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

2                               JUDGE MACE: Good morning. We are convened  
3 in a prehearing conference in Docket No. UE-050684. It  
4 is a complaint of the Washington Utilities and  
5 Transportation Commission against PacifiCorp, d/b/a  
6 Pacific Power and Light Company.

7                               My name is Theodora Mace, and with me on the  
8 Bench is Ann Rendahl, and we are the administrative law  
9 judges who have been assigned to preside over this  
10 matter, and we also want to note at the outset that the  
11 commissioners will be presiding during the evidentiary  
12 phase of this proceeding.

13                              The purpose of this prehearing is to take  
14 appearances of the parties, consider petitions to  
15 intervene, address discovery, the need for a protective  
16 order, consolidation issues, scheduling, and other  
17 matters. I know you are all aware that we circulated  
18 an agenda of this prehearing conference because we got  
19 several responses back, mainly about scheduling, and we  
20 will address that later on as we proceed through our  
21 list of items.

22                              I did ask and Judge Rendahl asked if there  
23 were any additional items we needed to add to the  
24 agenda, and I didn't get any response. I don't think  
25 Judge Rendahl did either. Did anybody want to add

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1 items to the agenda? It doesn't look like there are  
2 any.

3           Let's go ahead and take appearances from the  
4 parties. This is going to be your first appearance, so  
5 those of you who may not have practiced here with the  
6 Commission before, we ask you to give a long form of  
7 the appearance. That means your name, the party you  
8 represent, your full address, your phone, fax, and  
9 e-mail numbers.

10           The other thing we want to indicate is there  
11 are services by hard copy. If there is anyone who  
12 would be willing to just accept e-mail service,  
13 electronic service, please let us know and designate  
14 who it is who will be receiving service of documents  
15 from the Commission when you give your appearance.

16           I know that's a tall order, but I'm sure you  
17 are up to it, and I will begin with the counsel who are  
18 in the room and then turn to the counsel on the  
19 conference bridge. So Mr. Van Nostrand, would you  
20 begin, please?

21           MR. VAN NOSTRAND: James M. Van Nostrand with  
22 the law firm Stoel Rives, LLP, on behalf of Applicant,  
23 PacifiCorp. My address is 900 Southwest Fifth Avenue,  
24 Suite 2600, Portland, Oregon, 97204. Direct telephone  
25 number is (503) 294-9679; fax, (503) 220-2480. E-mail

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1 is jmvannostrand@stoel.com, and I would be the  
2 designated person to receive electronic service of any  
3 documents on behalf of PacifiCorp.

4 JUDGE MACE: Mr. Ridge?

5 MR. RIDGE: John Ridge with the law firm of  
6 Stoel Rives representing PacifiCorp. My address is 600  
7 University Street, Suite 3600, Seattle, Washington,  
8 98101; direct dial, (206) 386-7575; fax, (206)  
9 386-7500; e-mail, jhridge@stoel.com.

10 JUDGE MACE: Let's go next to you.

11 MS. DAVISON: My name is Melinda Davison, and  
12 also with me on the case is Irion Sanger; although,  
13 he's not with me today. We are appearing on behalf of  
14 the Industrial Customers of Northwest Utilities, ICNU.  
15 My firm name is Davison Van Cleve. Our address is 333  
16 Southwest Taylor, Suite 400, Portland, Oregon, 97204.  
17 My phone is (503) 241-7242. My fax is (503) 241-8160.  
18 My e-mail is mjd@dvclaw.com, and we are willing to  
19 accept electronic service, and it should be to my  
20 e-mail address.

21 JUDGE RENDAHL: Do you have a an e-mail for  
22 Mr. Sanger as well?

23 MS. DAVISON: Yes. His is ias@dvclaw.com.

24 JUDGE MACE: Which one is the one we should  
25 serve?

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1 MS. DAVISON: It should be me, Your Honor.

2 JUDGE MACE: Public Counsel?

3 MR. CROMWELL: Robert Cromwell, assistant  
4 attorney general appearing on behalf of the Public  
5 Counsel section of the Washington State Attorney  
6 General's office. My address is 900 Fourth Avenue,  
7 Suite 2000, State Mail Stop TB-14, Seattle, Washington,  
8 98164-1012. My direct line is (206) 464-6595. My fax  
9 number is (206) 389-2058. My e-mail address is  
10 robertc1@atg.wa.gov.

11 I'm also willing to accept electronic service  
12 for all electronic communications. I would ask that  
13 the Commission and all parties also serve the policy  
14 analyst, whose name is Steven Johnson. His e-mail  
15 address is stevenj@atg.wa.gov.

16 JUDGE MACE: Commission staff?

17 MR. TROTTER: Thank you. For the Commission,  
18 my name is Donald T. Trotter, assistant attorney  
19 general. My co-counsel is Shannon E. Smith, and she  
20 will enter a separate appearance.

21 My address is PO Box 40128, Olympia,  
22 Washington, 98504-0128. The street address is 1400  
23 South Evergreen Park Drive Southwest. My phone is  
24 (360) 664-1189; fax, (360) 586-5522. E-mail is  
25 dtrotter@wutc.wa.gov. We will accept e-mail service on

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1 behalf of Staff, and if it's sent both to myself and  
2 Ms. Smith and with the understanding that one hard copy  
3 would follow in the mail.

4 (Pause in the Proceedings.)

5 MS. SMITH: Shannon Smith, assistant attorney  
6 general appearing on behalf of Commission staff. My  
7 address is 1400 South Evergreen Park Drive Southwest,  
8 PO Box 40128, Olympia, Washington, 98504-0128. My  
9 telephone number is (360) 664-1192. My fax number is  
10 the same as Mr. Trotter's. My e-mail address is  
11 ssmith@wutc.wa.gov, and if it would be okay with the  
12 parties, we would also like them to e-mail their e-mail  
13 service to Tom Schooley, and his e-mail address is  
14 tschoole@wutc.wa.gov.

15 JUDGE MACE: In that same vein, while we were  
16 briefly off the record, we asked Ms. Omohundro of the  
17 Company whether she wished to receive an e-mail copy of  
18 service, an e-mail service of documents, and she said  
19 she did, and she's going to provide us now on the  
20 record her e-mail address.

21 MS. OMOHUNDRO: Christy Omohundro. My e-mail  
22 address is christy.omohundro@pacificorp.com.

23 JUDGE MACE: Thank you. Is there anyone else  
24 in the hearing room that seeks to enter an appearance  
25 today? I see there is no response, so let's turn to

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1 the parties who are on the conference bridge. I'll go  
2 first to Mr. Purdy.

3 MR. PURDY: Brad Purdy from Boise, Idaho,  
4 appearing on behalf of The Energy Project. My address  
5 is 2019 North Seventeenth Street, Boise, Idaho, 83702.  
6 My telephone is (208) 384-1299; fax, (208) 384-8511.  
7 Yes, I would accept electronic service. I'm the only  
8 one that needs to receive that. My e-mail is  
9 bmpurdy@hotmail.com.

10 JUDGE MACE: Thank you. And Mr. Cavanagh?

11 MR. CAVANAGH: Ralph Cavanagh,  
12 C-a-v-a-n-a-g-h, appearing for the Natural Resources  
13 Defense Council. The address is 111 Sutter Street, San  
14 Francisco, California, 94104. The phone number is  
15 (415) 875-6100. Fax number is (415) 875-6161. I will  
16 accept e-mail service, and the e-mail service address  
17 for me is rcavanagh@nrdc.org.

18 JUDGE MACE: Thank you. Is there anyone else  
19 on the conference bridge who wants to enter an  
20 appearance today? I hear no response.

21 Let's turn next to the petitions to  
22 intervene. We have received written petitions to  
23 intervene from The Energy Project, The Natural  
24 Resources Defense Council, and the Industrial Customers  
25 of Northwest Utilities. Is there anyone else in the



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1 hearing room who wants to present an oral petition to  
2 intervene today? Is there anyone on the conference  
3 bridge who wants to present an oral petition to  
4 intervene today? I hear no response. I would like to  
5 ask now whether there are any objections to the  
6 granting of the petitions to intervene that have been  
7 filed? I hear no objection, and we will grant those  
8 petitions to intervene.

9           As Judge Rendahl indicated, we will be  
10 preparing a list of representatives and a service list  
11 that we will be circulating to the parties. We may  
12 circulate it by e-mail, but it will also be attached to  
13 the prehearing conference order that results from this  
14 proceeding. If you have any changes, please let us  
15 know -- I think our e-mail addresses will be indicated  
16 on that service list -- and we can make any changes  
17 that are appropriate.

18           Let's turn next to the question of discovery.  
19 I would like ask whether the parties will be conducting  
20 discovery in this case. I understand, actually, they  
21 may already have begun discovery.

22           MR. TROTTER: Yes. It's my understanding  
23 that the suspension order of the Complaint invoked the  
24 Commission's rule, so the rule has been invoked. I  
25 think the issue is whether a schedule needs to be

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1 established and/or whether depositions will be needed,  
2 and at this point, I don't believe a schedule is  
3 necessary unless other parties believe it is. We will  
4 keep an open mind on that.

5           With regard to depositions, at this point, we  
6 are not sure whether any are needed, and if that issue  
7 cannot be worked out between the parties by  
8 accommodation, then we would come to you seeking an  
9 order setting a schedule for depositions. So we first  
10 need to know if we need them, and if we can't work out  
11 the schedule with the Company, then we would come to  
12 you for an order in that regard, so I think for now, we  
13 are satisfied the rule has been invoked.

14           JUDGE MACE: I'm also assuming when we  
15 discuss the schedule later on today, we will in some  
16 way incorporate needs you may have for discovery, if  
17 there is some timing issue with regards to how much  
18 time you will need for discovery. Is there anyone else  
19 that wants to address the question of discovery;  
20 Mr. Cromwell?

21           MR. CROMWELL: Was a protective order in?

22           MR. TROTTER: I think that's a separate  
23 agenda.

24           JUDGE MACE: So let me ask whether or not the  
25 parties wish to have a protective order entered in this

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1 proceeding, and I'm seeing the nods of heads, but it  
2 would be helpful if you say yes or no.

3 MR. VAN NOSTRAND: Yes, Your Honor.

4 JUDGE MACE: Then we will enter a protective  
5 order separately from the prehearing conference order.

6 Let's turn next to the question of  
7 consolidation. That was one of the items we sent out  
8 on our agenda. In March 2005, the Company filed an  
9 application in Docket No. UE-050412 for the deferral of  
10 costs related to declining hydrogeneration. The  
11 Commission has received a letter from Public Counsel  
12 asking the Commission to deny that petition.

13 In this docket, the Company mentions its  
14 deferral application in the direct testimony of  
15 Ms. Omohundro. In her testimony, she states that the  
16 Company proposes the UE-050412 docket for hydro  
17 accounting be incorporated and replaced by the power  
18 cost adjustment mechanism proposed in this case. In  
19 view of our review of that testimony and of the  
20 deferral application, it appears that it may be  
21 appropriate to consolidate that case with this case.

22 I'm going to turn next to the question of the  
23 PacifiCorp sale, which may be another area where a type  
24 of consolidation may be in order, but first I would  
25 like to address the consolidation of the deferral

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1 docket with this docket. Comments from the parties;  
2 Mr. Van Nostrand?

3 MR. VAN NOSTRAND: I think the Company would  
4 be agreeable to have that accounting order docket  
5 consolidated with this rate-case docket.

6 JUDGE MACE: Any objection to that?

7 MR. TROTTER: Staff supports that  
8 recommendation. We believe there are some common  
9 issues of fact or law involved there, and the issue of  
10 deferred power costs is one that has been T'd up in the  
11 rate case, so I think it makes sense to deal with those  
12 issues on the same record.

13 JUDGE MACE: Go ahead.

14 MS. DAVISON: Your Honor, this is Melinda  
15 Davison for the record. ICNU does not oppose  
16 consolidation, but we want to make clear that all of  
17 our rights, objections that would flow-through the  
18 hydrodeferral case would still be reserved through  
19 consolidation.

20 One of the issues we are specifically  
21 concerned about is to insure there would be no  
22 retroactive treatment of the PCA related to the  
23 hydrodeferral, so we would be certainly arguing that  
24 point if the Company raises that, and we want to make  
25 sure the consolidation in no way impairs our ability to

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1 raise those issues.

2 JUDGE MACE: I don't foresee any reason at  
3 this time why that would be the case. You will  
4 certainly have an option to present any argument about  
5 that issue to the Commission. Is there anyone on the  
6 conference bridge that has any comment on the question  
7 of consolidation? I hear no response. Mr. Cromwell?

8 MR. CROMWELL: I have nothing to add to what  
9 Ms. Davison stated.

10 JUDGE MACE: Very well. The Commission will  
11 enter a ruling on consolidation in the prehearing  
12 conference order and likely it will be granted. I  
13 suppose we could even grant it on the record today  
14 based on the agreement of the parties.

15 JUDGE RENDAHL: It's a Commission order, so  
16 we will have to present that to the Commission, but I  
17 don't see it will be an issue.

18 JUDGE MACE: The sale of PacifiCorp.  
19 Recently, as you all know, it was announced that  
20 ScottishPower, PacifiCorp's current owner, is selling  
21 PacifiCorp to Mid American Holdings. The Commission  
22 would seek comment from the Company and the parties on  
23 a number of the issues related to the sale.

24 The first is when does PacifiCorp anticipate  
25 filing for approval of the sale with the Commission?

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1 Is consolidation of the approval application with this  
2 case appropriate or necessary? Will the sale cause the  
3 Company to revise any of its testimony in this case?  
4 Would that have any impact on the scheduling? And I'm  
5 referring, I guess, specifically to, for example, some  
6 testimony that was filed in this case about expenses  
7 related to ScottishPower, so at this point, we would  
8 like to hear comments from the parties on these issues  
9 so that we can come to some resolution about what's the  
10 appropriate course to take, and I'll turn to  
11 Mr. Van Nostrand.

12 MR. VAN NOSTRAND: On these three points,  
13 first of all, when this transaction is less than two  
14 weeks old, we will be submitting applications for state  
15 approvals in each of the six states, and I expect that  
16 will be sometime in the next 30 or 60 days. We are  
17 very early on in that process.

18 As far as whether consolidation is  
19 appropriate, I guess until there is an application  
20 filed, I think it's premature to even speculate about  
21 whether it's appropriate, but from what I do know of  
22 the application and the transaction, I guess our  
23 position is there aren't any common issues of law or  
24 fact that would make consolidation appropriate.

25 The legal standard for approval in a

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1 transaction is far different than the standard for  
2 approving just and reasonable rates in this case, and  
3 as a factual matter, the transaction is not premised  
4 based on cost savings but is based on access to  
5 capital. So we would submit there are not any common  
6 issues of law or fact, and it seems unclear to me there  
7 would be any efficiencies gained by processing the  
8 dockets together since there are no common issues of  
9 law and fact.

10 As far as the effect on testimony, basically,  
11 because the identity of the shareholder changes doesn't  
12 mean that the costs are any different. The  
13 ScottishPower cross-charges is probably the only issue  
14 we can identify that's going to be affected. The issue  
15 there is service is provided by ScottishPower to  
16 PacifiCorp, and first of all, there won't be any change  
17 in those services provided until the transaction  
18 closes, which won't be at the earliest until the summer  
19 of 2006.

20 Second, those services that are provided by  
21 the ScottishPower headquarters, those services will  
22 probably be provided by Mid American once the  
23 transaction closes, so the services will continue to be  
24 provided but just provided by a different provider.

25 Beyond that, if you go down and look through

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1 the various cost components of this case, the capital  
2 structure assumes equity of 500 million dollars over  
3 the period ended March 31, 2006, and under the stock  
4 purchase agreement, those equity issues will still be  
5 made by ScottishPower in terms of this transaction. So  
6 just because the transaction is pending does not mean  
7 those equity issues will not occur.

8           So our view would be the transaction has very  
9 little impact, if at all, on the rate case issues.  
10 Particularly if you look at the historical test period  
11 and proforma period, there simply won't be any change  
12 in the Company's operations during the pertinent  
13 period.

14           JUDGE MACE: Thank you. Anyone else have any  
15 comment on those issues?

16           MR. TROTTER: For Commission staff, first of  
17 all, we can agree with a couple of things the Company  
18 has stated, and that is that it's premature today to  
19 know whether or not consolidation is appropriate. We  
20 don't know exactly when that case is going to be filed,  
21 what the case is going to be exactly, who the parties  
22 are going to be. I think all of those factors would  
23 dictate at least in part whether consolidation is  
24 appropriate.

25           Your Honor did identify an adjustment that is



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1 specifically related to ScottishPower. Counsel has  
2 suggested that the transaction would be consummated in  
3 the summer of 2006. That's during the rate year, and  
4 to the extent that those costs will not be paid, that  
5 is an issue. To the extent the cost will be paid to  
6 another entity, that is an issue, and certainly, access  
7 to capital is an issue.

8           Capital in the future will be provided  
9 through a triple-A rated utility, Mid American, instead  
10 of ScottishPower, so that very well could have an  
11 impact on the rate case. The issue is whether there is  
12 enough issues in common between the two dockets, and at  
13 this point, as I mentioned, we can not make that  
14 assessment.

15           With respect to the impact on scheduling, at  
16 this point, we don't believe there would be, if the  
17 cases were handled separately, there would be an impact  
18 on scheduling of this case. We believe at this moment,  
19 at least, that those issues can be resolved in the  
20 context of the rate case to the extent there is an  
21 overlap, but that could change. We've asked the  
22 Company for some information in that regard. We  
23 haven't got it yet, so when we get it, our minds could  
24 change on that issue, but for now, we think the  
25 Commission should not consolidate for all the reasons

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1 I've mentioned and a couple that the Company mentioned  
2 but revisit that issue when the time comes. Thank you.

3 JUDGE MACE: Any other comments from those in  
4 the hearing room; Mr. Cromwell?

5 MR. CROMWELL: I also would concur with  
6 Mr. Van Nostrand's conclusion as to the lack of a  
7 congruence of legal and factual issues, that this  
8 docket and the anticipated but not yet filed merger  
9 docket will contain. I concur with Mr. Trotter's  
10 conclusions as well.

11 I would add one other issue, which is that  
12 the docket now before the Commission does have a  
13 statutory suspension period. Consolidating a case yet  
14 to be filed, which shall be filed presumably at some  
15 anticipated date, currently projected to be 30 to 60  
16 days out. As we all know, such things can be subject  
17 to outside influences that no one in this room can  
18 control.

19 So I would be very concerned about  
20 consolidating a docket that hasn't been filed and for  
21 unforeseen reasons might not be filed for three or four  
22 months, and then the Commission and the parties would  
23 both be faced with a very compressed time line for  
24 trying to address a fairly discreet set of factual and  
25 legal issues concurrently with the rate case that had

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1 already been ongoing.

2           So from a parties' perspective and from my  
3 perspective, I think the resource allocation question  
4 and the timing would create some pressures that I don't  
5 think presently exist for the justification for  
6 consolidation. So for those reasons, I would oppose  
7 consolidation at this point.

8           JUDGE MACE: Ms. Davison?

9           MS. DAVISON: ICNU is a little closer to  
10 Staff's perspective on this. I think we should keep an  
11 open mind about the issues until we see the filing, and  
12 then I would note that it's highly unusual to have a  
13 general rate case and a merger proceeding or  
14 acquisition proceeding pending at the same time.

15           ICNU has been involved in these types of  
16 proceedings for electric utilities since 1996, and I  
17 can't recall any instances where we've have a general  
18 rate case and a merger proceeding at the same time, so  
19 I think there will be some issues that we need to be  
20 aware of, and we will just wait and see when the filing  
21 actually occurs, but we certainly would like the  
22 ability to raise any concerns at that time or perhaps  
23 look at some efficiencies of how we deal with some of  
24 the overlapping issues that may arise.

25           JUDGE MACE: Anyone on the conference bridge?

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1 Mr. Purdy, do you have any comment on this?

2 MR. PURDY: Yes. It's The Energy Project's  
3 position that consolidation would unnecessarily  
4 complicate the rate proceeding without any, as of yet,  
5 apparent offsetting benefits. We are essentially in  
6 agreement with everyone else.

7 JUDGE MACE: Mr. Cavanagh?

8 MR. CAVANAGH: Nothing to add, Your Honor.

9 JUDGE MACE: Any final comment on this;  
10 anything from the Company?

11 MR. VAN NOSTRAND: Nothing to add, Your  
12 Honor.

13 JUDGE MACE: Mr. Van Nostrand, I know you  
14 addressed when you thought the Company might make a  
15 filing. Could you talk to me again about that? What  
16 time frame? Do you have any idea when the Company  
17 thinks it will make a filing?

18 MR. VAN NOSTRAND: My best guess is 30 to 60  
19 days. We've got two entities who are now sort of  
20 beginning the integrating of the regulatory filing  
21 together, and having gone through this a few times,  
22 it's challenging, and I think people want to get it  
23 filed as soon as possible, and I think it could be as  
24 early as 30 days. I would be surprised if it were  
25 longer than 60 days, but as Mr. Cromwell said, it's a

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1 challenge.

2           The first case I worked on, the Puget, WNG  
3 merger, that merger agreement was signed in October and  
4 the case wasn't filed until April, but that included  
5 all the direct testimony and exhibits, but my best  
6 guess is 30 to 60 days, but that's one of the things we  
7 are meeting on this afternoon.

8           JUDGE MACE: I just wanted to get a better  
9 sense of what your thoughts were on that. We will be  
10 taking this under advisement. There is no application  
11 that's been filed yet, but we want to get input from  
12 the parties.

13           The next item on the agenda is the schedule  
14 of proceedings. As we stated in the prehearing  
15 conference, the Commission expects that an initial  
16 settlement conference will be convened today and that  
17 the settlement schedule will be incorporated into the  
18 overall schedule of proceedings that's established for  
19 this case.

20           In discussing a settlement schedule, the  
21 parties should determine whether they will primarily be  
22 discussing settlement before any further filing of  
23 testimony or after all testimony is filed. As I  
24 reviewed the proposed schedule that was sent by e-mail  
25 last week, I think from Ms. Smith, it certainly appears

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1 there is some time before the next filing when  
2 settlement discussions might take place, but we will  
3 explore that with the parties just a little bit later.  
4 So we will want to know from the parties what their  
5 plans are, their specific plans about the settlement  
6 discussions.

7 In addition, there are several factors that  
8 may have an impact on the schedule. Avista has filed a  
9 rate case, and the commissioners will be presiding at  
10 that rate case. We want to avoid overlap of the Avista  
11 schedule of proceedings, so you need to take that into  
12 account.

13 As we mentioned, we are concerned about the  
14 sale of PacifiCorp to ScottishPower and whether that  
15 would potentially have an impact on the schedule. We  
16 understand from testimony that's been filed that there  
17 is a proposal for a joint decoupling proposal that  
18 would be filed in the rebuttal phase, and I assume  
19 that, you, of course, would include that in the  
20 schedule. A concern we have is what if there is no  
21 agreement about decoupling; what happens then?  
22 Rebuttal would probably be too late for a decoupling  
23 proposal that the parties did not agree to, so we want  
24 you to take that into consideration.

25 We will need to schedule a public hearing,

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1 and we hope you will discuss a possible date for that.  
2 We understand you will probably coordinate with the  
3 Public Affairs section to accomplish that, but we want  
4 to hear what your thoughts are on that today too. Of  
5 course, there is the issue of discovery that we alluded  
6 to earlier, and we would want you to have adequate time  
7 for that, and finally, of course, we need to enter a  
8 final order on April 5th or before of 2006, that is.

9           So those are a lot of issues. As I mentioned  
10 earlier, we sent out an e-mail to the parties proposing  
11 hearing in, I believe, it was late October and November  
12 and received back a responsive schedule that calls for  
13 hearings January 16th to the 27th of 2006, and we have  
14 a concern with that because it seems to push us too far  
15 into the period when the commissioners will need time  
16 to deliberate on the issues that are presented.

17           We are concerned that the commissioners have  
18 enough time for that given their overall schedule. We  
19 have reviewed, for example, the schedule of the Avista  
20 case, and it appears there are 12 weeks between the  
21 last briefing date and the expiration of the suspension  
22 period. We feel that we need to build in a little more  
23 time for the commissioners to deliberate on this  
24 matter.

25           In your schedule, you also want to include a

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1 date for submission of witness and exhibit lists and a  
2 date for a prehearing conference prior to the  
3 evidentiary hearing. I just wanted to add those two  
4 other items in for your consideration. Did you have  
5 anything to add, Judge Rendahl?

6 JUDGE RENDAHL: I know the parties have  
7 discussed amongst themselves a schedule. Since our  
8 conversation this morning, Mr. Trotter did call us this  
9 morning to see if there were any thoughts on the  
10 schedule, and Judge Mace and I had mentioned that we  
11 were willing to change the hearing date to January 9th  
12 through the 20th proposing that those two dates with  
13 the same interval for briefs and answering briefs, so  
14 that would be February 13th and February 27th, which  
15 would give us a five-week period for working with the  
16 commissioners to develop an order, and I think that's a  
17 reasonable period of time.

18 Another question Judge Mace and I had was  
19 whether Staff and the Company and other parties had  
20 given any thought to identifying more clearly what is  
21 happening between now and November the 7th, because  
22 that seems to be a fairly lengthy period of time, but  
23 there may be some settlement discussions going on in  
24 that time. Ms. Smith?

25 MS. SMITH: What is going on between now and



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1 November 7th is the Staff is reviewing the Company's  
2 filing. I assume Intervenors and Public Counsel would  
3 be doing the same thing, and preparing responsive  
4 testimony to the Company's direct filing.

5           This case presents a number of complicated  
6 issues. There is the interjurisdictional cost  
7 allocation mechanism. There is a proposed power cost  
8 adjustment mechanism. There might be some prudence  
9 issues, and again, there are all of the accompanying  
10 revenue requirement issues. The Commission staff will  
11 need to audit the Company. We will need to conduct  
12 discovery. So we think that we will be very, very busy  
13 between now and November 7th getting that work done.

14           We had not contemplated specific settlement  
15 discussions during that time frame, and I know we're  
16 not quite at that point yet, but if the Commission were  
17 inclined to order a settlement conference or other  
18 formal settlement process for the parties, it would be  
19 Staff's preference that that would be scheduled after  
20 the date that the Commission staff files its responsive  
21 testimony so that we do not spend a lot of time on  
22 process away from the task of getting our responsive  
23 testimony filed.

24           JUDGE RENDAHL: Just a question in terms of  
25 whether Staff and the Company have discussed or

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1 discussed with other parties the Company's proposal to  
2 file with the rebuttal phase the decoupling proposal  
3 and whether there has been any thought in terms of  
4 schedule how that would work.

5 MR. TROTTER: There have been some  
6 discussions on that and some of them have involved  
7 NRDC, and so it might be preferable to have  
8 Mr. Van Nostrand and Mr. Cavanagh to describe their  
9 thoughts on where we are with that issue and if it  
10 would be presented at all, and then we can respond to  
11 that.

12 JUDGE MACE: Mr. Van Nostrand?

13 MR. VAN NOSTRAND: I think a legitimate  
14 concern has been expressed if we wait until the  
15 rebuttal phase of the testimony to roll out a  
16 decoupling, even though there will be discussions  
17 occurring prior to that.

18 I think there has been some discussions with  
19 NRDC that center around the notion that if agreement  
20 can be reached and is acceptable, it looks like it  
21 might have some legs. That would be filed by  
22 Mr. Cavanagh in his testimony. Possibly Mr. Cavanagh  
23 can address the timing issues or what his expectations  
24 are, but it wouldn't wait until the rebuttal phase, and  
25 then if this were a proposal, a new proposal filed at

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1 that point, I think the parties would have a legitimate  
2 need to be able to respond to that.

3 So I guess our thinking would be that at the  
4 same time the Company files its rebuttal testimony, the  
5 other parties would have an opportunity to file any  
6 testimony commenting on a decoupling proposal that's  
7 been introduced as part of the opposing testimony.

8 JUDGE MACE: Mr. Cavanagh?

9 MR. CAVANAGH: That is entirely acceptable to  
10 us. That is, NRDC is prepared to take responsibility  
11 for putting the best possible proposal on the table no  
12 later than the date set for intervenor testimony with  
13 as much consensus as possible.

14 JUDGE MACE: Anything else on this issue?  
15 Ms. Davison?

16 MS. DAVISON: Your Honor, the question I have  
17 for Mr. Cavanagh is whether the decoupling proposal  
18 still is intended to exclude industrial customers?

19 MR. CAVANAGH: There is no decoupling  
20 proposal at the moment, and we've reached no judgment  
21 as to what its coverage should be. We look forward to  
22 discussing that with all the parties.

23 MS. DAVISON: Your Honor, with that in mind,  
24 I guess we have some concern about this proposal. I  
25 guess the first question I have is if Mr. Cavanagh is

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1 filing this with his testimony, is he carrying the  
2 burden of proof on this issue or is the Company  
3 carrying the burden of proof, and we need to make sure  
4 that --

5           This is a very significant proposal if it  
6 does, in fact, include our client base, and certainly  
7 one that we have had experience with in other states,  
8 and we need to make sure we don't get shortchanged on  
9 our ability to respond to that and conduct discovery  
10 and really understand the components of that proposal.  
11 Obviously, the more narrow it is, the less concern I  
12 have; the broader, a lot of concern. It's a very  
13 significant issue for my client base.

14           JUDGE MACE: I would say based on what I have  
15 heard, I have two concerns. One is this question of  
16 burden of proof. I understood from the testimony that  
17 was filed that while it would be a joint proposal, it's  
18 something the Company wants to do, and the burden of  
19 proof would be with the Company. If it's different  
20 than that, I would like to hear what Mr. Cavanagh and  
21 you have in mind. That's one thing.

22           The other thing is this question of what  
23 appears to be sort of a settlement on this issue that's  
24 not going to include all the parties, or at least all  
25 the interested parties, and that points up some of the

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1 concern we had with trying to get a settlement  
2 conference scheduled for today and to begin to get that  
3 rolling so that all the parties are on the same page as  
4 far as talking about issues that are going to be  
5 resolved among them. I'm very concerned that it  
6 appears that this is going to be an offshoot issue that  
7 is going to be out of the loop of settlement and some  
8 parties may not be consulted. Mr. Van Nostrand?

9 MR. VAN NOSTRAND: On the burden of proof  
10 question, the Company would continue to carry the  
11 burden of proof, and the hope would be that a consensus  
12 proposal would be developed that involved the Company,  
13 NRDC, and other parties. I think Mr. Cavanagh will be  
14 attempting to develop a consensus based on discussions  
15 with the parties, and the intent will be that all  
16 parties will be involved in that process.

17 As I indicated, I think it would be  
18 appropriate to open the rebuttal testimony up to allow  
19 any parties who do not agree with that proposal and who  
20 are basically nonsettling parties to include in their  
21 rebuttal testimony comments on whatever consensus  
22 decoupling proposal is offered in Mr. Cavanagh's  
23 testimony.

24 MR. TROTTER: I didn't understand the  
25 procedure that was described to be a settlement

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1 procedure but rather discussions among parties about  
2 decoupling, and then NRDC would file whatever it wants  
3 to file just like any other intervenor can file.

4 I think Ms. Davison hit the nail on the head  
5 when she said -- I think I heard, the issue is what is  
6 a fair process on that point. Typically, intervenor  
7 cases are within the scope of the general case and  
8 additional time is not required for other parties to  
9 address that testimony. Occasionally, an issue comes  
10 up that's a major issue that requires more time. To  
11 the extent NRDC shares its thoughts with the parties  
12 between now and when it files, it might minimize the  
13 time parties need to respond, or it might maximize the  
14 time parties need to respond. We don't know that now.

15 I perceive this as a heads-up, and NRDC says  
16 that it plans to file a specific proposal and plans to  
17 talk to the parties about it, but until we actually see  
18 it, when they file it, we won't know if additional time  
19 will be needed at all. The Company has suggested the  
20 parties can respond, file reply testimony  
21 simultaneously with the Company's rebuttal filing date,  
22 and that might be doable.

23 We might want to write that in with the  
24 understanding we revisit it once it's filed, but I  
25 didn't view this to be in the context of a settlement

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1 at all. So as a litigation position, that will be  
2 taken by NRDC at some time in the future, so I think we  
3 can address it in the manner suggested with the  
4 understanding we need to be flexible dependent on  
5 whether it is actually filed.

6 JUDGE MACE: Mr. Cromwell?

7 MR. CROMWELL: Going back to the original  
8 question that you both posed as to what must be done  
9 before November 7th, I would simply remind the  
10 Commission that this general rate case involves issues  
11 that go back quite some time. I first became aware of  
12 PacifiCorp's existence in 1999 when I began doing this  
13 work, and significant issues have not been resolved in  
14 that time frame, arguably the PacifiCorp merger.

15 It's my understanding from informal  
16 conversations amongst the parties that many people view  
17 this case as the opportunity to try and put to rest the  
18 allocation issue and other questions that have remained  
19 unresolved since the Utah, PacifiCorp merger, let alone  
20 the ScottishPower, PacifiCorp merger, before we do the  
21 next merger. It would be nice to have that resolved  
22 before we add in new layers to the issues that this  
23 company presents to the Commission.

24 As to the specific question posed regarding  
25 settlement discussions, I concur with Commission staff.

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1 I would be comfortable at allocating a day or two prior  
2 to filing testimony, but given the significance and the  
3 scope of the issues that are presented to the  
4 Commission by this case, truly productive settlement  
5 discussions will probably take a lot of time, many days  
6 if not weeks, and I frankly won't have the time prior  
7 to filing our testimony to do that.

8 As to decoupling, this was an issue in the  
9 last rate case, and it was deferred unproductively. I  
10 share the concern that Ms. Davison voiced about what  
11 may or may not appear on November 7th from NRDC.  
12 Certainly are willing to allocate consulting and staff  
13 time to working with all the parties to discuss the  
14 matter prior to then to see if a consensual proposal  
15 can be put forward.

16 But I think that Mr. Trotter is correct; that  
17 as of right now, what the Commission has before it is  
18 an informal statement by a party that it intends to  
19 raise an issue in its testimony. So when we get to  
20 that point, if there is no consensus, then we certainly  
21 would be looking for an opportunity to respond to  
22 whatever might be raised in NRDC's testimony.

23 I think that as a predicate matter,  
24 decoupling, like power cost adjustment mechanisms,  
25 focus on risk, and that type of issue raises many other



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1 questions, such as cost of capital issues and how you  
2 allocate that risk amongst ratepayers and shareholders  
3 and what adjustments are appropriate when you make  
4 those types of risk shifts amongst the interested  
5 parties through this company.

6 So for all of those reasons, I express some  
7 concern to the Commission about these issues.

8 JUDGE MACE: Any final comment?

9 MR. CAVANAGH: Just a quick note. These  
10 issues are obviously not new to the Commission or to  
11 the parties. We submitted very extensive testimony on  
12 them in the last rate proceeding. I will make a  
13 personal commitment to work with all the parties to  
14 develop as much consensus as possible. Certainly, what  
15 you get on November 7th will not be a surprise.

16 JUDGE RENDAHL: You mean it will not be a  
17 surprise to the parties?

18 MR. CAVANAGH: Right. I'll be happy to  
19 extend the circle of discussions as broadly as the  
20 judges direct.

21 JUDGE RENDAHL: I think it's important to  
22 include every single party to the case in your  
23 discussions so that no one is excluded. I think that  
24 would be our primary consideration.

25 MR. CAVANAGH: I understand.

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1 JUDGE MACE: Ms. Davison?

2 MS. DAVISON: Your Honor, the only other  
3 thing I wanted to add about this discussion is I still  
4 have some discomfort about this timing. Maybe as we  
5 have more conversations with Mr. Cavanagh, which we've  
6 had none with him so far, so as we get engaged in these  
7 discussions, perhaps my concerns can be alleviated.

8 The concern I have Mr. Cromwell touched on  
9 briefly is that decoupling is not a discreet issue.  
10 It's an issue that very fundamentally affects other  
11 aspects of this case. So if the Commission is inclined  
12 to adopt a decoupling proposal, it will have  
13 broad-reaching ramifications on the case. It's  
14 fundamentally a different way to collect revenues from  
15 customers, so it feels like a very big issue to see a  
16 proposal that late in the case, and as you've noted,  
17 the case from November through January is on a very  
18 fast track, so I just have some concerns about whether  
19 we will really need to adequately deal with all the --  
20 decoupling --

21 JUDGE RENDAHL: I think you point out a key  
22 issue in the schedule, which there is a tension between  
23 the great number of issues that are presented in the  
24 case in allowing every person involved in the case,  
25 including the Commission, to resolving the case

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1 sufficient time to address all of those issues, so I  
2 guess -- is anybody opposed to the proposal that  
3 Mr. Cavanagh and Mr. Van Nostrand have made?

4 JUDGE MACE: You are opposed to Mr. Cavanagh  
5 filing testimony with Staff, Intervenors, Public  
6 Counsel on November 7th on decoupling?

7 MS. DAVISON: Yes, Your Honor. I think that  
8 issue is so significant that if we do not reach  
9 agreement among the parties that filing a proposal that  
10 late in the schedule, which I think still is very odd  
11 to me that it would be an issue that Mr. Cavanagh  
12 would file but yet the Company has the burden of proof  
13 on, I think that if we do not reach agreement on that  
14 issue, I think that is too late to bring a proposal  
15 into this case that is of that magnitude.

16 MR. CAVANAGH: If I could respond, I  
17 obviously disagree strongly with my counterpart as to  
18 the significance of the issues, and I think part of the  
19 burden I will face in this with the parties is  
20 persuading them and persuading the Commission that the  
21 issue does not, in fact, have the enormous consequences  
22 that Ms. Davison says it does.

23 If she will have an opportunity to make that  
24 argument if we present something that fundamentally  
25 challenges the bedrock elements of the case, I believe

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1 we will be able to persuade the Commission this is a  
2 relatively minor matter in terms of its implications  
3 for other issues; although, it is tremendously  
4 consequential in terms of the Company's incentives to  
5 pursue energy efficiency, and I accept that as one of  
6 the issues we have to take on in the proposal.

7 JUDGE MACE: Thank you, Mr. Cavanagh. We are  
8 just going to take a moment to discuss this; that is,  
9 Judge Rendahl and I are going to.

10 JUDGE RENDAHL: Let's be off the record.

11 (Discussion off the record.)

12 JUDGE MACE: We are inclined to go ahead with  
13 the procedure that Mr. Van Nostrand and Mr. Cavanagh  
14 have described, assuming that Mr. Cavanagh does talk  
15 with the parties about the decoupling proposal, trying  
16 to get as much consensus as possible so that what is  
17 filed is not a surprise, but we would expect that that  
18 filing would take place no later than the Staff, Public  
19 Counsel, Intervenor filing date, which according to the  
20 proposed Staff schedule, would be November 7th.

21 Ms. Davison, your client would have the  
22 option at that point to review that filing to make  
23 objections to it, file motions to strike, whatever is  
24 appropriate. You have your results and arguments you  
25 can make. You also have time to file rebuttal

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1 testimony. So we are persuaded we are going to allow  
2 that proposal to take its course according to what  
3 Mr. Van Nostrand and Mr. Cavanagh have described.

4 I think what we want to do now is adjourn so  
5 that you can take into account all the things we have  
6 mentioned and come up with a schedule. I understand  
7 you have already sort of fleshed out a schedule, but  
8 you might want to fine-tune that somewhat. We do have  
9 a number of other dates that need to be addressed. We  
10 do want to have a date for a settlement conference  
11 that's firm, and we want to know in a very specific way  
12 what you do propose as far as settlement is concerned.

13 JUDGE RENDAHL: We should go off the record  
14 and come up with a schedule.

15 MR. RIDGE: Can I ask a clarifying question?  
16 You mentioned a number of things that ought to be  
17 included in the schedule. One was settlement. The  
18 other was a prehearing conference for marking exhibits.  
19 Another was a public hearing for consumers. Were there  
20 any others than what are traditional.

21 JUDGE RENDAHL: I think any discovery issues  
22 you might want to address.

23 MR. TROTTER: I would propose just to make a  
24 motion for a late prehearing conference.

25 JUDGE RENDAHL: That's fine. So I think the

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1 concerns are how to schedule in settlement discussions  
2 and a prehearing conference for marking exhibits prior  
3 to the hearing and a time period for when the public  
4 hearing should be, and understandably, the actual date  
5 I think will be identified by the Company, Public  
6 Counsel, the Commission's public involvement staff.  
7 Gail Griffin Wallace is in the back of the room, so  
8 those of you who have not met her, she will be working  
9 on this case, and I can't think of any other dates at  
10 this point.

11 JUDGE MACE: I think that's it. Let's be off  
12 the record.

13 (Discussion off the record.)

14 JUDGE MACE: Parties have agreed that they  
15 will have a settlement conference September 30th and  
16 October 3rd of 2005. Staff, Intervenors, and Public  
17 Counsel will file testimony on November 3rd, and that  
18 testimony will include a decoupling proposal. Rebuttal  
19 testimony --

20 MR. TROTTER: Excuse me, Your Honor. I think  
21 the understanding was that NRDC has since likely to  
22 file a decoupling proposal. I don't think that was  
23 true of all parties, and that's certainly possible they  
24 won't file anything, but perhaps the transcript should  
25 reflect that.

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1           JUDGE MACE:  If there is a decoupling  
2 proposal, it will be filed at that time --

3           MR. TROTTER:  A decoupling proposal by NRDC.

4           JUDGE MACE:  -- by NRDC will be filed by  
5 November 3rd.  Rebuttal will be filed December 7th, and  
6 that rebuttal may contain responses to the decoupling  
7 proposal, if there is one filed.

8           MR. TROTTER:  I'm sorry.  If I could just  
9 interject.  That would be Company rebuttal in total,  
10 and then other parties can file rebuttal to the  
11 decoupling proposal.

12           JUDGE MACE:  Or response.  That's correct.  
13 Thank you for that addition.

14           January 4th will be the date for a prehearing  
15 conference to mark cross-examination exhibits.  The  
16 hearings will be held January 9th through the 20th.  
17 Initial briefs will be filed February 13th, responsive  
18 briefs February 27th, and the suspension period ends  
19 April 4th.

20           JUDGE RENDAHL:  Just one other matter.  Do  
21 the parties prefer that we schedule a location for the  
22 settlement conference, or do you want to reserve that  
23 to yourselves?

24           MS. SMITH:  May we reserve that to ourselves,  
25 please?  And if it becomes necessary to schedule a room

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1 here at the Commission, I'll take care of doing that.

2 JUDGE MACE: Contact Kippy Walker and she can  
3 take care of that. There is one final item we need to  
4 address, actually, and that falls under "other issues."  
5 We want to advise the parties that Nicholas Garcia, a  
6 member of the Commission's policy staff, will be an  
7 advisor to the Commission in this case. Because  
8 Mr. Garcia participated in the multistate process some  
9 time ago, we wanted to find out if any party has any  
10 comment on his participation in this docket as a  
11 Commission advisor. Any comment?

12 MR. CROMWELL: We have no objection, and I  
13 suppose I should also place on the record that Merton  
14 Lott, a recently retired WUTC employee, has been  
15 retained by Public Counsel to possibly address  
16 allocation questions as well as other issues. We  
17 discussed this informally amongst the parties, but in  
18 case the Commission might have a concern, I wanted to  
19 bring that up.

20 JUDGE MACE: Any comment on that?

21 MR. TROTTER: Just as to the latter, it's my  
22 understanding that certain statutes may or may not  
23 apply depending on what that former employee did or did  
24 not do, and we do not presume to judge that issue since  
25 we don't know the facts at this point, and compliance



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1 with the state ethics statute would be the  
2 responsibility of that individual, not me, so we will  
3 just leave it at that.

4 JUDGE MACE: Anyone on the conference bridge  
5 have any comment on these two matters? I hear no  
6 response. I wanted to mention to the parties that you  
7 will receive specific instructions for the method of  
8 filing documents with the Commission in this case. Our  
9 internal distribution list calls for an original and 12  
10 copies to be filed. If you need to make an electronic  
11 filing in accordance with those instructions, please  
12 let us know ahead of time, and we have information from  
13 the parties about who will take electronic service.

14 JUDGE RENDAHL: But there is a difference  
15 between submitting a document to the Commission  
16 electronically.

17 JUDGE MACE: That's true. With electronic  
18 filing, you need to ask us permission to file  
19 electronically ahead of time and then you file the hard  
20 copy by noon the next day, and you need to make sure  
21 you indicate that permission to the records center so  
22 that they are aware of it. So please contact us if you  
23 want to do that.

24 Is there anything else we need to address  
25 that the point?

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1                   JUDGE RENDAHL: The only thing I would ask is  
2 Mr. Cavanagh or Mr. Purdy, do you wish to order a copy  
3 of the transcript from this morning's prehearing  
4 conference?

5                   MR. PURDY: No. I'll simply await the order  
6 that comes out of this meeting.

7                   MR. CAVANAGH: Same for me, Ralph Cavanagh.

8                   JUDGE MACE: Anything else? Thank you.

9                   JUDGE RENDAHL: Thank you very much.

10                  (Prehearing conference adjourned at 10:57 a.m.)

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