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 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

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 4 WASHINGTON UTILITIES AND )

 TRANSPORTATION COMMISSION, )

 5 )

 Complainant, )

 6 )

 v. ) DOCKETS UE-190334

 7 ) and UG-190335

 AVISTA CORPORATION, d/b/a ) (Consolidated)

 8 AVISTA UTILITIES, )

 )

 9 Respondent. )

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 PREHEARING CONFERENCE, VOLUME I

11 Pages 1 through 46

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 2:29 p.m.

13 May 24, 2019

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15 Olympia, Washington

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 1 OLYMPIA, WASHINGTON; MAY 24, 2019

 2 2:29 p.m.

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 5 JUDGE O'CONNELL: Okay. Let's be on the

 6 record.

 7 Good afternoon. The time is approximately

 8 2:30 p.m. My name is Andrew O'Connell. I am an

 9 administrative law judge with the Washington Utilities

10 and Transportation Commission, and I will be presiding

11 in this matter, along with the commissioners.

12 We're here today for a prehearing conference

13 in consolidated dockets UE-190334 and UG-190335, which

14 is Avista's 2019 general rate case.

15 Avista has filed a motion to consolidate

16 docket UE-190222 concerning Avista's energy recovery

17 mechanism. The Commission has reviewed the motion as

18 well as responses to the motion to consolidate and has

19 decided to consolidate that docket with the GRC dockets.

20 I will issue an order memorializing this decision and

21 outline the procedure going forward in these dockets.

22 So I intend to take appearances next, but

23 before I do, I want to foreshadow some questions I have

24 for Mr. Meyer, and I expect that they are unexpected.

25 So I wanted to ask them now so that you can prepare and

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 1 kind of think about those questions.

 2 The first is: Given that we are going to be

 3 consolidating the ERM filing with the GRC, I'd like to

 4 hear what proposal you would have for sharing any of the

 5 data requests and responses that have already been

 6 issued in the ERM docket, and how those would be

 7 numbered and identified, and how we would clearly

 8 designate them. And then additionally, how Avista would

 9 propose we reconcile some duplicative identifications

10 and markings on testimony and exhibits that are, at

11 least currently appear in both cases.

12 And for example, I am thinking of an exhibit

13 that Mr. Ehrbar has sponsored in both dockets that is

14 marked as Exhibit PDE-2. And there may be others.

15 Okay. Let's move forward with appearances.

16 And let's begin with the company.

17 MR. MEYER: Thank you, your Honor. David

18 Meyer for Avista.

19 JUDGE O'CONNELL: And short appearances are

20 sufficient. We have, I believe, all of the information

21 on -- in the docket for all of the representatives.

22 And from staff.

23 MS. CAMERON-RULKOWSKI: Jennifer

24 Cameron-Rulkowski, Assistant Attorney General appearing

25 on behalf of Commission staff.

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 1 JUDGE O'CONNELL: And Public Counsel.

 2 MS. SUETAKE: Nina Suetake for Public

 3 Counsel. And on the line we also have Lisa Gafken for

 4 Public Counsel for the ERM.

 5 JUDGE O'CONNELL: Okay. Thank you.

 6 And for the Alliance of Western Energy

 7 Consumers.

 8 MR. PEPPLE: Good afternoon, your Honor.

 9 Tyler Pepple for the Alliance of Western Energy

10 Consumers.

11 JUDGE O'CONNELL: For the Energy Project.

12 MR. FFITCH: Good afternoon, your Honor.

13 Simon ffitch for the Energy Project.

14 JUDGE O'CONNELL: For Sierra Club.

15 MS. LOARIE: This is Jessica Yarnall Loarie

16 for the Sierra Club.

17 JUDGE O'CONNELL: And for the Northwest

18 Energy Coalition.

19 MR. SANGER: Irion Sanger and Marie Barlow.

20 JUDGE O'CONNELL: And for Northwest Citizens

21 Power Coalition.

22 MR. BELL: Should I come up?

23 JUDGE O'CONNELL: Yeah, if you would,

24 please. Come sit in front of a microphone. I think we

25 have one available.

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 1 MR. BELL: Thank you, your Honor.

 2 MR. FFITCH: Your Honor, I'm not sure that

 3 one's working. That's why I moved, so here.

 4 MR. BELL: We'll just share then.

 5 My name is Michael R. Bell, and I'm the

 6 treasurer for the Northwest Citizens Power Coalition.

 7 JUDGE O'CONNELL: Is there anyone else in

 8 the room or on the bridge line who wishes to make an

 9 appearance? Okay. Hearing nothing, let's move on.

10 Brings us to petitions for intervention.

11 Are there any petitions for intervention other than the

12 ones that have been filed in writing? Hearing none,

13 let's proceed.

14 I've read the petitions to intervene: One

15 on behalf of the Alliance of Western Energy Consumers;

16 one on behalf of the Sierra Club; one on behalf of the

17 Energy Project; one on behalf of the Northwest Energy

18 Coalition; and one on behalf of Northwest Citizens Power

19 Coalition. I'm unaware of any written objections to

20 these petitions. Are there any objections?

21 MR. MEYER: There may be, your Honor. Only

22 with respect to the Citizen Coalition. And I would like

23 to first better understand the type of issues that they

24 would be raising, sort of things they would be looking

25 at. So this would be in aid of an objection. So if you

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 1 might inquire as to those things of this representative.

 2 JUDGE O'CONNELL: Sure.

 3 Before I do that, are there any objections

 4 to any of the other intervenors who have petitioned for

 5 intervention?

 6 MS. CAMERON-RULKOWSKI: Your Honor, staff

 7 also has a question for the Northwest Citizens Power

 8 Coalition.

 9 JUDGE O'CONNELL: Yes.

10 MS. CAMERON-RULKOWSKI: We don't have

11 objections to the other intervenors. May I state that

12 question at this time?

13 JUDGE O'CONNELL: Please just hold on one

14 moment.

15 But as to all of the other intervenors, my

16 understanding, from going around the room and hearing to

17 the bridge line, is that there are no other objections

18 or questions about petitions to intervene?

19 MR. MEYER: Yes, from Avista.

20 JUDGE O'CONNELL: So to those petitions to

21 intervene, the ones for AWEC, Sierra Club, the Energy

22 Project, and Northwest Energy Coalition, those will be

23 granted.

24 Let's -- let's move on to the Northwest

25 Citizens Power Coalition. Mr. Bell, can you please

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 1 state the interest of the Northwest Power -- Citizens

 2 Power Coalition in this case.

 3 MR. BELL: Well, the Northwest Citizens

 4 Power Coalition was created by a group of concerned

 5 representatives back at the time Avista was wanting to

 6 transfer ownership to Hydro One. And that got our

 7 attention.

 8 The intervenors at the time were supposed to

 9 represent, safeguard the Avista customers and the broad

10 public interest, and had approved that deal. And our

11 group was opposed to that deal. It was obviously not in

12 the best interests of the rate payers.

13 And we appreciate the WUTC staff and

14 commissioners to not approve that, and they stated why

15 that it was not in the best interest of the rate payers,

16 and at that point we decided that we need proper

17 representation before these proceedings as an

18 intervenor. And we just felt like the existing

19 intervenors had not properly safeguarded the Avista

20 customers or the broad public interest in that

21 proceeding, and so we've since taken on our -- that

22 responsibility I guess.

23 JUDGE O'CONNELL: And but you're aware that

24 that acquisition is not at issue --

25 MR. BELL: That's correct.

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 1 JUDGE O'CONNELL: -- in this case.

 2 MR. BELL: That's correct. But that doesn't

 3 take away from the fact that someone needs to be acting

 4 in the best interest of the rate payers, the Avista rate

 5 payers and the common public interest, besides the WUTC

 6 staff and commissioners.

 7 JUDGE O'CONNELL: Okay.

 8 Ms. Cameron, yes, Ms. Suetake, I actually

 9 would like to hear from Public Counsel, but --

10 MS. SUETAKE: Sorry, I'm just told the

11 bridge line can't hear that mic very well.

12 MR. BELL: Let me -- does that work?

13 MS. SUETAKE: I don't think it's on.

14 JUDGE O'CONNELL: There is a red light that

15 should illuminate on.

16 MR. MEYER: Mine works, has been working.

17 MR. BELL: Okay. This one's not working and

18 this one's not either apparently. Okay.

19 JUDGE O'CONNELL: Has everyone here been

20 informed that we're moving to a new building soon? I'm

21 told that we will not have the same sort of technical

22 difficulties.

23 Mr. Bell, if you could, briefly, for those

24 who are on the bridge line, and I apologize for asking

25 you to resay it again, explain, briefly, your interest

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 1 in this proceeding.

 2 MR. BELL: Thank you, your Honor.

 3 My name's Michael Bell. I'm the treasurer

 4 for Northwest Citizens Power Coalition. Our

 5 organization was started at the time that Avista was in

 6 the process of transferring ownership to Hydro One, and

 7 we felt that that was not in the best interests of the

 8 rate payers. And the existing intervenors at the time

 9 approved that deal, which was a little disheartening on

10 our parts since we felt it was not in the best interests

11 of the rate payers and that they were not complying with

12 their primary responsibility of safeguarding the rate

13 payers.

14 As a result, we formed and decided that, on

15 any new actions involving rates and Avista and anything

16 along those lines, we would step in and request

17 intervenor status so that we could protect the interests

18 of the Avista rate payers.

19 And we appreciate the WUTC staff and

20 commissioners who denied that request to merge with

21 Hydro One, and we believe that they were the only ones

22 standing in in a position to safeguard the Avista

23 customers. And so with that, we're requesting

24 intervenor status.

25 JUDGE O'CONNELL: Is there a particular

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 1 subset of rate payers that you are representing? Or it

 2 sounds like you may be offering to represent all the

 3 Avista rate payers.

 4 MR. BELL: Right now our -- all of our

 5 members are Washington Avista customers. And so we're

 6 representing those, and we have new members all the

 7 time.

 8 JUDGE O'CONNELL: And are these residential

 9 customers?

10 MR. BELL: They are. They are. And I

11 appreciate you clarifying that, sir.

12 JUDGE O'CONNELL: Okay.

13 Ms. Cameron-Rulkowski, you mentioned that

14 you had a question.

15 MS. CAMERON-RULKOWSKI: I do. Thank you,

16 your Honor.

17 Mr. Bell, I had actually a couple of

18 questions. The one I was concerned about is that this

19 case is a general rate case, and it is quite different

20 from the Hydro One merger proceeding. And we -- you do

21 have an advocate in the form of Public Counsel who is a

22 statutory party, not an intervenor.

23 And so what I was wondering is if you could

24 explain why you think Public Counsel would not be able

25 to represent the interests of the rate payers in a

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 1 general rate case, which -- which is a pretty technical

 2 case. And so that was my one question.

 3 And then the also -- also something that I

 4 didn't see in -- in the petition was a statement about

 5 whether the coalition intended to broaden the issues in

 6 this proceeding. And this is a corollary to

 7 Judge O'Connell's question about whether there were

 8 particular issues that you were interested in. It

 9 sounds like your issues are general.

10 And the other question is: Would you be

11 willing to coordinate your efforts with Public Counsel,

12 if that's something that Public Counsel is interested

13 in, so that we don't have a duplicative efforts.

14 JUDGE O'CONNELL: So Mr. Bell, before you I

15 think address some of the concerns raised by

16 Ms. Cameron-Rulkowski, I -- I think that,

17 Ms. Cameron-Rulkowski, your questions were, at least to

18 start, in lieu of making an objection; is that correct

19 I'm understanding?

20 MS. CAMERON-RULKOWSKI: That's correct, your

21 Honor.

22 JUDGE O'CONNELL: Okay.

23 Mr. Bell, before you provide some more

24 information to explain more about the interests that

25 you're representing, I think it would be beneficial if

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 1 we heard from Public Counsel and Ms. Suetake or

 2 Ms. Gafken, if you could explain the role of Public

 3 Counsel and the interests that you represent.

 4 MS. SUETAKE: Thank you, your Honor.

 5 Public Counsel is here by statutory right as

 6 a party representing small business and residential rate

 7 payers. I am aware that -- that the party before us is

 8 slightly disappointed with our representation of

 9 small -- of residential customers in Avista's territory.

10 We are neutral on your petition. We do not

11 object to your petition at all. We understand that all

12 parties have the ability to petition for intervention

13 here, and it is while not -- while not a right of

14 parties, the Commission obviously has the discretion to

15 afford you party status.

16 We -- if the Commission grants party status,

17 we would, however, object to being required to

18 coordinate. I'm sure you're aware that Public Counsel's

19 presentation is on very technical natures, and I'm not

20 sure if our presentation of testimony would be able to

21 be coordinated with an outside party.

22 We absolutely welcome your participation in

23 settlement negotiations and the like, but I think it

24 would be difficult for us to coordinate all of our

25 positions.

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 1 JUDGE O'CONNELL: So Ms. Suetake, do you see

 2 the interest that Public Counsel represents as being

 3 distinct from the one you've heard is going to be

 4 represented by the Northwest Coalition of Power

 5 Consumers? Citizens Power Coalition. I apologize.

 6 MS. SUETAKE: No, I don't. I do not believe

 7 that we are distinct in that. We do represent

 8 residential rate payers, and our interests align to the

 9 extent that I understand your position.

10 JUDGE O'CONNELL: Okay. Before I turn back

11 to Mr. Bell, Mr. Meyer, did you have anything that arose

12 from those questions? Is there an objection that you

13 have to this intervenor's intervention?

14 MR. MEYER: Yes, just a few additional

15 comments. And first is: We want to hear from our

16 customers, and so even though I will object to their

17 intervention -- I'll explain why in just a moment -- I

18 don't want there to be any confusion about whether we do

19 or don't listen and take into account what our customers

20 have to say.

21 The company has many outreach efforts. It

22 stays in touch with its customers and appreciates the

23 dialogue. So let there be no confusion on the record

24 about that.

25 What I am concerned about though is -- is

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 1 what this does to this process. In listening to the

 2 responses to your questions and those of others,

 3 Mr. Bell has not identified any distinct or specific

 4 issue that cannot or will not presumably be addressed by

 5 other parties also charged with representing his

 6 constituency, most notably Public Counsel.

 7 I think you just heard from Public Counsel

 8 that it was her belief that she represents the interests

 9 of this customer group. So it's duplicative and there

10 are other avenues for this customer group and other

11 customer groups to be heard.

12 And we hold typically two to three public

13 hearings throughout the service area. It's not at all

14 unusual for customer groups, whether it's the Committee

15 on Aging or whether it's SNAP or other well-formed

16 organizations who have specific interests to appear,

17 testify, and have their voices heard.

18 So I just, I think the precedent is bad

19 precedent, unless the -- unless Mr. Bell can identify

20 specific interests that won't already be sufficiently

21 addressed by others. So with that, I object.

22 JUDGE O'CONNELL: Okay. Mr. Bell, I would

23 like to hear from you again, and I have a couple

24 questions that I hope will help clarify further your

25 position. I'm interested in learning how your

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 1 participation as a party in this proceeding will benefit

 2 the Commission's decision-making.

 3 MR. BELL: Well, I'm -- first of all, let me

 4 just say that our participation would be in coordination

 5 with the WUTC and others that are representing the rate

 6 payers. But we have -- before I go further, let me just

 7 say that this is a complex area. There's no doubt about

 8 it.

 9 I'm a retired CPA. I worked in healthcare

10 for 35 years. I had my own practice, 20 employees, and

11 I worked almost exclusively with hospitals that get

12 cost-based reimbursement. So the methodology we're

13 using here is a little bit different, but it's not much

14 different than what I worked in for 35 years.

15 There are some major issues that I'd like to

16 see addressed, and our primary concern is to make sure

17 the rate payers are not paying any more than they

18 absolutely have to, and that we've got somebody looking

19 out for our interest.

20 But I've reviewed some of the documentation

21 provided by Avista, and -- and there are a number of

22 things that I have -- have concerns about, and I'd like

23 to either be heard or to get answers to some of the

24 questions that I've got.

25 Would you like a list of those, your Honor?

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 1 JUDGE O'CONNELL: I think that actually

 2 brings up a question that I had for you that

 3 Ms. Cameron-Rulkowski also brought up, which is: To

 4 what extent do you intend to be participating in this

 5 proceeding? Are there any limits on the issues or any

 6 particular issues that you're wishing to address?

 7 MR. BELL: Well, I've got a list of a number

 8 of issues that I'd like to have addressed and perhaps

 9 have some answers to. And that can be done in

10 coordination with -- with the WUTC staff and other

11 representatives of the consumers or it can be done

12 separate, but I'm not interested in -- in interfering in

13 the proceedings. I'm merely interested in making sure

14 that there are certain questions that are addressed and

15 addressed properly.

16 JUDGE O'CONNELL: Can you briefly provide

17 those general issues that you're talking about.

18 MR. BELL: Sure. Currently Avista has about

19 $450 million in non-property excess deferred tax

20 liability to the rate payers and have -- they've

21 documented that a payback period for that would be about

22 36 years. I've researched that issue and the FERC is

23 suggesting that a payback period would be about 5 years,

24 not 36 years. I'd like to see that addressed.

25 One of our members at the time we formed was

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 1 the Spokane County treasurer, and he was outspoken about

 2 the Avista/Hydro One deal. And -- and at the time we

 3 were discussing that issue with -- with Avista during

 4 one of its efforts to communicate with customers, they

 5 contributed a hundred thousand dollars to his opponent

 6 in the Spokane County commissioner election. He had --

 7 his term as county treasurer had expired or would be

 8 expiring because of a term limit and he was running for

 9 county commissioner. And they contributed a hundred

10 thousand dollars to his opponent's campaign. I'd like

11 to know where that and all the other contributions that

12 are made by Avista to politicians show up in these

13 reports, because I'd like to see that they're in the

14 non-rate payer cost category, not in the rate payer cost

15 category.

16 There's a lot of marketing going on. Avista

17 does a lot of work on trying to sell everybody on the

18 fact that they do a great job, they've got a great

19 system, and there's a ton of money being spent on

20 marketing. And when I was in healthcare, if you want to

21 market to tell people what services are available to

22 you, that's one thing. If you want to just market to

23 say "We're a great company and we do a great job" and

24 it's more along those lines, that's not a allowable cost

25 and I'd like to see some distinction made between

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 1 marketing that the rate payers have to pay for and what

 2 the rate payers are not supposed to be paying for.

 3 There's also the deferred power cost. It

 4 exceeded the $30 million limit this year, and Avista's

 5 indicated they would like to repay that 3.4 million to

 6 the rate payers. I'd like to see Avista bring that

 7 power cost deferral down to zero rather than maintaining

 8 it at the $30 million pretty much tax-free loan from the

 9 rate payers.

10 So those are several of the -- of the main

11 issues that we've got. And I'm about a quarter of the

12 way through reading the rate documentation. I applaud

13 Avista, it certainly passes the weight test. But

14 there's a lot of information there and I'd like to read

15 through it further to understand exactly what they're

16 requesting and what documentation they have.

17 JUDGE O'CONNELL: Okay. So the issues I

18 think you've identified so far that I've written down

19 are: The pay back of the protected excess deferred

20 federal income tax, that period of payback; whether

21 political contributions and marketing are included in

22 rates; and the issue regarding the ERM filing, the

23 energy recovery mechanism, and the $34.4 million balance

24 there.

25 But I also hear that there may be other

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 1 issues that you have. You know, in looking at the

 2 filing, you may be interested in other issues that you

 3 discover.

 4 MR. BELL: That's correct, your Honor. And

 5 there's also additional issues at future time periods.

 6 The green bill that was just passed by the state

 7 legislature talks about penalties for utilities that are

 8 not in compliance with the green bill. And of course

 9 I've talked to the WUTC staff and they clearly indicated

10 penalties are not an allowable cost for rate-setting

11 purposes.

12 However, the same bill, Avista and the other

13 IOUs, investor-owned utilities, inserted or had

14 politicians insert other clauses in there that say you

15 can pay an alternative compliance payment in lieu of the

16 penalty, and an alternative compliance payment could be

17 run through the rate system. And there's also a

18 provision in there that says that if there is an

19 alternative compliance payment made, it's not required

20 to be disclosed to the rate payers.

21 And so in the future we would also want to

22 monitor whether there are any alternative compliance

23 payments being passed on to the rate payers, that that

24 won't happen for several years.

25 JUDGE O'CONNELL: Thank you.

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 1 Ms. Cameron-Rulkowski, in hearing further

 2 explanation from Mr. Bell, does staff have an objection

 3 after hearing some of those clarifications?

 4 MS. CAMERON-RULKOWSKI: Your Honor, I don't

 5 think staff is going to object, but I think I would

 6 point out that many of the issues that Mr. Bell raised

 7 actually have easy answers or are already settled at

 8 least as far as staff is concerned.

 9 The penalty or the alternative compliance

10 penalty as -- as you mentioned, Mr. Bell, will not be an

11 issue in this rate case.

12 The ERM balance is, once the company reaches

13 a certain trigger point, then it needs to be -- the

14 excess balance needs to be passed back. That certainly

15 is something that's going to be looked at closely in

16 this -- in this proceeding that all parties are

17 interested in.

18 The excess deferred income tax return

19 period, I believe that is set by the -- by the IRS. I

20 think we've -- we've gone over that issue a couple of

21 times here at the Commission. And some of the other

22 issues that you mentioned, I don't think they -- they go

23 into rates anyway.

24 So I guess what I would -- what I would --

25 if the Commission grants your intervention, grants the

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 1 intervention, I would... I would ask that the Northwest

 2 Citizens Power Coalition carefully consider any

 3 discovery that it issues so that it is not duplicative

 4 of issues that the -- that the parties have already

 5 addressed and -- and become more of -- more of an -- of

 6 an effort that is -- that is not needed to actually

 7 resolve the issues in the rate case.

 8 MR. BELL: Your Honor? Sorry.

 9 JUDGE O'CONNELL: Mr. Bell.

10 MR. BELL: Thank you, your Honor. I have

11 one more comment about the deferred tax liability.

12 Actually there are two categories of deferred tax

13 liability. One is related to property, and the IRS has

14 made it real clear that it has to be paid back at a

15 certain timetable, and if you violate that, you're in

16 big trouble. So I understand that.

17 The other is non-property deferred tax

18 liability. That's the 450 million that I'm talking

19 about. The other approximately 450 million is related

20 to property, so we've got two separate issues here.

21 The non-property $450 million liability

22 though, the IRS does not discuss that. And the -- the

23 federal energy regulation, regulatory Commission has

24 indicated that a five-year period is a reasonable period

25 for paying back a non-property deferred tax liability.

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 1 So I just wanted to clarify that and just make sure that

 2 that's on the record.

 3 There's one other issue that I -- I didn't

 4 flip enough pages to find. Currently the Avista folks

 5 are asking for a 9.8 to 10.8 percent return for their

 6 shareholders claiming that owning stock in a monopoly

 7 utility is a risky business and that they need a 9.8 to

 8 10.8 percent return on their investment.

 9 Personally, as a rate payer, I can't get 9.8

10 to 10 percent on anything that I invest in without some

11 difficulty. You have to be fairly well off to do that.

12 I find that 9.8 to 10.8 percent is outrageous, and

13 that's another issue that I would want some resolution

14 of.

15 Thank you, your Honor.

16 JUDGE O'CONNELL: Thank you, Mr. Bell.

17 I'm -- I'm aware of all these issues that

18 you've brought up, including the excess deferred income

19 tax issues and the others which includes the return on

20 equity that you just mentioned. I have --

21 I'm going to come back to you, Mr. Meyer.

22 MR. MEYER: Okay.

23 JUDGE O'CONNELL: But I've read all your

24 petition to intervene, I've heard the concerns and the

25 objection from Avista, and I'm going to take the

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 1 arguments under advisement as to whether you should be

 2 allowed party status in this case. I'm going to confer

 3 with the commissioners, and it's my intent that we will

 4 make a decision regarding your party status in the

 5 prehearing conference order that I will issue in the

 6 next few coming days. It will probably be next week.

 7 MR. BELL: Thank you, your Honor.

 8 JUDGE O'CONNELL: Mr. Meyer, is there

 9 anything else that you'd like to add?

10 MR. MEYER: Yes, even in light of that.

11 JUDGE O'CONNELL: Okay.

12 MR. MEYER: Number one, thank you for taking

13 the time to open those books up and dig into it. And

14 clearly you're not done, but you've identified four or

15 five technical issues, the last one being, we would

16 argue, is more of a matter of argument about what's a

17 fair return, that sort of thing.

18 But those are the kind of -- at least the

19 first several questions were the sort of questions we

20 routinely see in the discovery process. We get

21 literally a thousand or more discovery requests from

22 each of the parties around here. And so one way to

23 possibly navigate through this is: As you complete your

24 work and as technical issues pop up, Avista would have

25 no objection to you working, let's say through staff or

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 1 some other party who could propound, who could put those

 2 discovery questions after they help you edit and refine

 3 those, put those to Avista, we'll respond.

 4 Now, you may not like the response. That

 5 doesn't mean staff has to agree with the position you

 6 might be taking. But at least you'll have that

 7 information, because I'm hearing as much as anything

 8 just you need to understand a lot of these.

 9 So I don't mean to cheat you out of your

10 opportunity to learn more about what's behind the case

11 and why we feel the way we do. I just want to give you

12 an avenue that works in this process for you to have

13 that information. At the end of the day, if you're not

14 satisfied, you still disagree, and you well may disagree

15 with the answers that we give to that discovery, that's

16 when the public hearing process, you know, can be your

17 friend, because you'll say, "Look, I've reviewed all

18 this stuff and we still don't -- still don't agree."

19 Fair enough. So I'm just trying to give you

20 an avenue to participate in a way that really works in

21 this process.

22 MS. SUETAKE: Your Honor, I have a question

23 actually for Avista.

24 David, are you suggesting something less

25 than party status, but with discovery rights? I'm a

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 1 little confused as to what your objection is and what

 2 you're --

 3 MR. MEYER: No, it's -- I'm not suggesting

 4 some in-between status. I'm simply saying you have

 5 established parties participate, and my guess is that if

 6 you were to give them questions that you think are of

 7 interest, they will look at those and say, "Well, okay.

 8 We'll -- you know, fair enough. We'll ask that of

 9 Avista and get an answer."

10 You'll get the answer, and what becomes of

11 that answer, you know, it doesn't create an issue until

12 it becomes an issue. I'm just -- see what I'm getting

13 after here?

14 JUDGE O'CONNELL: Ms. Cameron-Rulkowski.

15 MS. CAMERON-RULKOWSKI: Your Honor, staff

16 does not -- does not agree to coordinate its discovery

17 with any other party.

18 JUDGE O'CONNELL: I understand.

19 To Public Counsel and to Commission staff,

20 when someone who is not a party to the case is

21 interested nonetheless and submits public comments to

22 either Public Counsel or to Commission staff, do you at

23 times interact with or take those comments and utilize

24 them in crafting your own? And I'm curious as to your

25 experience in previous proceedings and whether that is

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 1 something that has been done.

 2 MS. SUETAKE: Your Honor, Public Counsel

 3 does read all of the public comments that come in. I

 4 personally have not been here long enough to have

 5 experienced whether we've used those.

 6 If Ms. Gafken is still on the line, I would

 7 welcome her input.

 8 MS. GAFKEN: This is Lisa Gafken.

 9 As Ms. Suetake has mentioned, we do review

10 all of the comments that come in. They tend to be more

11 opinion pieces, you know, expressing what they feel

12 about the proposal more so than a list of substantive

13 issues that they want more information on. Or what I'm

14 trying to say is: It doesn't provide an avenue really

15 for discovery, at least in my experience.

16 You know, I suppose if that's opened up now,

17 we might see more of that. But really the customer

18 comments are an avenue for some of the -- the person

19 who's not mired in the technical aspects of the -- of

20 the case to express their opinion and get their points

21 of view heard.

22 As everyone knows, those then go into the

23 record as part of an exhibit and become part of the

24 evidentiary record. But we -- we have not in the past

25 coordinated our discovery with -- with customers. And I

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 1 would agree with staff's position that I don't know that

 2 we're in the best position or any party is really in the

 3 best position to coordinate their discovery based on

 4 another entity's information desires.

 5 JUDGE O'CONNELL: I understand.

 6 And Ms. Cameron-Rulkowski, before I return

 7 to you, let me say that there are Commission rules that

 8 provide for the Commission to take a particularly

 9 relevant or savvy public comment that is submitted in

10 any proceeding and accept it into the record as an

11 exhibit. And I am aware of that.

12 Ms. Cameron-Rulkowski, returning to you.

13 MS. CAMERON-RULKOWSKI: I wanted to clarify

14 that staff -- the public comments are all compiled

15 typically at the end of the process, and so it is not --

16 so staff -- staff will oftentimes read them as they --

17 as they come in, but they do not typically make their

18 way into staff testimony.

19 As Public -- counsel for Public Counsel

20 mentioned, oftentimes they are more along the line of

21 opinion pieces. However, there have been instances

22 where public comment has made it into the Commission

23 order. So that has -- that has happened as well.

24 JUDGE O'CONNELL: Okay. Thank you.

25 Well, as I've already stated, I'm going to

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 1 take it under advisement, the arguments for and against

 2 granting intervenor status to the Northwest Citizens

 3 Power Coalition. And I will include in the prehearing

 4 order a decision on that matter.

 5 Briefly, before I have some other things

 6 that we need to cover at this prehearing conference, but

 7 I have been given a draft procedural schedule by

 8 Commission staff for this general rate case.

 9 Has -- has Mr. Bell been shown this draft

10 schedule?

11 MS. CAMERON-RULKOWSKI: He has not, your

12 Honor. I'm going to distribute it to -- one to him

13 right now.

14 JUDGE O'CONNELL: Please. I think that

15 would be appropriate considering that the Commission has

16 yet to make a decision whether to include him or not. I

17 would like Mr. Bell to be able to see the important

18 dates that are being proposed, in particular the

19 evidentiary hearing dates as well as, if they are -- if

20 they are granted intervenor status, the dates for filing

21 of testimony and cross-answering testimony.

22 Before we get to that, let me back up. The

23 company requested a protective order when it filed its

24 general rate case, and a protective order has already

25 been issued. But as it regards docket UE-190222, that

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 1 docket does not yet have a protective order.

 2 Mr. Meyer, from my review of that filing,

 3 it's my understanding that the company, if you haven't

 4 already stated that you would like a protective order, I

 5 notice that there are things that are marked as

 6 confidential. So I wanted to ask if it's correct that

 7 you would like to have a protective order apply in that

 8 docket.

 9 MR. MEYER: Yes, I wanted to bring that

10 issue up. I'm glad you have. I would be satisfied

11 making the general rate case protective order apply as

12 well or you can just issue a fresh protective order in

13 the ERM docket itself. Maybe that's the cleanest way of

14 doing it.

15 JUDGE O'CONNELL: Okay. Well, the way I see

16 this is that if I issue a protective order just in the

17 ERM docket, that would require everyone who has already

18 signed an agreement of confidentiality in the general

19 rate case and anyone who has yet to file or sign an

20 agreement, everyone would have to sign another agreement

21 in the ERM docket.

22 MR. MEYER: Sure. Either way is fine.

23 JUDGE O'CONNELL: Well, I think that we can

24 make it simpler and cleaner. And I intend then to issue

25 a modified order 02 in these consolidated dockets, so

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 1 all three dockets -- 193334, 190335, and 190222 -- which

 2 will then incorporate all of those dockets.

 3 I -- I realize that for those who have

 4 already signed a confidentiality agreement, it would

 5 require those people to re-sign another confidentiality

 6 agreement, which if those people were interested in

 7 whatever is marked as confidential in the ERM docket,

 8 but I think it will make going forward simpler for all

 9 parties and the Commission.

10 Is there any objection to doing it that way?

11 Okay. Hearing none, that I am going to memorialize that

12 in the prehearing conference order and I will be issuing

13 a modified order 02 with that modification.

14 I also want to remind the parties that

15 filing and service are all done electronically now

16 according to Commission rule. However, in this case,

17 the Commission is also going to require the filing of an

18 original and three paper copies for internal

19 distributions. So if the filings include information

20 designated as confidential, please file the original and

21 three copies of the fully unredacted version. No paper

22 copy is necessary for any partly redacted or fully

23 redacted version. So please file those versions only in

24 electronic format.

25 If any party has yet to designate a lead

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 1 representative for service, please do so in email to me

 2 as soon as possible. Also if you would like to add

 3 anyone, names or addresses or other representatives or

 4 support staff who should relieve -- receive electronic

 5 courtesy copies of all documents, please email me that

 6 as well. My email is andrew.j.oconnell, that's spelled

 7 o-c-o-n-n-e-l-l, @utc.wa.gov. I'm sorry, w-a.g-o-v.

 8 Now I'd like to address the procedural

 9 schedule, the draft that I've been provided. Is

10 there -- among the parties that have already seen

11 this -- and Mr. Bell, I'll come to you in a moment --

12 are all the parties, is this a consensus proposal?

13 MS. CAMERON-RULKOWSKI: Yes, your Honor. I

14 believe it works for everyone. I will simply note that

15 in the prehearing conference right before this one, we

16 did develop a separate schedule for the remand

17 proceeding, and so that one item, remand settlement

18 conference on August 6th, can be stricken.

19 JUDGE O'CONNELL: Are there any other

20 strikes that are relevant arising from that other

21 proceeding?

22 MS. CAMERON-RULKOWSKI: I don't see any,

23 your Honor.

24 JUDGE O'CONNELL: Okay.

25 Okay. So I see here that an evidentiary

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 1 hearing is planned for December 11th through possibly

 2 December 13th. And I am aware that the Commission's

 3 calendars are available as well as the hearing room for

 4 those dates.

 5 As far as all of the other dates proposed,

 6 I'm going to confirm with the Commission's calendars,

 7 make sure there is no conflict. And if there is not, I

 8 will approve and incorporate into the prehearing

 9 conference order.

10 MS. CAMERON-RULKOWSKI: Your Honor.

11 JUDGE O'CONNELL: But before I -- before I

12 do that, I'd like to hear from Mr. Bell if there's any

13 conflict from you as to the hearing date in particular

14 and the other dates that might apply to you as an

15 intervenor if you are granted intervenor status.

16 MR. BELL: I have no objections. Thank you,

17 your Honor.

18 JUDGE O'CONNELL: Okay. Thank you.

19 Ms. Cameron-Rulkowski.

20 MS. CAMERON-RULKOWSKI: Your Honor, I'm

21 sorry, there's another date that needs to be stricken.

22 JUDGE O'CONNELL: Okay, please.

23 MS. CAMERON-RULKOWSKI: It's right before

24 the remand settlement conference, Avista files remand

25 testimony and exhibits. And a note about the proposed

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 1 hearing dates. We had originally set a somewhat longer

 2 period for hearing thinking that we might have a remand

 3 in there. I would propose we need that longer period,

 4 because now we have the ERM consolidated with the

 5 general rate case.

 6 JUDGE O'CONNELL: Is there any objection

 7 from the other parties?

 8 MS. SUETAKE: No, your Honor.

 9 JUDGE O'CONNELL: Hearing none.

10 Okay. Now to return to the few other

11 housekeeping items I had. Data requests: During

12 proceedings at the Commission, I'm aware that the

13 parties often request that any data requests and

14 responses are shared with every other party. I intend

15 to include this as a requirement in the prehearing

16 conference order.

17 Is there any objection to that inclusion?

18 MR. MEYER: No objection.

19 JUDGE O'CONNELL: Hearing no objection, I

20 will include that in the prehearing conference order.

21 Mr. Meyer, the two questions I had for

22 Avista at the outset of the hearing, I'm aware that for

23 the docket UE-190222, the ERM filing, there may have

24 already been data requests asked and answered of the

25 company. How would you propose we facilitate sharing

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 1 that information?

 2 MR. MEYER: Okay. Perhaps the cleanest way

 3 to do it is we will -- in fact we talked about it

 4 briefly before these prehearing conferences. We will

 5 provide copies of those responses to all other parties.

 6 There is some confidential information, so some of this

 7 may take a little bit of time while people execute who

 8 have not executed their protective order agreements, but

 9 we will provide those. So they will have in front of

10 them response to staff DRX; okay. Then they can make

11 whatever use they want to make of that.

12 So that covers what's been done till now.

13 Going forward of course they would propound their own

14 identified DRs. So I think everyone will get caught up

15 that way.

16 JUDGE O'CONNELL: Okay. Is there going to

17 be an issue with the numbering of those DRs?

18 MR. MEYER: I don't think so. There are not

19 that many that we can't, at the time of actual hearing,

20 make clear that, if Public Counsel wants to make use of

21 staff DR7, that that won't be clear on the record. It's

22 manageable.

23 JUDGE O'CONNELL: Okay. Commission staff?

24 MS. CAMERON-RULKOWSKI: Your Honor, we

25 already have discovery in the general rate case, and so

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 1 I believe staff would refer to these as the -- the

 2 informal ERM data request 1 through 13, something like

 3 that.

 4 JUDGE O'CONNELL: Okay. As long as we can

 5 clearly mark it so that it's easy for identification,

 6 especially if it is ends up being offered as an exhibit

 7 in the proceeding. I want to avoid as much confusion as

 8 I can.

 9 So next about the testimony exhibits --

10 MR. MEYER: Yeah.

11 JUDGE O'CONNELL: -- and the overlap that

12 there may be between the two proceedings. Do you have

13 thoughts on how you'd like to clearly organize those?

14 MR. MEYER: Well, first thought that comes

15 to mind is if we're dealing, for example, with a

16 Mr. Ehrbar testimony, just simply a parenthetical ERM

17 and a close parens after the exhibit designation, if

18 that's what it pertains to.

19 JUDGE O'CONNELL: Okay. Would that be

20 easier and simpler and would avoid confusion just as

21 well as having to renumber and resubmit those exhibits?

22 MR. MEYER: In other words, are you

23 suggesting why not just resubmit and --

24 JUDGE O'CONNELL: And I'm curious as to the

25 difficulty with doing that and the concerns for doing

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 1 that and whether your proposal would be just as clear

 2 and efficient.

 3 MR. MEYER: Yeah, either way. Fortunately

 4 the items of testimony that have been filed in the ERM

 5 docket are relatively few. And so it's not as if we are

 6 republishing a whole mass of material. So if you'd

 7 like, we can go ahead and republish those with some sort

 8 of designator like "ERM" after the witness exhibit

 9 number.

10 Is that what you have in mind?

11 JUDGE O'CONNELL: Perhaps. And perhaps that

12 might be the easiest.

13 Let me ask Commission staff, because it

14 sounds like discovery has already been going on in the

15 ERM filing and that there have been data requests that

16 are already going to have to have a designation. Will

17 it be -- I'm assuming that some of those data requests

18 refer to exhibits and testimony presented in that

19 filing.

20 In consideration of that, do you think it

21 would be clearer and easier to follow if we simply, when

22 we are referring to them, from now on have the

23 parenthetical after the designation that indicates

24 "ERM", Ms. Cameron-Rulkowski?

25 MS. CAMERON-RULKOWSKI: Not for data

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 1 requests. We'll just continue to issue data requests,

 2 and if they pertain to the ERM, they'll simply be

 3 numbered consecutively as formal data requests within

 4 the consolidated dockets going forward. So and

 5 whichever issue they go to, they'll be used as exhibits

 6 or not, so we don't need an additional designation for

 7 discovery.

 8 In terms of the exhibits that have already

 9 been filed, I think whatever the -- whatever the

10 Commission, whatever your Honor would like to do, we'll

11 go ahead and follow along. I think we can keep track of

12 everything. We have so far.

13 JUDGE O'CONNELL: Okay. I think Mr. Meyer's

14 suggestion of adding a, for lack of a better word, a

15 suffix to the end with a parenthetical with an "ERM"

16 would be sufficient and distinguishing, for example,

17 Mr. Ehrbar's Exhibit Number 2 from the, his Exhibit

18 Number 2 in the general rate case.

19 And I'm not going to require at this time

20 that you re-file them with that designation, but I think

21 when they're being referred to either in response

22 testimony or rebuttal testimony, there should be an

23 indication of which exhibit is being referred to.

24 Does that make sense?

25 MS. CAMERON-RULKOWSKI: That makes sense,

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 1 your Honor. And we'd be happy to refer to the exhibits

 2 and to the company exhibits in that way when staff does

 3 present its testimony. We may have one witness who

 4 testifies about several issues, including the ERM, and

 5 so we wouldn't want to add that designation to the

 6 response testimony in exhibits.

 7 JUDGE O'CONNELL: I apologize. Not for the

 8 responsive testimony, but -- and I understand how that

 9 may have been confusing when I said it. I was

10 anticipating that if there is responsive testimony that

11 addresses the ERM, inside that testimony and any

12 exhibits that go with it, that the testimony provided by

13 a witness would refer to the ERM exhibits with a

14 parenthetical so that we can keep clear whether that

15 witness who may be testifying about issues other than

16 the ERM, which documents that witness is referring to.

17 MS. CAMERON-RULKOWSKI: And so your Honor is

18 referring just to the company's testimony exhibits, only

19 the company testimony and exhibits would have the "ERM"

20 suffix; is that correct?

21 JUDGE O'CONNELL: Correct. Because that

22 would be the only thing at this time that would overlap;

23 correct?

24 MR. MEYER: But as we work our way through

25 the proceeding and we have staff intervenor testimony on

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 1 the ERM and we have the company rebuttal that deals with

 2 ERM issues, suddenly they become intertwined again,

 3 unless we keep that descriptor involved.

 4 MS. CAMERON-RULKOWSKI: If I may, I don't

 5 think we would have the duplication of exhibit numbers

 6 at that point. I would hope we could just go on

 7 numbering the company exhibits consecutively from

 8 wherever that witness last left off.

 9 JUDGE O'CONNELL: As consolidated dockets

10 from the effective date of the prehearing conference

11 order, for all intents and purposes, they are the same

12 proceeding.

13 MR. MEYER: And my only thought there was

14 it's fine either way. I just wanted, as we ultimately

15 go through the record and review it all, we can -- it's

16 easy for us to keep in mind that this bit of testimony,

17 if it's confined as to ERM and again it's ERM stuff or

18 that's general rate case stuff. So either way is fine.

19 Your choice.

20 JUDGE O'CONNELL: Okay.

21 MS. CAMERON-RULKOWSKI: If Mr. Meyer wishes

22 to withdraw Avista's motion for consolidation, we could

23 consider that.

24 MR. MEYER: Well, there's a thought. No.

25 MS. CAMERON-RULKOWSKI: Getting late in the

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 1 afternoon.

 2 JUDGE O'CONNELL: I will -- I'll address

 3 what we've talked about as far as identification and

 4 marking of the -- the ERM documents, and I'll try and

 5 make it clear in the prehearing conference order what my

 6 expectations and the Commission's expectations are going

 7 forward.

 8 MR. FFITCH: Your Honor.

 9 JUDGE O'CONNELL: Yes, Mr. ffitch.

10 MR. FFITCH: I have a related question, if I

11 could interject it here. The parties who are not

12 previously intervenors in the ERM matter because of the

13 consolidation, am I correct in assuming that now we

14 are -- Energy Project or other similar parties are full

15 parties with respect to ERM matters as well, so that if

16 we wanted to, and I have no idea at this point whether

17 we want -- we want to weigh in on ERM issues, but if we

18 choose to do so, we don't have to take any further

19 action formally to intervene in the ERM docket?

20 And then I guess that's a question. Because

21 of the consolidation, we are now deemed to be members

22 or, excuse me, intervenors in the ERM docket as well as

23 the general rate case docket.

24 JUDGE O'CONNELL: That is correct. You'll

25 be intervenor in the ERM docket as well. However,

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 1 because I understand that there -- it can be a little

 2 complicated, I am going to provide the notice in the

 3 prehearing conference order that extends the time period

 4 for filing as an intervenor in the consolidated dockets

 5 in order to give a fair opportunity for someone who was

 6 interested in intervening in the ERM docket, but didn't

 7 get the opportunity prior to this time.

 8 So yes, as being a party in the general rate

 9 case and the consolidation of that with the ERM filing,

10 you will be a party for all of those dockets.

11 MR. FFITCH: Thank you, your Honor.

12 Appreciate your clarification.

13 JUDGE O'CONNELL: Is there anything else

14 that we need to address before we adjourn today? Is

15 there --

16 MR. SANGER: Yes, Judge. This is Irion

17 Sanger on the line. I -- I just wanted to clarify my

18 understanding of the new protective order.

19 We have not yet submitted protective order

20 signature pages. My understanding is you'll be issuing

21 a new protective order for all three proceedings, and

22 probably the best course of action for us would be to

23 wait for that new protective order and sign those

24 confidentiality agreements and file them, and there's no

25 need for us to file confidentiality agreements on the

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 1 earlier protective order.

 2 JUDGE O'CONNELL: I think your understanding

 3 is correct, Mr. Sanger, yes.

 4 MR. SANGER: Great. Thanks a lot.

 5 JUDGE O'CONNELL: Is there anything else?

 6 MR. MEYER: Just to say -- say thank you,

 7 your Honor, for patiently working your way through this

 8 procedural snarl, the two combined cases, so --

 9 And the parties as well, thank you.

10 JUDGE O'CONNELL: Okay. Yes, thank you all.

11 I hope traffic is better going back than it was coming

12 down. And safe travels to you all.

13 We'll be off the record.

14 (Proceedings concluded at 3:29 p.m.)

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 1 C E R T I F I C A T E

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 3 STATE OF WASHINGTON

 4 COUNTY OF KING

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 6 I, Kathleen Hamilton, a Certified Shorthand

 7 Reporter and Notary Public in and for the State of

 8 Washington, do hereby certify that the foregoing

 9 transcript of the proceedings on MAY 24, 2019, is true

10 and accurate to the best of my knowledge, skill and

11 ability.

12 IN WITNESS WHEREOF, I have hereunto set my hand

13 and seal this 10TH day of JUNE, 2019.

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17 KATHLEEN HAMILTON, RPR, CRR, CCR

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