

Page 154

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

Page 155

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 liquefied 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

Page 156

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

Page 157

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.

Page 158

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

Page 159

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

Page 160

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

Page 161

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

Page 162

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

Page 163

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

Page 164

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

Page 165

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

Page 166

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

Page 167

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

Page 168

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

Page 169

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

Page 170

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

Page 171

1 worked very well together, so thank you.
 2 JUDGE MOSS: Thank you.
 3 Mr. Pepple, anything?
 4 MR. PEPPLER: 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.

Page 172

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.

Page 173

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.

Page 174

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.

Page 175

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

Page 176

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.

Page 177

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,

Page 178

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

Page 179

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

Page 180

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.

Page 181

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,

Page 182

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,

Page 183

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.)

Page 184

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

Page 185

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

Page 186

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.

Page 187

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

Page 188

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

Page 189

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

Page 190

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

Page 191

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

Page 192

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

Page 193

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?

Page 194

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

Page 195

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,

Page 196

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

Page 197

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

Page 198

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 --

Page 199

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

Page 200

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

Page 201

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.

Page 202

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 --

Page 203

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.

Page 204

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

Page 205

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

Page 206

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.

Page 207

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

Page 208

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

Page 209

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

Page 210

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

Page 211

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

Page 212

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

Page 213

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?

Page 214

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.

Page 215

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.

Page 216

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.

Page 217

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

Page 218

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

Page 219

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.

Page 220

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.

Page 221

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?

Page 222

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

Page 223

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

Page 224

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

Page 225

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

Page 226

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

Page 227

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

Page 228

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

Page 229

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

Page 230

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

Page 231

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

Page 232

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

Page 233

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.

Page 234

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

Page 235

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

Page 236

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

Page 237

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

Page 238

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

Page 239

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

Page 240

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

Page 241

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,

Page 242

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

Page 243

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?

Page 244

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,

Page 245

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

Page 246

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

Page 247

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.

Page 248

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

Page 249

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

Page 250

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.

Page 251

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

Page 252

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?

Page 253

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.

Page 254

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

Page 255

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.

Page 256

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

Page 257

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

Page 258

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?

Page 259

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?

Page 260

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

Page 261

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.

Page 262

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

Page 263

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

Page 264

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.

Page 265

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

Page 266

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

Page 267

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

Page 268

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

Page 269

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

Page 270

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,

Page 271

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

Page 272

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

Page 273

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

Page 274

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

Page 275

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

Page 276

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

Page 277

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 --

Page 278

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.

Page 279

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

Page 280

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

Page 281

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

Page 282

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

Page 283

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.

Page 284

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

Page 285

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

Page 286

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

Page 287

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

Page 288

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

Page 289

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

Page 290

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

Page 291

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

Page 292

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

Page 293

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

Page 294

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

Page 295

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

Page 296

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

Page 297

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

Page 298

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.

Page 299

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

Page 300

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 (Proceeding concluded 2:38 p.m.)
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 301

1 C E R T I F I C A T E
 2
 3 STATE OF WASHINGTON
 4 COUNTY OF KING
 5
 6 I, Sherrilyn Smith, a Certified
 7 Shorthand Reporter in and for the State of Washington,
 8 do hereby certify that the foregoing transcript is
 9 true and accurate to the best of my knowledge, skill
 10 and ability.
 11
 12
 13
 14
 15
 16
 17 _____
 18 SHERRILYN SMITH
 19
 20
 21
 22
 23
 24
 25