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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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OLYMPIA, WASHINGTON; MAY 26, 2016
1:35 P.M.
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JUDGE MOSS: Good afternoon, everyone. My name is Dennis Moss. I'm an administrative law judge for the Washington Utilities and Transportation Commission.

We are convened this afternoon in the matter styled Petition of PSE for, lower case Roman Numeral (i), Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem -- that's T-o-t-e-m -- Ocean Trailer Express, Inc., and lower case Roman (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services. It's Docket UG-151663, and it was filed back in August of 2015.

We've been through a couple of stages in this proceeding already. We had our preliminary Order 4 that invited the Company to come back with an alternative to its original proposal that the Commission could consider fully within its jurisdiction, or as has come back to us, in point of fact, with a split between jurisdictional and non-jurisdictional businesses.

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. PEPPE: 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.

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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.

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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

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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. ffitc,
 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

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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. ffitich, 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

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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?

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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

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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.

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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.

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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?

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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

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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.

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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. ffitich 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

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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

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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

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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

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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

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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

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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

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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

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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

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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,

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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,

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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,

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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. ffitich, 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. ffitich, 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

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 CERTIFICATE

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STATE OF WASHINGTON)
) ^{SS}
COUNTY OF KING)

I, ANITA W. SELF, a Certified Shorthand Reporter
in and for the State of Washington, do hereby certify
that the foregoing transcript is true and accurate to
the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 7th day of June, 2016.

ANITA W. SELF, RPR, CCR #3032