

Docket No. UE-190324 - Vol. I

In the Matter of: Puget Sound Energy

October 15, 2019



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition) DOCKET UE-190324
of)
)
PUGET SOUND ENERGY)
)
For Approval of its April 2019)
Power Cost Adjustment)
Mechanism Report)

HEARING, VOLUME I

Pages 1-84

ADMINISTRATIVE LAW JUDGE ANDREW O'CONNELL

October 15, 2019

10:00 A.M.

Washington Utilities and Transportation Commission
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1 LACEY, WASHINGTON; OCTOBER 15, 2019

2 10:00 A.M.

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

5
6 JUDGE O'CONNELL: Okay. Good morning.

7 Let's be on the record. The time is approximately
8 10 o'clock in the morning on Tuesday,
9 October 15th, 2019.

10 My name is Andrew O'Connell. I am an
11 administrative law judge with the Washington Utilities
12 and Transportation Commission, and I am co-presiding
13 with the Commissioners in Avista's general rate case and
14 ERM. And I will be presiding at this hearing on Staff's
15 motion to sever Avista's ERM from this general rate case
16 and consolidate it with PSE's, Puget Sound Energy's, PCA
17 and Pacific Power's PCAM.

18 The Commission has yet to decide on how to
19 rule on Staff's motion. Thank you to all the parties
20 for waiving the seven days notice so that we could have
21 this hearing today. We have a number of concerns and
22 questions that we want the input from the parties in how
23 to best resolve, but before we get to that, let's take
24 appearances, and short appearances are sufficient.

25 Let's begin with the companies and Avista.

1 MR. MEYER: Thank you, Your Honor. I want
2 to make sure my mic is on. There we go. For Avista,
3 David Meyer.

4 MS. McDOWELL: Katherine McDowell here on
5 behalf of Pacific Power.

6 MR. KUMAR: Ajay Kumar on behalf of Pacific
7 Power.

8 MS. BARNETT: Donna Barnett on behalf of
9 Puget Sound Energy.

10 JUDGE O'CONNELL: Thank you.
11 And for Staff?

12 MR. DALLAS: Joe Dallas on behalf of Staff.

13 MR. TEIMOURI: Daniel Teimouri on behalf of
14 Staff.

15 JUDGE O'CONNELL: And Public Counsel?

16 MS. GAFKEN: Lisa Gafken on behalf of Public
17 Counsel.

18 JUDGE O'CONNELL: And the Alliance of
19 Western Energy Consumes, AWEC?

20 MR. PEPPE: This is Tyler Pepple for AWEC.

21 JUDGE O'CONNELL: The Energy Project?

22 MR. FFITCH: Simon ffitch representing The
23 Energy Project.

24 JUDGE O'CONNELL: Sierra Club?

25 MS. YARNALL LOARIE: This is Jessica Yarnall

1 Loarie for Sierra Club.

2 JUDGE O'CONNELL: And the Northwest Energy
3 Coalition?

4 MS. BARLOW: This is Marie Barlow with
5 Northwest Energy Coalition.

6 JUDGE O'CONNELL: Thank you.

7 I believe we have a representative from
8 every party. I want to start by saying we're not
9 pleased with any party or about the situation we find
10 ourselves in. The timing of Staff's motion is
11 difficult, and the apparent lack of information being
12 shared is very disappointing. We determined this
13 hearing was necessary to help us decide the best option
14 going forward. The Commissioners would prefer to
15 preside along with me, but their schedules didn't permit
16 it.

17 Let's -- let's first address the elephant in
18 the room. The issue we want to address today is the
19 decision-making leading up to the 2018 Colstrip outage
20 and how the Commission can get the information it needs
21 to make a decision.

22 The three companies, Avista, Pacific Power,
23 and PSE, are all co-owners of Colstrip, and each has
24 filed a separate case seeking to recover for power costs
25 including costs related to the 2018 Colstrip outage. We

1 are well aware that the companies' cases have a plethora
2 of different issues in them, which share little or no
3 commonality. We're not holding this hearing because of
4 these issues. We're holding this hearing because of the
5 2018 Colstrip outage decision-making. It's an issue
6 that we may or may not decide is large enough to
7 outweigh the lack of commonality in the rest of the
8 filings.

9 We see that in Avista's general rate case
10 and ERM, we are going to be asked to make a decision
11 regarding prudence of decision-making leading up to the
12 2018 Colstrip outage. The burden is on Avista in that
13 case to show prudence and it is the burden of the other
14 companies to show prudence in their own cases. We are
15 concerned that we may not have sufficient information to
16 make a determination of prudence and keep in mind
17 whether ratepayers should pay for increased power costs
18 that the companies incurred resulting from the outage.

19 This hearing is about how we, the -- the
20 Commission, can get the information we need to make a
21 decision. It's not just any longer the concern of Staff
22 and getting the information that it needs. We are
23 concerned that we will not have sufficient information.
24 And if we determine that the only way we're going to get
25 sufficient information is by consolidating the dockets,

1 then we might have to do that.

2 All parties will have multiple chances to
3 speak at this hearing. I want the parties to stay
4 focused on the elephant in the room, the decision-making
5 leading up to the 2018 Colstrip outage and how the
6 Commission can most efficiently get the information we
7 need.

8 I'll allow at the end of the proceeding for
9 the parties to have input into anything that does not
10 otherwise come up in the hearing related to this
11 question, but I want the parties to stay focused on the
12 topics we address when we address them. If, during the
13 hearing, the parties believe a short recess is
14 necessary, perhaps where they can discuss amongst
15 themselves, I would permit such a request.

16 We see several options for moving forward,
17 but, though, let's talk about the obvious ones to start,
18 both of which have flaws. The first is, we keep
19 Avista's ERM with its general rate case and we keep the
20 dockets all separate. The problems that we see with
21 keeping Avista's ERM with its general rate case is that
22 the issue of decision-making leading up to the 2018
23 Colstrip outage is also an issue in PSE and Pacific
24 Power's filings.

25 While we were making only a decision as to

1 Avista in its ERM docket, the problem is that we were
2 only making a decision as to Avista, while PSE and
3 Pacific Power are also co-owners of Colstrip. Having to
4 make three different evaluations and determinations of
5 prudence and three separate proceedings for an issue,
6 the decision-making of the ownership for Colstrip
7 leading up to the outage, that could be resolved more
8 efficiently with a single determination.

9 The second, sever the ERM, consolidate with
10 the PCA and the PCAM as has been requested by Staff.
11 The effective date for Avista's ERM presents an
12 unfortunately tight timeline for resolution. Avista can
13 correct me if I'm mistaken, but I believe that date is
14 in early April 2020.

15 MR. MEYER: That's correct, Your Honor.
16 April 1st.

17 JUDGE O'CONNELL: Thank you.

18 We believe that an adjudication can be done
19 on that timeline, but there would be difficulties to
20 overcome as the companies have pointed out in their
21 responses. But we may feel after this hearing that we
22 have no other choice to get the information that we
23 need. This hearing is to determine if there is a better
24 option than the two I've outlined, and I'll allow all
25 the parties the opportunity to perhaps collaborate on an

1 option.

2 I want to start by hearing from Staff three
3 questions I want to put at this time to Staff. First, I
4 want Staff to outline what information is lacking and
5 what they would need from the companies in order to make
6 a prudency determination.

7 Second, I want to give Staff the opportunity
8 at this time to explain why it believes we have to
9 consolidate Avista's ERM with PSE's PCA and Pacific
10 Power's PCAM.

11 Last, is there another way, other than
12 through consolidation of these dockets, that Staff can
13 envision getting the necessary information.

14 Mr. Dallas.

15 MR. DALLAS: Thank you, Your Honor. So I
16 will take each question in the order you presented them.

17 So Staff's position is that the narrative
18 behind what happened leading up to the 2018 Colstrip
19 outage is spread across three dockets. Staff would like
20 to tell this narrative to the Commission; however, Staff
21 cannot provide this narrative pertaining to what
22 happened without referencing confidential information
23 within each docket.

24 Staff believes the information it would like
25 to reference would not be considered confidential among

1 the companies as joint owners of Colstrip. This is
2 because this information relates to the operation and
3 management of Colstrip. Staff cannot provide a complete
4 narrative of what happened during the 2018 outage in
5 three separate dockets at this time and will have
6 completely different recommendations as to each Colstrip
7 owner based on the different administrative records in
8 each docket.

9 It would be unwieldy, uneconomic, and
10 awkward to have a docket where concerning the same
11 doc- -- the same document, one company withholds the
12 document based on asserted privilege or confidentiality,
13 one company represents the document doesn't exist, and
14 one company represents the document exists and provides
15 it as a confidential response. This information
16 incongruity among the three dockets can lead to
17 different outcomes as to each company.

18 To illustrate this point, one company has
19 not yet acknowledged the fact that Talen has conducted a
20 Q-1 investigation. One company acknowledged this
21 investigation did occur, but did not provide any
22 documentation on it. And another company had
23 acknowledged there was an investigation, but provided
24 documents pertaining to the investigation as a
25 confidential response. This designation limits Staff's

1 ability to use that information in the other two
2 dockets. And -- and just to make this clear, Staff must
3 make its recommendation based on the individual
4 administrative records in each power cost filing.

5 Although the companies disagree, Staff's
6 position is that it would like to tell one narrative
7 about what happened. If the individual companies did
8 something different than the other ones, Staff would
9 acknowledge this distinction within its single
10 recommendation. Staff believes the Commission needs to
11 hear the complete narrative that is spread across the
12 three dockets to provide a result that's fair, just, and
13 reasonable.

14 As to specifics, Staff would propose a
15 two-tiered level of confidentiality in the consolidated
16 adjudication. The first tier would be confidential
17 information that is not confidential among the Colstrip
18 owners relating to the operation and management of
19 Colstrip.

20 The second layer of confidentiality would be
21 confidentially commercially sensitive information that
22 would be confidential amongst the Colstrip owners.

23 We believe that this two-tiered level of
24 confidentiality will accomplish the goal of giving Staff
25 the information to give the Commission the best

1 recommendation and preserving the companies' individual
2 commercially sensitive information.

3 JUDGE O'CONNELL: Let me -- let me stop you
4 just for a moment and back up. So I'm hearing a lot
5 about the -- the reasons why we should consolidate into
6 a single document, a single case, but what
7 specifically -- without revealing confidential
8 information, I'm -- I'm -- I guess I'm asking for
9 general topics, but what specifically do you not have
10 that you think you need to get?

11 MR. DALLAS: So really right now, there's a
12 big gap in the record. When the Company submitted their
13 initial filing, they submitted testimony from the outage
14 on, and there was a huge gap in the record pertaining to
15 what happened before the outage. We believe that we
16 have information that shows the outage was foreseeable.
17 Just because the outage was foreseeable, Staff's
18 position is that, that it's not imprudent, but we need
19 more information to determine what Talen and the
20 companies did before the outage.

21 But right now we don't have information in
22 each docket. We have information pertaining to what
23 happened in one docket, but not the other two. The
24 information that we do have is confidential, so when we
25 write our recommendations, they're going to be wildly

1 different based off the incongruity in the record. We
2 believe that a consolidated adjudication can deal with
3 these confidentiality issues in one proceeding so we can
4 have the information pertaining to what happened before
5 the outage, and specifically what Talen did prior to the
6 outage given the fact that we believe the outage was
7 foreseeable.

8 And also, I think there's a judicial economy
9 aspect as well. It'd be much easier from a -- from a
10 resource perspective for the Commission to -- to make
11 this determination in one proceeding as opposed to --
12 to -- to three separate proceedings on -- on -- on
13 really the same cost and the same parties, the Colstrip
14 owners.

15 JUDGE O'CONNELL: There might be some
16 judicial economy having the decision made in one
17 proceeding, but we're operating under a timeline that
18 makes it rather tight and difficult.

19 MR. DALLAS: So -- so -- so Staff's position
20 is -- is we do not want consolidation to prejudice
21 Avista at all. We -- it's very important to us that any
22 consolidated adjudication wrap up before April 1st. We
23 believe this consolidation -- this consolidated
24 adjudication will be narrowly focused on one issue, and
25 that's going to be what happened before the Colstrip

1 outage. And -- and -- and this could be a very
2 expedited proceeding. And it's very important to Staff
3 that this wrap up before the suspension date and the
4 GRC.

5 JUDGE O'CONNELL: Well, let's get to that a
6 little bit later, but I do recall that there are other
7 parties in Avista's GRC that intend to bring up other
8 contested issues other than the decision-making leading
9 up to the Colstrip outage.

10 MR. DALLAS: Yeah, and if I could mention
11 that for a second, Your Honor. We are aware that AWEC
12 and Public Counsel may have other issues they want to
13 discuss in the consolidated adjudication pertaining to
14 the ERM. Staff's understanding is that these issues are
15 relatively small in comparison to the issue of the
16 Colstrip outage. And I really want -- want to focus on
17 the legal standard here, that the -- the standard is
18 that the issues of fact and principles of law have to be
19 related, not identical. But -- but I -- I -- I can't
20 speak for AWEC and Public Counsel.

21 JUDGE O'CONNELL: How -- has Staff thought
22 about how else we could go about this to get the
23 information Staff says it needs in order to make a
24 decision, the information that we also -- we need?

25 MR. DALLAS: So -- so really our -- our

1 preference would be -- would be to have one protective
2 order, and in that one protective order, we would -- we
3 would figure out how we deal with the confidentiality
4 among the Colstrip owners. Now, if the Commission
5 doesn't go that route, we're going to have to fight
6 every individual designation so we can have three
7 identical administrative records so we can tell the same
8 story. Staff -- Staff thinks it's -- it doesn't make
9 sense for us to have three completely different
10 recommendations based off what the companies provide or
11 or -- or -- or refuse to provide.

12 So I -- I think it would be an uphill battle
13 to try to get three identical administrative records. I
14 think it would be much easier if we just have one
15 protective order and have that two-tier -- two-tiered
16 level of confidentiality, and then we can tell our story
17 and -- and -- and protect the companies' confidential
18 information at the same time.

19 JUDGE O'CONNELL: So no, there isn't another
20 idea that Staff has how to get this -- how to get this
21 information other than consolidate them?

22 MR. DALLAS: So the other option would be to
23 fight every individual designation in an attempt to get
24 three identical administrative records in the three
25 dockets pertaining to the same cost. So it -- it -- it

1 is possible, but, you know, the legal standard we're
2 dealing with among -- among them is judicial economy,
3 and it's much more efficient to have one protective
4 order that protects all the companies and allow Staff
5 and the Commission to have the relevant information.

6 MR. TEIMOURI: Excuse me, your Honor. Dan
7 Teimouri with Commission Staff. We could also issue
8 bench requests relating directly to this information to
9 the companies and -- and ask them directly for the
10 requested information.

11 MR. DALLAS: But -- but I'm not sure if that
12 would resolve the confidentiality issues but...

13 JUDGE O'CONNELL: Okay. Let me -- let's
14 turn to Public Counsel. Ms. Gafken, the same questions
15 generally for Public Counsel, is there another way you
16 can envision getting the information needed without
17 consolidating?

18 MS. GAFKEN: I did have one other idea. I'm
19 not certain that it's much better than the consolidation
20 idea. The Commission has conducted proceedings that are
21 not consolidated but conducted simultaneously. So that
22 was done -- I don't have the docket numbers at hand, but
23 a Puget filing back in 2012 or 2013 where they had an
24 ERF and a decoupling docket. Those dockets were not
25 consolidated, but they were held simultaneously. So

1 there was a -- a common hearing, a common process
2 that -- that happened. And that might address some of
3 the discomfort with the confidentiality between the
4 companies, but it would also foster the judicial economy
5 of having to deal with this in one proceeding.

6 I hear what Staff is saying about having to
7 fight all the confidentiality designations. I'm not
8 sure if my idea helps with that, particularly if the
9 companies continue to be somewhat inconsistent with how
10 they're providing the information, but that's -- that's
11 an -- an idea.

12 I did want to address briefly the piece of
13 Public Counsel's advocacy that might be more appropriate
14 in the GRC versus Avista's ERM. I have one witness
15 that's addressing both of those concepts. The -- the
16 concept of directional bias, that -- that's the piece
17 that could potentially go into the GRC versus staying
18 with the ERM, and if we separated that out that would
19 keep kind of the commonality intact among the three
20 companies.

21 Our testimony there is really more
22 informative. It -- it -- we're not offering it for
23 decisional purposes. We could sever that piece of the
24 testimony and with the Commission's permission, file
25 that in the GRC. It's relatively short. It's about --

1 that portion of the testimony is approximately ten
2 pages, and there's five exhibits that go along with it.
3 I don't believe that Avista would be prejudiced. We
4 outlined what that testimony would say in the letter
5 that we filed on October 3rd outlining what issues we
6 were anticipating on -- on filing. So I think that
7 there would be plenty of opportunity to respond and no
8 prejudice in that case, but we -- we could sever that
9 piece of our testimony out and provide that to the
10 Commission through the GRC and then keep our Colstrip
11 issues separate and deal with that in the ERM proceeding
12 if it's severed and consolidated with the other three.

13 Did you want me to -- to address your second
14 question in terms of why consolidation is -- is
15 necessary or --

16 JUDGE O'CONNELL: Well, I think --

17 MS. GAFKEN: -- want me to stop there?

18 JUDGE O'CONNELL: -- it was more aimed at
19 Staff --

20 MS. GAFKEN: Okay.

21 JUDGE O'CONNELL: -- the proponent of
22 wanting to consolidate. If you think that's the best
23 option, I would be interested to hear that. I -- I do
24 have a question, though, about your suggestion with
25 sharing a common procedural schedule for the separated

1 dockets and, you know, hearing them together but keeping
2 them separate. And I'm curious, do you think we would
3 have any trouble, any confusion making sure that those
4 items stay separate when they get heard in front of
5 Commission and then when they get decided? Just because
6 in my review of that example you gave, that caused a big
7 issue for the Commission later on.

8 MS. GAFKEN: I -- I think it's a flawed
9 approach if I'm being completely frank. It's a little
10 bit illusory because in my mind, it is consolidated, and
11 it does pose some administrative hassles on the
12 decision-making side in terms of having -- you still
13 have to produce three orders, you know, if you are
14 keeping it separate. It does look like it's
15 consolidated, and so I think it's hard to understand so
16 it lacks transparency. If you're Joe public looking in,
17 I'm not sure that they fully understand what's going on
18 in that circumstance.

19 I do believe that consolidation would be
20 more efficient. It would solve a lot of those problems.
21 You would have one record to deal with instead of three,
22 and there is a common story that needs to be told with
23 respect to the Colstrip outage and the -- and the events
24 leading up to that outage. From Public Counsel's
25 perspective, we have a story that we're ready to tell in

1 the Avista ERM filing, but, you know, Staff has
2 expressed some pretty serious concerns that perhaps we
3 don't have a clear story, or the full story, with
4 respect to all three of the companies.

5 So while I feel like I have a story to tell
6 the Commission with respect to Avista's ERM, I'm not
7 certain that it's the complete story or that it has all
8 the information that the Commission needs in order to
9 make a decision. And -- and that really goes to, you
10 know, concerns about the -- the regulatory system and
11 public trust and transparency. So I do believe that
12 consolidation would -- would resolve a lot of those
13 issues.

14 And in terms of the confidentiality issue, I
15 think those are things we can work through. Staff's
16 idea about the two-tiered confidentiality method is a
17 good one. We can deal with those issues as we come to
18 them. We may still have some discovery battles
19 depending on how things go forward, but we have those
20 anyway with three separate proceedings. And if they
21 were separated, it would take a whole lot more resources
22 than if they were consolidated.

23 You know, I mentioned this in our response,
24 Public Counsel only recently filed notices of appearance
25 in the other two dockets. We had engaged with Puget

1 with informal discovery. Our -- our engagement with
2 PacifiCorp has been a lot lighter, and that's purely a
3 resource adequacy issue. Of course, if these three
4 cases are consolidated, we will fully participate and go
5 forward that way. But there is -- there is a pretty
6 serious resource adequacy issue in dealing with all of
7 the things that come before the Commission.

8 JUDGE O'CONNELL: Okay. Thank you.

9 I am aware that there are a number of
10 parties on the bridge line who are present here for this
11 hearing, thank you, but they also indicated that they
12 were not going to be really participating in this
13 discussion.

14 And I want to check with Mr. Pepple. And I
15 do not recall and I want to offer you the chance to
16 speak, and I was curious if you are participating in
17 this discussion?

18 MR. PEPPLER: Thank you, Your Honor. Well, I
19 guess, yeah, we're happy -- we -- we certainly, yes, are
20 interested in participating in this discussion. I guess
21 if the question is whether we intend to file testimony
22 on the Colstrip outage, at this time, we do not,
23 although I wouldn't -- that's -- that's not intended to
24 indicate, you know, a position on it one way or the
25 other.

1 I guess I would say if -- you know, in
2 response to your -- your first question about whether
3 there are alternatives to consolidation, you know, one
4 other idea might be -- it's something that I just came
5 up with on the fly, so if it's a bad idea, then that's
6 fine. But it -- it -- it seems like it might be
7 possible to have another protective order that only
8 applies to the Colstrip outage and would be issued in
9 each utility's power cost docket. That would allow for
10 the exchange and use of information related to the
11 Colstrip outage in each docket without them being
12 necessarily consolidated. So just one other alternative
13 if the Commission does not want to consolidate the
14 dockets.

15 JUDGE O'CONNELL: Thank you. I think we
16 should bring that up later and talk about that one.

17 Next I want -- I want to turn to the
18 companies.

19 MR. DALLAS: And -- and, Your Honor, before
20 we turn to the companies, Staff has a proposition that
21 we'd like to hear what the companies thoughts are.

22 JUDGE O'CONNELL: Do you want to do that on
23 the record or --

24 MR. DALLAS: Yeah, we can do it on the
25 record. So after careful review of each filing, Staff

1 is now willing to stipulate that if these dockets are
2 consolidated, the only issue it will contest is the
3 prudence of the replacement power cost associated with
4 the 2018 Colstrip outage. With this stipulation,
5 though, Staff would like to consolidate the entire
6 dockets because the Commission has to improve the entire
7 deferral balances in each docket. It doesn't make sense
8 to sever individual issues in each docket if the
9 Commission needs to ultimately improve the entire
10 deferral balances. And with that, we -- we would like
11 to hear what the companies thoughts are on Staff's
12 proposed stipulation.

13 JUDGE O'CONNELL: Well, before we get there,
14 let's say that the companies reject your offer, but the
15 Commission decides we have to consolidate these anyway,
16 can we hold Staff to this only one issue is going to be
17 contested if this gets consolidated?

18 MR. DALLAS: I -- I -- I believe so. That's
19 Staff's position, and, you know, we -- we certainly want
20 to address the Commission's concerns and the companies'
21 concerns about commonality. In preparation for this
22 hearing, Staff looked at every filing, and we do not
23 believe any other costs ought to be included -- included
24 in the 2018 deferral balances were imprudent, so
25 therefore, we would propose that the consolidated

1 adjudication would be focused on a very narrow issue and
2 can be resolved before April 1st given that this is the
3 only common issue amongst all three Colstrip -- I mean,
4 all three power cost filings.

5 JUDGE O'CONNELL: Thank you. And I
6 mentioned that every party is going to have multiple
7 opportunities to speak. I do intend to come back around
8 to Staff.

9 MR. DALLAS: Thank you.

10 JUDGE O'CONNELL: I would -- I would ask
11 that the companies think about what Mr. Dallas just
12 requested. I'm not going to ask for responses right
13 away because I feel like that might be a little unfair
14 to ask you to respond immediately, but I would like to
15 ask you -- I want to ask each of the companies, Avista,
16 Pacific Power, and Puget Sound Energy, how do we get the
17 information and make a prudency determination and is
18 there a better way, another way other than
19 consolidating?

20 Mr. Meyer.

21 MR. MEYER: Thank you, Your Honor. First of
22 all, I know Avista feels this way and I suspect the
23 other companies and all parties in these dockets feel
24 this way is that we want the information to be made
25 available so the right decision gets made. So if you

1 start with that as an article of faith, you then find a
2 way to navigate through that, navigate through the
3 confidentiality issues. And I think there are ways to
4 do that.

5 I -- I'm not going to reargue because we're
6 vectoring in, if you will, on -- on a more precise
7 Colstrip issue here, but I want to emphasize that when
8 we filed the ERM six months ago, that triggered very
9 extensive discovery and over 150 separate items from
10 Staff and a hundred from other parties involved in the
11 production of 600 documents and countless hundreds of
12 hours of Avista, Staff time. I stand to be corrected,
13 but I don't believe we objected to any or if we did
14 object to any of the discovery, that I know there wasn't
15 a motion to compel, but I don't believe we even
16 objected. Now, whether the responses were sufficient or
17 not, that's I guess in the eye of the -- the reader.

18 So we've had, you know, five months of
19 discovery, ongoing, extensive discovery, and -- with
20 multiple rounds. There haven't been any motions to
21 compel in terms of what Avista did or didn't provide.
22 They -- the -- the Company, I think, has really done a
23 masterful job of dedicating the resources. And --
24 and -- and I can speak, I guess, candidly here is that
25 frankly, there was a lot of angst within the Company

1 about how much effort was being expended. And I was a
2 proponent, and the Company understood that it's
3 necessary to get this information out, but it was a big
4 job, and I suspect it will continue to be a big job.

5 And just as an aside, and this is I think
6 somewhat troubling for all of us who practice before the
7 Commission, it's exhausted some of the goodwill on both
8 sides, frankly; Staff, other parties, and the Company.
9 And I hate to see that happening through this extended
10 discovery process. But we'll patch those things up and
11 we'll get on with doing what we always do. But at this
12 point, five months into it, and virtually at the 11th
13 hour, we have the plug pulled on testimony that was to
14 be filed on October 3rd. The testimony surely was
15 written because when the parties were told that, I think
16 it was October 2nd, they didn't need to file that
17 testimony, I -- I -- I -- being prudent practitioners,
18 I'm sure they had it on the shelf ready to file.

19 So we lost that opportunity -- and this is
20 just specific to Avista. We lost that opportunity to
21 then keep the clock going in our joint procedural
22 schedule that called for testimony on the rate case and
23 testimony on the ERM all to be filed on October 3rd.
24 Now where are we? We are by -- I suspect, by the time
25 you and the Commission rule on what we're discussing

1 today, another week or so. It's not up to me to say
2 we've gone by, and we will have lost essentially three
3 weeks on our agreed upon schedule.

4 And in that process -- and there's a reason
5 I'm laying this out, because it may play into some
6 alternative suggestions later on. But in that process,
7 we have not disturbed the December 11th through 13th
8 hearing dates, nor do we want to. That was for the
9 general rate case and for the ERM. But what this
10 three-week delay has caused is a shrinkage of time for
11 us to respond. We had a late -- we had a November 6th,
12 I believe, date for a response, and now we're being
13 pinched. So some adjustment, no matter what, if they
14 remain consolidated in Avista's general rate case needs
15 to be made. And depending on which way the Commission
16 goes, there are ways to do that. It's not the end of
17 the world, there are ways to do that without disturbing
18 the general rate case.

19 At the end of the day, what matters to
20 Avista is April 1 of next year. That is the date our
21 new rates would go into effect, and that is the date
22 that we want to empty this bucket. We have a \$30
23 million bucket of ERM dollars that we've been accruing
24 at -- really since 2005, I believe it is. And under the
25 ERM mechanism, you don't tip that bucket, you don't

1 empty that bucket until you trip the lid, and that lid,
2 as I said, is \$30 million.

3 With this ERM filing, we will -- assuming
4 there were no issues, assuming there were no issues at
5 all, that bucket would have -- approximately \$34 million
6 bucket would have -- have been dumped, proceeds could go
7 where they belong and that's into the pockets of our
8 customers. Even if, even if one were to subtract out
9 the roughly three and a half million of Colstrip
10 ERM-related dollars from that \$34 million figure, it
11 would still trip the lid.

12 So no matter what, we don't want that date,
13 with or without the Colstrip issue in this case, to go
14 by so that we can't see some mitigation for our
15 customers come next April, April 1st, okay? That's why
16 we're trying to keep these pieces together.

17 Now, in the past, Avista has used -- by
18 agreement of the parties, because we never did trip that
19 lid, we've used in the 2013 case, I believe it was, we
20 had a two-year rate plan, we used pieces of that ERM
21 bucket to mitigate some of the rate year impact, and we
22 did it again in, I think, the 2015 case. But that's
23 only with agreement of the parties or with an order of
24 the Commission. The bucket would not have been dumped,
25 if you will, in those cases because we weren't at the

1 \$30 million tipping point.

2 So I hope that gives you some useful
3 information as to why we're so keen on keeping these two
4 proceedings marching in lockstep. It's -- it's not just
5 important for us or important to the efficient use of
6 your resources here, but it's important to our customers
7 as well. And the time's long since passed for that
8 bucket to be -- to be dumped.

9 So that's all by way of background. What --
10 what troubles me a bit is that -- and, again, I can't
11 and won't speak to what has been going on in the Puget
12 and the PacifiCorp dockets. I don't know what the
13 procedural posture is of those two dockets. I have not
14 talked to the practitioners on my left, and I -- I won't
15 pretend to. But I know that the Commission has
16 recognized discovery tools. Those tools could be
17 motions to compel, there were no motions to compel for
18 Avista, and in due course, if it was necessary to have a
19 motion to compel with respect to another issue, another
20 company, well, so be it, I don't know. So you have
21 that. And it -- it's -- it's a readymade tool, and
22 somebody else mentioned bench requests, so there are
23 ways of getting at this information.

24 It -- it -- it seems to me that -- let --
25 let me back up a minute. Common issues are not uncommon

1 with Colstrip. Every rate case -- not every rate case,
2 but in the last several rate cases, some party in one of
3 our jurisdictions has argued that you're spending too
4 much to sustain Colstrip beyond any, in their view,
5 reasonable termination date. Of course that involves
6 capital. But those kind of propositions were tested in
7 Idaho with Avista. Those capital spending decisions are
8 made jointly by those of us in the room along with Talen
9 and other owners.

10 We don't find ourselves when we're arguing
11 over capital, common capital decisions struggling with
12 consolidation and confidentiality. So I'm a little
13 surprised we found ourselves at this point at this time.
14 And certainly for Avista surprised that it is at the
15 11th hour so deep into our process. We in discovery
16 asked I -- I -- I believe it was either in a transmittal
17 letter or in the body of the discovery response, we
18 asked essentially if Staff is aware of any inconsistency
19 between the companies or shortcoming, and certain our
20 response is would you let us know.

21 And essentially that question that we posed
22 was left unanswered because it was no secret that Staff
23 along the way was unhappy with some of the responses
24 they were getting. Don't know whether it was our
25 responses, other responses, or what. So we provided

1 that invitation, let us know. Let us know. And that
2 was done I -- I'm -- I'm guessing five, six weeks ago in
3 plenty of time, in any event, for us to then sit down
4 and -- and -- and sensibly resolve these discovery
5 disputes.

6 So I think that after you've heard from the
7 other parties and at some point this morning, I would
8 like to propose a break and explore a -- a possible
9 process that would bring alignment to the companies,
10 because remember, the companies haven't had a chance to
11 discuss this among ourselves, and there may be ways we
12 can assist and help work this through. So a recess at
13 some point I think would be in order because no reason
14 why we can't come to terms with this today.

15 JUDGE O'CONNELL: I do appreciate that,
16 Mr. Meyer, and I -- we were hoping that by getting the
17 parties here together, either on the bridge line or here
18 in person, that we might be able to facilitate some
19 resolution that could be beneficial for everyone. So
20 thank you. I appreciate that sentiment.

21 Let me turn now to Pacific Power.
22 Ms. McDowell and Mr. Kumar, how do we -- of course,
23 the -- the Commission, we're -- we're primarily focused
24 on how we're going to get the information that we need
25 in order to make, as Mr. Meyer says, you know, get the

1 right information to make the right decision. Let's --
2 we want to get the decision right. Wanted to hear what
3 ways you can think of that we can get this information
4 without having to consolidate.

5 MS. McDOWELL: Yeah. You know, Judge, we
6 really appreciate that question, and I would say that
7 that is a question that we have been focused on in the
8 last couple of months as well. You know, just -- just
9 to maybe point out the obvious, the parties are not
10 similarly situated in part because our filing came many
11 months after Avista's and also after Puget's. So, you
12 know, we are in the place where we are still trying to
13 understand what information Staff needs and working to
14 provide it to Staff.

15 One of the ways that we tried to do that and
16 cut through some of the noise was to set a workshop
17 where we really had some dialogue with Staff in a more
18 open-ended way, in a way that I think is usually more
19 constructive than just, you know, dueling data requests
20 and responses. And I'm hoping -- I -- I feel like that
21 was a constructive step. I'm hoping that we can
22 continue to, you know, really understand what it is that
23 Staff's focused on. I think we now understand that it's
24 the pre-outage period, not the post outage period, but
25 that is, you know, information we've gained, and we can

1 continue to provide that information to Staff.

2 Now, I do want to say that where we're at
3 right now is in the informal process. And so the first
4 step, I believe, is to move to the adjudicatory process
5 so we can get a protective order in place. And I -- and
6 I thought it was quite constructive in Staff's motion
7 that Staff indicated that through the adjudicative
8 process, it believes that the discovery process that's
9 afforded in adjudication will allow Staff to obtain the
10 necessary information to provide a more detailed
11 recommendation to the Commission on the prudence of
12 these costs.

13 So I think, you know, just the first step is
14 adjudication and going into that, and we -- we haven't
15 even gotten to that step yet. So I think Staff
16 acknowledges that will be a material step to, you know,
17 being able to really get the kinds of information they
18 need from PacifiCorp. PacifiCorp has already filed a
19 protective order and hopes to have it entered as a part
20 of the opening of the adjudicatory process, and we are
21 certainly open to discussing a modified protective order
22 that would have the tiers that your -- that Staff
23 mentioned this morning.

24 I think in our response, you know, we tried
25 to respond as constructively as we could to the concerns

1 we were hearing from Staff about overlapping cases and
2 issues and workload issues and then this discovery
3 issue. And our -- our -- our response was well, let's
4 see if we can just work on conversations where we would
5 agree to allow discovery that is not confidential just
6 as to PacifiCorp, but only confidential among the owners
7 to be shared.

8 So I think our -- our response attempted to
9 try to make the same overture, that -- that if that's a
10 reasonable process we can agree to we're -- you know, if
11 the information is information that the co-owners
12 already have, then I think we can work around the normal
13 limitations of the protective order, and we would be
14 willing to do that. That was one of our responses.

15 So in our -- in our response is before we
16 went to what we think is a fairly drastic and awkward
17 step of consolidation of disparate proceedings, we
18 thought adjudication, we thought a modified protective
19 order or some kind of collaborative process, and -- and
20 frankly, you know, to avoid overlapping cases and the
21 challenges associated with that, I mean, normally the
22 Commission has -- takes these issues one at a time for
23 each utility, creates the record, and makes a decision
24 in that case, and then the next utility, you know, if --
25 if it's adverse to the utility, then Staff will

1 certainly cite that as a precedent, and that would need
2 to be distinguished by the next utility. If it goes the
3 other way, then Staff would need to argue why that
4 precedent doesn't apply, but you've already -- you're
5 not relitigating every issue, you're trying to say that
6 that precedent decided, in this case it would be Avista,
7 Avista would go first. When we would presumably next
8 get to Puget's case, Puget would be able to say why or
9 why not that decision applies to it or not.

10 I mean, it's a -- that's the normal process.
11 We have overlapping issues in cases regularly, and we
12 usually deal with them by deciding the issue in the
13 first case filed, and then the parties are left to deal
14 with the precedent in the preceding cases. You know, we
15 don't usually start all over again.

16 So that -- that to me seems like a process
17 that would work here, and I guess in terms of you're
18 trying to find solution space, that's ours. It's really
19 just doing it the way we usually do it, but I think here
20 with the innovative approach on the protective order,
21 that would allow common confidential information to be
22 shared among the individual dockets.

23 So I guess just in closing, we'd like to say
24 that, you know, we are still engaged in the discovery
25 process. Our last discovery, you know, our -- our

1 workshop with Staff was just at the end of last month.
2 We've filed additional follow-up responses out of that
3 workshop just a couple weeks ago. You know, we would --
4 we look forward to even a deeper discovery process once
5 we have a protective order in place and an adjudication
6 that's opened. So -- so we think this process can work,
7 and we think ultimately it will end up being the
8 cleanest and least complex way of dealing with what is
9 admittedly a complex issue for the Commission. Thank
10 you.

11 JUDGE O'CONNELL: Thank you.

12 Puget Sound Energy, Ms. Barnett.

13 MS. BARNETT: Thank you, Judge O'Connell.

14 First, I'd like to thank you for allowing PSE the
15 opportunity to come up with some seems like a
16 brainstorming session to come up with some creative
17 alternatives to consolidation, because I do think that
18 those alternatives are out there to get Staff what it
19 needs and the Commission what they need to -- to make a
20 recommendation.

21 And I don't have a lot to add on because I
22 agree with Mr. Meyer and Ms. McDowell, but I -- I do
23 think that we haven't tried just adjudication, and I
24 think most of the issues can be addressed through
25 adjudic- -- the adjudicative process. We could --

1 haven't had bench requests, those are available. An
2 in-camera review of documents, an order to compel,
3 workshops, even -- even depositions if we're talking
4 about a narrative. That's certainly an opportunity -- I
5 mean, an alternative that Staff has available --
6 available in an adjudicative proceeding.

7 I think what we're -- we have -- I do want
8 to mirror what Mr. Meyer said, Puget has similarly
9 requested information, specific information what it --
10 what it is it's lagging. We -- Puget is unclear about
11 what it does not have or what it has not given, and we
12 have not also received an answer to that specifically,
13 but -- so we don't think that the discovery process is
14 over. And even Mr. Pepple's recommendat- -- just option
15 of a protective order that applies just to the Colstrip
16 is an intriguing thought, that maybe some in between
17 that doesn't need to be -- doesn't require a
18 consolidation.

19 But I think it's a big deal to consolidate
20 these cases now. Even -- even if Avista weren't so far
21 along in their rate case, but just consolidating
22 multiple utilities in power cost proceeding, which has
23 never been done in 17 years of doing it, is a very big
24 deal for -- for, what, maybe one document or one piece
25 of information that I think we can address and get --

1 get to Staff and get to the Commission short of setting
2 a -- a big precedent for -- for future consolidation.

3 So I don't think I have anything other to
4 add except I agree with Ms. McDowell that we should take
5 this -- I sense that there was some urgency when Staff
6 has to file testimony and the GRC is -- is gearing up
7 for Avista that -- but we should still try separate
8 steps first and what can we get through with just the
9 adjudicative process.

10 JUDGE O'CONNELL: Staff has an idea at the
11 outset of their suggestions, and I'm curious what the
12 companies think about it. Should the Commission, if we
13 decide we don't want to consolidate these dockets but we
14 do want the information, should we, could we issue bench
15 requests to the companies to get that information more
16 immediately?

17 And, Mr. Myer.

18 MR. MEYER: Yes, it -- it's -- a lot of
19 information I suspect or if there are holes or perceived
20 holes in the presentation will be filled in our
21 rebuttal. And so that may answer bench requests. And
22 while that's a useful tool, that's sometimes a good tool
23 after the issues have been joined and you really see
24 what you already have that's been presented. So we
25 won't be filing our ERM rebuttal for some period of

1 time, because if Colstrip is the ERM issue, clearly we
2 cannot stay with this existing procedural schedule that
3 we've married up between Avista's GRC and the ERM. It
4 just won't work. Too much work has to be done with
5 testimony on the Colstrip issue. That rebuttal can't be
6 filed by early November.

7 So we're looking in any event, even if you
8 don't sever the -- the Avista ERM, I'm afraid you're
9 looking at two sets of hearings for Avista only, one
10 dealing with a rate case and then a follow-on hearing
11 with a somewhat -- with a separate prefiling track for
12 the ERM issue, all of which would lead to one order
13 prior to April of next year. So we're -- we're -- we're
14 in a pickle, and that procedural pickle has to -- has to
15 be addressed even if you don't sever.

16 JUDGE O'CONNELL: We're aware of the
17 procedural difficulty that there is in the Avista case
18 right now, and we will address it one way or the other.

19 MR. MEYER: Thank you.

20 JUDGE O'CONNELL: Ms. McDowell?

21 MS. McDOWELL: Judge O'Connell, I appreciate
22 you bringing up that issue or that tool of bench
23 requests, a tool that Staff also referenced. I think
24 goes back to your initial point that, you know, Staff
25 has concerns about getting the information, but really

1 more importantly, the Commission does. The Commission
2 needs that information to make the right decision here.
3 And I think that knowing that you have that tool of
4 bench requests is -- is a reason to continue to try to
5 work this out through the normal adjudicative process
6 knowing that if there are gaps and, you know, Avista's
7 case goes forward, but you have questions about
8 potentially the co-owners or some other aspect of the
9 case that is not being fully fleshed out in the Avista
10 record, you know, I think the Commission does have that
11 tool, and it's a less drastic step than consolidating
12 these cases and -- and trying to keep three records --
13 trying to develop three records within a single
14 proceeding, which is what's going to be required, and
15 that just seems messy.

16 Whereas if you keep the cases separate,
17 allow Avista's case to go forward, you have the ability,
18 the Commission has the ability to issue bench requests
19 if there seem to be gaps in the narrative. And, you
20 know, that's a situation where, you know, again, we
21 would -- to the extent you're seeking information common
22 to the owners, Avista would have that information to
23 provide and would not be bound by confidentiality issues
24 to provide it.

25 To the extent, you know, that is information

1 specific to one or the other utilities, well, then
2 appropriately that would come up in their cases. So I
3 think, you know, it is appropriate to make different
4 decisions for different utilities when there are
5 different circumstances, and that may come up. I mean,
6 it's not -- uniformity is not necessarily going to be
7 the outcome because we're all differently situated, but
8 I think through the Avista process and your bench
9 request process, you can make sure that you have a
10 complete record to decide Avista's case when it's first
11 up, then Puget's, and then ours.

12 So that's -- so I would say in some ways I
13 think the bench request process is one that can provide
14 you some assurance and the Commission some assurance
15 that no matter what, you're going to have the record you
16 need.

17 JUDGE O'CONNELL: Ms. Barnett?

18 MS. BARNETT: Thank you. I agree with --
19 with both Avista and PacifiCorp, and I -- I think the
20 bench requests are a valuable tool to get you -- to get
21 the Commission what they need. I think it would be most
22 valuable after an informal session with Staff to -- to
23 get to some clarity about what it is they need. I think
24 if we identify what they need and then the Commission
25 issue a bench request. There's a difference between

1 what we can -- what Puget can get and what they possess
2 versus what they don't even know about that -- that's
3 lagging. So I think the bench request, we can -- like
4 Ms. McDowell, said we get the Commission what it needs,
5 but I think more informal, like a workshop, to identify
6 and get clarity around what exactly that is would be
7 ideal.

8 JUDGE O'CONNELL: Okay. Before I return to
9 Staff, I do want to hear Staff's thoughts on what Staff
10 has heard. But before we get there, I want to bring up
11 some other options that we see that the parties might
12 want to think about when we do take a recess, and we
13 want to say that we are interested in hearing the
14 parties' thoughts on whether they are a better option.

15 In particular, the idea of severing and
16 consolidating just the prudency of decision-making
17 leading up to the outage. Then after a prudency
18 decision, return those to the separate dockets. And I'm
19 aware, as Staff described, of the difficulties of
20 severing just the issue of this prudency determination,
21 but if a joint or a consolidated decision were made on
22 prudency on an expedited schedule and time for them to
23 be reincorporated back into consideration of the rest of
24 the issues in each of the dockets, could that not
25 resolve the difficulties of severing just the prudency

1 decision?

2 Staff?

3 MR. DALLAS: Thank you, Your Honor. Let me
4 first comment on what the companies stated. I -- I
5 really appreciate their thoughtful responses. I think
6 their solutions would certainly resolve the -- the issue
7 of confidentiality, but it would not resolve the issue
8 of judicial economy. Under their solutions, we would
9 still have three hearings, three procedural schedules,
10 three settlement conferences, three written orders.
11 It -- it -- it wouldn't -- would not resolve that
12 concern, and I think Public Counsel voiced earlier that
13 they have resource constraints, that that's the reason
14 why they participated in the ERM more so than the other
15 two.

16 I think your solution, I -- I need to
17 consult with my client, but Staff's position is we want
18 to make sure the Commission has sufficient information
19 to make a decision that's fair, just, and reasonable for
20 both the ratepayer and the Company, and to make sure
21 that these proceedings don't drain the resources of the
22 Commission. So if your solution could accomplish those
23 two, I think Staff would be willing to entertain that,
24 but that's something I'd have to consult with my client
25 on.

1 JUDGE O'CONNELL: Right. Perhaps that's
2 something you can discuss during the recess.

3 MR. DALLAS: Absolutely.

4 JUDGE O'CONNELL: Okay. Ms. Gafken, do you
5 have any thoughts?

6 MS. GAFKEN: That's an intriguing idea. I
7 worry a little bit about the time frame. If we have a
8 separate proceeding on the one issue and then try to
9 finish the rest of the issues separately, do we make it
10 to the end, you know, to the targeted end date? And I'm
11 trying to kind of sketch that out in my own mind. I'm
12 not sure if that elongates it versus if we just do it
13 all at once, because I think we can make the April 1
14 date if we just dive in and do it. It's an intriguing
15 idea, though, because it -- it does sever that one
16 issue. It deals with some of the arguments about the
17 Commission has to deal with each one of the filings.

18 I -- I do want to chime in and -- and say
19 that Public Counsel's focus is also Colstrip. You know,
20 we do have that -- the one up -- you know, we want to
21 provide an update regarding the ERM workshop. I still
22 don't see that as a substantive issue, but really the
23 substantive issue that -- that Public Counsel is looking
24 at in all three of the dockets would be the Colstrip
25 issue. So I -- I think we're kind of in the same boat

1 with Staff on that.

2 So it's -- it's an interesting idea. I
3 think it's worth pondering more, but I -- I do have some
4 question about whether it simply elongates it.

5 JUDGE O'CONNELL: Let me -- let me turn to
6 the companies. And this is in consideration of what I
7 know about Avista's ERM filing. I'm not the judge on
8 the PacifiCorp, Puget Sound Energy filings. There
9 hasn't been a judge assigned. So I'm somewhat more
10 familiar with what's going on in Avista's case, and I am
11 aware that the determination of prudence of
12 decision-making leading up to the Colstrip outage is one
13 piece that then also needs to be considered as a whole
14 with the rest of the Avista's ERM filing including the
15 deferral balance. So that's why my question is, is the
16 potential to sever just the prudence determination have
17 a decision on that and then return it to the separate
18 dockets?

19 Mr. Meyer.

20 MR. MEYER: The more we talk this morning,
21 the narrower the issues appear to be. And so in that
22 sense, I think we're moving in the right direction.
23 What I'm -- but I don't want this to be illusory. We --
24 we talk from Staff's point of view that the real issue
25 is what happened before the outage, and the remedy

1 presumably is a disallowance in whole or in part of the
2 power cost replacement dollars. I don't know whether
3 even in exercising that remedy whether the Commission
4 will want to make distinctions between parties, and
5 there may be reasons why in some cases the Company
6 behave with just extraordinary dispatch and
7 reasonableness, and it would just be improper.

8 What -- what our prefiled testimony tells
9 you or tells the Commission about Colstrip in the ERM --
10 this is in the ERM docket -- is that even with this
11 two-month outage, that plant operated at an 82 percent
12 availability factor. That's pretty good. In fact,
13 the -- the -- I'm not arguing the case, but I'm trying
14 to provide perspective on this, okay? And even with --
15 with that, we will -- we will remind the Commission that
16 in other months of the year, Colstrip operated much
17 better, much better, greater availability than was
18 anticipated.

19 So at the end of the day, this episode,
20 while -- while certainly something you need to look
21 into, was -- was not so out of the ordinary. Again, I
22 don't want to argue the case, but we will be taking the
23 position that things happen in Colstrip, things happen
24 in every generating plant, and this was managed
25 appropriately, it's not the end of the world, and keep

1 this issue in some kind of perspective.

2 Okay. So back to the point at hand, I -- I
3 don't know if it -- if it's slimmed down quite the way
4 you describe it, Joe, on -- on behalf of Staff. You
5 know, if it's just a question of outage and power
6 replacement costs. I mean, did each of the three
7 companies monitor and exercise their fiduciary duties as
8 part of the management committee that oversees Talen? I
9 don't know if you're going to make distinctions there.
10 So it's -- it's -- while it's tempting to paint with a
11 broad brush and say it's just -- it's an -- it's an easy
12 up or down decision, there are nuances here that would
13 probably need to be explored on a company-by-company
14 basis.

15 I am heartened to -- to better understand
16 that maybe from even Public Counsel's perspective it
17 really is just the Colstrip issue. The other issue you
18 mentioned we can address perhaps in the rate case, Lisa.
19 So if -- and if there are no other ERM issues and if
20 we've strictly defined what we mean by the Colstrip
21 issue, then that lends itself to -- to some sort of
22 early decision on that just so long as -- and we put the
23 ERM to bed for Avista and we can use those dollars for
24 ratepayers, okay?

25 JUDGE O'CONNELL: So, Mr. Pepple, if you're

1 still on the line, I'd like to prepare you for a
2 question I'm going to ask perhaps after we take a
3 recess, and I'm curious about Staff and Public Counsel
4 have made fairly clear that they -- well, that Staff
5 offered to simplify the issues of the ERM to the
6 Colstrip outage. I recall that you, AWEC, have more
7 issues in the ERM docket than just the Colstrip outage,
8 and at some point after we take a recess, I'm going to
9 be interested to hear what -- whether you can make that
10 same offer or what your position on that is.

11 But let me return now to the companies, for
12 Pacific Power. Just for the decision of prudence on the
13 decision-making of the Colstrip outage, if we were to
14 sever that, expedite a decision on just that piece of
15 Pacific Power's filing and then return whatever that
16 determination is to your PCAM for consolidation with the
17 rest -- consideration with the rest of the things in
18 that docket, is that a possibility?

19 MS. McDOWELL: So, Your Honor, I appreciate,
20 you know, the attempt to come up with constructive
21 solutions here. I will say that that solution is not a
22 good one for PacifiCorp. You know, we think even if the
23 issue is narrowed to the Colstrip outage, that issue is
24 still not common among the three utilities. You have
25 the different utilities situated differently in terms of

1 the units at issue, ownership percentages, amounts in
2 controversy, rate impacts, replacement power strategies,
3 and the individual responses of the facts leading up to
4 the outage.

5 Ultimately the Commission has to make three
6 independent determinations on three individualized
7 records. And we -- we don't see that -- we see that as
8 being absolutely more complex in a consolidated
9 proceeding where the things get jumbled than if you do
10 it sequentially, take Avista's, take Puget's, take ours,
11 and then build on the record that gets developed over
12 time in the individual utility cases.

13 That's the normal course of events. We
14 think that is the more efficient process and frankly
15 more comfortable one for us. You know, as we are just
16 now like moving into an adjudicative process, the idea
17 that we are moving into an expedited adjudicative
18 process, which is, you know, like news to us and not
19 exactly in our schedule for the next couple of months,
20 is -- you know, that's not necessarily a welcome
21 development for us. I understand it's imperative for
22 Avista, but for us especially to try to meet, you know,
23 Staff's needs around let's -- let's really understand
24 the story so we can come to the right outcome, that --
25 that's at odds with but file your testimony next week.

1 And so, you know, we think in our situation
2 it would be better to set the normal schedule, not an
3 expedited schedule that, you know, works for Avista, but
4 to allow Avista's case to go forward then allow ours to
5 go forward in the normal course. We think our situation
6 is -- you know, we -- we get that there is a common
7 issue that occurred, a common fact that occurred, but we
8 think the utilities all are differently situated on that
9 and all have, you know, a different record that
10 ultimately needs to be developed. And we want a chance
11 to develop ours in the normal course, not in like
12 tomorrow because we've gotten thrown into a proceeding
13 frankly that we didn't expect to be thrown into.

14 So that's -- that's our course. We think --
15 I mean, ultimately we hope to settle this case. We've
16 generally been able to settle our PCAM filings and --
17 and we think that's going to be harder to do if we're
18 immediately thrown into litigation and don't have that
19 time to have those sort of discussions. So -- so, you
20 know, as much as we'd like to say yes and, you know,
21 continue with constructive brainstorming that's a
22 solution, I -- I don't think works because we just don't
23 think the commonality exists.

24 JUDGE O'CONNELL: I appreciate your input,
25 and you anticipated my comment about we do think that

1 there -- it's clear that there is some commonality. The
2 extent to which I think everyone can argue about at this
3 point, but there is some commonality here.

4 Ms. Barnett, you've had the -- the benefit
5 of hearing all of my questions before I get to ask them
6 of you. What are your thoughts?

7 MS. BARNETT: And hearing all the answers.

8 JUDGE O'CONNELL: Yes.

9 MS. BARNETT: I -- I guess I -- I look at
10 the -- at Staff's motion a little differently. I don't
11 see -- I don't see the proposal as really a narrowing
12 because that's the way I always saw Staff's proposal. I
13 understood. I guess, this is -- having done I guess now
14 15 power cost adjustments without any of them ever being
15 adjudicated, I just assumed this was the only issue. So
16 when they say we're just going to pull out and
17 bifurcate, I guess, this one issue from the PCA, I -- I
18 understood that -- I understood that to be Staff's
19 motion. That is their -- that is their position, is the
20 only issue is the Colstrip outage.

21 So I don't see as severing the -- this one
22 issue, the prudency issue of Colstrip outage replace
23 power costs as a -- as a -- as a more efficient
24 improvement, I guess, or -- or alternative. I think --
25 I -- I do think it's also not worth the -- I guess I'm

1 uncomfortable with, again, I think I said it before,
2 consolidating multiple companies into what -- into one
3 proceeding, setting that precedent. But not only that,
4 also setting a precedent that it's easy to bifurcate
5 specific issues from a rate case. I mean, that's
6 essentially what we'd be doing, is severing one issue
7 that you don't want to discuss in a rate case and we
8 want to take that offline and separate and -- and join
9 it with another. I think that's -- I think that's a big
10 deal. So I -- I think -- I guess I don't have anything
11 to add except that PSE would not be comfortable with
12 that proposal.

13 JUDGE O'CONNELL: Okay. It's about time, I
14 think, for us to have a recess, but I --

15 MR. DALLAS: And, Your Honor, before we go
16 on recess, can I quickly provide Staff's thoughts on
17 this?

18 JUDGE O'CONNELL: I want to address one more
19 thing --

20 MR. DALLAS: Okay. Great.

21 JUDGE O'CONNELL: -- before we go back to
22 Staff and --

23 MR. DALLAS: Great.

24 JUDGE O'CONNELL: -- go to recess.

25 From everything I've heard today, I want to

1 ask of Mr. Meyer a question that we've been pondering.
2 We would benefit from Avista agreeing to extend the
3 effective date of its ERM, if we decided these dockets
4 should be consolidated, will Avista agree to extend the
5 effective date of the ERM?

6 MR. MEYER: Would that have the effect of an
7 ERM decision that would extend beyond April 1st of 2020?

8 JUDGE O'CONNELL: To agree to extend the
9 effective date would be to move it beyond
10 April 1st, 2020, yes.

11 MR. MEYER: Then we would not agree to that.
12 We're -- that would prevent the \$30 million bucket from
13 benefitting customers because this issue would still be
14 unresolved. Now, that gives us still five months of
15 good, hard work between now and April 1st, and however
16 the Commission decides to address this, a lot can be
17 done in that period of time. So I'm not trying to be
18 difficult, but I want to preserve the objective.

19 JUDGE O'CONNELL: I understand. And it's
20 worth asking, and perhaps I just ask that you keep it in
21 mind as you discuss more during recess with the other
22 parties.

23 MR. MEYER: Sure. Thank you.

24 JUDGE O'CONNELL: Mr. Dallas?

25 MR. DALLAS: I just wanted to provide just

1 some very quick feedback. Staff's initial position is
2 we -- we agree with PSE that it's just procedurally
3 awkward to sever individual issues. I'm going to
4 consult with my client and get their thoughts on it, but
5 I wanted to reiterate what Donna said.

6 And also I wanted to address Meyer --
7 Mr. Meyer. Our position, we're coming from a principle
8 position. We have not made a decision on the prudence
9 of cost. At this point, Staff is trying to obtain the
10 information to make that determination.

11 As to what Pacific stated, we agree that
12 there could be different outcomes as to each company,
13 but Staff's position is that it would like to tell one
14 story. We believe it's one set of facts, the characters
15 are the Colstrip owners and Talen, and if each
16 individual Colstrip owner did something different, Staff
17 would certainly make that distinction within one
18 narrative response.

19 So we just want to make it clear that
20 Staff's position is that it will identify if -- if an
21 individual company did something different in its single
22 narrative within the consolidated adjudication to -- to
23 resolve that concern. Thank you.

24 JUDGE O'CONNELL: Thank you, Mr. Dallas.

25 It is 11:15 a.m. I don't believe after this

1 recess we will have much left to discuss, depending on
2 how the -- the parties do in the recess. Is half an
3 hour or 35 minutes sufficient for the parties to talk --
4 talk to your clients and then for us to come back and
5 have a short chat before we adjourn?

6 MR. DALLAS: Yes, Your Honor.

7 MR. MEYER: Yes for Avista. But I do --
8 after a short break, have the -- have us come back and
9 talk about some discovery options here, see what we can
10 do. And I think if -- if we need more than a half an
11 hour, can we -- well, how about we just call when we're
12 ready for you; would that work?

13 JUDGE O'CONNELL: That -- that would. If I
14 don't hear anything, I'm going to check back in in half
15 an hour, because it is -- I'm aware and conscious of
16 AWEC's availability as we get into the afternoon, and I
17 want to be sensitive to that. So I -- I am going to at
18 least check back in if I don't hear from you. If you
19 would like me to come back before half an hour, 35
20 minutes, yes, please, contact me. And I'm not seeing
21 anyone objecting to that, so with that, we will be off
22 the record in recess. Thank you.

23 (A break was taken from
24 11:18 a.m. to 11:47 a.m.)

25 JUDGE O'CONNELL: Let's be on the record.

1 Have the parties had a chance to collaborate and did any
2 good ideas come from that?

3 MR. MEYER: Well, before we go there, you
4 had a question pending for -- of Tyler.

5 JUDGE O'CONNELL: Yes, I do.

6 MR. MEYER: And probably should get that out
7 because that might have a bearing on -- on some of this.

8 JUDGE O'CONNELL: Very well.

9 Mr. Pepple, I wanted to check back in with
10 AWEC. Staff made an offer earlier in this hearing that
11 if the -- if everyone -- you know, if we consolidate all
12 of these dockets, the power cost filings, that they were
13 only going to contest a single issue. I'm aware from
14 the contested issues list that you filed in the ERM
15 docket that you have more issues than just that one, and
16 I'd like to hear from you regarding how you feel about
17 whether you can only focus on this one issue or whether
18 there are multiples that you still need to address.

19 MR. PEPPLER: Yeah, thank you, Your Honor.
20 So as I -- I mentioned to -- to some of the parties at
21 the break, you know, AWEC isn't -- isn't willing to give
22 up its issues for the sake of procedural efficiency.
23 You know, we think that there are issues that -- that
24 deserve to be raised. That said, I don't think that any
25 of the issues we raised that we have identified in the

1 list, you know, would -- would represent a good reason
2 for the Commission to, you know, either consolidate or
3 not consolidate depending on its position on the
4 Colstrip issue. I think that the issues we raised are
5 relatively narrow and can be dealt with pretty easily.

6 The first issue we -- we raised on is an
7 issue that, you know, we -- we raised in testimony in
8 the Avista remand docket. We feel like we need to raise
9 it in the ERM proceeding as well in order to protect our
10 interest on that issue, but it's an issue that could
11 very well be resolved in the ERM -- or in the remand
12 docket.

13 The third issue we raised is really just a
14 policy issue about, you know, the period over which
15 Avista should amortize the ERM balance, you know, and
16 that's -- I don't think that that's really a big enough
17 issue to -- to influence your decision here.

18 And then the -- the middle issue, the second
19 issue, regarding the -- the interest again, that's, you
20 know -- it's an issue that requires testimony, but
21 probably only a couple of pages to identify it. And,
22 you know, so it's -- again, it's a fairly simple and
23 narrow issue.

24 JUDGE O'CONNELL: Okay. Thank you.

25 Before we adjourn, close for the day, I do

1 want to give the opportunity to the parties to tell me
2 any -- anything else that we should consider and how we
3 should go forward. The kind of a catchall question for
4 the very end. Before we get to that, which I will allow
5 everyone to have a say, was there collaboration and is
6 there any idea for a resolution that would be acceptable
7 to everyone?

8 MR. MEYER: There is a germ of an idea, but
9 that will not resolve the fundamental question of
10 consolidation or not. The parties are apart on that as
11 I understand the positions, but what I think there may
12 be agreement on is that we've discussed this -- this
13 idea of holes in the discovery responses. We all say
14 the right things that Commission has to have what they
15 need and we all believe it, okay? But we're talking in
16 the abstract, so I -- I think it's time, starting with
17 the three utilities, to sit down, figure out amongst us
18 what we've already produced, because we haven't even
19 done that yet, and then talk amongst ourselves just what
20 is truly confidential, and we'll get into this two level
21 confiden- -- or protective order in just a minute, but
22 decide among ourselves just what the state of discovery
23 is. We can do that in fairly short order. And then sit
24 down with Staff and other interested parties to go over
25 that so we understand and you understand there's common

1 agreement, what's missing, what do you need, and can we
2 give that to you.

3 And we didn't talk about dates. I didn't
4 get the final okay from all parties. I'd like to get
5 all of that done -- that's actually a two-step process,
6 I suppose -- done in the next three to four weeks. And
7 then as a matter of cleanup, it's -- it's apparent that
8 in any event the -- another prehearing in the ERM,
9 Avista ERM docket will be required to reset the
10 schedule, assuming that it is going to proceed on its
11 own course, and that's the issue that has not been
12 resolved.

13 But, you know, I won't speak for how quickly
14 the Commission can turn an order around, so if the
15 hearing that carried into the new year on the ERM docket
16 would allow, I don't know, four to six weeks, seven
17 weeks, whatever the Commission finds necessary, then to
18 write an Avista-specific ERM order that talks about
19 Colstrip and everything else. And then we get to the
20 finish line of April 1st.

21 Now, did someone else want to better
22 articulate this protective order, we can agree on
23 something like that?

24 MR. DALLAS: Yes, thank you. So we had
25 collaborative conversations during our recess. I think

1 we -- we do have an agreement as to the two-tiered level
2 of -- of confidentiality. I think what the -- I think
3 the parties can correct me if I'm wrong, but we -- we
4 all agree that there should be at least a common
5 protective order, and that in this protective order,
6 there'd be two layers of confidentiality. One would be
7 confidential, but not confidential among the Colstrip
8 owners because the information relates to the operation
9 and management of Colstrip. And then the other layer
10 would be truly commercially sensitive information that
11 would be confidential as to each individual utility
12 company.

13 I think where the disagreement is, is how do
14 we proceed procedurally. Do we do this in three
15 separate dockets or do we do it in one. Staff's
16 position is that it would promote judicial economy to do
17 this in one as opposed to three because three
18 necessarily means three procedural schedules.

19 The Commission mentioned a -- a solution
20 where we would sever individual issues. Staff's
21 preference would be to consolidate the entire dockets
22 because it's -- it's just odd to us to sever individual
23 issues when the Commission has to approve the entire
24 deferral balances. But as an alternative, we would take
25 that as opposed to leaving these unconsolidated because

1 that would resolve the issue of judicial economy, but it
2 still would be very procedurally awkward in Staff's
3 opinion.

4 JUDGE O'CONNELL: Well, let me clarify a
5 little bit on that idea, because that thought came about
6 with the understanding that we need to have a decision
7 on the -- at least Avista's part of the 2018 Colstrip
8 outage, the decision-making leading up to the that, and
9 the prudence thereof. We need to have that decision to
10 then reincorporate it into the rest of the ERM to get to
11 the deferral balances. So that procedural idea would
12 have had to look something like severing that one issue
13 and returning it after a decision was made.

14 MR. DALLAS: So -- so I think if the issue
15 is timing, I think Staff's stipulation would -- would
16 resolve that concern. I know AWEC and Public Counsel
17 have some other minor issues, but with that stipulation,
18 I don't think there is going to be a substantive
19 difference in timing if we consolidated the entire
20 dockets -- I'm sorry -- as opposed to severing
21 individual issues because that one issue is the only
22 issue Staff may contest pursuant to its stipulation. So
23 I -- I -- I'm not sure if -- if there is a substantive
24 difference in timing between the two options.

25 JUDGE O'CONNELL: Okay. What I'm hearing is

1 that all the parties can agree that it would be a good
2 idea, whether consolidated or separate, that we have
3 this -- as we've characterized at this hearing -- a
4 two-tiered level of confidentiality and a protective
5 order. One level of confidentiality where it's not
6 confidential between the Colstrip owners and then
7 another level of confidentiality where essentially the
8 companies can't see the other information of the -- the
9 other companies. Is that -- I'm hearing that that is
10 the one thing that the parties can't agree on.

11 MS. BARNETT: I don't -- this is Donna
12 Barnett from PSE, and I think that offer was -- is a
13 compromise to consolidation. It is not intended to be a
14 support -- PSE does not support consolidation, and if
15 it's a -- I think that was a separate issue. So if it's
16 a two-tiered protective order, that doesn't mean we'd
17 want that in a consolidation as a compromise.

18 JUDGE O'CONNELL: So then the idea -- I just
19 want to make sure I understand. The idea then would be
20 to keep the dockets separate, allow this two-tiered
21 level of confidentiality, and that would allow for
22 introduction of certain evidence really to the Colstrip
23 owners and decision-making to be used in each of the
24 dockets?

25 MS. BARNETT: That's right, if it's

1 appropriate. That -- that's right. This would --
2 that's a -- PSE's and the other parties, my
3 understanding, is the attempt to get to understand what
4 Staff is missing and get them that information, which --
5 which is the purpose behind their motion the way we
6 understand. If judicial economy is a separate issue, we
7 don't think that judicial economy, the benefits afforded
8 the Commission in judicial efficiency or economy does
9 not outweigh the gray cost in establishing precedent of
10 having multiple power cost proceedings bound together in
11 a consolidated proceeding.

12 To me that just creates a -- a boilerplate
13 power cost rate proceeding that is applied to multiple
14 utilities without looking at every individual utility
15 the way they're filing separately. It's -- so I -- so I
16 think this is -- the offer was to -- as a -- as an
17 attempt to compromise to get Staff what they need and
18 not an acknowledgment or accession to consolidation.

19 JUDGE O'CONNELL: Okay.

20 MR. TEIMOURI: And, your Honor, this is Dan
21 Teimouri. And just to be clear that that is not Staff's
22 position. We do not see it as a compromise, but as a
23 component of a consolidated docket in our preference.

24 JUDGE O'CONNELL: We'll -- we will take that
25 into consideration, and I do want everyone to understand

1 that we're going to make a decision soon on this, and
2 it's possible that not everyone will be happy with that
3 decision. Someone's not going to get what they want
4 so...

5 MR. DALLAS: And, Your Honor, I -- I think
6 just to quickly talk about what PSE stated, I think I
7 already made this point, but Staff's position is it's
8 not going to have a boilerplate recommendation in the
9 consolidated adjudication. We believe it's one story,
10 and if every individual utility company did something
11 different, we would identify that.

12 JUDGE O'CONNELL: Mr. Dallas, I -- I
13 understand.

14 MR. DALLAS: Okay.

15 JUDGE O'CONNELL: You've made that point a
16 couple times.

17 MR. DALLAS: Okay. Yeah, yeah -- okay.

18 JUDGE O'CONNELL: No, I do recall quite
19 clearly that Staff said that you can do different
20 determinations in a single narrative.

21 MR. DALLAS: Exactly. I just wanted to
22 reconfirm that.

23 JUDGE O'CONNELL: Ms. McDowell.

24 MS. McDOWELL: Thanks. Just trying to get
25 in to clarify one thing, I think that we really

1 appreciated the suggestions of the tiering from Staff
2 and the individualized modified protective orders from
3 Mr. Pepple. And I think we tried to combine those
4 during the break into something that would work for all
5 of us to really address the discovery issue that you
6 raised and that Staff raised.

7 So we are totally comfortable with a
8 modified protective order being developed and entered in
9 each of the dockets that would have -- identify the
10 tiers and that would have the special language that
11 would allow information produced in one docket, you
12 know, in that, I guess it would be the tier -- the tier
13 two is where we've identified the common information,
14 that that common information would be -- notwithstanding
15 it being designated confidential, it would be -- in this
16 case, be allowed to be used in the three dockets.

17 So that -- that is different than your
18 typical protective order, and we're -- we're comfortable
19 with that, and we think that addresses -- we hope that
20 addresses your concern and also the Commission's concern
21 about how to manage this from an evidence perspective.
22 So -- so we're comfortable with that. I think the
23 distinction between what our perspective and what Staff
24 articulated was just the common protective order that
25 implies that if one protective order in a consolidated

1 proceeding. We still believe that judicial economy is
2 best served by doing this in three separate proceedings
3 and let the cases evolve in -- you know, in the way they
4 have been filed.

5 You know, Avista might be ready to go to
6 hearing in a month, but I don't think PacifiCorp is. We
7 are just now entering the adjudicatory process. We want
8 to engage in this discovery process. We also talked
9 about, you know, informal technical conferences, which
10 could potentially, if we have this kind of protective
11 order placed, the three utility, Staff and other parties
12 where we could do a technical conference that would --
13 where we could share information informally as a way of
14 getting around a lot of back-and-forth discovery
15 requests.

16 So we're open to all of those ideas, but in
17 our mind, that -- you know, judicial economy is served
18 by getting that -- sharing those facts in an orderly way
19 and then moving into, you know, an adjudicatory process,
20 your typical evidentiary testimony process. And I feel
21 like here we're not going to -- at least for PacifiCorp,
22 if we are, you know, moved and consolidated into
23 Avista's schedule, that's going to be problematic for us
24 to be able to engage in that kind of process.

25 So -- so we think judicial economy is best

1 served by continuing the cases separate, but doing these
2 innovative approaches to sharing information and also
3 informal sharing of information, both sort of formally
4 through the protective order and then informally through
5 these technical workshops or other proceedings.

6 JUDGE O'CONNELL: Thank you.

7 Ms. Gafken, do you have any thoughts?

8 MS. GAFKEN: I do feel like I would be
9 repeating a lot of what has already been said, but it
10 sounds to me like there is some agreement on the need to
11 share information and to levelize that information
12 across the three companies and to make sure that
13 everyone has the same information. I think that's
14 really been one of the key concerns. I don't think we
15 have agreement on how to proceed and meet, you know, the
16 deadlines that need to be met. And so I'm afraid we've
17 been unhelpful in that regard.

18 JUDGE O'CONNELL: So at this time, I want to
19 give all the parties, including the parties who are on
20 the bridge line, The Energy Project, Sierra Club,
21 Northwest Energy Coalition, AWEC, I want to give all
22 parties a chance and opportunity to provide any
23 additional thoughts on how we should move forward.
24 Let's -- let's start with Staff.

25 Mr. Dallas.

1 MR. DALLAS: Thank you, Your Honor. And
2 like you said, this will be a catchall, so I have a
3 couple points I want to hit. So the compromise that the
4 companies are seeking, we appreciate. I think it would
5 resolve a lot of the confidentiality issues. Staff
6 still has concern about judicial economy. You know, I
7 think Public Counsel stated it best, that it would
8 really limit our participation in all three if we had to
9 adjudicate the same cost three different times. And
10 then the first case wouldn't have the benefit of the
11 information and insight from the latter cases. So as
12 these cases evolve and we become more familiar with
13 these issues, the Commission may enter inconsistent
14 orders based on three serial cases.

15 The next point I want to talk about is the
16 timing of Staff's motion. I think -- you know, I -- I
17 want to explain why we filed it when we did. We've
18 always viewed these cases as one single case, and we
19 filed our motion after the workshop with PAC that took
20 place on September 20th, and we wanted to wait to file
21 our motion until we heard from PAC to give them a fair
22 opportunity.

23 This workshop was on September 20th, and
24 then after this workshop, we sat down with all the
25 information and filed our motion six days later. So

1 it's -- it's certainly -- there was no bad intent to the
2 timing of our motion. We certainly don't want to
3 prejudice any of the companies. We just did -- we just
4 wanted to give PAC a fair opportunity, and I -- I think
5 Staff would be accused of prematurely filing its motion
6 if we filed our motion prior to the workshop. So I just
7 wanted to -- to really state why we filed our motion
8 when we did. It's because we view all these cases as
9 one, which is why we're asking for consolidation.

10 As to the point why we didn't file motions
11 to compel, it -- it -- it didn't make sense to. For
12 instance, we believe the companies are withholding the
13 same document, so if we did a motion to compel with
14 Avista, we would fight that, and then if we won, it
15 would be confidential, and then we would have to try to
16 move that same document into the other three -- the
17 other two cases.

18 So -- so -- so it -- it makes more sense to
19 do this in a context of a consolidated adjudication
20 because we have to fight to get the document, and then
21 the document's going to be confidential, and then we
22 have to fight the designation of confidentiality to get
23 in the other two dockets. So it -- it's really a
24 five-step process to get one document in each
25 administrative record if there is no consolidation. So

1 we -- we -- we did not pursue the motions for -- motions
2 to compel because it just didn't make sense. It -- it
3 makes sense to -- to -- if we go that route, and we hope
4 we don't, it makes sense to do it within the context of
5 a consolidated adjudication so we can use that one
6 document as to all three companies because we want to
7 provide consistent recommendations. So I -- I just
8 wanted to provide some context on that.

9 And with that, I know it was a catchall. I
10 think those are the points I want to make. I'll move it
11 over to my associate, Dan.

12 MR. TEIMOURI: There were -- thank you, Your
13 Honor. There were a couple of points that were made
14 that Staff and I had a chance to respond to that I'll
15 just briefly touch on and then we'll move quickly
16 through them.

17 But I think first, PAC and PSE said
18 something to the effect that they're still trying to
19 understand what Staff needs, that Puget's not clear on
20 what it has not given. And I think that, you know,
21 Staff would strongly push back on this, we've had
22 several discovery conferences with both parties that
23 made very clear as Your Honor stated at the very
24 beginning of this hearing they were looking for the Q-1
25 contemporaneous decision-making leading up to the

1 Colstrip outage. So that was conveyed very clearly to
2 all companies, and I don't think there was any -- any
3 lack of clarity there.

4 It was also stated by Mr. Meyer, and I think
5 this appears in all the briefs, that there was thousands
6 of documents, lots of time spent, and by the same token,
7 there was a lot of time spent by Staff receiving those
8 thousands of documents. As you know, thousands of
9 documents a response does not make. And so we wasted a
10 lot of time going through those documents to not get an
11 answer to our questions, so I think shared frustration
12 on both sides.

13 It was said that this was bad precedent. I
14 think that's not true. This is a very narrow situation.
15 As was said, 17 years we haven't had a similar situation
16 where there was three joint owners with one outage. The
17 order could be narrowly crafted around those facts and
18 would not set bad precedent.

19 And lastly, during the break, we went and
20 looked for some precedent to establish that the issuance
21 of bench requests in a -- in a situation like this,
22 would be not be unprecedented, and we have that
23 authority here, and I would like to hand it up to the
24 Bench if you are so inclined to receive it and to share
25 it with the parties.

1 JUDGE O'CONNELL: And can you share with me
2 just the -- the docket and perhaps if you're -- whatever
3 document you're looking at?

4 MR. TEIMOURI: Yes, it's In re Joint
5 Application for Merger of Qwest Communications
6 International Inc. and US West Inc., Docket No.
7 UT-991358, April 26th, 2000.

8 JUDGE O'CONNELL: April 26th.

9 MR. TEIMOURI: And that's all I have, Your
10 Honor. Thank you.

11 JUDGE O'CONNELL: Thank you.

12 Ms. Gafken, does Public Counsel have any
13 other thoughts about how we should move forward?

14 MS. GAFKEN: I will speak briefly, and thank
15 you for the opportunity. From Public Counsel's
16 perspective, it -- it does seem somewhat unnecessary to
17 have three separate proceedings to deal with this
18 particular issue. I think it's -- it's been fairly --
19 it's been clarified that the Colstrip outage and the
20 events leading up to it really is -- is what we need to
21 grapple with, and we have three common owners.

22 Of course the Commission needs to deal with
23 each one of the filings, but it -- it seems to me to be
24 a bit unnecessary to have three separate proceedings and
25 gear up three separate times to deal with this -- this

1 particular issue. Of course each one of the individual
2 companies will have their percentage of ownership and
3 all of those things, but those are merely facts.
4 They're not things that necessitate separate treatment.

5 Public Counsel's preference would be to have
6 a process that has the most efficient path forward. So,
7 you know, fewer times parties need to gear up to address
8 this particular outage, we would prefer that.

9 In terms of consolidating three separate
10 companies into a single proceeding, I think the
11 Commission has broad discretion on that. It really
12 ultimately comes down to what does the Commission feel
13 that it needs to do in order to process these filings
14 and do so in a way that they can make a decision based
15 on all of the facts that they need to have and be the
16 most efficient with it. I think that discretion falls
17 squarely on the decision-makers.

18 I -- I am quite encouraged by the offer
19 to -- one, for the offer of the companies to meet among
20 themselves and then to meet with the rest of the parties
21 to -- to levelize the facts. I think that is very
22 constructive, and we look forward to participating in
23 that process, regardless of whether this ends up being
24 consolidated or not. I think I'll stop there. I don't
25 want to take up much more of the air time, but thank

1 you.

2 JUDGE O'CONNELL: Mr. Pepple for AWEC, do
3 you have any additional thoughts you would like to
4 voice?

5 MR. PEPPLER: Just very quickly, Your Honor.
6 AWEC is comfortable with whatever decision you make on
7 whether to consolidate or not consolidate for purposes
8 of the Colstrip outage as long as AWEC's right as a
9 party to raise be -- you know, other issues that it has
10 identified within the scope of the dockets is preserved,
11 so that's all. Thanks.

12 JUDGE O'CONNELL: Thank you, Mr. Pepple.
13 Mr. Ffitch, for The Energy Project?

14 MR. FFITCH: Thank you, Your Honor. We
15 don't have any comments at this time.

16 JUDGE O'CONNELL: Okay. Thank you.
17 And Ms. Yarnall Loarie for the Sierra Club?

18 MS. YARNALL LOARIE: Sierra Club also
19 doesn't have anything to add at this time. We still do
20 not oppose the idea of consolidating and severing this
21 issue for the sake of efficiency.

22 JUDGE O'CONNELL: Okay. Thank you.
23 And, Ms. Barlow, for Northwest Energy
24 Coalition?

25 MS. BARLOW: Thank you, Your Honor.

1 Northwest Energy Coalition doesn't have anything to add
2 either. Thank you.

3 JUDGE O'CONNELL: Okay. Thank you.

4 I want to return to the companies. For the
5 most part, I want to hear your final thoughts about how
6 we should move forward, but I'd also like to hear more
7 of Mr. Meyer about what would be needed as far as timing
8 if the companies needed to get together. Is that
9 something that can or -- or would be able to go hand in
10 hand with having this two-tiered protective order?
11 Because obviously if we do that, the companies will have
12 to get together.

13 MR. MEYER: Yeah, we'll have to sort the
14 information accordingly, and -- and -- and so we have
15 not talked about timing. I'm happy to send an email
16 around after I confer with my own client before I commit
17 my own client. They -- they don't like that.

18 JUDGE O'CONNELL: And here's my concern,
19 Mr. Meyer, is that we do expect to issue a decision
20 rather quickly on this, and that is going to have an
21 impact on what we decide to do procedurally with
22 Avista's general rate case. So I just want to
23 understand what sort of timeline we are under and
24 whether -- whether you're going to be able to have those
25 discussions before we issue a decision.

1 MR. MEYER: I would think not, because it
2 envisions an iterative process where we pull stuff
3 together, we look at it, we ask ourselves quite directly
4 and honestly is that really confidential or isn't it,
5 and -- and try and find common ground, hand it off to
6 others to look at and discuss, and then what comes out
7 of that, and this could be three, four weeks down the
8 road is we've identified the following six deficiencies
9 that need further discovery.

10 You know, I was just -- just trying to
11 reflect -- and this will be my last thought unless you
12 have other questions -- is how different today would be
13 if we weren't discussing this whole thing in the
14 abstract. And we all have views of what may or may not
15 be there in discovery once we get our hands on it, what
16 may or not be issues, and that's fair, because we're
17 early in the process with some of these parties.

18 But let's say we were before you today
19 arguing about six specific requests for information, six
20 requests. I think it would be an entirely different
21 discussion today, and I think there would be an order
22 coming, and we wouldn't be talking about consolidating
23 cases. But instead, because it's unfortunately and
24 maybe inevitably, we're discussing this on an abstract
25 basis, what it's done to Avista is that it's gummed up

1 the works, it's procedural works on its ERM, so that
2 it -- that is going to have to be delayed. We're
3 confident that we can set a new schedule that will still
4 meet that April 1st order, though.

5 So to end on a constructive note, I'll send
6 out something to the -- the utilities to jump start this
7 process, check with your principals, and then we can
8 decide how best to share this and then kick it over to
9 the other parties in terms of what -- what you would
10 like to do to assembly all this. That's the best I've
11 got.

12 JUDGE O'CONNELL: Ms. McDowell?

13 MS. McDOWELL: Thank you, Your Honor. Let
14 me just conclude by saying we are open to all ideas that
15 parties have on how to share information efficiently and
16 effectively to make sure all parties have the
17 information they need and to make sure the Commission
18 has what it needs to resolve this case. We do strongly
19 object to consolidation of these proceedings. We think
20 it would not promote judicial efficiency. That's the
21 Commission's perspective, and we think it would be
22 prejudicial to Pacific Power, that's our perspective.

23 Utilities are entitled to individualized
24 prudence determinations. So whether or not this case is
25 consolidated, the Commission is going to need to develop

1 an individualized record. We don't think it makes it
2 easier for the Commission to do that in a consolidated
3 proceeding. We think that creates a risk of a confused
4 record. That leads to my concern about prejudice. We
5 think in a consolidated proceeding, there's a risk that
6 other act- -- other parties' actions could be imputed to
7 us, that we could leave with an unclear, confused
8 record, and that we could be basically assigned a
9 schedule that is problematic for us because of another
10 utility's concerns.

11 So we have -- we do have concerns about
12 consolidation, both from the Commission's perspective
13 and judicial economy and from our perspective in terms
14 of our right to have an individualized determination of
15 our prudence in this case. Thank you.

16 JUDGE O'CONNELL: Thank you.

17 And, Ms. Barnett?

18 MS. BARNETT: Thank you, Your Honor. PSE
19 agrees with PacifiCorp and Avista on this. And I think
20 PSE's concerns were underscored by Staff's final
21 statements and final thoughts mainly when they said that
22 this is -- they viewed these as the same case, these
23 three separate -- three separate issues as the same case
24 and that it's one story. They're -- they're three
25 separate stories, they are three separate cases, they

1 are three separate companies with only one fact in
2 common. Not even one -- not even similar parties are in
3 common.

4 I think that -- that idea of creating a
5 consistent answer or prudence determination for each of
6 the companies is a mistake. Consistency should not be
7 the goal. Efficiency should not be the goal. Getting
8 it right should be the goal. And I think the compromise
9 that we proposed today will get Staff and the Commission
10 the information they need to get it right.

11 And -- and so I don't see a need to
12 consolidate them if they have the information they need
13 to get it right. And I think consolidating them, which
14 would then just be just for judicial consistency and
15 economy, would be a drastic departure from Commission
16 precedent and make it easier to do single issue
17 ratemaking in the future, consolidate totally
18 inappropriate cases with multiple companies. And -- and
19 so I think it -- it would be a very big and drastic
20 departure from the Commission's practice.

21 So just to end on a -- on a final note, I do
22 think PSE is committed to getting Staff the information
23 they need and finding out what that information is and
24 by -- by working together with the other companies we'll
25 do that. And I think that solves the -- the issues that

1 Staff has brought in its motion. And so I hope the
2 Commission considers that, but maintaining it as
3 separate -- separate -- separate cases, not
4 consolidated.

5 JUDGE O'CONNELL: Thank you.

6 MR. MEYER: May I just tack on? I know I
7 had my time.

8 JUDGE O'CONNELL: Very briefly, Mr. Meyer.

9 MR. MEYER: Okay. This process that you
10 just referred to where we share information, I think if
11 I were a commissioner, I might want to know whatever
12 happened there? Did you guys figure this stuff out or
13 not? It would be helpful I think to the Commissioners
14 if they're -- if someone -- probably Staff would report
15 out that there are X, Y, Z as unresolved discovery
16 issues, and so narrow this thing down at this point.
17 Otherwise, it's just a -- could be a nebulous exercise
18 and we're back here again.

19 JUDGE O'CONNELL: Okay. Well, considering
20 that, Mr. Dallas, Mr. Teimouri, Staff has the proponent
21 of the motion, last word?

22 MR. DALLAS: I think Staff would just stand
23 on its brief. I think, you know, consolidation can
24 resolve the confidentiality issues in one protective
25 order, and Staff's position is that the Commission has

1 sufficient information to make -- to render fair, just,
2 and reasonable rates, and we also believe that
3 consolidation would promote judicial economy and avoid
4 wasting the Commission's resources on hearing the same
5 case three separate times. And I guess with that, I
6 would just stand on our brief.

7 JUDGE O'CONNELL: Okay. Is there anything
8 else from the parties that we need to discuss at this
9 hearing? Not seeing anything in the room, I'm not
10 hearing anything from the bridge line. So with that, we
11 will adjourn this hearing. We will take into
12 consideration what's been said, and with that, we will
13 be off the record.

14 (Adjourned at 12:35 p.m.)
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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, 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.



Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358

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