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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 WASHINGTON UTILITIES AND )DOCKETS UE-190334, UG-190335

TRANSPORTATION COMMISSION, )and UE-190222 (Consolidated)

5 )

Complainant, )

6 )

vs. )

7 )

AVISTA CORPORATION, d/b/a )

8 AVISTA UTILITIES, )

)

9 )

Respondent. )

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HEARING, VOLUME II

12

Pages 47-130

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ADMINISTRATIVE LAW JUDGE ANDREW O'CONNELL

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October 15, 2019

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10:00 A.M.

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18 Washington Utilities and Transportation Commission

621 Woodland Square Loop Southeast

19 Lacey, Washington 98503

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1 LACEY, WASHINGTON; OCTOBER 15, 2019

2 10:00 A.M.

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

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6 JUDGE O'CONNELL: Okay. Good morning.

7 Let's be on the record. The time is approximately

8 10 o'clock in the morning on Tuesday,

9 October 15th, 2019.

10 My name is Andrew O'Connell. I am an

11 administrative law judge with the Washington Utilities

12 and Transportation Commission, and I am co-presiding

13 with the Commissioners in Avista's general rate case and

14 ERM. And I will be presiding at this hearing on Staff's

15 motion to sever Avista's ERM from this general rate case

16 and consolidate it with PSE's, Puget Sound Energy's, PCA

17 and Pacific Power's PCAM.

18 The Commission has yet to decide on how to

19 rule on Staff's motion. Thank you to all the parties

20 for waiving the seven days notice so that we could have

21 this hearing today. We have a number of concerns and

22 questions that we want the input from the parties in how

23 to best resolve, but before we get to that, let's take

24 appearances, and short appearances are sufficient.

25 Let's begin with the companies and Avista.

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1 MR. MEYER: Thank you, Your Honor. I want

2 to make sure my mic is on. There we go. For Avista,

3 David Meyer.

4 MS. McDOWELL: Katherine McDowell here on

5 behalf of Pacific Power.

6 MR. KUMAR: Ajay Kumar on behalf of Pacific

7 Power.

8 MS. BARNETT: Donna Barnett on behalf of

9 Puget Sound Energy.

10 JUDGE O'CONNELL: Thank you.

11 And for Staff?

12 MR. DALLAS: Joe Dallas on behalf of Staff.

13 MR. TEIMOURI: Daniel Teimouri on behalf of

14 Staff.

15 JUDGE O'CONNELL: And Public Counsel?

16 MS. GAFKEN: Lisa Gafken on behalf of Public

17 Counsel.

18 JUDGE O'CONNELL: And the Alliance of

19 Western Energy Consumes, AWEC?

20 MR. PEPPLE: This is Tyler Pepple for AWEC.

21 JUDGE O'CONNELL: The Energy Project?

22 MR. FFITCH: Simon ffitch representing The

23 Energy Project.

24 JUDGE O'CONNELL: Sierra Club?

25 MS. YARNALL LOARIE: This is Jessica Yarnall

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1 Loarie for Sierra Club.

2 JUDGE O'CONNELL: And the Northwest Energy

3 Coalition?

4 MS. BARLOW: This is Marie Barlow with

5 Northwest Energy Coalition.

6 JUDGE O'CONNELL: Thank you.

7 I believe we have a representative from

8 every party. I want to start by saying we're not

9 pleased with any party or about the situation we find

10 ourselves in. The timing of Staff's motion is

11 difficult, and the apparent lack of information being

12 shared is very disappointing. We determined this

13 hearing was necessary to help us decide the best option

14 going forward. The Commissioners would prefer to

15 preside along with me, but their schedules didn't permit

16 it.

17 Let's -- let's first address the elephant in

18 the room. The issue we want to address today is the

19 decision-making leading up to the 2018 Colstrip outage

20 and how the Commission can get the information it needs

21 to make a decision.

22 The three companies, Avista, Pacific Power,

23 and PSE, are all co-owners of Colstrip, and each has

24 filed a separate case seeking to recover for power costs

25 including costs related to the 2018 Colstrip outage. We

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1 are well aware that the companies' cases have a plethora

2 of different issues in them, which share little or no

3 commonality. We're not holding this hearing because of

4 these issues. We're holding this hearing because of the

5 2018 Colstrip outage decision-making. It's an issue

6 that we may or may not decide is large enough to

7 outweigh the lack of commonality in the rest of the

8 filings.

9 We see that in Avista's general rate case

10 and ERM, we are going to be asked to make a decision

11 regarding prudency of decision-making leading up to the

12 2018 Colstrip outage. The burden is on Avista in that

13 case to show prudency and it is the burden of the other

14 companies to show prudency in their own cases. We are

15 concerned that we may not have sufficient information to

16 make a determination of prudency and keep in mind

17 whether ratepayers should pay for increased power costs

18 that the companies incurred resulting from the outage.

19 This hearing is about how we, the -- the

20 Commission, can get the information we need to make a

21 decision. It's not just any longer the concern of Staff

22 and getting the information that it needs. We are

23 concerned that we will not have sufficient information.

24 And if we determine that the only way we're going to get

25 sufficient information is by consolidating the dockets,

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1 then we might have to do that.

2 All parties will have multiple chances to

3 speak at this hearing. I want the parties to stay

4 focused on the elephant in the room, the decision-making

5 leading up to the 2018 Colstrip outage and how the

6 Commission can most efficiently get the information we

7 need.

8 I'll allow at the end of the proceeding for

9 the parties to have input into anything that does not

10 otherwise come up in the hearing related to this

11 question, but I want the parties to stay focused on the

12 topics we address when we address them. If, during the

13 hearing, the parties believe a short recess is

14 necessary, perhaps where they can discuss amongst

15 themselves, I would permit such a request.

16 We see several options for moving forward,

17 but, though, let's talk about the obvious ones to start,

18 both of which have flaws. The first is, we keep

19 Avista's ERM with its general rate case and we keep the

20 dockets all separate. The problems that we see with

21 keeping Avista's ERM with its general rate case is that

22 the issue of decision-making leading up to the 2018

23 Colstrip outage is also an issue in PSE and Pacific

24 Power's filings.

25 While we were making only a decision as to

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1 Avista in its ERM docket, the problem is that we were

2 only making a decision as to Avista, while PSE and

3 Pacific Power are also co-owners of Colstrip. Having to

4 make three different evaluations and determinations of

5 prudency and three separate proceedings for an issue,

6 the decision-making of the ownership for Colstrip

7 leading up to the outage, that could be resolved more

8 efficiently with a single determination.

9 The second, sever the ERM, consolidate with

10 the PCA and the PCAM as has been requested by Staff.

11 The effective date for Avista's ERM presents an

12 unfortunately tight timeline for resolution. Avista can

13 correct me if I'm mistaken, but I believe that date is

14 in early April 2020.

15 MR. MEYER: That's correct, Your Honor.

16 April 1st.

17 JUDGE O'CONNELL: Thank you.

18 We believe that an adjudication can be done

19 on that timeline, but there would be difficulties to

20 overcome as the companies have pointed out in their

21 responses. But we may feel after this hearing that we

22 have no other choice to get the information that we

23 need. This hearing is to determine if there is a better

24 option than the two I've outlined, and I'll allow all

25 the parties the opportunity to perhaps collaborate on an

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1 option.

2 I want to start by hearing from Staff three

3 questions I want to put at this time to Staff. First, I

4 want Staff to outline what information is lacking and

5 what they would need from the companies in order to make

6 a prudency determination.

7 Second, I want to give Staff the opportunity

8 at this time to explain why it believes we have to

9 consolidate Avista's ERM with PSE's PCA and Pacific

10 Power's PCAM.

11 Last, is there another way, other than

12 through consolidation of these dockets, that Staff can

13 envision getting the necessary information.

14 Mr. Dallas.

15 MR. DALLAS: Thank you, Your Honor. So I

16 will take each question in the order you presented them.

17 So Staff's position is that the narrative

18 behind what happened leading up to the 2018 Colstrip

19 outage is spread across three dockets. Staff would like

20 to tell this narrative to the Commission; however, Staff

21 cannot provide this narrative pertaining to what

22 happened without referencing confidential information

23 within each docket.

24 Staff believes the information it would like

25 to reference would not be considered confidential among

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1 the companies as joint owners of Colstrip. This is

2 because this information relates to the operation and

3 management of Colstrip. Staff cannot provide a complete

4 narrative of what happened during the 2018 outage in

5 three separate dockets at this time and will have

6 completely different recommendations as to each Colstrip

7 owner based on the different administrative records in

8 each docket.

9 It would be unwieldy, uneconomic, and

10 awkward to have a docket where concerning the same

11 doc- -- the same document, one company withholds the

12 document based on asserted privilege or confidentiality,

13 one company represents the document doesn't exist, and

14 one company represents the document exists and provides

15 it as a confidential response. This information

16 incongruity among the three dockets can lead to

17 different outcomes as to each company.

18 To illustrate this point, one company has

19 not yet acknowledged the fact that Talen has conducted a

20 Q-1 investigation. One company acknowledged this

21 investigation did occur, but did not provide any

22 documentation on it. And another company had

23 acknowledged there was an investigation, but provided

24 documents pertaining to the investigation as a

25 confidential response. This designation limits Staff's

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1 ability to use that information in the other two

2 dockets. And -- and just to make this clear, Staff must

3 make its recommendation based on the individual

4 administrative records in each power cost filing.

5 Although the companies disagree, Staff's

6 position is that it would like to tell one narrative

7 about what happened. If the individual companies did

8 something different than the other ones, Staff would

9 acknowledge this distinction within its single

10 recommendation. Staff believes the Commission needs to

11 hear the complete narrative that is spread across the

12 three dockets to provide a result that's fair, just, and

13 reasonable.

14 As to specifics, Staff would propose a

15 two-tiered level of confidentiality in the consolidated

16 adjudication. The first tier would be confidential

17 information that is not confidential among the Colstrip

18 owners relating to the operation and management of

19 Colstrip.

20 The second layer of confidentiality would be

21 confidentially commercially sensitive information that

22 would be confidential amongst the Colstrip owners.

23 We believe that this two-tiered level of

24 confidentiality will accomplish the goal of giving Staff

25 the information to give the Commission the best

0060

1 recommendation and preserving the companies' individual

2 commercially sensitive information.

3 JUDGE O'CONNELL: Let me -- let me stop you

4 just for a moment and back up. So I'm hearing a lot

5 about the -- the reasons why we should consolidate into

6 a single document, a single case, but what

7 specifically -- without revealing confidential

8 information, I'm -- I'm -- I guess I'm asking for

9 general topics, but what specifically do you not have

10 that you think you need to get?

11 MR. DALLAS: So really right now, there's a

12 big gap in the record. When the Company submitted their

13 initial filing, they submitted testimony from the outage

14 on, and there was a huge gap in the record pertaining to

15 what happened before the outage. We believe that we

16 have information that shows the outage was foreseeable.

17 Just because the outage was foreseeable, Staff's

18 position is that, that it's not imprudent, but we need

19 more information to determine what Talen and the

20 companies did before the outage.

21 But right now we don't have information in

22 each docket. We have information pertaining to what

23 happened in one docket, but not the other two. The

24 information that we do have is confidential, so when we

25 write our recommendations, they're going to be wildly

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1 different based off the incongruity in the record. We

2 believe that a consolidated adjudication can deal with

3 these confidentiality issues in one proceeding so we can

4 have the information pertaining to what happened before

5 the outage, and specifically what Talen did prior to the

6 outage given the fact that we believe the outage was

7 foreseeable.

8 And also, I think there's a judicial economy

9 aspect as well. It'd be much easier from a -- from a

10 resource perspective for the Commission to -- to make

11 this determination in one proceeding as opposed to --

12 to -- to three separate proceedings on -- on -- on

13 really the same cost and the same parties, the Colstrip

14 owners.

15 JUDGE O'CONNELL: There might be some

16 judicial economy having the decision made in one

17 proceeding, but we're operating under a timeline that

18 makes it rather tight and difficult.

19 MR. DALLAS: So -- so -- so Staff's position

20 is -- is we do not want consolidation to prejudice

21 Avista at all. We -- it's very important to us that any

22 consolidated adjudication wrap up before April 1st. We

23 believe this consolidation -- this consolidated

24 adjudication will be narrowly focused on one issue, and

25 that's going to be what happened before the Colstrip

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1 outage. And -- and -- and this could be a very

2 expedited proceeding. And it's very important to Staff

3 that this wrap up before the suspension date and the

4 GRC.

5 JUDGE O'CONNELL: Well, let's get to that a

6 little bit later, but I do recall that there are other

7 parties in Avista's GRC that intend to bring up other

8 contested issues other than the decision-making leading

9 up to the Colstrip outage.

10 MR. DALLAS: Yeah, and if I could mention

11 that for a second, Your Honor. We are aware that AWEC

12 and Public Counsel may have other issues they want to

13 discuss in the consolidated adjudication pertaining to

14 the ERM. Staff's understanding is that these issues are

15 relatively small in comparison to the issue of the

16 Colstrip outage. And I really want -- want to focus on

17 the legal standard here, that the -- the standard is

18 that the issues of fact and principles of law have to be

19 related, not identical. But -- but I -- I -- I can't

20 speak for AWEC and Public Counsel.

21 JUDGE O'CONNELL: How -- has Staff thought

22 about how else we could go about this to get the

23 information Staff says it needs in order to make a

24 decision, the information that we also -- we need?

25 MR. DALLAS: So -- so really our -- our

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1 preference would be -- would be to have one protective

2 order, and in that one protective order, we would -- we

3 would figure out how we deal with the confidentiality

4 among the Colstrip owners. Now, if the Commission

5 doesn't go that route, we're going to have to fight

6 every individual designation so we can have three

7 identical administrative records so we can tell the same

8 story. Staff -- Staff thinks it's -- it doesn't make

9 sense for us to have three completely different

10 recommendations based off what the companies provide or

11 or -- or -- or refuse to provide.

12 So I -- I think it would be an uphill battle

13 to try to get three identical administrative records. I

14 think it would be much easier if we just have one

15 protective order and have that two-tier -- two-tiered

16 level of confidentiality, and then we can tell our story

17 and -- and -- and protect the companies' confidential

18 information at the same time.

19 JUDGE O'CONNELL: So no, there isn't another

20 idea that Staff has how to get this -- how to get this

21 information other than consolidate them?

22 MR. DALLAS: So the other option would be to

23 fight every individual designation in an attempt to get

24 three identical administrative records in the three

25 dockets pertaining to the same cost. So it -- it -- it

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1 is possible, but, you know, the legal standard we're

2 dealing with among -- among them is judicial economy,

3 and it's much more efficient to have one protective

4 order that protects all the companies and allow Staff

5 and the Commission to have the relevant information.

6 MR. TEIMOURI: Excuse me, your Honor. Dan

7 Teimouri with Commission Staff. We could also issue

8 bench requests relating directly to this information to

9 the companies and -- and ask them directly for the

10 requested information.

11 MR. DALLAS: But -- but I'm not sure if that

12 would resolve the confidentiality issues but...

13 JUDGE O'CONNELL: Okay. Let me -- let's

14 turn to Public Counsel. Ms. Gafken, the same questions

15 generally for Public Counsel, is there another way you

16 can envision getting the information needed without

17 consolidating?

18 MS. GAFKEN: I did have one other idea. I'm

19 not certain that it's much better than the consolidation

20 idea. The Commission has conducted proceedings that are

21 not consolidated but conducted simultaneously. So that

22 was done -- I don't have the docket numbers at hand, but

23 a Puget filing back in 2012 or 2013 where they had an

24 ERF and a decoupling docket. Those dockets were not

25 consolidated, but they were held simultaneously. So

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1 there was a -- a common hearing, a common process

2 that -- that happened. And that might address some of

3 the discomfort with the confidentiality between the

4 companies, but it would also foster the judicial economy

5 of having to deal with this in one proceeding.

6 I hear what Staff is saying about having to

7 fight all the confidentiality designations. I'm not

8 sure if my idea helps with that, particularly if the

9 companies continue to be somewhat inconsistent with how

10 they're providing the information, but that's -- that's

11 an -- an idea.

12 I did want to address briefly the piece of

13 Public Counsel's advocacy that might be more appropriate

14 in the GRC versus Avista's ERM. I have one witness

15 that's addressing both of those concepts. The -- the

16 concept of directional bias, that -- that's the piece

17 that could potentially go into the GRC versus staying

18 with the ERM, and if we separated that out that would

19 keep kind of the commonality intact among the three

20 companies.

21 Our testimony there is really more

22 informative. It -- it -- we're not offering it for

23 decisional purposes. We could sever that piece of the

24 testimony and with the Commission's permission, file

25 that in the GRC. It's relatively short. It's about --

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1 that portion of the testimony is approximately ten

2 pages, and there's five exhibits that go along with it.

3 I don't believe that Avista would be prejudiced. We

4 outlined what that testimony would say in the letter

5 that we filed on October 3rd outlining what issues we

6 were anticipating on -- on filing. So I think that

7 there would be plenty of opportunity to respond and no

8 prejudice in that case, but we -- we could sever that

9 piece of our testimony out and provide that to the

10 Commission through the GRC and then keep our Colstrip

11 issues separate and deal with that in the ERM proceeding

12 if it's severed and consolidated with the other three.

13 Did you want me to -- to address your second

14 question in terms of why consolidation is -- is

15 necessary or --

16 JUDGE O'CONNELL: Well, I think --

17 MS. GAFKEN: -- want me to stop there?

18 JUDGE O'CONNELL: -- it was more aimed at

19 Staff --

20 MS. GAFKEN: Okay.

21 JUDGE O'CONNELL: -- the proponent of

22 wanting to consolidate. If you think that's the best

23 option, I would be interested to hear that. I -- I do

24 have a question, though, about your suggestion with

25 sharing a common procedural schedule for the separated

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1 dockets and, you know, hearing them together but keeping

2 them separate. And I'm curious, do you think we would

3 have any trouble, any confusion making sure that those

4 items stay separate when they get heard in front of

5 Commission and then when they get decided? Just because

6 in my review of that example you gave, that caused a big

7 issue for the Commission later on.

8 MS. GAFKEN: I -- I think it's a flawed

9 approach if I'm being completely frank. It's a little

10 bit illusory because in my mind, it is consolidated, and

11 it does pose some administrative hassles on the

12 decision-making side in terms of having -- you still

13 have to produce three orders, you know, if you are

14 keeping it separate. It does look like it's

15 consolidated, and so I think it's hard to understand so

16 it lacks transparency. If you're Joe public looking in,

17 I'm not sure that they fully understand what's going on

18 in that circumstance.

19 I do believe that consolidation would be

20 more efficient. It would solve a lot of those problems.

21 You would have one record to deal with instead of three,

22 and there is a common story that needs to be told with

23 respect to the Colstrip outage and the -- and the events

24 leading up to that outage. From Public Counsel's

25 perspective, we have a story that we're ready to tell in

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1 the Avista ERM filing, but, you know, Staff has

2 expressed some pretty serious concerns that perhaps we

3 don't have a clear story, or the full story, with

4 respect to all three of the companies.

5 So while I feel like I have a story to tell

6 the Commission with respect to Avista's ERM, I'm not

7 certain that it's the complete story or that it has all

8 the information that the Commission needs in order to

9 make a decision. And -- and that really goes to, you

10 know, concerns about the -- the regulatory system and

11 public trust and transparency. So I do believe that

12 consolidation would -- would resolve a lot of those

13 issues.

14 And in terms of the confidentiality issue, I

15 think those are things we can work through. Staff's

16 idea about the two-tiered confidentiality method is a

17 good one. We can deal with those issues as we come to

18 them. We may still have some discovery battles

19 depending on how things go forward, but we have those

20 anyway with three separate proceedings. And if they

21 were separated, it would take a whole lot more resources

22 than if they were consolidated.

23 You know, I mentioned this in our response,

24 Public Counsel only recently filed notices of appearance

25 in the other two dockets. We had engaged with Puget

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1 with informal discovery. Our -- our engagement with

2 PacifiCorp has been a lot lighter, and that's purely a

3 resource adequacy issue. Of course, if these three

4 cases are consolidated, we will fully participate and go

5 forward that way. But there is -- there is a pretty

6 serious resource adequacy issue in dealing with all of

7 the things that come before the Commission.

8 JUDGE O'CONNELL: Okay. Thank you.

9 I am aware that there are a number of

10 parties on the bridge line who are present here for this

11 hearing, thank you, but they also indicated that they

12 were not going to be really participating in this

13 discussion.

14 And I want to check with Mr. Pepple. And I

15 do not recall and I want to offer you the chance to

16 speak, and I was curious if you are participating in

17 this discussion?

18 MR. PEPPLE: Thank you, Your Honor. Well, I

19 guess, yeah, we're happy -- we -- we certainly, yes, are

20 interested in participating in this discussion. I guess

21 if the question is whether we intend to file testimony

22 on the Colstrip outage, at this time, we do not,

23 although I wouldn't -- that's -- that's not intended to

24 indicate, you know, a position on it one way or the

25 other.

0070

1 I guess I would say if -- you know, in

2 response to your -- your first question about whether

3 there are alternatives to consolidation, you know, one

4 other idea might be -- it's something that I just came

5 up with on the fly, so if it's a bad idea, then that's

6 fine. But it -- it -- it seems like it might be

7 possible to have another protective order that only

8 applies to the Colstrip outage and would be issued in

9 each utility's power cost docket. That would allow for

10 the exchange and use of information related to the

11 Colstrip outage in each docket without them being

12 necessarily consolidated. So just one other alternative

13 if the Commission does not want to consolidate the

14 dockets.

15 JUDGE O'CONNELL: Thank you. I think we

16 should bring that up later and talk about that one.

17 Next I want -- I want to turn to the

18 companies.

19 MR. DALLAS: And -- and, Your Honor, before

20 we turn to the companies, Staff has a proposition that

21 we'd like to hear what the companies thoughts are.

22 JUDGE O'CONNELL: Do you want to do that on

23 the record or --

24 MR. DALLAS: Yeah, we can do it on the

25 record. So after careful review of each filing, Staff

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1 is now willing to stipulate that if these dockets are

2 consolidated, the only issue it will contest is the

3 prudency of the replacement power cost associated with

4 the 2018 Colstrip outage. With this stipulation,

5 though, Staff would like to consolidate the entire

6 dockets because the Commission has to improve the entire

7 deferral balances in each docket. It doesn't make sense

8 to sever individual issues in each docket if the

9 Commission needs to ultimately improve the entire

10 deferral balances. And with that, we -- we would like

11 to hear what the companies thoughts are on Staff's

12 proposed stipulation.

13 JUDGE O'CONNELL: Well, before we get there,

14 let's say that the companies reject your offer, but the

15 Commission decides we have to consolidate these anyway,

16 can we hold Staff to this only one issue is going to be

17 contested if this gets consolidated?

18 MR. DALLAS: I -- I -- I believe so. That's

19 Staff's position, and, you know, we -- we certainly want

20 to address the Commission's concerns and the companies'

21 concerns about commonality. In preparation for this

22 hearing, Staff looked at every filing, and we do not

23 believe any other costs ought to be included -- included

24 in the 2018 deferral balances were imprudent, so

25 therefore, we would propose that the consolidated

0072

1 adjudication would be focused on a very narrow issue and

2 can be resolved before April 1st given that this is the

3 only common issue amongst all three Colstrip -- I mean,

4 all three power cost filings.

5 JUDGE O'CONNELL: Thank you. And I

6 mentioned that every party is going to have multiple

7 opportunities to speak. I do intend to come back around

8 to Staff.

9 MR. DALLAS: Thank you.

10 JUDGE O'CONNELL: I would -- I would ask

11 that the companies think about what Mr. Dallas just

12 requested. I'm not going to ask for responses right

13 away because I feel like that might be a little unfair

14 to ask you to respond immediately, but I would like to

15 ask you -- I want to ask each of the companies, Avista,

16 Pacific Power, and Puget Sound Energy, how do we get the

17 information and make a prudency determination and is

18 there a better way, another way other than

19 consolidating?

20 Mr. Meyer.

21 MR. MEYER: Thank you, Your Honor. First of

22 all, I know Avista feels this way and I suspect the

23 other companies and all parties in these dockets feel

24 this way is that we want the information to be made

25 available so the right decision gets made. So if you

0073

1 start with that as an article of faith, you then find a

2 way to navigate through that, navigate through the

3 confidentiality issues. And I think there are ways to

4 do that.

5 I -- I'm not going to reargue because we're

6 vectoring in, if you will, on -- on a more precise

7 Colstrip issue here, but I want to emphasize that when

8 we filed the ERM six months ago, that triggered very

9 extensive discovery and over 150 separate items from

10 Staff and a hundred from other parties involved in the

11 production of 600 documents and countless hundreds of

12 hours of Avista, Staff time. I stand to be corrected,

13 but I don't believe we objected to any or if we did

14 object to any of the discovery, that I know there wasn't

15 a motion to compel, but I don't believe we even

16 objected. Now, whether the responses were sufficient or

17 not, that's I guess in the eye of the -- the reader.

18 So we've had, you know, five months of

19 discovery, ongoing, extensive discovery, and -- with

20 multiple rounds. There haven't been any motions to

21 compel in terms of what Avista did or didn't provide.

22 They -- the -- the Company, I think, has really done a

23 masterful job of dedicating the resources. And --

24 and -- and I can speak, I guess, candidly here is that

25 frankly, there was a lot of angst within the Company

0074

1 about how much effort was being expended. And I was a

2 proponent, and the Company understood that it's

3 necessary to get this information out, but it was a big

4 job, and I suspect it will continue to be a big job.

5 And just as an aside, and this is I think

6 somewhat troubling for all of us who practice before the

7 Commission, it's exhausted some of the goodwill on both

8 sides, frankly; Staff, other parties, and the Company.

9 And I hate to see that happening through this extended

10 discovery process. But we'll patch those things up and

11 we'll get on with doing what we always do. But at this

12 point, five months into it, and virtually at the 11th

13 hour, we have the plug pulled on testimony that was to

14 be filed on October 3rd. The testimony surely was

15 written because when the parties were told that, I think

16 it was October 2nd, they didn't need to file that

17 testimony, I -- I -- I -- being prudent practitioners,

18 I'm sure they had it on the shelf ready to file.

19 So we lost that opportunity -- and this is

20 just specific to Avista. We lost that opportunity to

21 then keep the clock going in our joint procedural

22 schedule that called for testimony on the rate case and

23 testimony on the ERM all to be filed on October 3rd.

24 Now where are we? We are by -- I suspect, by the time

25 you and the Commission rule on what we're discussing

0075

1 today, another week or so. It's not up to me to say

2 we've gone by, and we will have lost essentially three

3 weeks on our agreed upon schedule.

4 And in that process -- and there's a reason

5 I'm laying this out, because it may play into some

6 alternative suggestions later on. But in that process,

7 we have not disturbed the December 11th through 13th

8 hearing dates, nor do we want to. That was for the

9 general rate case and for the ERM. But what this

10 three-week delay has caused is a shrinkage of time for

11 us to respond. We had a late -- we had a November 6th,

12 I believe, date for a response, and now we're being

13 pinched. So some adjustment, no matter what, if they

14 remain consolidated in Avista's general rate case needs

15 to be made. And depending on which way the Commission

16 goes, there are ways to do that. It's not the end of

17 the world, there are ways to do that without disturbing

18 the general rate case.

19 At the end of the day, what matters to

20 Avista is April 1 of next year. That is the date our

21 new rates would go into effect, and that is the date

22 that we want to empty this bucket. We have a $30

23 million bucket of ERM dollars that we've been accruing

24 at -- really since 2005, I believe it is. And under the

25 ERM mechanism, you don't tip that bucket, you don't

0076

1 empty that bucket until you trip the lid, and that lid,

2 as I said, is $30 million.

3 With this ERM filing, we will -- assuming

4 there were no issues, assuming there were no issues at

5 all, that bucket would have -- approximately $34 million

6 bucket would have -- have been dumped, proceeds could go

7 where they belong and that's into the pockets of our

8 customers. Even if, even if one were to subtract out

9 the roughly three and a half million of Colstrip

10 ERM-related dollars from that $34 million figure, it

11 would still trip the lid.

12 So no matter what, we don't want that date,

13 with or without the Colstrip issue in this case, to go

14 by so that we can't see some mitigation for our

15 customers come next April, April 1st, okay? That's why

16 we're trying to keep these pieces together.

17 Now, in the past, Avista has used -- by

18 agreement of the parties, because we never did trip that

19 lid, we've used in the 2013 case, I believe it was, we

20 had a two-year rate plan, we used pieces of that ERM

21 bucket to mitigate some of the rate year impact, and we

22 did it again in, I think, the 2015 case. But that's

23 only with agreement of the parties or with an order of

24 the Commission. The bucket would not have been dumped,

25 if you will, in those cases because we weren't at the

0077

1 $30 million tipping point.

2 So I hope that gives you some useful

3 information as to why we're so keen on keeping these two

4 proceedings marching in lockstep. It's -- it's not just

5 important for us or important to the efficient use of

6 your resources here, but it's important to our customers

7 as well. And the time's long since passed for that

8 bucket to be -- to be dumped.

9 So that's all by way of background. What --

10 what troubles me a bit is that -- and, again, I can't

11 and won't speak to what has been going on in the Puget

12 and the PacifiCorp dockets. I don't know what the

13 procedural posture is of those two dockets. I have not

14 talked to the practitioners on my left, and I -- I won't

15 pretend to. But I know that the Commission has

16 recognized discovery tools. Those tools could be

17 motions to compel, there were no motions to compel for

18 Avista, and in due course, if it was necessary to have a

19 motion to compel with respect to another issue, another

20 company, well, so be it, I don't know. So you have

21 that. And it -- it's -- it's a readymade tool, and

22 somebody else mentioned bench requests, so there are

23 ways of getting at this information.

24 It -- it -- it seems to me that -- let --

25 let me back up a minute. Common issues are not uncommon

0078

1 with Colstrip. Every rate case -- not every rate case,

2 but in the last several rate cases, some party in one of

3 our jurisdictions has argued that you're spending too

4 much to sustain Colstrip beyond any, in their view,

5 reasonable termination date. Of course that involves

6 capital. But those kind of propositions were tested in

7 Idaho with Avista. Those capital spending decisions are

8 made jointly by those of us in the room along with Talen

9 and other owners.

10 We don't find ourselves when we're arguing

11 over capital, common capital decisions struggling with

12 consolidation and confidentiality. So I'm a little

13 surprised we found ourselves at this point at this time.

14 And certainly for Avista surprised that it is at the

15 11th hour so deep into our process. We in discovery

16 asked I -- I -- I believe it was either in a transmittal

17 letter or in the body of the discovery response, we

18 asked essentially if Staff is aware of any inconsistency

19 between the companies or shortcoming, and certain our

20 response is would you let us know.

21 And essentially that question that we posed

22 was left unanswered because it was no secret that Staff

23 along the way was unhappy with some of the responses

24 they were getting. Don't know whether it was our

25 responses, other responses, or what. So we provided

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1 that invitation, let us know. Let us know. And that

2 was done I -- I'm -- I'm guessing five, six weeks ago in

3 plenty of time, in any event, for us to then sit down

4 and -- and -- and sensibly resolve these discovery

5 disputes.

6 So I think that after you've heard from the

7 other parties and at some point this morning, I would

8 like to propose a break and explore a -- a possible

9 process that would bring alignment to the companies,

10 because remember, the companies haven't had a chance to

11 discuss this among ourselves, and there may be ways we

12 can assist and help work this through. So a recess at

13 some point I think would be in order because no reason

14 why we can't come to terms with this today.

15 JUDGE O'CONNELL: I do appreciate that,

16 Mr. Meyer, and I -- we were hoping that by getting the

17 parties here together, either on the bridge line or here

18 in person, that we might be able to facilitate some

19 resolution that could be beneficial for everyone. So

20 thank you. I appreciate that sentiment.

21 Let me turn now to Pacific Power.

22 Ms. McDowell and Mr. Kumar, how do we -- of course,

23 the -- the Commission, we're -- we're primarily focused

24 on how we're going to get the information that we need

25 in order to make, as Mr. Meyer says, you know, get the

0080

1 right information to make the right decision. Let's --

2 we want to get the decision right. Wanted to hear what

3 ways you can think of that we can get this information

4 without having to consolidate.

5 MS. McDOWELL: Yeah. You know, Judge, we

6 really appreciate that question, and I would say that

7 that is a question that we have been focused on in the

8 last couple of months as well. You know, just -- just

9 to maybe point out the obvious, the parties are not

10 similarly situated in part because our filing came many

11 months after Avista's and also after Puget's. So, you

12 know, we are in the place where we are still trying to

13 understand what information Staff needs and working to

14 provide it to Staff.

15 One of the ways that we tried to do that and

16 cut through some of the noise was to set a workshop

17 where we really had some dialogue with Staff in a more

18 open-ended way, in a way that I think is usually more

19 constructive than just, you know, dueling data requests

20 and responses. And I'm hoping -- I -- I feel like that

21 was a constructive step. I'm hoping that we can

22 continue to, you know, really understand what it is that

23 Staff's focused on. I think we now understand that it's

24 the pre-outage period, not the post outage period, but

25 that is, you know, information we've gained, and we can

0081

1 continue to provide that information to Staff.

2 Now, I do want to say that where we're at

3 right now is in the informal process. And so the first

4 step, I believe, is to move to the adjudicatory process

5 so we can get a protective order in place. And I -- and

6 I thought it was quite constructive in Staff's motion

7 that Staff indicated that through the adjudicative

8 process, it believes that the discovery process that's

9 afforded in adjudication will allow Staff to obtain the

10 necessary information to provide a more detailed

11 recommendation to the Commission on the prudence of

12 these costs.

13 So I think, you know, just the first step is

14 adjudication and going into that, and we -- we haven't

15 even gotten to that step yet. So I think Staff

16 acknowledges that will be a material step to, you know,

17 being able to really get the kinds of information they

18 need from PacifiCorp. PacifiCorp has already filed a

19 protective order and hopes to have it entered as a part

20 of the opening of the adjudicatory process, and we are

21 certainly open to discussing a modified protective order

22 that would have the tiers that your -- that Staff

23 mentioned this morning.

24 I think in our response, you know, we tried

25 to respond as constructively as we could to the concerns

0082

1 we were hearing from Staff about overlapping cases and

2 issues and workload issues and then this discovery

3 issue. And our -- our -- our response was well, let's

4 see if we can just work on conversations where we would

5 agree to allow discovery that is not confidential just

6 as to PacifiCorp, but only confidential among the owners

7 to be shared.

8 So I think our -- our response attempted to

9 try to make the same overture, that -- that if that's a

10 reasonable process we can agree to we're -- you know, if

11 the information is information that the co-owners

12 already have, then I think we can work around the normal

13 limitations of the protective order, and we would be

14 willing to do that. That was one of our responses.

15 So in our -- in our response is before we

16 went to what we think is a fairly drastic and awkward

17 step of consolidation of disparate proceedings, we

18 thought adjudication, we thought a modified protective

19 order or some kind of collaborative process, and -- and

20 frankly, you know, to avoid overlapping cases and the

21 challenges associated with that, I mean, normally the

22 Commission has -- takes these issues one at a time for

23 each utility, creates the record, and makes a decision

24 in that case, and then the next utility, you know, if --

25 if it's adverse to the utility, then Staff will

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1 certainly cite that as a precedent, and that would need

2 to be distinguished by the next utility. If it goes the

3 other way, then Staff would need to argue why that

4 precedent doesn't apply, but you've already -- you're

5 not relitigating every issue, you're trying to say that

6 that precedent decided, in this case it would be Avista,

7 Avista would go first. When we would presumably next

8 get to Puget's case, Puget would be able to say why or

9 why not that decision applies to it or not.

10 I mean, it's a -- that's the normal process.

11 We have overlapping issues in cases regularly, and we

12 usually deal with them by deciding the issue in the

13 first case filed, and then the parties are left to deal

14 with the precedent in the preceding cases. You know, we

15 don't usually start all over again.

16 So that -- that to me seems like a process

17 that would work here, and I guess in terms of you're

18 trying to find solution space, that's ours. It's really

19 just doing it the way we usually do it, but I think here

20 with the innovative approach on the protective order,

21 that would allow common confidential information to be

22 shared among the individual dockets.

23 So I guess just in closing, we'd like to say

24 that, you know, we are still engaged in the discovery

25 process. Our last discovery, you know, our -- our

0084

1 workshop with Staff was just at the end of last month.

2 We've filed additional follow-up responses out of that

3 workshop just a couple weeks ago. You know, we would --

4 we look forward to even a deeper discovery process once

5 we have a protective order in place and an adjudication

6 that's opened. So -- so we think this process can work,

7 and we think ultimately it will end up being the

8 cleanest and least complex way of dealing with what is

9 admittedly a complex issue for the Commission. Thank

10 you.

11 JUDGE O'CONNELL: Thank you.

12 Puget Sound Energy, Ms. Barnett.

13 MS. BARNETT: Thank you, Judge O'Connell.

14 First, I'd like to thank you for allowing PSE the

15 opportunity to come up with some seems like a

16 brainstorming session to come up with some creative

17 alternatives to consolidation, because I do think that

18 those alternatives are out there to get Staff what it

19 needs and the Commission what they need to -- to make a

20 recommendation.

21 And I don't have a lot to add on because I

22 agree with Mr. Meyer and Ms. McDowell, but I -- I do

23 think that we haven't tried just adjudication, and I

24 think most of the issues can be addressed through

25 adjudic- -- the adjudicative process. We could --

0085

1 haven't had bench requests, those are available. An

2 in-camera review of documents, an order to compel,

3 workshops, even -- even depositions if we're talking

4 about a narrative. That's certainly an opportunity -- I

5 mean, an alternative that Staff has available --

6 available in an adjudicative proceeding.

7 I think what we're -- we have -- I do want

8 to mirror what Mr. Meyer said, Puget has similarly

9 requested information, specific information what it --

10 what it is it's lagging. We -- Puget is unclear about

11 what it does not have or what it has not given, and we

12 have not also received an answer to that specifically,

13 but -- so we don't think that the discovery process is

14 over. And even Mr. Pepple's recommendat- -- just option

15 of a protective order that applies just to the Colstrip

16 is an intriguing thought, that maybe some in between

17 that doesn't need to be -- doesn't require a

18 consolidation.

19 But I think it's a big deal to consolidate

20 these cases now. Even -- even if Avista weren't so far

21 along in their rate case, but just consolidating

22 multiple utilities in power cost proceeding, which has

23 never been done in 17 years of doing it, is a very big

24 deal for -- for, what, maybe one document or one piece

25 of information that I think we can address and get --

0086

1 get to Staff and get to the Commission short of setting

2 a -- a big precedent for -- for future consolidation.

3 So I don't think I have anything other to

4 add except I agree with Ms. McDowell that we should take

5 this -- I sense that there was some urgency when Staff

6 has to file testimony and the GRC is -- is gearing up

7 for Avista that -- but we should still try separate

8 steps first and what can we get through with just the

9 adjudicative process.

10 JUDGE O'CONNELL: Staff has an idea at the

11 outset of their suggestions, and I'm curious what the

12 companies think about it. Should the Commission, if we

13 decide we don't want to consolidate these dockets but we

14 do want the information, should we, could we issue bench

15 requests to the companies to get that information more

16 immediately?

17 And, Mr. Myer.

18 MR. MEYER: Yes, it -- it's -- a lot of

19 information I suspect or if there are holes or perceived

20 holes in the presentation will be filled in our

21 rebuttal. And so that may answer bench requests. And

22 while that's a useful tool, that's sometimes a good tool

23 after the issues have been joined and you really see

24 what you already have that's been presented. So we

25 won't be filing our ERM rebuttal for some period of

0087

1 time, because if Colstrip is the ERM issue, clearly we

2 cannot stay with this existing procedural schedule that

3 we've married up between Avista's GRC and the ERM. It

4 just won't work. Too much work has to be done with

5 testimony on the Colstrip issue. That rebuttal can't be

6 filed by early November.

7 So we're looking in any event, even if you

8 don't sever the -- the Avista ERM, I'm afraid you're

9 looking at two sets of hearings for Avista only, one

10 dealing with a rate case and then a follow-on hearing

11 with a somewhat -- with a separate prefiling track for

12 the ERM issue, all of which would lead to one order

13 prior to April of next year. So we're -- we're -- we're

14 in a pickle, and that procedural pickle has to -- has to

15 be addressed even if you don't sever.

16 JUDGE O'CONNELL: We're aware of the

17 procedural difficulty that there is in the Avista case

18 right now, and we will address it one way or the other.

19 MR. MEYER: Thank you.

20 JUDGE O'CONNELL: Ms. McDowell?

21 MS. McDOWELL: Judge O'Connell, I appreciate

22 you bringing up that issue or that tool of bench

23 requests, a tool that Staff also referenced. I think

24 goes back to your initial point that, you know, Staff

25 has concerns about getting the information, but really

0088

1 more importantly, the Commission does. The Commission

2 needs that information to make the right decision here.

3 And I think that knowing that you have that tool of

4 bench requests is -- is a reason to continue to try to

5 work this out through the normal adjudicative process

6 knowing that if there are gaps and, you know, Avista's

7 case goes forward, but you have questions about

8 potentially the co-owners or some other aspect of the

9 case that is not being fully fleshed out in the Avista

10 record, you know, I think the Commission does have that

11 tool, and it's a less drastic step than consolidating

12 these cases and -- and trying to keep three records --

13 trying to develop three records within a single

14 proceeding, which is what's going to be required, and

15 that just seems messy.

16 Whereas if you keep the cases separate,

17 allow Avista's case to go forward, you have the ability,

18 the Commission has the ability to issue bench requests

19 if there seem to be gaps in the narrative. And, you

20 know, that's a situation where, you know, again, we

21 would -- to the extent you're seeking information common

22 to the owners, Avista would have that information to

23 provide and would not be bound by confidentiality issues

24 to provide it.

25 To the extent, you know, that is information

0089

1 specific to one or the other utilities, well, then

2 appropriately that would come up in their cases. So I

3 think, you know, it is appropriate to make different

4 decisions for different utilities when there are

5 different circumstances, and that may come up. I mean,

6 it's not -- uniformity is not necessarily going to be

7 the outcome because we're all differently situated, but

8 I think through the Avista process and your bench

9 request process, you can make sure that you have a

10 complete record to decide Avista's case when it's first

11 up, then Puget's, and then ours.

12 So that's -- so I would say in some ways I

13 think the bench request process is one that can provide

14 you some assurance and the Commission some assurance

15 that no matter what, you're going to have the record you

16 need.

17 JUDGE O'CONNELL: Ms. Barnett?

18 MS. BARNETT: Thank you. I agree with --

19 with both Avista and PacifiCorp, and I -- I think the

20 bench requests are a valuable tool to get you -- to get

21 the Commission what they need. I think it would be most

22 valuable after an informal session with Staff to -- to

23 get to some clarity about what it is they need. I think

24 if we identify what they need and then the Commission

25 issue a bench request. There's a difference between

0090

1 what we can -- what Puget can get and what they possess

2 versus what they don't even know about that -- that's

3 lagging. So I think the bench request, we can -- like

4 Ms. McDowell, said we get the Commission what it needs,

5 but I think more informal, like a workshop, to identify

6 and get clarity around what exactly that is would be

7 ideal.

8 JUDGE O'CONNELL: Okay. Before I return to

9 Staff, I do want to hear Staff's thoughts on what Staff

10 has heard. But before we get there, I want to bring up

11 some other options that we see that the parties might

12 want to think about when we do take a recess, and we

13 want to say that we are interested in hearing the

14 parties' thoughts on whether they are a better option.

15 In particular, the idea of severing and

16 consolidating just the prudency of decision-making

17 leading up to the outage. Then after a prudency

18 decision, return those to the separate dockets. And I'm

19 aware, as Staff described, of the difficulties of

20 severing just the issue of this prudency determination,

21 but if a joint or a consolidated decision were made on

22 prudency on an expedited schedule and time for them to

23 be reincorporated back into consideration of the rest of

24 the issues in each of the dockets, could that not

25 resolve the difficulties of severing just the prudency

0091

1 decision?

2 Staff?

3 MR. DALLAS: Thank you, Your Honor. Let me

4 first comment on what the companies stated. I -- I

5 really appreciate their thoughtful responses. I think

6 their solutions would certainly resolve the -- the issue

7 of confidentiality, but it would not resolve the issue

8 of judicial economy. Under their solutions, we would

9 still have three hearings, three procedural schedules,

10 three settlement conferences, three written orders.

11 It -- it -- it wouldn't -- would not resolve that

12 concern, and I think Public Counsel voiced earlier that

13 they have resource constraints, that that's the reason

14 why they participated in the ERM more so than the other

15 two.

16 I think your solution, I -- I need to

17 consult with my client, but Staff's position is we want

18 to make sure the Commission has sufficient information

19 to make a decision that's fair, just, and reasonable for

20 both the ratepayer and the Company, and to make sure

21 that these proceedings don't drain the resources of the

22 Commission. So if your solution could accomplish those

23 two, I think Staff would be willing to entertain that,

24 but that's something I'd have to consult with my client

25 on.

0092

1 JUDGE O'CONNELL: Right. Perhaps that's

2 something you can discuss during the recess.

3 MR. DALLAS: Absolutely.

4 JUDGE O'CONNELL: Okay. Ms. Gafken, do you

5 have any thoughts?

6 MS. GAFKEN: That's an intriguing idea. I

7 worry a little bit about the time frame. If we have a

8 separate proceeding on the one issue and then try to

9 finish the rest of the issues separately, do we make it

10 to the end, you know, to the targeted end date? And I'm

11 trying to kind of sketch that out in my own mind. I'm

12 not sure if that elongates it versus if we just do it

13 all at once, because I think we can make the April 1

14 date if we just dive in and do it. It's an intriguing

15 idea, though, because it -- it does sever that one

16 issue. It deals with some of the arguments about the

17 Commission has to deal with each one of the filings.

18 I -- I do want to chime in and -- and say

19 that Public Counsel's focus is also Colstrip. You know,

20 we do have that -- the one up -- you know, we want to

21 provide an update regarding the ERM workshop. I still

22 don't see that as a substantive issue, but really the

23 substantive issue that -- that Public Counsel is looking

24 at in all three of the dockets would be the Colstrip

25 issue. So I -- I think we're kind of in the same boat

0093

1 with Staff on that.

2 So it's -- it's an interesting idea. I

3 think it's worth pondering more, but I -- I do have some

4 question about whether it simply elongates it.

5 JUDGE O'CONNELL: Let me -- let me turn to

6 the companies. And this is in consideration of what I

7 know about Avista's ERM filing. I'm not the judge on

8 the PacifiCorp, Puget Sound Energy filings. There

9 hasn't been a judge assigned. So I'm somewhat more

10 familiar with what's going on in Avista's case, and I am

11 aware that the determination of prudency of

12 decision-making leading up to the Colstrip outage is one

13 piece that then also needs to be considered as a whole

14 with the rest of the Avista's ERM filing including the

15 deferral balance. So that's why my question is, is the

16 potential to sever just the prudency determination have

17 a decision on that and then return it to the separate

18 dockets?

19 Mr. Meyer.

20 MR. MEYER: The more we talk this morning,

21 the narrower the issues appear to be. And so in that

22 sense, I think we're moving in the right direction.

23 What I'm -- but I don't want this to be illusory. We --

24 we talk from Staff's point of view that the real issue

25 is what happened before the outage, and the remedy

0094

1 presumably is a disallowance in whole or in part of the

2 power cost replacement dollars. I don't know whether

3 even in exercising that remedy whether the Commission

4 will want to make distinctions between parties, and

5 there may be reasons why in some cases the Company

6 behave with just extraordinary dispatch and

7 reasonableness, and it would just be improper.

8 What -- what our prefiled testimony tells

9 you or tells the Commission about Colstrip in the ERM --

10 this is in the ERM docket -- is that even with this

11 two-month outage, that plant operated at an 82 percent

12 availability factor. That's pretty good. In fact,

13 the -- the -- I'm not arguing the case, but I'm trying

14 to provide perspective on this, okay? And even with --

15 with that, we will -- we will remind the Commission that

16 in other months of the year, Colstrip operated much

17 better, much better, greater availability than was

18 anticipated.

19 So at the end of the day, this episode,

20 while -- while certainly something you need to look

21 into, was -- was not so out of the ordinary. Again, I

22 don't want to argue the case, but we will be taking the

23 position that things happen in Colstrip, things happen

24 in every generating plant, and this was managed

25 appropriately, it's not the end of the world, and keep

0095

1 this issue in some kind of perspective.

2 Okay. So back to the point at hand, I -- I

3 don't know if it -- if it's slimmed down quite the way

4 you describe it, Joe, on -- on behalf of Staff. You

5 know, if it's just a question of outage and power

6 replacement costs. I mean, did each of the three

7 companies monitor and exercise their fiduciary duties as

8 part of the management committee that oversees Talen? I

9 don't know if you're going to make distinctions there.

10 So it's -- it's -- while it's tempting to paint with a

11 broad brush and say it's just -- it's an -- it's an easy

12 up or down decision, there are nuances here that would

13 probably need to be explored on a company-by-company

14 basis.

15 I am heartened to -- to better understand

16 that maybe from even Public Counsel's perspective it

17 really is just the Colstrip issue. The other issue you

18 mentioned we can address perhaps in the rate case, Lisa.

19 So if -- and if there are no other ERM issues and if

20 we've strictly defined what we mean by the Colstrip

21 issue, then that lends itself to -- to some sort of

22 early decision on that just so long as -- and we put the

23 ERM to bed for Avista and we can use those dollars for

24 ratepayers, okay?

25 JUDGE O'CONNELL: So, Mr. Pepple, if you're

0096

1 still on the line, I'd like to prepare you for a

2 question I'm going to ask perhaps after we take a

3 recess, and I'm curious about Staff and Public Counsel

4 have made fairly clear that they -- well, that Staff

5 offered to simplify the issues of the ERM to the

6 Colstrip outage. I recall that you, AWEC, have more

7 issues in the ERM docket than just the Colstrip outage,

8 and at some point after we take a recess, I'm going to

9 be interested to hear what -- whether you can make that

10 same offer or what your position on that is.

11 But let me return now to the companies, for

12 Pacific Power. Just for the decision of prudency on the

13 decision-making of the Colstrip outage, if we were to

14 sever that, expedite a decision on just that piece of

15 Pacific Power's filing and then return whatever that

16 determination is to your PCAM for consolidation with the

17 rest -- consideration with the rest of the things in

18 that docket, is that a possibility?

19 MS. McDOWELL: So, Your Honor, I appreciate,

20 you know, the attempt to come up with constructive

21 solutions here. I will say that that solution is not a

22 good one for PacifiCorp. You know, we think even if the

23 issue is narrowed to the Colstrip outage, that issue is

24 still not common among the three utilities. You have

25 the different utilities situated differently in terms of

0097

1 the units at issue, ownership percentages, amounts in

2 controversy, rate impacts, replacement power strategies,

3 and the individual responses of the facts leading up to

4 the outage.

5 Ultimately the Commission has to make three

6 independent determinations on three individualized

7 records. And we -- we don't see that -- we see that as

8 being absolutely more complex in a consolidated

9 proceeding where the things get jumbled than if you do

10 it sequentially, take Avista's, take Puget's, take ours,

11 and then build on the record that gets developed over

12 time in the individual utility cases.

13 That's the normal course of events. We

14 think that is the more efficient process and frankly

15 more comfortable one for us. You know, as we are just

16 now like moving into an adjudicative process, the idea

17 that we are moving into an expedited adjudicative

18 process, which is, you know, like news to us and not

19 exactly in our schedule for the next couple of months,

20 is -- you know, that's not necessarily a welcome

21 development for us. I understand it's imperative for

22 Avista, but for us especially to try to meet, you know,

23 Staff's needs around let's -- let's really understand

24 the story so we can come to the right outcome, that --

25 that's at odds with but file your testimony next week.

0098

1 And so, you know, we think in our situation

2 it would be better to set the normal schedule, not an

3 expedited schedule that, you know, works for Avista, but

4 to allow Avista's case to go forward then allow ours to

5 go forward in the normal course. We think our situation

6 is -- you know, we -- we get that there is a common

7 issue that occurred, a common fact that occurred, but we

8 think the utilities all are differently situated on that

9 and all have, you know, a different record that

10 ultimately needs to be developed. And we want a chance

11 to develop ours in the normal course, not in like

12 tomorrow because we've gotten thrown into a proceeding

13 frankly that we didn't expect to be thrown into.

14 So that's -- that's our course. We think --

15 I mean, ultimately we hope to settle this case. We've

16 generally been able to settle our PCAM filings and --

17 and we think that's going to be harder to do if we're

18 immediately thrown into litigation and don't have that

19 time to have those sort of discussions. So -- so, you

20 know, as much as we'd like to say yes and, you know,

21 continue with constructive brainstorming that's a

22 solution, I -- I don't think works because we just don't

23 think the commonality exists.

24 JUDGE O'CONNELL: I appreciate your input,

25 and you anticipated my comment about we do think that

0099

1 there -- it's clear that there is some commonality. The

2 extent to which I think everyone can argue about at this

3 point, but there is some commonality here.

4 Ms. Barnett, you've had the -- the benefit

5 of hearing all of my questions before I get to ask them

6 of you. What are your thoughts?

7 MS. BARNETT: And hearing all the answers.

8 JUDGE O'CONNELL: Yes.

9 MS. BARNETT: I -- I guess I -- I look at

10 the -- at Staff's motion a little differently. I don't

11 see -- I don't see the proposal as really a narrowing

12 because that's the way I always saw Staff's proposal. I

13 understood. I guess, this is -- having done I guess now

14 15 power cost adjustments without any of them ever being

15 adjudicated, I just assumed this was the only issue. So

16 when they say we're just going to pull out and

17 bifurcate, I guess, this one issue from the PCA, I -- I

18 understood that -- I understood that to be Staff's

19 motion. That is their -- that is their position, is the

20 only issue is the Colstrip outage.

21 So I don't see as severing the -- this one

22 issue, the prudency issue of Colstrip outage replace

23 power costs as a -- as a -- as a more efficient

24 improvement, I guess, or -- or alternative. I think --

25 I -- I do think it's also not worth the -- I guess I'm

0100

1 uncomfortable with, again, I think I said it before,

2 consolidating multiple companies into what -- into one

3 proceeding, setting that precedent. But not only that,

4 also setting a precedent that it's easy to bifurcate

5 specific issues from a rate case. I mean, that's

6 essentially what we'd be doing, is severing one issue

7 that you don't want to discuss in a rate case and we

8 want to take that offline and separate and -- and join

9 it with another. I think that's -- I think that's a big

10 deal. So I -- I think -- I guess I don't have anything

11 to add except that PSE would not be comfortable with

12 that proposal.

13 JUDGE O'CONNELL: Okay. It's about time, I

14 think, for us to have a recess, but I --

15 MR. DALLAS: And, Your Honor, before we go

16 on recess, can I quickly provide Staff's thoughts on

17 this?

18 JUDGE O'CONNELL: I want to address one more

19 thing --

20 MR. DALLAS: Okay. Great.

21 JUDGE O'CONNELL: -- before we go back to

22 Staff and --

23 MR. DALLAS: Great.

24 JUDGE O'CONNELL: -- go to recess.

25 From everything I've heard today, I want to

0101

1 ask of Mr. Meyer a question that we've been pondering.

2 We would benefit from Avista agreeing to extend the

3 effective date of its ERM, if we decided these dockets

4 should be consolidated, will Avista agree to extend the

5 effective date of the ERM?

6 MR. MEYER: Would that have the effect of an

7 ERM decision that would extend beyond April 1st of 2020?

8 JUDGE O'CONNELL: To agree to extend the

9 effective date would be to move it beyond

10 April 1st, 2020, yes.

11 MR. MEYER: Then we would not agree to that.

12 We're -- that would prevent the $30 million bucket from

13 benefitting customers because this issue would still be

14 unresolved. Now, that gives us still five months of

15 good, hard work between now and April 1st, and however

16 the Commission decides to address this, a lot can be

17 done in that period of time. So I'm not trying to be

18 difficult, but I want to preserve the objective.

19 JUDGE O'CONNELL: I understand. And it's

20 worth asking, and perhaps I just ask that you keep it in

21 mind as you discuss more during recess with the other

22 parties.

23 MR. MEYER: Sure. Thank you.

24 JUDGE O'CONNELL: Mr. Dallas?

25 MR. DALLAS: I just wanted to provide just

0102

1 some very quick feedback. Staff's initial position is

2 we -- we agree with PSE that it's just procedurally

3 awkward to sever individual issues. I'm going to

4 consult with my client and get their thoughts on it, but

5 I wanted to reiterate what Donna said.

6 And also I wanted to address Meyer --

7 Mr. Meyer. Our position, we're coming from a principle

8 position. We have not made a decision on the prudency

9 of cost. At this point, Staff is trying to obtain the

10 information to make that determination.

11 As to what Pacific stated, we agree that

12 there could be different outcomes as to each company,

13 but Staff's position is that it would like to tell one

14 story. We believe it's one set of facts, the characters

15 are the Colstrip owners and Talen, and if each

16 individual Colstrip owner did something different, Staff

17 would certainly make that distinction within one

18 narrative response.

19 So we just want to make it clear that

20 Staff's position is that it will identify if -- if an

21 individual company did something different in its single

22 narrative within the consolidated adjudication to -- to

23 resolve that concern. Thank you.

24 JUDGE O'CONNELL: Thank you, Mr. Dallas.

25 It is 11:15 a.m. I don't believe after this

0103

1 recess we will have much left to discuss, depending on

2 how the -- the parties do in the recess. Is half an

3 hour or 35 minutes sufficient for the parties to talk --

4 talk to your clients and then for us to come back and

5 have a short chat before we adjourn?

6 MR. DALLAS: Yes, Your Honor.

7 MR. MEYER: Yes for Avista. But I do --

8 after a short break, have the -- have us come back and

9 talk about some discovery options here, see what we can

10 do. And I think if -- if we need more than a half an

11 hour, can we -- well, how about we just call when we're

12 ready for you; would that work?

13 JUDGE O'CONNELL: That -- that would. If I

14 don't hear anything, I'm going to check back in in half

15 an hour, because it is -- I'm aware and conscious of

16 AWEC's availability as we get into the afternoon, and I

17 want to be sensitive to that. So I -- I am going to at

18 least check back in if I don't hear from you. If you

19 would like me to come back before half an hour, 35

20 minutes, yes, please, contact me. And I'm not seeing

21 anyone objecting to that, so with that, we will be off

22 the record in recess. Thank you.

23 (A break was taken from

24 11:18 a.m. to 11:47 a.m.)

25 JUDGE O'CONNELL: Let's be on the record.

0104

1 Have the parties had a chance to collaborate and did any

2 good ideas come from that?

3 MR. MEYER: Well, before we go there, you

4 had a question pending for -- of Tyler.

5 JUDGE O'CONNELL: Yes, I do.

6 MR. MEYER: And probably should get that out

7 because that might have a bearing on -- on some of this.

8 JUDGE O'CONNELL: Very well.

9 Mr. Pepple, I wanted to check back in with

10 AWEC. Staff made an offer earlier in this hearing that

11 if the -- if everyone -- you know, if we consolidate all

12 of these dockets, the power cost filings, that they were

13 only going to contest a single issue. I'm aware from

14 the contested issues list that you filed in the ERM

15 docket that you have more issues than just that one, and

16 I'd like to hear from you regarding how you feel about

17 whether you can only focus on this one issue or whether

18 there are multiples that you still need to address.

19 MR. PEPPLE: Yeah, thank you, Your Honor.

20 So as I -- I mentioned to -- to some of the parties at

21 the break, you know, AWEC isn't -- isn't willing to give

22 up its issues for the sake of procedural efficiency.

23 You know, we think that there are issues that -- that

24 deserve to be raised. That said, I don't think that any

25 of the issues we raised that we have identified in the

0105

1 list, you know, would -- would represent a good reason

2 for the Commission to, you know, either consolidate or

3 not consolidate depending on its position on the

4 Colstrip issue. I think that the issues we raised are

5 relatively narrow and can be dealt with pretty easily.

6 The first issue we -- we raised on is an

7 issue that, you know, we -- we raised in testimony in

8 the Avista remand docket. We feel like we need to raise

9 it in the ERM proceeding as well in order to protect our

10 interest on that issue, but it's an issue that could

11 very well be resolved in the ERM -- or in the remand

12 docket.

13 The third issue we raised is really just a

14 policy issue about, you know, the period over which

15 Avista should amortize the ERM balance, you know, and

16 that's -- I don't think that that's really a big enough

17 issue to -- to influence your decision here.

18 And then the -- the middle issue, the second

19 issue, regarding the -- the interest again, that's, you

20 know -- it's an issue that requires testimony, but

21 probably only a couple of pages to identify it. And,

22 you know, so it's -- again, it's a fairly simple and

23 narrow issue.

24 JUDGE O'CONNELL: Okay. Thank you.

25 Before we adjourn, close for the day, I do

0106

1 want to give the opportunity to the parties to tell me

2 any -- anything else that we should consider and how we

3 should go forward. The kind of a catchall question for

4 the very end. Before we get to that, which I will allow

5 everyone to have a say, was there collaboration and is

6 there any idea for a resolution that would be acceptable

7 to everyone?

8 MR. MEYER: There is a germ of an idea, but

9 that will not resolve the fundamental question of

10 consolidation or not. The parties are apart on that as

11 I understand the positions, but what I think there may

12 be agreement on is that we've discussed this -- this

13 idea of holes in the discovery responses. We all say

14 the right things that Commission has to have what they

15 need and we all believe it, okay? But we're talking in

16 the abstract, so I -- I think it's time, starting with

17 the three utilities, to sit down, figure out amongst us

18 what we've already produced, because we haven't even

19 done that yet, and then talk amongst ourselves just what

20 is truly confidential, and we'll get into this two level

21 confiden- -- or protective order in just a minute, but

22 decide among ourselves just what the state of discovery

23 is. We can do that in fairly short order. And then sit

24 down with Staff and other interested parties to go over

25 that so we understand and you understand there's common

0107

1 agreement, what's missing, what do you need, and can we

2 give that to you.

3 And we didn't talk about dates. I didn't

4 get the final okay from all parties. I'd like to get

5 all of that done -- that's actually a two-step process,

6 I suppose -- done in the next three to four weeks. And

7 then as a matter of cleanup, it's -- it's apparent that

8 in any event the -- another prehearing in the ERM,

9 Avista ERM docket will be required to reset the

10 schedule, assuming that it is going to proceed on its

11 own course, and that's the issue that has not been

12 resolved.

13 But, you know, I won't speak for how quickly

14 the Commission can turn an order around, so if the

15 hearing that carried into the new year on the ERM docket

16 would allow, I don't know, four to six weeks, seven

17 weeks, whatever the Commission finds necessary, then to

18 write an Avista-specific ERM order that talks about

19 Colstrip and everything else. And then we get to the

20 finish line of April 1st.

21 Now, did someone else want to better

22 articulate this protective order, we can agree on

23 something like that?

24 MR. DALLAS: Yes, thank you. So we had

25 collaborative conversations during our recess. I think

0108

1 we -- we do have an agreement as to the two-tiered level

2 of -- of confidentiality. I think what the -- I think

3 the parties can correct me if I'm wrong, but we -- we

4 all agree that there should be at least a common

5 protective order, and that in this protective order,

6 there'd be two layers of confidentiality. One would be

7 confidential, but not confidential among the Colstrip

8 owners because the information relates to the operation

9 and management of Colstrip. And then the other layer

10 would be truly commercially sensitive information that

11 would be confidential as to each individual utility

12 company.

13 I think where the disagreement is, is how do

14 we proceed procedurally. Do we do this in three

15 separate dockets or do we do it in one. Staff's

16 position is that it would promote judicial economy to do

17 this in one as opposed to three because three

18 necessarily means three procedural schedules.

19 The Commission mentioned a -- a solution

20 where we would sever individual issues. Staff's

21 preference would be to consolidate the entire dockets

22 because it's -- it's just odd to us to sever individual

23 issues when the Commission has to approve the entire

24 deferral balances. But as an alternative, we would take

25 that as opposed to leaving these unconsolidated because

0109

1 that would resolve the issue of judicial economy, but it

2 still would be very procedurally awkward in Staff's

3 opinion.

4 JUDGE O'CONNELL: Well, let me clarify a

5 little bit on that idea, because that thought came about

6 with the understanding that we need to have a decision

7 on the -- at least Avista's part of the 2018 Colstrip

8 outage, the decision-making leading up to the that, and

9 the prudency thereof. We need to have that decision to

10 then reincorporate it into the rest of the ERM to get to

11 the deferral balances. So that procedural idea would

12 have had to look something like severing that one issue

13 and returning it after a decision was made.

14 MR. DALLAS: So -- so I think if the issue

15 is timing, I think Staff's stipulation would -- would

16 resolve that concern. I know AWEC and Public Counsel

17 have some other minor issues, but with that stipulation,

18 I don't think there is going to be a substantive

19 difference in timing if we consolidated the entire

20 dockets -- I'm sorry -- as opposed to severing

21 individual issues because that one issue is the only

22 issue Staff may contest pursuant to its stipulation. So

23 I -- I -- I'm not sure if -- if there is a substantive

24 difference in timing between the two options.

25 JUDGE O'CONNELL: Okay. What I'm hearing is

0110

1 that all the parties can agree that it would be a good

2 idea, whether consolidated or separate, that we have

3 this -- as we've characterized at this hearing -- a

4 two-tiered level of confidentiality and a protective

5 order. One level of confidentiality where it's not

6 confidential between the Colstrip owners and then

7 another level of confidentiality where essentially the

8 companies can't see the other information of the -- the

9 other companies. Is that -- I'm hearing that that is

10 the one thing that the parties can't agree on.

11 MS. BARNETT: I don't -- this is Donna

12 Barnett from PSE, and I think that offer was -- is a

13 compromise to consolidation. It is not intended to be a

14 support -- PSE does not support consolidation, and if

15 it's a -- I think that was a separate issue. So if it's

16 a two-tiered protective order, that doesn't mean we'd

17 want that in a consolidation as a compromise.

18 JUDGE O'CONNELL: So then the idea -- I just

19 want to make sure I understand. The idea then would be

20 to keep the dockets separate, allow this two-tiered

21 level of confidentiality, and that would allow for

22 introduction of certain evidence really to the Colstrip

23 owners and decision-making to be used in each of the

24 dockets?

25 MS. BARNETT: That's right, if it's

0111

1 appropriate. That -- that's right. This would --

2 that's a -- PSE's and the other parties, my

3 understanding, is the attempt to get to understand what

4 Staff is missing and get them that information, which --

5 which is the purpose behind their motion the way we

6 understand. If judicial economy is a separate issue, we

7 don't think that judicial economy, the benefits afforded

8 the Commission in judicial efficiency or economy does

9 not outweigh the gray cost in establishing precedent of

10 having multiple power cost proceedings bound together in

11 a consolidated proceeding.

12 To me that just creates a -- a boilerplate

13 power cost rate proceeding that is applied to multiple

14 utilities without looking at every individual utility

15 the way they're filing separately. It's -- so I -- so I

16 think this is -- the offer was to -- as a -- as an

17 attempt to compromise to get Staff what they need and

18 not an acknowledgment or accession to consolidation.

19 JUDGE O'CONNELL: Okay.

20 MR. TEIMOURI: And, your Honor, this is Dan

21 Teimouri. And just to be clear that that is not Staff's

22 position. We do not see it as a compromise, but as a

23 component of a consolidated docket in our preference.

24 JUDGE O'CONNELL: We'll -- we will take that

25 into consideration, and I do want everyone to understand

0112

1 that we're going to make a decision soon on this, and

2 it's possible that not everyone will be happy with that

3 decision. Someone's not going to get what they want

4 so...

5 MR. DALLAS: And, Your Honor, I -- I think

6 just to quickly talk about what PSE stated, I think I

7 already made this point, but Staff's position is it's

8 not going to have a boilerplate recommendation in the

9 consolidated adjudication. We believe it's one story,

10 and if every individual utility company did something

11 different, we would identify that.

12 JUDGE O'CONNELL: Mr. Dallas, I -- I

13 understand.

14 MR. DALLAS: Okay.

15 JUDGE O'CONNELL: You've made that point a

16 couple times.

17 MR. DALLAS: Okay. Yeah, yeah -- okay.

18 JUDGE O'CONNELL: No, I do recall quite

19 clearly that Staff said that you can do different

20 determinations in a single narrative.

21 MR. DALLAS: Exactly. I just wanted to

22 reconfirm that.

23 JUDGE O'CONNELL: Ms. McDowell.

24 MS. McDOWELL: Thanks. Just trying to get

25 in to clarify one thing, I think that we really

0113

1 appreciated the suggestions of the tiering from Staff

2 and the individualized modified protective orders from

3 Mr. Pepple. And I think we tried to combine those

4 during the break into something that would work for all

5 of us to really address the discovery issue that you

6 raised and that Staff raised.

7 So we are totally comfortable with a

8 modified protective order being developed and entered in

9 each of the dockets that would have -- identify the

10 tiers and that would have the special language that

11 would allow information produced in one docket, you

12 know, in that, I guess it would be the tier -- the tier

13 two is where we've identified the common information,

14 that that common information would be -- notwithstanding

15 it being designated confidential, it would be -- in this

16 case, be allowed to be used in the three dockets.

17 So that -- that is different than your

18 typical protective order, and we're -- we're comfortable

19 with that, and we think that addresses -- we hope that

20 addresses your concern and also the Commission's concern

21 about how to manage this from an evidence perspective.

22 So -- so we're comfortable with that. I think the

23 distinction between what our perspective and what Staff

24 articulated was just the common protective order that

25 implies that if one protective order in a consolidated

0114

1 proceeding. We still believe that judicial economy is

2 best served by doing this in three separate proceedings

3 and let the cases evolve in -- you know, in the way they

4 have been filed.

5 You know, Avista might be ready to go to

6 hearing in a month, but I don't think PacifiCorp is. We

7 are just now entering the adjudicatory process. We want

8 to engage in this discovery process. We also talked

9 about, you know, informal technical conferences, which

10 could potentially, if we have this kind of protective

11 order placed, the three utility, Staff and other parties

12 where we could do a technical conference that would --

13 where we could share information informally as a way of

14 getting around a lot of back-and-forth discovery

15 requests.

16 So we're open to all of those ideas, but in

17 our mind, that -- you know, judicial economy is served

18 by getting that -- sharing those facts in an orderly way

19 and then moving into, you know, an adjudicatory process,

20 your typical evidentiary testimony process. And I feel

21 like here we're not going to -- at least for PacifiCorp,

22 if we are, you know, moved and consolidated into

23 Avista's schedule, that's going to be problematic for us

24 to be able to engage in that kind of process.

25 So -- so we think judicial economy is best

0115

1 served by continuing the cases separate, but doing these

2 innovative approaches to sharing information and also

3 informal sharing of information, both sort of formally

4 through the protective order and then informally through

5 these technical workshops or other proceedings.

6 JUDGE O'CONNELL: Thank you.

7 Ms. Gafken, do you have any thoughts?

8 MS. GAFKEN: I do feel like I would be

9 repeating a lot of what has already been said, but it

10 sounds to me like there is some agreement on the need to

11 share information and to levelize that information

12 across the three companies and to make sure that

13 everyone has the same information. I think that's

14 really been one of the key concerns. I don't think we

15 have agreement on how to proceed and meet, you know, the

16 deadlines that need to be met. And so I'm afraid we've

17 been unhelpful in that regard.

18 JUDGE O'CONNELL: So at this time, I want to

19 give all the parties, including the parties who are on

20 the bridge line, The Energy Project, Sierra Club,

21 Northwest Energy Coalition, AWEC, I want to give all

22 parties a chance and opportunity to provide any

23 additional thoughts on how we should move forward.

24 Let's -- let's start with Staff.

25 Mr. Dallas.

0116

1 MR. DALLAS: Thank you, Your Honor. And

2 like you said, this will be a catchall, so I have a

3 couple points I want to hit. So the compromise that the

4 companies are seeking, we appreciate. I think it would

5 resolve a lot of the confidentiality issues. Staff

6 still has concern about judicial economy. You know, I

7 think Public Counsel stated it best, that it would

8 really limit our participation in all three if we had to

9 adjudicate the same cost three different times. And

10 then the first case wouldn't have the benefit of the

11 information and insight from the latter cases. So as

12 these cases evolve and we become more familiar with

13 these issues, the Commission may enter inconsistent

14 orders based on three serial cases.

15 The next point I want to talk about is the

16 timing of Staff's motion. I think -- you know, I -- I

17 want to explain why we filed it when we did. We've

18 always viewed these cases as one single case, and we

19 filed our motion after the workshop with PAC that took

20 place on September 20th, and we wanted to wait to file

21 our motion until we heard from PAC to give them a fair

22 opportunity.

23 This workshop was on September 20th, and

24 then after this workshop, we sat down with all the

25 information and filed our motion six days later. So

0117

1 it's -- it's certainly -- there was no bad intent to the

2 timing of our motion. We certainly don't want to

3 prejudice any of the companies. We just did -- we just

4 wanted to give PAC a fair opportunity, and I -- I think

5 Staff would be accused of prematurely filing its motion

6 if we filed our motion prior to the workshop. So I just

7 wanted to -- to really state why we filed our motion

8 when we did. It's because we view all these cases as

9 one, which is why we're asking for consolidation.

10 As to the point why we didn't file motions

11 to compel, it -- it -- it didn't make sense to. For

12 instance, we believe the companies are withholding the

13 same document, so if we did a motion to compel with

14 Avista, we would fight that, and then if we won, it

15 would be confidential, and then we would have to try to

16 move that same document into the other three -- the

17 other two cases.

18 So -- so -- so it -- it makes more sense to

19 do this in a context of a consolidated adjudication

20 because we have to fight to get the document, and then

21 the document's going to be confidential, and then we

22 have to fight the designation of confidentiality to get

23 in the other two dockets. So it -- it's really a

24 five-step process to get one document in each

25 administrative record if there is no consolidation. So

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1 we -- we -- we did not pursue the motions for -- motions

2 to compel because it just didn't make sense. It -- it

3 makes sense to -- to -- if we go that route, and we hope

4 we don't, it makes sense to do it within the context of

5 a consolidated adjudication so we can use that one

6 document as to all three companies because we want to

7 provide consistent recommendations. So I -- I just

8 wanted to provide some context on that.

9 And with that, I know it was a catchall. I

10 think those are the points I want to make. I'll move it

11 over to my associate, Dan.

12 MR. TEIMOURI: There were -- thank you, Your

13 Honor. There were a couple of points that were made

14 that Staff and I had a chance to respond to that I'll

15 just briefly touch on and then we'll move quickly

16 through them.

17 But I think first, PAC and PSE said

18 something to the effect that they're still trying to

19 understand what Staff needs, that Puget's not clear on

20 what it has not given. And I think that, you know,

21 Staff would strongly push back on this, we've had

22 several discovery conferences with both parties that

23 made very clear as Your Honor stated at the very

24 beginning of this hearing they were looking for the Q-1

25 contemporaneous decision-making leading up to the

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1 Colstrip outage. So that was conveyed very clearly to

2 all companies, and I don't think there was any -- any

3 lack of clarity there.

4 It was also stated by Mr. Meyer, and I think

5 this appears in all the briefs, that there was thousands

6 of documents, lots of time spent, and by the same token,

7 there was a lot of time spent by Staff receiving those

8 thousands of documents. As you know, thousands of

9 documents a response does not make. And so we wasted a

10 lot of time going through those documents to not get an

11 answer to our questions, so I think shared frustration

12 on both sides.

13 It was said that this was bad precedent. I

14 think that's not true. This is a very narrow situation.

15 As was said, 17 years we haven't had a similar situation

16 where there was three joint owners with one outage. The

17 order could be narrowly crafted around those facts and

18 would not set bad precedent.

19 And lastly, during the break, we went and

20 looked for some precedent to establish that the issuance

21 of bench requests in a -- in a situation like this,

22 would be not be unprecedented, and we have that

23 authority here, and I would like to hand it up to the

24 Bench if you are so inclined to receive it and to share

25 it with the parties.

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1 JUDGE O'CONNELL: And can you share with me

2 just the -- the docket and perhaps if you're -- whatever

3 document you're looking at?

4 MR. TEIMOURI: Yes, it's In re Joint

5 Application for Merger of Qwest Communications

6 International Inc. and US West Inc., Docket No.

7 UT-991358, April 26th, 2000.

8 JUDGE O'CONNELL: April 26th.

9 MR. TEIMOURI: And that's all I have, Your

10 Honor. Thank you.

11 JUDGE O'CONNELL: Thank you.

12 Ms. Gafken, does Public Counsel have any

13 other thoughts about how we should move forward?

14 MS. GAFKEN: I will speak briefly, and thank

15 you for the opportunity. From Public Counsel's

16 perspective, it -- it does seem somewhat unnecessary to

17 have three separate proceedings to deal with this

18 particular issue. I think it's -- it's been fairly --

19 it's been clarified that the Colstrip outage and the

20 events leading up to it really is -- is what we need to

21 grapple with, and we have three common owners.

22 Of course the Commission needs to deal with

23 each one of the filings, but it -- it seems to me to be

24 a bit unnecessary to have three separate proceedings and

25 gear up three separate times to deal with this -- this

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1 particular issue. Of course each one of the individual

2 companies will have their percentage of ownership and

3 all of those things, but those are merely facts.

4 They're not things that necessitate separate treatment.

5 Public Counsel's preference would be to have

6 a process that has the most efficient path forward. So,

7 you know, fewer times parties need to gear up to address

8 this particular outage, we would prefer that.

9 In terms of consolidating three separate

10 companies into a single proceeding, I think the

11 Commission has broad discretion on that. It really

12 ultimately comes down to what does the Commission feel

13 that it needs to do in order to process these filings

14 and do so in a way that they can make a decision based

15 on all of the facts that they need to have and be the

16 most efficient with it. I think that discretion falls

17 squarely on the decision-makers.

18 I -- I am quite encouraged by the offer

19 to -- one, for the offer of the companies to meet among

20 themselves and then to meet with the rest of the parties

21 to -- to levelize the facts. I think that is very

22 constructive, and we look forward to participating in

23 that process, regardless of whether this ends up being

24 consolidated or not. I think I'll stop there. I don't

25 want to take up much more of the air time, but thank

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1 you.

2 JUDGE O'CONNELL: Mr. Pepple for AWEC, do

3 you have any additional thoughts you would like to

4 voice?

5 MR. PEPPLE: Just very quickly, Your Honor.

6 AWEC is comfortable with whatever decision you make on

7 whether to consolidate or not consolidate for purposes

8 of the Colstrip outage as long as AWEC's right as a

9 party to raise be -- you know, other issues that it has

10 identified within the scope of the dockets is preserved,

11 so that's all. Thanks.

12 JUDGE O'CONNELL: Thank you, Mr. Pepple.

13 Mr. ffitch, for The Energy Project?

14 MR. FFITCH: Thank you, Your Honor. We

15 don't have any comments at this time.

16 JUDGE O'CONNELL: Okay. Thank you.

17 And Ms. Yarnall Loarie for the Sierra Club?

18 MS. YARNALL LOARIE: Sierra Club also

19 doesn't have anything to add at this time. We still do

20 not oppose the idea of consolidating and severing this

21 issue for the sake of efficiency.

22 JUDGE O'CONNELL: Okay. Thank you.

23 And, Ms. Barlow, for Northwest Energy

24 Coalition?

25 MS. BARLOW: Thank you, Your Honor.

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1 Northwest Energy Coalition doesn't have anything to add

2 either. Thank you.

3 JUDGE O'CONNELL: Okay. Thank you.

4 I want to return to the companies. For the

5 most part, I want to hear your final thoughts about how

6 we should move forward, but I'd also like to hear more

7 of Mr. Meyer about what would be needed as far as timing

8 if the companies needed to get together. Is that

9 something that can or -- or would be able to go hand in

10 hand with having this two-tiered protective order?

11 Because obviously if we do that, the companies will have

12 to get together.

13 MR. MEYER: Yeah, we'll have to sort the

14 information accordingly, and -- and -- and so we have

15 not talked about timing. I'm happy to send an email

16 around after I confer with my own client before I commit

17 my own client. They -- they don't like that.

18 JUDGE O'CONNELL: And here's my concern,

19 Mr. Meyer, is that we do expect to issue a decision

20 rather quickly on this, and that is going to have an

21 impact on what we decide to do procedurally with

22 Avista's general rate case. So I just want to

23 understand what sort of timeline we are under and

24 whether -- whether you're going to be able to have those

25 discussions before we issue a decision.

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1 MR. MEYER: I would think not, because it

2 envisions an iterative process where we pull stuff

3 together, we look at it, we ask ourselves quite directly

4 and honestly is that really confidential or isn't it,

5 and -- and try and find common ground, hand it off to

6 others to look at and discuss, and then what comes out

7 of that, and this could be three, four weeks down the

8 road is we've identified the following six deficiencies

9 that need further discovery.

10 You know, I was just -- just trying to

11 reflect -- and this will be my last thought unless you

12 have other questions -- is how different today would be

13 if we weren't discussing this whole thing in the

14 abstract. And we all have views of what may or may not

15 be there in discovery once we get our hands on it, what

16 may or not be issues, and that's fair, because we're

17 early in the process with some of these parties.

18 But let's say we were before you today

19 arguing about six specific requests for information, six

20 requests. I think it would be an entirely different

21 discussion today, and I think there would be an order

22 coming, and we wouldn't be talking about consolidating

23 cases. But instead, because it's unfortunately and

24 maybe inevitably, we're discussing this on an abstract

25 basis, what it's done to Avista is that it's gummed up

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1 the works, it's procedural works on its ERM, so that

2 it -- that is going to have to be delayed. We're

3 confident that we can set a new schedule that will still

4 meet that April 1st order, though.

5 So to end on a constructive note, I'll send

6 out something to the -- the utilities to jump start this

7 process, check with your principals, and then we can

8 decide how best to share this and then kick it over to

9 the other parties in terms of what -- what you would

10 like to do to assembly all this. That's the best I've

11 got.

12 JUDGE O'CONNELL: Ms. McDowell?

13 MS. McDOWELL: Thank you, Your Honor. Let

14 me just conclude by saying we are open to all ideas that

15 parties have on how to share information efficiently and

16 effectively to make sure all parties have the

17 information they need and to make sure the Commission

18 has what it needs to resolve this case. We do strongly

19 object to consolidation of these proceedings. We think

20 it would not promote judicial efficiency. That's the

21 Commission's perspective, and we think it would be

22 prejudicial to Pacific Power, that's our perspective.

23 Utilities are entitled to individualized

24 prudence determinations. So whether or not this case is

25 consolidated, the Commission is going to need to develop

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1 an individualized record. We don't think it makes it

2 easier for the Commission to do that in a consolidated

3 proceeding. We think that creates a risk of a confused

4 record. That leads to my concern about prejudice. We

5 think in a consolidated proceeding, there's a risk that

6 other act- -- other parties' actions could be imputed to

7 us, that we could leave with an unclear, confused

8 record, and that we could be basically assigned a

9 schedule that is problematic for us because of another

10 utility's concerns.

11 So we have -- we do have concerns about

12 consolidation, both from the Commission's perspective

13 and judicial economy and from our perspective in terms

14 of our right to have an individualized determination of

15 our prudency in this case. Thank you.

16 JUDGE O'CONNELL: Thank you.

17 And, Ms. Barnett?

18 MS. BARNETT: Thank you, Your Honor. PSE

19 agrees with PacifiCorp and Avista on this. And I think

20 PSE's concerns were underscored by Staff's final

21 statements and final thoughts mainly when they said that

22 this is -- they viewed these as the same case, these

23 three separate -- three separate issues as the same case

24 and that it's one story. They're -- they're three

25 separate stories, they are three separate cases, they

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1 are three separate companies with only one fact in

2 common. Not even one -- not even similar parties are in

3 common.

4 I think that -- that idea of creating a

5 consistent answer or prudency determination for each of

6 the companies is a mistake. Consistency should not be

7 the goal. Efficiency should not be the goal. Getting

8 it right should be the goal. And I think the compromise

9 that we proposed today will get Staff and the Commission

10 the information they need to get it right.

11 And -- and so I don't see a need to

12 consolidate them if they have the information they need

13 to get it right. And I think consolidating them, which

14 would then just be just for judicial consistency and

15 economy, would be a drastic departure from Commission

16 precedent and make it easier to do single issue

17 ratemaking in the future, consolidate totally

18 inappropriate cases with multiple companies. And -- and

19 so I think it -- it would be a very big and drastic

20 departure from the Commission's practice.

21 So just to end on a -- on a final note, I do

22 think PSE is committed to getting Staff the information

23 they need and finding out what that information is and

24 by -- by working together with the other companies we'll

25 do that. And I think that solves the -- the issues that

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1 Staff has brought in its motion. And so I hope the

2 Commission considers that, but maintaining it as

3 separate -- separate -- separate cases, not

4 consolidated.

5 JUDGE O'CONNELL: Thank you.

6 MR. MEYER: May I just tack on? I know I

7 had my time.

8 JUDGE O'CONNELL: Very briefly, Mr. Meyer.

9 MR. MEYER: Okay. This process that you

10 just referred to where we share information, I think if

11 I were a commissioner, I might want to know whatever

12 happened there? Did you guys figure this stuff out or

13 not? It would be helpful I think to the Commissioners

14 if they're -- if someone -- probably Staff would report

15 out that there are X, Y, Z as unresolved discovery

16 issues, and so narrow this thing down at this point.

17 Otherwise, it's just a -- could be a nebulous exercise

18 and we're back here again.

19 JUDGE O'CONNELL: Okay. Well, considering

20 that, Mr. Dallas, Mr. Teimouri, Staff has the proponent

21 of the motion, last word?

22 MR. DALLAS: I think Staff would just stand

23 on its brief. I think, you know, consolidation can

24 resolve the confidentiality issues in one protective

25 order, and Staff's position is that the Commission has

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1 sufficient information to make -- to render fair, just,

2 and reasonable rates, and we also believe that

3 consolidation would promote judicial economy and avoid

4 wasting the Commission's resources on hearing the same

5 case three separate times. And I guess with that, I

6 would just stand on our brief.

7 JUDGE O'CONNELL: Okay. Is there anything

8 else from the parties that we need to discuss at this

9 hearing? Not seeing anything in the room, I'm not

10 hearing anything from the bridge line. So with that, we

11 will adjourn this hearing. We will take into

12 consideration what's been said, and with that, we will

13 be off the record.

14 (Adjourned at 12:35 p.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

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6 I, Tayler Garlinghouse, a Certified Shorthand

7 Reporter in and for the State of Washington, do hereby

8 certify that the foregoing transcript is true and

9 accurate to the best of my knowledge, skill and ability.

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13 Tayler Garlinghouse, CCR 3358

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