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 1 BEFORE THE WASHINGTON STATE

 2 UTILITIES AND TRANSPORTATION COMMISSION

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

 4 In the Matter of the Petition of )

 )

 5 PUGET SOUND ENERGY. )DOCKET NO. UG-151663

 )

 6 for (i) Approval of a Special )

 Contract for Liquefied Natural )

 7 Gas Fuel Service with Totem )

 Ocean Trailer Express, Inc., and )

 8 (ii) a Declaratory Order )

 Approving the Methodology for )

 9 Allocation Costs Between )

 Regulated and Non-regulated )

10 Liquefied Natural Gas Services )

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12 HEARING, VOLUME III

13 Pages 72 - 129

14 ADMINISTRATIVE LAW JUDGE DENNIS MOSS

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16 1:35 p.m.

17 MAY 26, 2016

18 Washington Utilities and Transportation Commission

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19 Olympia, Washington 98504-7250

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 1 OLYMPIA, WASHINGTON; MAY 26, 2016

 2 1:35 P.M.

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 4

 5 JUDGE MOSS: Good afternoon, everyone. My

 6 name is Dennis Moss. I'm an administrative law judge

 7 for the Washington Utilities and Transportation

 8 Commission.

 9 We are convened this afternoon in the matter

10 styled Petition of PSE for, lower case Roman Numeral

11 (i), Approval of a Special Contract for Liquefied

12 Natural Gas Fuel Service with Totem -- that's

13 T-o-t-e-m -- Ocean Trailer Express, Inc., and lower case

14 Roman (ii) a Declaratory Order Approving the Methodology

15 for Allocating Costs Between Regulated and Non-regulated

16 Liquefied Natural Gas Services. It's Docket UG-151663,

17 and it was filed back in August of 2015.

18 We've been through a couple of stages in

19 this proceeding already. We had our preliminary Order 4

20 that invited the Company to come back with an

21 alternative to its original proposal that the Commission

22 could consider fully within its jurisdiction, or as has

23 come back to us, in point of fact, with a split between

24 jurisdictional and non-jurisdictional businesses.

25 We also entertained a request that was

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 1 generally supported by all parties to have a bifurcated

 2 proceeding in phase one and phase two; phase one to

 3 consider a couple of issues that the Company considers

 4 to be foundational, and I'll return to that point in

 5 just a moment.

 6 Before doing so, however, let's go ahead and

 7 get the preliminary business of taking appearances out

 8 of the way, and we'll start with the Company, Mr. Kuzma.

 9 MR. KUZMA: Good afternoon, your Honor.

10 Jason Kuzma from Perkins Coie on behalf of Puget Sound

11 Energy.

12 JUDGE MOSS: I'm going to turn first to my

13 left and your right so I don't miss it.

14 MR. PEPPLE: Good afternoon. Tyler Pepple

15 for the Industrial Customers of Northwest Utilities.

16 JUDGE MOSS: Mr. Brooks?

17 MR. BROOKS: Good afternoon, Commissioners,

18 Judge Moss. Tommy Brooks, Cable Huston, for the

19 Northwest Industrial Gas Users.

20 JUDGE MOSS: Mr. ffitch, I believe we are to

21 you.

22 MR. FFITCH: Thank you, your Honor. Good

23 afternoon, Commissioners and Judge Moss. Simon ffitch

24 for the Office of Public Counsel, Washington State

25 Attorney General.

0077

 1 MR. SHEARER: And Brett Shearer, Assistant

 2 Attorney General on behalf of Commission Staff. And

 3 with me is my colleague, Pat Oshie.

 4 JUDGE MOSS: All right. Do we have anybody

 5 on the conference bridge line who wishes to enter an

 6 appearance today? Since we have all the players here,

 7 I'm not surprised to hear the sound of silence.

 8 So with that, then, I did want to raise

 9 another point concerning the order that established the

10 bifurcated proceeding, and that was Order 7. In that

11 order, which I had a hand in crafting, or perhaps it's

12 even got my signature on it, I'm not sure, but either

13 way, the suggestion -- the Commission made the

14 suggestion that, with respect particularly to the second

15 question presented, it might be able to only reach a

16 conditional decision at this phase of the proceeding.

17 And as everyone knows, the other parties other than the

18 Company all, I believe, suggested in their briefs in

19 this phase that this may be something that would be

20 necessary with respect to both questions.

21 Having said that, I also observed the point

22 that the Company states in its brief in two places, I

23 believe, that if it does not get an affirmative answer

24 to these two questions, I gather, as stated, it will not

25 go forward with the project.

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 1 And so I think Public Counsel called that

 2 out and described it as an ultimatum. I'm not sure that

 3 it is, but in any event, my question to the Company is,

 4 as a preliminary matter, is it an ultimatum? Is it --

 5 does it have to be an affirmative answer without

 6 conditions, or can it be a tentative answer that's

 7 dependent ultimately on a more fully-developed record

 8 that will be possible in phase two?

 9 And I note in that connection, I believe the

10 project is probably on a little bit longer timeline than

11 originally anticipated because of other matters. So if

12 you could address that preliminarily, and then we'll

13 launch into the arguments.

14 MR. KUZMA: Sure, your Honor. The project

15 has certain timing issues that are still outstanding for

16 the Company.

17 JUDGE MOSS: Okay.

18 MR. KUZMA: It requires about 32 to

19 36 months to complete the project. Puget's trying to

20 meet a need for its peaking resource for the winter of

21 2019; also, the need for the TOTE service in 2019 as

22 well. So there are -- I wouldn't describe what

23 it -- I wouldn't describe it as an ultimatum as the

24 Public Counsel has suggested, but there is some need for

25 expedited treatment of this proceeding.

0079

 1 We do note that this has been ongoing

 2 since -- I believe August 11th we filed the petition.

 3 We understand that there's been changes due to the --

 4 you know, the original request. We have had some

 5 time -- due to the unfortunate sinking of the El Faro,

 6 it has delayed TOTE'S need for a little bit, about a

 7 year. And so we still have some issues that we need to

 8 work forward, but we do recognize the other parties'

 9 briefing in which they indicated that they would like

10 more process.

11 And Puget's greatest concern in this

12 proceeding is, is we believe that this is a really good

13 project for both the Company, its customers, the region

14 and the environment. And that is what we are ultimately

15 trying to solve here is how to -- due to the unregulated

16 and the regulated nature of it, it's sort of a square

17 peg and we're trying to fit it into a regulatory round

18 hole.

19 And we don't -- we don't -- just to be

20 honest, we don't have the best way of doing that right

21 now. And we have some concerns that the traditional

22 adjudicative proceeding might not be the best way of

23 doing that.

24 Right now I would say just that Puget has --

25 is -- would be open to many different considerations, is

0080

 1 looking for some opportunity to maybe collaborate with

 2 the other parties. We believe that, on the merger order

 3 issue in particular, those other parties have raised

 4 issues that Puget would readily agree. We don't have an

 5 operating agreement yet. We don't have an ownership

 6 agreement yet. We don't think those are insurmountable

 7 goals, but those are something that we would be able to

 8 work out perhaps with the other parties in a

 9 collaborative manner over the next few months.

10 And so that's why today, after reading the

11 briefs, we actually are of the opinion that we -- our

12 understanding is that the other parties would require

13 more process, and we're amenable to that.

14 The one request we would have in return is

15 that over the next two months, let's say, we enter into

16 perhaps a mediated collaborative process with the other

17 parties of trying to understand that the primary goal

18 here is to build a project that has both unregulated and

19 regulated, neither one of which pencil out without the

20 other. We can't build a regulated standalone project

21 and we can't build an unregulated standalone project.

22 It's the economies of scale that capture the benefits

23 for the customers, which we project to be about

24 $100 million today and the 2015 IRP.

25 And as a result, that's what our proposal --

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 1 after reading the briefing, considering the issues --

 2 that we would bring to the Commission today, is that

 3 we'd request, pursuant to the Commission's orders, that

 4 we begin a mediated process.

 5 We actually thought about who would be a

 6 good mediator for this process, and we had reached out

 7 to Mr. Don Trotter, former Attorney General, Assistant

 8 Attorney General, and he worked on the merger

 9 proceeding, so he is very intimately aware of the

10 ring-fencing issues that are implicated by this. He

11 doesn't have any background in the LNG project, but he's

12 a very capable attorney and can bring himself up to

13 speed.

14 We've reached out to him. He said that he

15 would be available and interested in assisting with

16 this. We were very clear that we would require him to

17 be very independent. We do not want him to be anything

18 other than to facilitate -- help solve problems, maybe

19 think a bit more creatively.

20 And so we're willing to go forward with more

21 process, put some more -- allow the parties to build

22 more of a record, but we would request this

23 collaborative proceeding, which we could use as both a

24 perhaps settlement process and a discovery process so

25 that we can help flesh through the issues, narrow them,

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 1 because we -- we understand that this is a different

 2 animal, and we are struggling at this point to try to

 3 fit it within the regulatory model. And that's why we

 4 think that someone like Mr. Trotter would be able to

 5 facilitate that.

 6 JUDGE MOSS: Well, let me respond then.

 7 We're getting into colloquy sooner than I anticipated,

 8 and with me, which I also didn't anticipate, but I think

 9 I can perhaps move things along a little bit.

10 First of all, I would like to say that I

11 think you have made an excellent decision to reach out

12 to Mr. Trotter. I know from prior experience working

13 with him over the course of many years, both in terms of

14 his success as a negotiator and in assisting parties to

15 come to meetings of the mind, he's really good in that

16 role. He's also very bright and capable, as you

17 indicated, so that I would -- I acknowledge and applaud

18 your decision to do that.

19 The other point that I think I should bring

20 up, bring forward, then, at this point is whether we

21 need to do more than -- today than discuss the -- sort

22 of the parameters of this further process that would

23 certainly allow a couple of months for this to work its

24 way through, certainly with some direction from us, I

25 think. Without having consulted with the commissioners,

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 1 I think they would certainly be supportive of that kind

 2 of an effort to the point of encouraging it.

 3 What do you need from us today if this

 4 process is to go forward? And I see Commissioner --

 5 Chairman Danner reaching for his microphone, so let me

 6 turn the floor over to him.

 7 CHAIRMAN DANNER: Well, I'm intrigued by the

 8 proposal. I would like to actually find out what the

 9 other parties -- you know, how -- what their response is

10 to this, to see if this is a fruitful endeavor going

11 forward.

12 JUDGE MOSS: Let's go ahead and take that

13 question up then, and we'll start with you, Mr. ffitch,

14 if that's all right, or with Staff.

15 MR. OSHIE: Thank you, your Honor.

16 Well, your Honor, first -- and

17 Commissioners, Staff was made aware of the structured

18 mediation proposal that Mr. Kuzma just brought forward

19 to the Commission yesterday, and -- at least I was made

20 aware of it yesterday.

21 And so Staff is not opposed to a structured

22 mediation option, certainly would support, you know,

23 Mr. Trotter as the preferred mediator for this. But

24 Staff does have some conditions that they believe at

25 least the Commission should consider before ordering the

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 1 parties or agreeing to suspend the procedural process to

 2 engage in a structured mediation.

 3 And so the terms or the conditions that

 4 Staff would like the Commission to consider are the

 5 following: So in the structured mediation, Staff

 6 believes that it cannot agree that -- well, it should --

 7 that -- excuse me, I'll start over a little bit -- that

 8 the Utility should at all times be protected from the

 9 risks that are forwarded by an unregulated activity that

10 is funded by PSE's investors. That's the first -- I

11 mean, Staff will enter -- we're willing to talk about

12 this, we're willing to go into structured mediation to

13 discuss it, but that principle has to be part of any

14 settlement that is agreed to by Staff.

15 As a second condition, if you will, the

16 process must offer a reasonable prospect of success. So

17 right now Staff is engaged in numerous rate cases, which

18 the Commission is aware of. It is devoting time and

19 resources to completing those cases in some instances

20 and beginning the process of discovery in others. So if

21 Staff is going to spend a lot of time in this structured

22 mediation, there's no use doing it if there's no real

23 prospect of success. So that is a commitment that Staff

24 is willing to make to try to -- you know, try to

25 accomplish, but it is really a commitment that needs to

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 1 be made by all the parties before entering into any kind

 2 of mediation effort.

 3 The third condition, I think, is pretty --

 4 is pretty straightforward, that all parties must be

 5 involved. And in Staff's mind, all parties must agree

 6 to the solutions presented to the Commission at the end

 7 of the process.

 8 Another condition. Staff believes that it

 9 should be completed quickly and efficiently -- in

10 Staff's mind, within 30 to 60 days -- and the Company

11 should agree to provide all documents, any evidence

12 required by the parties; in other words, to enhance

13 discovery so that the information can be transferred in

14 a very timely and efficient way to the parties that need

15 it. This is to accommodate whatever the schedule is set

16 by the Commission for structured mediation. So if it's

17 going to be 30 days, I think that expedites the

18 discovery process; if it's 60 days, it could have some

19 more flexibility.

20 And finally, what Staff would like the

21 Commission to know is that, entering into any kind of

22 structured mediation, Staff is going to apply what I'll

23 call the basic principles of regulation:

24 Reasonable allocation of costs based on the

25 cost causer. Where's the effort being made here to

0086

 1 engage in providing the service? That's where the costs

 2 should lie.

 3 The Commission's framework for determining

 4 how costs will be allocated when it's involved in

 5 affiliated transaction. The Commission has said we have

 6 the statutes, and the Commission has set forth certain

 7 rules, if you will, through the case law on how those

 8 transactions should be considered and how those costs

 9 should be dealt with, and so Staff would apply that in

10 the structured mediation.

11 And finally, what Staff -- if there's some

12 decision on an equity adder, Staff is going to apply the

13 principle of a reasonable cost of capital depending on

14 the risks associated with the endeavor.

15 So those are the general, you know,

16 principles, if you will. They may have sounded somewhat

17 specific, but I think it's important before -- I think

18 the message from Staff is that, to engage in a process

19 like this, the parties should understand where Staff is

20 coming from. And if there's no real hope of success,

21 based on what I've just relayed to the Commission, then

22 we should all know that right up front before engaging

23 in it.

24 JUDGE MOSS: Well, Mr. Oshie, I appreciate

25 your remarks. Certainly one of the guiding principles

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 1 of mediation is that all parties participate in good

 2 faith. And the sort of candor that you've displayed in

 3 outlining the parameters within which Staff, for its

 4 part, could do that, I think is helpful. And if others

 5 wish to do that, I would certainly encourage it.

 6 Before I move on to Mr. ffitch, I'll first

 7 give you an opportunity if you have more to say, but I

 8 did want to return briefly to your first point, because

 9 I didn't quite -- I don't like my note.

10 So as I understood it, you were talking

11 about the concern over financial risk?

12 MR. OSHIE: Maybe said in a different way,

13 Judge, is that Staff believes that the ring-fencing

14 provisions contained in the merger order should be

15 upheld.

16 JUDGE MOSS: That would be a more direct way

17 to say it.

18 MR. OSHIE: Yes. And to protect the

19 ratepayers from the unregulated -- from risks associated

20 with unregulated activities of PSE's investors.

21 JUDGE MOSS: That certainly makes it very

22 clear.

23 MR. OSHIE: Thank you.

24 JUDGE MOSS: All right. Thank you.

25 Commissioner Jones has a question.

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 1 COMMISSIONER JONES: Just a question, or a

 2 point of clarification, a little bit of a colloquy.

 3 I had a chance to read your brief,

 4 Mr. Oshie, so on page two, you say that Staff is not per

 5 se opposed to an LNG facility in the Port of Tacoma. It

 6 doesn't say how or who or what. And you say there may

 7 be -- very well be broad merits to the plans offered by

 8 the Company, but they involve complex questions of law

 9 and policy, and you just mentioned cost allocation.

10 So what would -- what do you see would be

11 the focus, at least, of Staff's concern if this process

12 is to lead to any result in structured mediation? Would

13 it be focused more on law, on policy, or on some of the

14 issues you just discussed, a Merger Commitment 58 on

15 ring-fencing, or cost allocation, or all of the above?

16 MR. OSHIE: Well, Commissioner Jones, I'd

17 like to distribute that in some primary to secondary

18 order, because I think that they're all -- well, I think

19 they're all very important, and I really can't say at

20 this time what Staff would look at first and foremost.

21 But I think what -- you know, where -- part

22 of what Staff is intending by its brief is to say,

23 there's a lot of ways that this project can provide

24 benefits, but there's a cost associated with that. And

25 when you begin to look at the costs, Staff would like to

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 1 approach this as understanding, how are they -- what are

 2 the activities that are going to take place, for

 3 example, at the TOTE dock? How should those activities,

 4 on a day-to-day basis, be allocated as to costs?

 5 From Staff's perspective, when you look at a

 6 peaker plant, as an example, from a very high level, you

 7 have a peaker plant, and it will be needed a few days a

 8 year perhaps, or maybe not at all. And as we all know,

 9 in the natural gas side of the business, customer use is

10 going down, weather is getting warmer, so those heat

11 days that are required are beginning to decrease. And

12 we're seeing that -- at least it was -- the Commission

13 has seen that as a general trend, a cost of natural gas

14 industries. So all that will play out on its own, and

15 it's certainly not going to be decided here in this

16 proceeding.

17 But the idea is really, where are the costs

18 being driven? And to Staff, the daily refueling

19 activities, or weekly, whatever it may be, at the TOTE

20 facility, are really going to drive how that facility's

21 going to be used, the manpower needed to staff it up,

22 all of the activities at the dock on a recurring basis

23 will be to refuel the TOTE transport ships. And

24 that's -- I think that's how it's going to roll.

25 So where -- how should the costs be

0090

 1 allocated? Puget has proposed an allocation scheme that

 2 Staff doesn't think is correct, and so it's a matter of

 3 sorting that out. That's what we were intending to do

 4 in the hearing is, through discovery, kind of sort out

 5 how these costs should be allocated. And we will -- and

 6 if required, Staff would make that presentation to the

 7 Commission, but it will be based on activities at the

 8 dock, not an upfront, just broad, high-level allocation

 9 of this is what it should be.

10 So if that gets to your question, at least

11 in part, Commissioner Jones --

12 COMMISSIONER JONES: Mr. Oshie, I think it

13 does, but I -- in your brief, you say "law" and

14 "policy," so policy is generally, at least in my view,

15 determined by the commissioners, by the Commission as a

16 whole; policy often involves complex issues of

17 legislation, things like that, environmental -- the

18 reducing diesel emissions I think you would agree is a

19 huge part of this application from maritime vessels.

20 But whether or not this applies here or not,

21 I think it is kind of a policy question. So what kind

22 of -- if policy is going to be a big part of this

23 structured mediation, how much guidance, if any, do you

24 need from us?

25 MR. OSHIE: Well, the policies of the

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 1 Commission have generally been set forth, of course, by

 2 the Commission in their orders and other statements.

 3 And so the statements made by the legislature with

 4 regard to the importance of LNG, Staff would be

 5 considering those, and that's the policies that I

 6 believe Staff is looking at.

 7 What is the -- what's the import of LNG?

 8 How should it be developed?

 9 At what cost? I mean, at what cost should

10 it be developed?

11 And is this the best way to do it?

12 So that's the policy, at least in part, that

13 was described in the brief generally. You know, the

14 legal framework is set forth also by the Commission and

15 by the Commission statutes, the enabling statutes, and

16 Staff would -- you know, Staff would apply those as

17 required.

18 The merger order is a very important piece

19 of this. And so that's why, leading off this

20 discussion, Staff intends to uphold the integrity of the

21 merger order to protect ratepayers from unregulated

22 risk. So that's where Staff would approach this unless

23 given another direction.

24 COMMISSIONER JONES: And specifically a

25 Merger Commitment 58?

0092

 1 MR. OSHIE: There's Merger 58 and there's a

 2 number of other merger commitments, Commissioner, that I

 3 think come into play. I can't give you the -- you know,

 4 the rhyme and the reason, if you will, and name them

 5 off. The more I review the merger order, the more I

 6 think different commitments would apply, at least if not

 7 directly, indirectly to this case.

 8 COMMISSIONER JONES: And as you know, I was

 9 heavily involved in some of those merger commitments,

10 and dissented on part of them, but I did read Merger

11 Commitment 58 -- I was going to ask some questions

12 today -- we may not have time to ask questions -- but

13 Merger Commitment 58 is pretty explicit in terms of

14 corporate organization.

15 Would you not agree, Mr. Oshie, it basically

16 said one of the purposes of ring-fencing, as you stated,

17 was PE, the immediate Holdco -- not to mention Puget

18 Intermediate and Puget Holdings -- PE was to only own

19 one subsidiary, PSE?

20 JUDGE MOSS: I think that's Commitment 56.

21 COMMISSIONER JONES: Is it 56, Judge? I'm

22 sorry. I correct the record. Merger Commitment 56.

23 MR. OSHIE: Commissioner, if it's 56 or 58,

24 I remember that very clearly, and I would -- and Staff

25 does as well, and understands -- I believe understands

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 1 well the intention of the Commission in that regard.

 2 I mean, as you remember, it was a -- at many

 3 times a difficult order for the Commission, and it was

 4 a -- I believe it was negotiated, it was a hard-fought

 5 case, and in the end, the Commission ended up with a

 6 170-page order. And it -- and many of the details that

 7 we talk about today were included in it in very direct,

 8 and I think very unambiguous statements made by the

 9 Commission and by you in your dissenting opinion.

10 COMMISSIONER JONES: Thank you.

11 JUDGE MOSS: And it is -- just to make sure

12 the record is perfectly clear, it is 56 and 58 to which

13 the Company seeks exemption or amendment, and other

14 parties did bring forth additional commitments they felt

15 were implicated, such as 210, 35 and some others.

16 Mr. ffitch, did you have something to share

17 with us on this subject matter?

18 MR. FFITCH: Yes, your Honor. Thank you.

19 If you'll indulge me, I think I may have a few things to

20 say.

21 We're kind of, I think, sort of reacting in

22 real time almost to this new proposal from the Company.

23 I guess I'll say at the outset that, as a general

24 matter, mediation, you know, is a good thing in these

25 proceedings, and can be a good thing.

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 1 I would also say, though, that in this

 2 particular situation, I would ask the Commission to

 3 think about the context of where we are in a couple of

 4 respects.

 5 One is that this would be the third time

 6 that the Company has essentially called a halt or a

 7 pause to this proceeding and asked parties to go into

 8 some sort of collaboration or settlement or discussion

 9 process. And in both previous instances, in the end, it

10 wasn't possible to really put that square peg in the

11 round hole, and the result of it was that we came back

12 to the Commission for guidance on threshold or

13 foundational issues.

14 And most recently, as you know, and the

15 reason this hearing was scheduled today, the Company

16 itself asked for a bifurcated proceeding to address

17 foundational issues, specifically merger commitment

18 waiver and incentive payments.

19 And we agree those are foundational issues.

20 We devoted, and all the others parties devoted

21 substantial resources to briefing those and being

22 prepared to address those today to the extent the

23 Commission wanted to do that. And we believe that that

24 bifurcated approach that the Company brought forward was

25 going to be a useful and efficient and a productive way

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 1 to move forward and get some guidance from the

 2 Commission on those two key issues, which the Company

 3 itself indicated were critical for it to know answers to

 4 go forward.

 5 They seem to have moderated that position

 6 perhaps today, but I guess we -- at this point I'm just

 7 kind of thinking out loud here a little bit -- I guess

 8 we would ask the Commission to take this under

 9 advisement at least and think about -- first of all, use

10 today if there are questions --

11 JUDGE MOSS: Let me ask that those that are

12 on the conference bridge line listening in, mute your

13 telephones, please. You are interfering with our

14 ability to hear each other in the hearing room. Please

15 silence your phones. Thank you.

16 Go ahead, Mr. ffitch.

17 MR. FFITCH: I guess one response to

18 something -- Mr. Kuzma is sort of characterizing

19 everyone else's position as wanting more process. I

20 won't characterize anybody else's position, but our

21 position was that the Commission could rule on the

22 foundational questions, and then what we said was,

23 essentially, if the Commission's inclined to grant a

24 waiver, or particularly to grant an incentive and thinks

25 that's conceptually okay, we just recommended that the

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 1 details of that be worked out in a -- on a better

 2 record.

 3 But we didn't say to the Commission, We

 4 don't know what to do, we need lots more process, and

 5 that wasn't really the intent of any of the parties in

 6 structuring this bifurcated approach. The intent was to

 7 get some guidance on those two key issues, if possible,

 8 and we still think that would be valuable.

 9 And I want to kind of key into something

10 that Mr. Oshie said on behalf of Staff, and that is, if

11 you are going to go into a mediation, or if one is, if

12 we are, you want it to be productive. And if those two

13 issues are still going to be on the table, if the

14 Company would still like to proceed to conduct this

15 business at the Puget Energy level and -- which would

16 currently be contrary to Condition 56, and use Puget

17 Energy's credit contrary to Condition 58, if that is

18 still the Company's position in the mediation, and if

19 the Company's position in the mediation is that they

20 have to have an incentive payment in order to go forward

21 with this project, then I'm not sure that that's going

22 to be a very productive mediation. I don't see our

23 office agreeing to that. I'm not sure other parties

24 would agree to that.

25 And so we haven't yet heard from the Company

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 1 whether those are still final positions that cannot be

 2 modified in mediation.

 3 JUDGE MOSS: We'll get back to Mr. Kuzma

 4 here in a few minutes.

 5 MR. FFITCH: So -- so that's -- I think

 6 that's the question mark with this mediation idea.

 7 Ultimately -- I guess the other point about

 8 the mediation is, if you have this mediation and not

 9 everybody's on board with the result, if not everybody

10 agrees that there should be an incentive payment and

11 something gets brought to the Commission, there's still

12 going to have to be a decision down the line on that

13 point. And so is that efficient?

14 This has been a terrific demand on the

15 resources of all the parties so far, this case, with all

16 the different phases and the briefing and the discovery

17 and the settlement processes. It's been really quite a

18 drain on, you know, a lot of parties' resources, and now

19 this next phase would probably continue that.

20 So getting some clarity and some guidance on

21 at least some of these key issues right now wouldn't be

22 a bad thing. It doesn't mean that we can't continue to

23 talk after that. If the issues are narrowed, if there's

24 some focus provided by a Commission ruling, then the

25 Company knows where they stand and can look at, you

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 1 know, what their options are, and there are options.

 2 And I guess I just want to finish up by

 3 saying a little bit more about the case itself, about

 4 the proposal itself. Why are we even here in this room?

 5 Why is Public Counsel sitting here? Why is the

 6 Commission sitting on this? Because the Company has an

 7 obligation to provide a peaking resource.

 8 If the -- if the Company just wanted to go

 9 into the LNG fuel business, it could do that by

10 establishing an unregulated sub in the -- at the Puget

11 Holding level. We wouldn't have to have a docket about

12 that. There might be some issues down the road about,

13 you know, affiliated interest agreements or something

14 like that. But essentially from the customer

15 perspective, the number one issue here is, you know, do

16 we need a peaker? And if so, has the Company gone out

17 and gotten the lowest cost resource to provide the

18 peaking facility? Those are pretty old-fashioned,

19 straightforward, noncontroversial issues.

20 The Company actually, in the ordinary course

21 of its business, would go out and find that lowest cost

22 peaking resource without coming to the Commission

23 initially. They'd just go do their business and do

24 their due diligence and do their prudent management, and

25 eventually come back to the Commission and say, we'd

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 1 like to get paid for this, and we made the right choice.

 2 What do you think? And then, you know, that would

 3 probably be addressed in a -- for example, a general

 4 rate case hearing.

 5 They could do that now. They could build

 6 the peaker or buy the pipeline capacity or do whatever

 7 they wanted to, and the LNG project is separate and

 8 apart from that. It doesn't necessarily have to be

 9 fully entangled with this peaking resource issue.

10 So, you know, the Company's got an option to

11 go forward essentially following the -- you know, the

12 agreed structure of the merger commitments, and

13 following normal resource acquisition for the peaker,

14 and the facility could get built.

15 If the Company -- the regulated company

16 wants to buy peaking resources from the facility, they

17 could have an affiliated interest agreement, or they

18 could do an RFP to the world to see who wants to provide

19 LNG for peaking purposes, or some kind of a peaking

20 resource to the Company, and Puget LNG could bid into

21 the RFP if they thought they had a good deal for the

22 regulated company.

23 So I think it's kind of important to step

24 back, sort of to wrap that up, maybe to summarize that

25 and step back and say, you know, what's this really

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 1 about from a regulated customer perspective and from a

 2 regulated perspective? The only real focus here should

 3 be, I think, on the peaker. That's what -- that's the

 4 regulated piece of this.

 5 So I guess I'll stop at this point. You've

 6 read our briefs. Happy to answer questions or get into

 7 some of the other issues there, but I won't repeat what

 8 we've already discussed in the briefs.

 9 JUDGE MOSS: All right. Thank you,

10 Mr. ffitch.

11 Mr. Brooks, do you have something you'd like

12 to add?

13 MR. BROOKS: Yes. I would like to share

14 NWIGU's thoughts on this idea of a structured mediation.

15 You know, the question's been posed, you

16 know, kind of what do we think about it, and we've had,

17 you know, the last 24 hours to try to think about it.

18 And I think the -- you know, we're not gonna

19 sit here and say we're not gonna mediate. I mean,

20 it's -- we committed at the very beginning of this

21 docket to stay engaged and to not, you know, delay the

22 process, and we -- that was part of our discussion, I

23 think, in front of you, Judge Moss, when we converted

24 this from a declaratory action to a contested case

25 hearing, that we would stay engaged. And so we're

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 1 committed to staying engaged and not being a holdup.

 2 So I think the real question is, I mean,

 3 part of it is one of timing, and is this mediation going

 4 to be done in lieu of, for example, getting an order

 5 that's based on the issues that are in front of the

 6 Commission today?

 7 Or what I think, which is more appropriate,

 8 is that we go ahead and answer the questions that are

 9 before the Commission today and use that as guidance

10 leading into the mediation.

11 Just to take for an example, you know, one

12 of the issues with the merger commitments, the parties

13 could very well go away, come back with something that

14 they actually all agree to, but the Commission may still

15 feel strongly about whether or not the merger

16 commitments should be waived or not.

17 And really, all the arguments have been very

18 comprehensive, and they're before you now, so let's get

19 an answer on that and not have to worry about how that

20 feeds into some sort of other mediation or negotiation

21 kind of discussion.

22 I think it's the same on the sharing. You

23 know, the issue is squarely in front of you. Let's

24 know, based on the positions we already have, what the

25 answer is, so if we're going to go into mediation, we

0102

 1 have that as guidance.

 2 I guess the other thought we sort of had on

 3 this is -- and kind of what Mr. ffitch said -- in our

 4 briefs we talked about the inadequacy of the record. I

 5 don't -- maybe we should have not been as soft in our

 6 brief. We weren't saying we wanted more process or we

 7 needed process for process sake. We said that the

 8 record's just not adequate to make these decisions, and

 9 so make it based on the record that Puget presented and

10 let's move on.

11 I do get the sense that the structured

12 mediation is, in part, to develop that record. And you

13 know, it's tough for us -- you know, we're -- like

14 everyone else, we have limited resources. It's not our

15 job to build the record and to develop the record. We

16 critically -- we critique records where we can, we hire

17 experts to help develop a record to support our

18 position. But when I hear a 60-day process to try to

19 get to a record that's going to be satisfactory to all

20 the parties, it seems like a really, really high hurdle

21 to jump over.

22 And partly I say that -- the issues that are

23 raised -- that the other parties have raised in their

24 briefs, they're pretty technical, and they are different

25 than when the -- when this issue came up all together.

0103

 1 There was no incentive or -- you know,

 2 incentive payment, portfolio benefit to shareholders

 3 initially. Now there is. And that's raised a whole new

 4 bunch of issues for us, one's that we do think are very

 5 technical.

 6 And you know, we call it a mediation, but a

 7 mediation's going to be a negotiation. And you know, I

 8 try to think, well, what are we going to be negotiating?

 9 In a normal rate case, there's always issues that

10 everyone kind of -- you know, let's take rate of return,

11 for example. The parties monitor that a lot. They have

12 a good sense of where they are. They can go, and

13 there's enough pieces in there that, as a black box,

14 that everyone can kind of get comfortable with it.

15 These issues are not normal issues, and

16 they're new, they're novel. If we're going to talk

17 about leveraging ratepayer assets, I don't know that we

18 can negotiate that. We need to understand it and have a

19 principle of reason for why we're going one direction or

20 another, and we just think that's going to take a robust

21 amount of information for the Commission to make a

22 decision on that.

23 So I don't want to say that -- I mean, that

24 pushes me in a direction where I'm -- I question the --

25 you know, how fruitful the mediation can actually be.

0104

 1 But if it's what the Commission wants, give us some

 2 guidance on -- you know, make the decision that's in

 3 front of you today, give us a little bit of guidance and

 4 see how much progress we can make, and we'll stay

 5 committed to being engaged.

 6 JUDGE MOSS: I appreciate your comments.

 7 And I just wanted to say that we're considering this for

 8 the first time, too. So keep that in mind.

 9 CHAIRMAN DANNER: And so if we were to give

10 you some guidance today, is this something you think can

11 be done in 30 or 45 days?

12 MR. BROOKS: I do not have high hopes that

13 in 30 to 45 days we can resolve the technical issues

14 that the parties have presented in their briefs that led

15 to their current positions. I would be happy to hear

16 new information from everyone that says that we can, and

17 so we could take that into consideration.

18 CHAIRMAN DANNER: So what would your sense

19 of an appropriate timeline be?

20 MR. BROOKS: I'd just -- it's really hard to

21 know. I can't give you that yet without going back and

22 talking to the technical folks and saying, you know,

23 what would we need, and what kind of resources do we

24 need to put to it?

25 JUDGE MOSS: Okay. Mr. Pepple?

0105

 1 MR. PEPPLE: Good afternoon. Well, first, I

 2 will say thank you for inviting ICNU to this docket. We

 3 always appreciate being heard.

 4 I am, I think, going to be Switzerland on

 5 the issue of whether it's a good idea to mediate or not,

 6 recognizing that we have a slightly different interest

 7 in this matter than the other parties. I think we're --

 8 we'll be comfortable either way with what the Commission

 9 decides.

10 I'll say -- just one thing is that, one of

11 the interests we do have in this proceeding is the

12 possibility for this docket and any waiver of merger

13 conditions to be precedential and to influence future

14 decisions.

15 So I guess I would add one condition to

16 Staff's from ICNU, which is that any -- if we are able

17 to reach agreement and a stipulation, I would like it to

18 be very clear that the elements of that stipulation are

19 not precedential on future decisions.

20 That's all from us.

21 JUDGE MOSS: All right. Thank you.

22 I believe we have made our way back to you,

23 Mr. Kuzma. I would like to hear your reaction or

24 response to some of the ideas you've heard. We are, of

25 course -- this is something the Commission has to take

0106

 1 under consideration as well, because we're basically

 2 being asked to offer some guidance or establish some

 3 kind of process or what have you.

 4 So what are your thoughts with respect to

 5 some of the things you've heard from others?

 6 MR. KUZMA: It's difficult to -- given all

 7 the different opinions, but I believe the best way to

 8 approach this is, Puget's biggest interest in this is to

 9 construct the project. It is a good project for Puget,

10 customers, region and the environment.

11 And we know we have presented a model.

12 We're not necessarily wedded to that model. What we

13 would like to do is proceed with a method that we can

14 maybe get all parties on board that would allow for the

15 project to be built, because we do sincerely believe

16 this is in the best interests of the customers.

17 And we proposed it as a separate affiliate

18 because we believed that Puget Sound Energy could have

19 constructed the project as planned, but then that would

20 have created some unnecessary risks to customers, and we

21 thought it would be better to separate that risk by

22 having it into an affiliate, an unregulated affiliate.

23 We can consider other models as well. We're

24 not -- again, we're just trying to figure out a way to

25 make this work for the region and for the customers.

0107

 1 And our -- our position is essentially that we're open

 2 to different ideas, and that's why we would like the

 3 mediated settlement.

 4 We do not think the adjudicative process

 5 fits well into building something, and that's what we're

 6 trying to do here. We're trying to come up with an idea

 7 that will work for all.

 8 We can't, as Mr. ffitch had suggested, just

 9 build a peaker. The peaker -- we have presented

10 evidence that that's $215 million to build a standalone

11 peaker. Meanwhile, this facility we're projecting would

12 be $135 million, so there's an $80 million benefit, just

13 due to the economies of scale of this, as far as the

14 allocation of capital costs.

15 So there are benefits here being achieved by

16 having both uses that are lost if we separate those

17 uses, and that causes the conundrum for us of how do

18 proceed with this in a manner that would be acceptable

19 to all.

20 We do not -- I would -- you know, to address

21 some of the things individually as far as Staff's

22 conditions, I think we agree that utility customer

23 interests should be protected. We're not seeking to --

24 you know, we viewed a lot of the different commitments

25 that they raised for the merger order as being

0108

 1 applicable. We would agree. I mean, we intend to make

 2 sure that customers are held harmless from the

 3 activities of this.

 4 If parties have ideas of better ways of

 5 structuring that, we're open to those. We're not trying

 6 to supplement those. We are just simply stating that we

 7 would like to go through this mediated proceeding,

 8 because we feel like if we just brought back another

 9 proposal, it might be insufficient for one reason or

10 another, that we're inadvertently overlooking something.

11 And working together, we can identify those issues and

12 maybe try to address them together as a far more

13 expeditious process than having us go away for another

14 month and come back with another proposal that may or

15 may not be liked.

16 JUDGE MOSS: Okay. Thank you.

17 COMMISSIONER RENDAHL: Mr. Kuzma, this is

18 Commissioner Rendahl.

19 So are you essentially saying the Company is

20 not backing away from but moving off its proposal that

21 triggered the threshold conditions that we were asked to

22 make and go back to the drawing board?

23 MR. KUZMA: I think that's a fair

24 characterization. I think we would consider many

25 different alternatives. We came back with one that we

0109

 1 thought that the Company could live with; obviously it

 2 ran into some concerns with others.

 3 And so we are simply running into an issue

 4 of timing. We need to work in a concerted effort to get

 5 this done within the next few months, because once we've

 6 lost this window, we've lost the opportunity to build

 7 the project, and customers have lost the benefits

 8 associated with the project.

 9 This is a once-in-a-generation opportunity

10 to build this project that's come about in large part

11 due to environmental regulations facing TOTE. And if we

12 do not seize this at this time, TOTE has an opportunity

13 to seek other alternatives.

14 COMMISSIONER RENDAHL: Okay. So I'm also

15 aware that this isn't the only place that these

16 threshold decisions are going to be made. This is about

17 the regulatory issues. But the City of Tacoma is also

18 in a position of making some decisions.

19 So how does that play into the timing? I

20 don't think that their process ends in two months. So

21 I'm just trying to get a sense of, realistically, how

22 does this play out?

23 MR. KUZMA: Well, it depends on the

24 different issues that they're examining. I'm not aware

25 of the City of Tacoma's decision-making at this time. I

0110

 1 do know that Puget has some issues related to the Corps

 2 and some of the shoreline that requires some permitting

 3 with respect to the in-water works, for example.

 4 Those are something we are comfortable that

 5 we can -- we can complete and work through. And at the

 6 same time, we can work through some of the construction

 7 that doesn't require the in-water works, for example, so

 8 that we can delay those until a later time perhaps.

 9 Those are issues that we can work through,

10 but we have a fundamental problem of we don't even know

11 how we can structure this at this point. Puget Sound

12 Energy could build the entire project on its own, but we

13 thought that that would be an unpalatable risk to

14 the share -- I mean to the customers, so therefore,

15 we've proposed the alternative, having it as an

16 affiliate.

17 That has now raised some concerns with

18 others as well, and we're not discounting those

19 concerns. We just think that those are not

20 insurmountable concerns. Those are issues that, you

21 know, ring-fencing was designed to protect, and we would

22 like to work within that structure of creating something

23 that would work for all.

24 COMMISSIONER RENDAHL: So in terms of the

25 question of the benefits and how those would be

0111

 1 allocated, are you proposing -- is the Company proposing

 2 to provide additional information, additional details

 3 about costs, and details that would, I think, make a

 4 difference to the parties in terms of what is entailed

 5 and what benefits might be present, so that it's not

 6 just such a hypothetical question about sharing of

 7 benefits?

 8 MR. KUZMA: Yes. We met yesterday with the

 9 IRP team that calculated many of those benefits. They

10 are fully prepared to work throughout the next 60 days I

11 think was mentioned earlier as far as on the structured

12 settlement discussions. We are fully committed to

13 working to meet the goals and the deadlines and give the

14 information that is required by the other parties.

15 COMMISSIONER RENDAHL: So having heard

16 Staff's conditions, does a mediation still seem like

17 it's an option?

18 MR. KUZMA: Yes. I think Puget doesn't have

19 a disagreement with nearly any of their concerns except

20 for, perhaps, they said that it would require a

21 unanimous proposal at the end. We think that's taking

22 it a bit too far. We think that maybe partial

23 settlement might be possible.

24 The problem with unanimous is you just

25 always create the veto right in some party, in which

0112

 1 case they'll hold out and -- you know, for some issue

 2 that might be dear only to them, and not in the best

 3 public interest, and I'm including the Company there.

 4 So that's why I would suggest that that's

 5 the one issue that we would take issue with, is just, we

 6 think that it shouldn't preclude a potential for a

 7 partial settlement if, you know, say, three out of the

 8 four parties agree on a certain proposal.

 9 COMMISSIONER RENDAHL: Thank you.

10 MR. OSHIE: Your Honor, Pat Oshie for Staff.

11 May I respond?

12 JUDGE MOSS: Sure.

13 MR. OSHIE: Thank you. What Staff is

14 intending, and it's not that somehow there's going to be

15 an ultimate end game of this case through structured

16 mediation; in other words, the parties can agree to what

17 they can agree to in structured mediation. If there are

18 issues that aren't agreed to, it's going to come back to

19 the Commission, just as a full settlement or a partial

20 settlement would come back to the Commission. And it's

21 at that point the Commission is going to have to make

22 the decision as to whether the settlement is consistent

23 with its, you know, statutory authority, its policies,

24 or it sees the public interest and sees the benefits.

25 But I don't -- I mean, I don't have to walk through that

0113

 1 with you. You already understand it.

 2 So -- but to think that -- I mean, certainly

 3 Staff doesn't mean that everything is going to happen in

 4 a structured settlement or a structured mediation. It

 5 is to try to resolve what can be resolved. And if that

 6 can't be resolved, it's going to come back, and those

 7 issues will be dealt with, whether it's the remaining --

 8 whatever the remaining process may be in this case, or

 9 in some other procedural tool to get it done.

10 JUDGE MOSS: Okay.

11 MR. KUZMA: And with that clarification -- I

12 appreciate that. I may have misunderstood. I thought

13 the requirement was more of a global settlement, and

14 that may just not be possible. If some of the issues

15 have to come back, or if one party does want to hold out

16 and raise issues with the Commission, we could be

17 amenable to that. That's understandable.

18 JUDGE MOSS: There are several -- at least

19 one, and perhaps more than one, I think, party suggested

20 that it would be useful to have guidance from the

21 Commission concerning the threshold questions you put

22 forth. I wanted to get your thoughts on that. It may

23 be that the Company is open to and perhaps even

24 considering putting forth a structural proposal that

25 would obviate the need for -- for example, for exemption

0114

 1 or amendment of 56 and 58, in which case our answering

 2 the question would be meaningless.

 3 So I just wanted to get your thoughts on

 4 whether it would be worth while for the Commission to

 5 still hear some argument today and give, for lack of a

 6 better term, some guidance to these threshold questions.

 7 MR. KUZMA: I'm finding out what I think.

 8 JUDGE MOSS: The answer is being handed up.

 9 MR. KUZMA: We agree that guidance would be

10 good, particularly with respect to the merger order

11 issue. We don't know that it would not be possible to

12 put an entity above Puget Energy, but it would be

13 difficult given there's lots of issues with respect to

14 credit ratings, credit issues, things of that nature.

15 Like I said, we're not ruling that out, but

16 if we could do it at Puget Energy or below -- I mean

17 below Puget Energy, it would be useful and helpful to

18 know whether that's even a possibility. That is one

19 issue that we definitely think that guidance would be

20 assistance.

21 JUDGE MOSS: Okay.

22 MR. KUZMA: And one thing I do want to

23 raise, earlier in response to something that

24 Commissioner Jones said as far as 56, I just wanted to

25 call out for the record that Commitment 56 does say that

0115

 1 Puget Energy shall have no business other than owning

 2 PSE.

 3 But at the same time, 26A says that any

 4 unregulated affiliate would be placed at either Puget

 5 Holdings, Puget Intermediate or Puget Energy. So

 6 there's a conflict there that we read 56 to be without

 7 Commission approval, and that's -- that's why we're

 8 seeking this at this time, because there is an

 9 inconsistency between the two.

10 JUDGE MOSS: Okay. I think I would like to

11 take the opportunity to chat with the commissioners

12 privately before we go further with all of this. Just a

13 brief opportunity.

14 So we've been talking now for an hour.

15 Let's take a ten-minute recess, and then we'll be back

16 and decide where we go from here. Thank you.

17 (A break was taken from

18 2:30 p.m. to 3:03 p.m.)

19 JUDGE MOSS: Let's be back on the record.

20 MR. KUZMA: Your Honor, if I may for one

21 minute, to clarify something.

22 JUDGE MOSS: Oh, okay.

23 MR. KUZMA: During the break, we conversed.

24 And taking up on NWIGU's suggestion regarding the

25 guidance, we do think guidance on both issues would be

0116

 1 appropriate and helpful as well. So it sort of caught

 2 me off cuff, but I think I limited it to the merger

 3 order, but it would be as well to the sharing of the

 4 portfolio benefits as well.

 5 JUDGE MOSS: Thank you.

 6 CHAIRMAN DANNER: All right. I guess I'll

 7 start. And I'm not going to speak for my colleagues,

 8 but I'll just tell you what my thoughts are on this.

 9 I think the answer to both of the questions

10 that are posed before us right now are, it depends. We

11 just don't have the proposal in front of us that would

12 allow us to give you the guidance you're looking for.

13 And so I -- actually, I like the idea of the

14 parties getting together for a mediated discussion, and

15 I have a lot of confidence in Mr. Trotter to serve as

16 the mediator there.

17 But I also think that it's important for

18 everybody to come to these discussions without lines in

19 the sand, because, again, I think it's really going to

20 come down to a meeting of the minds.

21 In my mind, I think that the merger

22 conditions are -- they are tools to protect the

23 ratepayers. And if there are alternatives or different

24 shapes of ring fences or other things that would also

25 serve to provide similar protections to the ratepayers,

0117

 1 that I wouldn't foreclose those. But that is really

 2 going to be dependent on the conversations that you all

 3 have going forward.

 4 With regard to the sharing, again, I'm --

 5 whatever that sharing might be, you know, I don't know

 6 about an equal sharing, but some other kind of sharing,

 7 again, that's going to be based on what the parties can

 8 have discussions about, because I don't think we should

 9 foreclose anything, and it's going to be dependent upon

10 what all of you come up with.

11 I think all of you are aware of the

12 interests and the goals of the other parties, and there

13 won't be a lot of surprises here. But I do think it

14 would be fruitful for the parties to invest the time,

15 and so I would encourage that end.

16 But in terms of the guidance that we could

17 provide, the only thing I would say is, that's really up

18 to you. We're not going to put limits on it other than,

19 at the end of the day, we do want to make sure that

20 whatever you come to is in the public interest and that

21 ratepayers are protected.

22 COMMISSIONER RENDAHL: I echo my colleague's

23 comments. I guess what's -- the "it depends" is really

24 the issue, because there -- in particular on the sharing

25 question, we don't have a whole lot of details to go on,

0118

 1 and it is really a hypothetical question. And so I

 2 think it's very hard for us to decide those.

 3 And I agree that whatever you all might be

 4 able to come up with should be focused on public

 5 interest and make sure the ratepayers are protected

 6 given the -- what we do know about this possible

 7 project.

 8 So I understand you all want some more

 9 concrete direction from us today, but I also think the

10 proposal and having Mr. Trotter provide some

11 facilitation for discussion could be very useful.

12 And I would limit the time before you come

13 back and give us a status update would be no more than

14 two months, because there are other things going on at

15 the Commission that will need everyone's attention, I

16 would encourage everyone to focus their attention and

17 see if they can be creative without any lines in the

18 sand, as Chairman Danner said, and then come back and

19 check in with us.

20 So that's what I have to say.

21 COMMISSIONER JONES: And this is

22 Commissioner Jones, and I concur with my colleagues as

23 well.

24 Just to add a little more flavor to it, I

25 think that PSE's proposed alternative business models,

0119

 1 the four proposed in the brief, are obviously inadequate

 2 to some of the parties, particularly Staff and Public

 3 Counsel. I would urge the Company to look at those in

 4 some detail and be creative. I mean, you may go back to

 5 the drawing board on number 1, number 2, number 3,

 6 number 4, or there could be a number 5 or a number 6.

 7 So look at the alternative business models. No lines in

 8 the sand.

 9 You obviously heard my colloquy with

10 Mr. Oshie on some of the merger commitments and the

11 ring-fencing. They are not -- I mean, conditions

12 change, business models may change, but I think the

13 intent of those merger commitments, especially in 56 and

14 58 -- and I heard you, Mr. Kuzma on other merger

15 commitments -- but at least I don't want to get into a

16 discussion of the pros and cons and weighting of merger

17 commitments at this hearing today.

18 So -- and I think Mr. Oshie stated some of

19 those merger -- the intent of those merger commitments,

20 ring-fencing, is that PSE -- the regulated ratepayers of

21 PSE are adequately protected, or fully protected;

22 however, you can go back and look at the record.

23 So be creative, no lines in the sand, and

24 come back and give us a status update. That's where I'm

25 coming from.

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 1 JUDGE MOSS: I think the commissioners have

 2 certainly thoroughly covered the discussion that we had

 3 in the past half hour in terms of where the Commission

 4 is on this at this time.

 5 What I did hear from the parties and PSE is

 6 that you are willing to engage in good faith in a

 7 mediated process with open minds, creative thinking,

 8 out-of-the-box thinking, whatever may be required to try

 9 to accommodate the various interests that were expressed

10 at high levels today. And I think that's -- I think

11 that's a good thing.

12 I think Mr. Trotter will certainly, I'm

13 sure, effectively manage the mediation process, and will

14 no doubt have some conversation with you at the outset

15 concerning his expectations for everyone's participation

16 as well. And so we're going to travel hopefully here

17 and give you all two months to engage in this process.

18 And I wanted to ask you, Mr. Kuzma, you said

19 that PSE reached out to Mr. Trotter. Have you made an

20 arrangement with Mr. Trotter whereby you would engage

21 his services for some fee and have him help you out on

22 this and --

23 MR. KUZMA: That was the understanding.

24 There haven't been -- the details have not been worked

25 out with Mr. Trotter yet, but PSE would be willing to

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 1 pay for his services to be worked out with him.

 2 The only issue that Mr. Trotter had was, I

 3 believe it was -- he's unavailable the day of June 6th.

 4 His daughter's graduating and --

 5 JUDGE MOSS: Understandable.

 6 MR. KUZMA: Yes. And the week of June 20th,

 7 he has other obligations that week; otherwise, he said

 8 he was available over the two-month period.

 9 JUDGE MOSS: Okay. Very good. All right.

10 CHAIRMAN DANNER: Is that arrangement okay

11 with the others? I mean, what I don't want is to get a

12 bill in two months on my desk.

13 MR. KUZMA: No. Understood.

14 MR. OSHIE: That's Staff's understanding,

15 Chairman Danner, that Mr. Trotter would be -- I mean, I

16 assumed Mr. Trotter would be paid for by PSE. So if

17 that is now the case, then -- if it's not, I guess we

18 should talk about that.

19 JUDGE MOSS: Well, it does strike me --

20 CHAIRMAN DANNER: And you're okay with that?

21 Directing that question to the other parties.

22 MR. OSHIE: Staff is fine with it. And

23 frankly, Mr. Trotter's in a pretty good negotiating

24 position right now. He's been endorsed by the parties

25 and the Commission, so if he's listening, you know, he

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 1 knows the position he's in.

 2 MR. FFITCH: Your Honor, I'd like an

 3 opportunity to think about that. We would have a

 4 concern about the mediators being paid for by one of the

 5 parties. That -- just at the outset, I want to think

 6 about whether we're comfortable with that. It would be

 7 preferable to have him hired by the Commission, I think,

 8 and it would be a more neutral position for obvious

 9 reasons.

10 JUDGE MOSS: Well, I would say this. If

11 there's any option along those lines, it would be the

12 splitting of costs among the parties. The Commission is

13 not in a position to finance this sort of thing. If we

14 were, we'd do it routinely, frankly.

15 So you know, it's Mr. Trotter after all

16 we're talking about here, and personally I can't think

17 of anyone more trustworthy.

18 MR. KUZMA: If --

19 MR. FFITCH: I don't have any questions

20 about Mr. Trotter, but structurally it's often a

21 consideration as to who is paying the --

22 JUDGE MOSS: In some settings I agree. I

23 agree in some settings that's true.

24 MR. KUZMA: Your Honor, if I may address

25 that issue. We thought about that, and we raised that

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 1 with Mr. Trotter, and he does have a technical issue as

 2 far as something along the lines of pensions and being

 3 retained by the Commission, so it would be better for

 4 him if it were to come from someone other than the

 5 State.

 6 But there is also the issue of -- I mean, we

 7 could structure this in any way. Puget's willing to

 8 foot the bill. We thought Mr. Trotter was somebody that

 9 everybody could agree was trustworthy and independent.

10 That's why we thought he would be a good choice.

11 JUDGE MOSS: Yeah, and I support that view.

12 And while I understand the concerns expressed -- and

13 Mr. ffitch, in some settings, I think it is a concern.

14 Just speaking for myself here, I think in this case,

15 considering who we're talking about, it's probably less

16 of a concern. And I encourage you to think about that.

17 MR. FFITCH: May we have 24 hours to let you

18 know, your Honor? It would be probably less than that,

19 but --

20 JUDGE MOSS: Sure.

21 MR. KUZMA: We'd be willing to split it with

22 Public Counsel if that would make it easier.

23 COMMISSIONER RENDAHL: Just to clarify,

24 Mr. ffitch, your concern is in terms of the payment

25 arrangement, not with the --

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 1 MR. FFITCH: With Mr. Trotter?

 2 COMMISSIONER RENDAHL: Right.

 3 MR. FFITCH: Yeah. Let me be absolutely

 4 clear. We have no concerns whatever with Mr. Trotter.

 5 You know, we have some reservations about the mediation

 6 that I've already expressed, but we're hopeful that

 7 there'll be some productive results, so we are willing

 8 to participate and abide by the Commission's wishes. We

 9 think Mr. Trotter is an excellent choice. We just have

10 a -- we just request a brief period to think about the

11 compensation issue.

12 JUDGE MOSS: All right. So you can let me

13 know -- even by e-mail will be sufficient.

14 MR. FFITCH: I will do that.

15 JUDGE MOSS: All right.

16 MR. BROOKS: Your Honor, just for a point of

17 clarification. I mean, I assume that the other parties

18 would be able to be privy to any -- the engagement

19 agreement and everything that's sort of on the table.

20 He's working through all the parties even if the bill is

21 coming from Puget.

22 MR. KUZMA: We see no problem with that.

23 JUDGE MOSS: Yeah, that's a good point,

24 Mr. Brooks. That's -- his agreement should provide that

25 he is working for all the parties, yes, that's right.

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 1 All right. Well, I will set -- I have to look at my

 2 calendar.

 3 MR. PEPPLE: Your Honor --

 4 JUDGE MOSS: Oh, I'm sorry, Mr. Pepple.

 5 MR. PEPPLE: It's okay. Just for the

 6 record, we certainly support Mr. Trotter as well, and we

 7 support PSE paying for as much as possible.

 8 JUDGE MOSS: All right. Very good.

 9 MR. OSHIE: Your Honor, this is Pat Oshie

10 for Staff, if I could. There is one issue that Staff

11 would like to address, and that is there's some

12 recurring themes here, I think, from today's hearing and

13 from other matters that -- other sort of stages of this

14 proceeding.

15 One is that Puget wants this done as quickly

16 as possible, even representing that they -- at one point

17 that they had a board meeting in the month of June and

18 they wanted the Commission to make a decision before the

19 board meeting so they could inform the board as to where

20 they were. So to move this along expeditiously, I

21 think, is a component of this, and the Commission has

22 expressed it, Staff has expressed it.

23 There's another element as well that Staff

24 is concerned about, and that is spending a lot of time

25 without any real fruitful and reasonable outcome.

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 1 So what Staff is going to propose is that

 2 there be what is effectively a walkaway date on

 3 June 17th; that we structure this schedule -- that the

 4 parties move quickly engaging Mr. Trotter, move quickly

 5 into the initial stages of this mediation. I don't

 6 think it will take Mr. Trotter long to understand what

 7 this case is all about and the parties to put together

 8 their positions.

 9 So if we're not making reasonable progress

10 towards some outcome by Friday, June 17th, then I think

11 what Staff would like to propose is that we let the

12 Commission know that it doesn't appear that we can take

13 this any further.

14 So I know it's a short time, but I don't

15 think any party here wants to -- I don't want to put it

16 this way exactly -- but to waste their time trying to

17 reach an agreement similar to the MSP process that

18 PacifiCorp engaged in and it took, what, a year, maybe

19 more, and they still are engaged in it trying to bring

20 resolution to issues that were raised by the State.

21 JUDGE MOSS: We're setting a two-month

22 parameter on it and would expect to have very

23 significant progress by the end of that two-month period

24 if we're going to do anything further than that.

25 I would not want to take away Mr. Trotter's

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 1 leverage and flexibility by setting such a date as you

 2 suggest. Mr. Trotter is familiar with mediation and the

 3 principles and rules of mediation. And if it becomes

 4 apparent to him that there is an impasse, he will

 5 declare an impasse and that will be the end of the

 6 story. So I would rather leave that in his hands,

 7 just -- again, it's a tool in the box of a mediator, so

 8 I want to keep it there.

 9 MR. OSHIE: Yes, your Honor.

10 JUDGE MOSS: And of course, expedition is

11 something that does bring a certain amount of -- well,

12 let's see, my old favorite saying from Boswell is, The

13 prospect of the hangman's noose does wonderfully

14 concentrate the mind. So if time is of the essence, it

15 will have the same salutary effect on everybody's

16 behavior.

17 CHAIRMAN DANNER: I've got to read more

18 Boswell. So I guess I agree with that. I think that

19 the premise here, though, is that everybody's agreed to

20 go forward in good faith, and so I think as long as we

21 continue to talk in good faith, you know, for the next

22 at least 60 days, then the potential for some kind of

23 progress is out there, and I would want to give it every

24 opportunity.

25 JUDGE MOSS: So with thus and our

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 1 encouragement, I don't know that you need anything

 2 further from us in terms of an order. I would put out a

 3 notice establishing a date and time for a status

 4 conference. I'll have to check the calendar to see

 5 about that.

 6 The parties -- as the time approaches, I

 7 will ask that a party representative or the parties

 8 individually let me know, give me some sense of where

 9 things stand, whether it would be worthwhile to bring

10 the commissioners to the status conference, or whether

11 it should just be something that I would attend. So if

12 you all could do that, I would appreciate that as well.

13 All right? And of course, if you make

14 progress along the way faster than you anticipate, let

15 us know that, too. We can always accelerate our

16 process.

17 All right. Anything further?

18 MR. KUZMA: Thank you.

19 JUDGE MOSS: All right. Thank you all very

20 much. We appreciate your participation today.

21 (Hearing concluded at 3:20 p.m.)

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

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 3 STATE OF WASHINGTON )

 ) ss.

 4 COUNTY OF KING )

 5

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 7 I, ANITA W. SELF, a Certified Shorthand Reporter

 8 in and for the State of Washington, do hereby certify

 9 that the foregoing transcript is true and accurate to

10 the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 and seal this 7th day of June, 2016.

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17 ANITA W. SELF, RPR, CCR #3032

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