

Docket No. UE-161123 - Vol. I

Washington Utilities and Transportation  
Commission v. Puget Sound Energy

November 7, 2016



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Page 1

1 BEFORE THE WASHINGTON  
 2 UTILITIES AND TRANSPORTATION COMMISSION  
 3 \_\_\_\_\_  
 4 WASHINGTON UTILITIES AND )  
 4 TRANSPORTATION COMMISSION, )  
 5 )  
 6 Complainant, )  
 6 vs. ) Docket No. UE-161123  
 7 )  
 8 PUGET SOUND ENERGY, )  
 8 )  
 9 Respondent. )  
 10 \_\_\_\_\_  
 11 PREHEARING CONFERENCE, VOLUME I  
 12 PAGES 1-51  
 13 ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER  
 14 \_\_\_\_\_  
 15 November 7, 2016  
 16 9:30 a.m.  
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1 OLYMPIA, WASHINGTON; NOVEMBER 7, 2016  
 2 9:30 A.M.  
 3 --o0o--  
 4  
 5 JUDGE FRIEDLANDER: All right. Good  
 6 morning. We will go on the record. My name is  
 7 Marguerite Friedlander. I'm the administrative law  
 8 judge assigned to this proceeding by the Washington  
 9 Utilities and Transportation Commission. We are here  
 10 for a prehearing conference in Docket UE-161123, Puget  
 11 Sound Energy's request for approval of a new retail  
 12 wheeling service tariff for a large non-core customer  
 13 and approval of signed service agreement.  
 14 The purpose of the prehearing this morning  
 15 is to take appearances of the parties, address petition  
 16 for intervention, identify issues, establish a  
 17 procedural schedule, and any other procedural issues the  
 18 parties wish to address.  
 19 So we will begin with appearances. I will  
 20 ask each attorney to state their full name, spell their  
 21 last name, give me your title, and the party you  
 22 represent, and we will begin with Mr. Kuzma.  
 23 MR. KUZMA: Jason Kuzma from Perkins Coie,  
 24 K-u-z-m-a. I am the attorney representing Puget Sound  
 25 Energy.

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1 JUDGE FRIEDLANDER: Thank you.  
 2 Mr. Casey.  
 3 MR. CASEY: Christopher Casey, Assistant  
 4 Attorney General representing Commission Staff. Last  
 5 name is spelled C-a-s-e-y.  
 6 JUDGE FRIEDLANDER: Thank you.  
 7 And Ms. Gafken.  
 8 MS. GAFKEN: Good morning. Lisa Gafken. My  
 9 last name is spelled G-a-f, as in Frank, k-e-n. I'm an  
 10 assistant attorney general appearing on behalf of Public  
 11 Counsel.  
 12 JUDGE FRIEDLANDER: Thank you.  
 13 We also have several interventions that the  
 14 Commission has received. We will begin with the  
 15 intervention on behalf of Microsoft.  
 16 MS. THOMAS: Thank you, Judge Friedlander.  
 17 I am Elizabeth Thomas from K&L Gates representing  
 18 Microsoft, and with me is Ben Mayer also from K&L Gates.  
 19 My last name is spelled T-h-o-m-a-s, Ben's last name is  
 20 spelled M-a-y-e-r.  
 21 JUDGE FRIEDLANDER: Thank you.  
 22 Appearing today on behalf of the Industrial  
 23 Customers of Northwest Utilities.  
 24 MR. PEPPLER: This is Tyler Pepple for ICNU.  
 25 I just joined.

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1 JUDGE FRIEDLANDER: Okay. If you could  
 2 state your name, spell your last name, give your title,  
 3 and then who you represent.  
 4 MR. PEPPLER: Yes, Tyler, T-y-l-e-r, last  
 5 name is P-e-p-p-l-e. All Ps as in Peter. I am the  
 6 attorney for the Industrial Customers of Northwest  
 7 Utilities.  
 8 JUDGE FRIEDLANDER: Thank you.  
 9 And Mr. Ffitch.  
 10 MR. FFITCH: Good morning, Your Honor.  
 11 Simon Ffitch, Attorney at Law. Last name is spelled  
 12 double F-f-i-t-c-h, two Fs. I'm representing the Energy  
 13 Project this morning.  
 14 JUDGE FRIEDLANDER: Thank you.  
 15 Ms. Bosh.  
 16 MS. BOSH: Good morning. I'm Joni Bosh.  
 17 I'm a non-attorney. I'm here with the Northwest Energy  
 18 Coalition, and my last name is spelled B-o-s-h.  
 19 JUDGE FRIEDLANDER: Thank you.  
 20 And do we have any representative appearing  
 21 on behalf of the Walmart Stores, Inc.?  
 22 MS. BALDWIN: Yes, thank you. This is Vicki  
 23 Baldwin. Vicki, V-i-c-k-i, Baldwin, B, as in boy,  
 24 a-l-d-w-i-n, and I am with Perkins Behle & Latimer  
 25 representing Walmart Stores, Inc. and Sam's West, Inc.

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1 JUDGE FRIEDLANDER: Okay. Thank you.  
 2 And is there a representative today  
 3 appearing on behalf of Kroger stores?  
 4 MR. BOEHM: Yes, good morning, Judge. My  
 5 name is Kurt Boehm. That's spelled B-o-e-h-m, and I'm  
 6 the attorney representing the Kroger Company.  
 7 JUDGE FRIEDLANDER: Okay. Thank you.  
 8 And then on behalf -- is there an attorney  
 9 on behalf of NIPPC?  
 10 MR. SANGER: Yes, Your Honor. Irion Sanger  
 11 appearing on behalf Northwest & Intermountain Power  
 12 Producers Coalition. My name is spelled, first name  
 13 Irion, I-r-i-o-n, Sanger, S-a-n-g-e-r.  
 14 JUDGE FRIEDLANDER: And so that I get the  
 15 acronym right, can you please state Northwest --  
 16 MR. SANGER: Northwest & Intermountain Power  
 17 Producers Coalition, NIPPC.  
 18 JUDGE FRIEDLANDER: Great. Thank you.  
 19 Is there anyone else either on the  
 20 conference bridge or here in the Commission's hearing  
 21 room who wishes to make an appearance today?  
 22 MR. ROBERSON: Good morning, Your Honor. My  
 23 name is Jeff Roberson, R-o-b-e-r-s-o-n. I'm an  
 24 assistant attorney general appearing on behalf of Staff.  
 25 JUDGE FRIEDLANDER: Okay. Thank you.

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1 All right. Then let's get to the petitions  
 2 for intervention. We will start off with Microsoft.  
 3 And just so you know, I have already read the  
 4 interventions themselves. I am still catching up on the  
 5 debate about NIPPC's intervention, but I will let all of  
 6 you speak on that as we run the course.  
 7 So let's begin with Microsoft, and I will  
 8 just ask, because I have already read the intervention,  
 9 if there are any objections to Microsoft's intervention.  
 10 All right. Hearing none, I will grant the  
 11 intervention.  
 12 MS. THOMAS: Thank you.  
 13 JUDGE FRIEDLANDER: Let's go to the  
 14 Industrial Customers of Northwest Utilities. Is there  
 15 any objection to the intervention of ICNU?  
 16 All right. Hearing nothing, I will go ahead  
 17 and grant the intervention of the Industrial Customers  
 18 of Northwest Utilities.  
 19 With regard to the Energy Project, is there  
 20 anyone who wishes to voice an objection to the  
 21 intervention of the Energy Project?  
 22 Hearing nothing, I will go ahead and grant  
 23 that intervention.  
 24 So we're to the Northwest Energy Coalition.  
 25 Is there anybody who wishes to voice an objection to the

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1 intervention of the Northwest Energy Coalition?  
 2 Hearing nothing, I will grant that  
 3 intervention.  
 4 Is there anyone who wishes to voice an  
 5 objection to the intervention expressed by Walmart  
 6 Stores?  
 7 MR. KUZMA: Your Honor, PSE does not have an  
 8 objection, per say, to Walmart, although we would note  
 9 for the record that the eligibility for service with  
 10 Schedule 451 is limited to Schedule 40 customers, and  
 11 Walmart is not a customer of Schedule 40. This is a  
 12 different circumstance than, say, Kroger or ICNU  
 13 customers, but we don't have an objection, but we would  
 14 presumably bring that up during sort of the issue's  
 15 discussion.  
 16 JUDGE FRIEDLANDER: Okay. Thank you. I  
 17 appreciate that. Hearing no objection, I will allow  
 18 this intervention.  
 19 And with regard to the intervention of  
 20 Kroger Stores, I don't believe I received a petition  
 21 yet, Mr. -- is it Boehm?  
 22 MR. BOEHM: It's Boehm, Your Honor.  
 23 JUDGE FRIEDLANDER: Boehm, okay.  
 24 MR. BOEHM: We filed the petition on Friday.  
 25 JUDGE FRIEDLANDER: Okay.

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1 MR. BOEHM: I did receive an email that  
 2 there was data documents we needed to file, and  
 3 we've -- we just submitted those this morning.  
 4 JUDGE FRIEDLANDER: Okay. All right. Thank  
 5 you. And your substantial interest, would you please  
 6 describe it?  
 7 MR. BOEHM: Yes, Your Honor. We are a  
 8 Schedule 40 customer for some of our accounts, so, you  
 9 know, we -- we -- we view any changes that might affect  
 10 the Schedule 40 as potentially affecting our rates. And  
 11 we would also, similar to Microsoft, we would -- we  
 12 would potentially have interest in a rate like this.  
 13 JUDGE FRIEDLANDER: All right.  
 14 MR. BOEHM: So we would like to possibly  
 15 explore those issues.  
 16 JUDGE FRIEDLANDER: All right. And is there  
 17 anyone who wishes to voice an objection to the  
 18 intervention of Kroger Stores?  
 19 MR. KUZMA: PSE's objecting to the NIPPC's  
 20 motion to intervene on several grounds. The standards  
 21 for intervention before the Commission are such that the  
 22 party must have a substantial interest in the proceeding  
 23 or that their intervention would be in the public  
 24 interest. As discussed in greater detail in our  
 25 response opposition, NIPPC is not a customer of Puget

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1 Sound Energy. It represents competitive or independent  
 2 power producers that sell on competitive markets and,  
 3 therefore, they do not have a substantial interest in  
 4 this proceeding because they are not a customer of PSE,  
 5 they do not plan to be a customer of PSE to my  
 6 knowledge.  
 7 And so, therefore, they lack the substantial  
 8 interest under the standard set forth by the Commission  
 9 in UG-061256, which was cost management service, which  
 10 is a similar organization on the gas side in which case  
 11 they've attempted to intervene in the proceeding and  
 12 were denied in part based upon their lack of a  
 13 substantial interest.  
 14 That gets, then, to the question of whether  
 15 they have a public -- whether they contribute to the  
 16 public interest, and in this case, we think that they --  
 17 they do have an interest in the outcome of this  
 18 proceeding. We are not going to deny that they don't,  
 19 but we do not believe that they are going to contribute  
 20 significantly to the development of a record in this  
 21 proceeding.  
 22 They are approaching this from a different  
 23 viewpoint of, say, Kroger or Walmart or Microsoft in  
 24 that they are supply and not the demand. And,  
 25 therefore, we think that they are, again, not in the

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1 substantial -- they don't have a substantial interest,  
 2 but at the same time, it will -- it will compound and  
 3 burden the record because of the fact that, quite  
 4 frankly, Microsoft, Kroger, Walmart, they are all --  
 5 they can all satisfy their own development of the record  
 6 of why they believe this might be in the public  
 7 interest.  
 8       Additionally, part of the standards set  
 9 forth by NIPPC was that -- in their petition was that  
 10 they were interested in making sure that this complies  
 11 with all laws. That's something that obviously the  
 12 Commission can take care of. Commission Staff and  
 13 Public Counsel have similar interests in making sure  
 14 that this complies with all laws as does PSE.  
 15       So we do not believe that they will  
 16 significantly contribute to the public interest, will  
 17 burden the record, and the benefits of their  
 18 participation in this proceeding will be outweighed by  
 19 the burden that they will cause.  
 20       JUDGE FRIEDLANDER: Okay. Thank you. So  
 21 would you -- would PSE describe NIPPC as a competitor?  
 22       MR. KUZMA: They would have an interest in  
 23 this proceeding in that if Microsoft were to go to an  
 24 open access under Schedule 451, they have -- they  
 25 represent some people that could supply Microsoft, and

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1 that's fine. We don't have any problem with that. We  
 2 just do not believe they have a place in this proceeding  
 3 in that this is about the load and whether the load can  
 4 lead to an open access. Once that load is left, then  
 5 NIPPC's members have every opportunity to engage with  
 6 Microsoft, for example, to supply the load that  
 7 Microsoft might have.  
 8       JUDGE FRIEDLANDER: I guess the reason I am  
 9 asking is I am wondering about confidential information.  
 10       MR. KUZMA: I would have to -- as far as  
 11 confidential information, the materials that are in the  
 12 record are -- there's two things that are confidential.  
 13 One's related to Puget and some of the issues related to  
 14 coal strip closure, the potential coal strip closure,  
 15 and the other is Microsoft's load forecast. So I would  
 16 defer to Microsoft on its -- I mean, Puget would be  
 17 uncomfortable having the coal strip load closure -- I  
 18 mean, plant closure issues out there. I would have to  
 19 defer to Ms. Thomas with respect to Microsoft's  
 20 forecast.  
 21       MS. THOMAS: Thank you. I think we would  
 22 have some concerns about confidentially to the extent  
 23 that NIPPC was going to share the information about  
 24 Microsoft's load forecast with its members because  
 25 Microsoft will be negotiating with suppliers who

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1 wouldn't want that information to be accessible to the  
 2 suppliers.  
 3       JUDGE FRIEDLANDER: Okay. Thank you.  
 4       Mr. Sanger, do you wish to respond?  
 5       MR. SANGER: Yes, Your Honor. NIPPC is a  
 6 nonprofit trade association whose interests are to  
 7 foster competitive retail and wholesale markets, and  
 8 NIPPC has both a substantial interest in this proceeding  
 9 and it will benefit the public interest and more fully  
 10 develop the record. In terms of the cases cited by  
 11 Puget Sound Energy, I'm a little disappointed that they  
 12 did not cite and refer to precedents directly contrary  
 13 to their response and opposition.  
 14       The Commission has allowed in a number of  
 15 cases parties which are either direct competitors or  
 16 trade associations representing competitors in  
 17 proceedings at least going back to the mid '90s,  
 18 including proceedings where retail competition was put  
 19 at issue by Puget Sound Energy. And the test that the  
 20 Commission has looked at is whether or not competition  
 21 was in fact put at issue by the Utilities' filing, and  
 22 when competitive issues were put in place including  
 23 retail wheeling, then the Commission has found that  
 24 development of the record and the public interest is  
 25 served by entities participating in the proceeding.

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1       Also, NIPPC does satisfy the substantial  
 2 interests portion of the requirement to participate in a  
 3 proceeding, and in certain aspects of this case, NIPPC  
 4 is not a competitor of Puget Sound Energy. Puget Sound  
 5 Energy has elected to no longer serve this particular  
 6 load. So it's NIPPC's members and other power suppliers  
 7 that will be competing for Microsoft and any other  
 8 eligible customer's loads.  
 9       The terms and conditions that are set in  
 10 this proceeding will have a direct impact on power  
 11 suppliers' ability to sell power under this tariff. So  
 12 the Commission will be setting terms that could cause an  
 13 injury that this Commission could redress and that this  
 14 is directly causally linked. So NIPPC's members will  
 15 be -- could be directly impacted by any decision that  
 16 comes out of here.  
 17       JUDGE FRIEDLANDER: And I hate to interrupt,  
 18 you can continue after I ask this question. What do you  
 19 mean by that -- you were talking about the conditions  
 20 under which the Commission would set for this tariff for  
 21 customers to leave. What did you mean about that could  
 22 potentially -- potentially impact the members of NIPPC?  
 23       MR. SANGER: So for example, there's  
 24 requirements on alternative power suppliers needing to  
 25 make certain transmissions and ancillary services

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1 agreements and requirements, and NIPPC's members  
 2 participate in direct access and retail wheeling  
 3 programs in other states, and they could opine on the  
 4 reasonableness of that. And while we haven't had a  
 5 chance to review those yet, it's possible that those  
 6 requirements or any other terms and conditions could  
 7 impact the ability of alternative power suppliers to  
 8 sell power under the rate schedule.  
 9 And it's our understanding that it's  
 10 modelled on the Schedule 449 program, which has been  
 11 successful, but we haven't completed our review. And we  
 12 don't know if the terms and conditions under this tariff  
 13 will allow all alternative service suppliers under all  
 14 circumstances, or at least in, you know, a reasonable  
 15 amount of alternative power suppliers to sell power.  
 16 JUDGE FRIEDLANDER: And how would you  
 17 respond, though, to the criticism that Mr. Kuzma made as  
 18 far as your members not being customers of the utility  
 19 itself?  
 20 MR. SANGER: Well, in the public interest  
 21 standard, they don't have to be customers. The  
 22 Commission has allowed direct competitors in proceedings  
 23 that deal with competition and retail wheeling. That  
 24 recent HVAC case that PSE is involved in, they were  
 25 allowed in. In the '90s, there was a merger case which

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1 created Puget Sound Power & Light and retail wheeling  
 2 was directly addressed in that proceeding, and  
 3 competitors including Snohomish PUD and the Washington  
 4 PUD Association were allowed in. Commission recognized  
 5 they were competitors.  
 6 Columbia REA, CREA, an electric cooperative  
 7 that directly competes with PacifiCorp was allowed in to  
 8 address the terms and conditions of PacifiCorp's tariff  
 9 that could impact competition, and the Commission  
 10 ordered the objection of PacifiCorp, allowed them to  
 11 intervene in those proceedings.  
 12 So being a customer isn't required under the  
 13 first prong. And under the second prong, the three  
 14 elements of constitutional standing are injury,  
 15 causation, and redressability, and it -- at some point,  
 16 the alternative service suppliers could be injured, and  
 17 that injury could be caused by a Commission decision  
 18 which could be redress.  
 19 JUDGE FRIEDLANDER: So you mentioned several  
 20 dockets where the Commission has allowed noncustomers to  
 21 intervene. Did you provide those dockets in the  
 22 response or in your response to the opposition filed by  
 23 PSE?  
 24 MR. SANGER: Yes, yeah.  
 25 JUDGE FRIEDLANDER: You've referenced those

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1 dockets?  
 2 MR. SANGER: We've referenced at least four  
 3 of those dockets, two of which were PacifiCorp dockets,  
 4 one of which was a Puget Sound Power & Light docket, the  
 5 one that had Snohomish PUD and the Washington PUD  
 6 Association. And then the other one, most recent one  
 7 from this year, was a Puget Sound Energy proceeding in  
 8 which Commission allowed intervention on the grounds  
 9 that Puget put at issue, competition.  
 10 And I would note that it would be --  
 11 response and opposition was filed late on Friday  
 12 afternoon and, you know, we had the weekend, but we had,  
 13 you know, no time, business time to fully research the  
 14 issue. So there may be other cases out there that we  
 15 haven't had an opportunity to find.  
 16 JUDGE FRIEDLANDER: Okay. Thank you.  
 17 And, Mr. Kuzma, did you want to respond?  
 18 MR. KUZMA: Yes, I would like to respond to  
 19 several of the points made. First, I would like to  
 20 point out that the Commission's rules have two prongs.  
 21 He's correct, there's two prongs, the one is substantial  
 22 interest and one is the public interest. He basically  
 23 conceded that as a customer, they don't have a  
 24 substantial interest, but the Commission has allowed  
 25 noncustomer groups under the public interest standard.

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1 We do not deny the fact that that's a possibility, but  
 2 it's completely at the discretion of the Commission.  
 3 The Commission has generally looked upon the  
 4 balancing standard of whether the participation of that  
 5 intervenor is outweighed by the costs in allowing that.  
 6 I believe Mr. Sanger's arguments alone point to the fact  
 7 that this will complicate this docket immeasurably to  
 8 have NIPPC involved.  
 9 NIPPC's only statements raised here so far  
 10 has to do with interconnection and transmission service,  
 11 neither of which under this schedule are within the  
 12 jurisdiction of the Commission, then to the first  
 13 jurisdictional item once you've gone to a retail  
 14 wheeling service.  
 15 And so any availability or requirements with  
 16 respect to interconnection of the generator and of the  
 17 transmission would be addressed in a FERC proceeding,  
 18 not in the UTC proceeding. This is the inappropriate  
 19 place for this to occur.  
 20 Microsoft is well aware and has been advised  
 21 that they will be coming for a transmission customer  
 22 upon going to a Schedule 451 service much like any other  
 23 customer that went under a Schedule 451 service. It's  
 24 no different than what has happened with the Schedule  
 25 449 customers.

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1 And, again, this just demonstrates that the  
 2 participation of NIPPC in this proceeding will burden  
 3 the record with immaterial and irrelevant issues. With  
 4 respect to the terms and conditions of service of the  
 5 retail service wheeling across distribution services,  
 6 that's something that's going to be uniquely within the  
 7 jurisdiction of the Commission, but it's going to be  
 8 something that's of concern to the customers.  
 9 The transmission will be placed upon or put  
 10 to the point of receipt at the distribution service of  
 11 PSE and then wheeled to the final party, in this case  
 12 Microsoft. So those issues are not something that NIPPC  
 13 has any concern with. NIPPC does have concern under the  
 14 FERC standards and the FERC requirements for  
 15 transmission, but nothing in this Schedule 451 has  
 16 anything to do with the issues that he has raised in  
 17 this proceeding so far today.  
 18 JUDGE FRIEDLANDER: Okay. Thank you.  
 19 And, Mr. Sanger, did you have anything to  
 20 add?  
 21 MR. SANGER: Yeah, I would just add that we  
 22 are not going to raise any FERC issues. I was just  
 23 responding to a question that you raised. We have not  
 24 completed our review. We're not going to unduly burden  
 25 the record, and we are not going to raise any issues

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1 that are within FERC's jurisdiction.  
 2 JUDGE FRIEDLANDER: All right. Thank you.  
 3 Is there anyone else who wishes to weigh in  
 4 on this issue? Does Staff?  
 5 MR. CASEY: Yes, Your Honor. Just very  
 6 briefly, Staff supports NIPPC's intervention because of  
 7 its ability to inform a robust policy discussion or a  
 8 robust discussion on the law, policy, and technical  
 9 requirements of a new extended direct access program.  
 10 In addition, we think the success of PSE's  
 11 proposal, if it were to be approved for PSE's customers,  
 12 will depend or could possibly depend on entities like  
 13 NIPPC's members.  
 14 Staff, we support this largely because of  
 15 their ability to form a robust discussion. I have a  
 16 number of things to say about that. I would like to  
 17 wait to talk about issue identification and scope of  
 18 issues to really flush those out, but that's why we  
 19 support the intervention.  
 20 JUDGE FRIEDLANDER: So are you saying that  
 21 you wish to wait to discuss that with the other parties,  
 22 or are you asking for an opportunity to, in writing,  
 23 respond to the opposition?  
 24 MR. CASEY: I do not necessarily need an  
 25 opportunity to respond in writing, but I would like to

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1 have a discussion today as part of this prehearing  
 2 conference on issues like that --  
 3 JUDGE FRIEDLANDER: Scope of issues?  
 4 MR. CASEY: Yes, exactly.  
 5 JUDGE FRIEDLANDER: Okay. Is there anyone  
 6 else who wishes to -- okay. I see Ms. Gafken.  
 7 MS. GAFKEN: Yes, I'll weigh in on this as  
 8 well. Public Counsel does also support NIPPC's petition  
 9 for intervention. The Commission's rule under  
 10 intervention is fairly broad, and there is a lot of  
 11 discretion there. We generally support a liberal  
 12 interpretation of those intervention standards and do  
 13 feel that it falls under the public interest prong and  
 14 potentially the substantial interest prong as well.  
 15 If there's any limitations that would need  
 16 to be imposed, those can be discussed, but we feel that  
 17 allowing the intervention would be better than -- or  
 18 closing a party to be -- to be part of the proceeding.  
 19 We do feel that there's a perspective that would be  
 20 valuable to the proceeding. Mr. Sanger pointed to the  
 21 leasing proceeding, which is one that Public Counsel was  
 22 involved in. And in that case, there were trade  
 23 associations that were involved and they did provide a  
 24 robust perspective and did benefit from the record. And  
 25 we believe that that's the case here as well.

Page 24

1 JUDGE FRIEDLANDER: Do you have a docket  
 2 number for that proceeding?  
 3 MS. GAFKEN: You know, I did last night. I  
 4 didn't write it down here.  
 5 JUDGE FRIEDLANDER: Okay. I'm sure it's in  
 6 Mr. Sanger's response.  
 7 MS. GAFKEN: It is. I know it starts with a  
 8 15.  
 9 JUDGE FRIEDLANDER: Which one, I'm sorry?  
 10 MR. CASEY: I believe it was 158271, but I  
 11 could be mistaken.  
 12 JUDGE FRIEDLANDER: Okay.  
 13 MS. GAFKEN: That sounds right to me.  
 14 JUDGE FRIEDLANDER: Okay.  
 15 MS. GAFKEN: Started with a 15, ends with  
 16 71. The middle two numbers there I am not sure on.  
 17 JUDGE FRIEDLANDER: Okay. Thank you.  
 18 MR. SANGER: Your Honor, it was 151871,  
 19 UE-151871 and UG-151872.  
 20 JUDGE FRIEDLANDER: Thank you.  
 21 All right. Is there anyone else who wishes  
 22 to make a statement or address the issue?  
 23 All right. Thank you. I am going to hold  
 24 the petition for intervention in abeyance. I would like  
 25 to review some of the case law myself and then make a

Page 25

1 determination, but I would imagine that determination  
 2 will be rendered shortly.  
 3 Why don't we move on to some of the  
 4 procedural issues now, and we'll get to narrowing the  
 5 scope of what issues are at stake in this proceeding.  
 6 So first of all, do we have a need for a  
 7 protective order in this proceeding?  
 8 MR. KUZMA: Yes, Your Honor. The initial  
 9 filing included some materials, as discussed earlier,  
 10 that were filed under confidential rules primarily  
 11 related to Puget's coal strip plant and Microsoft's load  
 12 forecasts.  
 13 JUDGE FRIEDLANDER: Okay. Thank you. So is  
 14 that a standard or highly confidential?  
 15 MR. KUZMA: There may be a need for a highly  
 16 confidential depending upon, you know, some of the other  
 17 customers and NIPPC's involvement. If it were along the  
 18 lines of NWEC, Public Counsel, and Staff, I don't think  
 19 Puget has any concerns, but if we do have, for example,  
 20 NIPPC, Walmart, and Kroger, I think there might need to  
 21 be highly confidential.  
 22 JUDGE FRIEDLANDER: Okay. And it's no real  
 23 difference in workload for me, so I can do it either  
 24 way. If somebody has an objection to a highly  
 25 protective order, they should probably let me know.

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1 Otherwise, I think that might be the best.  
 2 Does Staff have something they want to say?  
 3 MR. CASEY: I would just like to say that  
 4 when a proceeding has both confidential and highly  
 5 confidential, it does increase the administrative burden  
 6 on the parties especially on days of filing. You know,  
 7 I think with the potential number of parties here, the  
 8 number of witnesses, you know, I think that could, you  
 9 know, put some -- put some stress on the parties. So,  
 10 you know, if the companies feel like there is highly  
 11 confidential information that needs to be protected,  
 12 Staff understands and is open to that.  
 13 You know, our preference is to not have, you  
 14 know, kind of this -- lots of information where we're  
 15 trying to keep track of one set of confidential and  
 16 another set of highly confidential, and you are trying  
 17 to figure out who gets what. So our preference would be  
 18 one, and we would like to kind of have the parties who  
 19 feel that there is really a need for a highly  
 20 confidential protective order to please, you know,  
 21 give -- show some support for why a regular confidential  
 22 is not sufficient.  
 23 MR. KUZMA: And as someone that has done  
 24 this for several years, I admit that there is an extra  
 25 burden of having highly confidential. I am not going to

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1 try to argue that. There just raises an issue here, we  
 2 could either deal with this issue because there are  
 3 competitors and there are customers that might not want  
 4 to have their information released. It might be Kroger.  
 5 I know Microsoft already has information on the record,  
 6 Walmart stores, ICNU, Kroger. Others might also have  
 7 some information on the record that they would rather  
 8 not have others see.  
 9 We could deal with that on a highly  
 10 confidential basis or we could deal with that through  
 11 motions to exclude parties from having some information.  
 12 Either way works. I think that the highly confidential  
 13 designation is a slightly less burden than having  
 14 motions to exclude others from seeing confidential  
 15 information.  
 16 JUDGE FRIEDLANDER: And I would -- I share  
 17 Staff's concern about the work burden, because we ended  
 18 up having an order in the Pacific Power case that was  
 19 actually three orders where we had a redacted version,  
 20 confidential version, and a highly confidential version.  
 21 So I do understand that, and I think that the parties to  
 22 a certain extent have overlabeled a lot of information  
 23 as confidential or highly confidential in the past that  
 24 has made the burden that much more onerous.  
 25 So -- but having said that, the Commission

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1 also has a balance that's with developing a full and  
 2 accurate record, so I understand that if customers are  
 3 concerned that some of their information may get out  
 4 that they do not want to be shared with others, then I  
 5 certainly understand why a highly confidential  
 6 protective order would be necessary.  
 7 MR. CASEY: And Staff will acknowledge, Your  
 8 Honor, that, you know, we do think that we will need  
 9 access to customers' load data in order to -- as part of  
 10 discovery in this proceeding as well as the inputs to  
 11 PSE's PSM III model, and we also anticipate needing the  
 12 ability to rerun that model with modified assumptions  
 13 and updated information. So I wanted to state that so  
 14 you're aware.  
 15 JUDGE FRIEDLANDER: Thank you.  
 16 Is there anyone else who wishes to speak to  
 17 the confidential protective order or highly confidential  
 18 protective order issue?  
 19 All right. The Commission will prepare a  
 20 highly confidential protective order shortly. And how  
 21 about as far as discovery rules, I assume that the  
 22 parties will be conducting discovery as Staff has  
 23 already indicated they will need certain information and  
 24 that I would imagine the parties want to invoke the  
 25 discovery rules of the Commission for formal discovery



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1 and --

2 All right. Having said that, let's get on

3 to the procedural issues of addressing the scope of the

4 case.

5 So, Mr. Casey, you had mentioned wanting to

6 narrow the scope of the case. Why don't you begin with

7 that.

8 MR. CASEY: Well, Commission Staff would

9 like to invite and encourage the Commission to provide

10 some guidance to the parties about the appropriate scope

11 of the issues in order to prevent discovery disputes and

12 appropriately focus the testimony. Candidly, you know,

13 our concern is forgetting the discovery process, getting

14 some data requests out, a couple weeks later they come

15 back, there's objections to them, and then we're into

16 motions to compel. And we are, you know, potentially a

17 month or even two months in and we're still trying to

18 figure out what exactly we should and should not be

19 talking about.

20 We think that this case, you know, brings

21 up, you know, potentially a lot of issues and also

22 potentially interacts with some other cases out there.

23 One of the things I would like to bring to the

24 Commission's attention is the PSE general rate case that

25 will be filed in January of 2017. There are different

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1 aspects of this case that will interact with that one.

2 You know, for instance, Microsoft's load will be in the

3 test year of that rate case.

4 Also, pursuant to a settlement agreement

5 from a little while back, that case is going to address

6 Schedule 40 in substantial ways. However, Staff does

7 think that -- that rate design issues and cost of

8 service issues for distribution-only customers on

9 Schedule 40 should be limited to the rate case. We

10 think a general rate case is the appropriate place to

11 talk about rates, and we think that this case should be

12 talking about the law, policy, and technical

13 requirements of a new expanded direct access program.

14 I have already mentioned some of the

15 anticipated discovery that Staff thinks it will need.

16 Staff also identifies five kind of major issues in this

17 case. The first being identifying and addressing

18 stranded costs, the second is implications of an

19 unbundling policy or direct access program broadly.

20 Staff really believes there needs to be a robust policy

21 discussion on who has the eligibility to participate in

22 open energy markets in Washington, what is the effect on

23 remaining customers, and what is the likelihood of

24 additional load leaving the system and impacts thereof.

25 In addition, the third issue is the

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1 jurisdictional and regulatory consequences of approval.

2 The fourth would be application of laws such as the

3 Energy Independence Act and renewable energy mandate.

4 So what would be the application of those types of laws

5 to customers who have been granted access to wholesale

6 markets, and the fifth would be policy questions

7 concerning the liability of -- and so --

8 JUDGE FRIEDLANDER: Reliability, I'm sorry,

9 as far as the third-party power producer or are we

10 talking about the --

11 MR. CASEY: I think Staff just wants to make

12 sure they will have access to information, adequate

13 assurance that -- that this will not kind of have

14 negative impacts on the system or the system's customer.

15 And we understand that a lot of those aspects are

16 reliability -- aspects are for jurisdictional, but we

17 still think there is some room for discussion on that

18 especially around information about supply and things of

19 that nature.

20 And, you know, I will also say that I

21 believe in Washington, we're operating in a little bit

22 of a vacuum that other states are not because they have

23 a statute that speaks directly to this type of program,

24 in Washington we don't have that. Ultimately,

25 Commission Staff is here to help develop a robust record

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1 that will facilitate the Commission's decision and, you

2 know, we want to respond to the needs of the

3 Commissioners in making that decision. Because of this

4 vacuum that I just mentioned, it's really why we believe

5 a robust conversation on law, policy, and technical

6 requirements is necessary, and that's why we invite and

7 encourage guidance to the parties.

8 JUDGE FRIEDLANDER: Okay. Thank you. I

9 would note that as far as policy is concerned, some of

10 that if it's far-reaching, could get into ad hoc

11 rulemaking if it's involving a larger policy discussion

12 that might implicate other IOUs or any regulated

13 utility. So we have to be careful that way as well.

14 MR. CASEY: Yes, I definitely understand.

15 And I think our interest is, you know, again, part of it

16 is having a sufficient discussion to feel comfortable

17 that the eligibility parameters that PSE has proposed

18 for accessing this new schedule are the correct and

19 appropriate ones.

20 JUDGE FRIEDLANDER: Thank you.

21 Is there anyone else who would like to weigh

22 in on the narrowing of issues? I expect PSE probably

23 has something to say about that.

24 MR. KUZMA: Yes, Your Honor. On the issues

25 that Staff has identified, the five, I think we would

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1 agree that stranded cost obviously is something that is  
 2 to be addressed in this proceeding. The jurisdictional  
 3 and regulatory consequences of an open access, we would  
 4 agree as well, there is some precedent in this state  
 5 with respect to Schedule 449 customers. There's also  
 6 precedent throughout the country as well, and that can  
 7 be addressed.

8 The effect of the potential laws of the  
 9 renewable FERC oil standard, et cetera, that may be an  
 10 issue and also the -- I am a little unsure what the  
 11 reliability concerns are at this time, but we will take,  
 12 you know, that as it comes.

13 With respect to the question of an unbundled  
 14 policy, I would like to note for the record that FERC  
 15 has looked at retail wheeling programs like this under  
 16 two scenarios. One is pursuant to a statewide policy  
 17 that you might see somewhere in a state like Texas.

18 The second is pursuant to a voluntary  
 19 program. That's what this is. Puget has established  
 20 the voluntary program for the Commission's approval and  
 21 upon that, Puget will offer retail wheeling pursuant to  
 22 that voluntary program.

23 Puget has no interest is expanding the  
 24 eligibility for service beyond that, which is in section  
 25 1 of its statute -- statement -- Schedule 451.

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1 For example, that's one of the reasons that  
 2 we raised issues with respect to Walmart's  
 3 participation. Kroger, on the other hand, is a Schedule  
 4 40 customer and may qualify for the service now or in  
 5 the future and could take -- and could take the service  
 6 under that -- that -- under Schedule 451, but Walmart  
 7 did not. That doesn't prohibit Walmart from perhaps  
 8 becoming a Schedule 40 customer in the future and  
 9 therefore being eligible under Schedule 451, but we have  
 10 no interest in expanding beyond current or future  
 11 Schedule 40 customers.

12 Additionally, we have established a ceiling  
 13 of a hundred megawatts at any given time a capacity  
 14 limit under Schedule 451. That is a -- was chosen by  
 15 Puget for a reason. That is a maximum that Puget felt  
 16 did have an impact on customers as evidenced by the  
 17 stranded power supply, stranded cost agreed to by  
 18 Microsoft. But once we go beyond the hundred megawatts,  
 19 you start to see a multiplier effect and that causes  
 20 greater burden on PSE's bundled customers.

21 And so therefore, we have carefully tried to  
 22 sculpt the eligibility for service requirements in a way  
 23 that would have the least impact on the public interest  
 24 but still allow this program for some of the larger  
 25 customers. And we have no interest in seeking to have

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1 that expanded beyond what is in eligibility for service.  
 2 And so at this time, we would strongly  
 3 disfavor any type of argument that this should be opened  
 4 up to a broader open access. It does impact other IOUs  
 5 in this state, and we acknowledge that there is no  
 6 statute meeting this. In fact, the state's public  
 7 policy has for the most part with limited exceptions  
 8 disfavored open access and, therefore, we think that we  
 9 have tried to craft this in a manner that allows for  
 10 limited exception for the most sophisticated largest  
 11 customers, but we have interest in expanding it beyond  
 12 that.

13 JUDGE FRIEDLANDER: Okay. Thank you.  
 14 Mr. Casey, did you have anything to add?  
 15 MR CASEY: The only follow-up I would add is  
 16 we would -- Staff appreciates that the Company carefully  
 17 selected the eligibility parameters and that is not  
 18 interested in expanding them. And, you know, it may be  
 19 the case that those are the appropriate parameters, but  
 20 what we don't want is to prohibit all discussion on  
 21 whether they're the appropriate parameters and, you  
 22 know, whether they are set at the right place.

23 JUDGE FRIEDLANDER: Thank you.  
 24 MR. KUZMA: And PSE's position on that would  
 25 be that may be an appropriate thing. This is not the

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1 appropriate docket for that. We have filed a schedule.  
 2 The Commission considers this schedule and can rule on  
 3 this schedule. If there wishes to be a broader policy,  
 4 then there are rulemaking, there are other procedures  
 5 that are better suited for that than this proceeding.

6 JUDGE FRIEDLANDER: Did anyone else have  
 7 anything they would like to add to that?  
 8 MR. BOEHM: Your Honor, this is Kurt Boehm  
 9 for Kroger. I would just like to agree with the  
 10 statement that -- that, you know, although this might be  
 11 PSE's policy, this might be their position, I think it  
 12 would be inappropriate to preclude discussion on the  
 13 eligibility requirements. The -- the docket has very  
 14 specific eligibility requirements and who is to say  
 15 whether those are the correct specific eligibility  
 16 requirements. So we would just like the ability to --  
 17 to file testimony on that issue.

18 JUDGE FRIEDLANDER: Okay. Thank you.  
 19 Ms. Thomas, did you have anything to add?  
 20 MS. THOMAS: Thank you. Thank you, Your  
 21 Honor. Yes, we agree with Puget Sound Energy that the  
 22 scope should be narrowly focused on the tariff that was  
 23 presented in the agreement that was presented. We think  
 24 that there will be enough issues there for discussion  
 25 that -- and there will be a robust record developed for

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1 the Commission to decide whether to go forward on this  
 2 specific proposal.  
 3 We feel that if other customers want a  
 4 different proposal in other dockets, they could come  
 5 forward with that or in legislature or through a  
 6 rulemaking. There are a lot of different ways, but I  
 7 think that it's important to keep focused on the very  
 8 tariff that's presented and the agreement that's  
 9 presented and not open it up to sort of a hypothetical  
 10 discussion about what would happen if the tariff looked  
 11 different.  
 12 JUDGE FRIEDLANDER: Okay. Thank you. But  
 13 you're not -- you're not suggesting, though, that  
 14 outside the Commission's purview that we couldn't  
 15 consider if Staff raised alternative qualifications that  
 16 we couldn't consider those?  
 17 MS. THOMAS: Yeah, I would have to defer to  
 18 Puget Sound Energy on that because it is their tariff.  
 19 MR. KUZMA: It's a difficult question to  
 20 answer because there is a fine line. There is a fine  
 21 line between making modifications to the existing  
 22 schedule that may be in the public interest, and there  
 23 is a difference between that and forcing upon Utility a  
 24 service that it feels uncomfortable providing.  
 25 This is not a state mandate. This isn't the

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1 statute -- the legislature creating a statute that  
 2 requires this. Puget, in close contact with Microsoft,  
 3 developed this at the request of a customer and is  
 4 trying to meet that customer's needs. We have also  
 5 allowed this to be a schedule rather than a special  
 6 contract to allow other customers similarly situated to  
 7 meet that -- if they meet the requirements to also  
 8 receive service under that schedule.  
 9 Puget does not have an interest in expanding  
 10 the eligibility requirements beyond the hundred  
 11 megawatts. That we believe would be in, again, the  
 12 public interest because that has a multiplier effect on  
 13 our other bundle load customers. The larger that  
 14 capacity requirement is, the far greater impact on other  
 15 customers.  
 16 So at this time, we are comfortable with the  
 17 schedule that we have filed. We do not believe that the  
 18 Commission should impose upon the Company a requirement  
 19 for a greater open access than what it has volunteered  
 20 to provide in this schedule, but we are willing to talk  
 21 about some of the materials within the schedule. We're  
 22 not saying that this is necessarily a take it or leave  
 23 it. We believe that this is a schedule that has been  
 24 carefully designed using Schedule 449 and the  
 25 experiences there as a -- as a background, but also

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1 recognize that customers like Microsoft and other  
 2 Schedule 40 customers are -- have large distribution  
 3 loads and large distribution services unlike some of the  
 4 other 449 customers and try to account for that.  
 5 So we have developed a carefully crafted  
 6 schedule, we believe, that we're not saying there can't  
 7 be any discussion about, but we do not want to expand  
 8 the service beyond the hundred megawatts at this time.  
 9 JUDGE FRIEDLANDER: Okay. Thank you.  
 10 If no one else wishes to opine on this  
 11 topic, I think we can safely say that the scope of the  
 12 proceeding is what has been filed, but on the other  
 13 hand, all of the parties are able to present alternative  
 14 approaches. And so to the extent that they are  
 15 addressing whatever has been filed in the tariff,  
 16 they're certainly able to come up with alternatives to  
 17 the eligibility that has been brought before us by the  
 18 Company. So that doesn't really narrow the scope so  
 19 much as it does allow the parties their typical due  
 20 process rights to propose to the Commission whatever  
 21 they think is in the public interest as far as this  
 22 tariff goes. Hopefully that has addressed Staff's  
 23 concern. If not, there is always the times for motions,  
 24 as well, to compel production and things like that.  
 25 MR. CASEY: Yes, I understand. Those are

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1 some of the things I am hoping to avoid and at the end  
 2 of the day, we're really here to facilitate the  
 3 Commission's review and develop the facts that the  
 4 Commission needs for review. So I will, you know, leave  
 5 it at that and just again invite and encourage the  
 6 Commission to, you know, potentially provide some extra  
 7 guidance in the order that comes out of this proceeding.  
 8 JUDGE FRIEDLANDER: Okay. Thank you.  
 9 As far as other procedural issues that need  
 10 to be addressed, we have the procedural schedule that we  
 11 need to come up with. Have the parties been circulating  
 12 some ideas as far as the procedural schedule in this  
 13 matter?  
 14 MR. CASEY: Yes, Your Honor, we've discussed  
 15 a procedural schedule and, amazingly, I think we might  
 16 even have some general consensus around it.  
 17 JUDGE FRIEDLANDER: Okay.  
 18 MR. CASEY: You know, we did acknowledge  
 19 that some of the discussion we had about issue  
 20 identification and clarification could affect it. We  
 21 didn't know if issues, you know, some further discussion  
 22 on the issues built into it might be necessary. Also,  
 23 as part of it, we have a, you know, potential  
 24 opportunity for PSE and/or Microsoft to provide  
 25 supplemental direct testimony if there are issues that

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1 need to be addressed that they haven't yet addressed in  
 2 the prefiled testimony. But beyond that, I believe I --  
 3 we got consensus over the weekend, and so if that is the  
 4 case, I will read it off.  
 5 JUDGE FRIEDLANDER: Please.  
 6 MR. CASEY: So the supplemental testimony  
 7 from PSE and/or Microsoft if necessary would be due on  
 8 December 15th, 2016. Staff and intervenor response  
 9 testimony and exhibits due on March 6th, 2017, rebuttal  
 10 testimony and exhibits and cross-answering testimony and  
 11 exhibits would be due on April 7th, 2017. The discovery  
 12 deadline would be April 18th, 2017.  
 13 JUDGE FRIEDLANDER: I'm sorry, April 18th?  
 14 MR. CASEY: Yes.  
 15 JUDGE FRIEDLANDER: Okay.  
 16 MR. CASEY: Cross-examination, exhibits of  
 17 the exhibit list would be due on April 27th, 2017. We  
 18 talked about reserving three days for a hearing based on  
 19 the number of parties, you know, maybe one of those days  
 20 might not be necessary, but the hearing would be on May  
 21 3rd, 4th, and 5th, 2017. Both hearing briefs would be  
 22 due on June 7th, 2017, reply briefs on July 10th, 2017,  
 23 and the suspension date is September 7th, 2017.  
 24 JUDGE FRIEDLANDER: Okay. Thank you. First  
 25 of all, will you email that schedule to me as long as

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1 everyone has agreed to it?  
 2 Ms. Gafken.  
 3 MS. GAFKEN: Your Honor, there was one other  
 4 thing I was going to bring up and I meant to talk about  
 5 it beforehand. I don't think it is going to be  
 6 controversial. It's fairly standard. We usually have a  
 7 rationing down of the discovery response times.  
 8 JUDGE FRIEDLANDER: Right.  
 9 MS. GAFKEN: And it just hasn't been  
 10 discussed yet, and usually what happens is it ratchets  
 11 down from ten to seven and then down again to five, and  
 12 I would propose that that be incorporated. The other  
 13 item that I was going to bring up with the group was on  
 14 reply brief incorporating a page limit to shorten the  
 15 reply brief from 60 to something much shorter than that.  
 16 If the Commission's rules don't have a page limit for  
 17 reply briefs, then it doesn't seem necessary to have a  
 18 60-page reply brief.  
 19 JUDGE FRIEDLANDER: Makes sense. As far as  
 20 the discovery -- shortening of discovery response time,  
 21 if I am not mistaken, don't we usually have once  
 22 rebuttal testimony comes in, we shorten it to seven days  
 23 and then is it --  
 24 MS. GAFKEN: It's actually when the response  
 25 testimony comes in, so the March 6th date, March 6th,

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1 that would be when it would be reduced to seven and then  
 2 the April 7th filing date for rebuttal, that's when it  
 3 would be reduced to five.  
 4 JUDGE FRIEDLANDER: Okay. Does anyone have  
 5 any opposition to that? We have done it in previous  
 6 cases. All right. So I think that is pretty much  
 7 fairly agreed upon.  
 8 As far as the page limit, I am certainly in  
 9 favor of that. Does anybody have any problems with  
 10 shortening it down to, say, 20 pages? All right. I  
 11 think -- I think we will go with 20 on the reply brief.  
 12 20-page limit on the reply briefs which are due  
 13 July 10th according to the schedule.  
 14 And then if you would email me a copy of  
 15 that schedule, Mr. Casey, I would appreciate it.  
 16 Is there anything else as far as procedural  
 17 issues that we need to discuss?  
 18 Mr. Ffitch.  
 19 MR. FFITCH: As has routinely been done in  
 20 other cases, I just want to ask the Commission to  
 21 establish an electronic service list, sort of a courtesy  
 22 service list for people to add their support staff for  
 23 general service of -- by the parties and Commission.  
 24 JUDGE FRIEDLANDER: Certainly. And we have  
 25 done that in the past, and I will be emailing you all

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1 and asking for that as well as the representative you  
 2 want to be designated and the attorney you want to be  
 3 designated to receive hard copy service. And I know,  
 4 Mr. Ffitch, you have asked for only one hard copy, one  
 5 representative to be designated for hard copy service  
 6 and then everything else would be electronic. So we  
 7 will take that into consideration and deal with it  
 8 offline on -- through email.  
 9 MR. FFITCH: Thank you, Your Honor. And  
 10 just a brief footnote to that. I noticed that our  
 11 petition for intervention has a typo for Mr. Collins'  
 12 email address.  
 13 JUDGE FRIEDLANDER: Oh, okay.  
 14 MR. FFITCH: The parties may already have  
 15 put that into their system, so please be watching for  
 16 the correction when the new order and service list comes  
 17 out, and I can -- I will email the bench with the  
 18 correct --  
 19 JUDGE FRIEDLANDER: Thank you.  
 20 MR. FFITCH: -- email address for  
 21 Mr. Collins.  
 22 JUDGE FRIEDLANDER: And I will add that to  
 23 the appendix at the end of the prehearing conference.  
 24 Is there anything else besides -- I guess I  
 25 should tell you guys that original and five as far as

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1 hard copies go except for redacted, we only need one  
 2 original. We don't need a copy of that, and if that --  
 3 is there anything else, Ms. Thomas?  
 4 MS. THOMAS: Yes, Your Honor, thank you.  
 5 Microsoft had a question. We're comfortable with the  
 6 schedule, but we're a little puzzled about what to do  
 7 about the December filing date, because it calls for  
 8 additional filings from the Company and from Microsoft  
 9 if needed. And we don't know how we can determine what,  
 10 if anything, is needed.  
 11 JUDGE FRIEDLANDER: Sure. I think that is  
 12 probably going to depend upon what happens in discovery,  
 13 and that, I believe the parties are leaving it up to the  
 14 Company and Microsoft to determine whether they feel  
 15 they need to supplement the record, but the parties are  
 16 free to -- to discuss that on their own or voice their  
 17 own views if I am misstating their position.  
 18 Sorry, for those on the conference bridge,  
 19 Staff is having a brief -- a brief conference of their  
 20 own.  
 21 So, Mr. Casey.  
 22 MR. CASEY: Um --  
 23 JUDGE FRIEDLANDER: What was intended by the  
 24 date for supplemental testimony to be filed?  
 25 MR. CASEY: So Staff was hoping we would get

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1 a little bit more clarity and confirmation out of the  
 2 discussion this morning about what issues would be  
 3 addressed. Staff is positioning that, you know, maybe  
 4 there needs to be some -- some procedure, some kind of  
 5 issue conference to flush that out if we haven't done  
 6 enough this morning. I will say I don't know if I got  
 7 clarity on whether, you know, PSE is going to answer  
 8 discovery questions around the parameters that it has  
 9 established.  
 10 And again, you know, I do think, you know,  
 11 if we -- if we had clarity from the Commission, it would  
 12 be more apparent whether or not the Company and/or  
 13 Microsoft needed to file something supplemental.  
 14 Microsoft is -- their situation is a little odd here  
 15 because they are intervenors who have kind of already  
 16 filed some testimony. I'm still trying to figure out  
 17 exactly kind of how they're fitting into the normal  
 18 procedural path that we take here.  
 19 JUDGE FRIEDLANDER: So let me ask this,  
 20 then. What I am understanding you to be saying is that  
 21 you're unsure of whether the Company will respond to  
 22 data requests that they may feel are outside the scope  
 23 of the issues in this case; is that correct? And you're  
 24 trying to head that off?  
 25 MR. CASEY: Yes, and also if there are

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1 issues that they -- that are, you know, highly relevant  
 2 to the Commission's decision that they should have  
 3 addressed in their initial filing but didn't, that I  
 4 believe, you know, they should speak to those issues  
 5 before the other parties should have to comment and  
 6 follow up and so --  
 7 JUDGE FRIEDLANDER: And this has been an  
 8 ongoing discussion that we've had in many rate cases  
 9 about changing -- not only changing positions while the  
 10 case is continuing, but also the evolving nature of the  
 11 case itself. I would say that as -- as you mentioned,  
 12 the Company may -- I don't know, it's absolutely  
 13 possible that the Company may voice an objection to  
 14 discovery that Staff wishes to conduct.  
 15 As I have done in other proceedings, I would  
 16 strongly encourage any party who feels that they have a  
 17 right to ask for this data to do so with a motion to  
 18 compel. We usually can get a very quick turn-around  
 19 time on those, and the schedule, I think, is long enough  
 20 and allows for a good bit of wiggle room that if you are  
 21 having problems, if a party is having problems, please  
 22 do file a motion to compel.  
 23 And I understand the frustration that Staff  
 24 has voiced in the past as well as this proceeding on it  
 25 not being the parties' duties to make Staff -- to make

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1 the Company's case and Microsoft's case for them. This  
 2 is -- again, this has been an ongoing issue where  
 3 information becomes available to the parties through  
 4 discovery that was not addressed in initial testimony  
 5 and exhibits.  
 6 And I believe, Ms. Thomas, this is to answer  
 7 your question. You have not appeared before us before  
 8 potentially or potentially in many, if any, rate cases,  
 9 so this has been an ongoing concern.  
 10 MS. THOMAS: I do appreciate the concern.  
 11 Thank you, Your Honor. And just for the record, I have  
 12 appeared here before, but it's been a while.  
 13 JUDGE FRIEDLANDER: Okay. Probably -- yeah,  
 14 yeah. And I have only been here about eight and a half  
 15 years, so it certainly -- you're a new face to me  
 16 anyway. So my -- my understanding, though, of what  
 17 Staff is saying is that you would be given the  
 18 opportunity as well as PSE to supplement testimony, to  
 19 address issues that have been raised in discovery, and I  
 20 believe that what Staff is saying, and, Mr. Casey and  
 21 Mr. Roberson, you can correct me if I am wrong, is that  
 22 this is not mandatory. There is nothing saying that you  
 23 have to file the supplemental testimony. It's just that  
 24 Staff may be addressing things that have been raised in  
 25 discovery that the Commission will be seeing for the

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1 first time.

2 MS. THOMAS: Thank you, Your Honor, and

3 Mr. Casey, and I do appreciate the concern and the need

4 for the complete record, and it is odd, I recognize, for

5 an intervenor to be filing almost simultaneously with

6 the Company. But we felt it was the right thing to do

7 because our interests are obviously aligned with PSE's

8 on this.

9 I guess I can only say I hope that discovery

10 proceeds very quickly so that we can flush out the

11 issues and have a good sense by the time of the due date

12 for the supplemental testimony whether we missed

13 something and we should file supplemental testimony.

14 JUDGE FRIEDLANDER: Certainly, and that's

15 what the Commission would hope as well that these issues

16 are -- I'm -- I'm -- was at a loss to describe with

17 clarity for all the parties but Mr. Casey in particular,

18 what the issues will be in this case because so much of

19 that gets determined during discovery, and there's a

20 plethora of potential issues that could be raised in the

21 case, germane or not, that the Commission really is just

22 as curious as the rest of you the direction that it will

23 take.

24 So to the extent the Commission can provide

25 guidance in the prehearing conference order, we will

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1 attempt to do so, but I caution that a lot of that will

2 be up to the parties.

3 With that, if there's nothing further, and I

4 don't hear anything else from the conference bridge, we

5 are adjourned. Thank you.

6 (Adjourned at 10:34 a.m.)

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1 CERTIFICATE

2

3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

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6 I, Tayler Russell, a Certified Shorthand Reporter

7 in and for the State of Washington, do hereby certify

8 that the foregoing transcript is true and accurate to

9 the best of my knowledge, skill and ability.

10

11 Tayler Russell, CCR \_\_\_\_\_

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