

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)
)
 PUGET SOUND ENERGY.) DOCKET NO. UG-151663
)
 for (i) Approval of a Special)
 Contract for Liquefied Natural)
 Gas Fuel Service with Totem)
 Ocean Trailer Express, Inc., and)
 (ii) a Declaratory Order)
 Approving the Methodology for)
 Allocation Costs Between)
 Regulated and Non-regulated)
 Liquefied Natural Gas Services)

HEARING, VOLUME III

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ADMINISTRATIVE LAW JUDGE DENNIS MOSS

1:35 p.m.

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Washington Utilities and Transportation Commission
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1 OLYMPIA, WASHINGTON; MAY 26, 2016

2 1:35 P.M.

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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

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. PEPPLER: 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.

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.

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.

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

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 --

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,

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,

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

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

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

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

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.

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

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

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

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?

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

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.

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

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

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

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

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

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

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

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

1 have that as guidance.

2 I guess the other thought we sort of had on
3 this is -- and kind of what Mr. ffitich 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.

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.

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?

1 MR. PEPPLER: 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

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.

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

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

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

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

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

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

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

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

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

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,

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,

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,

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.

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

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

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

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 --

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.

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

3 MR. PEPPLER: Your Honor --

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

5 MR. PEPPLER: 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.

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

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

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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C E R T I F I C A T E

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3 STATE OF WASHINGTON)

4 COUNTY OF KING) ss.

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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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