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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION)
4)
Complainant,)
5)
vs.) DOCKET NO. UE-050870
6) Volume I
PUGET SOUND ENERGY, INC.,) Pages 1 - 55
7)
Respondent.)

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10 A prehearing conference in the abovematter
11 was held on June 22, 2005, at 1:37 p.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge DENNIS MOSS.

14 The parties were present as follows:

15 PUGET SOUND ENERGY, INC., by KIRSTIN S. DODGE
16 and JASON KUZMA, Attorneys at Law, Perkins Coie, 10885
17 Northeast Fourth Street, Suite 700, Bellevue,
Washington 98004; telephone, (425) 635-1407.

18 WASHINGTON UTILITIES AND TRANSPORTATION
19 COMMISSION, by ROBERT D. CEDARBAUM, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
20 Post Office Box 40128, Olympia, Washington 98504-0128;
telephone, (360) 664-1188.

21 PUBLIC COUNSEL, by SIMON J. FFITCH, Assistant
22 Attorney General, 900 Fourth Avenue, Suite 2000,
Seattle, Washington 98164; telephone, (206) 389-2055.

23 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
24 by MATTHEW W. PERKINS, Attorney at Law, Davison Van
Cleve, 333 Southwest Taylor, Suite 400, Portland,
Oregon 97204; telephone, (503) 241-7242.

25 Kathryn T. Wilson, CCR
Court Reporter

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1 ZILKHA RENEWABLE ENERGY, by STEPHEN C. HALL,
2 Attorney at Law, Stoel Rives, 900 Southwest Fifth
3 Avenue, Suite 2600, Portland, Oregon 97204; telephone,
4 (503) 294-9625.

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 NORTHWEST INDEPENDENT POWER PRODUCERS
4 COALITION, by ROBERT D. KAHN, Executive Director, 7900
5 Southeast 28th Street, Suite 200, Mercer Island,
6 Washington 98040; telephone, (206) 236-7200.

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

2 JUDGE MOSS: Good afternoon, everyone. My
3 name is Dennis Moss. I'm an administrative law judge
4 for the Washington Utilities and Transportation
5 Commission. We are convened in the first prehearing
6 conference in the matter styled WUTC against Puget
7 Sound Energy, Inc., Docket No. UE-050870, a type of
8 proceeding that has come to be known as a
9 power-cost-only rate case, or PCORC, also implicating
10 the so-called power-cost-adjustment mechanism, or PCA.

11 Our first order of business will be to take
12 appearances, and then we will take up any petitions to
13 intervene. I have one written petition. We have
14 certain pending motions that I want to resolve, or we
15 have a motion, and various responses to that.

16 We will talk about our process and our
17 procedural schedule, which I delayed the start of this
18 prehearing conference this afternoon in an effort to
19 give the parties an opportunity to discuss that matter
20 and at least come close, and then we will take up any
21 other issues that we have. So let's begin with
22 appearances, and let's start with the Company.

23 MS. DODGE: Thank you, Your Honor. Kirstin
24 Dodge with Perkins Coie for Puget Sound Energy, and
25 with me is Mr. Jason Kuzma, also an attorney with

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1 Perkins Coie. Address is 10885 Northeast Fourth
2 Street, Suite 700, Bellevue, Washington, 98004. E-mail
3 is kdodge@perkinscoie.com, and Mr. Kuzma's e-mail is
4 jkuzma@perkinscoie.com.

5 Telephone is (425) 635-1400; fax, (425)
6 635-2400. I may add that we have a special e-mail for
7 submission of data requests to Puget Sound Energy at
8 psedrs@perkinscoie.com, and there is no need to fax
9 data requests to us if that e-mail distribution list is
10 used.

11 JUDGE MOSS: Thank you.

12 MR. HALL: Good afternoon, Your Honor. I'm
13 Stephen Hall from the law firm of Stoel Rives, LLP.
14 I'm here today on behalf of Three Wind Developers that
15 participated in Puget's RFP. Those companies are
16 Zilkha Renewable Energy, enXco, and RES North America,
17 and I would just add that I'm here just for the limited
18 purpose of commenting on Puget's motion for amended
19 protective order.

20 JUDGE MOSS: Thank you.

21 MR. PERKINS: Good afternoon. This is Matt
22 Perkins from Davison Van Cleve. I'm here on behalf of
23 the Industrial Customers of Northwest Utilities. Not
24 appearing today but who will be involved in this case
25 is Brad Van Cleve from our office. Our address is 333

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1 Southwest Taylor, Suite 400, Portland, Oregon, 97204.
2 Phone number is (503) 241-7242; fax, (503) 241-8160,
3 and our e-mail address is mail@dvclaw.com.

4 JUDGE MOSS: Thank you.

5 MR. FFITCH: Your Honor, for the office of
6 Public Counsel appearing in this case we expect to be
7 Mr. Robert Cromwell. He is on the bridge line. We are
8 kind of reacting quickly to the schedule we received in
9 the Verizon case this morning in terms of our office's
10 involvement, so I've had a brief chance to talk with
11 him about the proposed schedule we have here, and he is
12 on the bridge line, and as we get into scheduling
13 discussions, Robert, if you have additional comments
14 you want to make about the proposal as it affects your
15 schedule, please weigh in, but we are expecting
16 Mr. Cromwell to appear for Public Counsel in this case.

17 The office is at 900 Fourth Avenue, Suite
18 2000, Seattle, Washington, 98164. Phone number is
19 (206) 464-6595. That is Mr. Cromwell's number. The
20 fax number is (206) 389-2079, and Mr. Cromwell, do you
21 want to give your e-mail address?

22 MR. CROMWELL: Good afternoon, Your Honor.

23 JUDGE MOSS: We can barely hear you.

24 MR. CROMWELL: My e-mail address is
25 robertcl@atg.wa.gov.

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1 JUDGE MOSS: Thank you. Mr. Cedarbaum?

2 MR. CEDARBAUM: Robert Cedarbaum, assistant
3 attorney general, representing Commission staff. My
4 address is the Heritage Plaza, 1400 South Evergreen
5 Park Drive Southwest, Olympia, Washington, 98504. My
6 e-mail address is bcedarba@wutc.wa.gov. My direct
7 phone line is area code (360) 664-1188. Fax is area
8 code (360) 586-5522.

9 JUDGE MOSS: Thank you. Do we have anyone on
10 the bridge line? We have one more in the room.

11 MR. KAHN: My name is Robert Kahn, K-a-h-n.
12 I'm the executive director of the Northwest Independent
13 Power Producers Coalition, otherwise known as NIPPC.
14 I'm here for the purpose of commenting with respect to
15 the confidentiality treatment in this docket. Our
16 offices are at 7900 Southeast 28th Street, Suite 200,
17 Mercer Island, Washington, 98040. Do you need other
18 coordinates as well, such as phone and so forth?

19 JUDGE MOSS: Go ahead, Mr. Kahn.

20 MR. KAHN: So our phone number is (206)
21 236-7200. My e-mail address is rkahn@nippc.org.

22 JUDGE MOSS: Thank you. I believe that
23 completes the room. Let me ask if there is anyone on
24 the conference bridge line who wishes to enter an
25 appearance today? Apparently not.

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1 All right. Well, our first order of
2 business, I suppose, I have received one petition to
3 intervene from the Industrial Customers of Northwest
4 Utilities. That petition was in writing. We don't
5 need to hear it again. Is there any objection?

6 MS. DODGE: No, Your Honor.

7 MR. CEDARBAUM: No.

8 JUDGE MOSS: Hearing no objection, ICNU's
9 petition is granted. Is there any party or any other
10 person who wishes to seek intervenor status? I will
11 hear comments.

12 All right. Let me do it this way: The
13 parties had some opportunity to discuss things
14 beforehand. Has any accommodation been reached on the
15 procedural schedule; Mr. Cedarbaum?

16 MR. CEDARBAUM: Yes, Your Honor. I believe
17 the parties have reached agreement; although, we
18 haven't heard directly from Mr. Cromwell, so he will
19 need to comment if required.

20 The schedule that we've agreed to is as
21 follows: On September 7th, the Staff, Public Counsel,
22 and Intervenor direct testimonies will be filed by noon
23 on that day. On September 21st, also by noon, the
24 Company will file its rebuttal case. The hearings that
25 were asked for the Commission to set would be for the

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1 week of October 3rd, and perhaps not all of those days
2 will be necessary as we get closer to those days.

3 Opening briefs, simultaneous, will be October
4 21st. Although we didn't talk about a time of day, the
5 Commission's prior practice of having a midafternoon
6 filing date, if that's what the Commission wants this
7 time around, from Staff's perspective, that's fine.

8 JUDGE MOSS: We can pause and ask whether
9 parties want to do the e-mail submission at noon on the
10 day preceding and then the official filing is the next
11 day when it's received. Does that work for everybody?

12 MR. CEDARBAUM: So October 21st at noon?

13 JUDGE MOSS: Yes. That gives us a chance to
14 make copies and distribute it internally.

15 MR. CEDARBAUM: And then reply briefs would
16 also be e-mailed by noon on October 28th with physical
17 service the next day.

18 JUDGE MOSS: And everybody understands our
19 official receipt is when we get the hard copy, but the
20 preceding day is for electronic submission.

21 MR. FFITCH: Can I just inquire about the
22 procedure on the testimony and for rebuttal days? For
23 that noon date, is that satisfactory to have that be
24 electronic filing with a follow-up hard copy on the
25 following day or by the close of business?

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1 JUDGE MOSS: Let's hear what the other
2 parties have to say.

3 MR. FFITCH: The reason I bring it up is if
4 we have the actual receipt of hard copies by noon, that
5 pretty much takes that day away. You are really saying
6 that your deadline for getting the document finished is
7 the 6th.

8 JUDGE MOSS: Mr. Cedarbaum?

9 MR. CEDARBAUM: I think that's a fair point
10 that we hadn't discussed, so I would second
11 Mr. ffitch's suggestion for having that be electronic
12 submission by noon on those September dates.

13 JUDGE MOSS: Let me ask this: I assume the
14 Company had an interest in having this by noon since
15 you will be on the receiving end?

16 MS. DODGE: Yes, with respect to the
17 September 7th. I think the September 21st was the
18 other parties wanting to get theirs by noon. I will
19 say we have had -- in fact, in our general rate case --
20 had some trouble actually receiving electronic copies.
21 They may have been sent by the deadline, but they
22 weren't received until a day later and after some
23 follow-up. So we actually prefer to get the e-mail, at
24 least, by noon and then a hard copy at the end of the
25 day if a messenger can't get there by straight-on noon.

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1 JUDGE MOSS: Would it work for the parties to
2 have those portions that can be readily transmitted
3 electronically transmitted with the hard copy to be
4 delivered by the close of business?

5 MR. FFITCH: Yes, Your Honor.

6 JUDGE MOSS: That seems workable to me, and
7 basically what you get at noon is the testimony and
8 maybe one or two exhibits that were created. The rest
9 is probably going to be copies of documents and one
10 thing and another.

11 Also from the Commission's perspective,
12 because this is often voluminous, frankly, I don't
13 think we want to take on the responsibility for copying
14 and distribution, so it's no advantage to us to have it
15 by noon. So if that's workable, let's say that the
16 parties will make a good-faith effort to do an
17 electronic exchange at noon, and then we'll have close
18 of business on those days for the full submission.
19 Does that seem agreeable to everyone?

20 MR. PERKINS: Your Honor, I guess due to our
21 location in Portland, the hard copy by the close of
22 business at the end of the day still effectively puts
23 us one day before we overnight the hard copies. I
24 don't know if the parties would be willing to agree we
25 would make our efforts to have it delivered overnight

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1 for delivery in the morning? I don't know if that
2 creates problems for everyone or not, and we would
3 endeavor to have everything in electronic form to
4 distribute by noon.

5 JUDGE MOSS: Can we make a concession to the
6 Portland party?

7 MS. DODGE: The problem is that our
8 experience, and I don't know if it's a prior server
9 issue or something, but that's where we had the problem
10 last year, and we didn't get either until the next day,
11 so I don't know.

12 MR. PERKINS: That's a fair point. We will
13 do what we need to do.

14 JUDGE MOSS: Very good. Are there any other
15 thoughts on the procedural schedule? Mr. Cromwell, you
16 may have something to say about it.

17 MR. CROMWELL: I do, Your Honor. I have a
18 conflict on October 3rd, which is the second of two
19 days of the settlement conferences scheduled in the
20 PacifiCorp rate case.

21 JUDGE MOSS: As luck would have it, you are
22 not going to have to worry about that. Perhaps I
23 should go ahead and talk about Commission scheduling.

24 MR. CROMWELL: I defer to you.

25 JUDGE MOSS: It's just a question of I have

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1 done some research into the Commission's schedule,
2 which I seem to have left somewhere else, but I think I
3 recall the points.

4 First of all, let me ask a question:
5 Realistically, what are parties thinking of in terms of
6 days of hearing? I note in this connection that in the
7 prior proceeding of this nature, we had four days of
8 hearing, something less, actually, and in the prior
9 general rate proceeding, we had four days of hearing.

10 So in some regards, at this stage, this
11 proceeding appears to be somewhat simpler and more
12 straightforward than either of those two proceedings.
13 So how much time are we thinking we are going to need
14 in terms of hearing days, and I'm thinking in terms of
15 maybe two and a half. Do parties think that
16 sufficient, or do you want to block out more time?

17 MR. CEDARBAUM: Hopefully, past experience
18 will predict this case, but we don't know, and we just
19 haven't gotten enough into the case to know, but I
20 guess the idea the parties had was to schedule that
21 week; although, I understood there was a conflict on
22 the 4th and the 3rd. I think that's the latest we
23 could have a hearing in this case and still try to meet
24 the expectation of, at least from the parties' respect,
25 of getting the Commission order out by the beginning of

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1 December.

2 JUDGE MOSS: I agree that's beginning to push
3 the envelope just a little bit. We do have some
4 conflicts on the 3rd and the 4th. I also was unaware
5 of the conflict on the 3rd when I discussed dates with
6 you informally, and I apologize I didn't have better
7 information. I still don't have the conflict on my
8 internal calendar. I don't know why, but for whatever
9 reason, it turns out we do have a commissioner
10 availability issue on the 3rd. We do have a similar
11 problem on the 4th, and indeed, as far as I know, the
12 morning of the 5th, but that may be subject to change.

13 What I have in mind is that we could schedule
14 the 5th, 6th and 7th and reserve the 10th and 11th as
15 spillover days in the event it should take longer than
16 I anticipate. I realize it's early in the proceeding.
17 It's difficult to judge at this point how much
18 cross-examination will actually be required.

19 If we did that, would that remove your
20 conflict that week, Mr. Cromwell?

21 MR. CROMWELL: Your Honor, I would be
22 concerned, frankly. In terms of trying to make the
23 PacifiCorp settlement dates productive will take some
24 preparation, and that would be the time I would
25 normally be preparing for a hearing, and so my request

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1 would be to roll the hearings for the following week
2 so -- worse case scenario is that the PacifiCorp
3 settlement discussions are not fruitful -- I have a few
4 days to get ready for these hearings, producing
5 cross-exhibits for folks as is common practice.

6 JUDGE MOSS: Anybody else want to be heard on
7 the proposal that is before us this afternoon as
8 modified by the information I gave you concerning the
9 availability of the commissioners?

10 MR. FFITCH: Your Honor, for Public Counsel,
11 we also would like to request at least one public
12 comment hearing be scheduled in the case, and the time
13 period shortly after the testimony is filed, which
14 would be in mid September, the opening responsive
15 testimony, and we would request that it be held in
16 Bellevue.

17 An alternative location for either a second
18 hearing or an alternative single hearing location would
19 be in Olympia during the evidentiary hearings, and
20 Mr. Cromwell had not mentioned this, but I think it was
21 our hope that the schedule would also include a
22 settlement conference date for this proceeding, which
23 could be either just shortly before the testimony is
24 filed or after.

25 JUDGE MOSS: You anticipated a point on my

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1 procedural schedule, Mr. ffitch, and I do want to see
2 if we can set a date for that. I have actually
3 penciled it in in terms of process flow between now and
4 the response case.

5 On the other hand, it could follow the
6 response case, except that I see we've only provided a
7 short interval of 14 days between the response and the
8 rebuttal, so that might not be a very good time for the
9 Company. So perhaps before the response testimony
10 would be a good opportunity if the parties wish to
11 explore the prospects for settlement. We would like to
12 set a date for that so it would be known, and that, of
13 course, is subject to rescheduling as the parties may
14 suggest further down the line, so I would also like to
15 set a date for that.

16 I have to be concerned about Mr. Cromwell's
17 conflicting obligations. That's not necessarily going
18 to drive what we do, but I do want to take it into
19 account.

20 MR. PERKINS: I apologize for interrupting,
21 but I would like to bring to your attention that Avista
22 hearings are supposed to start on October 17th, and it
23 would be problematic for us to move the hearings in
24 this proceeding to the week of the 10th, especially if
25 it's intended to set aside five days for this hearing.

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1 That would put us into three straight weeks of hearings
2 with also the opening and reply briefs in this case due
3 in the middle of the Avista hearings.

4 JUDGE MOSS: So we do have a time crunch on
5 the other end as well, and I appreciate you bringing
6 that up, Mr. Perkins, and that, of course, is a very
7 salient point considering the commissioners will be
8 sitting in both and so will I, so this could be very
9 problematic to slip too much into the week of the 10th.

10 Mr. Cromwell, are there prospects, do you
11 think, for moving the date for the PacifiCorp
12 settlement conference? I have an inside track with the
13 judges in that case.

14 MR. CROMWELL: It's certainly possible, Your
15 Honor. I'm just looking through my calendar right now.
16 That might be the better solution, to bump forward a
17 week, say, September 23rd, 26th?

18 JUDGE MOSS: In terms of looking at the
19 Commission's overall calendar, while I cannot control
20 what happens in these other proceedings, I think with
21 some discussion internally and some discussion with
22 PacifiCorp and other parties in that proceeding, we can
23 perhaps move that date or those two days to a more
24 convenient time and still not press up against this
25 week of the 17th, which I see as being the larger of

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1 the two problems. If we remove that constraint --
2 let's assume for the moment we are successful in doing
3 that -- is the schedule otherwise acceptable?

4 MR. CROMWELL: Yes, Your Honor.

5 JUDGE MOSS: The only thing missing then,
6 before I do a recital to make sure I have all my notes
7 correct, is what about the settlement conference in
8 this case? I have never seen a case here where there
9 was not a prospect of resolving at least some issues by
10 cooperative endeavor, so it seems appropriate to me
11 that we might set a date for that, and it could be a
12 single day or a couple of days sometime prior to the
13 filing of the Staff, Public Counsel and Intervenor
14 response testimony. Today is June 22nd so there is
15 quite an opportunity between now and, say, September
16 7th.

17 MS. DODGE: Well, we are happy to accommodate
18 the other parties' schedules. I think it's often
19 productive to have a settlement discussion at least two
20 weeks ahead of the time that the other testimonies are
21 due before people have to focus on getting those ready.
22 At the same time, I know there is probably some
23 constraint on the other end that the other folks want
24 to have their chance to do their investigation, so we
25 are happy to hear from the others.

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1 JUDGE MOSS: You all did such a good job in
2 working out the procedural schedule so far that I think
3 I want to go off the record for an opportunity to
4 succeed a second time today, and I'm building momentum,
5 I hope, for success on a third matter. So let's be off
6 the record.

7 (Discussion off the record.)

8 JUDGE MOSS: Have the parties reached a date
9 that they want to propose for a settlement discussion?

10 MR. CEDARBAUM: Yes, Your Honor. I think
11 we've agreed on August 11th as that day, and we
12 actually didn't talk about a time, but I'll propose
13 9:30 at the Commission's offices, and I will arrange a
14 room.

15 JUDGE MOSS: All right. I'm mark that on the
16 procedural schedule as well. Let me recite through the
17 procedural schedule as I have it to confirm with
18 everyone that I have it correct.

19 PSE prefiled its direct case on June 7th. We
20 now have scheduled a settlement conference date of
21 August 11th at 9:30 in the morning here. Staff, Public
22 Counsel, and Intervenor response testimony on September
23 7th by close of business. However, parties will make
24 good-faith efforts to distribute electronic copies to
25 each other by noon that day.

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1 PSE's rebuttal testimony, September 21st,
2 following the same time protocol as I just described
3 for the response testimony. Evidentiary hearing, we
4 will begin, I believe, on October the 5th. I will set
5 the time once I learn more. We will schedule the 5th
6 through the 7th and hope that we can finish in that
7 time frame. We will know more as we get closer. If
8 not, then I will go ahead and reserve the 10th and 11th
9 as potential spillover days.

10 Simultaneous initial briefs on October 21st
11 to be delivered by e-mail at noon, and that's both on
12 the parties and to the Commission, and I ask that you
13 do send a courtesy copy directly to me rather than
14 sending just to the record's center. Simultaneous
15 reply briefs, October 28th, same protocol.

16 The official filing dates for the briefs then
17 will be the 22nd and 29th when we will expect to
18 receive -- I'm sorry. I guess for the second one, it
19 will have to be the 31st when we will expect to receive
20 hard copy in the records center, the 28th being a
21 Friday.

22 I just want to ask one more question in
23 connection with scheduling. In reviewing the Company's
24 case, I noticed that the goal of a December 1 effective
25 date was driven by the expected events with the Hopkins

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1 Ridge acquisition, which I also notice is about ten
2 percent of the rate increase. What I'm curious about
3 is whether there are factors in connection with the
4 other aspects, the other 50 million dollars, that also
5 militate in favor of that December 1st date.

6 MS. DODGE: Actually, yes, because the
7 requested costs in the case are based on the December
8 1st through and November rate year, so depending on
9 when various costs and changes take place, according to
10 contract and according to other matters, it can change.
11 There is just a different basket of costs.

12 JUDGE MOSS: So we would end up rerunning
13 Aurora. As we all know, things sometimes occur in the
14 course of a proceeding that require some changes in
15 procedural schedules, but we can all be mindful that
16 this is a date that's important for more than one
17 reason. I do have it on the schedule as an
18 aspirational date.

19 MR. FFITCH: Your Honor? There was one
20 matter you didn't cover in your recap, and that was the
21 public comment hearings.

22 JUDGE MOSS: That is because I'm not putting
23 a date down for that for a couple of reasons. I have
24 down the note that you are suggesting Bellevue shortly
25 after the response case; as an alternative, time and

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1 place, Olympia during the evidentiary hearing.

2 I would like to have some internal
3 consultation before we decide. It's two fundamental
4 different proposals, and then we can work with your
5 office, and, of course, we will work with the parties
6 to establish a date that is convenient for everyone, so
7 I think we will work around those parameters and we
8 will schedule that by notice at a later date.

9 MR. PERKINS: If I could ask for one point of
10 clarification. The proposal that I believe
11 Mr. Cromwell sent out prior to the conference this
12 morning, the date that is now September 21st, that was
13 to include the Company rebuttal also as well as Staff,
14 Public Counsel, and Intervenor cross-answer testimony,
15 and I wasn't sure if I heard that.

16 JUDGE MOSS: You probably didn't hear that
17 because I rarely think of cross-answering testimony,
18 but that is something there may be, so yes, that would
19 be the same day.

20 MR. PERKINS: Thank you.

21 JUDGE MOSS: The 21st is also a Friday, and
22 so the official receipt date on the initial briefs will
23 also be the following Monday, the 24th.

24 Is there anything else I've missed in terms
25 of the procedural schedule, or have we covered all the

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1 bases?

2 MR. FFITCH: There is one other item that is
3 quasi-schedule related, and that is the matter of the
4 notice to customers, and I've conferred briefly with
5 Ms. Dodge about that. I understand they have a
6 proposal which arrived at my house by e-mail this
7 morning, and I'll just let her address that. We may
8 want to take this up after the prehearing and report to
9 the judge after the fact, but that is something we want
10 to get nailed down.

11 JUDGE MOSS: Any comment, Ms. Dodge?

12 MS. DODGE: That's the public notice. In the
13 last power-cost-only rate case, the Company did do a
14 customer notice through a paid advertisement in
15 newspapers in the service area because the time that it
16 takes to design and finalize and send one out in a
17 billing can span more than three months, so that would
18 be our proposal in this case as well.

19 JUDGE MOSS: Any thought on that at this
20 time, Mr. ffitich?

21 MR. FFITCH: I would like to review the
22 rules, Your Honor. I believe that in a case that's
23 going to litigation involving rate increase that
24 individual customer notice may be the expectation in
25 the rules, but I would like to look at their proposal,

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1 review the last case, and then respond back.

2 JUDGE MOSS: I think I will agree to rely on
3 that process with the point being if there is a
4 problem, that can be brought to the Commission's
5 attention and we can resolve it, so I feel confident
6 the parties will be able to work out whatever needs to
7 be worked out to insure there is adequate notice to
8 customers.

9 Somewhat related is the question of
10 discovery, which I know the Commission initiated
11 through its complaint suspension order. That will
12 continue pursuant to the Commission's procedural rules,
13 WAC 480-7-400. Do we need to modify the discovery
14 rules in any way?

15 MR. CEDARBAUM: Yes, Your Honor. That's a
16 point, actually, that I overlooked as well. During our
17 informal discussions prior to today on scheduling, I
18 think we had agreed that upon the filing of Staff,
19 Public Counsel, and Intervenor response testimony on
20 the 7th that the turnaround time for responses of data
21 requests would be reduced to five business days instead
22 of the current ten business day turnaround time. I
23 believe we are agreeable to that.

24 JUDGE MOSS: Is that a request?

25 MR. CEDARBAUM: That's a request. I think

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1 the parties agreed to it.

2 MS. DODGE: Yes. The parties have agreed to
3 that is my understanding.

4 JUDGE MOSS: Mr. ffitch, are you thinking?

5 MR. FFITCH: I think we are fine with that,
6 Your Honor.

7 JUDGE MOSS: Very good. I'll put it in the
8 order. This brings us then to the pending matter of
9 the motion for protective order with highly
10 confidential provisions. I have the Company's motion
11 and accompanying documents. I have read it all. I
12 have the answer from ICNU, the answer from Public
13 Counsel, and I also have attachments to the answer from
14 ICNU, which I have also read, and we had comments filed
15 in connection with this matter by several persons who
16 are represented here today and I will just treat as
17 interested persons for purposes of our proceeding and
18 will allow comment if needed.

19 To be clear in our record, the renewable
20 energy developer known as enXco, the comments were
21 filed on behalf of that entity. Summit Power
22 Northwest, LLC, filed comments. Zilkha Renewable
23 Energy filed comments. I suppose I should ask, is it
24 an acronym RES, or is it actually "res", as in "res
25 judicata"?

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1 MR. HALL: It's closer to the latter, Your
2 Honor. They pronounce it "rez".

3 JUDGE MOSS: RES North America and it's
4 affiliates also have filed comments. Before we get to
5 any comments or argument on -- yes, Mr. Kahn?

6 MR. KAHN: Judge Moss, I have comments here,
7 which I can distribute at this time, if that's okay.

8 JUDGE MOSS: If you are planning on filing
9 those, you may as well distribute those now.

10 MR. KAHN: (Complies.)

11 JUDGE MOSS: There was some discussion in the
12 paper that crossed back and forth that we might
13 consider returning to the form of protective order that
14 was used in the last PCORC proceeding, and so before we
15 get into heated debate that frankly we have heard
16 before, let me ask the Company if there is any prospect
17 of some accommodation in that direction or some other
18 accommodation with respect to the dispute?

19 MS. DODGE: Your Honor, the Company does not
20 believe that the language that was ultimately agreed
21 upon in the 2003 power-cost-only rate case is
22 appropriate, and we have considered that. However, I
23 would say it's not the same debate as last time for a
24 couple of reasons.

25 One, I think that this issue has continued to

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1 evolve through the Company's participation in the RFP
2 process and working with developers, and in addition,
3 this Commission-sponsored RFP process was a little
4 different than the prior RFP process and the
5 information they gathered then.

6 And also, the last case was a settlement, and
7 it was a compromise at the time that seemed workable at
8 the time, but I think the consensus that it's confirmed
9 by the letters by the developers is not considered
10 adequate by the development community, so the Company
11 is not in a position to agree to it.

12 In addition, the last case, because it was a
13 settlement, it was explicitly submitted to not be
14 precedential in future cases.

15 JUDGE MOSS: I can't imagine there is
16 anything ever going to be precedential about the
17 protective orders because we go through this quite a
18 lot. That's not a concern. I'm just looking for
19 possible opportunities to accommodate everyone's
20 interests without becoming too entrenched in positions,
21 so in that sense, I am slipping quickly into the role
22 of mediator here, if I can do that without protection.

23 MS. DODGE: I needed to add that the Company
24 is open to accommodating other parties, and our
25 suggestion has been to the extent that the Company's

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1 proposed language is viewed as ambiguous or overly
2 broad that let's sharpen our pencils and work on that.
3 We are certainly open to modifying that language. I
4 think what the parties are getting stuck on is the
5 fundamental question of whether this should be a use
6 restriction or an access restriction.

7 JUDGE MOSS: That does seem to be the heart
8 of the matter. Let's develop a little bit of
9 information on the record that may turn out to be
10 useful and hopefully won't turn out to be
11 counter-productive, and we do have plenty of time
12 available to us this afternoon. Perhaps we will go off
13 the record and parties will be able to have some
14 further discussion with sharp pencils.

15 Mr. Perkins, let me ask you one question on
16 behalf of your client, who seems to be, perhaps as a
17 practical matter, most potentially affected by this,
18 and to Public Counsel and Staff some special
19 consideration -- I'll just put it to you directly: Is
20 your client going to participate actively on the
21 Hopkins Ridge acquisition issue, or are your concerns
22 elsewhere in this case?

23 MR. PERKINS: I guess I would say for right
24 now, it's a little bit difficult for us to tell. We
25 haven't been able to fully review the filing given. We

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1 don't have access to highly confidential or
2 confidential information. I would think that we would
3 participate actively with respect to all the issues
4 that we identify once we are able to fully review that,
5 but saying that, Mr. Schoenbeck, who we use regularly
6 in these proceedings, does not have the filing at this
7 point because we haven't seen a lot of value in
8 providing him half the information. I guess as far as,
9 at this point, limiting the issues that we may focus
10 on, it's a little bit difficult for me to do that.

11 JUDGE MOSS: I do understand. I also simply
12 note that in prior proceedings, the ICNU has tended to
13 focus on one or two issues that it considers to be the
14 major issues in the case. As I noted earlier today,
15 the Hopkins Ridge acquisition from a financial
16 perspective is a relatively minor point in this case.
17 Important to be sure, but from a financial perspective,
18 it's small relative to the whole.

19 MR. SCHOENBECK: Judge Moss, this is John
20 Schoenbeck. I'm on the bridge line. With respect to
21 the last PCORC case, we did review the acquisition.

22 JUDGE MOSS: Thank you, Mr. Schoenbeck.

23 MS. DODGE: I would like to just state that
24 the Company has tried to be extraordinarily careful in
25 this case to be very careful about limiting the amount

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1 of information its redacted, and we actually redrafted
2 some of what we submitted in order to provide useful
3 information to people who are viewing it who don't have
4 access to the confidential information. So in some
5 cases, we provided ranges or approximates rather than
6 exacts, which still give you the scale.

7 I would just say that I believe it is
8 possible for even the public in general, anybody who is
9 interested, to review this filing and make sense of it
10 as well as a party such as ICNU to review the filing
11 and have an opinion about reasonableness without having
12 to delve into the detail of specific individual cost
13 items of various developers.

14 JUDGE MOSS: I'm not trying to limit ICNU in
15 its review or participation. I'm just discussing in
16 general some points that may be pertinent as we try to
17 resolve this matter. Don't get the wrong impression,
18 please. Mr. Cedarbaum?

19 MR. CEDARBAUM: Staff has not filed any
20 written comments on the motion for protective order,
21 and we did that because Staff does not at this point
22 intend to employ an outside expert. So our reading of
23 the proposed protective order is that we would be
24 treating highly confidential information the same way
25 we treat confidential information, and the Staff

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1 witness nor myself would be required to sign the
2 Exhibit C for the proposal, so this discussion in this
3 case is somewhat academic for Staff, and we would raise
4 any issues in other cases as issues come up.

5 On the other hand, there is some policy
6 matters here as well. I think Staff is sympathetic to
7 the Company's needs but also to Public Counsel and
8 ICNU's needs once they have their witnesses lined up
9 and examining the case. So we were trying to do what
10 the Bench was trying to do, which was to start with
11 some language that somebody proposed and see if it
12 could be amended to take into account everyone's
13 interests, and we were starting with the language that
14 was in the last PCORC and trying to see if that could
15 be broadened to some extent so that the parties who
16 opposed that language wouldn't feel that access by
17 those experts would hinder them, so we are willing to
18 try to do that.

19 JUDGE MOSS: Thank you for willing to
20 participate in that way. Mr. ffitich, does Public
21 Counsel have any intention of using an outside expert,
22 because under the current language, your internal
23 people are fine.

24 MR. FFITCH: That's correct, Your Honor. We
25 are looking at whether to use a consultant, and we did

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1 in the last PCORC case, and as I alluded to in our
2 memorandum, when we had this debate in the last PCORC
3 case, we heard from a number of our consultants that
4 this kind of language, especially with employment-type
5 restrictions was, A, pretty unprecedented in other
6 jurisdictions and also a real problem for them in terms
7 of them being able to sign it.

8 I've been specifically advised by Mr. Lazar,
9 who was our witness in the last PCORC, that he would
10 not be willing to sign this type of language in the
11 last case, not in this case. We haven't had that
12 discussion for this case, but I know his personal
13 position is that he's unwilling to sign that kind of a
14 broad restriction.

15 Just to slip into a very brief sort of
16 argumentative point here, if you will allow me, I
17 notice from reading Mr. Kahn's letter, and I think this
18 is actually more or less acknowledged in the Company's
19 own filing, they are pretty much acknowledging that if
20 you sign this, you are agreeing not to work in this
21 industry for three years, and if you look at the next
22 to the last paragraph of Mr. Kahn's letter -- actually,
23 the top paragraph on the second page, essentially
24 saying -- I'm paraphrasing -- the only way to protect
25 the integrity of this information is to secure the

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1 consultants' commitment not to provide consulting
2 services to others working in power development for
3 three years.

4 That is the broadest kind of limitation that
5 our office has ever seen in any proceeding. There is
6 no limitation that broad, to our knowledge, that has
7 been approved by this commission before. The letter
8 goes on to say, as I think Puget says, that we can find
9 other consultants. I'm not sure that's correct, and
10 I'm also not sure that that's a very good answer. They
11 are conceding it's an extremely broad and limiting
12 restriction and acknowledging that it causes problems
13 and then telling us, well, you can go and find other
14 people, which I think supports our argument.

15 I would also just make one more observation,
16 which is that I'm not sure what it is about the PCORC
17 proceedings, but they seem to be kind of on the tip of
18 the spear of pushing the breadth of highly confidential
19 protective order restrictions in front of this
20 commission.

21 This commission and other parties before this
22 commission dealing with extremely sensitive competitive
23 information have agreed to far less restrictive types
24 of protective orders, and I'm particularly referring to
25 the telecom side. If you look at some of the

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1 competitive proceedings over there, for example, Docket
2 UT-033044, much more reasonable and limited
3 restrictions, primarily focused on use, have been
4 agreed to and adopted in those cases, and just this
5 morning in the Verizon case, Verizon and MCI have
6 proposed a protective order that hasn't been issued
7 yet, but there was agreement in principle on the record
8 to a highly confidential protective order with far less
9 onerous provisions for outside consultants than those
10 that are presented here.

11 So I'm getting into the policy here, but we
12 are very, very concerned about the Commission approving
13 this type of provision which will then be undoubtedly
14 presented by other parties in future cases as where the
15 bar has been moved to, and we just think that it's bad
16 public policy and it's unnecessary. There hasn't been
17 any problem in this area. There have been no untoward
18 disclosures. Neither this applicant or any other party
19 has brought them to the Commission's attention on the
20 energy or telecom side. I think there is no
21 justifiable concern that would warrant this kind of an
22 overly broad restriction.

23 JUDGE MOSS: We have slipped a little bit
24 into argument, and that's fine. I think it's
25 inevitable that we will have some.

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1 MR. CROMWELL: If I may.

2 JUDGE MOSS: You may, but let me finish
3 first. I just want to emphasize one point in response
4 to what you said, Mr. ffitch, and it is my view that
5 whenever we set one of those protective orders with
6 essentially custom provisions for a case, it should not
7 be regarded by anyone in any subsequent case as
8 establishing any sort of bar or precedent or what have
9 you. These things are by their nature custom-crafted.

10 We tried through our rules to establish
11 something more standard. As the person responsible for
12 that rule-making process, I would say it's probably the
13 biggest failure in process from my perspective, and I
14 hope some day to be able to correct it, but your points
15 are well taken, and we appreciate you making them.
16 Mr. Cromwell, you had something to add?

17 MR. CROMWELL: For the record, I've not
18 reviewed the motion or the responses, but I would
19 certainly note, as you've alluded, this is a discussion
20 that has occurred before the Commission in litigated
21 proceedings as well as -- and I would note my concern
22 with the legal enforceability of any protective order
23 that purports to restrict future employment.

24 JUDGE MOSS: Thank you for that.

25 MR. PERKINS: If I could add one point, I

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1 would like to address this in terms of we've heard a
2 lot about the restrictions that this places on
3 consultants who might be retained in this proceeding,
4 but I would like the record to reflect very clearly
5 that from our perspective, this is not just a
6 consultant issue. This is a counsel issue as well in
7 that the second paragraph of what they propose, as far
8 as the restrictions, says: "I'm not now involved in or
9 for a period of three years involved myself in the
10 provision of counsel or consulting services to persons
11 or entities, the owners or developers of energy
12 projects or resources."

13 I would say virtually every paper operation
14 client that we represent has some sort of cogeneration
15 operation that I would read as being an energy project
16 or resource, and as a result of that, I see this as for
17 a period of three years not being able to provide
18 services on any matter unrelated to this information,
19 unrelated to energy matters at all, in that arena.

20 I echo Public Counsel's comments that this is
21 overly broad in terms of the protections that are
22 needed and realize that in terms of our participation
23 in this proceeding. Ms. Dodge made the point that,
24 well, you can possibly view some of the public
25 information that's been provided and make decisions

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1 about reasonableness, but I don't think as far as
2 public participation and navigating the procedural
3 rules of the hearing in this proceeding going forward
4 without lawyers who have full understanding of the
5 facts, it's a very difficult road to hoe, I guess I
6 would say, and I would just like the record to reflect
7 this is a counsel problem for us.

8 JUDGE MOSS: Your point is well taken. This
9 is something that affects counsel and consultants, all
10 of whom fear early retirement, it seems.

11 MR. PERKINS: Especially at 31.

12 JUDGE MOSS: A couple of points I want to put
13 on the table as we go forward with our discussion, one
14 is I'm hearing a lot of concern about this three-year
15 bar, and I'm wondering if a major part of that concern
16 is not the length of time, whether if we limited it to
17 a single year, for example, that would in any way
18 alleviate the concerns that I've heard expressed.
19 Mr. Ffitch, I would like to ask you to speak to that
20 and Mr. Perkins too, perhaps.

21 MR. FFITCH: I will defer to ICNU and then
22 I'll respond.

23 MR. PERKINS: I don't think it would
24 alleviate much of our concern. As I noted, as far as
25 the client base that our firm seems to have, a year

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1 restriction on being able to provide services on any
2 matter, whether it's related to the information in this
3 proceeding or not, I don't see how we could agree to
4 that.

5 I believe Mr. Schoenbeck is still on the
6 phone. I can let him speak to whether it would
7 alleviate his concerns or not.

8 MR. SCHOENBECK: The time period is certainly
9 what we are concerned about, but what's a little bit
10 perplexing to me as well is they actually restrict you
11 in advising gas-fired clients, because a significant
12 portion of our consulting business has always been
13 representing cogeneration industry, and I might
14 consider something like a one-year provision if it just
15 had to do with not advising renewable projects and
16 their subsequent responses to RFP's.

17 JUDGE MOSS: Thank you for that information,
18 Mr. Schoenbeck. Did you have something, Mr. ffitch?

19 MR. FFITCH: I would just add that our real
20 policy position that espouses this in a number of
21 proceedings is that the restriction should be on use,
22 not on employment. Obviously, a reduction down to one
23 year is better than the three years, but we still
24 believe the use restriction is the better approach.

25 JUDGE MOSS: We are getting the useful

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1 information out on the table that may be helpful to
2 some off-the-record discussion. Ms. Dodge, you have
3 something now?

4 MS. DODGE: I just want to be heard on the
5 use restriction. The three years is a time period that
6 has appeared in a number of prior Commission orders,
7 for whatever that's worth. It's also consistent with
8 Puget Sound Energy's noncompete agreement for its own
9 employees.

10 It's also consistent with Washington case
11 law. There are at least a couple of cases of record
12 which courts have upheld three-year employment
13 restrictions, particularly in the accounting field,
14 where employees have detailed information about the
15 clients of the firm they are working for.

16 And I just would also point out that as far
17 as the discussion on the cogen, I think it's actually
18 very troubling. It's exactly the problem. If ICNU is
19 representing cogens and Mr. Schoenbeck is representing
20 cogens, they are also getting into this process. So
21 some of the highly confidential information that has
22 been masked in this case is the detailed information
23 about other cogen projects that we are asking the
24 company purchase resources from them, and the company
25 is going out for another request for proposals,

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1 according to the Commission's rules, to be filed in
2 July and then go forward in a few months.

3 I just think it's troubling to think that
4 folks who are advising other potential participants in
5 that process would have access to this information.

6 JUDGE MOSS: Thank you. Let me hear from
7 Mr. Kahn and then we will hear from Mr. Hall so we have
8 everybody having an opportunity to speak to this.

9 MR. KAHN: Just very briefly, we feel
10 strongly about this as well. I'm not surprised to hear
11 others, Public Counsel in particular. I at no time
12 want to suggest that somebody remove themselves from
13 this industry. What I'm trying to convey is that folks
14 need to remove themselves from the development activity
15 in this industry. More and more, we are seeing utility
16 requests for proposals be all source, which speaks to
17 this question about the distinction between renewables
18 and thermal resources as somewhat moot.

19 There is a developing specialization among
20 folks with a deep knowledge of the economic variables
21 of this business that goes out of its way to separate
22 itself out from the competitive environment. It's the
23 very kind of approach that I would think Public Counsel
24 would recognize and love to see because it's consistent
25 with their approach.

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1 In any event, we feel that it will compromise
2 the integrity of the overall process if it ends up like
3 this, and a point that I did not make in my letter is
4 that part of our passion about this issues is that it's
5 going to end up restricting the opportunities of
6 utilities and ultimately ratepayers, because if we are
7 not careful and there is this leakage of information or
8 perception of it, multiple parties will not participate
9 in these bids, so it's a matter of some serious
10 long-term implications.

11 MR. HALL: Thank you, Your Honor. I would
12 also add, and I'm sure Mr. Kahn would agree, that
13 renewable resources compete with thermal generation. A
14 restriction for a consultant to work for one versus for
15 the other, that consultant would still be working with
16 the same RFP, so I don't think that would be adequate.

17 I'm here on behalf of RES North America,
18 Zilkha Renewable Energy, and enXco. All three of those
19 companies were bidders in Puget's recent RFP. Two of
20 them had their projects selected by Puget.

21 As part of Puget's RFP, these companies
22 provided Puget with detailed extensive information
23 about the cost structure of the wind projects. They
24 provided information about capital costs, O&M costs,
25 and site-specific wind data. No doubt access to

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1 detailed confidential cost-related information gave
2 Puget a strong advantage during negotiations. The
3 question now is what to do with that confidential data
4 after the RFP.

5 Protecting the integrity of the confidential
6 information after the RFP is concluded is important
7 both to those bidders that were selected and to those
8 that were not selected and who will have to rebid the
9 same projects. That also sends an important message to
10 developers who are considering bidding in subsequent
11 RFP's.

12 In addition, wind projects need
13 confidentiality concerns. Unlike
14 power-purchase-agreement RFP's or thermal resources,
15 wind projects are unique in that they are intermittent
16 resources, and they are site specific. You have to
17 build where the wind is. Knowing a competitor's cost
18 structure and especially information related to the
19 capacity factor of a competitor's site would be
20 particularly valuable information in preparing a bid
21 for an RFP.

22 Release of sensitive competitive information
23 to competitors affects owners of existing projects and
24 especially new projects, including expansion of
25 existing projects and unsuccessful bidders having to

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1 rebid the same project. Release of competitive
2 information to current or future consultants of
3 industry competitors is problematic because the use of
4 such information cannot be placed in the future.

5 Like Mr. Kahn, we believe the disclosure of
6 commercially sensitive information to our competitors
7 or their consultants would put participants from
8 Puget's recent RFP at a distinct and unfair
9 disadvantage in future competitive situations, and it
10 could discourage participation in future RFP's in
11 Washington. It's also likely to increase resistance to
12 supplying such highly confidential information in
13 future RFP's, and the likely result will be fewer
14 choices and increased costs for Puget and its
15 ratepayers.

16 One thing I've noted in hearing the
17 discussions back and forth between the Company, ICNU,
18 Public Counsel, and Staff is the kind of generalized
19 level of talking at the principle level, but I think if
20 we just took it down a notch to the detail of what data
21 we are actually talking about, maybe that would be part
22 of the sharpening our pencils that you suggested,
23 Judge.

24 The information that we are seeking
25 protection for, the highly confidential protection for,

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1 is limited, and here are a few examples, and these are
2 included in our comments in more detail, but just to
3 hit a few points. Site-specific wind data analysis
4 that is using such data for each site. Most of the
5 projects that submit a bid, the projects were not
6 selected, and those companies will have to rebid those
7 projects at a future date.

8 My client's understand the need for and do
9 not object to treatment of the all-in price for the
10 project, are willing to have that treated as
11 confidential as opposed to highly confidential
12 understanding the need to look at that, but highly
13 confidential treatment is necessary for information
14 regarding project costs, direct costs, indirect costs.

15 Also information regarding the terms of
16 underlying agreements, like turbine supply agreements,
17 other project agreements, these agreements have
18 confidentiality provisions of their own, and it's kind
19 of a cascading effect of these agreements, and also,
20 and this is quite narrow, but proposals as to how
21 specific milestone payments could be structured, which
22 can reveal to developers the willingness and ability to
23 internally finance projects.

24 Just to sum up, these RFP's produce a
25 treasure trove of confidential information, especially

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1 here where Puget seeks to own the project. They
2 request an additional level of detail that wouldn't be
3 requested if they were just buying the output of a
4 project or purchase-power agreement. Having access to
5 this data is an exceptional opportunity for a
6 consultant or anybody else to learn about the
7 competitive sensitivities that developers in the
8 industry and of Puget as well.

9 And afterwards, it's impossible to police the
10 use of that information. For these reasons, we urge
11 the Commission to grant Puget's request for a
12 protective order and highly confidential provisions to
13 protect the integrity of the RFP process.

14 JUDGE MOSS: Just one question, and I don't
15 dispute the difficulty in enforcing restrictions on the
16 dissemination of confidential information in the wake
17 of a proceeding such as this, but I do recall reading
18 in one of these papers that was filed that in
19 Washington, we do have statutes that concern the
20 appropriate use of proprietary information and provide
21 for, among other things, if it was related to me
22 accurately, exemplary damages. So there are other
23 protections out there. How practical they may be, I
24 don't know, but I just make that one observation.

25 I'm putting my thoughts out there as they

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1 occur, and one is -- well, two right now. One is that
2 I do hear as I listen to the comments that there is
3 some room here for working things out in the sense of
4 identifying more specifically the information we are
5 talking about. It may be as I suggested by an earlier
6 comment or question to ICNU that the type of data that
7 that organization needs may be satisfied without
8 getting into the sort of specific things that are
9 concerns, as Mr. Hall just said, and I know the Company
10 has tried to be careful in designating up front and
11 would continue to do so, but perhaps some further
12 discussion along those lines would be fruitful.

13 Another point that I want to make is that
14 while this commission is in the practice of using
15 protective orders as an affirmative tool, that is to
16 say, as a tool to facilitate the exchange of
17 information, the more traditional use remains
18 available, and that is as a defensive mechanism, so
19 that if we structure a protective order that is less
20 restrictive than what PSE would prefer to see or the
21 commentators would prefer to see, there is always the
22 availability of the motion for protective order with
23 respect to a request for specific information, and then
24 we would hear that on an individual basis and reach a
25 decision that might concern both who and what. My only

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1 thought being it may not be possible to resolve this in
2 a satisfactory way, sort of more generic if you will.
3 It may be we have to get down, as often happens in
4 civil litigation, and in my day in Washington DC, often
5 happened in FDRC proceedings. They didn't use this
6 affirmative protective order there.

7 So that's another thing to keep in your minds
8 as we talk about this, and I will make a third point
9 here, because I think we are moving quickly to the
10 point where I want to let you take a break and talk
11 amongst yourselves. My last point would be that if the
12 parties continue to take positions that more or less
13 push the Commission to what I would call a black or
14 white decision, that is what you will get, and one side
15 or the other is going to be unhappy with that, which is
16 often the result in the arena of court or
17 administrative adjudicatory proceedings.

18 That is not where I would like to see this
19 end up. We have had success in prior proceedings
20 largely because of the parties' efforts to craft
21 something that works for everyone, and that would be my
22 preference. If we can't get there or see no prospect
23 of doing so, then certainly I will take all of this
24 argument to the commissioners, who are presiding in
25 this proceeding, and we will discuss it together, and

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1 they will make a decision about which way they are
2 going to go, taking into account the policy and other
3 arguments that we've heard today and on prior
4 occasions.

5 Leaving you with that thought, unless there
6 is something that you absolutely must say at this
7 point, let me suggest that -- if we went off the record
8 for 30 minutes, does that seem like a reasonable thing
9 to do? Is that long enough to give you time for
10 discussion yet short enough to avoid you coming to
11 blows? I'm getting some nods of approval and perhaps
12 some raised eyebrows at skepticism, but let's do that.
13 If the parties reach an accommodation in the next ten
14 minutes, they can let me know and I will be in my
15 office. Otherwise, I'll expect to be back on the Bench
16 at 3:30. Let's be off the record.

17 (Discussion off the record.)

18 JUDGE MOSS: I've given parties a 30-minute
19 opportunity to discuss among themselves whether some
20 accommodation can be reached with respect to the
21 protective order, and I would like to hear a report
22 from someone. Anyone? Volunteers? Mr. Cedarbaum?

23 MR. CEDARBAUM: I think the idea is that both
24 ICNU and Public Counsel will take some time to review
25 the Company's filing that is on white paper and yellow

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1 paper, so nonconfidential and confidential material, to
2 try to get an assessment as to whether or not they need
3 access to highly confidential information, which is on
4 blue paper.

5 Then in the meantime, I think the Company
6 would be amending its motion to ask the Commission to
7 issue the standard protective order just with the
8 confidential provisions in it and not the highly
9 confidential provisions. If at a time Public Counsel
10 and ICNU determine that they need access to the highly
11 confidential information, that issue will be T'd up and
12 brought back to you.

13 MR. PERKINS: I apologize for interrupting,
14 but I feel like we're ready for a decision on this
15 issue. Given the expedited schedule in this case, I
16 feel like we don't want to go forward with this kind of
17 uncertainty. Based on my review of the filing --

18 JUDGE MOSS: Let me interrupt you. I'm not
19 going to make the decision. I'm going to talk it over
20 with the commissioners before any decision is made, and
21 they are not here, so that's not on the table.

22 MR. PERKINS: Then we will review the filing.

23 JUDGE MOSS: Anything else, Mr. Cedarbaum?

24 MR. CEDARBAUM: The only clarification is
25 that as from the beginning of this case, Staff counsel

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1 and in-house Public Counsel and Staff and Public
2 Counsel have full access to the highly confidential
3 information as confidential, and we will treat it as
4 confidential. Staff will treat it as confidential and
5 provide copies of it in our testimony and whatever only
6 in accordance with the protective order that's in
7 existence at the time.

8 JUDGE MOSS: Anybody else want to be heard;
9 Ms. Dodge?

10 MS. DODGE: Yes. I think just a detail would
11 be I guess I wouldn't say it's amending our motion as
12 much as simply putting it off for a moment, because
13 that way, it will already be in the record and T'd up
14 for later approval if we need it.

15 JUDGE MOSS: I'm not sure how to best
16 approach that. I was impressed with the suggestion
17 that Mr. Cedarbaum was making that the Commission could
18 easily go ahead and enter the standard form of
19 protective order without the highly confidential, and
20 then we could handle that highly confidential piece as
21 an amendment, as we have done many times in the past.

22 We try to avoid the two-step process. It
23 seems to me that we might get the best possible result
24 by doing a two-step process, and if ICNU and others can
25 take some additional time to determine whether they

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1 learn everything they need to learn on the basis of the
2 confidential, we'll go ahead and give you access to
3 that, and then be in a better position to discuss terms
4 for a highly confidential, and perhaps Public Counsel
5 will determine whether it's going to hire an outside
6 expert and so forth.

7 And in the meantime, if an issue arises,
8 something is requested or what have you and it's in
9 that category that the Company regards as highly
10 confidential, you do still have the option of filing an
11 affirmative motion recognizing that you are under a
12 ten-day response obligation.

13 I think that's workable, and I think it is as
14 close as could possibly be hoped for today, given the
15 discussion I heard, but at the same time, I see some
16 prospect for getting to where we need to get. That
17 would be my goal, and since I get to decide, that's the
18 way we will proceed. We don't need any further motion.

19 I will see to the entry of the standard form
20 of protective order with confidential provisions
21 without any need for further paper. If the parties
22 want to file something in terms of suggesting an
23 amendment, we will be open to that.

24 MS. DODGE: Your Honor, just to clarify, in
25 the meantime, we would anticipate continuing with

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1 highly confidential designation treatment per our
2 original filing, because that way, at least for Staff's
3 purposes and marking purposes, we don't have to redo
4 paper, and we can take up the treatment if and when
5 needed.

6 JUDGE MOSS: That's fine.

7 MS. DODGE: I would just point out as far as
8 the standard confidentiality order, that also has been
9 in development over time, so I would just ask that the
10 form of the standard confidential order that we
11 submitted be used. That was the same one that was used
12 in the general rate case that Puget most recently had,
13 if you want to check that, but we did some tweaking in
14 that proceeding of that confidential language, and it
15 was an agreed language in the end.

16 JUDGE MOSS: In the general?

17 MS. DODGE: Yes, in the general.

18 JUDGE MOSS: I'm sure that Ms. Walker had a
19 hand in producing that document, so we should have
20 ready access to that.

21 Thank you all for taking the time to discuss
22 it among yourselves. I think it was a productive
23 endeavor and will lead to a final solution that will
24 satisfy everyone. Other than a few closing remarks
25 that are more or less boilerplate, I don't think there

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1 is any other business, but let me ask the parties if
2 they have any further business to take up today.
3 Apparently not.

4 On paper filings in this proceeding, we need
5 the original and 15 copies for internal distribution.
6 As you are all well familiar, make your filings to the
7 Commission secretary either by mail to the secretary at
8 the Washington Utilities and Transportation Commission,
9 PO Box 47250, 1300 South Evergreen Park Drive
10 Southwest, Olympia, Washington, 98504-7250, or by other
11 means of delivery to the Commission's physical address.

12 I do want to stress that we require that
13 filings of substance be submitted not only on paper
14 format but also electronically. I will enter a
15 prehearing conference order for the Commission, and
16 that will have the schedule and other useful
17 information.

18 Although we always reserve the option of
19 having a final prehearing conference a few days before
20 the evidentiary hearing for the exchange of exhibits
21 and any other pressing matters, we have with some
22 success managed that process in several hearings now,
23 including general rate cases, without the necessity for
24 a live conference, and that would be my proposal to
25 proceed that way again.

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1 The exception being if there are at the time
2 of the evidentiary hearing, or shortly prior to,
3 motions and other things that we like to get resolved
4 in advance, then we will provide a conference. For
5 example, there is sometimes a motion to strike, and
6 then in an abbreviated schedule such as this, we might
7 not have time for a separate discovery motions
8 conference, so barring something like that, we will try
9 to do that by other means of exchange other than having
10 a conference.

11 In the meantime, if you have procedural
12 questions, you may contact me with those. In general,
13 if you bring procedural matters to me on an agreed
14 basis, it's more or less pro forma. Otherwise, we may
15 have to have some kind of telephone conference or what
16 have you. All right. I believe that completes
17 everything I have to say. Ms. Dodge?

18 MS. DODGE: I just wanted to note that per
19 the new rules, we filed an original and 12 copies with
20 our initial filing. Would it be helpful for the
21 Commission to receive three more?

22 JUDGE MOSS: If we require any additional
23 copies of the full filing, let us let you know. It's
24 rather voluminous, and I did have to secure an extra
25 copy, but we had enough, so at this point, I have the

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1 last one, but we'll hold off. Mr. Kahn?

2 MR. KAHN: Given the scenario where Puget if
3 need be can come and request an amendment to protect
4 the highly confidential information, will we have an
5 opportunity to comment again if necessary, or should we
6 intervene in order to reserve that possibility?

7 JUDGE MOSS: I would not allow you to
8 intervene for that purpose alone. Interested persons
9 are always free to file. We don't reject filings by
10 virtue of who they might come from, but we might reject
11 the substance. Your rights will be protected.

12 Under the statute, RCW 80.04.095, about
13 confidential documents, there are provisions there that
14 provide for the protection of documents that are filed
15 under a claim of confidentiality here that do involve
16 the potential participation by third parties who may be
17 impacted. So we in general follow that type of process
18 with respect to these types of disputes.

19 I have personally been involved in several
20 where a third party was a counter-party in a contract
21 and was interested in protecting some information, and
22 they were allowed to be heard, so that would be what I
23 would expect.

24 MR. KAHN: Our comments wouldn't be specific
25 to Hopkins Ridge in any way. It would be general the

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1 conversation we had today.

2 JUDGE MOSS: We try to preserve everyone's
3 rights. Anything else? As always, I get the last
4 word, and we are adjourned.

5 (Prehearing conference adjourned at 3:44 p.m.)

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