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19 NORTHWEST INDUSTRIAL GAS USERS, by EDWARD A.
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23 224-3092.

24 SEATTLE STEAM COMPANY, by ELAINE L. SPENCER,
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(via bridge), Associate Counsel, Department of the
Navy, 1220 Pacific Highway, San Diego, California
92132; telephone, (619) 532-4018.

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1 THE KROGER COMPANY, by KURT J. BOEHM (via
2 bridge), Attorney at Law, Boehm, Kurtz & Lowry, 36 East
3 Seventh Street, Suite 1510, Cincinnati, Ohio 45202;
4 telephone, (513) 421-2255.

5 NUCOR STEEL SEATTLE, INC., by DAMON
6 XENOPOULOS and SHAUN MOHLER (via bridge), Attorneys at
7 Law, Brickfield, Burchette, Ritts & Stone, 1025 Thomas
8 Jefferson Street Northwest, Eighth Floor, West Tower,
9 Washington DC 20007; telephone, (202) 342-0800.

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

2 JUDGE MOSS: Good afternoon. My name is
3 Dennis Moss. I'm an administrative law judge with the
4 Washington Utilities and Transportation Commission
5 presiding this afternoon in the first prehearing
6 conference in several dockets, actually. We have
7 before us today the Washington Utilities and
8 Transportation Commission against Puget Sound Energy,
9 Dockets UE-072300 and UG-072301. This is a general
10 rate case filing by Puget Sound Energy. The Commission
11 has suspended the filing and set the matter for
12 hearing.

13 Our other proceeding is styled, In the matter
14 of the joint application of Puget Holdings, LLC, and
15 Puget Sound Energy, Inc., for an order authorizing
16 proposed transaction, Docket U-072375, and this is a
17 docket concerning a proposed acquisition of Puget Sound
18 Energy or Puget Energy, Inc., by an investment group.

19 Our first order of business will be to take
20 the appearances of counsel and other representatives
21 who may be present who have requested an opportunity to
22 intervene in the proceeding, so we will start with the
23 Company and proceed around the room starting on my
24 left.

25 MS. CARSON: I'm Sheree Strom Carson. I'm

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1 representing Puget Sound Energy and also Puget
2 Holdings. My address is 10885 Northeast Fourth Street,
3 Suite 700, Bellevue, Washington, 98004. My phone is
4 (425) 635-1400; fax, (425) 635-2400, and my e-mail
5 address is scarson@perkinscoie.com. Also with me is my
6 co-counsel, Jason Kuzma, who will also give his
7 appearance; Tom DeBoer, director of rates and
8 regulatory affairs, is also here, and there are members
9 of the investor consortium who are also attending on
10 the phone.

11 JUDGE MOSS: Thank you.

12 MR. KUZMA: Jason Kuzma, also with Perkins
13 Coie, also representing Puget Sound Energy and Puget
14 Holdings, LLC. Same contact information as Ms. Carson
15 with the sole exception of my e-mail, which is
16 jkuzma@perkinscoie.com.

17 MR. BROOKHYSER: Donald Brookhyser for the
18 Cogeneration Coalition of Washington. The court
19 reporter has my contact information, if that's
20 sufficient for the record.

21 JUDGE MOSS: We do need you to read the
22 information into the record.

23 MR. BROOKHYSER: My address is Suite 1750,
24 1300 Southwest Fifth Avenue, Portland, Oregon; phone
25 number, (503) 402-8702. E-mail address is

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1 deb@a-klaw.com.

2 JUDGE MOSS: I should have mentioned this is
3 a joint prehearing conference. We have a motion to
4 consolidate, which I'll take up in a minute, but in the
5 meantime, the reason I raise this now, Mr. Brookhyser,
6 is I believe you are intervening on behalf of the
7 Cogeneration Coalition only in the merger docket?

8 MR. BROOKHYSER: That's correct.

9 MS. SPENCER: Elaine Spencer on behalf of
10 Seattle Steam intervening in the general rate case. My
11 contact information is Graham and Dunn, Pier 70, 2801
12 Alaskan Way, Suite 300, Seattle, Washington,
13 98121-1128. My phone number is (206) 340-9638. My
14 e-mail address is espencer@grahamdunn.com.

15 JUDGE MOSS: Let's jump over here to
16 Ms. Davison.

17 MS. DAVISON: Good afternoon. My name is
18 Melinda Davison, and I am intervening on behalf of the
19 Industrial Customers of Northwest Utilities in the
20 merger proceeding. I'll start with that first, and
21 also with me is Andrew Harris, and we are with Davison
22 Van Cleve, 333 Southwest Taylor, Suite 400, Portland,
23 Oregon, 97204. Phone is (503) 241-7242. Fax is (503)
24 241-8160, and e-mail is mjd@dvclaw.com.

25 For the general rate case, it will be the

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1 same firm, the same contact information, except that
2 will be Brad Van Cleve and Irion Sanger, and the e-mail
3 address for them is bvc@dvclaw.com, and Irion Sanger's
4 is ias@dvclaw.com. Thank you.

5 JUDGE MOSS: Thank you. I believe you have a
6 general e-mail address at mail@dvclaw.com?

7 MS. DAVISON: Yes, that is correct.

8 JUDGE MOSS: Mr. Roseman, go ahead.

9 MR. ROSEMAN: My name is Ronald Roseman. I'm
10 representing The Energy Project. My address is Ronald
11 L. Roseman, attorney, 2011 14th Avenue East, Seattle,
12 Washington, 98112. My telephone number is (206)
13 324-8792. My fax number is (206) 568-4138. My e-mail
14 address is ronaldroseman@comcast.net. The Energy
15 Project is petitioning to intervene in both dockets.

16 JUDGE MOSS: Go ahead.

17 MS. EDMONDS: Sarah Edmonds, legal counsel
18 for PacifiCorp. My contact information is 825
19 Northeast Multnomah, Suite 1800, Portland, Oregon,
20 97232. Direct dial is (503) 813-6840. Fax is (503)
21 813-7252. E-mail is sarah.edmonds@pacificorp.com.
22 PacifiCorp is intervening in the merger proceeding
23 only, Your Honor.

24 MR. FINKLEA: My name is Ed Finklea. I
25 represent the Northwest Industrial Gas Users. We have

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1 filed petitions to intervene in the rate proceeding and
2 the merger. My contact information, I'm with the law
3 firm Cable, Huston at 1001 Southwest Fifth Avenue,
4 Suite 2000, Portland, Oregon, 97204. Phone is (503)
5 224-3092. Fax is (503) 224-3176. My e-mail address is
6 efinklea@cablehuston.com, and also appearing in this
7 proceeding with me will be Chad Stokes at the same
8 address, same phone numbers, and his e-mail address is
9 cstokes@cablehuston.com.

10 JUDGE MOSS: Is that a new e-mail for you?

11 MR. FINKLEA: You are correct, Your Honor.

12 We have a new e-mail carrier that caused us to change
13 from chbh to cablehuston.

14 JUDGE MOSS: Are there any other counsel
15 other than Public Counsel and Staff counsel in the
16 hearing room who wish to enter an appearance? I don't
17 see any, but I want to make sure. I'm going to go
18 ahead and take the appearances of Public Counsel and
19 Staff counsel, and then I will turn to those on the
20 bridge line.

21 MR. FFITCH: Good afternoon, Your Honor.
22 Simon ffitich, assistant attorney general with the
23 Public Counsel office. The address is 800 Fifth
24 Avenue, Suite 2000, Seattle, Washington, 98104-3188.
25 Phone number is (206) 389-2055. Fax is (206) 464-6451.

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1 E-mail is simonf@atg.wa.gov. Public Counsel is
2 appearing in both the sale and the rate case dockets,
3 Your Honor, and in addition, Attorney Sarah Shifley for
4 Public Counsel will also enter an appearance.

5 MS. SHIFLEY: Sarah Shifley for Public
6 Counsel. I have the same mailing address and fax as
7 Mr. ffitch. My direct phone number is area code (206)
8 464-6595, and my e-mail address is sarahs5@atg.wa.gov.

9 JUDGE MOSS: Mr. Trotter?

10 MR. TROTTER: Donald T. Trotter appearing for
11 Commission staff in the merger docket. My address is
12 1400 South Evergreen Park Drive Southwest, PO Box
13 40128, Olympia, Washington 98504-0128. The fax is
14 (360) 586-5522. The phone is (360) 664-1189. E-mail
15 is dtrotter@wutc.wa.gov.

16 MR. CEDARBAUM: My name is Robert Cedarbaum.
17 I'm an assistant attorney general appearing for
18 Commission staff in the rate case dockets. My street
19 address and fax is the same as Mr. Trotter's. My
20 e-mail is bcedarba@wutc.wa.gov. My direct-dial
21 telephone number is area code (360) 664-1188.

22 I would also like to enter the appearance of
23 co-counsel Jonathan Thompson, assistant attorney
24 general. Mr. Thompson is not here today, but his
25 street address and fax are the same as mine and

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1 Mr. Trotter's. His e-mail is jthompso@wutc.wa.gov, and
2 his direct dial is area code (360) 664-1225. He will
3 be appearing with me in the rate case proceedings.

4 JUDGE MOSS: Thank you. I want to turn now
5 to those of you on the telephone conference bridge
6 line, and since I know who most of you are, I'm going
7 to call you out by party name and you can enter your
8 appearance if you are present. Mr. Kurtz, Mr. Boehm,
9 someone present there for Kroger?

10 MR. BOEHM: Yes, Your Honor. This is Kurt
11 Boehm representing Kroger. Kroger is petitioning to
12 intervene in both dockets. My address is Boehm, Kurtz
13 and Lowry, 36 East Seventh Street, Suite 1510,
14 Cincinnati, Ohio 45202. My phone number is (513)
15 421-2255. Fax is (513) 421-2764. My e-mail is
16 kboehm@bkllawfirm.com, and Mr. Kurtz's e-mail is
17 mkurtz@bkllawfirm.com.

18 JUDGE MOSS: For Federal Executive Agencies,
19 I know Mr. Furuta is not going to be available today.
20 Is someone present for the Federal Agencies?

21 MR. JOHANSEN: Yes, Your Honor. My name is
22 Scott Johansen, and my contact information is associate
23 counsel, Department of the Navy, 1220 Pacific Highway,
24 San Diego, California 92132. Telephone is area code
25 (619) 532-4081. Fax is area code (619) 532-1663.

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1 E-mail is scott.johansen@navy.mil and Mr. Furuta's
2 contact information is associate counsel, Department of
3 the Navy, 1455 Market Street, Suite 1744, San
4 Francisco, California, 94103. Telephone is (415)
5 503-6994. Fax is (415) 503-6688. Mr. Furuta's e-mail
6 is norman.furuta@navy.mil.

7 JUDGE MOSS: Thank you very much. Ms. Dixon,
8 are you there for the Northwest Energy Coalition?

9 MS. DIXON: Yes, I am. This is Danielle
10 Dixon for the Northwest Energy Coalition. The address
11 is 811 First Avenue, Suite No. 305, Seattle,
12 Washington, 98104, and that is a new mailing address
13 for us. The phone number is (206) 621-0094. The fax
14 number is (206) 621-0097. My e-mail is
15 danielle@nwenergy.org, and we have petitioned to
16 intervene in the merger docket.

17 JUDGE MOSS: Does your petition to intervene
18 bear your updated address?

19 MS. DIXON: It should.

20 JUDGE MOSS: The only other petition to
21 intervene that I have for whom I have not heard an
22 appearance is the Washington and Northern Idaho
23 District Council of Laborers. Is there a
24 representative present? I do have counsel listed on
25 that motion. Apparently not.

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1 Let's take up petitions to intervene. I'll
2 just ask the Company if there are objections to any of
3 these petitions to intervene that we have prefiled.

4 MR. XENOPOULOS: Your Honor? I apologize for
5 interrupting. I would like to make an oral motion to
6 intervene, if that's acceptable.

7 JUDGE MOSS: What is your name?

8 MR. XENOPOULOS: My name is Damon Xenopoulos.
9 I'm appearing with co-counsel. I would like to make a
10 motion to intervene on behalf of Nucor Steel Seattle,
11 Inc., and appearing with co-counsel of my office, Shaun
12 Mohler. We are of the firm Brickfield, Burchette,
13 Ritts, and Stone. Our address is 1025 Thomas Jefferson
14 Street Northwest, Eighth Floor, West Tower, Washington,
15 DC, 20007. Telephone number is area code (202)
16 342-0800. Fax number is area code (202) 342-0807. My
17 e-mail address is dex@bbrslaw.com. Shaun Mohler's
18 e-mail address is scm@bbrslaw.com, and we are seeking
19 to intervene in the general rate case.

20 JUDGE MOSS: Why don't you go ahead and tell
21 us the basis for your petition to intervene.

22 MR. XENOPOULOS: Nucor Steel Seattle takes
23 metal gas transportation service from the Company, and
24 Nucor Steel Seattle is a large transportation customer
25 of the Company's, and it's potentially financially

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1 impacted by the outcome of this proceeding.

2 JUDGE MOSS: And now I will ask if there are
3 other oral petitioners to intervene before we go back
4 to the Company. Hearing none, now we are back to you,
5 Ms. Carson.

6 MS. CARSON: Judge Moss, Puget Sound Energy
7 and Puget Holdings do object to the motion to intervene
8 that is brought by the Washington and Northern Idaho
9 District Council of Laborers. It's not clear to the
10 company's, what their stake is in either the merger
11 case or the general rate case. There is very little
12 description of this given even in the motion to
13 intervene.

14 We do know it is a union group, but it does
15 not represent any employees of Puget Sound Energy. It
16 is my understanding that this group has sought to have
17 the company use representative employees for various
18 jobs, including flaggers and such. This does not seem
19 within the scope of what should be addressed either in
20 the general rate case or the merger proceeding, and
21 looking back to the last merger proceeding involving
22 Puget Sound Energy, Puget Power and Light, and
23 Washington Natural Gas, there was a motion to intervene
24 by the labor unions in that case, and that was limited
25 to issues of safety and adequacy of the merger plan to

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1 meet the needs of customers and issues regarding wages,
2 benefits, job protection. Union matters were not
3 allowed in that proceeding.

4 JUDGE MOSS: All right, and I believe we have
5 ascertained that the counsel for the Washington and
6 Northern Idaho Council of Laborers are not present
7 today? Well, I have reviewed the petition to intervene
8 by the Washington and Northern Idaho Council of
9 Laborers, and the stated interest in that petition is
10 that many of its members are ratepayers. Were counsel
11 present, I would ask if that's in the charter of the
12 union. I don't know that it is, but in any event, I
13 believe the interest of the ratepayers, particularly
14 those of residential ratepayers, who I'm assuming whose
15 interest is being asserted, is adequately represented,
16 I believe, by Public Counsel, who is going to enlighten
17 me in some fashion to this subject. Go ahead,
18 Mr. ffitch.

19 MR. FFITCH: We have no objection to the
20 petition to intervene by this organization. We believe
21 that it's in the interests of the Commission
22 proceedings to allow maximum possible intervention by
23 all interested groups.

24 If there is a concern about redundancy in
25 terms of presenting residential ratepayer positions, we

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1 would recommend that the Commission deal with that
2 through directing coordination between the parties and
3 so on, but we don't see the participation of this
4 particular organization would necessarily be burdensome
5 in terms of bringing in unnecessary issues based on
6 statement of interest or in terms of administrative
7 burden because I think we are certainly willing and
8 prepared to coordinate with all other consumer groups
9 in the proceeding, so we would urge that the petition
10 not be denied, Your Honor.

11 JUDGE MOSS: Mr. Cedarbaum?

12 MR. CEDARBAUM: The Staff also would echo the
13 Company's objection to this intervention, and more to
14 the point, I think Your Honor alluded to the reasons
15 why Staff objects, and that is as you noted on Page 2
16 of the intervention, it states that the petitioners'
17 interests in this proceeding flows from the fact that
18 it represents numerous individuals whose rates for gas
19 and electricity would be impacted.

20 We also believe that those interests are the
21 types of interests that Public Counsel represents and
22 that the intervention would burden the record. On the
23 other hand, they can coordinate their interests and
24 issues through Public Counsel and have them represented
25 without being given party status in the case. So we

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1 think that end can be achieved which adding another
2 party to this proceeding. That appears to be getting
3 complicated, so we would object.

4 JUDGE MOSS: Anything further? I think I've
5 heard all I need to hear. I think it's correct that in
6 general, the representation of individual consumer
7 ratepayer interests is well handled by the office of
8 Public Counsel, and people are free to contact the
9 Public Counsel and coordinate that representation
10 through that office.

11 Insofar as the stated interests of the union
12 in this case, it does not to me, on its face, at least,
13 appear to have anything to do with the union, per say.
14 As far as those interests go, we have had this come up
15 in previous cases of this type and have made the
16 observation in one fashion or another that while the
17 union certainly has interest in this type of thing,
18 those interests are best pursued in other forum in
19 other manners than through the regulatory process here
20 at this commission where our concerns are to consider
21 whether the merger is consistent with the public
22 interest, and so for those reasons, I will deny the
23 motion to intervene by the Washington and Northern
24 Council of Laborers. Is there any objection to any
25 other petition to intervene?

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1 MS. CARSON: Not by the Company.

2 JUDGE MOSS: Mr. Trotter?

3 MR. TROTTER: Staff will object to the
4 intervention of PacifiCorp. They are seeking a
5 full-party status. They indicate they tend to monitor
6 the docket, which if that was the limit, Staff would
7 not necessarily object, but they are reserving the
8 right to file testimony and participate as any other
9 party would.

10 The interest they state is an interest in
11 developing, quote, regulatory precedent related to
12 ownership structure, unquote, and Staff believes that
13 is not a substantial interest in the context of this
14 case and their participation will not serve the public
15 interest. As Your Honor is aware, PacifiCorp already
16 had a docket focused on that precise issue. That
17 docket was litigated and a Commission order was issued.
18 That's UE-051090. They had an opportunity to develop
19 regulatory precedent in that docket, and they can
20 litigate these types of issues again in another docket
21 with facts relevant to Pacific.

22 The Commission rarely allows interventions of
23 this sort. We refer Your Honor to UG-951415, Third
24 Supplemental Order, April 26th, 1996. In that case,
25 the Commission denies the intervention of Northwest

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1 Natural in the Cascade Natural Gas rate case.
2 Northwest Natural wanted to litigate policy issues on
3 rate design, cost allocations, and special treatment of
4 those revenues. The Commission denied intervention.

5 Pacific sites Docket UE-960195 in which
6 Avista was allowed intervention. That was an
7 extraordinary case. The Commission had already allowed
8 certain potential competitors of PSE to intervene in
9 that case on the issue of competition policy, and the
10 Commission specifically noted that under the Cole
11 Supreme Court decision, in Cole, those intervenors
12 would not necessarily be allowed in, but because of the
13 nature of the issue, they allowed them in, and it's not
14 explicitly stated in that order, but it's rather
15 apparent that Avista was allowed to intervene on the
16 same basis because they wanted to participate on that
17 issue. This isn't a case anywhere close to that case,
18 and on that basis, we are opposing the PacifiCorp
19 intervention.

20 JUDGE MOSS: Thank you. Ms. Edmonds?

21 MS. EDMONDS: As Mr. Trotter points out,
22 PacifiCorp has requested that it be allowed to monitor
23 and participate as necessary in this proceeding with
24 respect to issues surrounding ownership structure.
25 Specifically, PacifiCorp anticipates that ring fencing

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1 is likely to be an issue of interest in this
2 proceeding. As the Commission is aware and Mr. Trotter
3 has pointed out, in the acquisition of PacifiCorp by
4 Mid American Holdings Company, an extensive set of ring
5 fencing provisions were approved by this commission.

6 Because of potential similarities in
7 ownership structure between PacifiCorp and the
8 ownership structure contemplated in the proposed
9 transaction, PacifiCorp is certain that it has a direct
10 substantial interest in the outcome of these
11 proceedings insofar as PacifiCorp is interested in
12 protecting its interests with respect to this -- ring
13 fencing provides, but also to preserve its rights with
14 respect to future transactions should PacifiCorp or Mid
15 American ever seek to engage in one. Although the
16 Company has no plans to at this time, any precedent
17 surrounding ring fencing established in this case would
18 most certainly be applied to PacifiCorp and Mid
19 American, and as such, we feel our interests are direct
20 and substantial.

21 Furthermore, our interest is narrowly focused
22 on ring fencing issues, which could include, to the
23 extent they are brought up in this case, double
24 leverage or consolidated tax adjustments. PacifiCorp
25 is in a unique position to represent its own interests

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1 in this proceeding and no other party can adequately do
2 so. We believe that PacifiCorp's experience with ring
3 fencing may well serve to assist this Commission in
4 resolution of the issues touching upon ring fencing
5 and ask that Your Honor consider our petition for leave
6 to intervene on those grounds.

7 JUDGE MOSS: I had considered your petition
8 before coming in here today, and had Mr. Trotter not
9 objected, I would put to you the question in any event,
10 wouldn't it serve PacifiCorp's interest to simply
11 participate in this proceeding with the status of an
12 interested person, and we recognize the status of what
13 we call IP's, interested persons, who wish to monitor
14 without participation.

15 Full participation has a lot of implications,
16 including the fact that the Company would open itself
17 to discovery. I'm not sure you really want to go
18 there, and furthermore, I think the most important
19 point I wish to make is that the sorts of interests you
20 want to protect are not really at stake here. There is
21 nothing we are going to do in this proceeding that's
22 going to affect PacifiCorp in any direct way.

23 As far as precedent is concerned, if
24 PacifiCorp and the HC come here in the future with some
25 sort of transaction that would follow in this

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1 Commission's jurisdiction, it would be considered on
2 its own merits, and whether what we do here has any
3 applicability or not, certainly speculative at best in
4 the absence of any concrete proposal. So on those
5 bases, I'm disinclined to allow the petition and I will
6 deny it, but you can certainly participate on that
7 basis as an IP. We can put you on a formal list so
8 that you will be kept abreast of developments.

9 I also mention that we do have a very good
10 record, this commission, of keeping everyone informed
11 through our Web site about the progress of a case.
12 Everything that's filed in the case is posted the same
13 day, and you can follow it very, very closely. If at
14 some point in the future in the course of this
15 proceeding, something comes to light that would cause
16 you to want to renew your petition, you can do that,
17 and we will consider it on the merits at that time, but
18 sitting here today, I'm going to deny the motion.

19 MS. EDMONDS: So Your Honor is inclined to
20 grant interested party status?

21 JUDGE MOSS: Yes. Interested party is no
22 problem at all. Mr. ffitich?

23 MR. FFITCH: Might I request that the labor
24 union intervenor also be formally granted interested
25 person status?

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1 JUDGE MOSS: Sure. Ms. Carson, I take it
2 there is nothing further in the way of the Company's
3 interest in these petitions?

4 MS. CARSON: In the petitions to intervene,
5 that is correct.

6 JUDGE MOSS: Then I'm going to rule on the
7 rest of them collectively and grant them. Next matters
8 of business concern motions and -- Mr. Roseman?

9 MR. ROSEMAN: I just noted as you were
10 speaking, Judge Moss, that I heard everyone delineate
11 which cases they were participating in except for the
12 Department of the Federal Executive Agencies. You
13 might know the answer to that, but I don't.

14 JUDGE MOSS: I believe it's both dockets.

15 MR. JOHANSEN: Yes, that's the case.

16 JUDGE MOSS: Anything else before we move on
17 to motions and requests? The Commission previously
18 invoked discovery in the general rate case, as I
19 recall. I don't know if we've done anything along
20 those lines in the property transfer case. All of you
21 are familiar with our discovery rules, and I would
22 expect discovery to proceed in a accordance with those
23 rules in all of these dockets.

24 We have a protective order entered in the
25 general rate case on December 17th, 2007. Do we need a

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1 protective order in the property acquisition case?

2 MS. CARSON: Yes, Your Honor. We anticipate
3 that a protective order with highly confidential
4 provisions will be necessary in that case, and we ask
5 that the Commission use the standard protective order
6 with highly confidential provisions.

7 JUDGE MOSS: Would that be the one we just
8 entered in the general rate case, or that one was
9 modified at the last, as I recall.

10 MS. CARSON: It's my understanding that the
11 Commission has a more standard protective order with
12 highly confidential provisions that it has used in
13 other transaction dockets, and we would be comfortable
14 with that.

15 JUDGE MOSS: Mr. ffitch is going to help me
16 out. I believe you will recall that we have in prior
17 proceedings concerning Puget had a special order with
18 Puget each time. It's been a little different from
19 other companies, or is that wrong. We do have a
20 standard form, but we seem to have tweaked it from
21 proceeding to proceeding.

22 MR. FFITCH: I think you are correct, Your
23 Honor, but my assistance may peter out about the
24 specific details of earlier orders.

25 JUDGE MOSS: These are long and the

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1 differences are subtle, so what I propose we do is have
2 you all work among yourselves as you did in connection
3 with the general rate case and make sure everybody is
4 on board with the terms as there need to be some
5 tailoring to accommodate the needs of specific parties.
6 I'll encourage you to try to do that so we can have
7 this protective order in place at an early time without
8 controversy about its term. You all have been very
9 successful in the past about doing that, so if you can
10 accomplish that as quickly as this week, we can get
11 that order to cover that docket as well.

12 MS. CARSON: We can do that.

13 JUDGE MOSS: I have pending before me a PSE
14 motion to file supplemental testimony and exhibit
15 that's concerning some testimony and supplemental
16 testimony exhibit Garrett concerning the Sumas
17 acquisition. Is there any objection to that motion?
18 Hearing no objection, and I have looked at the matter,
19 I'm inclined to grant that motion, and so it is
20 granted.

21 The only remaining prefiled motion that I
22 have -- we have two. We have the Public Counsel motion
23 to adopt public hearing schedule. Mr. ffitch, I'm
24 going to put that off. I haven't had any opportunity
25 to discuss the matter of public comment hearings with

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1 the commissioners, which I customarily do before making
2 a determination on that based on their direction. So I
3 will have that conversation with them this week and we
4 will act on that probably by subsequent notice.

5 MR. FFITCH: Thank you, Your Honor. We
6 intended to bring that up in the scheduling portion of
7 the discussion, and Ms. Shifley is prepared to address
8 it if you have any questions.

9 JUDGE MOSS: I believe you have some proposed
10 date ranges, and I will take what you have given me to
11 the commissioners and see what they say.

12 MR. FFITCH: Yes. There may be one other
13 matter related to the Company notice that we will want
14 to bring up during the scheduling piece just to give
15 you a status report.

16 JUDGE MOSS: Yes, that's fine.

17 MS. CARSON: Judge Moss? Do we have the
18 opportunity now to address Public Counsel's motion on
19 public hearings?

20 JUDGE MOSS: You want to be heard on the
21 motion?

22 MS. CARSON: Yes, either now or in writing,
23 whichever you prefer.

24 JUDGE MOSS: How complicated is this going to
25 be?

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1 MS. CARSON: Not very complicated, Your
2 Honor.

3 JUDGE MOSS: Then I'll hear you now.

4 MS. CARSON: Public Counsel has requested
5 four different dates for public hearings. We think
6 that this is more than is necessary. The Company's
7 recommend two dates for public hearings and recommend
8 they be held one in the Bellevue or Woodinville area.
9 Woodinville is the area that Public Counsel
10 recommended, so somewhere in Bellevue, Woodinville,
11 that general vicinity, and the other in the South Sound
12 area, perhaps Olympia. We think that leaves sufficient
13 opportunity for the public, so we request it be limited
14 to those two settings.

15 JUDGE MOSS: Anybody else want to be heard on
16 that? Whatever you say I will convey to the
17 commissioners.

18 MS. SHIFLEY: I would like to respond by
19 drawing your attention to the reasons that we stated in
20 our motion for additional, or at least four public
21 hearings in this case. As you know, there has been
22 significant public attention to these cases, and I
23 think that the circumstances of both these cases do
24 warrant having additional public hearings and
25 opportunities for the public to have their questions

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1 asked and to address the Commission directly, so please
2 do take a look at the motion.

3 JUDGE MOSS: Thank you; I will certainly do
4 that. We have the final matter in this set, and this
5 is the joint Public Counsel and Staff motion to
6 consolidate. I have the motion and I have read that,
7 and of course I have the support that was filed by the
8 Northwest Industrial Gas Users, I believe, and then we
9 have the response to the joint motion from Puget Sound
10 Energy. Does anybody else wish to be heard on this?

11 Well, I think I found the papers quite
12 adequate in terms of the arguments that are made. I
13 don't feel the need to have any additional argument,
14 unless someone has a compelling desire to be heard on
15 this, and I have had an opportunity for some internal
16 discussion on this as well, and on the basis of the
17 motion, Commission's consideration of the motion, the
18 decision is that we will not consolidate these
19 proceedings. We will conduct these proceedings
20 separately.

21 As you all know, we are here today in joint
22 conference. I did, of course, defer the one prehearing
23 until today so we could have this conference jointly.
24 Regardless of whether we consolidate, there is a need
25 for us to have a coordinated process recognizing the

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1 resource constraints of all the parties and the
2 Commission, the fact that we are going to be processing
3 these two major dockets concurrently, and I know there
4 is a request from the Company to have an order in the
5 property transfer case by July 1, is that right? And
6 of course the suspension date in the rate proceeding
7 is, I believe, November 3rd?

8 MS. CARSON: That's correct.

9 JUDGE MOSS: So there is some overlap there
10 that has to be dealt with in dates and times, and I
11 have looked at my calendar a little bit, and it appears
12 to me a workable schedule can be achieved for both
13 dockets that will allow everybody to accomplish what
14 needs to be accomplished without undue burden.

15 With that in mind, the next matter on our
16 agenda today is the process and procedural schedules,
17 and now it's the process and schedules plural. You all
18 know everybody in this room. You've all participated
19 in these proceedings many times and you know what dates
20 we need. We need dates for response testimony,
21 rebuttal testimony, hearing dates. We will want to
22 have dates established for settlement discussions. You
23 will also want to consider in the context of discussing
24 this, and I'm going to go off the record here and let
25 you all discuss this among yourselves, in terms of

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1 discovery, it is often beneficial for you all to make
2 some agreements concerning discovery turnaround times
3 and that sort of thing. You may want to consider some
4 special process in terms of blackout periods or what
5 have you depending on other matters that you resolve in
6 working on that schedule. Let me ask if anybody has a
7 proposed schedule that they want to put forward today
8 in either or both cases.

9 MS. CARSON: Yes, Judge Moss. The Company
10 does have a proposed schedule for both cases. We have
11 sent it around to the parties; although it's possible
12 some of the recent intervenors have not received it,
13 but I have copies here.

14 JUDGE MOSS: Mr. Cedarbaum?

15 MR. CEDARBAUM: Over the past few days, there
16 have been schedules going back and forth amongst a
17 number of parties, and the Company did submit another
18 proposal just before the hearing today. I guess my
19 suggestion, if other parties agree, is that we take a
20 break, and perhaps the parties can just talk about this
21 issue rather than discussing it on the record.

22 JUDGE MOSS: Mr. Trotter, do you want to be
23 heard on this?

24 MR. TROTTER: Not on this, but just in
25 following up on your wish for a coordinated process, I

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1 was going to mention in the context of the protective
2 orders, the existing one in the general rate case and
3 typical orders only permit you to use the information
4 in that docket in that docket, so I was wondering if
5 there would be an objection to add the other docket so
6 in the protective order for the merger case, we would
7 be able to use the information in that docket in the
8 merger case and the general rate case and vice versa.
9 That will require you to amend the general rate case
10 one and to include that language in the other one. I
11 thought that might be paper saving and otherwise
12 promote the efficiency of the docket.

13 Then secondly, whether the parties could
14 generally agree that a data request issued in one
15 docket and the response would be used in either one so
16 you don't have to issue the same data request in both;
17 again, saving the paper copies and all the other
18 efforts and resources that would go around to avoid
19 duplication.

20 JUDGE MOSS: In the absence of some sort of
21 mechanism such as you suggest, Mr. Trotter, I can see
22 that there could be a considerable possibility of
23 duplicity of discovery, and I think everybody would
24 want to avoid that. I'm inclined to think that you all
25 will want to work together to achieve some sort of

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1 mechanism along the lines that Mr. Trotter has
2 described. If not, if you can't do that, then of
3 course there would be nothing to prevent the duplicity
4 of discovery being issued anyway, so I certainly
5 encourage you to do that, and if you can't work
6 something out and have to bring something to me to
7 resolve in that way by motion, I would certainly
8 entertain such a thing. It does make sense to me that
9 we not have unnecessary duplication in the production
10 of paper considering the volume we already have, and I
11 can anticipate it will get larger, so let's do try for
12 that.

13 MR. TROTTER: I think we can work on the data
14 request issue, but the protective order will require
15 some action on your part, and the Company would need to
16 be heard on that recommendation.

17 JUDGE MOSS: Sure, but what I'm suggesting is
18 that you all work together in terms of developing a
19 protective order for the property transfer case, and
20 then, of course, that may require some modification to
21 the order that we've already entered in the general
22 rate case, and if the Company wishes to be heard on the
23 suggestion, I certainly would entertain that.

24 MS. CARSON: We are happy to talk with the
25 other parties about this. I think in terms of the

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1 protective order, we wouldn't have a problem with that
2 being modified, but we can address it in more detail.

3 MR. TROTTER: We'll work on the language, but
4 I think it's just simply add the phrase -- it already
5 says, "except for purposes of this proceeding or the
6 docket." That may just do it, but we will certainly
7 work with counsel on it.

8 JUDGE MOSS: I will just put some paper
9 before me and see it's processed and signed and
10 entered. Mr. ffitich, did you want to be heard?

11 MR. FFITCH: This may be perhaps more
12 appropriate after we've had a chance to talk to other
13 counsel regarding proposed schedules, Your Honor, but I
14 will say that we have an initial concern with the
15 expedited schedule for the sale docket that's been
16 presented by the Company. The aspirational date, if
17 you will, of July 1st seems to us to be simply an
18 arbitrary date to try to move matters forward in an
19 unnecessarily high rate of speed that disadvantages,
20 essentially, every other party and the Commission in
21 the case. Particularly arbitrary given that the sale
22 parties' own agreement calls for kind of a drop-dead
23 date, if you will, on regulatory approvals of October
24 28th, 2008, with an almost automatic extension through
25 the end of April 2009, if the only thing left is the

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1 regulatory approvals of the -- that have been taken
2 care of.

3 In going to the scheduling discussions, we
4 are going to be looking for a reasonable and a fair
5 process rather than arbitrarily truncated process. The
6 Company has volitionally filed both of these dockets
7 together, and we think that it's inappropriate that
8 simply because of that procedural choice by the Company
9 that other parties and the Commission itself be forced
10 into untenable procedural choices, so we are going to
11 approach the scheduling discussions from that
12 perspective.

13 JUDGE MOSS: Ms. Carson, do you want to be
14 heard on the suggestion that you have proposed
15 something that's untenable?

16 MS. CARSON: Yes, thank you. What we have
17 proposed is a six-and-a-half-month time period from
18 initial filing until the aspirational date for the
19 final order. That's consistent with the other cases
20 that have been before the Commission recently where
21 there has a sale, approximately six to seven months, so
22 we don't think this is an untenable or unworkable
23 schedule. MDHC and PacifiCorp, both of them were on a
24 similar time frame.

25 We do think it's important to move this

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1 along. It's in the best interest of the companies,
2 best interest of the region and the customers if the
3 issues regarding ownership can be decided sooner rather
4 than later, so we do think that a July 1 date is
5 appropriate, and Mr. Markel addressed in his testimony
6 of the general rate case the issue of regulatory lag,
7 and it is very important for -- the Company didn't have
8 a lot of choices in terms of business terms that needed
9 to go ahead and file its general rate case as soon as
10 possible because of the regulatory lag it's facing and
11 the effect this has on the Company, so we think it's a
12 reasonable schedule and we ask that it be adopted.

13 JUDGE MOSS: I do have a question about the
14 importance of this date. Is the date selected because
15 it's consistent with what we accomplished in the two
16 prior cases you referred to, or is there some business
17 purpose? There is no issue of regulatory lag in a
18 property acquisition case like there might be in a rate
19 case. So tell me about that date and why it's
20 important.

21 MS. CARSON: It is important for the Company
22 and region to have the issue of ownership of the
23 company decided as soon as reasonably possible, and
24 this is consistent with what we've seen in the past.
25 All the other regulatory approvals, shareholders

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1 approvals should be obtained by that July 1 date, so
2 this would be the final approval needed in order to
3 finish the deal, to get this approval, and then we will
4 have to close on the transaction, of course, but this
5 should be the final approval needed. So it just
6 doesn't seem to make a lot of sense to stretch it out
7 and leave this uncertainty hanging over the Company and
8 the community if it can be resolved, and based on other
9 transactions, this is a reasonable time period.

10 JUDGE MOSS: As I recall, there is something
11 in the transaction documents concerning the anticipated
12 closing, and that's in the fall sometime, isn't it?

13 MS. CARSON: That's in October.

14 JUDGE MOSS: So presumably, you would need
15 final action by this commission some 30 days in advance
16 of that anticipated closing date to accomplish it as a
17 business?

18 MS. CARSON: Let me clarify. That's not the
19 anticipated closing date. That is the final date
20 unless an extension is necessary, so that is the
21 outside date anticipated by the parties.

22 JUDGE MOSS: Mr. Trotter?

23 MR. TROTTER: Just a couple of facts, Your
24 Honor. Counsel for the Company was talking about the
25 date those other dockets were resolved, but if you look

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1 at the prehearing conference order that set the
2 schedule, MDHC case was filed on July 15th with an
3 aspirational order date of February 28th, approximately
4 seven-and-a-half months later.

5 In the Cascade case, it was from the time of
6 filing to the time of briefs was seven months, and then
7 if you add a month for the order, that would get you to
8 eight months. So they are at six-and-a-half, which is
9 substantially less than the matter in which those other
10 cases were actually scheduled. Granted, those other
11 cases were resolved by settlement, but if you look at
12 the schedule, it was much longer than what they are
13 referring to.

14 Then finally in the Cascade case, at least,
15 the Company was able to file on the date they filed
16 their application their final proxy statement to
17 shareholders. We don't have that yet. We have a
18 preliminary proxy statement from PSE but not the final
19 one, so we don't even have the same documents in the
20 door that Cascade had when they filed their case. So
21 all those factors suggest that an order date by July 1
22 is extremely aggressive.

23 JUDGE MOSS: Mr. ffitch?

24 MR. FFITCH: Just briefly to respond to a
25 couple of points. First of all, another factual

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1 difference between this case and those other dockets
2 that were mentioned is the simultaneity of the general
3 rate case with the factor was not present in the same
4 way in the other dockets. Secondly, in terms of the
5 reasonableness of the proposal, why you don't have this
6 before you yet, I'll point out that the Company's
7 procedural schedule has us filing testimony in the
8 general rate case four days before the beginning of the
9 evidentiary hearing in the sale case, which I think is
10 patently unworkable and unreasonable.

11 So I think that's again the reason why we
12 think that this notion of a July 1st date is simply an
13 unnecessary difficulty that's being presented here, and
14 I think it's not a good starting place for us in terms
15 of working out a fair schedule in the case.

16 JUDGE MOSS: Before I offer a word of advice
17 and go off the record, does anyone else want to be
18 heard to inform the advice I'm going to give? The
19 advice I'm going to give is to the Company, and that is
20 to be flexible within the reasonable range of your
21 business needs in terms of this merger case. It is an
22 aggressive schedule. I did look at the prior
23 prehearing orders, and that schedule you proposed is as
24 tight as anything we've done. We do have a concurrent
25 general rate case, and in PacifiCorp, we had a similar

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1 situation; although, there was a built-in lag of a
2 couple of months there that facilitated scheduling.
3 We don't have that here. We only have two weeks lag
4 here between the filing dates of the two cases.

5 We do have to consider in terms of our
6 staff's participation and public counsel's
7 participation our statutory parties. The resources are
8 somewhat limited. We can't expect these parties to
9 file testimony and a few days later launch into a
10 full-blown evidentiary hearing in another proceeding.
11 I haven't seen these tentative schedules, but I'm just
12 basing my comments and my advice on what I'm hearing.

13 It requires flexibility all around, and I'm
14 sure Public Counsel and Staff will have to swallow hard
15 to accept some of the outcomes, but I want to encourage
16 the other parties and the Company in particular to be
17 accommodating in this way so that we can process all of
18 this stuff efficiently, and you may decide to do some
19 coordinated work in terms of discovery and settlement
20 conferences where you all want to come together and
21 have meetings. That would also create some
22 efficiencies in processing the two cases concurrently.

23 So with that, I don't think I need to say
24 anything further right now. I will either be in my
25 office downstairs or can be easily located by

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1 contacting Ms. Keck, so I'll give you all whatever time
2 you need and you come get me when you are ready and we
3 will try to wrap this thing up as quickly as we can.
4 We will be off the record.

5 (Recess.)

6 JUDGE MOSS: I'm informed that the parties
7 have had fruitful discussions during our period off the
8 record and have arrived at agreed procedural schedules
9 in both dockets. I'll read those into the record, and
10 you all will correct me if I make any errors.

11 As to the rate case, which is Dockets
12 UE-072300 and UG-072301, there will be issue discussion
13 and settlement conference on March 5th. Staff, Public
14 Counsel, and Intervenor response testimony and exhibits
15 will be due on May 23rd; the Company's rebuttal
16 testimony and any cross-answering testimony on June
17 20th; settlement conferences July 7th through 11 and
18 16th through 18th; evidentiary hearings August 25th
19 through 29th. Those dates appear to be clear on the
20 commissioners' calendars so I've booked those dates.

21 Simultaneous briefs on September 24th.
22 Parties hope to have an order by the 27th of October
23 with new rates in effect by the suspension date,
24 November the 3rd. The discovery turnaround time will
25 change from ten business days to seven business days at

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1 the time Staff, Public Counsel, and Intervenors file
2 their response cases, and the discovery turnaround will
3 change again once the Company files its rebuttal case
4 to a five-business-day turnaround.

5 As to the merger docket, Docket U-072375,
6 technical conference on April 27th. Staff, Public
7 Counsel, Intervenor response testimony and exhibits due
8 on June 18th; joint applicants' rebuttal case and any
9 cross-answering testimony, July 2nd. The settlement
10 conferences scheduled again concurrently with those in
11 the rate case, July 7th through 11th and July 16th
12 through 18th; evidentiary hearing scheduled 7/28
13 through 31; simultaneous briefing August 13th, and the
14 goal is to have an order by September the 2nd. Did I
15 get it right?

16 MS. CARSON: Yes. One thing we noticed is
17 the technical conference on April 27th, that date is a
18 Sunday.

19 JUDGE MOSS: Is that a problem?

20 MS. CARSON: I think it might be.

21 MR. TROTTER: 28th is fine.

22 MS. SHIFLEY: We've spoken with the Company,
23 and we were going to just request that we have a
24 deadline for the parties to report back to the
25 Commission or to the Bench about the content and format

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1 of the public notice, and we were hoping to actually
2 have a deadline put in there for us to report back that
3 would be two weeks from the prehearing order.

4 JUDGE MOSS: Everyone is in agreement on
5 that? Did you want that in the procedural schedule?

6 MS. SHIFLEY: Yes, please.

7 JUDGE MOSS: What is the filing to be?

8 MS. SHIFLEY: It would just be sort of a
9 status report to you that we have reached consensus on
10 the format and content of the public notice.

11 JUDGE MOSS: I failed to mention that the
12 discovery turnaround periods will be the same in the
13 merger case as previously discussed in the rate case,
14 and something else I failed to mention, and
15 unfortunately he's not here anymore, but Judge Adam
16 Torem will be copresiding with me in the rate
17 proceeding, and you may expect to see him at public
18 comment hearings and perhaps on the Bench in the
19 evidentiary hearing.

20 MS. CARSON: Could I just clarify one issue?
21 The Company's understanding on the settlement
22 conferences are those are not necessarily joint
23 settlement conferences. They may or may not be, but
24 we've scheduled a set time period for those in both
25 cases.

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1 JUDGE MOSS: I meant to say they were
2 scheduled concurrently, the same time. What about
3 electronic submission in this case. Do the parties
4 want to have the protocol whereby you can submit things
5 electronically and then deliver them to the Commission
6 in hard copy the next day? Okay, we will do that. And
7 remember that for purposes of electronic service, if
8 you want to just get electronic service, you need to
9 file a letter waiving other forms of service. That
10 protects us because of statutory. You don't have to do
11 that, but if you prefer to have the electronic service,
12 that's what you can do, but I ask that those letters be
13 filed.

14 You have agreed to some dates for settlement
15 conferences. If you wish the Commission to try to
16 furnish you with any sort of settlement judge,
17 mediation-type services, try to give us as much notice
18 as you can. The staff and the administrative law judge
19 division is really quite small right now. Our
20 resources are pretty limited, so if you need that kind
21 of assistance, you might let us know, and Judge Wallis
22 is in retirement, but he's also available and is a fine
23 mediator. That's all acceptable process here, and I
24 encourage you to take advantage of that if it will help
25 you.

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1 In filings in both proceedings, we need the
2 original plus 12 copies for our internal distribution.
3 We have been working recently perhaps towards some
4 changes in our procedural rules eventually to reduce
5 the filing burden. Because these dockets involve
6 highly confidential and confidential data, what I want
7 you to do when you file is file the original and 12
8 copies of the fully confidential version because
9 everybody at the Commission who is working on these
10 cases has access to that level of confidentiality.

11 File an original and one copy of any partly
12 redacted version and an original and one copy of any
13 fully redacted version. We don't need 36. We just
14 need 12 and then the others for our files, and we are
15 hopefully moving towards doing that for your original
16 filings too because there is just way too much paper
17 being wasted the way we've been doing it.

18 You all know about filing through the
19 Commission secretary and that. I will follow the
20 practice that we followed in many prior cases where
21 I'll have you submit your order presentation list of
22 witnesses prior to the hearing, the estimates of
23 cross-examination. We'll exchange exhibits as we
24 typically do without the necessity of a prehearing
25 conference unless there are pending motions we need to

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1 deal with. That's all I have. Is there any other
2 business?

3 MR. CEDARBAUM: With respect to the
4 submission of witness lists and cross-time and
5 cross-exhibits, the electronic submission rule that we
6 are following with hard copy to follow will apply at
7 that phase as well?

8 JUDGE MOSS: To the extent it can apply.
9 There are documents that have to be exchanged in hard
10 copy because they are not available in electronic, but
11 something to that exception, yes, the electronic
12 exchange is fine.

13 MR. FFITCH: Your Honor, with regard to
14 electronic service lists, as the Commission has done in
15 the past, we would ask the permission to submit
16 additional names to the electronic service list that
17 would include other members of the Public Counsel
18 office staff, and I could do that now, but perhaps you
19 would just prefer to have a letter or e-mail to the
20 Bench.

21 JUDGE MOSS: We've done this before. If you
22 have consultants, perhaps, whom you wish to have served
23 with things or staff in your offices, for electronic
24 service purposes, it doesn't add any burden to have
25 these names. So if you all exchange that and copy me

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1 on the final list, we will be sure to get everyone on
2 that list for our external e-mail address book.

3 MR. FFITCH: Thank you, Your Honor.

4 MS. CARSON: One other matter, I believe we
5 forgot to address when we were informally meeting, the
6 issue of data requests and using that for both dockets,
7 so I want to go ahead and say what the Company's
8 position is on that. We don't object to this limited
9 subjects that are legitimately at issue in both dockets
10 or related to both dockets, and it seems like it needs
11 to be tied to a witness in the dockets, so if that's
12 the case, then the data request should have all the
13 dockets listed on the data request to make clear that
14 it's for both cases. The Company would issue one
15 response, and if the Company felt that it was not
16 appropriate for both dockets, the Company could object
17 to it, and I think those are the conditions that we
18 would agree to.

19 MR. TROTTER: It may not be apparent when the
20 data request is issued which docket it's appropriate
21 to, so we may not be able to say in advance what
22 dockets it applies to. Certainly we can give one of
23 the dockets. That's the whole point. When you get a
24 response and it contains useful information in both
25 dockets, do you have to reissue it.

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1 Secondly, many times, data requests are not
2 identified directly to a witness. It could be asking
3 for general information applicable to the Company, and
4 we would let the Company decide who can answer
5 questions about it. It's not always apparent. If it's
6 tied to testimony, that's pretty obvious, but often
7 times, data requests don't tie to a specific witness
8 and they are not required to. So I think we can do
9 this all on a best-efforts basis and you can make your
10 rulings if disputes arise, but I think there is a very
11 significant possibility that there will be overlap in
12 certain areas, and it would be much more efficient to
13 just issue one DR.

14 MS. CARSON: And I think the concern of the
15 Company is that every DR will come in with both dockets
16 on it, and that's what we want to guard against. So
17 what we would suggest is that you would have five days
18 after receiving the Company's response to indicate
19 whether they wanted to use it for both dockets, so that
20 way, you would have the opportunity to see what the
21 Company's response is and determine if it's appropriate
22 to both dockets.

23 JUDGE MOSS: Are you trying to preserve an
24 opportunity to object; is that the whole point of this?

25 MS. CARSON: Right. There is concern about

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1 surprise on the stand in terms of data requests that
2 relate to one case and are used in another where the
3 witness is not familiar with it. It seems like there
4 needs to be some tie to both cases. Otherwise, what we
5 will get is all the DR's on both dockets.

6 MR. TROTTER: The problem is that the
7 Company's restrictions here give us the incentive to
8 issue a DR in each docket or identify both dockets when
9 we don't mean to. Sometimes we don't decide what
10 evidence we are going to use, for example, in
11 cross-examination, I guess is the only element of
12 surprise. We don't decide that until several weeks
13 after we get the response. So being required to
14 identify what document we plan to use five days after
15 we get it is unfairly restrictive.

16 I think we are all going to use good faith
17 here. I'm just purely trying to avoid having to issue
18 it in both, or once we get a response saying, I might
19 be able to use this over here; maybe, maybe not. Do I
20 have to issue another DR now, somehow precommit that we
21 are going to use it.

22 MS. CARSON: This wouldn't be a precommittal,
23 and I think we could be flexible on the five days or
24 ten days or some reasonable time period for you to look
25 at it and determine whether it's relevant to both

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1 dockets.

2 The other issue that arises is you do have
3 some intervenors in one case and some in the other, and
4 now these intervenors are going to be getting all the
5 DR's that relate to a different case. I think it's
6 important to try to use our best efforts to only issue
7 them in both cases if they relate to both cases, in
8 fact.

9 MR. TROTTER: Best efforts is the touchstone
10 here, but being too prescriptive about it is unfair,
11 and we have to identify our cross-exhibits in advance
12 in any event, so the element of surprise would be
13 diminished, but I didn't make this proposal with
14 ulterior motives in mind, Your Honor.

15 JUDGE MOSS: I understand. If this is
16 brought forward to me to resolve, my inclination, based
17 on what I'm hearing here, is to make a ruling that
18 would allow for parties to exercise good faith and do
19 their best to identify the dockets to which they
20 believe the discovery relates. The Company, I don't
21 think, is prejudiced by that in the sense that your
22 objections at the hearing are there. Whether you
23 object on the discovery or not, I'll hear your
24 objection at hearing, if there is an objection on
25 relevance or what have you.

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1 I think the goal here again is to maintain an
2 efficient operation if we can and reduce the burden on
3 everybody. To the extent you can identify discovery
4 requests to a particular docket, I would say do so.
5 Sometimes it may be unclear. Sometimes it may relate
6 to more than one matter. I think it probably
7 easiest -- since you are only going to be furnishing to
8 any given party, you are only furnishing one response.
9 That's probably at least burdensome from the Company's
10 perspective due to the amount of paper.

11 MS. CARSON: Your Honor, we would at least
12 ask that if this becomes burdensome on the Company in
13 that every data request relates to both dockets that we
14 could revisit this with you if it does become an issue.

15 JUDGE MOSS: I'm trying to forestall that
16 problem. If we try to set up some mechanism now, you
17 are going to get a lot of data requests that say all
18 three dockets unnecessarily, and then we are going to
19 hash it out data request by data request, which is
20 among my least favorite activities. So I'm hoping that
21 you can all work something out that will be functional
22 and avoid the necessity of that kind of thing.

23 MS. DIXON: Judge Moss, I have a clarifying
24 question. The Coalition is intervening only in the
25 merger docket. In issuing our data requests, should we

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1 be sending that only to the intervenors who are in the
2 merger case, or should we be sending the data request
3 questions to all the parties in both of the cases?

4 JUDGE MOSS: That does set up an interesting
5 question. We do have some parties who are only in one
6 proceeding. Seattle Steam is an example. I would say
7 to the extent you are participating in only one docket,
8 your obligation would run to the parties in that
9 docket, because all of your discovery presumably
10 relates only to the docket you are participating in, so
11 does that answer your question? Serve only the parties
12 in the one docket you are participating in.

13 MS. DIXON: And then if parties in that
14 docket see something in those data request responses
15 that they are interested in using in another
16 proceeding, I assume they would have a process for
17 requesting that information again.

18 JUDGE MOSS: The process would be to issue a
19 data request saying, I would like to see that too.

20 MS. DIXON: Thank you.

21 MR. XENOPOULOS: Your Honor, two clarifying
22 questions in connection with the motion to intervene
23 you granted, we had actually prepared a draft motion in
24 writing. Should we file that at this stage, or might
25 that complicate the issue?

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1 JUDGE MOSS: It's not necessary.

2 MR. XENOPOULOS: Second of all, will the
3 Commission accommodate telephonic participation in the
4 settlement conferences that now appear on the
5 procedural schedule?

6 JUDGE MOSS: The settlement conferences are
7 really the parties' conferences. The Commission does
8 not have any supervisory role with respect to those, so
9 the parties will need to work out among themselves
10 whatever agreements they want to work out.

11 If there is a problem in that regard, you can
12 certainly bring that to the Commission's attention and
13 we will endeavor to resolve that problem, but we have
14 found on the basis of long experience that the parties
15 can usually work something out that will work for
16 everyone, so contact both staff counsel and counsel for
17 the Company and talk about that a little bit outside
18 the context of our prehearing conference.

19 MR. XENOPOULOS: Thank you.

20 JUDGE MOSS: Anything else? Thank you all
21 very much for being here today and for working so well
22 together on the procedural schedule. We will see you
23 again soon.

24 (Prehearing adjourned at 3:49 p.m.)

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