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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the Application) Docket No. UE000080
4 of Avista Corporation for a) Volume I
5 Ruling on the Regulatory) Pages 1-22
6 Treatment of the Gain on the)
7 Proposed Sale of the 2.5% Share)
8 of the Centralia Power Plant)
9 Acquired by Avista Corporation)
10 from Portland General Electric)
11 to be Sold to TECWA Power Inc.,)
12 _____)

13 A hearing in the above matter was
14 held on February 10, 2000, at 1:40 p.m., at 1300 South
15 Evergreen Park Drive Southwest, Olympia, Washington,
16 before Administrative Law Judge ROBERT WALLIS.

17 The parties were present as
18 follows:

19 AVISTA CORPORATION, by Gary A.
20 Dahlke, Attorney at Law, 1200 Washington Trust Financial
21 Center, Spokane, Washington 99204.

22 INDUSTRIAL CUSTOMER NORTHWEST
23 UTILITIES a/k/a ICNU, via telephone, Melinda Davidson,
24 1300 Southwest Fifth Avenue, Suite 2915, Portland,
25 Oregon 97201.

26 PUBLIC COUNSEL, via telephone, by
27 Simon Ffitch, Assistant Attorney General, 900 Fourth
28 Avenue, Suite 2000, Seattle, Washington 98164.

29 THE COMMISSION, by Robert
30 Cedarbaum, Assistant Attorney General, 1400 South
31 Evergreen Park Drive Southwest, Olympia, Washington
32 98504-0128.

33 Joan E. Kinn, CCR, RPR
34 Court Reporter

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1 JUDGE WALLIS: The conference will please
2 come to order. This is a prehearing conference before
3 the Washington Utilities and Transportation Commission
4 in Docket Number UE000080 in the matter of the
5 application of Avista Corporation for a Ruling on the
6 Regulatory Treatment of the Gain on the Proposed Sale of
7 the 2.5% Share of the Centralia Power Plant Acquired by
8 Avista Corporation from Portland General Electric to be
9 Sold to TECWA Power Inc. This conference is being held
10 at Olympia, Washington, on February 10, the year 2000.
11 My name is Robert Wallis, Administrative Law Judge
12 presiding today. Let's begin with appearances from the
13 parties and beginning with the applicant.

14 MR. DAHLKE: Yes, my name is Gary Dahlke,
15 D-A-H-L-K-E. I am an attorney with the firm of Paine
16 Hamblen, Coffin, Brooke & Miller, Spokane, Washington.
17 My address is 1200 Washington Trust Financial Center,
18 Spokane, Washington, 99204.

19 JUDGE WALLIS: Thank you, Mr. Dahlke.

20 MR. CEDARBAUM: Robert Cedarbaum, Assistant
21 Attorney General, representing The Commission staff. My
22 business address is the Heritage Plaza Building, 1400
23 South Evergreen Park Drive Southwest in Olympia,
24 Washington, 98504.

25 JUDGE WALLIS: And on the bridge line we have

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1 an intervener or petitioner for intervention; is that
2 correct, the industrial customers?

3 MS. DAVIDSON: Yes, Your Honor, I'm sorry.
4 This is Melinda Davidson. I'm with the law firm of
5 Duncan Weinberg Ginzer and Penbroke. My address is 1300
6 Southwest Fifth Avenue, Suite 2915, Portland, Oregon,
7 97201. And also I would like to enter an appearance of
8 Bradley Van Clears, also of our office. We represent
9 the industrial customers of Northwest Utilities, also
10 referred to as ICNU.

11 JUDGE WALLIS: Thank you, Ms. Davidson. I
12 will ask that as you participate in this conference as
13 the day goes on, please hold the telephone microphone
14 close to your mouth and speak up so that we can all hear
15 you clearly. I will also ask the people on the bridge
16 line if there is anything that you find difficult to
17 hear or to understand, if you will tell us, and we will
18 do our best to conduct this conference in a way that
19 everyone is able to hear what goes on and to participate
20 fully.

21 Public counsel is also present today on the
22 bridge line and is seeking to participate; is that
23 correct?

24 MR. FFITCH: That's correct, Your Honor. For
25 public counsel, Simon Ffitch, Assistant Attorney

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1 General. The address, excuse me, the name of the office
2 is Public Counsel Section, Washington Attorney General.
3 The address is 900 Fourth Avenue, Suite 2000, Seattle,
4 Washington, 98164. The phone number is 206-389-2055.
5 The fax number is 389-2058. The E-mail address is
6 simonf@atg.wa.gov. And I wanted to ask if you're
7 hearing me okay. I'm using the speaker phone.

8 JUDGE WALLIS: Yes, we can hear you.

9 MR. FFITCH: Thank you, Your Honor.

10 JUDGE WALLIS: Thank you. Are there any
11 other persons on the bridge line or present in the room
12 today that would like to enter an appearance?

13 Let the record show that there is no
14 response.

15 Ms. Davidson, I take it that you are asking
16 to intervene in this docket; is that correct?

17 MS. DAVIDSON: Yes, Your Honor, I have not
18 submitted a formal petition, but I intend to.

19 JUDGE WALLIS: What is the basis for your
20 intervention?

21 MS. DAVIDSON: We are -- I represent large
22 industrial customers, and we represent several customers
23 who are, I'm sorry, clients who are customers of Avista,
24 so our interest is a very direct interest as rate
25 payers.

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1 JUDGE WALLIS: Is there objection to the
2 intervention and participation by the industrial
3 customers?

4 MR. CEDARBAUM: There is no objection.

5 MR. DAHLKE: No objection.

6 MR. FFITCH: No objection.

7 JUDGE WALLIS: Very well, let us proceed.

8 I understand that there have been discussions
9 amongst commission staff, the company, and perhaps
10 others involving an appropriate process for resolving
11 the issue that's raised in the application. Is that
12 correct, Mr. Cedarbaum?

13 MR. CEDARBAUM: Well, yes, Your Honor. The
14 discussions mainly took place between the staff, the
15 company, and counsel for both. Ms. Davidson and Mr.
16 Ffitch were kept apprised of what we were talking about
17 along the way, but they didn't really participate in
18 what was said and what was done.

19 JUDGE WALLIS: What is the result of your
20 discussions?

21 MR. CEDARBAUM: The procedure that the staff
22 and the company would find agreeable and that we're
23 proposing to The Commission has three components. The
24 process that we propose assumed that The Commission
25 wanted to or that there was a need to issue a decision

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1 on this application at the same time The Commission
2 rendered a decision in the pending Centralia
3 consolidated case involving Pacific or Puget Sound
4 energy and Avista, so that was sort of the assumption
5 that we operated under. And the process that we came up
6 with and that we're proposing today basically has three
7 components.

8 The first is that we would ask that this case
9 be consolidated with the other case, which I guess I
10 will call the main Centralia case, so that the record in
11 that case would be available to us in this particular
12 application.

13 The second aspect of our proposal involves a
14 stipulation of fact that we have circulated to both
15 public counsel and counsel for ICNU, and we're ready
16 with that stipulation to file today if this is the
17 process that we're going to use.

18 And then the third aspect of our proposal is
19 a briefing schedule that would then not require any
20 further evidentiary hearings, but a briefing to The
21 Commission based on the record in the main case and a
22 stipulation. And we have dates proposed for that of
23 February 18th for opening briefs and February 23rd for
24 limited reply briefs.

25 So that was our proposed process, but

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1 apparently there might be some issue from The
2 Commission's perspective as to whether or not that's an
3 appropriate process. And I also think I had an E-mail
4 from Mr. Ffitch this morning, and he can speak for
5 himself on this, but he had some trouble with the
6 briefing schedule that we were proposing.

7 JUDGE WALLIS: Mr. Dahlke, does that
8 represent your understanding with commission staff?

9 MR. DAHLKE: Yes.

10 JUDGE WALLIS: Is there anything that you
11 would like to add?

12 MR. DAHLKE: Not at this time, no.

13 JUDGE WALLIS: Mr. Ffitch.

14 MR. FFITCH: Thank you, Your Honor. Yes, we
15 have been kept apprised of the discussions and have been
16 provided with copies of proposed stipulation language.
17 The Public Counsel would not object to the general
18 procedure proposed, which involves, if I understand it,
19 a stipulation and then a fax and then a briefing
20 schedule.

21 Having said that, we think we need to get
22 comfortable with what's in the stipulation obviously,
23 and there's a couple of questions that we still have
24 about that. And then in terms of the briefing issues
25 themselves, I'm not sure if we're going to get into

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1 discussing that, but we probably would add an issue to
2 the issues list.

3 And then finally, the schedule of this
4 process is pretty tight given other obligations of the
5 office, and we would intend to ask if there's room to
6 add some time to the briefing schedule. It's very tight
7 from our point of view. So that's kind of our take on
8 the proposal at this point.

9 JUDGE WALLIS: Thank you, Mr. Ffitch.
10 Ms. Davidson.

11 MS. DAVIDSON: Thank you, Your Honor. I
12 agree with Mr. Ffitch in general. I think we are
13 supportive of the process that staff has laid out here.
14 We support consolidation. We also support going forward
15 with stipulated facts and merely briefing of legal
16 issues. However, having an opening brief due on
17 February 18th is from our perspective very aggressive
18 and would be quite a hardship to try to meet that
19 schedule. We received quite a number of documents that
20 represent the attachments to this stipulation, and I
21 have not had an opportunity to carefully go through
22 those documents, as I just received them a day or two
23 ago, and I also share Mr. Ffitch's concern about the
24 timing of this. I would not attempt to ask for an
25 excessive delay, but even a few days would be helpful.

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1 MR. CEDARBAUM: Your Honor, if I could just
2 add two points just to my general discussion, not in
3 response to what was just said, but just for your
4 information.

5 JUDGE WALLIS: Mr. Cedarbaum.

6 MR. CEDARBAUM: Thank you. With respect to
7 consolidation, I did have messages back and forth with
8 the other parties not represented today but who are
9 parties in the main Centralia case, and there were no
10 objections from those other parties with respect to
11 consolidation.

12 And with respect to the issues that we were
13 proposing to be briefed, I think that the two issues
14 that we have discussed with the company involved the
15 jurisdictional issue that has been raised, whether or
16 not The Commission even has the authority to approve or
17 disapprove this particular transaction. And the second
18 issue is whether or not there is any reason to treat the
19 gain from the PGE purchase and sale differently than the
20 remaining 15% that Avista owns of Centralia. I think
21 the third issue that Mr. Ffitch and I have talked about
22 was just a general issue of whether it's in the public
23 interest to approve this sale of the 2 1/2% purchased
24 from PGE and then sold to Transalta. I think that's the
25 issue that Mr. Ffitch had in mind. And if that is, then

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1 we certainly don't have any objection to that being an
2 issue on the list to be briefed. It certainly was one I
3 guess we just assumed was probably part of the other
4 two.

5 JUDGE WALLIS: Mr. Ffitch.

6 MR. FFITCH: That is correct, that is the
7 additional issue that we had in mind to recommend.

8 JUDGE WALLIS: Mr. Dahlke, do you have any
9 comments?

10 MR. DAHLKE: I have no objection to that
11 issue being briefed as well. I had assumed that it was
12 subsumed within the other two that Mr. Cedarbaum
13 referenced.

14 JUDGE WALLIS: What about schedule,
15 Mr. Ffitch and Ms. Davidson, what preferences would you
16 have as to schedule?

17 MR. FFITCH: If I could speak first, I guess
18 this leads into the question I was starting to ask a
19 little bit earlier, Your Honor. You were drawing some
20 analogies to the declaratory order and suggesting that a
21 similar process could be adopted here where The
22 Commission would take this up on an expedited schedule
23 after the Centralia order, the main order issued.

24 JUDGE WALLIS: More technically, I was asking
25 whether doing so would adversely affect any of the

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1 participants, but please proceed.

2 MR. FFITCH: Okay. Yes, I understand that,
3 I'm paraphrasing, perhaps quite liberally. But in any
4 event, if -- well, I guess the short answer is I don't
5 think that would prejudice Public Counsel. And, in
6 fact, the reason I'm I guess pursuing the idea is that
7 if that approach were adopted, it seems to build in a
8 little bit more time for getting the briefs filed as
9 opposed to a schedule where we are trying to get the
10 decision on this matter simultaneously with the
11 Centralia, main Centralia decision.

12 JUDGE WALLIS: Well, why don't we, if we may,
13 address these issues one at a time. And if you would,
14 comments assuming that The Commission adopts the
15 decision schedule that Mr. Cedarbaum and Mr. Dahlke are
16 proposing, what briefing schedule would suit your
17 purposes?

18 MR. FFITCH: Well, I was looking at a period
19 of two weeks for opening briefs and some shorter period
20 for reply briefs, perhaps a week or ten days after that
21 date. So possibly, for example, opening briefs due on
22 the 25th of February and replies due the following
23 Friday or Monday, March 3rd or March 6th.

24 JUDGE WALLIS: So it appears that that would
25 not permit The Commission to enter a single order

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1 resolving all matters; is that correct?

2 MR. FFITCH: If there needs to be an order by
3 March 8, that would be correct. I will admit to some
4 lack of familiarity with the details of the Centralia
5 case. Another attorney was handling that for our
6 office, and I'm just getting back in touch with that
7 case in full detail. So if, in fact, The Commission is
8 bound to issue an order by March 8, that certainly
9 creates some constraints for us. I was not aware that
10 that was the case. But again, I didn't have a
11 familiarity with that case in general one way or the
12 other. So if we adopted the -- if The Commission were
13 to deal with the -- were to get the briefs in and then
14 deal with this matter as it will do the declaratory
15 matter after the main order in an expedited fashion,
16 that would give us -- that would fit in with that
17 approach, it seems to me.

18 JUDGE WALLIS: Ms. Davidson, what are your
19 preferences?

20 MS. DAVIDSON: Your Honor, I support the
21 position of Mr. Ffitch.

22 JUDGE WALLIS: Very well. Mr. Dahlke, does
23 Avista have a position on timing?

24 MR. DAHLKE: Yes, Your Honor. It's my
25 understanding that we do need to have an order by March

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1 8th, and if I understood, your question posed to me
2 earlier was whether we could consider a process where
3 the order in this application was deferred until the
4 same time as The Commission issued an order on the
5 application of TECWA.

6 JUDGE WALLIS: No, the question is whether
7 Avista would be harmed by a process in which The
8 Commission entered an order on the merits of the
9 transfer application and then undertook on an expedited
10 schedule to resolve the issues in your application.
11 There is no tie whatsoever with the TECWA petition for a
12 declaratory order.

13 MR. DAHLKE: Sorry.

14 JUDGE WALLIS: Except that it follows a
15 schedule of that pattern.

16 MR. DAHLKE: I believe that my client is
17 asking to have known the allocation of all gain issues
18 related to the sale of the Centralia plant, both 15% and
19 the 2 1/2%, at the time that it is otherwise required to
20 make a decision regarding proceeding to closing. We had
21 been proceeding under the assumption that that date was
22 the 7th of March. And if you want to give me a moment
23 to consult with Mr. Dukich who is here with me, I can
24 respond on whether he feels that we would be adversely
25 affected by any delay in that regard.

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1 JUDGE WALLIS: Very well, let's be off the
2 record for purposes of a consultation.

3 (Discussion off the record.)

4 (Brief recess.)

5 (Discussion off the record.)

6 JUDGE WALLIS: During some administrative
7 discussions, the parties had stated a perceived need for
8 an order to be entered by The Commission no later than
9 March 8th. There are some difficulties with meeting
10 that March 8th date, both from the perspective of
11 allowing sufficient briefing time for parties who wish
12 to argue matters to The Commission to do a creditable
13 job, but also there are problems with that schedule in
14 terms of The Commission's ability to enter an order
15 based on a reasoned understanding of the issues.

16 Consequently, it does not appear that the
17 March 8th deadline is a feasible deadline for the work
18 that must be done prior to entry to an order. I have
19 indicated that I would allow any party who wishes to do
20 so to state on the record at this time the arguments for
21 proceeding to an order on or before March 8.

22 Mr. Dahlke, did you wish to do that?

23 MR. DAHLKE: Yes, Your Honor. For Avista
24 Corporation the dates that we were looking at are, as I
25 understand them, dates that are essentially required by

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1 the agreements that have been entered into by Avista
2 Corporation and the purchaser, TECWA, and I have no
3 authority in terms of what's required by that contract
4 to agree to an extension.

5 I understand that the parties were
6 anticipating an order by March 7, and so under those
7 circumstances, I am constrained to make the request that
8 the order be issued under that original time frame. I
9 understand the concerns that you have indicated, but I
10 feel like my hands are tied.

11 JUDGE WALLIS: Very well, that's understood.
12 Does any other party wish to comment?

13 MR. CEDARBAUM: Yes, Your Honor, this is Bob
14 Cedarbaum, we had prior to today agreed with the company
15 to an earlier briefing schedule, which was fine with us.
16 We also heard the arguments of public counsel and ICNU
17 and understood their interests as well and felt that
18 those interests should be accommodated also, so
19 certainly don't have any objection to the briefing
20 schedule that will be established.

21 As to the contract and the timing of it, I
22 think I would at least like to state for the record I
23 think The Commission does have the discretion to go with
24 the longer briefing schedule. And the reason why I
25 think that is that there are essentially two time frames

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1 in the contract that are important. One was 12 months
2 after the date that the contract was signed, which would
3 be sometime in May of this year.

4 The second time frame was six months after
5 the last application for regulatory approval was filed,
6 and we all thought of that as being six months after
7 Puget filed. That may not be the case. It may actually
8 be six months after Avista filed this particular
9 application. The reason why I say that is that if the 2
10 1/2% sale is jurisdictional to The Commission, then
11 January 21st of 2000 when the application was filed is
12 the last date that an application was filed for
13 regulatory approval. So that means that the May date,
14 12 months after the contract was signed, is really the
15 point in time that The Commission needs to issue an
16 order by on this application.

17 On the other hand, if The Commission doesn't
18 have jurisdiction and this application didn't need to be
19 filed, then there's no impact that this order will have
20 on the company, this company or the other companies that
21 are contracting for the sale of Centralia, because The
22 Commission regulatory approval wasn't required.

23 So in either case, it seems to me The
24 Commission is free to go ahead with the longer
25 procedural schedule, and that does accommodate the

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1 interest of public counsel. But again, the staff was
2 willing and is still willing to go with the shorter
3 schedule.

4 JUDGE WALLIS: Thank you, Mr. Cedarbaum.
5 Any other party wish to be heard? I would
6 like to note that Ms. Davidson did read for us a portion
7 of Avista's earlier application, which did not include a
8 request that The Commission address this particular
9 matter. Let's --

10 MR. DAHLKE: Your Honor, if I could add
11 there.

12 JUDGE WALLIS: Mr. Dahlke.

13 MR. DAHLKE: In terms of our interpretation
14 of where we are, I feel like I need to add to what
15 Mr. Cedarbaum said.

16 JUDGE WALLIS: Please do.

17 MR. DAHLKE: Originally Avista Corporation
18 had filed indicating its interpretation that it did not
19 need to file for approval in order to effectuate a sale
20 and transfer of the PGE 2 1/2%, and that filing was made
21 last summer. There has been no change in that position.
22 The new filing that has been made similarly takes that
23 same position.

24 As the way we would characterize the new
25 filing is that we understand that apart from the

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1 question of whether an order is required or not in order
2 to effectuate the transfer, there is an issue over
3 whether the gain resulting from the PGE share is going
4 to be subject to a regulatory treatment and allocation
5 potentially, and it's that second issue that our
6 application addresses.

7 And our interpretation is that knowing what
8 The Commission's intention is with regard to that is
9 pertinent information before the company can decide
10 whether to proceed with the sale. And we do disagree
11 that the parties intended, and obviously this is a
12 matter of contractual intent, I can't speak to what the
13 parties intended when they signed the original
14 agreement, but I think pending an ability to consult
15 with them about that, I don't think that there would be
16 agreement that this most recent petition that we made
17 with regard to the gain and not for approval to make the
18 transaction extends in any way the times that were
19 originally intended in that contract.

20 JUDGE WALLIS: Thank you, Mr. Dahlke.

21 In other regards, the proposal that parties
22 had made appears to be acceptable, that is,
23 consolidation of the matters so that the record is
24 available, understanding that separate orders will be
25 entered, the receipt of a stipulation of fact and a

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1 briefing schedule. As to the stipulation, the parties
2 have agreed that a stipulation of fact will be filed
3 with The Commission no later than Monday, and it may be
4 filed earlier if the parties reach agreement earlier.
5 The briefing schedule that is acceptable to the parties
6 is that simultaneous briefs on the matters addressed
7 will be filed on or before March 28.

8 MR. CEDARBAUM: I think you misspoke, Your
9 Honor, February 28 not March 28.

10 JUDGE WALLIS: February 28 of the year 2000.
11 And limited reply briefs, that is briefs addressing new
12 or unexpected matter, may be filed no later than March 6
13 of the year 2000. We developed those schedule dates
14 with the understanding that the previously discussed
15 schedule would be extended by one day to allow the
16 parties the time to send their filings so that paper
17 filings would be received by The Commission no later
18 than the scheduled date.

19 It will not be acceptable for parties to fax
20 in their filings on those dates. It is required,
21 however, that the parties direct a courtesy copy of
22 their filing in electronic format to The Commission via
23 electronic mail directed to the records center, and the
24 E-mail address is records@wutc.wa.gov.

25 MR. FFITCH: Your Honor.

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1 JUDGE WALLIS: Mr. Ffitch.

2 MR. FFITCH: I'm not sure if this was on the
3 record before, so I wanted to ask if the record might
4 also reflect the parties' agreements for the additional
5 briefing issue, that is the question of whether the
6 subject transaction involving the PGE interest in the
7 Centralia plant should be approved by The Commission.

8 MR. CEDARBAUM: Actually, I don't think any
9 of the issues that we discussed are on the record.
10 That's one of them. The other two, as I understand it,
11 are whether or not The Commission has jurisdiction over
12 this particular sale, and two, whether or not the gain
13 on the 2 1/2% of the sale of Centralia should be treated
14 the same or differently than the remaining share that
15 Avista owns and is seeking to sell.

16 JUDGE WALLIS: Very well, thank you, Mr.
17 Cedarbaum.

18 Is there anything further to come before The
19 Commission at this time?

20 MS. DAVIDSON: Your Honor, this is Melinda
21 Davidson, and I just had one quick clarifying question.

22 JUDGE WALLIS: Ms. Davidson.

23 MS. DAVIDSON: I'm assuming that since this
24 docket is being consolidated with the main Centralia
25 docket that I do not need to file a separate petition to

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1 intervene. Is that assumption correct?

2 JUDGE WALLIS: I would say yes and no to
3 that. In as much as your participation was not objected
4 to by any party, we will consider that you have filed
5 for intervention in this docket and that intervention
6 has been granted.

7 MR. DAHLKE: Your Honor and Ms. Davidson as
8 well, I did receive a petition from you for intervention
9 in this docket on February 2nd. I'm sorry, I received
10 it February 7th. It's dated February 2nd, so I think
11 that's already gone out of your office.

12 MS. DAVIDSON: All right, well, someone is
13 more efficient than I realized. Thank you.

14 MR. DAHLKE: You're right on top of it.

15 MR. FFITCH: Boy, I wish that kind of stuff
16 happened in my office, filing necessary pleadings and I
17 didn't even know it.

18 MR. DAHLKE: We're all very jealous.

19 JUDGE WALLIS: Very well. Now the final
20 thing that I do want to state for the record is that it
21 is The Commission's intention once The Commission enters
22 an order in the main set of cases, that is as to the
23 Centralia steam plant transaction, The Commission
24 intends to address the issues raised in this docket on
25 an expedited matter, expedited basis.

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1 So if there is nothing further, we will
2 adjourn this session, and I want to thank you all for
3 participating today.

4 (Hearing adjourned at 3:10 p.m.)

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