

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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

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HEARING, VOLUME V  
PAGES 150 - 301  
ADMINISTRATIVE LAW JUDGE DENNIS J. MOSS

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9:33 A.M.  
OCTOBER 17, 2016

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A P P E A R A N C E S

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1 OLYMPIA, WASHINGTON; OCTOBER 17, 2016

2 9:33 A.M.

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4  
5 CHAIRMAN DANNER: Good morning. This is  
6 Monday, October 17th, 2016, and this is a meeting of  
7 the Utilities and Transportation Commission in the  
8 matter of Puget Sound Energy for Approval of a special  
9 Contract for Liquefied Natural Gas Fuel Service with  
10 Totem Ocean Trailer Express, Inc., and a Declaratory  
11 Order Approving the Methodology for Allocation Costs  
12 between Regulated and Non-Regulated Liquefied Natural  
13 Gas Services, and this is Docket UG-151663.

14 I am David Danner and I am the chair of the  
15 commission, and I am joined today by my colleagues,  
16 Commissioner Philip Jones and Commissioner Ann  
17 Rendahl. The hearing today will be presided over by  
18 Administrative Law Judge Dennis Moss.

19 Before we get started, I would like to just be  
20 very clear about what is before us today and what is  
21 not. As I understand it, we are here to discuss only  
22 the matters of the approval of the special contract  
23 and the allocation of costs. We are not here to  
24 approve the siting or the permitting of the plant, we  
25 are not here to approve or review any safety standards

1 for the plant's construction or for the plant's  
2 operations. That is my understanding and that is how  
3 I will be going forward today.

4 All right. So, Judge Moss, I will turn it  
5 over to you.

6 JUDGE MOSS: All right.

7 Good morning, everyone. Nice to see you all  
8 here today. Chairman Danner gave the style of the  
9 case and the docket number. I will just note it was  
10 filed on August 11th, 2015. I want to make an  
11 uncharacteristically long opening statement here,  
12 which will essentially be a recital of what you have  
13 already read in the notice for today. But given the  
14 high public profile of this matter, it seems  
15 appropriate to me to memorialize the procedural  
16 history of the case at the outset of our hearing  
17 today, and of course it's otherwise in the record. So  
18 let me just go through that.

19 As I mentioned, on August 11th, 2015, Puget  
20 Sound Energy filed with the Washington Utilities and  
21 Transportation Commission a, quote, Petition for  
22 Approval of a Special Contract for Liquefied Natural  
23 Gas Service with Totem Ocean Trailer Express, Inc.,  
24 and a Declaratory Order Approving the Methodology for  
25 Allocating Costs between Regulated and Non-Regulated

1 Liquefied Natural Gas Services, closed quote.

2 One of the longer captions in the history of  
3 the Commission, I'm sure.

4 The Commission entered Order 04 in this  
5 proceeding on December 18th, 2015, determining among  
6 other things that, quote, PSE's service to TOTE as  
7 [initially] proposed is not within the Commission's  
8 jurisdiction to regulate, closed quote. The  
9 Commission also concluded, however, quote, that the  
10 legislative finding in RCW 80.28.280 that the  
11 development of liquified natural gas vessel refueling  
12 facilities is in the public interest and that requires  
13 that we take further inquiry. The Commission gave  
14 notice of additional public process to consider the  
15 matter.

16 The Commission entered Order 05 on  
17 January 11th, 2016, extending the date for filing  
18 supplemental briefs in the matter until January 29th,  
19 2015, and providing an opportunity for reply briefs on  
20 February 15th, 2016, and scheduling oral argument. On  
21 January 25th, 2016, in Order 06, we granted an  
22 unopposed motion from staff, our regulatory staff, to  
23 suspend the procedural schedule to allow parties  
24 additional time to engage in settlement discussions.

25 On March 4th, 2016, PSE filed a motion

1 requesting the Commission establish a so-called  
2 bifurcated, or two-part proceeding in this docket, to  
3 allow for review of an alternative business model that  
4 PSE was proposing as contemplated by Commission  
5 Order 04. PSE's alternative business model would  
6 treat all sales of LNG for transportation fuel as  
7 nonjurisdictional.

8 Just as an aside, this would eliminate or  
9 remove from the case the part of the caption that  
10 talks about a special contract because this would no  
11 longer be subject to a special contract.

12 The Company proposes to establish a newly  
13 formed, unregulated subsidiary of Puget Energy, PSE's  
14 parent corporation, as the business entity that would  
15 make sales to TOTE, that is the Totem operation, and  
16 others.

17 The Commission entered Order 07 establishing  
18 the process that was requested. The idea was to  
19 consider certain threshold issues in Phase 1, with  
20 other issues to be determined in a Phase 2, if needed.  
21 Order 07 established the dates for initial and  
22 response briefs to be filed, and for oral argument in  
23 Phase 1. We extended the time frame for that briefly,  
24 and then on May 26th, 2016, we had a hearing before  
25 the Commissioners and myself as presiding

1 administrative law judge. The Commission considered  
2 preliminarily a request by PSE that the oral argument  
3 scheduled for the hearing be continued in favor of  
4 providing an opportunity to -- for the parties to  
5 engage in a mediated settlement negotiation with a  
6 third-party independent mediator. Following  
7 discussion on the merits of PSE's proposal, the  
8 commissioners expressed their willingness to provide  
9 this opportunity to PSE and the other parties.

10 As summarized briefly at the time, the  
11 presiding judge, myself, said the Commission is  
12 willing to engage in good faith -- the parties are  
13 willing to engage in good faith in a mediated process  
14 with open minds, creative thinking, out-of-the-box  
15 thinking, whatever may be required to try to  
16 accommodate the various interests expressed at high  
17 levels during the course of our proceeding on  
18 May 26th.

19 The Commission set September 9th as the date  
20 by which the parties would complete the mediation  
21 process. We granted extensions of that schedule. And  
22 ultimately on September 30th, 2016, the parties filed  
23 a proposed settlement stipulation for the Commission's  
24 approval. On October 7th, 2016, the parties filed  
25 evidence in support of the settlement stipulation.



1           That is the matter that is before us today.  
2           The Commission set this matter, found good cause to  
3           set this matter for hearing on shortened notice  
4           because of the press of other business before the  
5           agency and the importance of the matter to be  
6           considered.

7           We also found good cause to set a public  
8           comment hearing in this matter to be held on shortened  
9           notice, two days from now, on Wednesday, October 19th,  
10          between the hours of 6:00 and 9:00 p.m. The  
11          Commission will also receive into the record written  
12          comments that have been submitted thus far, and any  
13          additional written comments submitted to the  
14          Commission concerning this matter that are filed by  
15          5:00 p.m. on Thursday, October 20th, 2016. And those  
16          opportunities will be relayed to the public again on  
17          Wednesday evening.

18          Mr. Andrew Roberts is here today, I believe.  
19          Yes, there he is, in the back of the room. If any  
20          members of the public are here and wish to talk with  
21          Mr. Roberts about process for filing comments or what  
22          have you, he is available during the breaks, or you  
23          can take him aside as we proceed, and get those  
24          questions answered. He will also be here on Wednesday  
25          night. He will be here to assist the public then as

1 well.

2 Having said all of that, we can now move on to  
3 the -- take the appearances and begin to conduct our  
4 business today.

5 We'll start with the Company. Mr. Kuzma.

6 MR. KUZMA: Good morning. Jason Kuzma  
7 on behalf of Puget Sound Energy.

8 JUDGE MOSS: Thank you.

9 We will just go around the room.

10 MR. PEPPLER: Tyler Pepple with the  
11 Industrial Customers of Northwest Utilities.

12 MR. STOKES: Good morning. Chad Stokes  
13 for the Northwest Industrial Gas Users.

14 MS. GAFKEN: Lisa Gafken, Assistant  
15 Attorney General, appearing on behalf of Public  
16 Counsel.

17 MR. ROBERSON: Jeff Roberson, Assistant  
18 Attorney General, on behalf of Commission Staff.

19 MR. SHEARER: Brett Shearer, Assistant  
20 Attorney General, on behalf of Commission Staff.

21 JUDGE MOSS: Are there any parties --  
22 Mr. Finklea, did you -- no, you're not counsel  
23 anymore, are you?

24 MR. FINKLEA: No, sir.

25 JUDGE MOSS: You are now the head

1 honcho.

2 MR. FINKLEA: I grew up to be a client.

3 JUDGE MOSS: I have seen you so many  
4 times over the years.

5 Are there any other counsel in the room who  
6 wish to enter an appearance?

7 Are there any representatives on the telephone  
8 conference bridge line who wish to enter an appearance  
9 in this proceeding today?

10 Hearing none, we appear to be through that  
11 process.

12 MR. WRIGHT: Excuse me, Judge.

13 JUDGE MOSS: Yes.

14 MR. WRIGHT: This is Jeff Wright of  
15 Brown, Williams, Moorehead & Quinn, one of the  
16 technical mediation assistants.

17 JUDGE MOSS: Oh, all right. Thank you.  
18 And you filed testimony, I believe.

19 MR. WRIGHT: Yes.

20 JUDGE MOSS: All right. Thank you.

21 All right. In terms of the evidence, I am  
22 presuming we will be able to stipulate into the record  
23 today the settlement stipulation that I have marked as  
24 Exhibit J-5, the joint testimony in support of the  
25 settlement stipulation that I have marked as JT-1. I

1       suppose that should be 1T. JT-2, JT-3, and JT-4.  
2       Those are the professional qualification statements  
3       respectively of Carla Colamonici --

4                   MS. GAFKEN: Colamonici.

5                   JUDGE MOSS: Yes, Colamonici.

6       Thank you. I have not met her before, so her name  
7       threw me there as I looked at it.

8                   3 is Mr. Finklea's professional  
9       qualifications, and Mr. Gomez's is in JT-4. Then for  
10      Mr. Wright's testimony, who was just speaking to us  
11      over the telephone conference bridge line, his  
12      testimony is marked as JCW-1T, and his exhibit, JCW-2,  
13      which is the Brown, Williams, Moorhead & Quinn final  
14      report on PSE Tacoma LNG project for mediation parties  
15      dated September 29th, 2016. That's JCW-2.

16                  Now, it strikes me that it would be useful,  
17      perhaps, and I wanted to give the parties the  
18      opportunity to tell me what they think about having  
19      the original testimony filed by PSE at the time of its  
20      petition as part of the record in this proceeding.

21                  Mr. Kuzma?

22                  MR. KUZMA: Puget would support the  
23      inclusion of at least Mr. Garratt's, Mr. Piliaris's,  
24      Ms. Free's. We probably would not need to include any  
25      materials from some of the outside consultants in that

1 proceeding, the testimony at least, but we would  
2 support that those materials be included. Some of  
3 those materials were relied upon, for example, in the  
4 determination of the capital allocation that Brown  
5 Williams reviewed. So, for example, those materials  
6 would be relevant, as would be the materials that  
7 Larry Anderson included in his testimony, relates to  
8 the distribution costs issues that are briefly  
9 mentioned in the settlement stipulation.

10 JUDGE MOSS: All right. So at a  
11 minimum, then, we should have the originally filed  
12 testimonies of Mr. Garratt, Mr. Piliaris, Ms. Free,  
13 and was it Mr. Anderson?

14 MR. KUZMA: That's correct.

15 JUDGE MOSS: Okay.

16 Do other parties wish to be heard on this  
17 subject?

18 Ms. Gafken? Staff? No.

19 All right. Well, what we will do is, we will  
20 go ahead and put those in the record as stipulated.  
21 What I want you to do, though, is further review that  
22 original filing. You may supplement the record with  
23 any additional testimonies or exhibits from those,  
24 that original filing, that you think are appropriate.  
25 Other parties are also free to identify sections of

1       that. That should be in the record.

2               Ms. Gafken, you had an emendation, I believe,  
3 with respect to the JT-1T.

4               MS. GAFKEN: Yes, Your Honor. In  
5 preparing for today's hearing I noticed that there  
6 were certain citations that were in the original  
7 individual section, individual Public Counsel section  
8 of the joint testimony, that in the editing process  
9 had been dropped. I think it was just a matter of  
10 formatting. They were originally footnotes and I  
11 think in the cut-and-paste process they were  
12 inadvertently dropped.

13               I have handed out a one-page list of the six  
14 citations that should have been included. There's  
15 actually five that were dropped altogether, and then  
16 one, then, that was included but has an error in it,  
17 so that one simply needs to be corrected. So I have a  
18 one-pager that we can go through. We are also happy  
19 to submit a revised version of the joint testimony  
20 with the citations inserted.

21               JUDGE MOSS: We discussed off the record  
22 before the hearing, in addition to the erratum we  
23 can -- I will ask you to refile the joint testimony,  
24 the parts that need corrections. The reason for that  
25 is because of the reliance these days on electronic

1 documents, and so we have to have a full new document  
2 in order to capture everything appropriately. So we  
3 will have that, and those exhibits I have identified  
4 will be made part of the record. I will later flesh  
5 out the exhibit list with the four testimonies we just  
6 discussed, and any others that parties wish to have  
7 made part of the record from that period in our  
8 process, and I will get that circulated to everyone  
9 for corrections or what have you.

10 All right. Are there any other preliminary  
11 matters?

12 Apparently not.

13 I think it would be appropriate to give you an  
14 opportunity at least to give -- perhaps one counsel  
15 the opportunity to give us a brief opening statement.

16 Was that something you had contemplated doing,  
17 Mr. Kuzma, perhaps?

18 MR. KUZMA: No, it was not, actually.

19 JUDGE MOSS: Well, let's test your  
20 skills.

21 MR. KUZMA: After we met last May, the  
22 parties did reach an agreement to have a mediated  
23 settlement. We had Mr. Don Trotter, former Assistant  
24 Attorney General that represented Public Counsel and  
25 Commission Staff, preside over that. We also retained

1 Brown Williams. Mr. Wright is on the phone to give  
2 independent -- there's a lot of cost allocation issues  
3 involved. We felt that there needed to be an expert  
4 in the gas field. Brown Williams is involved in that.  
5 Mr. Wright worked at FERC for many years and is  
6 involved in the natural gas industry and very  
7 knowledgeable.

8 And over the course of the May to September  
9 period the parties worked diligently to identify the  
10 issues, pushed Puget to identify those issues that  
11 were necessary to continue with the project.  
12 Ultimately Puget decided that Puget would be willing  
13 to go forward with the project if we were able to work  
14 through some of the ring-fencing issues that were  
15 identified that currently would prohibit use of a  
16 subsidiary other than PSE to own the nonregulated  
17 portions of the LNG project, and identify the need for  
18 a cost allocation so that it could finance and account  
19 for the capital cost in the development of an  
20 ownership of the resource at the time.

21 Ultimately the parties were able to reach a  
22 conclusion and agreement on those issues.

23 Also, NIGU raised issues with respect to  
24 certain of the distribution elements. Puget reached  
25 an agreement with NIGU that Puget would, in a future



1 proceeding, make certain cost allocation proposals  
2 with respect to those two elements, those cost  
3 distribution elements, that would not be necessary but  
4 for the Tacoma LNG project. That doesn't affect any  
5 other parties' rights to challenge those allocations,  
6 but it does -- Puget actually agrees with NIGU's  
7 proposal and has incorporated it within its settlement  
8 stipulation.

9 So that's what brings us here today. We think  
10 that we have reached a proposal that works for all  
11 parties and are willing to put forth the joint  
12 parties' testimony for questions regarding that  
13 settlement.

14 JUDGE MOSS: And while that's a natural  
15 segue into seating our witnesses, I will ask if other  
16 counsel have anything they would like to add to  
17 Mr. Kuzma's comments before we proceed.

18 Ms. Gafken, do you have something?

19 MS. GAFKEN: I suppose it would be nice  
20 if all counsel had a chance to make a brief opening.

21 JUDGE MOSS: I am offering you that  
22 opportunity now.

23 MS. GAFKEN: Right. It was something  
24 that I guess I had anticipated as a potential, and so  
25 I did have a few things that I had thought about

1 saying. So with --

2 JUDGE MOSS: Please go forward.

3 MS. GAFKEN: Sure.

4 Public Counsel is pleased to be able to join  
5 this settlement agreement. This has been a long and  
6 arduous proceeding. Public Counsel was highly  
7 skeptical of the proposal when it was first brought by  
8 Puget. During the course of the proceeding, the  
9 parties have worked diligently and hard to understand  
10 the proposal and all of the elements of it.

11 One thing that I think is important to note,  
12 the proposal has changed over time. That's important  
13 because the way that it has changed over time I think  
14 has allowed the parties to come to the agreement  
15 that's before the Commission now.

16 One of the things that was a real big  
17 stumbling block for Public Counsel was the proposal --  
18 it was the second proposal, where Puget was asking the  
19 ratepayers to pay for 50 percent of the projected  
20 savings based on the joint facility. That was a very  
21 big hurdle. When Puget made the proposal to enter  
22 into mediation, we were very willing to do the  
23 mediation, and came into it with an open mind, but we  
24 were also very skeptical about where the parties would  
25 ultimately land. And so we are appreciative of

1 Puget's ability to look at the situation and work with  
2 the parties in that regard.

3 Also, the level of detail that we were able to  
4 engage was very beneficial. We sat through at least a  
5 day's worth of very detailed engineering discussion  
6 with the engineers who will ultimately build the  
7 facility, and that level of detail. While the  
8 prudence piece isn't before the Commission today, that  
9 will be decided when Puget comes in for cost recovery,  
10 but that was something that the parties looked at for  
11 a certain level of comfort in being able to move  
12 forward and say this is something that we can  
13 reasonably get behind and move forward in terms of  
14 building in the protections that are reasonably  
15 necessary.

16 Which brings me to probably the most important  
17 piece of the settlement, and that is the ratepayer  
18 protections that are built in. One of the key  
19 components for Public Counsel was the hold harmless  
20 provision. It's actually a three-part hold harmless  
21 provision. You know, we can get into that once the  
22 panel is brought on. Holding the ratepayers harmless  
23 for the LNG operations was probably the most critical  
24 component of the settlement for Public Counsel. It's  
25 an unregulated activity, and in our view, the utility

1 customers shouldn't bear any of that risk. The  
2 settlement agreement provides a path forward for Puget  
3 to engage in the LNG activities, but it holds the  
4 utilities customers harmless. And so we do view the  
5 settlement providing the path forward for Puget while  
6 also providing the ratepayer protections as necessary.

7 And then with regard to some of the  
8 distribution facility views that nobody here raised,  
9 we -- we don't share those views, but the settlement  
10 agreement allows for the full litigation of those  
11 views when the cost allocation is fully before the  
12 Commission.

13 Thank you.

14 JUDGE MOSS: Thank you, Ms. Gafken.

15 Before we go on, I want to say it's not  
16 possible this morning for me to use the mute caller  
17 function at my end of the conference bridge line,  
18 because we have Mr. Wright on the telephone, and he  
19 may need to be able to speak to us at some point. I  
20 am going to ask anyone who is listening in on the  
21 teleconference bridge line to please mute your phone  
22 so that we do not get the background noise in the  
23 hearing room from your side conversations, your  
24 shuffling of things on your desk, or what have you.  
25 It's very distracting in the hearing room. Please do

1 that to help us out today. Thank you.

2 Now, do other counsel wish to make a  
3 statement?

4 No? Staff has nothing?

5 MR. STOKES: I'll join in.

6 For the Gas Users, you know, I think it's  
7 important to note, as Public Counsel did, that this  
8 proceeding has changed over time. The proposal has  
9 changed and it satisfied a lot of the parties'  
10 concerns. We were very concerned starting out.

11 I think one of the biggest issues for us is  
12 having the capability to understand the proposal and  
13 the cost and details, and having Brown Williams  
14 involved was very, very helpful for us and gave us a  
15 lot of comfort. The stipulation has all the public  
16 interest concerns. We wanted to make sure the  
17 ratepayers were protected and the costs be allocated  
18 with the principle of cost causation, which is the  
19 conversations that you heard this morning about the  
20 allocation of costs, which will be a future  
21 proceeding.

22 But all in all I think it was a good process.  
23 Having the experts, the independent experts in there  
24 to answer our questions and provide analysis was very  
25 important from our perspective, and all the parties

1 worked very well together, so thank you.

2 JUDGE MOSS: Thank you.

3 Mr. Pepple, anything?

4 MR. PEPPLE: I suppose I should just say  
5 something since this may be the only time you hear  
6 from ICNU.

7 So, Your Honor, our position in this was more  
8 limited than the other parties. We just wanted to  
9 make sure that the merger commitments were protected  
10 in this proceeding. I won't repeat the comments of  
11 Ms. Gafken, but we thought that the hold harmless  
12 provision was particularly important.

13 One other that I think was important for us  
14 was when the -- you know, when the rubber sort of hits  
15 the road, so to speak, the settlement leaves open the  
16 potential for parties to argue that the -- any  
17 interaction between Puget LNG and PSE does violate a  
18 merger commitment down the road if that -- you know,  
19 if things change. Those positions are left open.

20 And because we viewed our position to be on  
21 simply the merger commitments and on legal matters, we  
22 did not sponsor a witness. I just wanted to make that  
23 clear, if there are any questions based on that.

24 JUDGE MOSS: Thank you very much.

25 All right.

1 MR. SHEARER: Your Honor.

2 JUDGE MOSS: Mr. Shearer.

3 MR. SHEARER: If I could make an opening  
4 statement. I changed my mind.

5 JUDGE MOSS: You changed your mind. All  
6 right. Very well.

7 MR. SHEARER: If you will allow me to.

8 JUDGE MOSS: I will certainly allow  
9 that.

10 MR. SHEARER: I step in just to echo the  
11 thoughts of the other parties. The parties worked  
12 very hard at mediation and very diligently. Staff  
13 was, like Public Counsel, very skeptical initially.  
14 The importance of outside experts, as NIGU hinted, was  
15 also very important. We got to a place where everyone  
16 fortunately felt comfortable. And I think Mr. Gomez  
17 in his testimony put it very eloquently, boiled down  
18 the essence of what Staff sees the settlement as. It  
19 is an amendment to Merger Commitments 56 and 58 in  
20 exchange for very, very strong ring-fencing provisions  
21 to hold ratepayers harmless from any unregulated  
22 activity, a reaffirmation of all the other merger  
23 commitments from the 2007 order, and the ability to  
24 share the costs of a needed peaking facility with an  
25 affiliate.

1 JUDGE MOSS: I believe that order was  
2 actually entered in 2008, wasn't it?

3 MR. KUZMA: Yeah, December 30th, 2008,  
4 but it was started in 2007.

5 MR. SHEARER: It started in 2007.

6 JUDGE MOSS: I just want the record to  
7 be clear. I was the administrative law judge in that  
8 proceeding. I thought I had a recollection of doing  
9 it the last day of the year, and then I went on  
10 vacation for a month.

11 COMMISSIONER JONES: Judge, I remember  
12 you calling me on vacation in Montana.

13 JUDGE MOSS: That too.

14 All right. So with that, I arranged for there  
15 to be four chairs at the mid table there. Counsel, I  
16 am going to ask you to remove yourselves to the side  
17 table, if you would, and we will have our four joint  
18 testimony witnesses sitting up here. We have  
19 Mr. Wright on the telephone. Once everybody is  
20 settled in, I am going to swear all five of you  
21 simultaneously, and that way we will be able to have a  
22 more, if you will, freewheeling conversation between  
23 you witnesses and the commissioners. And if I can't  
24 resist, I may even ask a question. I don't know,  
25 we'll see.



1 MS. GAFKEN: Your Honor, if I may?

2 JUDGE MOSS: Ms. Gafken.

3 MS. GAFKEN: So you noted that  
4 Ms. Colamonici, you weren't familiar with her, and I  
5 would like to introduce her, just very briefly. She  
6 is a new regulatory analyst with Public Counsel, so  
7 this is her first time testifying before the  
8 Commission. She came onboard in August. We may be  
9 breaking a Public Counsel record in terms of how  
10 quickly we have a regulatory analyst testifying before  
11 the Commission. I am very pleased to be able to  
12 introduce Ms. Colamonici in this proceeding.

13 We also have an expert consultant available to  
14 Public Counsel during this proceeding, Melissa  
15 Whitten, who is also on the telephone in case there is  
16 any particularly technical question that comes up. I  
17 don't know that there will be, but she is available on  
18 the bridge line should anything come up that  
19 Ms. Colamonici needs input.

20 JUDGE MOSS: And that name was Lisa  
21 Witman, W-I-T-M-A-N?

22 MS. GAFKEN: Melissa Whitten,  
23 W-H-I-T-T-E-N.

24 JUDGE MOSS: And Melissa is with two Ls?

25 MS. GAFKEN: One L.

1 JUDGE MOSS: One L.

2 MS. GAFKEN: M-E-L-I-S-S-A.

3 JUDGE MOSS: This is just not my day.

4 Ms. Colamonici, welcome to your first  
5 appearance before the Commission. We will try to be  
6 nice.

7 MS. COLAMONICI: Thank you.

8 JUDGE MOSS: All right. Very well.

9 All right. Those of you here in the hearing  
10 room, I am going to ask you to rise and raise your  
11 right hands, and those of you on the telephone, and  
12 that includes you, Ms. Whitten and Mr. Wright, please  
13 raise your right hand.

14  
15 JEFF WRIGHT, DAVID GOMEZ, ROGER GARRATT, EDWARD  
16 FINKLEA, CARLA COLAMONICI, MELISSA WHITTEN, having  
17 been first duly sworn on oath testified as follows:

18  
19 JUDGE MOSS: Thank you.

20 I heard six "I dos," so I think we are in good  
21 shape there. You may all be seated, of course, and we  
22 will proceed with questions from the bench.

23 Who wants to start.

24 CHAIRMAN DANNER: I think we will  
25 start -- I don't want to -- I've got a long list of

1 questions, but I am sure that they overlap with those  
2 of my colleagues. I think I will just start by asking  
3 a few and then I will -- we can go around the room or  
4 down the bench here.

5 JUDGE MOSS: Let me just interject here,  
6 if I may. I should have said this before. I think  
7 instead of just going one commissioner, followed by  
8 another, and so forth, as we touch on subject matters  
9 that are of interest and you have questions, don't  
10 hesitate to say, oh, I have some follow-up on that.  
11 Let's try to keep it together in terms of subject, to  
12 the extent possible, without cutting off any  
13 conversation at all.

14 And then counsel may -- if legal questions  
15 come up, we may ask for some response from counsel as  
16 well, so please be ready for that.

17 Okay. Thank you.

18 CHAIRMAN DANNER: All right. Thank you.

19 So what I am -- I am interested in just making  
20 sure that I understand the stipulation fully. I want  
21 to understand, first of all, the tenancy in common.  
22 As I understand the term, that means utility of  
23 possession, that is the co-tenants, even though they  
24 may have unequal shares in the property, they have an  
25 equal right to the use and possession of the property.

1 I am trying to figure out what that means with regard  
2 to joint and several liability. If the plant is  
3 damaged, who bears the cost? If the plant owners are  
4 sued, who has the liability if there is any  
5 obligations on the part of the owners? And I  
6 understand that allocation is a matter to come, but  
7 how do you see that working?

8 I guess I will start with you, Mr. Garratt.

9 MR. GARRATT: Well, let me start by --

10 CHAIRMAN DANNER: Is your microphone on?

11 MR. GARRATT: I think it's on now.

12 JUDGE MOSS: It is, yes.

13 MR. GARRATT: So let me start by having  
14 more of a layman's response to this, because I think  
15 if you want to get into more of the legalities of the  
16 tenancy in common, I might defer to Jason Kuzma to  
17 respond to that.

18 Generally speaking, I would say that what we  
19 are proposing here is very similar to, say, the way  
20 the Company owns its interest in the Frederickson 1  
21 power plant, where we are a tenant in common with  
22 Atlantic Power. In that particular case, we own  
23 49.85 percent and Atlantic Power owns 50.15 percent.  
24 You have an ownership agreement that specifies  
25 ownership percentages and specifies liabilities,

1 et cetera.

2 And I think to the second part of your  
3 question, in terms of bearing those, certainly within  
4 the ownership agreement, you try and delineate the  
5 liability based on ownership and based on causation.  
6 And then I think ultimately the customers are  
7 prepared, through both insurance provisions, as well  
8 as through future rate proceedings, in terms of how  
9 those costs are paid for in the event of some sort of  
10 situation that gives rise to a liability.

11 CHAIRMAN DANNER: Mr. Kuzma?

12 Actually, I should let the judge ask --

13 MR. KUZMA: Oh.

14 JUDGE MOSS: That's all right.

15 CHAIRMAN DANNER: -- people to speak.

16 Go ahead.

17 MR. KUZMA: Well, I would draw the  
18 Commission's attention to Paragraphs 15 and 16 of the  
19 settlement stipulation. In Paragraph 15 the first  
20 sentence states that the obligations and liabilities  
21 will be governed by the joint ownership agreement,  
22 which is to be filed in this proceeding after the  
23 creation of Puget LNG, and it will be subject to the  
24 Commission's review and approval at that time.

25 It is intended to be a several liability in

1 the agreement. With respect to the -- one part I  
2 think that would be important to focus on as well is  
3 Puget is going -- Puget Sound Energy and Puget LNG  
4 will own the independent components as tenants in  
5 common with different ownership rights with respect  
6 to -- it's not an overall. You know, I think we are  
7 anticipating it be a 43/57 split on an overall common  
8 share, but with respect to independent components of  
9 that. For example, the liquefaction train might be --  
10 a larger portion of that owned by Puget LNG and the  
11 storage facility might be larger owned by PSE, in  
12 accordance with Attachment D.

13 Ultimately those will be several liabilities  
14 with respect to -- if you look at -- Paragraph 16 in  
15 that section states that the capital cost allocations  
16 will limit each party's liability with respect to  
17 their several liabilities for each component. There  
18 is a proviso in there, in the event that there is  
19 anything being operated exclusively on behalf of one  
20 of the parties, they shall be individually liable for  
21 that, even though they might be, under tenants in  
22 common, jointly liable. So there will be a  
23 reimbursement for the amounts that they might be  
24 liable.

25 A good example of that is if there is any form

1 of liabilities associated with the marine bunkering  
2 component. That's an activity that's exclusively  
3 Puget LNG. If PSE were to be held jointly liable,  
4 then Puget LNG would reimburse for that.

5 Conversely, you might have a situation with --  
6 vaporizer is an exclusively operated component for  
7 PSE. If Puget LNG were held to be jointly liable due  
8 to the tenants in common nature, then PSE would  
9 reimburse for that.

10 So we are intending to have the costs and the  
11 benefits to flow with respect to any types of  
12 liability, and we -- we recognize that as tenants in  
13 common, there is a joint liability aspect to that,  
14 although we have tried to limit it to the extent that  
15 we can, and more detail would be in the joint  
16 ownership agreement, which is to be filed, I believe,  
17 60 to 90 days after Puget LNG is created.

18 CHAIRMAN DANNER: Okay.

19 Well, part of the reason I am asking is just  
20 understand how the joint tenancy works with regard to  
21 the liability, and you've got the other provisions in  
22 here. I am also trying to be mindful of how complex  
23 the -- how complex are the filings going to be as they  
24 come to us in the future and are they things that we  
25 are going to have enough guidance here to do.

1           You mentioned something about the allocations.  
2           I was looking at the table in Paragraph 26, which is  
3           where you have listed a number of items. I guess this  
4           is back to the witnesses now. I wonder if you could  
5           talk to me about those agreements. I'm trying to  
6           understand in particular truck loading and storage and  
7           how you came to those numbers.

8           MR. GARRATT: So starting with storage,  
9           which essentially is the 8 million-gallon tank on site  
10          to store the LNG. There are calculations that back up  
11          that allocation between P -- the 79 percent for PSE  
12          and 21 percent for Puget LNG, and specifically on the  
13          PSE side related to the amount of LNG that would be  
14          used during a 6.3-day peaking event, and then also an  
15          additional quantity that would be used to back up  
16          Puget LNG so that the utility has the ability to  
17          utilize the firm transportation on the interstate  
18          pipeline during that same peaking event.

19          Again, the short answer is there are  
20          mathematical calculations that lay out those  
21          allocations. That was all part of the work that the  
22          other parties reviewed and -- and including Brown  
23          Williams.

24          And then truck loading was a bit -- a bit more  
25          of a settlement, if you will, because we -- frankly,



1 we don't know in the future how much truck loading  
2 will be used by one party versus the other. But the  
3 5 percent was a way to ensure that the utility had  
4 some access to the truck loading, because certainly  
5 the utility will be using that equipment to provide  
6 LNG to the Gig Harbor facility.

7 CHAIRMAN DANNER: Okay.

8 COMMISSIONER RENDAHL: I have a  
9 follow-up --

10 CHAIRMAN DANNER: Sure.

11 COMMISSIONER RENDAHL: -- on that  
12 question.

13 Good morning, Mr. Garratt.

14 MR. GARRATT: Good morning.

15 COMMISSIONER RENDAHL: And, Mr. Wright,  
16 this may go to you as well, because I think you, in  
17 your testimony and exhibits, support the cost  
18 allocation that was discussed in the testimony filed  
19 by Ms. Free.

20 And you are familiar, Mr. Garratt, with  
21 Ms. Free's testimony?

22 MR. GARRATT: Yes.

23 COMMISSIONER RENDAHL: So in that  
24 testimony specifically about storage, because that is  
25 the one I had the largest question about, as to why,

1 the 79 percent for the regulated customers. And so  
2 it's my understanding from reviewing her testimony  
3 that the basis is -- is -- under the cost allocation  
4 factors that the Commission has approved for PSE  
5 generally, that the storage basis is due to the cost  
6 causation, as you just mentioned, because of the --  
7 the amount needed to store for a 6.3-day peaking  
8 event; is that correct?

9 MR. GARRATT: Well, that's a piece of  
10 it. And then, in addition, there is storage for this  
11 exchange of utilizing Puget LNG's transportation  
12 capacity during that peaking event.

13 COMMISSIONER RENDAHL: Okay.

14 And so there is a point in Ms. Free's  
15 testimony when she speaks to whether the value of the  
16 allocation factors will change based on how  
17 subscription levels might change over time. Are you  
18 familiar with that part of her testimony? Do you need  
19 to see it?

20 MR. GARRATT: It would be helpful to see  
21 it.

22 COMMISSIONER RENDAHL: Okay.

23 We will just take a moment. It's on Page 17  
24 of her SEF-1T.

25 (Pause in the proceedings.)

1                   COMMISSIONER RENDAHL: So on Page 17,  
2 the Q and A beginning on Line 3. I'll give you a  
3 minute since it has probably been a little while.

4                   (Pause in the proceedings.)

5                   MR. GARRATT: Okay.

6                   COMMISSIONER RENDAHL: Okay.

7                   So that was her testimony as this was  
8 initially filed, and now we have a settlement  
9 agreement. Is it your understanding -- and  
10 Mr. Wright, you can chime in after Mr. Garratt. Is  
11 the allocation factor that we are looking at in this  
12 settlement, that the parties have agreed to, fixed for  
13 the entire term of the LNG project and its service, or  
14 will this be subject to change later, as subscription  
15 levels might change, additional folks come on besides  
16 the TOTE entity?

17                  MR. GARRATT: As I understand it, the  
18 capital allocation factors are fixed, and that what --  
19 partially what Ms. Free is referring to -- and her  
20 testimony has to do with operating expenses.

21                  So -- so going back to the capital allocation.  
22 So, for instance, the -- you know, by way of example,  
23 PSE owns 10 percent of the liquefaction capacity,  
24 Puget LNG owns 90 percent of that capacity. If -- we  
25 do envision within the joint operating agreement that

1 if Puget LNG uses additional liquefaction capacity,  
2 they would pay PSE for the use of that. It wouldn't  
3 change the ownership percentage, but they would be  
4 paying for it. Again to compare it to Freddy 1, it  
5 would be similar. If we took more than our  
6 49.85 percent of output we would pay Atlantic Power  
7 for that. And then --

8 COMMISSIONER RENDAHL: So the storage  
9 facility, though, is a capitalized asset and that  
10 amount of 79 percent and 21 will remain fixed. Is  
11 that what you are saying?

12 MR. GARRATT: It would remain fixed, but  
13 you could have a similar situation on the storage  
14 side, where I think you could imagine a scenario where  
15 for some reason Puget LNG needs additional storage  
16 capacity for some period of time, in which case Puget  
17 LNG would compensate the utility for the use of that  
18 additional storage time.

19 COMMISSIONER RENDAHL: Okay. Thank you.

20 And, Mr. Wright, do you concur with what  
21 Mr. Garratt just described?

22 MR. WRIGHT: Well, it was our  
23 understanding going into it, we were looking at the  
24 capital expenditures and looking at the allocation  
25 based on those, and as such -- for instance with the

1 storage, the 79 percent to PSE, 21 percent to Puget  
2 LNG, we agreed with the background. I would submit,  
3 as Mr. Garratt said, if there is some transaction that  
4 happens during the course of events and somebody takes  
5 more than their fair share, so to speak, or their  
6 allocated shares, then I would expect there would be  
7 compensation. That was not part of the Brown Williams  
8 analysis.

9 COMMISSIONER RENDAHL: Okay.

10 And, Mr. Garratt, that would be under the  
11 joint operating agreement provisions?

12 MR. GARRATT: Yes.

13 COMMISSIONER RENDAHL: Okay.

14 And, Mr. Gomez, or Ms. Colamonici,  
15 Mr. Finklea, any further comments on that?

16 MR. GOMEZ: No further comments from  
17 Dave Gomez, Commission Staff.

18 MS. COLAMONICI: No further comments.

19 MR. FINKLEA: No.

20 COMMISSIONER RENDAHL: Okay.

21 Thank you very much.

22 CHAIRMAN DANNER: And just to be clear,  
23 Frederickson 2 is the same thing, the capital  
24 allocations are fixed; is that correct?

25 MR. GARRATT: Freddy 1.

1           CHAIRMAN DANNER: I'm sorry. I thought  
2 you said 2. Freddy 1.

3           MR. GARRATT: Yes.

4           CHAIRMAN DANNER: They are fixed. And  
5 then -- I mean it doesn't seem that you would want to  
6 have some -- something fixed so hard that storage is  
7 going to be 79/21 and nobody can -- nobody can utilize  
8 unused capacity or prioritize it or have commercial  
9 negotiations.

10          MR. GARRATT: Again, we really see this  
11 as -- as setting up ownership and setting up the right  
12 to that capacity.

13          JUDGE MOSS: Let me jump in here just  
14 quickly.

15                 So, for example, on the PSE side of the  
16 ledger, so to speak, this was -- this allocation was  
17 based on a 6.3-day peaking event, as I understand it.  
18 What if there was a 7.3-day peak event? Then there  
19 would be a payment from PSE to represent additional  
20 capacity that was available to satisfy that peaking  
21 event?

22          MR. GARRATT: Yes. So in that sort of  
23 scenario, assuming that there was additional fuel in  
24 the tank, there is some -- there are -- and in fact  
25 there are some provisions in the TOTE contract where

1 we can -- where the utility can use TOTE's LNG and  
2 compensate TOTE. So yes, under your scenario, if it  
3 was used beyond the capacity that was allocated to  
4 PSE, PSE would need to pay for that.

5 JUDGE MOSS: Thinking back to some of  
6 the earlier testimony and discussion about this, am I  
7 correct in understanding that -- at the same time that  
8 this facility is satisfying PSE customers' peak needs,  
9 the ships can still be fueled as required under the  
10 TOTE contract, for example?

11 MR. GARRATT: Yes. And so in the normal  
12 course of events, it is designed to both serve its  
13 peaking function, as well as fueling vessels.

14 JUDGE MOSS: All right.

15 And either you or Mr. Gomez or both can  
16 address the question, my final question on this point,  
17 which is how durable is this peaking requirement?  
18 Have we looked out into the future and forecast that  
19 this sort of peaking need is going to be in place for  
20 the next five years, the next two years, or what? Has  
21 there been any analysis of that?

22 MR. GARRATT: Well, I will give an  
23 initial response, and then let Mr. Gomez respond as  
24 well.

25 So this peaking facility has been evaluated in

1 our integrated resource plan over the past several  
2 years. Generally speaking, it is based on a load  
3 forecast that looks out over a 20-year period.

4 JUDGE MOSS: All right.

5 MR. GOMEZ: Commissioners, Staff looked  
6 at -- Staff looked at the requirements for the 2018/19  
7 period, as Mr. Garratt has indicated. My testimony  
8 included that the requirement of approximately 111,000  
9 dekatherms per day, a peak capacity, it's required  
10 that the facility itself is designed to satisfy over  
11 60 percent of that, along with other resources.

12 As Mr. Garratt has said, as the Company has  
13 articulated, this has been before the Commission in  
14 two IRPs, 2013 and the 2015 IRP. And so to that  
15 extent, Staff has looked at the most recent IRP, 2015  
16 IRP, and confirmed that the actual peaking resource  
17 is needed, as indicated by the company.

18 CHAIRMAN DANNER: And forecasting peak  
19 load is not a precise science, so there is some  
20 possibility that the peak will actually fall below or  
21 above the threshold that is assumed in this agreement;  
22 is that right?

23 MR. GOMEZ: Yes.

24 CHAIRMAN DANNER: Thank you.

25 So could I ask about the non-consolidation



1 opinion? And I guess I should start, maybe you could  
2 give me a time line of future steps. If we approve  
3 this stipulation, what are the steps that go forward  
4 to create this entity and what confidence do you have  
5 that you will get the non-consolidation opinion?

6 I see people are looking at Mr. Kuzma.

7 JUDGE MOSS: Mr. Kuzma, are you going to  
8 answer that one for us?

9 MR. KUZMA: Yes, Your Honor.

10 Paragraph 10 states that the -- within 60 days  
11 of the formation of Puget LN -- well, we can start, I  
12 guess, with Paragraph 9 on Page 4. Paragraph 9 states  
13 that within 30 days of issuance of an order approving  
14 the settlement, Puget LNG will be created by Puget  
15 Energy. Paragraph 10 states that within 60 days of  
16 the formation of Puget LNG, there will be the filing  
17 of the non-consolidation opinion. So effectively it  
18 would be around -- you know, no later than 90 days  
19 after the issuance of an order in this proceeding.

20 At this time we are pretty confident that we  
21 will be able to get a non-consolidation opinion. This  
22 document, as indicated earlier by, I believe it was  
23 Ms. Gafken, incorporates pretty much all of the  
24 ring-fencing provisions that are in the current merger  
25 order, with the exception of 56 and 58, which have the

1 amendment with respect to the creation of Puget LNG.

2 So there isn't a lot of change with respect to  
3 the current commitments within the merger order, and  
4 quite frankly there is -- there is the ability to work  
5 with the non-consolidation opinion in mind, in  
6 creating Puget LNG and the operating agreement, or the  
7 LLC agreement, and the joint ownership agreement.

8 So we will work with the counsel that will be  
9 doing the non-consolidation opinion, as far as what  
10 types of elements would be looked for by that counsel,  
11 and try to incorporate them at the outset, so that we  
12 can try to work and make sure that we do what is  
13 necessary to obtain the non-consolidation opinion and  
14 protect the Company from a substantive consolidation  
15 in the event of any bankruptcy of Puget Energy.

16 JUDGE MOSS: Mr. Kuzma, I am just going  
17 to ask you to moderate your pace a little bit when you  
18 are speaking so the court reporter doesn't have to  
19 work quite so hard.

20 MR. KUZMA: Will do.

21 CHAIRMAN DANNER: So you think that it's  
22 not likely that you would be -- that you would not be  
23 able to obtain a non-consolidation opinion.

24 Who are you asking this of? This is -- is  
25 it -- this is not your in-house counsel, this would be

1 a third party?

2 MR. KUZMA: Yes, this is -- generally  
3 it's an attorney that is an expert -- "expert" is  
4 probably a bad term, but who has a particular focus in  
5 corporate debt and bankruptcy laws. And the person  
6 that we have identified to do it is the same  
7 individual that gave the non-consolidation opinion  
8 resulting from a merger order in 2009. It would be  
9 the same individual.

10 CHAIRMAN DANNER: All right.

11 And you state in the end of Paragraph 10 that  
12 if you can't obtain this agreement, that you will seek  
13 guidance from the Commission. I was just wondering  
14 what kind of guidance you would be seeking from us at  
15 that time. Would it -- would you actually bring us  
16 another proposal or would you expect us to come up  
17 with something?

18 MR. KUZMA: I think at that time -- we  
19 think that's highly unlikely given what we can work  
20 with. If it gets to that position, I think we would  
21 be obligated to bring another proposal to the  
22 Commission. It would be dealing with respect to  
23 substantive consolidation issues in the event of an  
24 unfortunate bankruptcy of Puget Energy in the future.

25 That's not obviously something that the

1 Commission has, A, jurisdiction over, or B, expertise  
2 over. So it would be our obligation at that time to  
3 bring another proposal that would meet the spirit and  
4 the intent of this provision, even if we can't meet  
5 the letter of it with respect to the non-consolidation  
6 opinion.

7 Again, I think that given where we are and  
8 what's being asked of us in this proposal, I don't  
9 think that we will have too much difficulty getting  
10 the non-consolidation opinion. This, frankly, is  
11 ownership structure that is fairly common in large  
12 infrastructure deals and is not something that would  
13 be outside the realm of anything that hasn't been seen  
14 by bankruptcy courts and bankruptcy attorneys.

15 JUDGE MOSS: I just wanted to ask, with  
16 respect to Chairman Danner's last question, how would  
17 the Company, and other parties if they wish to address  
18 the question as well, view the Commission in its  
19 order, in any order approving the settlement,  
20 conditioning that approval on the Company's ability to  
21 come forward with such a different agreement or  
22 different mechanism, if you will, if you cannot, for  
23 whatever reason, no matter how unlikely, get this  
24 non-consolidation opinion?

25 Am I clear enough or shall I restate that?

1 MR. KUZMA: I think you were clear. I  
2 am trying to envision a scenario. So the order is  
3 granted conditioned on Puget's obtaining the  
4 non-consolidation opinion?

5 JUDGE MOSS: And in the event that is  
6 not possible, then bringing us, bringing the  
7 Commission a satisfactory alternative form of  
8 agreement.

9 MR. KUZMA: I believe that's the intent  
10 of this Subsection 4 of Paragraph 10. I think that  
11 that would be acceptable to the Company.

12 The intent here was -- the other parties had  
13 raised that similar issue of, A, if we can't get the  
14 non-consolidation opinion, what would we need to do to  
15 get that, take all efforts to do that. If not, then  
16 we would have an obligation to bring forth another  
17 proposal to the Commission, so I think that would be  
18 acceptable.

19 JUDGE MOSS: Thank you.

20 CHAIRMAN DANNER: So wait a minute.  
21 Just so that I understand, I mean we can't -- you  
22 cannot form Puget LNG unless we approve the order, and  
23 so if we were to make the order conditional upon a  
24 non-consolidation letter, which you cannot request  
25 until you have formed Puget LNG, we may have some

1 complications to work out. So if -- if your answer is  
2 yes, you could agree to that, I would like to know how  
3 you --

4 MR. KUZMA: Well, you have hit the point  
5 that I was struggling with, as far as we need to have  
6 an order, and if it is a conditional order, we have  
7 the order, so I think we would be able to form Puget  
8 LNG, LLC at that time.

9 The way I understood Judge Moss's rephrasal  
10 [sic] is that we would have an obligation to come back  
11 with another proposal. It wouldn't negate -- the  
12 original order would still stand, it would just have  
13 an obligation on Puget Sound Energy's part to fix the  
14 problem, for lack of a better word, or phrase.

15 And that's -- that's what the condition would  
16 be, was that we have an obligation to bring forth  
17 either a non-consolidation opinion or a similar  
18 proposal that meets the intent and spirit of that,  
19 even though we might not be able to get the  
20 non-consolidation opinion.

21 So that's how I reconciled them. The original  
22 order doesn't -- doesn't implode necessarily, it just  
23 simply says that we have more work to do.

24 CHAIRMAN DANNER: All right. So it  
25 is -- it's possible to do, we can fashion something,

1 that we can address that.

2 So speaking of the formation of the LNG, I'm  
3 just curious about how you envision the LLC going  
4 forward. Is it going to have employees? Is it going  
5 to have a board of directors? How are those -- how  
6 are those people going to be appointed and so forth?

7 MR. KUZMA: Puget Energy will appoint  
8 the members of -- it will have a board of members  
9 and --

10 CHAIRMAN DANNER: A board of directors?

11 MR. KUZMA: It's called a board of  
12 members when it's an LLC. So it will have a board of  
13 members, effectively the same as a board of directors.  
14 And so those parties would be identified and appointed  
15 by Puget Energy.

16 It will not have employees. The intent that  
17 we worked through with the parties is that there would  
18 be, pursuant to the -- there would be an operating  
19 agreement in which it will engage Puget Sound Energy  
20 to operate the plant. Because quite frankly, the --  
21 the differences in operations between what Puget Sound  
22 Energy would do -- Mr. Garratt can go into it with  
23 more detail -- and what Puget LNG would do,  
24 effectively the only thing that Puget LNG employees  
25 would be for is effectively just to fuel, because the

1 operations of Puget Sound Energy are their -- are the  
2 same as if it were operating it as a peaking-only  
3 plant, except for the fueling part.

4 So Puget Sound Energy would pay its shares of  
5 the operating expense in accordance with the ownership  
6 agreement, but there would also be an operating  
7 agreement in which it would compensate PSE toward the  
8 operations of -- of the plant.

9 CHAIRMAN DANNER: Okay.

10 And so the executive officers of the LLC would  
11 also be Puget employees, then?

12 MR. KUZMA: It does not need to be, but  
13 it's likely that they might be members of Puget Sound  
14 Energy or employees of Puget Sound Energy, or Puget  
15 Energy.

16 JUDGE MOSS: Who is going to market the  
17 transportation fuel?

18 MR. GARRATT: So we have an employee  
19 recently hired to do business development for both LNG  
20 and CNG. As he works on LNG efforts, he will charge  
21 his time to Puget LNG.

22 JUDGE MOSS: But that's a PSE employee?

23 MR. GARRATT: He is a PSE employee.

24 JUDGE MOSS: Okay.

25 COMMISSIONER JONES: This is



1 Commissioner Jones. Judge, I didn't realize Chairman  
2 Danner was getting into operating agreements. I have  
3 a few follow-up questions on the non-consolidation  
4 opinion. If we are getting into governance now, I  
5 have a few questions on governance. I don't know  
6 if it's appropriate now?

7 CHAIRMAN DANNER: Yeah.

8 COMMISSIONER JONES: Okay.

9 Mr. Kuzma, who wrote the -- I was here in  
10 2009. I read the opinion. Who -- who did your  
11 non-consolidation opinion in 2009?

12 MR. KUZMA: It was Mr. George Fogg.

13 COMMISSIONER JONES: Spell it.

14 MR. KUZMA: F-O-G-G.

15 COMMISSIONER JONES: And which law firm  
16 is he with?

17 MR. KUZMA: Perkins Coie.

18 COMMISSIONER JONES: But did not the  
19 Commission, in our merger order, condition -- make  
20 some sort of condition -- I couldn't find it right  
21 now. But didn't we have some sort of condition on the  
22 non-consolidation opinion being offered? Are you  
23 familiar with that?

24 MR. KUZMA: Yes.

25 COMMISSIONER JONES: And what did --

1       what -- what was the specific nature of that  
2       condition?

3                   MR. KUZMA: Well, if I -- I don't have  
4       it before me, but if I recall, it was in many respects  
5       similar to what we have here. We would need to have a  
6       non-consolidation opinion presented to the Commission.  
7       If we were unable to do so, then we would need to come  
8       back before the Commission with the changes in  
9       structure to the merger commitments that were  
10      necessary pursuant to the request to make the  
11      non-consolidation opinion effective.

12                   COMMISSIONER JONES: I have it in front  
13      of me now, Judge Moss, Mr. Kuzma. I can't find it.  
14      Maybe you -- you could just clarify that for the  
15      record, which we have 14 conditions that we imposed,  
16      the majority imposed in this order. I think it's in  
17      there somewhere.

18                   JUDGE MOSS: I'm sorry, Commissioner  
19      Jones, I'm not quite understanding what it is you want  
20      confirmed.

21                   COMMISSIONER JONES: I would like the  
22      number of the condition in the merger order.

23                   JUDGE MOSS: We will make that Bench  
24      Request 1.

25                   MR. KUZMA: So if I can clarify, there

1 were the 14 conditions to the merger --

2 COMMISSIONER JONES: Correct.

3 MR. KUZMA: -- the 63 merger commitments  
4 and you want which number. Okay. Will do.

5 COMMISSIONER JONES: Yeah. This was  
6 imposed by the majority of the Commission.

7 MR. KUZMA: Yes.

8 COMMISSIONER JONES: It wasn't in the --  
9 in the settlement agreement for the merger.

10 MR. KUZMA: Correct.

11 COMMISSIONER JONES: A question on  
12 governance, since the Chairman asked it.

13 So currently you have 12 members of the board  
14 of director of PE and 12 members of the board of  
15 director of PSE, correct?

16 MR. KUZMA: Mr. Garratt may know better  
17 than I.

18 COMMISSIONER JONES: Mr. Garratt, you  
19 have been to many board meetings to talk about this  
20 project. I pulled it down. This is not a trick  
21 question. I think there are 12 members of the PE  
22 board led by Melanie Dressel, who is Columbia Bank  
23 Tacoma [sic], she is chairwoman of the board, and the  
24 PE board consists of the same 12 members. Again,  
25 Melanie Dressel is the chairwoman of the board; is

1 that correct?

2 MR. GARRATT: Yes.

3 COMMISSIONER JONES: Okay.

4 So are we going to have more appointments of  
5 the same members of the board? What I'm trying to get  
6 at, is there going to be some independence, some  
7 diversity? Who chooses these board members? It's an  
8 even number. If they disagree on an issue -- usually  
9 boards are structured to be five or seven. What  
10 happens?

11 Maybe this is more directed to Mr. Kuzma, as  
12 the attorney.

13 I mean as starters, Mr. Kuzma, the  
14 paragraph -- I think you -- it says in here somewhere,  
15 LNG will appoint two board members --

16 MR. KUZMA: Yes. If you --

17 COMMISSIONER JONES: -- and PSE will  
18 appoint two board members. But, as you know, in  
19 response to the Chairman's question, LNG does not  
20 exist yet as a special purpose entity LLC, so they  
21 have no ability to even organize themselves yet.

22 MR. KUZMA: That's correct. That would  
23 be organized by Puget Energy. And if you -- I think  
24 you were pointing to Page 3 of Attachment B to the  
25 full settlement stipulation.

1                   COMMISSIONER JONES:  Yes, I am.

2                   MR. KUZMA:  And so that's the current  
3 expectation at this time, that there would be a board  
4 of four, two of which would be appointed by PSE and  
5 two appointed by Puget LNG.  That's the current  
6 expectation.  There hasn't been any formation at this  
7 time.

8                   COMMISSIONER JONES:  Okay.

9                   But there is no -- there is nothing in here as  
10 we did in merger order.  I think the Commission  
11 imposed a condition that said one member -- at least  
12 one member had to be an independent board member,  
13 right?

14                   MR. KUZMA:  There was -- if you look at  
15 the merger commitments, there is an independent board  
16 member.  They have -- I'm having a little difficulty  
17 phrasing this correctly.  There are different roles of  
18 independent directors.  I believe there is an  
19 independent director that has no duties but for the  
20 issuance of a vote in the event of a voluntary  
21 bankruptcy.

22                   I believe there is a PSE board member that is  
23 an independent member, an independent director but in  
24 a different respect, in which that independent  
25 director is a full participating board member and --

1 but brings diversity of opinion and expertise to  
2 the -- to the board.

3 So the question I guess would be if we are  
4 looking at something with respect to a bankruptcy  
5 protection board member versus a diversity of opinion  
6 board member, that's where I'm struggling.

7 Independent director has been used in both  
8 forms and I'm not sure what you are addressing here.  
9 But it does currently state that the anticipation  
10 would be two selected by PSE and two by Puget LNG. It  
11 doesn't say that they need to be employees or  
12 independent directors or a combination thereof.

13 COMMISSIONER JONES: Okay.

14 I can't give you any further direction on what  
15 I'm driving at now by the word independence.  
16 Independence is -- could be construed to be a broad  
17 term. It has been by FERC and by commissions around  
18 the country.

19 This is a new venture for Puget. It's a very  
20 creative and unusual corporate structure, and I am  
21 just kind of struggling with, if there are 12 members  
22 of the board that are the same of PSE and PE, and then  
23 these 12 members get to choose four of their own to be  
24 the board of -- LNG board members, I'm not sure if  
25 that's the right way to go. That's all I'm saying.

1 JUDGE MOSS: May I interject here?

2 CHAIRMAN DANNER: So --

3 JUDGE MOSS: Oh, sorry. Go ahead.

4 CHAIRMAN DANNER: I was just going to --  
5 well, maybe this is -- I will wait. I was going to  
6 actually raise the issue of affiliate transactions and  
7 how that plays into this and what protections there  
8 are.

9 JUDGE MOSS: Well, my question is  
10 directly a follow-on to Commissioner Jones's  
11 questions.

12 You mentioned that there is an independent  
13 director as a result of the merger order that is  
14 concerned only in the event of a bankruptcy situation.  
15 That would be a bankruptcy at Puget Energy level?

16 MR. KUZMA: I believe it is. I am  
17 trying to remember. I think it is a Puget Energy  
18 level bankruptcy.

19 JUDGE MOSS: So if there was a  
20 bankruptcy of Puget LNG, that independent director  
21 would not be involved.

22 MR. KUZMA: That independent director  
23 would not be involved, no.

24 JUDGE MOSS: So only at the Puget Energy  
25 level. Because we would clearly be concerned with

1 both levels.

2 MR. KUZMA: Well, I think we would be of  
3 the opinion that we would not need to have an  
4 independent director at the Puget LNG level for the  
5 simple fact that the investment at Puget LNG is going  
6 to be a rather small investment of Puget Energy. We  
7 are looking at, I believe it's somewhere around  
8 \$180 million, you know, in a company with total assets  
9 of liabilities of well over 7 billion.

10 A Puget LNG bankruptcy would be an unfortunate  
11 event, but it would not be one that threatened the  
12 existence of Puget Energy. It would be a bad year,  
13 but it would not be one in which Puget Energy would  
14 need to be worried about a bankruptcy event.

15 JUDGE MOSS: You will forgive my  
16 laughter there. It's the context --

17 MR. KUZMA: Yes.

18 JUDGE MOSS: -- that makes that funny.

19 All right. Thank you.

20 COMMISSIONER RENDAHL: So I have one  
21 other follow-up on the non-consolidation. This may be  
22 a question for you, Mr. Kuzma.

23 This not being something I am terribly  
24 familiar with in my day-to-day work. Paragraph 10  
25 mentions that it is subject to the customary



1 assumptions and exceptions. I guess given that there  
2 was a similar non-consolidation opinion following the  
3 merger, are those the same assumptions and exceptions?  
4 And maybe you can tell us generally, if you have an  
5 understanding of this, what those are.

6 MR. KUZMA: Yes, these are the -- this  
7 is the same or similar language that was in the merger  
8 order with respect to the non-consolidation opinion.  
9 Many of the customary assumptions and exceptions  
10 relate to the current state of the bankruptcy law at  
11 the time. My understanding of it at least is, is the  
12 current state of the bankruptcy laws at the time of  
13 the creation of the opinion. They have to make  
14 certain assumptions that -- you know, the bankruptcy  
15 courts are going to follow the traditional common law  
16 with respect to bankruptcy and statutory changes.  
17 Those obviously can change over time. Bankruptcy is a  
18 constitutional right, but it also is a creature of  
19 statute, and so they have to make certain assumptions  
20 with respect to the state of the bankruptcy statutes  
21 and the common law at the time.

22 Those are generally the types of assumptions  
23 and exceptions that are customary and it is explicitly  
24 stated in the opinion.

25 COMMISSIONER RENDAHL: Thank you.

1                   COMMISSIONER JONES: Judge, I just have  
2 a couple more on the governance, and then I think the  
3 Chairman was going to ask about affiliate interests.  
4 Let me finish up. In terms of process, I am having  
5 difficulty recognizing the time lines of a lot of  
6 this, and I will be asking questions throughout the  
7 day on this.

8                   But in terms of Commission approval,  
9 Mr. Kuzma, talk about what you need, what the Company  
10 needs. By "the Company" I mean PE and PSE, the  
11 companies.

12                   So right now we have a full settlement  
13 stipulation in front of us that does a number of  
14 things, as you know: The cost allocation, the cost  
15 allocation factors, we waive 56 and 58 on the merger  
16 order, hold harmless provisions. There's a lot in  
17 here. So you want approval of that as soon as  
18 possible. And then after that a joint ownership  
19 agreement with detailed corporate bylaws would be  
20 submitted to the Commission for approval.

21                   So those are the two immediate items that I  
22 see over the next two to three months. Could you  
23 elaborate a little bit on, is that a correct  
24 understanding? And when the JOA, what I call joint  
25 ownership agreement, comes to the Commission, do you

1 expect that to be approved at an open meeting or to be  
2 set for hearing and adjudicated again?

3 MR. KUZMA: As far as the time line, the  
4 time line really revolves around the -- it commences  
5 with respect to the order approving the settlement.  
6 We detailed that in some length on Paragraphs 9  
7 through, I believe it's 12.

8 Essentially, for example, let's say two weeks  
9 from today is October 31st. I'll use that just for  
10 simplicity because it is the end of the month. The  
11 Commission issues an order approving the settlement,  
12 or adopting the settlement. Pursuant to Paragraph 9,  
13 Puget Energy will have 30 days, or the month of  
14 November, then, to create Puget LNG. Pursuant to  
15 Paragraph 10, within 60 days of the creation of Puget  
16 LNG -- so in that respect, simplistically we can say  
17 the months of December or January we would have a  
18 non-consolidation opinion that we would have to have  
19 issued and brought before the Commission, or in the  
20 failure to do so, follow the procedures with respect  
21 to the non-consolidation opinion requirements in  
22 Paragraph 10 of obtaining those changes in structure  
23 that are necessary to get that. And if not, go to the  
24 situation where we would need to bring another  
25 proposal that seeks to incorporate the intent or

1 spirit.

2 Paragraph 12 states that within 60 days of the  
3 formation of Puget LNG. So that's -- we would bring  
4 forth the joint ownership agreement. That would be  
5 concurrent with the non-consolidation opinion because  
6 it's 60 days from the formation of Puget LNG.  
7 Assuming Puget LNG was created in the month of  
8 November, we would effectively have the months of  
9 December and January to bring forward the joint  
10 ownership agreement.

11 With respect to --

12 COMMISSIONER JONES: Mr. Kuzma?

13 MR. KUZMA: Yes.

14 COMMISSIONER JONES: Could you stop  
15 there, just for a minute, on Paragraph 12.

16 So one of my subquestions was what does "for  
17 approval" mean and what's your expectation of how the  
18 Commission would approve that? And then RCW  
19 80.16.020, as I understand it, that's the affiliated  
20 interests transaction statute, right? So what would  
21 be in the joint ownership agreement regarding  
22 affiliate interest transaction rules?

23 MR. KUZMA: Yes. I will take it in  
24 several parts.

25 RCW 80.16.020 is the joint -- I mean is the

1 affiliated transaction statute. With respect to the  
2 question of what would the approval look like, I think  
3 the intent would be that we would continue, perhaps,  
4 to work with the other parties, as far as putting  
5 together a joint ownership agreement.

6 Part of the settlement stipulation includes  
7 the Attachment B, which has, for lack of a better  
8 word, a term sheet with respect to what the  
9 expectations are. So the parties have reviewed that  
10 and have submitted their comments on that, but it's  
11 not a fully-fledged document at that time.

12 So as far as the approval, my assumption would  
13 be if we can work out a joint ownership agreement that  
14 all the parties confirm, meet their expectations with  
15 respect to at least the term sheet conditions, then we  
16 would bring that forward, and if the Commission were  
17 to do it at an open meeting, there would be an open  
18 meeting.

19 COMMISSIONER JONES: Since Mr. Gomez is  
20 here and represents Staff, I would like to especially  
21 ask you, but the other parties -- Ms. Gafken, if you  
22 wish to weigh in. Is that your understanding of when  
23 the joint ownership agreement comes back to us? I  
24 imagine this would be fairly complicated with  
25 corporate bylaws and details on affiliate interest

1 transactions and on the O&M costs and your ability to  
2 audit. So, I mean, is this enough time? Is this  
3 something you are comfortable with for Staff,  
4 Mr. Gomez?

5 MR. GOMEZ: Staff, as far as what --  
6 what the Company proposes to file going forward, as  
7 far as this case, joint ownership agreement, Staff's  
8 understanding is that it will contain as much detail  
9 as Staff needs to be able to be assured that -- that  
10 going forward it will have the ability to look at  
11 these and look at costs on an ongoing basis, and to  
12 confirm, with regards to the different costs, the  
13 appropriate allocations.

14 So at this point the -- as far as looking over  
15 any actual costs, we have no actual costs, so it would  
16 have to be based on kind of what the principles are  
17 associated with that. To the extent -- our  
18 understanding is that the Commission will have every  
19 opportunity to review or reject any specific terms  
20 associated with the joint operating agreement. So any  
21 operating agreements before us we will -- will have  
22 the opportunity to look --

23 COMMISSIONER JONES: But do you --  
24 Mr. Gomez, do you expect to do that in an open meeting  
25 setting, maybe several open meetings, depending on how

1 far you get?

2 MR. GOMEZ: I have not contemplated  
3 the -- procedurally how we would go about it, but  
4 certainly that is one way that we could go about it.

5 Ms. Colamonici, I didn't mean to go to  
6 Ms. Gafken. I want you to say something for the first  
7 time. I didn't mean to go to Ms. Gafken, but you are  
8 the expert witness, depending on how the two of you  
9 want to work it out. I just wanted to get a sense of  
10 your review of the JOA, the joint ownership agreement,  
11 and how long, if you are comfortable with this.

12 MS. GAFKEN: Ms. Colamonici is looking  
13 at me. For the process question, I will go ahead and  
14 take that one.

15 An open meeting process may be an appropriate  
16 way to deal with it. As Mr. Gomez indicated, I think  
17 all the parties expect to be able to review it and  
18 have an adequate opportunity to review, and also for  
19 the Commission to review, and have an adequate time to  
20 weigh and make a decision on it.

21 We have had several proceedings where that has  
22 happened in an open meeting setting, and perhaps  
23 several meetings, where we get so far and then we kick  
24 it to the next open meeting and do a little bit more  
25 work. That's a process that has worked before. There

1 is also some challenges with that model.

2 At this time I don't necessarily anticipate an  
3 adjudication on the joint operating agreement. That's  
4 barring any surprises, I suppose.

5 CHAIRMAN DANNER: So, if I may, the  
6 scenario that I worry about is you are going to have  
7 60 days to get the JOA agreed to by multiple parties.  
8 If there are contentious issues that come up,  
9 something has to be filed in 60 days, according to  
10 this settlement, so something will be filed that not  
11 all the parties agree to, and then we are there  
12 saying, okay, we want you to approve or suspend or do  
13 whatever. And so I do worry. If this falls into an  
14 adjudication, what does that do to the time lines here  
15 and how do we deal with that? And so I am just trying  
16 to get a sense of the likelihood that there are going  
17 to be sticky issues in the JOA.

18 COMMISSIONER JONES: And, Ms. Gafken,  
19 just for the record, you said joint operating  
20 agreement and it's joint ownership agreement.

21 MS. GAFKEN: That's correct.

22 COMMISSIONER JONES: I don't think --  
23 Mr. Kuzma, I don't think you are asking the Commission  
24 to approve a joint operating agreement for Puget LNG,  
25 are you?



1 MR. KUZMA: No.

2 COMMISSIONER JONES: That's way too much  
3 detail, I think.

4 MR. KUZMA: That's --

5 COMMISSIONER JONES: Yeah.

6 MS. GAFKEN: That's correct, I did  
7 misspeak.

8 COMMISSIONER JONES: That's all.

9 CHAIRMAN DANNER: So I was just trying  
10 to get a sense of if -- if the parties are confident  
11 that a JOA can be -- can be agreed to in that short  
12 time line, and it is a short time line.

13 MR. KUZMA: Well, I would -- I would  
14 posit that we have already discussed many of the  
15 critical terms, and they are in the term sheet  
16 attached as an exhibit. Many of the principles, I  
17 think, have already been agreed upon by the parties.  
18 I think there are -- there will need to be reviews of  
19 language, things of that nature.

20 But this effectively -- this document gives us  
21 90 days. It's 60 days from the creation of Puget LNG,  
22 but effectively it's 90 days to submit it. It's not a  
23 requirement on the Commission to approve it in that  
24 time period, it's simply a requirement that we submit  
25 it within those 90 days.

1           So that's -- that's how we view it, is that  
2     the -- we have already worked through what I would say  
3     are the more -- the more troublesome principles, or --  
4     or important principles, maybe not troublesome.  
5     Granted there may be some devil in the details that  
6     come along that will need to be worked out among the  
7     parties, but we think that this is something that we  
8     could do within the period that we have established in  
9     this process, in the mediation. That, you know, we  
10    have worked well together and we -- we now have a  
11    common understanding and goal, so I think we would be  
12    able to hammer this out before the end of January.

13           JUDGE MOSS: If there is no follow-up to  
14    that, this might be a convenient moment for our  
15    morning break.

16           Do you have follow-up on that? That's fine.

17           COMMISSIONER JONES: Not from me.

18           CHAIRMAN DANNER: I do want to ask a  
19    question about affiliated interests.

20           JUDGE MOSS: Right. When we return,  
21    Chairman Danner will have some questions concerning  
22    affiliated interests, and that will be our next topic  
23    of discussion.

24           Let's go ahead and take 15 minutes, until 10  
25    after the hour.

1 (A brief recess.)

2 JUDGE MOSS: All right. Let's be back  
3 on the record.

4 Before we proceed with our discussion, I have  
5 to interrupt our proceedings briefly to note for the  
6 record an ex parte contact has occurred during the  
7 course of the proceeding. This is in the form of an  
8 email that was sent to all three commissioners and  
9 myself, from an individual who has previously  
10 expressed an interest in this proceeding, and who has  
11 communicated in this fashion before, and who has been  
12 directed and told and explained to on several  
13 occasions that this is an inappropriate thing to do.

14 If we look at this stuff it's an ex parte  
15 contact, and we have not done that. What we have been  
16 doing is sending these things first to the records  
17 center, and now to our consumer affairs section, so  
18 these can be made public comments, they can be made  
19 part of the record. But that's the appropriate way  
20 for members of the public who are interested in this  
21 proceeding to let their concerns and thoughts and  
22 ideas be known to the Commission, through that  
23 process, not through direct communications with the  
24 commissioners or myself. We are the presiding  
25 officers in this proceeding.

1           Both the statutes and the Commission's rules  
2 forbid ex parte contacts. That's RCW 34.05.455 and  
3 WAC 480-07-310. Now, those are fairly extensive, I'm  
4 not going to read them into record, but I think  
5 everybody -- the counsel in the room certainly are  
6 familiar with this concept. So I just -- I want to  
7 note for the record the -- that this was done during  
8 our hearing this morning.

9           Perhaps it's one of the curses of the modern  
10 age of electronics that we all are up here capable of  
11 receiving these things as they come in. So I am not  
12 going to read this into the record at this time, but I  
13 will publish it by way of notice of ex parte contact,  
14 and any party in the proceeding will have an  
15 opportunity to respond to it. So that's it.

16           Actually, I will ask Commissioner Rendahl. Do  
17 you want me to put this in the record?

18           COMMISSIONER RENDAHL: I think it would  
19 be useful for the parties to see what came in. You  
20 can pass it around.

21           JUDGE MOSS: I will read it. All right.

22           This is an email received from an individual  
23 by the name of Phil Brooke, B-R-O-O-K-E, today at  
24 9:40 a.m., the subject matter is respectful objection.  
25 It reads: On the bridge line. I am direct safety and

1 risk management for one of the largest local  
2 employers, but approach this issue as an individual.  
3 Note, unknown possibly significant financial liability  
4 allocations and safety are one and the same. You just  
5 excluded safety in the opening. You just abdicated  
6 your responsibility to ratepayers. Note, additionally  
7 TOTE has cancelled their current LNG conversion  
8 effort. Did you know this? PSE has zero customers.  
9 Note, citizens are being asked to comment on opaque  
10 methodology which is patently unfair. Respectfully,  
11 Phil Brooke, Summit, Washington.

12 I will just bother to comment on this to the  
13 extent of saying that the Commission has spent well  
14 over a thousand hours working on this matter. It is  
15 giving it full, fair consideration in the context of  
16 its adjudicative process. I have to take exception to  
17 the idea that citizens are being asked to comment on  
18 opaque methodology, which is patently unfair. We have  
19 explained at great length, having had previous e-mails  
20 from the director of the administrative law division  
21 to this individual and others, how this process works,  
22 how parties may participate in it, how members of the  
23 public may participate in it, and the Commission has a  
24 very long history of allowing full, open public  
25 process. We are very good at it, frankly. This sort

1 of thing is neither appropriate nor called for under  
2 the circumstances.

3 So again, this does constitute an ex parte  
4 contact. I'm sorry that it occurred. I'm sorry that  
5 somebody opened it, not knowing this was the  
6 substance. Because we have included in our messages  
7 to members of the public in this proceeding that it is  
8 not appropriate to contact any of the presiding  
9 officers directly, yet they persist in doing so. That  
10 needs to stop.

11 I will stop there.

12 Do any of the commissioners wish to comment on  
13 this?

14 All right. Fine. So I will make this  
15 available by notice.

16 Having said all of that, too, the cure for  
17 ex parte contact under both the statute and the rules  
18 is for us to give such notice and an opportunity for  
19 any party in the proceeding who wishes to do so to  
20 respond to the substance of the ex parte contact,  
21 which is now part of our transcript.

22 All right. Thank you. And I'm sorry for that  
23 interruption, folks. This has been a very useful  
24 conversation we have been having this morning. I am  
25 going to take a deep breath and then we will move on.

1 MS. GAFKEN: Your Honor, if I may?

2 JUDGE MOSS: Pardon me?

3 MS. GAFKEN: If I may just say a few  
4 words, just very briefly, on that topic?

5 JUDGE MOSS: You may.

6 MS. GAFKEN: As the ratepayer advocate,  
7 there has been quite a bit of public interest in this  
8 proceeding. I just wanted to express appreciation  
9 both to the Commission and to the Company for the  
10 willingness to conduct a public comment hearing on  
11 very short notice. We do have a public comment  
12 hearing coming up on Wednesday evening. I do  
13 encourage the public to come out and provide its  
14 comment to the Commission.

15 There is great interest in this proceeding and  
16 the facility that PSE would like to build. The focus  
17 before this Commission is very narrow, as the parties  
18 understand. And the Commission has provided the  
19 opportunity to the public to come out and provide its  
20 comment, and for that Public Counsel is very  
21 appreciative.

22 JUDGE MOSS: Thank you, Ms. Gafken.

23 All right. Now we are going to turn to the  
24 subject of affiliate interest transactions. Chairman  
25 Danner has more questions on that subject.

1                   CHAIRMAN DANNER: Well, that is the  
2 question. So we are creating a joint ownership -- or  
3 this -- we envision there will be a joint ownership  
4 agreement, but the agreement is among two entities  
5 that are clearly affiliated, and we have a statute  
6 right now that says that the Commission must approve  
7 affiliated interest transactions, transactions that go  
8 between these two affiliated entities for any  
9 transactions that are over a certain dollar amount.

10                   I am trying to get a handle on -- first of  
11 all, I think that nothing -- nothing in this agreement  
12 disturbs that authority, if I -- if I understand that.  
13 Is that your understanding?

14                   MR. GOMEZ: Chairman Danner, that is  
15 Staff's understanding.

16                   CHAIRMAN DANNER: And so the question is  
17 how does that work in practice? Because it would seem  
18 that almost every transaction that is going to go on  
19 between these two entities is going to have to come to  
20 the Commission for approval. And how -- how does that  
21 work? What are the mechanics of that when you are  
22 talking about what I would -- I mean I envision this,  
23 that there would be constant transactions going on  
24 between the two. Am I right or wrong about that,  
25 Mr. Garratt or Mr. Gomez?



1 MR. GOMEZ: I will take a stab at it.

2 Dave Gomez, Commission Staff.

3 The joint ownership agreement that is coming  
4 before the Commission is -- again, I think there will  
5 be some expectations, or at least what the  
6 expectations are from the Commission Staff.  
7 Commission Staff anticipates that the joint ownership  
8 agreement will be general in the sense that it will  
9 just provide the structure for operational  
10 transparency and that there -- there is a principle  
11 base for terms and conditions in owning and operating  
12 the Tacoma LNG facility.

13 So in essence what the Company will be  
14 articulating is its relationship between the two  
15 entities and how decisions will be made to operate the  
16 plant. It won't go in as much detail with regards to  
17 what we would normally see in a rate case, where the  
18 company would articulate its affiliated interest  
19 transactions, the nature of them.

20 There's a requirement, I believe I am correct,  
21 it's annually that the Company files that. Commission  
22 Staff looks at those affiliated interest transactions  
23 on a yearly basis, but for the purposes of rate  
24 setting at a later rate case, we look at all of the  
25 different costs before the Staff to evaluate, then in

1 those cases we will be looking in greater detail with  
2 regards to each individual transaction and whether it  
3 meets the principles with regards to cost causation  
4 and appropriateness for inclusion in rates. That  
5 would be later and different and separate and distinct  
6 from the operating -- excuse me, the ownership  
7 agreement.

8 CHAIRMAN DANNER: So you are saying  
9 there would be an annual filing, basically identifying  
10 the affiliated interest transactions the preceding 12  
11 months; is that...

12 MR. GOMEZ: To the extent that I'm aware  
13 of, every year the companies are required to file  
14 their affiliated interest transactions. I believe it  
15 includes information that allows Staff to make a  
16 comparison and to determine whether the transactions  
17 themselves are at an arm's length, meaning that the --  
18 that there is no subsidization or that costs  
19 themselves are in any way inappropriate for inclusion  
20 in the rates at some other point.

21 Again, the purpose of that filing annually is  
22 just to articulate those affiliated interest  
23 transactions, they are amounts that occurred during  
24 that year, and Staff examines those as part of the  
25 Staff investigation. It does not bring that before

1 the Commission. At least that's been my experience  
2 with those.

3 CHAIRMAN DANNER: Okay.

4 We have had a number of, over the years,  
5 single -- single filings with single transactions in  
6 them, often beforehand, asking us for approval. You  
7 know, when a -- when a telecom company sells a  
8 building, for example, that is something that has come  
9 to us beforehand. I just wanted to make sure, and I  
10 will take a look at the statute, that -- that we are  
11 not getting into something where we are in the  
12 position of having to micromanage because there is  
13 nothing but cost and affiliated interest transacting  
14 going -- going between these two entities.

15 And maybe I can ask Mr. Roberson, since I have  
16 never had a chance to ask him a question before.

17 COMMISSIONER JONES: Another first.

18 CHAIRMAN DANNER: And if you want to  
19 defer that question, that's fine. I'm just putting  
20 you on the spot.

21 MR. ROBERSON: I have not looked  
22 extensively at the affiliated interest statutes. I do  
23 know that the Commission would have to approve the  
24 initial -- the joint operating -- the joint ownership  
25 agreement. Sorry, Commissioner Jones. And then

1 whether or not the Company would need to come back  
2 with every transaction, I'm not -- I'm not clear on  
3 that. I would have to look into that.

4 COMMISSIONER JONES: Can I follow up,  
5 Mr. Chairman, with Mr. Gomez?

6 CHAIRMAN DANNER: Yes, you may.

7 COMMISSIONER JONES: So, Mr. Gomez, in  
8 your testimony on Page 28, the joint testimony, Lines  
9 15 through 20, you seem fairly confident with this  
10 very creative, somewhat unusual transaction, to audit  
11 the affiliated interest transactions between PSE  
12 and -- and I'm just going to call it LNG for now, not  
13 Puget LNG. So what gives you that confidence? I mean  
14 is it the number of staff that you have? This is --  
15 this is kind of plowing new territory, I think.

16 MR. GOMEZ: Commissioner Jones, are you  
17 referring to my testimony on Page 28, Line 15?

18 COMMISSIONER JONES: Yes.

19 16. I'm sorry.

20 Are you there?

21 MR. GOMEZ: Yes, I'm there.

22 COMMISSIONER JONES: And there you  
23 state, for the record, Commission Staff has the  
24 continuing ability to audit the affiliated  
25 transactions between PSE and LNG, and then you go on

1 to say why.

2 What gives you that confidence, and what other  
3 large, affiliated interest transactions have you --  
4 have you been doing?

5 MR. GOMEZ: Well, I think Mr. Garratt  
6 brought up the example of Freddy 1. I am less  
7 familiar with that facility than I am with Tacoma LNG,  
8 obviously. I have never specifically worked on  
9 Freddy 1, but my understanding of that agreement is  
10 there's two -- there's two separate and distinct  
11 owners. In this case there is a separate owner to --  
12 from the Company.

13 The companies, then, both of them -- is it  
14 Atlanta General?

15 MR. GARRATT: Atlantic Power.

16 MR. GOMEZ: Atlantic Power and PSE  
17 co-own the facility. There is a general agreement  
18 with regards to their budgets and how they will  
19 operate the facility throughout the year. And then  
20 there's costs that go -- that are caused either by  
21 one, provision of one owner's service to -- versus the  
22 other. And there's -- it's a dynamic process back and  
23 forth that occurs between these entities.

24 PS -- Puget Sound Energy, of course, comes  
25 before the Commission, brings its rate cases before

1 the Commission for analysis, and we look at the costs  
2 associated with operating and maintaining those  
3 resources, or that resource, co-owned. And in those  
4 cases we examine the transactions. And the Company by  
5 nature has to allow the utility regulatory staff to  
6 examine any and all records associated with that  
7 facility to confirm those affiliated interest  
8 transactions and to confirm that they are made based  
9 on arm's length transactions. That there is -- in the  
10 case of a joint-owned facility, where you have Puget  
11 LNG, unregulated, owning it, there's naturally a  
12 concern from regulatory staff and auditing to ensure  
13 that there is no cross-subsidization, there's no  
14 inappropriate costs that are being asked to be paid by  
15 ratepayers.

16 Staff is comfortable that we have the process,  
17 we have the familiarity, and if need be we will bring  
18 additional resources to bear to examine that. But  
19 there is nothing in what the Company has presented  
20 with regards to Puget LNG and the regulated portion of  
21 the facility that Staff feels will be an  
22 insurmountable challenge to ensure that the right  
23 costs are being allocated to ratepayers.

24 COMMISSIONER RENDAHL: So, Mr. Gomez,  
25 just to follow up. So your understanding is -- and

1 any of the other witnesses can weigh in afterwards.  
2 Your understanding is that there would be, instead of  
3 sort of routine affiliated interest filings that would  
4 come before the Commission, as we handle them on the  
5 open meeting agenda, there would be one annual filing  
6 by the Company, or the companies, with the Commission,  
7 identifying these, and then more specifically, more  
8 detail when Puget Sound Energy files a general rate  
9 case to identify those specific elements that they are  
10 seeking recovery for?

11 MR. GOMEZ: That's correct, as you had  
12 described. That's my understanding of -- of -- on an  
13 ongoing regular basis the Company files its -- on an  
14 annual basis required to file its affiliated interest  
15 transactions. I believe it's with regards to the  
16 amount and the type, and they are identified in -- in  
17 individual annual reports. And then there is the  
18 inclusion of those costs within an actual rate case,  
19 or a tariff revision is before the Commission, a  
20 normal rate case.

21 In those cases, the general rate case, where  
22 the staff would -- where Staff would bring it to the  
23 Commission would be is if there was something in the  
24 affiliated interest transaction report, on an annual  
25 basis, there was an issue or problem. But there's

1 really no action that occurs, other than Staff  
2 investigate those transactions.

3 Now, if we go into a rate case, then -- then  
4 we utilize those reports, and others, to look at the  
5 Company's case and how it is filed and determine  
6 whether or not the cost that's being -- the ratepayer  
7 is being asked to cover, with regards to the Tacoma  
8 LNG plant, would be included in the rates or not  
9 included in the rates.

10 So it's a two -- two separate, but it's also  
11 ongoing examination over time.

12 COMMISSIONER RENDAHL: So, Mr. Garratt,  
13 is that consistent with your understanding of how this  
14 would go forward?

15 MR. GARRATT: It is. And I would just  
16 add, in my mind I don't necessarily see there being a  
17 lot of transactions between PSE and Puget LNG, and I'm  
18 thinking about this maybe more from a practical  
19 perspective than a legal perspective.

20 But from a practical perspective, on a  
21 day-to-day basis the facility is liquifying natural  
22 gas and it's going into the storage tank, and so  
23 we're -- we would be, you know, keeping tabs of that  
24 inventory and saying, well, this amount of -- this  
25 many gallons of that LNG belongs to PSE and this many



1 gallons belong to Puget LNG. And then as it goes to  
2 TOTE or other transportation customers, that inventory  
3 would change. Conversely, if it gets vaporized and  
4 put back into the gas system, PSE's inventory changes.

5 And likewise with the operations. On  
6 day-to-day operations, the plant employees would be  
7 charging their time and we would have an allocation  
8 methodology.

9 So I think it's only a few scenarios, like we  
10 talked about earlier in this hearing, where there is  
11 actually some sort of commercial transaction going  
12 back and forth. Again, I think it's -- in my mind  
13 it's fairly straightforward.

14 COMMISSIONER RENDAHL: So the bulk of  
15 this is really going to be more accounting  
16 transaction -- account -- not transactions, but  
17 accounting notations, as to the workings of the LNG  
18 plant under the joint ownership agreement, and then  
19 the affiliated interest transactions, so to speak,  
20 that would be reported would be anything outside of  
21 that differ -- that would be different from the  
22 allocations identified in the joint ownership  
23 agreement. Is that -- is that a fair  
24 characterization?

25 MR. GARRATT: Yes, I think that is a

1 very good way to put it.

2 COMMISSIONER RENDAHL: Okay.

3 MR. GARRATT: And I would just say that  
4 it's an accounting allocation.

5 COMMISSIONER RENDAHL: Thank you.

6 Mr. Gomez, just as I was looking at your  
7 testimony, on -- on the bottom of Page 28, on Line 23,  
8 and the top of Page 29, on Line 4, you refer to the  
9 joint operating agreement. I think you meant joint  
10 ownership agreement? Just so we can be clear.

11 MR. GOMEZ: I do, and I acknowledge  
12 that.

13 COMMISSIONER RENDAHL: Thank you.

14 MR. GOMEZ: Sorry.

15 CHAIRMAN DANNER: Mr. Finklea?

16 MR. FINKLEA: I just wanted to -- I hope  
17 this clarifies. We haven't addressed this in our  
18 testimony. This is a resource that is a substitute  
19 for pipeline capacity. So in my mind at least, this  
20 is how we have approached this, the costs associated  
21 with running this facility would be addressed annually  
22 in your purchased gas adjustment proceedings. So it's  
23 not like a -- like a piece of pipe you just put in the  
24 ground and if there is no rate case for five years  
25 there is no relook. In my mind at least, this would

1 be reviewed annually through your purchased gas  
2 adjustment proceedings, so you do have an annual look  
3 at this.

4 CHAIRMAN DANNER: So where I am getting  
5 is really about the legalities of this, because in the  
6 statute, 80.16.020, it does say the filing of an  
7 affiliated interest transaction must be made prior to  
8 the effective date of the contract or the arrangement,  
9 and so I just want to be clear that the arrangement  
10 that you have going forward conforms to this statute.  
11 This is more about the -- the -- you know, dotting the  
12 Is and crossing the Ts here.

13 I have -- I have confidence that we have all  
14 the ways to go back and audit and make sure that these  
15 arm's length transactions are indeed arm's length, and  
16 that we can make the changes that are necessary, and  
17 we protect the ratepayers in that. But when we have  
18 this particular provision, I want to make sure that --  
19 that any JOA or any other document coming forward is  
20 going to address this particular requirement in -- in  
21 020.

22 MR. KUZMA: This is Mr. Kuzma. If I may  
23 speak to that. There might be a little confusion on  
24 that point. I think for -- the joint ownership  
25 agreement goes along the lines of what Mr. Gomez

1 addressed, as far as setting up sort of the budgeting  
2 and those types of ownership issues. What I hear from  
3 the Commission now is more on the operation side.

4 And it has always been Puget's contemplation,  
5 and I believe the other parties as well, that there  
6 would be another JOA, a joint operating agreement, in  
7 which Puget LNG would engage Puget Sound Energy to act  
8 as the operator, much like Atlantic Power with respect  
9 to Freddy 1. It will detail those processes and those  
10 transactions. That would set forward what I would  
11 view as the affiliated transactions going forward, as  
12 far as the services that PSE will be providing to  
13 Puget LNG.

14 I am not aware of any goods or services that  
15 Puget LNG would be providing to PSE, other than  
16 perhaps -- you know, when we talk about usage in  
17 excess of the ownership shares, we would include in  
18 there as far as the rates and the fees with respect to  
19 those service fees that would -- that would be  
20 applied.

21 CHAIRMAN DANNER: Okay.

22 I mean there's a distinction. I mean  
23 Frederickson is two owners who are distinct. Here you  
24 have two owners that are affiliated.

25 MR. KUZMA: That's true.

1                   CHAIRMAN DANNER:  So it's not a perfect  
2 analogy.

3                   MR. KUZMA:  It's not a perfect analogy,  
4 but that's also why the affiliated transaction rules  
5 are in place.  We understand at PSE that we need to  
6 make sure that they are as close as possible to an  
7 arm's length transaction because -- to -- to protect  
8 the public and ratepayers of PSE.  So we understand  
9 that, those are in -- in mind, and we know that the  
10 other parties here will be working to ensure that  
11 that's the case.  And so it would all be pursuant to  
12 the joint ownership -- the joint operating agreement.

13                   CHAIRMAN DANNER:  The joint operating  
14 agreement.

15                   But -- okay.  So it would have to be developed  
16 in such a way that it addresses this requirement, that  
17 prior to the effective date of any contract it has to  
18 come to us for approval.  So --

19                   MR. KUZMA:  That is true.  And the  
20 Tacoma LNG facility is not going to go into service  
21 for at least three years from now, so there is time  
22 for that to occur and to develop some of the details.

23                   We did not include the joint operating  
24 agreement in the settlement stipulation per se, but it  
25 was something that -- I know that PSE at least, I

1 can't speak for all parties, but I believe all parties  
2 understood what would need to be done in the -- in the  
3 intervening three years.

4 CHAIRMAN DANNER: Again, that is all  
5 about strict compliance with the statute. Again, I  
6 think that we have the tools where we can go back and  
7 say, okay, no, this was -- you know, this was  
8 different than arm's length, or we can assure that  
9 something is arm's length, and make sure that the  
10 ratepayers aren't picking up any -- any more costs  
11 than are -- than they are required to do.

12 MR. KUZMA: Exactly. And PSE  
13 understands that, and so does -- well, Puget Energy at  
14 least. What we are trying to do here is establish the  
15 ownership shares, because as we get construction costs  
16 in the door, we need to know how to allocate those  
17 dollars, and that's what we are trying to establish  
18 now. We know when it is up and running there will be  
19 another set of dollars that come in and need to be  
20 allocated differently, and -- and those would be  
21 pursuant to the operating agreement, because those  
22 will vary depending upon usage, far more than the  
23 ownership shares are.

24 The way I view it -- I guess I'm an energy  
25 lawyer, but I view it as capacity and energy. And so

1 the ownership shares establish the capacity, or the  
2 right of each party to use the facility, and the  
3 amount that they have paid into it, versus on an  
4 energy basis, it's sort of like the operating.  
5 Depending upon circumstances in any given year,  
6 depending on subscriptions, the operating costs can  
7 vary, and those would need to be pursuant to an  
8 operating agreement, and will fluctuate year to year.  
9 Those are the types of things that would be included  
10 pursuant to either the PGA and/or affiliated  
11 transaction, dependent upon -- if it's just a pure  
12 cost allocation it would be a PGA. If it's an  
13 exchange of goods or services, it would be an  
14 affiliated transaction.

15 JUDGE MOSS: Just so we don't get our  
16 JOAs mixed up, as I understand, the joint ownership  
17 agreement is something that the Commission will be  
18 given an opportunity to review and approve.

19 MR. KUZMA: That's correct. The  
20 settlement stipulation requires it to be filed within  
21 60 days of the creation of Puget LNG, and then it does  
22 state for approval by the Commission.

23 JUDGE MOSS: And then the other JOA,  
24 meaning the joint operating agreement, presumably  
25 falls within the definitions in RCW 80.16.020, and so

1 it would have to be also brought to the Commission for  
2 approval.

3 MR. KUZMA: Yes.

4 JUDGE MOSS: And then if it was amended,  
5 those amendments would have to be brought to us for  
6 approval. But that's pretty much the extent of the  
7 affiliated interest transactions. That defines it,  
8 doesn't it?

9 MR. KUZMA: That is correct, and that is  
10 PSE's understanding.

11 JUDGE MOSS: Okay. All right. That's  
12 clear.

13 CHAIRMAN DANNER: Thank you for that  
14 clarification.

15 COMMISSIONER JONES: Mr. Gomez, this is  
16 Commissioner Jones. Just a final follow-up to you on  
17 your review and -- and the auditing of this. This is  
18 not an electric generation plant, this is -- this is a  
19 liquefaction, vaporization. This is something new, I  
20 think, to regulatory services staff, right?

21 MR. GOMEZ: Yes.

22 COMMISSIONER JONES: So in your  
23 testimony you talk about that you have benefit from  
24 consultation with technical experts and interstate  
25 pipeline operators. This is not something you



1 normally do, right, when you review an electric  
2 generation plant?

3 MR. GOMEZ: That's correct. By the very  
4 nature of -- of the complexities associated with  
5 pipeline capacity costs, bringing in additional  
6 experts, as was recommended by -- in -- during  
7 mediation was something quite useful.

8 COMMISSIONER JONES: So in this building  
9 we have our pipeline safety staff, and this is not, as  
10 the Chairman said, about pipeline safety, although we  
11 have ruled on some pipeline safety aspects of this  
12 project. But how do you propose that you have  
13 sufficient engineering and other technical  
14 capabilities on staff as you proceed forward in this?  
15 It's not just -- in my view, just legal and  
16 accounting, it involves engineering as well.

17 MR. GOMEZ: As far as engineering  
18 resources going forward with regards to the staff, I  
19 don't think we have -- or I have at least contemplated  
20 any beyond this, with regards to any issues coming  
21 before the Commission later, or at least to Commission  
22 staff to -- to really need to lean on any engineering  
23 analysis, further engineering analysis of the plant.  
24 At least that's what I anticipate, that anything that  
25 would come before us in the future would be more

1 cost-related, which we do have, you know, staff,  
2 folks -- or staff that's capable there.

3 COMMISSIONER JONES: Mr. Wright, are you  
4 on the phone? Are you still there?

5 MR. WRIGHT: Yes, I am. Yes, I am,  
6 Commissioner.

7 COMMISSIONER JONES: So good to have you  
8 on the phone. I haven't seen you since you left FERC.  
9 In those days, when you were -- you were director of  
10 the office of energy projects for FERC, right?

11 MR. WRIGHT: Correct.

12 COMMISSIONER JONES: You heard my  
13 question, and I'm not trying to advertise your  
14 consultancy services per se, but state commissions  
15 generally around the country, as you know, are not  
16 really well schooled, in my view, for some of these  
17 interstate pipeline issues and natural gas because  
18 they are regulated by FERC. So FERC usually handles  
19 export facilities, FERC handles interstate pipeline  
20 and all the issues related to that.

21 So do you have any -- do you have any comment  
22 on how this commission, maybe talking about other  
23 commission staffs around the country, on the Gulf Cost  
24 have -- have dealt with these affiliate interest rules  
25 and -- because these are -- these -- this gets into

1 technical analysis and not just economic analysis.

2 MR. WRIGHT: Well, not so much  
3 affiliate. There are affiliate rules at the Federal  
4 Energy Regulatory Commission that the companies are  
5 supposed to adhere to and have to prove that they have  
6 adhered to. You will find that many pipelines and LNG  
7 export facilities, to use that example, are  
8 affiliated, but they -- they have to put up firewalls,  
9 so to speak. They have to adhere to the rulemaking of  
10 the FERC, in terms of separation of staff and the  
11 like.

12 If you are going on a state-by-state basis,  
13 and we are talking about facilities that are subject  
14 to only state regulation, I would expect -- and I do  
15 not know for the state of Washington, the WUTC, if  
16 there are affiliate rules. I would imagine there must  
17 be because you are dealing with -- the Commission  
18 deals with companies that have business pursuits and  
19 they need to protect the ratepayers, as well as be a  
20 fair arbiter, I guess you could say, of all the  
21 stakeholders, which include the regulated companies.

22 So to be fair -- (bridge line interference  
23 interruption) -- position of knowledge of -- of what's  
24 happening to each and every state, but I would think  
25 there needs to be some kind of safeguards in terms of

1 affiliate interest rules that ensure, you know, fair  
2 ratemaking, fair allocation of costs, and preserve the  
3 ratepayers' position, in terms of not incurring any  
4 unwanted or unnecessary or unjustified costs.

5 COMMISSIONER JONES: Mr. Wright, that  
6 was not my question. Judge Moss and Chairman Danner  
7 just cited to our RCW, our state statute, that deals  
8 with affiliated interest transactions, so we do have  
9 that. But my question to you was more, given your --  
10 given your background of large LNG and other projects  
11 around the country, what sort of engineering or  
12 technical expertise do you think needs to be at the  
13 Commission to -- to review these projects as they go  
14 forward?

15 MR. WRIGHT: Well, simply put, at the  
16 FERC there is a -- there is an in-house engineering  
17 staff, and with regard to LNG and to pipeline capacity  
18 construction, these facilities are modeled in house.  
19 I am not going to say that every state commission may  
20 have such a budget for that, but I would think when  
21 they are faced with special situations where it  
22 involves the construction of capacity facilities,  
23 where a company purports to want to build to a certain  
24 capacity, that needs to be vetted to make sure that  
25 there is -- you know, in terms of using an old term,

1       there is no gold plating going on, the facility is  
2       built to meet the needs, it's not overbuilt so to  
3       speak.

4               So, yes, I do think there needs to be  
5       engineering expertise, but, you know, I -- I won't  
6       rule out that it cannot be done on a contractor basis.  
7       I myself am not an engineer, so there is no conflict  
8       of interest there. I am not purporting to advance my  
9       own firm for that.

10              You know, meeting the needs of the ratepayer  
11       by looking at the adequacy and the technical, if you  
12       will, needs of that facility, and whether it meets the  
13       needs of the ratepayers is a necessity.

14              COMMISSIONER JONES: Thank you.

15              COMMISSIONER RENDAHL: So I just have a  
16       follow-up on the operating agreement, or the, excuse  
17       me, the ownership agreement. I will just call it the  
18       JOA. And this question is for Mr. Garratt.

19              So, do you know, if the Commission were to  
20       approve the settlement, then there is the timing that  
21       goes along, and -- and within 30 days Puget LNG is  
22       formed, and then within 60 days after that you've got  
23       the non-consolidation opinion that must be filed, plus  
24       the -- the JOA. You have said that you would be, or  
25       your counsel said that you would be working with the

1 parties in this case in developing that JOA, as well  
2 as working on this. And that other "working on this"  
3 is what I have a question about.

4 Who is going to negotiate this JOA on behalf  
5 of PSE and on behalf of Puget LNG if there are no  
6 employees for Puget LNG? Is this between the board  
7 members? So who is going to be representing Puget LNG  
8 in this JOA creation?

9 MR. GARRATT: Well, I think in -- in  
10 terms of who would represent Puget LNG, it would -- I  
11 would envision that there is this board of members and  
12 that technically they would be representing the Puget  
13 LNG interests.

14 Again, I don't necessarily see this JOA being  
15 that complicated, given that we already have a term  
16 sheet, and -- and, you know, presuming the settlement  
17 goes forward, we've got these ownership allocations.  
18 So -- so I see this as being a relatively  
19 straightforward ownership agreement.

20 COMMISSIONER RENDAHL: But in order for  
21 this to be valid it has to be negotiated, essentially,  
22 and agreed to between two separate parties, and so  
23 that's why I am inquiring about this, about how  
24 separate this negotiation will be, or is this just PSE  
25 creating the joint ownership agreement?

1 MR. GARRATT: I don't see it as being --  
2 COMMISSIONER RENDAHL: Do you understand  
3 my question?

4 MR. GARRATT: I certainly don't see it  
5 as being PSE simply developing this agreement. Again,  
6 there will be specific bylaws related to Puget LNG,  
7 and there will be representatives of Puget LNG. And  
8 so in that respect it -- there are particular  
9 interests related to Puget LNG, there's particular  
10 interests related to PSE. And then I think the  
11 regulatory process here, bringing it back to the other  
12 parties and bringing it to the Commission, provides  
13 additional protection.

14 COMMISSIONER RENDAHL: But in order to  
15 ensure that this non-consolidation opinion is valid,  
16 it seems to me there has to be some separation here.  
17 Are you going to have separate representation, legal  
18 representation, for Puget LNG? It seems to me there  
19 needs to be some separation as you are negotiating  
20 this joint ownership agreement. Is that your  
21 understanding?

22 MR. GARRATT: We certainly haven't  
23 contemplated what sort of legal representation would  
24 exist on both sides here. Again, we -- it seems to be  
25 that we are playing within a fairly narrow field here,

1       though, as well, from a legal perspective, because we  
2       have already addressed a lot of the legal -- the  
3       typical legal provisions that you would have in any  
4       sort of joint operating agreement, within this term --  
5       within the combination of the term sheet and the  
6       settlement agreement.

7                   COMMISSIONER RENDAHL: Mr. Kuzma, do you  
8       have anything to add to that?

9                   MR. KUZMA: Not necessarily. I don't  
10      believe there has been contemplation of separate legal  
11      representation, or that's been ruled out. Quite  
12      frankly, Puget LNG doesn't exist now, so that's been  
13      part of the reason behind it.

14                  I think from PSE's perspective, dealing with  
15      the other parties to the settlement stipulation  
16      effectively creates a lot of the third party -- I mean  
17      the arm's length transaction that would otherwise  
18      occur. We know we need to make sure that it is  
19      aboveboard, fair, and represents adequate allocation  
20      of the benefits and liabilities, to do that, and to  
21      also get approval from the Commission.

22                  At such time that Puget LNG is created, they  
23      will have its own advisors that will be seeking to  
24      protect its interests. I mean there will be a  
25      separate -- a party that will approve the agreement



1 and it will be subject to the board's approval of  
2 Puget LNG.

3 Effectively we are, you know, abiding by all  
4 corporate laws and regulations with respect to this  
5 transaction.

6 CHAIRMAN DANNER: Just to follow up on  
7 that, though. It's -- you are going to have a board  
8 of members who may also be directors of one of the  
9 other companies, so they've got a fiduciary  
10 responsibility to Puget Energy, for example, and then  
11 they will also have a fiduciary responsibility to the  
12 LLC. Is there a conflict there if there is  
13 negotiation among those two entities?

14 You know, we are trying to make sure that  
15 nothing on the LLC side bleeds over so that ratepayers  
16 are picking up costs that are not properly assigned to  
17 them. We want to make sure that the ratepayers are  
18 getting the best deal for any -- anything, any prices  
19 that are the subject of these negotiations. And, you  
20 know, we could look to Staff, we could look to Public  
21 Counsel to be a form of checks and balances on that,  
22 but don't there need to be some checks and balances  
23 inherent in the system before Staff and Public Counsel  
24 get involved?

25 MR. KUZMA: I believe in this

1       circumstance we are abiding by all affiliated  
2       transaction rules and requirements. I would submit  
3       that this is no different than any of the other  
4       affiliated interests that might exist, that the  
5       Commission already regulates, whether that be on the  
6       telecom or energy side. I know, for example, Pacific  
7       Power & Light has a host of affiliates that have  
8       perhaps similar arrangements. Also Cascade Natural  
9       Gas and MDU.

10               We are not operating necessarily within --  
11       this is unique to Puget. Puget currently does not  
12       have any affiliates with which it does these types of  
13       transactions. It currently only has Puget Western,  
14       and that's more of a real estate holding company for  
15       real estate that is no longer used for utility  
16       service.

17               So this is a bit unique for Puget, but it's  
18       not something that is totally unique within the  
19       industry. And we are seeking to get counsel from  
20       those that deal with these comfortably and -- and  
21       adequately to make sure that the protections are  
22       there, because quite frankly, negotiating a contract  
23       that is not something that can be approved by the  
24       Commission, is not in either PSE's or Puget LNG's  
25       interests.

1                   CHAIRMAN DANNER: Right. And the  
2 reason -- the reason that you have 020 is simply to  
3 deal with these situations where a company has to -- a  
4 company has to deal with itself, essentially, in the  
5 way it has got these things structured, and so we  
6 become the third party.

7                   MR. KUZMA: Effectively. That's how I  
8 would view it, yes.

9                   CHAIRMAN DANNER: Any other comment on  
10 this among the folks at the table?

11                   Okay.

12                   COMMISSIONER JONES: I have a question  
13 for Mr. Garratt. This is more of a quick clarifying  
14 question.

15                   Could you turn to Attachment C of the full  
16 settlement stipulation. It's the one dealing with  
17 fixed operating costs. I think you are familiar with  
18 this.

19                   Now, Judge, is -- all of Attachment C, is  
20 this -- is there any confidential information in here  
21 by line item, or is this all public?

22                   MR. KUZMA: This is public.

23                   COMMISSIONER JONES: Okay.

24                   So, Mr. Garratt, you have stated on the record  
25 that you will have no staff at LNG, only two board

1 members from LNG, but yet there is a staff line item  
2 here for \$3.157 billion per year, in what is called  
3 fixed operating costs, so what is that?

4 By the way, what do you mean by "fixed," as  
5 opposed to variable?

6 When I think of operations and maintenance, I  
7 usually think it's a combination of fixed and  
8 variable, but this is all labeled fixed, and why is  
9 that?

10 MR. GARRATT: So to take the second  
11 question first, we really wanted to delineate the  
12 fixed operating costs because there are certainly  
13 variable operating costs associated with this  
14 facility. The advantage of the variable operating  
15 costs are that they are directly attributable to one  
16 side or the other. And one of the best examples of a  
17 variable operating cost of this facility is the  
18 electricity consumption, because the primary consumer  
19 of electricity of this facility is the compressor  
20 that's used in the liquefaction process, so you can  
21 very much add that cost to whichever side the gas is  
22 designated for.

23 In terms of these costs themselves, these  
24 costs really relate to the plant staff. There is a  
25 certain number of employees located at this plant. We

1 are showing that for a typical year this is the total  
2 cost of that staff that would be located at the plant.

3 COMMISSIONER JONES: Okay. So this  
4 would be the total cost for staff for all the cost  
5 allocators, liquefaction, vaporization, bunkering,  
6 truck loading, everything, right?

7 What's the projected number of staff that you  
8 have in 2020? Do you have an idea of that?

9 MR. GARRATT: Yeah, I believe it's 16 or  
10 17.

11 COMMISSIONER JONES: Okay.

12 Thanks. That's all I have on that.

13 CHAIRMAN DANNER: So just so I  
14 understand, I mean the 3,157,852 that's in  
15 Attachment C, those are the costs, but you are --  
16 basically, you are going to be allocating Puget Energy  
17 employees to this project and that's -- so you don't  
18 necessarily have dedicated employees, but that money  
19 is assigned to what you anticipate will be the costs  
20 of Puget employees who are moving over to -- to do  
21 work that would be of value to the LLC?

22 MR. GARRATT: Yes, so PSE employees. At  
23 the moment we are envisioning that these would be PSE  
24 employees.

25 CHAIRMAN DANNER: PSE employees, yeah.

1 MR. GARRATT: We haven't made -- I guess  
2 I just would add that we haven't made a final  
3 determination about that. It could be that -- just as  
4 we use contractors for some of our power plants, it  
5 could be that some of the employees are contractors.

6 CHAIRMAN DANNER: Thank you.

7 (Pause in the proceedings.)

8 JUDGE MOSS: All right. We do have  
9 sufficiently more -- sufficient additional questions  
10 that it would be appropriate for us to take a lunch  
11 break and then resume. Given the limited resources in  
12 our community on the west side here, we usually give  
13 90 minutes for lunch. We can do that again today. We  
14 will come back at 1:30.

15 Let's be off the record.

16 (Lunch recess.)

17 JUDGE MOSS: Let's be back on the  
18 record, please.

19 Welcome back, everybody, after what I hope was  
20 a pleasant lunch break for you. We have some more  
21 questions from the Commissioners for you.

22 I'm not sure who is going up next.

23 Commissioner Jones.

24 COMMISSIONER JONES: Okay. This is  
25 Commissioner Jones. I have some questions on the

1 capital structures. These are finance-related  
2 questions on the capital structure and the financing  
3 of this.

4 You may want to refer to Paragraph 27,  
5 Mr. Kuzma and Mr. Garratt. These questions are  
6 primarily directed at the Company.

7 Paragraph 27 describes a process, a three-part  
8 or four-part process in which PSE will assign its  
9 ownership shares with the components of Tacoma LNG to  
10 Puget LNG and describes payments. So I guess my  
11 question is, can you, at a higher level, just describe  
12 how these payments are going to be made, both for  
13 common capital costs and the projected capital  
14 expenditures? Let's start there.

15 Mr. Garratt, why don't you -- and I am going  
16 to ask, probably, you to walk me through this as -- as  
17 we go forward.

18 MR. GARRATT: Okay. So as I see the way  
19 this would play out is once Puget LNG was created,  
20 then this process would begin to occur. And I think  
21 currently we have spent roughly \$20 million on this  
22 development. We have about \$20 million that would be  
23 capitalized towards this project. And so --

24 COMMISSIONER JONES: Now, be careful.  
25 "We" meaning PSE?

1 MR. GARRATT: Well, it's all on the  
2 books of PSE at the moment because --

3 COMMISSIONER JONES: Okay.

4 MR. GARRATT: -- Puget LNG does not  
5 yet --

6 COMMISSIONER JONES: Correct.

7 MR. GARRATT: -- exist.

8 So once Puget LNG exists, then this process  
9 would occur with respect to all of the spending that  
10 has occurred in the past. And so at that point, part  
11 of the ownership would sit on the books of PSE and the  
12 remainder would sit on the books of Puget LNG. And  
13 then going forward, as invoices came in, they would be  
14 allocated. And so on a going-forward basis this would  
15 occur any -- anytime and every time an invoice was  
16 paid for anything related to the project.

17 COMMISSIONER JONES: Okay. Let's get to  
18 Part 3 there, and you may want to refer to  
19 Attachment D. This is the way I am looking at it. I  
20 am trying to square up Attachment D, the ownership  
21 shares, with this provision of the payment. So (iii)  
22 says, Puget LNG shall pay PSE an amount equal to, and  
23 there are two components of this payment, (a) PSE's  
24 total capital expenditures for the Tacoma LNG as of  
25 the transfer date.



1           So if you refer to Attachment D -- now, I  
2 realize this will be on the transfer date, which could  
3 be in the spring of 2017, but according to -- I want  
4 you to do the math here. Attachment D, the projected  
5 cap ex, capital expenditures, allocated to PSE are  
6 about 133.7 million, right?

7           MR. GARRATT: Yes.

8           COMMISSIONER JONES: So does that 133.7  
9 match what you understand A to be there, in that  
10 calculation of the payment?

11          MR. GARRATT: Yes.

12          COMMISSIONER JONES: And what is (b),  
13 then, "Puget LNG's projected common capital costs  
14 allocation of fifty-seven percent"? Would that be, on  
15 Attachment D, that far right column, 41.5 million?

16          MR. GARRATT: Yeah, I believe so. I  
17 think where this gets a little complicated is that  
18 these ownership allocations are formulaic with --

19          COMMISSIONER JONES: Right.

20          MR. GARRATT: And then specifically with  
21 the pieces that are categorized as being common, being  
22 calculated as the weighted average of the -- of the  
23 categories up above.

24          COMMISSIONER JONES: Right, I know that.  
25 But if you could just accept hypothetically, or your

1 best understanding of the payment that's going to be  
2 made to PSE from LNG on that date, if you just add  
3 those two numbers together it's \$174 million. So is  
4 that accurate?

5 MR. KUZMA: Which numbers?

6 MR. GARRATT: Where are you getting the  
7 174?

8 COMMISSIONER JONES: I am adding  
9 133 million, which is projected cap ex to PSE. If you  
10 go from the --

11 MR. GARRATT: The 133,669?

12 COMMISSIONER JONES: Uh-huh. And I'm  
13 adding that -- I'm adding that, not subtracting that,  
14 with the language in Paragraph 27 that says, "Puget  
15 LNG's projected common capital costs allocation of  
16 fifty-seven percent."

17 MR. KUZMA: No, I think there is a  
18 misunderstanding. What is going on in 27 (iii)(a)  
19 here is, as of the transfer date, which might be, as  
20 you mentioned, February, for example, of next year,  
21 Mr. Garratt said there's 20 million currently on PSE's  
22 books. So what the capital payment, pursuant to this  
23 paragraph, would be, would be that \$20 million, so the  
24 capital expenditures as of the transfer date  
25 multiplied by the 57 percent.

1                   COMMISSIONER JONES: So Paragraph 27  
2 just applies to all the costs incurred to date for  
3 permitting, legal, et cetera, et cetera. You are  
4 going to capitalize those, and this describes the way  
5 that those payments are going to be allocated?

6                   MR. KUZMA: Well, Puget LNG will make a  
7 payment, if it remains 20 million of 57 percent,  
8 11.4 million, to PSE to compensate for the 57 percent  
9 share.

10                  COMMISSIONER JONES: Okay.

11                  MR. KUZMA: And then on an ongoing basis  
12 it would be making its contributions pursuant to the  
13 capital allocations that you identified in  
14 Attachment D.

15                  COMMISSIONER JONES: Okay. Thank you  
16 for the clarification. I think I am beginning to  
17 understand it a little bit better. Not totally.

18                  Mr. Kuzma, this is more for you. How is PE  
19 going to fund this overall program? The total  
20 projected capital costs, as you know, are 310 million,  
21 PSE's share 133, Puget LNG's share 177.

22                  MR. KUZMA: Puget Energy will be making  
23 a contribution to Puget LNG to capitalize it for, in  
24 the event of -- as of the transfer date. If it's  
25 11.4 million, it will make the 11.4 million. And then

1 on an ongoing basis, when the construction costs are  
2 due, it will make further contributions to Puget LNG,  
3 so Puget LNG can pay its share of the construction  
4 costs.

5 COMMISSIONER JONES: So it will be done  
6 as construction proceeds of the total facility for  
7 liquefaction, storage, bunkering, by these functions  
8 as -- as the engineering is done, as the board is  
9 approved -- as the board of members approves them,  
10 then PE will inject debt, or my next question is debt  
11 or equity, or is it just cash?

12 MR. KUZMA: It will be cash into Puget  
13 LNG from Puget Energy. So Puget Energy could raise  
14 the cash either through retained earnings, the  
15 dividends that come up through PSE that it retains,  
16 rather than paying up through the ownership stream.  
17 Also, PE has over \$1 billion of utilized debt at this  
18 time that it could use to --

19 COMMISSIONER JONES: Say that again?

20 MR. KUZMA: Has over \$1 billion in  
21 unutilized debt at this time.

22 COMMISSIONER JONES: PE does?

23 MR. KUZMA: Yes.

24 And PSE has a similar amount, so PSE would be  
25 financing it in its accustomed form and pursuant to

1 the capital structure approved by the Commission.

2 COMMISSIONER JONES: So the intention of  
3 the board right now, or of the management, is to  
4 finance this primarily with debt of --

5 MR. KUZMA: No. No, that's not correct.

6 COMMISSIONER JONES: Okay.

7 MR. KUZMA: That's not correct. It  
8 would be, I believe -- I mean Mr. Garratt might know  
9 more details about this. I think it was going to be  
10 40 percent equity, 60 percent debt at the PSE LNG  
11 side.

12 COMMISSIONER JONES: Yeah, I was going  
13 to ask that next. What is it going to be, equity and  
14 debt?

15 MR. GARRATT: So that is correct. Puget  
16 LNG, the intention is for that to be 40/60,  
17 equity/debt, and that is consistent with the capital  
18 structure of Puget Energy.

19 COMMISSIONER JONES: Yes. That was my  
20 next question. I took a look at the -- this is  
21 irritating, but it's good to have people listening in.

22 The latest June 30th, 2016 10-Q, according to  
23 that, the total debt of PE is roughly 60 percent,  
24 equity is 40 percent. So that's the intention, to  
25 finance LNG in a similar way?

1 MR. GARRATT: That's correct.

2 COMMISSIONER JONES: Mr. Garratt, do you  
3 happen to know the capital structure of PSE at the  
4 moment?

5 MR. GARRATT: The precise structure, I  
6 believe it's typically around 48/52.

7 COMMISSIONER JONES: Okay.

8 So my questions are -- again, pursuant to the  
9 merger order, we do not -- we do not have  
10 responsibility over the leverage of the holding  
11 company, but we do have responsibility for the  
12 leverage at the PSE level, so I think the Commission  
13 takes these questions seriously.

14 I personally want to know how much leverage is  
15 going to be used at the holding company level to  
16 finance this unusual corporate structure, because it  
17 is first of a kind, I think, so that's why I am asking  
18 these questions.

19 Mr. Garratt, do you happen to know how this  
20 special -- this is called a special purpose entity,  
21 correct, or an SPE?

22 MR. GARRATT: Yes.

23 COMMISSIONER JONES: And it's formed as  
24 an LLC under the laws of the state of Washington,  
25 right?

1 MR. GARRATT: Yes.

2 COMMISSIONER JONES: Okay.

3 So in my brief review of -- of the FASB rules  
4 on this, this type of activity for the PSE financials,  
5 there -- there would -- or at least under the Puget  
6 Energy, this would be consolidated under the PE  
7 financials --

8 MR. GARRATT: Yes.

9 COMMISSIONER JONES: -- under its 10-Q.  
10 And they would have to list out the nature, purpose,  
11 size, and activities of this SPE, this special purpose  
12 entity, the carrying amount and classification of the  
13 consolidated assets, and C, the lack of recourse if  
14 creditors or beneficial interest holders of a  
15 consolidated -- of some sort of debt are available to  
16 have recourse on the primary beneficiary.

17 So my questions are how -- how is this going  
18 to appear on the balance sheet? Is that a correct  
19 understanding of how the SPE is going to appear on the  
20 balance sheet of Puget Energy?

21 MR. GARRATT: Certainly to the best of  
22 my knowledge it is. I am not a CPA and so that is not  
23 my area of expertise. I would certainly anticipate  
24 that it would be rolled up to PE.

25 COMMISSIONER JONES: And then how would

1 the Commission Staff follow this? I -- I down -- I  
2 looked at the latest commission basis report for the  
3 end of December. As soon as expenditures are made on  
4 this plant, on the PSE side, would it be classified  
5 under plant in service common, under -- you know, just  
6 like other gas plants that -- that you have on your  
7 books?

8 MR. GARRATT: I believe it gets  
9 classified initially as construction work in progress,  
10 and then it stays at that level until it goes into  
11 service.

12 COMMISSIONER JONES: Mr. Gomez, you are  
13 nodding your head. Is that your understanding, too?  
14 Is this something you have discussed -- well, you  
15 can't tell me what you have discussed in mediation, of  
16 course, but is this something you have -- you have  
17 looked at?

18 MR. GOMEZ: Yes, Commissioner Jones. We  
19 agree with the Company, that the -- that the capital  
20 will go into construction work-in-process. And then  
21 as the construction is completed and we are ready to  
22 bring it into a prudence review, then that's when --  
23 when the actual asset will move into service, and all  
24 costs will be known and measurable at that point, and  
25 we would transition it out actual rate base.



1                   COMMISSIONER JONES: Mr. Gomez, if I  
2 could follow up on that. One of the concerns of  
3 special purpose entities over the last decade or so is  
4 that they not -- they don't necessarily show up  
5 properly on the balance sheet. These were for  
6 primarily financial companies, but special purpose  
7 entities, if they are not included under either  
8 GAAP -- usually GAAP accounting, that it's difficult  
9 to track them, and to track the leverage and the  
10 potential liabilities associated with SPEs, special  
11 purpose entities.

12                   So the fact that this is going to be carried  
13 on the PE balance sheet, which you don't regulate,  
14 which we don't regulate at the Commission level, does  
15 that cause you any concern about how to track it,  
16 about how they are booking the costs and things like  
17 that?

18                   MR. GOMEZ: No, Commissioner. We  
19 haven't, or at least I don't see an issue with that.  
20 Any kind of exposure that the Company has relative to  
21 that, we solely focus then on the capital structure as  
22 it affects the utility. With that regards, we're kind  
23 of -- whatever risks or whatever the Company has taken  
24 on the nonregulated side, we're not necessarily  
25 concerned about how that would necessarily affect

1 Puget LNG's capital structure. We are concerned about  
2 the capital structure of the utility, and to that  
3 extent we feel comfortable that we remain fully  
4 insulated.

5 COMMISSIONER JONES: So if you look at  
6 Attachment D, Mr. Gomez, the projected capital  
7 expenditures allocated to PSE, which is what we  
8 regulate, and then you heard Mr. Kuzma's response on  
9 the debt facility, so the fact that they are going to  
10 be pulling perhaps \$133 million in additional debt  
11 over the next three or four years to finance this with  
12 no equity, it's just going to be debt, does that cause  
13 you any concern?

14 MR. KUZMA: If I may, I never stated  
15 that we would be doing that. We said that it would  
16 be -- PSE would be funding this according to the  
17 48/52 percent capital structure that we mentioned  
18 earlier. For the 177 million for Puget LNG,  
19 Mr. Garratt said 40 percent would be equity and  
20 60 percent would be debt.

21 COMMISSIONER JONES: Okay.

22 MR. GOMEZ: Right. So that's -- Staff's  
23 understanding is that from the projected capital  
24 expenditures that are allocated to PSE with regards to  
25 the capital structure, that we would evaluate what the

1 return on our equity would be, is based on -- on what  
2 we have always done with the utility with regards to  
3 not taking into account anything that's not associated  
4 with the regulated service, or provision regulated  
5 service.

6 So the 133 million, in terms of  
7 capitalization, its recognition into rate base  
8 relative to rates, all of that will -- will work the  
9 same way it has in the past, utilizing the  
10 Commission-approved rates, capital structure, with  
11 regards to calculating the return on rate base.

12 COMMISSIONER JONES: Mr. Kuzma, you said  
13 earlier that there was a \$1 billion facility  
14 unutilized with PSE.

15 MR. KUZMA: Yes, that's correct. There  
16 is a \$1 billion unutilized facility that we would be  
17 using to finance approximately 60 percent of \$180  
18 million worth of debt. So, you know, if we are  
19 looking at around \$100 million worth of debt being  
20 taken out to finance the Puget LNG portion, the  
21 remainder of approximately 75 -- 7 million would be  
22 equity.

23 COMMISSIONER JONES: That's on the PE  
24 side or the PSE side?

25 MR. KUZMA: That's the PE side.

1                   COMMISSIONER JONES:   What about the PSE  
2   side?

3                   MR. KUZMA:   PSE would be self-financing  
4   the entire facility through retained earnings and the  
5   debt it has.  It also has around a billion dollars of  
6   unused debt facilities, so the 133 million, it will be  
7   48 percent or so debt -- I'm sorry, 48 percent equity  
8   and 52 percent debt.

9                   COMMISSIONER JONES:  And that equity  
10   could be a combination of either retained earnings or  
11   perhaps an equity infusion from PE into PSE?

12                  MR. KUZMA:  Most likely, given the sizes  
13   we are looking at here, it would be retained earnings,  
14   because this is a construction process over several  
15   years.

16                  COMMISSIONER JONES:  Okay.  Thanks.

17                  Those are all my questions on the capital  
18   structure.  Thank you.

19                  COMMISSIONER RENDAHL:  Thank you.  Just  
20   one little bit of follow-up on that for Mr. Garratt  
21   and Mr. Gomez.

22                  On those credit facilities -- actually, if you  
23   would look at -- I think this is for Mr. Gomez.  If  
24   you look at Page 27 of the joint testimony, I think  
25   this is your testimony, Mr. Gomez, on the paragraph

1 that begins on Line 14. In terms of the very last  
2 sentence about PSE and Puget Energy guaranteeing the  
3 ratepayers will not be asked to assume the costs of  
4 any capital write-offs or losses, et cetera,  
5 et cetera.

6 So will -- will there be any -- in terms of  
7 relationship between Puget LNG and PSE, in addition to  
8 the joint ownership agreement, are there going to be  
9 any performance bonds or warranties or any other  
10 instruments in place that you are aware of relating to  
11 the liabilities?

12 MR. GOMEZ: None that I'm aware of, but  
13 Mr. Garratt, if there are some, would know.

14 MR. GARRATT: I don't believe there's  
15 any other agreements per se, but part of what we have  
16 promised is that Puget Energy would guarantee the  
17 obligations of Puget LNG.

18 COMMISSIONER RENDAHL: Okay.

19 MR. GARRATT: So I think that it  
20 provides additional assurance here that PSE would not  
21 be, you know, standing in for those kinds of things.

22 COMMISSIONER RENDAHL: Okay.

23 So Paragraph 3 of the settlement talks about  
24 the hold harmless provisions for liabilities and  
25 financial losses of any of the nonregulated activity

1 of the LNG facility, correct?

2 And I guess that could be for Mr. Garratt  
3 first.

4 So Paragraph 3 of the -- of the -- or  
5 section -- I guess it's Paragraph 11. Paragraph 11 is  
6 No. 3 under the ring-fencing agreement. Do you see  
7 that?

8 MR. GARRATT: Yes.

9 COMMISSIONER RENDAHL: Okay.

10 And then Appendix B to the settlement says  
11 that PSE is going to operate the plant, right? They  
12 are going to provide the operations and maintenance  
13 under a contract is my understanding.

14 MR. GARRATT: Yes.

15 COMMISSIONER RENDAHL: So this raises  
16 some questions to me about this relationship between  
17 PSE and PSE -- or Puget LNG and this hold harmless  
18 provision. So if PSE is going to be operating this  
19 plant and PSE's customers are being held harmless only  
20 for liabilities on the unregulated side, if PSE is  
21 operating this and they are operating the unregulated  
22 activity portion of this plant and something goes  
23 wrong, can't someone who is damaged, who has damages,  
24 go after PSE for being the operator of the plant?

25 MR. GARRATT: Certainly a third party

1       could go after PSE. This is getting to ultimately who  
2       would be liable.

3                   COMMISSIONER RENDAHL: Correct.

4                   MR. GARRATT: It doesn't really matter  
5       if a court awarded that amount to that third party.  
6       Ultimately it would be Puget LNG that would be  
7       responsible for indemnifying PSE in the scenario that  
8       you described.

9                   COMMISSIONER RENDAHL: So there will  
10      be -- along with these hold harmless provisions, there  
11      will be indemnification provisions in the joint  
12      ownership agreement making very clear that hold  
13      harmless between the two entities?

14                  MR. GARRATT: Yes.

15                  COMMISSIONER RENDAHL: Okay.

16                  MR. KUZMA: And if the Bench would like,  
17      Paragraph 16 addresses that issue, where it  
18      essentially states that each party will, regardless of  
19      joint and several liability or ownership -- operator  
20      liability, each party would bear its ownership share  
21      of that. And then in the case you mentioned, if it  
22      was a liability resulting from a fueling service, then  
23      that would be something that would be exclusively for  
24      Puget LNG, and therefore would be -- bear the full  
25      cost of that, even though PSE may be the first point

1 of contact, as far as, you know, a third party  
2 might -- might be.

3 COMMISSIONER RENDAHL: So that would be  
4 even if PSE's employees were negligent, even between  
5 the two parties, Puget LNG and Puget Energy?

6 MR. KUZMA: Yes.

7 CHAIRMAN DANNER: So basically your  
8 focus -- that's the proviso in Paragraph 16 that  
9 you're looking at?

10 MR. KUZMA: Yes, for -- with respect  
11 to --

12 CHAIRMAN DANNER: To the extent that any  
13 loss or damages caused by actions performed  
14 exclusively for -- for Puget LNG or exclusively for  
15 PSE, then the owner on whose behalf the actions were  
16 exclusively performed will be fully responsible --

17 MR. KUZMA: Correct.

18 CHAIRMAN DANNER: -- for the loss or  
19 damage?

20 MR. KUZMA: Correct.

21 COMMISSIONER RENDAHL: So what about the  
22 shared responsibilities?

23 MR. KUZMA: Well, if it were negligence,  
24 for example, as you mentioned, with respect to  
25 operations that caused some, you know, third party



1       harm, then if it was resulting from the -- the  
2       vaporizer, for example, that would be 100 percent PSE,  
3       the liquefier would be 90 percent. I mean it would --  
4       it would follow along the ownership shares. We split  
5       up all liabilities according to the ownership share.

6                   CHAIRMAN DANNER: Are there any  
7       ownership components that are not listed in that table  
8       on Paragraph 26?

9                   MR. KUZMA: Yes. Common -- I'm glad you  
10      mentioned that. Common is not listed. There's a  
11      paragraph following it. The ownership shares are  
12      affixed and -- but the capital dollars, given that  
13      this isn't -- the plant isn't constructed yet, are  
14      not. As a result, we agreed in this provision that  
15      there would be -- the weighted average cost of all of  
16      the components would be the ownership share. If the  
17      plant comes out exactly on budget it would be almost  
18      roughly exactly 43/57. 43 percent for PSE, 57 for  
19      Puget LNG. Now, we know there might be underruns or  
20      overruns, depending upon different components, so that  
21      might vary. But it's just a mathematical formula to  
22      determine that common cost allocator. But that's the  
23      only one that's not listed.

24                   COMMISSIONER RENDAHL: Okay. Thank you.

25                   And then just one other question -- actually,

1 two. So is there going to be -- actually, no, you  
2 have answered that question.

3 On insurance. So Paragraph 17 of the  
4 settlement refers to Puget LNG having -- or Puget  
5 Energy will adequately insure the nonregulated  
6 activity, but it is silent as to PSE, which I assume  
7 means that PSE will adequately insure, as that is in  
8 quotes, the regulated activities. And maybe,  
9 Mr. Garratt, you can just -- you can explain that a  
10 little bit more fully for our record.

11 MR. GARRATT: Sure. So, yes, you are  
12 correct, this does only address the Puget LNG side of  
13 it, because I think all the parties understood, it was  
14 a basic assumption that PSE would carry insurance for  
15 this facility. The point of this in the settlement  
16 was to make sure that Puget Energy was carrying an  
17 adequate level of insurance.

18 I guess I might add that given a tenancy in  
19 common ownership structure, then each owner carries  
20 their own -- typically carries their own insurance  
21 policies.

22 COMMISSIONER RENDAHL: Okay. Thank you.

23 MR. ROBERSON: Commissioner Rendahl,  
24 from Staff's perspective, Puget Energy and its  
25 affiliates, Puget Sound Energy is an affiliate of

1 Puget Sound Energy [sic], so we -- Staff believes  
2 Paragraph 17 applies to both LNG and to PSE.

3 COMMISSIONER RENDAHL: So does that  
4 mean, then, that Puget Sound Energy is insuring the  
5 nonregulated activities of Tacoma LNG?

6 MR. ROBERSON: No, but it would carry  
7 insurance.

8 COMMISSIONER RENDAHL: Okay.

9 CHAIRMAN DANNER: Are we pretty much  
10 done with that topic?

11 COMMISSIONER RENDAHL: Unless you have  
12 more.

13 CHAIRMAN DANNER: Well, I have a few  
14 other questions.

15 I don't know if we -- have we -- so far we  
16 have talked about the credit facilities. PSE has been  
17 financing this project, so far as I see it, and I am  
18 wondering about the benefits that would flow to PSE  
19 customers for the use of PSE capital to underwrite the  
20 LNG's costs. Where does that figure in, just  
21 basically the cost of money?

22 MR. GARRATT: I would say that it would  
23 be figured in in this initial settlement once Puget  
24 LNG is formed because the roughly \$20 million that has  
25 been spent includes AFUDC. AFUDC is really the cost

1 of capital. And then, again, from that point on, each  
2 owner is carrying its own weight going forward.

3 CHAIRMAN DANNER: Okay. So once again,  
4 we are not asking the ratepayers to pick this up?

5 MR. GARRATT: Right. Yeah. This is  
6 very much trying to keep things very distinct and  
7 separate.

8 CHAIRMAN DANNER: Okay. Thank you.

9 My last question. If the LNG, LLC is sold to  
10 a third party, would the Commission have any role  
11 in -- maybe this is a Mr. Kuzma question, but would  
12 the Commission have any role in approving or reviewing  
13 that transfer?

14 MR. KUZMA: The answer would be no.  
15 This is not a jurisdictional entity, so the sale of  
16 that would not be. That being said, there may be some  
17 transactions between it and PSE that remain. There  
18 might be some Commission approvals with respect to the  
19 operating agreement, for example, or the ownership  
20 agreement, but there would be no need to have  
21 Commission approval upon the sale.

22 CHAIRMAN DANNER: And the reason I ask  
23 that is just the tenancy in common portion of it.  
24 Again, is it -- is it something that can be separated?  
25 Can these two entities be separated? And I guess

1       there would be a non-consolidation opinion at that  
2       point.

3                   MR. KUZMA:  No.  The only components  
4       that could -- the only components that -- the only  
5       components that aren't part of the whole are the  
6       vaporizer, which PSE needs, and the marine bunkering  
7       that Puget LNG needs.  And so any entity would want to  
8       maintain the tenants in -- tenancy in common because  
9       it would not benefit from having just the marine  
10      bunkering, for example.

11                   CHAIRMAN DANNER:  Okay.

12                   JUDGE MOSS:  I have a few clarifying  
13      questions.  I believe these are going to be largely  
14      for you, Mr. Gomez.

15                   If you want to go ahead and finish your  
16      conversation with Mr. Garratt, that's fine.

17                   MR. GOMEZ:  No, I was just making sure  
18      that my understanding of something was --

19                   JUDGE MOSS:  That's fine.

20                   MR. GOMEZ:  -- consistent with the way I  
21      wrote it.

22                   JUDGE MOSS:  I'm not trying to be funny,  
23      I just wanted to make sure.

24                   So I am looking at Page 24 of the joint  
25      testimony, and a couple of points on this page.  At

1 Lines 4 and 5 you talk about liability and sharing the  
2 cost of the facility with an unregulated affiliate.  
3 PSE and its customers you say could save tens of  
4 millions of dollars. And then further down the page,  
5 at Line 18, you say a shared peaking facility appears  
6 to be cost effective, using again sort of conditional  
7 language there.

8 But then you go on to identify and explain  
9 more fully your reference earlier to tens of millions  
10 of dollars in savings, representing a range of  
11 possible savings for the project dependent on  
12 different assumptions. And having read through the  
13 consultant's report, I gather that is an artifact in  
14 part of the different assumptions that are made and  
15 the -- assumptions of cost of acquiring additional  
16 pipeline capacity relative to the cost to the facility  
17 itself.

18 So can you just give me a rough sense of what  
19 that range is? Is it like 5 to 10 or 50 to 100? What  
20 are we talking about?

21 MR. GOMEZ: Yes, Your Honor. In looking  
22 at it, there is Appendix D to -- I want Appendix D to  
23 the consultant's report.

24 JUDGE MOSS: Okay.

25 MR. GOMEZ: Maybe that's something

1 that's not available, or it is. Appendix D.

2 Well, in any event -- I will wait and see  
3 if --

4 MR. KUZMA: It will be, I believe,  
5 Page 258 of JWC-2C.

6 JUDGE MOSS: Exactly the page I had in  
7 mind.

8 COMMISSIONER JONES: Which page,  
9 Mr. Kuzma? 258?

10 MR. KUZMA: Page 258.

11 COMMISSIONER JONES: Okay.

12 MR. KUZMA: And just to be clear, the  
13 only things that are confidential on this page are the  
14 cents per dekatherm that are in the boxes.

15 MR. GOMEZ: Are you there --

16 JUDGE MOSS: I'm there.

17 MR. GOMEZ: -- Your Honor?

18 JUDGE MOSS: I'm there.

19 MR. GOMEZ: Okay.

20 When I look at it -- when we look at  
21 Appendix D we see that there is a full range of  
22 possibilities, and there is a range of possibilities  
23 if you look at it from a net present value perspective  
24 or if you look at it from an incremental standpoint.

25 So if you look at the columns, the first two

1 columns, just as you get to the right of the scenarios  
2 that are listed, you will see the different  
3 incremental cost benefits associated with the facility  
4 and the range that's being shown. We are including in  
5 the range what the Company actually filed. And so  
6 when you look at that particular range, you can see  
7 that it varies significantly, anywhere between what  
8 the Company originally filed, which was a benefit of  
9 249 million, to something -- depending on the scenario  
10 you looked at, could be -- 37 million would be the  
11 benefit.

12 So the benefit in terms of -- of how much and  
13 exactly is -- is not as important as -- as the fact  
14 that it is a benefit, and it is a benefit that is  
15 recognized, the one that's -- confirms that the Tacoma  
16 LNG facility, when compared to -- to a pipeline and  
17 the cost of a pipeline alternative, is least cost.

18 So one of the things that the Commission had  
19 articulated in Order 04 was the question, posing the  
20 rhetorical question, is this facility least cost when  
21 compared to other alternatives. And so Staff -- the  
22 terminology that Staff used, tens of millions, was  
23 to -- to ensure that there is no precise number but  
24 there is a benefit, and from a perspective of least  
25 cost, the development of a facility meets that --



1 meets that threshold requirement, at least from  
2 Staff's perspective, to proceed.

3 And Staff also looked at, in the Commission --  
4 the consultant's report also looked at a stand-alone  
5 peak facility located in a different location, other  
6 than -- and that was not least cost when compared to  
7 other alternatives.

8 Again, the chart that we have here shows the  
9 full range of scenarios that were examined as a result  
10 of the consultant's report and as a result of Staff's  
11 examination, and we confirmed that the plant is least  
12 cost, at least from -- from -- when compared to  
13 another alternative.

14 JUDGE MOSS: That is relative to either  
15 the pipeline expansion alternative or the stand-alone  
16 facility alternative?

17 MR. GOMEZ: That's correct, Your Honor.

18 JUDGE MOSS: Okay.

19 MR. GOMEZ: I may add also that there  
20 was some discussion about the diverted gas benefit.  
21 And if you look at Scenario No. 13, the diverted gas  
22 benefit was examined by Staff, which is the difference  
23 between a cost allocator for storage of 61 percent  
24 versus the position that we are at now, which is  
25 79 percent.

1           The diverted gas benefit, as Mr. Garratt had  
2 articulated, is the fact that we get to take advantage  
3 of gas that was on its way to be liquified and doesn't  
4 get liquified, and gets injected directly into the  
5 system, which provides, based on the analysis that we  
6 have, a significant advantage, around \$30-some million  
7 of benefit to ratepayers.

8           Again, all of these benefits are dependent on  
9 final costs and other numbers at the end we will  
10 examine during prudence. But for the perspective --  
11 in fact, we are looking at a range of estimates. The  
12 estimates appear to show, and Staff is convinced that  
13 the Tacoma LNG facility, or at least the peaker  
14 portion of it, is least cost for ratepayers to secure  
15 a peaking storage resource.

16           JUDGE MOSS: All right. Thank you.

17           That's one of the questions there. And I  
18 think you have answered my second one, too, which is  
19 having to do with the certainty of the cost estimates.  
20 Clearly they represent a range, based on a range of  
21 assumptions.

22           The last thing you say in the sentence that  
23 begins on Page 24 at Line 18, the carryover there, is  
24 that one of the factors considered in this analysis is  
25 the degree to which Puget LNG is successful in

1 marketing the remaining unsubscribed balance of the  
2 Tacoma LNG facility, and I did not understand why that  
3 matters.

4 MR. GOMEZ: It certainly -- when we  
5 looked at the different scenarios -- I'm going to look  
6 at the scenarios 11 and 12. You look at it and see  
7 the effect. And we do the sensitivity analysis, and  
8 we wanted to see -- in -- in part because of some of  
9 the costs that we can't get away from. And if you  
10 looked at Attachment C, some of these fixed operating  
11 costs that would normally -- because if there was no  
12 subscription, then there has -- based on the  
13 settlement stipulation -- yeah, there is some  
14 massaging of numbers, and so we wanted to have an  
15 additional sensitivity to look at different  
16 subscription rates.

17 And so the effect of the savings or the  
18 benefit -- we still see benefit, regardless of what  
19 happens on the unregulated side, and if TOTE is the  
20 only customer -- now, certainly that's the reason why  
21 Staff has reserved a statement there, is it is  
22 certainly to say the more customers that could be  
23 subscribed, up to 100 percent, could affect some of  
24 the operational -- or some of these additional costs  
25 that were listed in Attachment C, which would then of

1 course improve, you know, the cost to ratepayers.

2 JUDGE MOSS: As I understand it,  
3 operating costs shift to PSE only if Puget LNG goes  
4 out of business; is that right?

5 Are you telling me that depending on how  
6 business is on the Puget LNG side, that affects the  
7 PSE --

8 MR. GOMEZ: I stand --

9 JUDGE MOSS: -- operating costs?

10 MR. GOMEZ: I'm incorrect. That's  
11 incorrect, Your Honor. I think that I misstated that.

12 I guess what I am trying to say is that the  
13 subscription does have an effect with regards to what  
14 the facility's costs are. My understanding is it's  
15 based on costs, that we would absorb more or less of,  
16 depending on the degree to which -- I guess I'm not  
17 talking about this right.

18 JUDGE MOSS: Let me try it this way.

19 MR. GOMEZ: Okay.

20 JUDGE MOSS: Assuming there are variable  
21 costs associated with operating, those by definition  
22 would vary with the use of the plant. So if the plant  
23 is underutilized, those costs would presumably be  
24 lower, but the allocation of those costs, as long as  
25 Puget LNG remained in existence, would remain the same

1 proportionately.

2 MR. GOMEZ: I believe that's correct.  
3 I'm going to check with Mr. Garratt here.

4 MR. GARRATT: I would just say with  
5 variable costs, though, they by definition go away.  
6 So again, if you -- if you take something that's a  
7 variable cost, power consumption, if -- if you make it  
8 less LNG, then they just directly vary. So from a PSE  
9 perspective, those costs don't go up regardless of  
10 what happens on the Puget LNG side.

11 And then I think in terms of fixed costs, this  
12 scenario was trying to look at a worst-case scenario.  
13 I think your presumption is also correct, that as long  
14 as Puget LNG is in business, the allocation should be  
15 more or less the same. There may be a little bit of  
16 noise, depending on if you do more maintenance on the  
17 storage versus on the liquefaction, but I think  
18 generally speaking it would -- it would tend to be  
19 more noise in the economics than really a driving  
20 force.

21 JUDGE MOSS: Okay. I think I understand  
22 it now. Thank you.

23 Looking over at Page 26 of the testimony,  
24 there is a sentence beginning, toward the bottom of  
25 the page there, Line 20, If PSE decides to pursue the

1 Tacoma LNG facility project, Commission Staff and  
2 other settling parties want nonregulated operations to  
3 be isolated from PSE's regulated operations as soon as  
4 possible.

5 And my question was, isolated from one another  
6 in what sense?

7 MR. GOMEZ: When we are referring  
8 to that is the -- for the ownership shares and for the  
9 formation of Puget LNG, for the accounting to begin as  
10 soon as possible, as the -- now the -- the bulk of the  
11 spending of the project will occur. And we feel it's  
12 the easiest way to recognize those differences between  
13 regulated and unregulated, as the construction goes,  
14 rather than do it after the fact.

15 JUDGE MOSS: So it's a financial  
16 concept?

17 MR. GOMEZ: Yes, Your Honor.

18 JUDGE MOSS: Okay. That's what I was a  
19 little bit confused about.

20 Just a couple more. Bear with me.

21 Getting over to Page 30, at Line 22, the  
22 testimony reads, Neither Commission Staff nor any  
23 other settling party can precisely predict exact  
24 peaking usage patterns or LNG fuel sales several years  
25 into the future.

1           The question that prompted in my mind was who  
2 has priority in the event there is a conflict in these  
3 patterns?

4           MR. GOMEZ: It's Staff's understanding  
5 that the peaker portion of it will have priority by  
6 its own nature. Now, the contractual obligations  
7 associated with TOTE, my understanding -- our  
8 understanding is that there is some flexibility with  
9 being able to meet the requirements of TOTE if in the  
10 event peaker needs become the priority for the system.

11           Now, the limiting factor, of course, is the  
12 vaporization, how much gas can physically leave the  
13 plant. So to that extent the Company has contemplated  
14 in its operations to be able to meet 100 percent of  
15 the load that the plant can deliver and be able to do  
16 so when called upon. So to that extent, Commission  
17 Staff is satisfied that the -- that the requirements  
18 for peaking for this plant will be met. And in the  
19 event, for some unforeseeable reason, it can't be, the  
20 Company does have some flexibility with -- on its  
21 unregulated side to be able to satisfy its  
22 requirements contractually and still be able to  
23 deliver peak gas to ratepayers.

24           CHAIRMAN DANNER: That prioritization  
25 would extend, so if there are other subscribers

1       besides TOTE, then that would apply to all of them, so  
2       the peaking would be the priority?

3                   MR. GOMEZ:   Yes.

4                   JUDGE MOSS:   And I think the answer to  
5       my next question is one you probably have already  
6       given.  This is stating a similar concept a different  
7       way.  At the bottom of this Page 31 you say, beginning  
8       at Line 19, Commission Staff supports ring-fencing as  
9       much of the nonregulated risk and cost as  
10      expeditiously as possible (before construction).

11                  So my marginal question there actually was,  
12      this suggests the timing of the ring-fencing  
13      provisions is uncertain, but I gather, in light of  
14      your earlier answer, it was simply recognizing that  
15      you want everything to be in place as soon as  
16      possible, as approvals go forward and what have you.

17                  MR. GOMEZ:   Yes, Your Honor.  And the  
18      statement there includes the time frame that we have  
19      contemplated in this process.  There is no -- no -- we  
20      are not asking for anything different.

21                  JUDGE MOSS:   That's what I thought after  
22      listening to your earlier answer.

23                  Now, there is a concept discussed at the top  
24      of Page 32, beginning at Line 2, and it's explaining  
25      Section III, capital A, Arabic 6, Notice to the



1 Commission. This section of the settlement agreement  
2 requires PSE to notify the Commission of a potential  
3 sale as soon as practicable because Puget Energy could  
4 sell Puget LNG to another operator. And Mr. Kuzma was  
5 just discussing the fact that we would have no  
6 regulatory authority over PSE -- Puget LNG's decision  
7 to do that.

8 My question to you is, would the Commission  
9 have any opportunity to -- or are the parties  
10 obligating themselves to give notice to the Commission  
11 before any such thing occurred, and would there be  
12 some consulting with the Commission before that  
13 happened? It's an event that could be profoundly  
14 significant, it seems to me, to PSE as well, so that's  
15 my question.

16 MR. GOMEZ: I highlighted this section  
17 as we were talking about that, Your Honor. The joint  
18 ownership agreement, at least the way it's been  
19 presented to us, will show that there will be a  
20 commitment to notify the Commission in the event that  
21 there is a transfer. Furthermore, the restrictions  
22 that we agreed to would be that the condition of any  
23 sale to any transferee, that PSE require them to  
24 assume the obligations of the joint ownership  
25 agreement, and then to also be able to demonstrate

1 separately to the Commission their financial  
2 capability to continue to own and operate their  
3 portion, the nonregulated portion of the Tacoma LNG  
4 facility.

5 It's absolutely critical that we can at least  
6 reserve the Commission's ability to come back and look  
7 at who this partner will be, in particular since the  
8 plant will be operated in conjunction with the  
9 utility, and that it will be an important asset for  
10 ratepayers in order to meet peak load.

11 So it's in the public interest that the  
12 Commission continue to retain and -- and why we have  
13 reserved that within the ownership agreement to have  
14 that right. I think it's important to include.

15 JUDGE MOSS: To put it simply, while we  
16 don't -- we would not -- "we" meaning the Commission  
17 would not have the authority and jurisdiction to  
18 approve it, we would nevertheless have an oversight  
19 capability with respect to any such transactions so  
20 that -- see to it that it's not sold to an Enron-type  
21 entity, for example.

22 MR. GOMEZ: That's correct. You know,  
23 we are confident that the Company and Puget Sound  
24 Energy, in contemplating whatever sale has -- has --  
25 it's in their interest, since they have to continue to

1 operate as the utility, PSE, do business with and  
2 still be in front of the Commission, that they sell it  
3 to the right partner.

4 And it's always been contemplated within the  
5 Company that there be -- perhaps in the future, and  
6 unknown to them, but that there be some interest from  
7 a -- from a third party to run that portion of the  
8 facility, to market, to get into that business. We  
9 can see where that would be -- perhaps could, in the  
10 right circumstances, even be a benefit.

11 JUDGE MOSS: Okay. Thank you very much.

12 CHAIRMAN DANNER: Just so I understand  
13 how that works in practice, a buyer comes forward, and  
14 we don't have the ability to say yes or no to the  
15 transfer, but the buyer -- let's say the buyer doesn't  
16 want to abide by all the ring-fencing provisions, yet  
17 the sale -- the sale is going forward and we can't  
18 stop it, then what is our recourse?

19 MR. GOMEZ: Well, I think -- and again,  
20 I think -- if I am thinking about this right, it would  
21 be that the Commission then certainly can only impute  
22 the costs that it would recognize as being reasonable  
23 for the provision of its portion, or the PSE utility  
24 portion of the plant, and then whatever is unrecovered  
25 or agreed to amongst PSE and its -- whoever decides to

1 buy the facility, those would become their costs and  
2 their problems, and they would have to absorb those  
3 costs and couldn't bring them before ratepayers.

4 Now, I think that -- that in itself, the fact  
5 that the Commission has the final word on what it is  
6 going to accept in rates and not accept in rates, and  
7 that it could continuously look at this plant from  
8 a -- you know, different costs that may be included,  
9 whether they are prudent or not, can -- the  
10 Commission's authority will extend in perpetuity as  
11 long as this continues to be a resource for  
12 ratepayers.

13 CHAIRMAN DANNER: All right. Thank you.

14 JUDGE MOSS: And, of course, Puget  
15 Energy has a continuing interest in PSE, as well as in  
16 Puget LNG.

17 MR. GOMEZ: Yes.

18 JUDGE MOSS: That would be a piece of  
19 this as well.

20 MR. GOMEZ: And the Company, by all its  
21 representations, is fully committed to this line of  
22 business. It's just reserving that right, that in the  
23 future part of its business may change and they may  
24 decide to do something different.

25 JUDGE MOSS: All right. Well, that

1 takes care of all of my clarifying questions. I  
2 appreciate that very much.

3 Are there any further questions from the  
4 Commissioners?

5 CHAIRMAN DANNER: Well, I would just  
6 like kind of a summation. I mean in your -- in your  
7 testimony, your joint testimony, each one of you  
8 concluded by saying that approval of this agreement is  
9 in the public interest. I would just like you to  
10 summarize very briefly, in your own words, why you  
11 think that this -- this project and this transaction  
12 is in the public interest.

13 MR. GARRATT: Well, first and foremost I  
14 would say it's in the public interest because we do  
15 have a need, "we," Puget Sound Energy has a need for  
16 additional peaking capacity resources and this is the  
17 least cost way of achieving that. And as Mr. Gomez  
18 referred, it's -- you know, we not only demonstrate  
19 that as compared to a pipeline alternative, but it's  
20 also the synergies that result from doing this as a  
21 dual use facility, so that we have the ability to  
22 pay -- to essentially buy a larger liquefier that the  
23 nonregulated piece of the project ends up paying  
24 90 percent of the cost for.

25 I guess the underlying part of that that may

1 be in some of my original testimony, is the cost of  
2 liquefaction, for example, is not linear. If you were  
3 to buy liquefaction of 10 percent, you would pay  
4 almost exactly the same amount that we are paying for  
5 this amount of liquefaction. It's that sort of  
6 synergy that's -- that's really driving this from a  
7 least cost perspective.

8 And then the -- I would say sort of beyond  
9 that is, in terms of, you know, what we are proposing  
10 here between PSE and Puget LNG, from the beginning  
11 it's always been about trying to have a very  
12 straightforward and transparent separation between  
13 these two entities so that we are capturing the costs  
14 on the regulated side, on the nonregulated side, and  
15 just making things as straightforward and simple as  
16 possible.

17 MR. GOMEZ: I would just echo the things  
18 that Mr. Garratt has already told you. I think that,  
19 as he had indicated, there is a need for a resource,  
20 and to the extent that there -- the resources that are  
21 available from the Company, the Company has presented  
22 those in their IRP. Through the process of this case  
23 we have gone and examined their analysis of least cost  
24 and we have now concurred that this is a resource  
25 that's the least cost. To that extent there is a

1 public interest associated with acquiring a resource  
2 that's needed for the future at the least cost.

3 So then there is also an investment, a  
4 significant investment that the Company is making  
5 in -- in a -- into the Port of Tacoma, an area that  
6 has contaminated facilities, and the Company, through  
7 the process of building this facility, is going to  
8 take and remediate a lot of the contamination on its  
9 site, which is part -- one of the benefits that we get  
10 out of this, along with the reduced emissions that are  
11 associated with the development of -- of LNG as a  
12 transportation fuel. And so there is some additional  
13 benefit, just than -- more than just least cost from a  
14 public interest standpoint.

15 There is -- also what we found out as a result  
16 of this case is there is a lot of uncertainty with  
17 regards to the development of pipeline capacity. And  
18 so to the extent that the Company can develop this, it  
19 insulates itself from a lot of these market forces  
20 that are outside of real LVC-driven type of capacity  
21 projects, and more around speculative, among other  
22 projects along the I-5 corridor with regards to LNG  
23 and other plants. So to that extent the Company is --  
24 is carving out something, that it can be a master of  
25 it's own destiny, it's not within the control of one

1 of the pipeline companies.

2 The other thing is, is that there is a synergy  
3 that's -- that's created with development of this  
4 facility, in terms of what the requirements are for  
5 peak use in that facility and what's required to serve  
6 TOTE. And so to the -- to the extent that those  
7 synergies reduce costs for all, you only have to look  
8 at what the costs would have been for a stand-alone  
9 plant. Much higher than what the repairs are going to  
10 be for this facility. So to the extent that we  
11 leverage these synergies, we, as ratepayers get an  
12 advantage.

13 So as far as I see there is a lot of public  
14 interest with the development of the facility. Again,  
15 going through this process to make sure that we have  
16 carved out and done the right analysis going forward,  
17 there is a common understanding of how the plant will  
18 be developed. I think in the end we will be able to  
19 actualize and realize these -- these very important  
20 benefits for repairs.

21 MS. COLAMONICI: Public Counsel believes  
22 that this is in the public interest because there are  
23 the inclusion of provisions guaranteeing that PSE  
24 ratepayers will be held harmless, also insulating PSE  
25 ratepayers from the risk of the unregulated activity



1 at the Tacoma LNG facility. Additionally, the  
2 requirements of adequate insurance for the unregulated  
3 activity at the facility, also containing user fees  
4 for the -- for Puget LNG and PSE portion of the  
5 activities of the facility, as well as affirming and  
6 continuing to apply the merger commitments. And  
7 finally, PSE agrees to notify the Commission if assets  
8 are sold or transferred, are all in the public  
9 interest according to Public Counsel.

10 JUDGE MOSS: Thank you.

11 MR. FINKLEA: Thank you, members of the  
12 Commission and Parties. There are several aspects to  
13 why this is, in our opinion, is in the public interest  
14 for you to approval.

15 Critical to our understanding of the entire  
16 transaction is that Puget ratepayers are being  
17 protected from the costs and liabilities associated  
18 with the LNG side of the house. So that was one of  
19 the first thresholds that had to be met in our minds.  
20 And then the broader question was, is this in the  
21 public interest to do? And we understand that there  
22 is no preapproval of the prudence of this investment  
23 here today, but we came to this proceeding with a  
24 commitment in our minds that if -- if the dual  
25 facility didn't look like a cost-effective way to meet

1 peak demand after 2019, that our organization  
2 shouldn't support a stipulation like this.

3 And we were the ones that suggested that we  
4 turn to a third party, because frankly it was, in our  
5 opinion, beyond the capability of the interveners and  
6 Staff to answer the essential question without the  
7 assistance of -- of technical experts. We think the  
8 Brown, Williams, Moorhead & Quinn firm did a  
9 tremendous job in leading us through that.

10 The reason we made this a priority as an  
11 organization, understanding that most of our members  
12 take transportation service and, you know, we are  
13 interrupted on interruptible [sic] days, so we could  
14 have taken a kind of laissez-faire approach to this  
15 whole proceeding, but we didn't want Puget to make a  
16 build/no build decision if it really pencils out to do  
17 this. So this is how we came to this.

18 We aren't signing onto this stipulation just  
19 because we reserve the right to challenge the prudence  
20 later. It's an odd situation because we are not  
21 saying this is a prudent investment, we will never  
22 have to look at it again.

23 This is where we came down. If this project  
24 can be developed and operated as planned and built to  
25 budget, this dual purpose LNG facility should be a win

1 for Puget's customers, and it should also be a win for  
2 the environment.

3 The ancillary benefit of reducing emissions,  
4 CO2 emissions, other air pollutant emissions, that  
5 doesn't escape our organization's radar screen either.  
6 We think that this is a very positive thing if it can  
7 be done.

8 So our support today is grounded on the deeper  
9 understanding that the parties gained regarding  
10 capacity alternatives from the work that was done by  
11 Brown & Williams. We conclude that if the project  
12 really can be built to budget, it should deliver a  
13 cost-effective way to meet a several-day peak demand  
14 event anytime after 2019, and all forecasts show that  
15 that is something Puget needs.

16 There is a couple aspects, and I think  
17 Mr. Gomez touched on these. There is a lot of  
18 uncertainty surrounding pipeline alternatives. This  
19 region may very well see a pipeline expansion sometime  
20 in the next five years. Who are the subscribers, what  
21 it costs, those are all big jump ball questions.

22 It isn't that there aren't alternatives out  
23 there. We, through the confidential process, got a  
24 look behind the curtain at what some of the  
25 alternatives could be. What I can tell you from that

1 deep dive is there is uncertainty surrounding all of  
2 those that are not associated with this project. This  
3 project's uncertainties have to do with whether it can  
4 be built to budget. If it can be it's -- by the  
5 numbers that Mr. Gomez gave you, it's a -- it's a win  
6 for Puget's customers, and it's a fairly substantial  
7 win, and in some situations it's a real big win.

8 Now, that all really depends on what the  
9 alternatives are. There's just that much uncertainty  
10 about what it really would cost to have a pipeline  
11 capacity expansion that Puget could participate in at  
12 this kind of level. The numbers are kind of all over  
13 the board, and they are all hundreds of millions of  
14 dollars, and all have environmental uncertainties  
15 around them as well.

16 Any pipeline alternative involves looping a  
17 system that's been in place since the late '50s. Yes,  
18 it's an existing right-of-way, but it's more pipe on  
19 an existing right-of-way, it's river crossings, it's  
20 stream crossings, all the issues, environmental issues  
21 that have to be addressed by pipeline projects. So  
22 there are large uncertainties if this project doesn't  
23 go forward.

24 So our conclusion was that if this project can  
25 be built to budget, that it's in the public interest

1 to do so, and it's in the ratepayers' interest  
2 particularly, the sales customers of Puget that need  
3 service on a cold winter day, it's in their interest  
4 that we go forward.

5 JUDGE MOSS: Thank you, Mr. Finklea.

6 All right. Well, I believe that will bring  
7 our inquiries today to a conclusion. I want to say  
8 that I know a great many long, hard hours and a lot of  
9 intellectual power went into getting us to where we  
10 are today.

11 I have been involved in this case at every  
12 step of the way from the beginning, and I have to say  
13 you all have done a good job of educating me and  
14 educating all of us in terms of this project and what  
15 it means. I think the Commission will be in a  
16 position to make a good decision here and hopefully we  
17 will be able to do that promptly and get an order out  
18 before too long. I will do my part in that  
19 connection.

20 I think the Chairman is going to have the  
21 final word here, but I would just like to say  
22 thank you all very much. Appreciate it.

23 CHAIRMAN DANNER: Well, I too want to  
24 say thank you all very much. And, Judge Moss, you  
25 will get the final word.

1           We are going to have a public hearing on  
2           Wednesday night to take comments from members of the  
3           public, and we also want to hear their views before we  
4           make any decisions going forward. I think that that  
5           is a very important step in the process. I just  
6           wanted to make sure that people understand that we are  
7           not done yet.

8           JUDGE MOSS: Anything further?

9           CHAIRMAN DANNER: Ms. Gafken?

10          MS. GAFKEN: I just wanted to inquire  
11          about the public comment exhibits. There have been,  
12          as you well know, a number of written comments that  
13          have been submitted. My office has also received a  
14          number of emails. I'm not sure if anything has come  
15          in via postal service, but certainly emails. I would  
16          propose next Friday as a due date for that public  
17          comment exhibit.

18          JUDGE MOSS: All right. Well, I have  
19          indicated that we would receive public comments until  
20          five o'clock, close of business, on the 20th.

21          MS. GAFKEN: Correct.

22          JUDGE MOSS: Which is Thursday. And so  
23          that would give you about a week. That should be time  
24          to compile it and submit it.

25          Why don't we go ahead and set the -- what is

1       that date, the 28th, the Friday you would want to  
2       submit it?

3                   MS. GAFKEN:    Sorry, I had the date  
4       earlier.  It's the 28th.

5                   JUDGE MOSS:    Yes, Friday the 28th is  
6       when we will be looking for that exhibit.

7                   MS. GAFKEN:    Thank you.

8                   JUDGE MOSS:    All right.  Thank you.

9                   Anything further from counsel or anybody else?

10                   All right.  Well, then, I guess I will have  
11       the final word and say we are off the record.

12                                   (Pceeding concluded 2:38 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF KING

I, Sherrilyn Smith, 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.

\_\_\_\_\_

SHERRILYN SMITH