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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND TRANSPORTATION) Docket UE-130137
COMMISSION,) Docket UG-130138

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Complainant,) (Consolidated)
) Page 1-60

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v.)

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PUGET SOUND ENERGY, INC.)

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Respondent.)

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JOINT PREHEARING CONFERENCE, VOLUME I

12

Pages 1-60

13

ADMINISTRATIVE LAW JUDGE DENNIS J. MOSS

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9:35 A.M.

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March 22, 2013

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Washington Utilities and Transportation Commission
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OLYMPIA, WASHINGTON, MARCH 22, 2013

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9:35 A.M.

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P R O C E E D I N G S

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JUDGE MOSS: All right. Let's be on the record.

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Good morning, everyone. My name is Dennis Moss. I'm an administrative law judge with the Washington Utilities and Transportation Commission.

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We are convened this morning in a joint prehearing conference in five dockets. There's no significance to the order, other than the numbers of the dockets.

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The first is In the Matter of the Petition of Puget Sound Energy, Inc., for Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power as Defined in RCW 80.80.010, and the Recovery of Related Acquisition Costs, Docket UE-121373.

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The next two are styled In the Matter of the Petition of Puget Sound Energy, Inc., and NW Energy Coalition for an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms, that's Dockets UE-121697 and UG-121705.

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The fourth and fifth dockets are styled WUTC against Puget Sound Energy, Inc., Dockets UE-130137 and UG-130138. And this is referred to colloquially, I suppose, as an "expedited

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1 rate filing," or "ERF."

2 And if I didn't mention it, the preceding two are
3 referred to as generically as "the decoupling dockets."

4 I'll move straight to my agenda for the day and take
5 the appearances.

6 We'll start with the Company.

7 MS. CARSON: Good morning, Your Honor. Sheree Strom
8 Carson with Perkins Coie, representing Puget Sound Energy.

9 Did you want the long form of appearance?

10 JUDGE MOSS: No.

11 MS. CARSON: Okay.

12 JUDGE MOSS: Short form is fine.

13 MS. CARSON: Thank you.

14 JUDGE MOSS: And you're representing the Company in
15 all of these dockets?

16 MS. CARSON: I am.

17 JUDGE MOSS: All right. Do you have co-counsel?

18 MS. CARSON: I do. Jason Kuzma and Donna Barnett.

19 JUDGE MOSS: All right. Let's just move around the
20 room.

21 Ms. Davison?

22 MS. DAVISON: Good morning, Your Honor. Melinda
23 Davison. I'm here on behalf of the Industrial Customers of
24 Northwest Utilities. And my co-counsel is Joshua Weber, who is
25 not with me today.

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1 JUDGE MOSS: But we've seen Mr. Weber in these
2 proceedings before.

3 MR. STOKES: Good morning, Your Honor. Chad Stokes
4 for the Northwest Industrial Gas Users. Cable Huston law firm.
5 Also appearing with me will be Tommy Brooks.

6 MR. BROOKS: And I'm on the phone.

7 JUDGE MOSS: Ah, Mr. Brooks. Welcome.

8 Okay. Mr. Roseman?

9 MR. ROSEMAN: Good morning. My name is Ronald
10 Roseman. I'm representing The Energy Project.

11 MR. FFITCH: Good morning, Your Honor. Simon ffitch
12 for the Public Counsel Office.

13 MR. TRAUTMAN: Good morning. Greg Trautman,
14 Assistant Attorney General, and Sally Brown, Senior Assistant
15 Attorney General, for Commission Staff.

16 MS. GOODIN: Good morning, Your Honor. Amanda Goodin
17 with EarthJustice, representing the NW Energy Coalition in the
18 decoupling dockets. My co-counsel is Todd True, who is not with
19 me today.

20 JUDGE MOSS: Okay.

21 MS. GOODIN: And also here is Nancy Hirsh with the NW
22 Energy Coalition. The Coalition is representing itself in the
23 PPA docket.

24 MR. FURUTA: And, good morning, Judge Moss.

25 JUDGE MOSS: Mr. Furuta, how are you?

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1 MR. FURUTA: Yes, very good. Thank you.

2 Norman Furuta, representing the consumer interests of
3 the Federal Executive Agencies.

4 And depending on how long the proceedings last, I may
5 have co-counsel on this.

6 JUDGE MOSS: Okay.

7 MR. FURUTA: They were not identified as such in our
8 petition to intervene, but they were mentioned --

9 JUDGE MOSS: That's fine.

10 MR. FURUTA: -- as parties to contact, Rita Liotta
11 and John Cummins.

12 JUDGE MOSS: Yes, I saw that in your notice.

13 All right. I think we can go to the bridge line.

14 Are there persons on the bridge line who wish to
15 enter an appearance today; that is to say, persons in a
16 representative capacity for any party or would-be party?

17 Hearing nothing, I suppose everyone is here in the
18 room. That's good.

19 All right. A couple of things while we're at this
20 stage. I will, of course, enter prehearing conference orders in
21 these matters, and they will have attached to them a form of
22 service list. This is not the agency's formal service list, and
23 so I'm going to have to ask each of you to help me. We need to
24 keep Records Center clear. There needs to be one person
25 designated for each party; that is to say, for PSE, not PSE's

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1 counsel. Mr. Johnson, for example, will probably be PSE's
2 representative for purposes of service; somebody at the Company.
3 Similarly for ICNU, someone at the organization, NWIGU, so forth
4 and so on.

5 So I would like for you all to just send me an
6 e-mail -- that's all you need to do -- identifying that one
7 individual, because you all may have identified several
8 individuals who you want to get stuff, as Mr. Furuta, for
9 example, identified several. So that's one thing I need from
10 you, if you could to do that for me.

11 Also what I passed out or what I circulated -- or
12 served, I should say, in terms of the prehearing conference
13 order, that list will likely be incomplete. I intend to get
14 those orders out today, so they're based on the information that
15 I had as of today. And, indeed, I didn't even use all of that
16 information, so they're going to be incomplete.

17 So, again, if you could send me in that same e-mail
18 or a separate e-mail, just let me know if there are others you
19 want to appear on that list, which I prepare for your benefit
20 and my benefit in terms of maintaining full communications
21 during the course of the proceeding.

22 And, again, that's separate from the official service
23 list, which is the one that has one company representative and
24 one lead counsel, if there is counsel, okay? So that's that.

25 We do have petitions to intervene. I suppose I

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1 should go ahead and move on to that. The question of
2 intervention is not pertinent to Docket UE-121373. The parties
3 in that case, in addition to PSE, are Staff, represented, I
4 believe, by Ms. Brown and Mr. Trautman. Public Counsel.
5 Mr. Ffitch, you are the representative in that case. ICNU and
6 NWECC are both participants in that, and I believe Ms. Davison
7 and Mr. Weber will be representing ICNU, and NWECC -- I'm sorry.
8 What was your last name? I'm sorry.

9 MS. GOODIN: Goodin.

10 JUDGE MOSS: Goodin. Okay. No "w"?

11 MS. GOODIN: No "w."

12 JUDGE MOSS: Thank you. My hearing is not that
13 wonderful.

14 So Ms. Goodin is representing.

15 You'll be lead?

16 MS. GOODIN: Not in that docket, Your Honor.

17 JUDGE MOSS: Oh, okay.

18 MS. GOODIN: In the decoupling dockets, yes.

19 JUDGE MOSS: Okay. All right.

20 And so who is NWECC's counsel in...

21 MS. GOODIN: NWECC is representing itself in that
22 docket, and Nancy Hirsh is the representative.

23 JUDGE MOSS: Nancy Hirsh will continue in her
24 representative capacity -- ah, there you are. All right. Very
25 good -- which brings me to the other dockets. And based on what

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1 Ms. Goodin just said, I suspect I have some corrections to put
2 in my little list of things up here.

3 So let's see. In Dockets UE-121697 and UG-121705,
4 the decoupling dockets, PSE and NWEA are joint petitioners in
5 that, and you will be lead in that?

6 MS. GOODIN: Mm-hm.

7 JUDGE MOSS: All right. You all will have to bear
8 with me a little bit as I take more extensive notes today than I
9 normally do, but there's a lot going on here. A lot of moving
10 parties.

11 Okay. All right. Now, what I have for the
12 decoupling dockets, which were just set for hearing, and an open
13 meeting here a week or so ago. I can't recall. It must have
14 been a week ago because we have a seven day minimum notice
15 period for these gatherings.

16 So I have, I believe, petitions to intervene from
17 ICNU, Kroger Company --

18 Oh, is anyone on the phone for Kroger Company?

19 -- NWIGU, Energy Project, and FEA have all sought to
20 intervene in the decoupling dockets.

21 Is there anyone else? Am I missing anyone?

22 I'm going to ask again: Is there anybody for Kroger
23 Company on the bridge line? If you're there and you're talking,
24 I'm not hearing anything, so you must have your phone on mute.

25 All right. Well, apparently...

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1 (Phone beeps.)

2 I was just asking if there was anyone on the bridge
3 line for Kroger Company. Did they just join us perhaps?

4 Apparently not.

5 All right. I'm reasonably confident that I have a
6 petition to intervene from them.

7 Turning to the ERF dockets, UE-130137 and UG-130138,
8 I have petitions to intervene from ICNU, The Energy Project, and
9 Nucor Steel.

10 Is there anyone on the line for Nucor Steel?

11 Apparently not.

12 Now, what about the Northwest Industrial Gas Users?
13 Are you intending to intervene in that proceeding?

14 MR. STOKES: Yes, Your Honor, if we haven't already.
15 I thought we had. I apologize.

16 JUDGE MOSS: Maybe you did.

17 MR. STOKES: Okay.

18 JUDGE MOSS: I'm open to the idea that I missed it.
19 That's one of the reasons I'm doing this. I wanted to check on
20 this.

21 How about you, Mr. Furuta? Are you going to
22 participate in the rate dockets? I'll mention in connection
23 with this that they are going to proceed on a common schedule,
24 so if that makes your decision any easier.

25 MR. FURUTA: Yes. I think in order to make sure that

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1 we receive all documents, if I could make an oral motion to
2 intervene in that docket.

3 JUDGE MOSS: I think that would be entirely
4 acceptable and, frankly, expected.

5 MR. FURUTA: Thank you.

6 JUDGE MOSS: All right. Now, I don't have anybody on
7 the line for Kroger. I was going to put the same question to
8 Kroger, but since they are not here, I can't do anything about
9 that.

10 All right. Now, given the lineup of players in the
11 decoupling dockets, is there any objection to the intervention
12 by any of those I mentioned?

13 MS. CARSON: No objection by PSE.

14 JUDGE MOSS: Hearing no other objections, those
15 petitions will be granted.

16 And then in dockets, the ERF dockets, I'll just refer
17 to them by their common names so I don't have to keep repeating
18 those docket numbers.

19 Is there any objection? And what I have in the
20 lineup there is ICNU, Northwest Industrial Gas Users, Nucor
21 Steel, and The Energy Project.

22 No objections?

23 MS. CARSON: No.

24 JUDGE MOSS: Okay. I hear no objections on those --
25 oh, and the Federal Executive Agencies. Those will be granted

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1 as well.

2 Okay. Very good. All right. Something may have
3 happened. Mr. Boehm is usually pretty good about participating
4 for Kroger, and I'm surprised he's not on the phone today.
5 Something could have happened with the notice conceivably, so
6 I'll just ask and get the matter out of the way now.

7 Assuming that they do intend to also intervene in the
8 rate docket, there would be no objection there?

9 MS. CARSON: No.

10 JUDGE MOSS: Okay. All right. I'm prepared to cut
11 people slack when we give the minimum statutory notice on things
12 like this, particularly when they're in remote locations such
13 as -- where is he? Chicago? Cincinnati?

14 MS. DAVISON: Cincinnati.

15 JUDGE MOSS: Cincinnati, yeah. All right.

16 And we have a written motion from Nucor, and I'll
17 just deal with that, so...

18 All right. All the petitions, then, are granted as
19 filed and as made orally today.

20 Now, we have several other motions pending, and I
21 intend to deal with those right now. But before I do that, I
22 will simply say that discovery under WAC 480-07-400 through 425,
23 is -- I don't like that idea of invoking it. Those are the
24 discovery rules, and that's how you will conduct your discovery
25 in accordance with those rules. But in any event, I am making

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1 one change, and that is it will be a five-day turnaround on all
2 discovery responses beginning today.

3 MR. FFITCH: Is that business days, Your Honor? May
4 I inquire?

5 JUDGE MOSS: Yeah. I thought about making it
6 calendar days, but that seems to be just cutting it. I don't
7 want to force people to work every Saturday and Sunday, so let's
8 keep it business days.

9 If it becomes a problem in not getting stuff in a
10 timely way or there's some problem, let me know, and we can
11 always make it calendar days. But for now business days. I
12 believe the rule provides for ten business days as a standard,
13 so that's cutting it in half.

14 We have an expedited joint motion of ICNU, Public
15 Counsel, and NWIGU to consolidate all four dockets other than
16 the PPA docket; that is to say, the decoupling dockets and the
17 ERF dockets.

18 Do I understand the motion correctly in all four
19 consolidating?

20 MR. FFITCH: Yes, Your Honor.

21 JUDGE MOSS: Okay. Anybody want to be heard on that?

22 Now, I have your response, so I've read that. No
23 need to repeat it, but if there's anything to add.

24 I already know what I'm going to do here, so there's
25 really -- you can argue if you want, but I've had a chance to

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1 think about all this stuff, so...

2 MS. CARSON: I have nothing to add.

3 JUDGE MOSS: As you all know, one of the Commission's
4 goals in doing what it's done -- do what it did at the open
5 meeting and so forth -- was to put all of this into common
6 management, so to speak. Well, I'm the manager, so I have given
7 this a lot of thought. In fact, it's been occupying all of my
8 waking and some of my sleeping hours in recent weeks.

9 So what we're going to do on consolidation is this:
10 We're going to consolidate the two ERF dockets. We're going to
11 consolidate the two decoupling dockets as a formal matter. We
12 are going to conduct those two proceedings on a common schedule,
13 so I'm not going to consolidate them formally at this time. I
14 may never do that. That doesn't mean I'm going to necessarily
15 issue separate orders.

16 So the only thing I'm accomplishing here from a
17 standpoint of managing the case and administrative convenience
18 is I won't have to unconsolidate something later, should there
19 be a need for me to do something individually.

20 But everything's going to be on a common schedule.
21 We're going to talk about that in a minute. And I don't know if
22 the final order in this proceeding will be one order or two
23 orders or three orders. I'm not sure, but we'll get -- we'll
24 cross that bridge when we come to it.

25 All right. What else do we have? I'm putting off

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1 the motion to compel.

2 We have a -- ICNU filed a notice of deposition for
3 Ms. Reynolds in the decoupling dockets. That is pending.

4 As I understand, there's no objection on that?

5 MS. DAVISON: I haven't -- sorry.

6 This is Melinda Davison. I have not heard any
7 objection from Staff. We accommodated their request to move the
8 date.

9 JUDGE MOSS: Yeah. I saw that, yeah. Okay. Well,
10 that's fine, then. I just wanted to make sure we're all on the
11 same page.

12 MS. CARSON: Your Honor, if I may speak to that?

13 JUDGE MOSS: You may.

14 MS. CARSON: I guess it depends. We may have an
15 objection depending on the scope of the questions in the
16 deposition. If it's going to confidential settlement
17 negotiations, then we would object to that.

18 MS. BROWN: So would Staff.

19 JUDGE MOSS: Okay. Well, I'll let you all work that
20 out during the depositions practice, which we don't ordinarily
21 indulge, but it seems to me -- and, frankly, in this instance,
22 because we are hoping to expedite the whole discovery process,
23 which we'll talk about a little bit more here in a minute, that
24 this may be a very efficient way to cut to the chase, so to
25 speak. But I'll also speak to the substance of your concern

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1 here in a moment when I deal with the motion to compel. My
2 least favorite subject is a discovery dispute.

3 MS. BROWN: Mine, too.

4 JUDGE MOSS: Well, then, I'm glad you didn't
5 interpose an objection to the deposition. That's good.

6 All right. Now, one last thing in this set that will
7 not be controversial, I suspect. I just need to ask.

8 Is there a need for a protective order in any of
9 these?

10 MS. CARSON: Yes, Your Honor. I believe there is.
11 There have already been some data requests that have been
12 propounded to us that ask for confidential information. I don't
13 anticipate there will be much confidential information, but in
14 an abundance of caution, I think we --

15 JUDGE MOSS: Do you think we need highly confidential
16 provisions?

17 MS. CARSON: I don't think so.

18 JUDGE MOSS: All right. Then I'm going to have to
19 prepare today protective orders in the decoupling dockets and
20 the ERF dockets without the highly confidential provisions.
21 If that should become apparent that it's necessary, you'll let
22 me know.

23 Okay. All right. Now, we have a motion to compel
24 outstanding. ICNU filed a motion to compel responses to -- I
25 believe it's two data requests that were at the early -- at that

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1 stage they were informal data requests, I suppose. They are now
2 formal data requests in my world, and so we'll deal with the
3 formal motion to compel. It is now procedurally proper,
4 whatever its status before, and I have the Company's response to
5 that.

6 The one thing that I find striking in connection with
7 that is that -- I should have flagged this in here, but
8 somewhere in here it says that PSE is intending to provide
9 certain of the documents that you asked for, Ms. Davison, in
10 connection with convening some discussion, some conferences with
11 other parties concerning the settlement that was filed 14
12 minutes before this conference began. So I haven't really had
13 much opportunity to look at that, but I think there's a pretty
14 clear line in terms of the discovery process here, Ms. Davison.

15 Oh, here it is. It's actually part of the PSE
16 response to Data Request No. 2.1. And part of that response
17 says that PSE's in the process of scheduling settlement
18 conferences, slash, technical conferences with other parties and
19 will provide work papers and proposals to ICNU and other parties
20 as requested and needed as part of that process.

21 I want that to occur now, regardless of when these
22 conferences take place, whether they're settlement or technical
23 or otherwise. I think technical conferences can be a useful
24 part of the discovery process even if no one else in the room is
25 inclined -- or on the phone -- to participate in any sort of

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1 settlement effort.

2 The technical conferences can be a very useful way to
3 get information exchanged, so I want the -- to the extent there
4 are papers that will be pertinent to that that are responsive in
5 some fashion to ICNU Data Request No. 2.1, I want you to go
6 ahead and provide them, Ms. Carson.

7 And, of course, I think since this is going to this
8 technical conference thing, then that should probably be
9 provided to everybody, all right?

10 Do you have a question?

11 MS. CARSON: Well, we have provided those already.

12 JUDGE MOSS: Okay. Good. Actually, my question that
13 I wrote in the margin here is, "Has this occurred?" I suppose I
14 should have asked that first.

15 MS. CARSON: Yes. The work papers relating to ERF
16 and decoupling and the settlement terms all have been provided
17 to ICNU, as well as, you know, many other responses to data
18 requests relating to aspects of ERF and decoupling, which are
19 elements of the settlement, have been provided. And we've been
20 operating on trying to get these out on a five-day turnaround
21 time already, so these have been provided.

22 What we haven't provided is the correspondence and
23 notes and negotiations relating to settlement, which is a
24 different matter than discovery to the underlining aspects of
25 the settlement or the different mechanisms that make up the

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1 settlement.

2 JUDGE MOSS: Well, and Ms. Davison may wish to be
3 heard here in moment. I'm sure she will and probably dispute
4 these. But I think, indeed, Ms. Davison, that Ms. Carson has
5 demarked the line that I alluded to a moment ago.

6 To the extent there are further settlement
7 negotiations and to the extent that ICNU elects to involve
8 itself in that process, then certainly that will present an
9 opportunity to delve into the questions of what tradeoffs were
10 made and what tradeoffs you're being asked to accept and allow
11 you to offer counter -- allow you to offer counterproposals and
12 so on and forth.

13 But in terms of, you know, what Staff and NWEAC and
14 PSE have done in terms of the settlement agreement that's
15 presented today, that's their agreement. I'm going to -- and
16 I'll discuss this more in a moment, too, but at this stage, I'm
17 just going to treat it as a stipulated position on all this
18 stuff. We're going forward with my procedural schedule, which
19 I'll talk in a minute to, but I don't think it's appropriate to
20 ask for, you know, the e-mails and correspondence and so forth
21 and such to the extent it doesn't bear directly on the substance
22 of the settlement agreement.

23 So it's a hard -- in some ways it's a little hard to
24 pin down, you know, what is and what is not appropriate in that
25 sense, but I just have to rely on the parties' good faith to a

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1 certain degree. But there is a settlement privilege, and those
2 who have engaged in settlement negotiations are entitled to that
3 privilege. And I know that puts you in an awkward spot in this
4 context. Frankly, the way this whole matter has unfolded, I
5 think, has placed everybody in something of an awkward position,
6 including me, in terms of figuring out what's going on here.

7 But in any event, I do want you to be provided with
8 all the substantive material. And as I understand what
9 Ms. Carson said, that's been provided.

10 MS. DAVISON: Mm-mm.

11 JUDGE MOSS: And maybe there wasn't very much. Based
12 on my review of the settlement, I don't know how much there
13 would be.

14 So I realize that I'm probably being about as clear
15 as mud here, but it's difficult to make a crystal clear ruling
16 on this matter, because it's sometimes difficult to say, Well,
17 that's purely, you know, negotiating and posturing and
18 negotiating strategy and so forth, versus, Oh, that's something
19 that's actually an element of the settlement we're bringing
20 forward, and this is how we got there.

21 But to the extent it does show something about an
22 element in the settlement that says that this is how we got
23 there, this is how we ran the numbers, or this is how we
24 calculated this or calculated that, that's certainly pertinent.
25 You know, that's what I would call "work papers," and that needs

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1 to be provided.

2 Indeed, as our rules require, when you file your
3 testimony in these matters, you have to provide your work
4 papers, so that's what's -- you know, that's what goes to the
5 substance of this stuff, so that's what's important in terms of
6 giving the Commission what it needs to decide the issues in
7 dispute.

8 So I certainly am prepared to listen what you have to
9 say, Ms. Davison, if you want to make a record on this, but
10 that's about as clear a ruling as I can give you on it.

11 MS. DAVISON: Thank you, Your Honor. Yes, this is
12 Melinda Davison on behalf of ICNU.

13 The two data requests that are at issue are ICNU 2.1
14 and 2.2.

15 JUDGE MOSS: Mm-hm.

16 MS. DAVISON: To date, we have received one single
17 document in response to those data requests.

18 Now, in the context of other data requests, we have
19 received some documents. But in terms of trying to actually get
20 documents in response to these two data requests, to my
21 knowledge, that's all we received.

22 Now, the issue that I have, Your Honor, with all due
23 respect, is that these meetings have been going on, we think,
24 since January. And when the parties raised the issue that this
25 was impermissible, secret settlement negotiations, counsel,

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1 Ms. Brown in particular, was very adamant that these were
2 technical conferences, and that these were not impermissible
3 settlement conferences. And --

4 MS. BROWN: I never said that.

5 MS. DAVISON: And I certainly recall you several
6 times saying that these were technical conferences, and so it
7 seems like the parties that were engaged in these discussions,
8 depending on what the issue is, either take the position that
9 these are technical conferences and they're not impermissible
10 secret settlement negotiations, or when we're asking for
11 documents to try to understand what took place at these
12 conferences, they become settlement negotiations that no other
13 party was invited to.

14 And we're not trying to -- as we said very clearly in
15 our motion, we're not trying to get into impermissible
16 attorney-client work product privilege, although I do believe
17 that PSE's characterization of work product privilege in the
18 response is not supported behind Washington law.

19 But, nevertheless, we believe that we are now faced
20 with a highly expedited schedule, and we've tried to do
21 everything possible to get up to speed as soon as we knew that
22 we were faced with this highly expedited schedule. And trying
23 to get the documents that went back and forth that form the
24 basis of the settlement was what we thought was one of the
25 quicker ways to get to the bottom line and understand what's

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1 transpired in the last three months.

2 So, you know, I understand your concern, and we're
3 not trying to dive into things that are highly sensitive between
4 these two parties. But, you know, quite frankly, all of us who
5 are not included in those negotiations are at a severe
6 disadvantage. We don't know if technical documents were given
7 to Staff by PSE. We assume they were because, otherwise, I
8 couldn't see the basis for entering into such a global
9 settlement.

10 JUDGE MOSS: And those would need to be provided
11 consistent with my ruling.

12 MS. DAVISON: All right. Well, thank you, Your
13 Honor.

14 JUDGE MOSS: Technical documents.

15 MS. DAVISON: Correct.

16 JUDGE MOSS: Right.

17 MS. DAVISON: Right, and that's what we're looking
18 for. We're trying to understand what transpired; you know, what
19 dollars are at stake; what dollars are shifting this way or that
20 way. That's what we're trying to do here.

21 JUDGE MOSS: I think that's fair enough.

22 All right. Anything else from anybody?

23 Mr. ffitch?

24 MR. FFITCH: Thank you, Your Honor. I would just
25 state for the record that we're supportive of the concerns

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1 raised by the Industrial Customers on this issue. And in our
2 view, this is distinguishable from the ordinary settlement
3 situation in which the settlement privilege clearly applies, as
4 we have indicated in prior pleadings.

5 JUDGE MOSS: Right. And that would carry into the
6 hearing room as well, so if you all brought forward settlement,
7 we would not be inquiring into that process of how you got
8 there.

9 MR. FFITCH: Correct. However, in this case, as our
10 pleadings have indicated, the procedural setting of these
11 discussions is highly unusual and precisely the type of
12 discussions which the Commission's own rules, we believe, are
13 designed to prevent occurring so that for the participants in
14 those to take shelter behind the Commission rules as to
15 privilege and so on, well, at the same time, in our view,
16 departing from the rules with respect to settlement negotiations
17 we think is improper.

18 JUDGE MOSS: Okay. Thank you.

19 Anybody want to be heard?

20 MR. TRAUTMAN: Well, a couple things. As we have
21 mentioned before, we've had -- there have been settlement
22 conferences. We have invited the other parties. They have
23 chosen not to come to some of those conferences.

24 And I guess -- and just in broader context in the
25 motion to compel, I would assume that what needs to be provided

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1 also has to have some relevancy. And I guess I -- it seems to
2 me, particularly when we've had settlement conferences, we have
3 a settlement agreement, and it seems that whatever is going to
4 be required to be produced through in response to discovery
5 should -- it should have to have some relevance as to
6 ascertaining the reasonableness of the settlement. And I'm not
7 talking about --

8 JUDGE MOSS: Well, that's not entirely the standard,
9 Mr. Trautman.

10 MR. TRAUTMAN: That's fine.

11 JUDGE MOSS: What's standard is the likelihood of
12 leading to admissible evidence, not that it be in itself
13 admissible.

14 MR. TRAUTMAN: I agree. But it has to be likely to
15 lead to admissible evidence, and I don't even think that
16 standard's being met with a lot of these requests.

17 JUDGE MOSS: Well, that may be. I don't know. These
18 are only two requests as to which there's a motion to compel, so
19 I don't know about the rest of them. I haven't seen them.

20 All right. I wanted to ask you another question,
21 Mr. Trautman.

22 You said that there were opportunities offered to
23 these other parties to participate in settlement negotiations
24 and these were declined.

25 To what period of time are you referring?

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1 MS. BROWN: March.

2 MR. TRAUTMAN: In March.

3 MS. CARSON: March 1 through March 18.

4 JUDGE MOSS: These were the dates that were offered
5 up after the Staff let us know that a settlement had been
6 reached in principle?

7 MS. CARSON: That's correct.

8 JUDGE MOSS: Okay. All right. Now, I'm going to say
9 again something I said the other day, which is if you all
10 elect -- that is to say those who are not parties to the
11 settlement agreement that we got this morning -- if you elect
12 not to engage with the parties who are putting this forth, that
13 is your choice. No one is going to hold it against you, but
14 that is the choice you're making.

15 I have encouraged you to not make that choice. I
16 would encourage you to try to engage with the parties who have
17 settled, and see if you can gain an understanding about what it
18 is they have agreed to and the basis for those agreements and
19 what they're hoping to accomplish. And, you know, you may or
20 may not find that it's something you can agree to, but at least
21 I would like you to engage with PSE and Staff and NWEAC.

22 As you all know from long practice, one of the things
23 we added to the whole procedural schedule a few years back was a
24 settlement conference date, because we want everybody to get
25 together and at least discuss it once.

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1 Now, you know, I'm sympathetic to the concerns that I
2 have heard expressed here today and before about the fact that
3 there were all these settlement negotiations that led to an
4 agreement in principle before you all were invited to the table.
5 I'm concerned about that, but that's what happened, and so
6 that's what -- you know, as the, you know, sort of pedestrian
7 philosophy states, it is what it is, so that's the situation you
8 got to deal with.

9 But I still think you should, you know, at least sit
10 down for an hour or something. In fact, you could do that today
11 after this is over and talk about it a little bit and see if
12 there might be some common ground on some issue. I don't know.
13 Maybe there's none. But I'm just encouraging that.

14 And I know you did schedule a "technical conference,"
15 I believe it's called, or "issues conference" or something. I
16 have got that on the procedural schedule that I passed out for
17 April 4th. That's coming a little later than is ideal, I think,
18 but if that's the first opportunity...

19 And perhaps that will be an opportunity when all of
20 the parties can be better informed on the basis of discovery
21 responses and so forth and participate more meaningfully, but
22 that can be whatever you all make it.

23 I'll hear from you, Mr. ffitch.

24 But, you know, if you can -- today is the 22nd; is
25 that right? So, you know, if you could move that up, that might

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1 be good, too, or have some kind of preliminary conversation.

2 Mr. ffitch?

3 MR. FFITCH: Thank you, Your Honor. As we have
4 indicated before, we don't want to get into a he said, she said
5 about these past interactions, but statements have been made
6 again about our willingness, or lack thereof, to engage in
7 meetings.

8 And just to state on the record our recollection of
9 events, we were asked to engage in a number of meetings over a
10 one-week period after learning the settlement had been reached
11 in principle, and that a new decoupling petition would be filed.

12 We, Public Counsel, indicated that we did not want to
13 get together for a meeting before either of those events
14 happened, and as you know, the decoupling petition was not filed
15 until, I think, the second week of March, March 8th or 9th. The
16 other dates that were put forward for us to meet on these
17 matters again were very shortly after the new settlement outline
18 was circulated and the new decoupling matter was filed, and what
19 we indicated to the other parties was that we would meet after
20 we had a chance to review those documents and continue with some
21 of the initial discovery that we had already propounded. And we
22 proposed two April dates for that, which would give us time and
23 our experts time to review the materials.

24 And so we have had an agreement for quite a period of
25 time to meet with Staff and the Company on these matters on

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1 April 4th.

2 JUDGE MOSS: Mm-hm.

3 MR. FFITCH: And as a matter of fact, some of us did,
4 in response to your encouragement from the Bench, sat down
5 informally with Staff and Public Counsel -- or Staff at the
6 Company last week.

7 JUDGE MOSS: Good. I'm glad to hear it.

8 MR. FFITCH: So I just want the record to reflect a
9 more complete picture, Your Honor.

10 JUDGE MOSS: That's fine. And except for that last
11 bit, I understood the events just as you laid them out.

12 I think the decoupling revised proposal, I have in my
13 notes here that that was actually electronically filed on March
14 1st; is that right? And then it was officially filed on the
15 4th. That is to say --

16 MR. FFITCH: I'm sorry.

17 MS. BROWN: Yeah, that's right.

18 MR. FFITCH: I think that's right.

19 JUDGE MOSS: Yeah. We got the paper copy on the 4th
20 at the Commission. That's the official filing date. So you'll
21 see some shifting dates in things that I published because the
22 Records Center posts things the same day they're received
23 electronically, but then they later notate when the hard copy is
24 received, and that is the official filing date. So if you see
25 some dates shifting by a few days, that's why.

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1 MR. FFITCH: I apologize, Your Honor.

2 JUDGE MOSS: No, no. That's all right.

3 MR. FFITCH: I stand corrected on that.

4 JUDGE MOSS: As you have an interest in having the
5 record clear, so do I, so that's when that occurred.

6 And I am pleased to hear, frankly, that you all did
7 sit down and have some informal discussion, and I would
8 encourage that to continue either informally or formally as the
9 parties deem appropriate.

10 And, again -- I'm going to say, again, Mr. ffitch,
11 you're right. Engaging in, you know, who did what to whom when
12 is not productive as I said before, and, indeed, as I believe
13 you said in one your pleadings.

14 And, again, it's not something I'm going to hold
15 against anybody. There's nothing that compels anyone to enter
16 into these settlement negotiations or to agree to a settlement,
17 so that's certainly not the only way to resolve contested
18 issues.

19 Ms. Davison, something further?

20 MS. DAVISON: I'd just like to make two quick points.
21 One is that we are doing everything we can to clear our
22 schedules for these expedited cases, but we have five major rate
23 cases pending in our firm right now, and so the early dates were
24 very problematic for us.

25 The other thing is that I would just simply hope that

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1 all the parties will be a little more collaborative going
2 forward. This notion of, Okay. Here are three dates that you
3 can pick from for settlement, and that's it, and then we send,
4 you know, responses back, it feels like it's not very
5 collaborative. It feels like it's not the usual case where,
6 yes, you go back and forth with calendars, but you finally land
7 on one that everybody's happy with.

8 And I think that, yes, we have received several
9 e-mails, some of which -- of settlement dates, some of which,
10 you know, conflict with other preexisting commitments.

11 And I just want to make sure that you understand and
12 the Commission understands that early on we asked to be included
13 on these settlement negotiations. And so we are very much
14 proponents of settlement, part of the major settlement with the
15 Avista case last year.

16 So I don't want there to be any notion that we're not
17 willing to sit down. We are. But we do have constraints that
18 we have to work around.

19 JUDGE MOSS: I understand, Ms. Davison. And I have
20 practiced in this arena from your side of the Bench, and I did
21 so both from a large firm and from a small firm. And I
22 understand the pressures on a small firm and how great they can
23 be -- or a smaller firm, and I also think that, you know,
24 collaborative process is certainly something I have been
25 encouraging everybody to participate in.

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1 And Ms. Brown's going to be want to be heard here in
2 a second, but I'll finish first.

3 One of the things that I am wanting bring to you
4 today is we have had some internal discussions in the
5 Administrative Law Division, and Mr. Kopta has agreed to make
6 himself available as a mediator or a settlement judge, whatever
7 you want to call him. The idea is to have someone who is a
8 third-party neutral to facilitate discussions.

9 Mr. ffitch raised this early on, and then sort of
10 placed the matter into reserve. Not just picking up on that,
11 but on my own experience in this field, I thought this case just
12 sort of cries out for that kind of thing. And so I would like
13 to suggest to you -- and I see some heads nodding in the
14 affirmative that that's something that could be useful -- and
15 then he could get in touch with you and perhaps bring that -- be
16 that collaboration point, if you will, in terms of getting
17 things moving in that direction.

18 Does anybody have an objection to that idea?

19 I'm hearing no objection, so I'm going to tell
20 Mr. Kopta that in addition to his other many other
21 responsibilities, he needs to make some time for this, and he'll
22 get back to you quickly.

23 And I'll say from myself and put it on the record
24 that I very much appreciate his willingness to step in in this
25 way and do this. He's very skilled, and that could be helpful.

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1 Ms. Brown, you have something?

2 MS. BROWN: Yes. Thank you, Your Honor. I just
3 wanted to comment on some remarks of Ms. Davison that I consider
4 to be misleading in terms of -- I don't want to get into who
5 struck John --

6 JUDGE MOSS: Right. I don't want you to.

7 MS. BROWN: -- although I've heard some of John's
8 striking this morning.

9 But in terms of working collaboratively, I just want
10 to note something that you were already aware of, and that is
11 that, you know, I don't believe it's purely collaborative to
12 note up depositions or motions to compel.

13 And we were able to successfully reschedule the
14 deposition of Ms. Reynolds. Ms. Davison had noted it for March
15 28th, and I suggested the 18th or the 25th. Neither of those
16 dates worked, so we wound up slipping it forward to April 2nd.

17 JUDGE MOSS: Right.

18 MS. BROWN: So in terms of negotiating, that did
19 work.

20 But -- and, well, as I said, I'll stop there.

21 JUDGE MOSS: Thank you.

22 MS. BROWN: But if I had a couple more hours, I would
23 keep going, but I will refrain from that. Thank you.

24 JUDGE MOSS: Thank you. I appreciate that.

25 I'm going to say it again, in light of what you just

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1 said, Ms. Brown, that, you know, there has been a lot of heat in
2 this proceeding, more heat than light. And I think it's time to
3 move in the other direction, and you all need to put aside your
4 sense of personal pique, or whatever, that has risen under the
5 circumstances that have surrounded all of this.

6 And I don't mean to lecture you -- but it sounds like
7 I am -- but, you know, that's what professionalism is all about.
8 I get mad too. I sometimes get mad at you all and I go back to
9 my office and rant and rave to whoever will listen and then I'm
10 over. I'm done with it.

11 Sometimes I write -- actually, I hope you never seek
12 these in discovery. I sometimes write orders that I hope never,
13 ever see the light of day and then I throw them in the trash and
14 write the order that I intend to write. That's part of
15 professionalism too. It's part of survival as a professional.
16 You have to get it out of your system. That's how I do it, so
17 you all find whatever works for you and get it out of your
18 systems. And I, you know, really don't need to hear it, and I
19 really don't need you to all to be exchanging that you did this.
20 You did that. It's just not useful. It's just not helpful.
21 And this case will not turn on that in any way. It really
22 won't.

23 So I'm just -- okay. I have said enough. I have
24 said that before, but there it is.

25 All right. Now, let's turn to the matter of process

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1 and procedural schedule.

2 I did pass out a schedule which I -- I don't know if
3 you noticed or not, it's front and back on the sheet that I
4 passed out. The schedule is different as to 121697 -- I'm
5 sorry. I'm going back to that. It's different as to the
6 decoupling and the ERF only in a small way.

7 In the case of the decoupling docket, Staff already
8 filed testimony on March 4th, which is the same day the Company
9 filed its testimony and exhibits pertinent to the revised
10 petition that was in the form of supplemental testimony.

11 MR. ROSEMAN: Excuse me, Your Honor. I am confused.

12 The docket numbers on the procedural sheet are
13 identical on the ones that I have, the exact same one, so I'm a
14 little bit confused.

15 JUDGE MOSS: Well, that may have been something that
16 came out in the copying process, so I apologize. Mine is
17 correct. I may have the only correct one in the room.

18 The one that says Staff testimony, March 4, 2013,
19 that's dockets 121697 and 121705. So just pencil that in and...

20 MR. ROSEMAN: This is the early one? Yeah. It says
21 the second one.

22 MS. DAVISON: Right, we have both.

23 MULTIPLE SPEAKER: Mine's right.

24 JUDGE MOSS: Yeah, I apologize. There was
25 probably -- you know, as this got processed and got copied,

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1 there was an earlier iteration where the docket numbers didn't
2 get changed and...

3 MULTIPLE SPEAKERS: Mine is correct.

4 JUDGE MOSS: Mr. Roseman, you got the only incorrect
5 copy in the room.

6 MULTIPLE SPEAKERS: Yeah, mine's incorrect, too.

7 JUDGE MOSS: Oh, no, no. Okay.

8 MULTIPLE SPEAKERS: Mine's wrong.

9 MULTIPLE SPEAKERS: Mine's right.

10 JUDGE MOSS: Well, anyway, it's easy enough to pencil
11 in, so pencil it in, and let's --

12 MR. ROSEMAN: I'm sorry for the confusion, but...

13 JUDGE MOSS: No, and I apologize. These things
14 happen. You see all the paper I came in here with today. It's
15 no wonder things got a little confusing.

16 All right. Anyway, so Staff filed testimony in the
17 decoupling dockets on March the 4th, so as we move down through
18 that schedule, then, it is different also in the fact that on
19 April 26 is the scheduled date for Public Counsel and Intervenor
20 response testimony which would respond to the common position
21 taken by PSE and Staff in their prefiled testimony.

22 And, of course, the ERF docket, that's not the case,
23 although I'm not sure in light of the settlement how this might
24 affect things, our proposed settlement. We had, of course,
25 Company direct testimony in support of the filing on February

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1 4th is what my record showed and then...

2 So we'd have Staff, Public Counsel, and Intervenor
3 response testimony. Typically, however, we now have Staff, PSE,
4 and NWECC have filed a settlement in which Public Counsel and
5 Staff are now taking a common position on the ERF. I'm sorry.
6 Did I say Public Counsel?

7 MR. TRAUTMAN: Yeah.

8 JUDGE MOSS: I'm sorry. I meant PSE. It's all those
9 p's that are throwing me off.

10 Staff and PSE are taking a common position on the
11 ERF, so I think -- and tell me what you think, Mr. Trautman, but
12 it seems to me that Staff, to the extent they're planning to
13 file any testimony in support of their position on the
14 settlement, needs to go ahead and do so promptly.

15 When would you suggest?

16 MR. SCHOOLEY: Monday or Tuesday.

17 MR. TRAUTMAN: Well, I would assume it would be not
18 just Staff, but it would be all the settling parties, I assume.

19 JUDGE MOSS: Well, NWECC, as well, would be --

20 MR. TRAUTMAN: And PSE.

21 JUDGE MOSS: But I don't think -- well, yeah, I guess
22 they're...

23 MR. TRAUTMAN: I think they would have to because --

24 JUDGE MOSS: Well, I don't know that PSE needs to
25 file anything else. I mean, as I understand, I did get through

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1 the settlement in the few minutes I had. I didn't have any
2 chance to study it, but I don't see that there's anything in the
3 settlement that deviates from what PSE filed; is that right?

4 MR. TRAUTMAN: Well --

5 MS. CARSON: That's correct.

6 JUDGE MOSS: So they've already filed testimony in
7 support of that.

8 MR. TRAUTMAN: Well, there is with respect -- oh, in
9 these two. I'm thinking of -- that's right. I was thinking of
10 TransAlta.

11 JUDGE MOSS: That's a different matter.

12 MR. TRAUTMAN: I understand.

13 JUDGE MOSS: So I would like to have the Staff -- I
14 thought I actually heard Mr. Schooley say back there that maybe
15 Monday or Tuesday might work. I don't know. I thought it was
16 one of the counsel making a joke, but maybe if it was
17 Mr. Schooley, we should go ahead with that.

18 MR. TRAUTMANN: Would Wednesday be soon enough?

19 JUDGE MOSS: What date is that?

20 MR. TRAUTMAN: That's the 27th.

21 JUDGE MOSS: March 27th. All right. That will be
22 the date for the Staff testimony. And that's good, because that
23 will be in advance of the April 4th issues/technical conference,
24 assuming that's going to go forward on that date, which I am
25 assuming.

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1 MR. FFITCH: Your Honor, just to clarify, the Staff
2 testimony would be in support of the settlement?

3 JUDGE MOSS: Yeah. And I'm viewing this this way --
4 and I always view multiparty settlements this way, but I may not
5 always say so, but I do -- that's a stipulation. It's a
6 stipulated position as to the outcome of the case.

7 And so, you know -- and we have a hearing about it.
8 We always have to have a hearing about a settlement. And
9 whether it's contested or not, we have a hearing.

10 But in the case of a contested settlement, then, you
11 know, you, Mr. ffitch, for example -- not to single you out, but
12 just because we're talking here -- your positions in the case
13 will be part of the record in that hearing, your litigation
14 position, it's in opposition to the settlement, and then there's
15 the settlement and the testimony in support of that outcome.
16 And the Commission will ultimately have to decide whether to
17 accept, reject, or accept with conditions. That's how that will
18 come out.

19 So does that clarify things at all for you?

20 MR. FFITCH: Well, I guess I would like some more
21 guidance, Your Honor.

22 I do agree that in the ordinary course in many of our
23 settlements, the filing of a settlement, even a non-unanimous
24 settlement, the Commission has narrowed the scope of the hearing
25 to be simply about whether that settlement is accepted or

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1 rejected or conditioned, and it is not a hearing on the full
2 merits.

3 JUDGE MOSS: That's not going to be the case here.

4 This schedule is very tight, and I've tried to strike
5 a balance between what the Company wants and Staff and so forth
6 in their settlement. They want that May 1st date, and,
7 Mr. ffitch, I was mindful of the filing that you made suggesting
8 the dates that would carry us, I believe, into September. I
9 gave a lot of thought to this, I discussed it internally, and
10 this -- I believe this schedule works.

11 But in terms of reaching a full and final resolution
12 as to this, all of this -- which is my intention and the
13 intention, I believe, of the Commissioners -- we just need to
14 hear everything we need to hear on the merits.

15 So if you have developed a position on the ERF, on
16 the decoupling, fine. If you want to file a response,
17 vis-a-vis, the pending petition for reconsideration and motion
18 to reopen the record, you will have an opportunity to do that,
19 too. And I'll tell you about that in just a minute. We want
20 everything before us, and then we'll be able to decide and get
21 this done in accordance with this schedule.

22 We're looking for posthearing briefs on May 30th with
23 respect to the ERF and the decoupling, and we'll have the
24 hearing on May 16. So that's pretty quick turnaround. I have
25 to ask PSE, assuming it's going to be willing, to help us with

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1 an expedited transcript there. The parties can work with the
2 court reporter on that.

3 And then I will tell you -- although you will never
4 see it on a procedural schedule, and I will never make the
5 commitment, I will tell you that my aspiration is to have an
6 order after the -- after the briefs in two weeks, the middle of
7 June. That's my goal. I'm pretty good at meeting my goals.
8 We'll see how it works out this time.

9 But I'm also going to -- I'll just jump ahead here
10 and say with respect to the TransAlta matter, one of the things
11 I have to do for the Commission in connection with that
12 proceeding is to (1) rule on Staff's pending motion that has
13 never really been ruled on, and to establish procedural dates in
14 that case. There's a notice right now that would have the
15 Commission deciding that on the 29th of March. Obviously,
16 that's not going to happen.

17 Again, following consultation internally and based on
18 my own thoughts about how this should all unfold -- it looks
19 like a briefing date fell off of one of these schedules by the
20 way, but it's the same in both -- I'm going to set, if you will,
21 common dates for the PPA docket as well. And what I mean by
22 that is the only thing yet to be filed there is any response
23 anybody wants to file, and that can respond to the substance of
24 the petition and also to the settlement proposal, proposed
25 resolution.

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1 And I think that that -- I'll just set that date the
2 same as the posthearing briefs, make that May 30th, and you can
3 prepare all of this at one time and submit it. And that can
4 be -- I think that should be a separate document from your
5 briefs, but you could file it the same day or sooner.

6 Again, I'll make the point that procedural dates are
7 deadlines, so if you want to get that out of the way sooner,
8 that's fine. You can do that.

9 And then I will set -- I will notice the Commission's
10 intention to act in that matter by the last business day of
11 June, which is June 28th.

12 Now, of course, I prefaced that by telling you that
13 my goal is the middle of June, and so that also would be the
14 goal in that case. We do it all at the same time. That's what
15 I want to do, so that's probably what will happen. But I'll
16 give the Commission a little slack since that's a notice, and I
17 don't want to have to do it a third time, so that's why that
18 date will be on that notice, okay?

19 Now, while we're on the subject of the process and
20 procedural schedule, let me ask if there are any points people
21 wish to raise to my attention. I don't need to hear that, Oh,
22 this is horrible. We can't do it, because we're just not going
23 there.

24 As you know, I normally put it to the parties to
25 establish the schedule. But this situation is, in my

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1 experience, unique, and so I have decided to handle it in a
2 unique fashion -- or unique for me -- and just set this. But
3 I'm willing to listen if there's some particular aspect of this
4 that you would like to address. I'll listen to what you have to
5 say and see if there's any adjustment I might be willing to
6 make.

7 Anybody?

8 MR. TRAUTMAN: I just have a quick clarifying
9 question.

10 So the filing that would have been due on March 27th
11 responding in the -- TransAlta responding to the motion for
12 reconsideration is now part of the May 30th filing?

13 JUDGE MOSS: It's continued until May 30th.

14 MR. TRAUTMAN: May 30th. Okay.

15 JUDGE MOSS: And do you all need a written order on
16 that?

17 MS. BROWN: No.

18 MR. TRAUTMAN: No, no. I just wanted to be sure that
19 May 27th was not...

20 JUDGE MOSS: Right.

21 MR. TRAUTMAN: No, March --

22 JUDGE MOSS: Right.

23 MR. TRAUTMAN: -- 27th was not an actual deadline.

24 JUDGE MOSS: All right. We...

25 MR. FFITCH: Your Honor?

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1 JUDGE MOSS: Mr. ffitch?

2 MR. FFITCH: I'm just responding to your question.

3 We would request a written order on the extension of
4 time or inclusion in the schedule with respect to the response,
5 the petition for reconsideration, if for no other reason that it
6 gets pretty difficult to track all these dates and all these
7 dockets and the overlapping schedules. And our staff would love
8 to have a piece of paper that says when it's going to happen.

9 JUDGE MOSS: Then you shall have it, Mr. ffitch.

10 MR. FFITCH: Thank you.

11 JUDGE MOSS: I will enter an order.

12 And, you know, just to dot the i's and cross the t's,
13 it will deny your motion for continuance and grant a continuance
14 on the Commission's own motion as indicated, okay?

15 Ms. Davison?

16 MS. DAVISON: I had two questions.

17 JUDGE MOSS: Okay.

18 MS. DAVISON: The first one is the due date of
19 testimony and exhibits.

20 I'm wondering if we can actually have till five p.m.
21 as opposed to the usual two o'clock?

22 JUDGE MOSS: For electronic submission?

23 MS. DAVISON: Yes.

24 JUDGE MOSS: Sure.

25 MS. DAVISON: Okay.

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1 JUDGE MOSS: The Records Staff will hate me, but
2 there you go.

3 MS. DAVISON: Thank you.

4 JUDGE MOSS: No. I think you can certainly submit --
5 I would encourage you to submit it as early as you can. And
6 that's really the reason we set the earlier time is because the
7 Records Center tries diligently to get this stuff posted the day
8 filed, and I don't want to ask people to stay late to do that.

9 MS. DAVISON: Right. We will --

10 JUDGE MOSS: So if you can get it in earlier, that
11 will be very helpful to us, but I'll give you that extra time.

12 MS. DAVISON: We appreciate that since we have two
13 pieces of testimony due that day.

14 JUDGE MOSS: Sure. Again, we're going to follow the
15 practice. I know you all are very familiar with just -- the
16 courtesy copies that go, of course, to everybody else and to me,
17 are helpful as well.

18 And, you know, on these filing dates, I typically am
19 around a little later than five just in case if something comes
20 in, so...

21 MS. DAVISON: Then the second: I think you clarified
22 this, but just to make sure the record is clear that on the
23 event schedule I have, we should strike Staff from the testimony
24 date on both dockets; is that correct?

25 JUDGE MOSS: Yeah. On the one they're not indicated;

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1 on the other, yeah, because they're going to file on March 27th
2 in the ERF dockets. So that is correct. And then that will be
3 reflected in the prehearing conference order version of this,
4 hopefully, with the right docket numbers.

5 MS. DAVISON: All right. Thank you, Your Honor.

6 JUDGE MOSS: Okay. No problem.

7 Anybody else?

8 MR. FURUTA: Your Honor?

9 JUDGE MOSS: Yes, sir, Mr. Furuta?

10 MR. FURUTA: For the March 27th date, I take it NW
11 Energy Coalition is also to file?

12 JUDGE MOSS: To the extent that they -- yeah. NW
13 Energy Coalition is supporting the settlement, so -- this is
14 their common position with PSE and Staff, and so they would need
15 to file at the same time.

16 So if NWECC intends to file any testimony in support
17 of the settlement on the ERF, that would be the time.

18 Now, I assume that NWECC didn't have any intention to
19 file anything on decoupling? Maybe yes? Maybe no? I don't
20 know.

21 MS. GOODIN: That's correct; since we already filed
22 testimony supporting the joint petition.

23 JUDGE MOSS: Right.

24 MS. GOODIN: And I believe we're not party to the ERF
25 docket, so I don't anticipate any additional testimony.

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1 JUDGE MOSS: Don't anticipate anything. Okay. Fine.

2 And Mr. Furuta has usefully clarified that the same
3 rules apply to all who are similarly situated.

4 Okay. Anything else?

5 MR. FFITCH: Yes, Your Honor, if I may?

6 JUDGE MOSS: Yes.

7 MR. FFITCH: Two points: The first point is that I
8 understand your ruling today with respect to the schedule.

9 For the record, I will state that Public Counsel
10 objects to the schedule. We believe it's prejudicial to our
11 ability to prepare an adequate response to these filings, and
12 that we believe that the schedule that we previously requested
13 would be the appropriate one for the case.

14 The second point with respect to the draft -- or to
15 the schedule that's been distributed. If that is adopted, we
16 would object to having the discovery cutoff date on April 10th
17 and would simply request that there be no -- either no discovery
18 cutoff date at all, which is often the case in Commission cases,
19 because there's a natural cutoff right before hearing, or
20 alternatively have a discovery cutoff date, perhaps on May 14th,
21 the same date the cross-examination exhibits are due.

22 JUDGE MOSS: No. I want a discovery cutoff date
23 earlier in this proceeding, and, frankly, this is a matter of
24 Commission practice that needs to change. I have long thought
25 this practice of conducting discovery right up to the eve of a

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1 hearing is a bad practice, and I will be advocating this in the
2 upcoming revision of the Commission's procedural rules, which,
3 if anybody hasn't heard yet, we opened a rulemaking on our
4 procedural rules, so I will be arguing for that change.

5 If you don't get the information you need, if there's
6 some problem you feel like, you can always ask for special
7 treatment. But I think what I want to do here, what I'm trying
8 to accomplish here is to say, Look. Figure out what you need
9 that you haven't gotten, and let's get on with it.

10 And I think the discovery -- I'll say another thing
11 about this. I think discovery practice at the Commission is out
12 of hand. When I see three and 400 data requests in a case,
13 there's something wrong with that.

14 At the FERC, we were limited to 30. We got 30 data
15 requests -- or we called them "interrogatories." In an
16 interstate natural gas pipeline rate case, that's what we got.
17 We managed. Now, there were a lot of multipart questions that
18 the judge let us get away with, but, you know, it needs to be
19 more reasonable.

20 And in this case, particularly, I feel comfortable
21 with setting this date, Mr. ffitich, because I think the scope of
22 these matters is pretty limited.

23 The decoupling matter. Now, for whatever else you
24 may say, yes, I understand there was a revised proposal filed on
25 February the 4th, but we've been kicking this discovery thing

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1 around at the Commission for a long time. And all of you have
2 participated to one degree or another in various aspects of
3 that. Most recently we looked at it very thoroughly in both the
4 Avista and the PSE general rate cases, and a lot of discussion.
5 Of course we see a lot of -- we see ourselves quoted back a lot
6 on some of that in filings that have been made.

7 But, anyway, there's been a lot of general discussion
8 back and forth, exchange of information and ideas, so a lot of
9 that ground has been covered. I know you'll have specific
10 questions with respect to the specific proposal here, and it's
11 different. It's got this rate plan in it and so on and so
12 forth. I understand that, but that's the sort of thing you'll
13 be needing to inquire into is those few specifics. You don't
14 need to get into the broad aspects of decoupling and so forth.
15 That's been done, so that's what I think about that.

16 Same thing with the ERF. Now, the ERF is a fairly
17 narrowly drawn rate matter. It's not a general rate case. It
18 doesn't have all those major issues that take so much time like
19 cost of money, for example, or -- and that require you to engage
20 additional experts and so on. I think it's fairly
21 straightforward. To be sure there will be questions you'll
22 have, you'll need data to conduct your analyses and -- so you
23 can present your own evidence and say, Oh, this is horrible
24 because it's going to cost a hundred billion dollars over the
25 next five years or whatever.

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1 But, you know, to the extent you need data, I think
2 you can ask for it early on. And I hope -- and I think it's the
3 case. My belief is that you all have been -- and you've told me
4 you've been engaging in this on an informal way up until now,
5 and -- so there's a lot of stuff out there.

6 I'll use the approach of saying -- and I'm sure the
7 Company will do its best to get the information to parties on an
8 expeditious basis.

9 And, again, the five-day turnaround is also a
10 deadline. If things can be provided next day, provide them, and
11 help. You know, that's part of the collaborative effort, too,
12 in getting through this schedule.

13 And everybody needs to understand -- PSE needs to
14 understand, ICNU needs to understand, NWIGU, everybody needs to
15 understand -- if there's any problems in the smooth and elegant
16 management of this case that I intend to bring to it, that could
17 disrupt things, so I don't want any posturing in this regard.

18 But if there's a real problem, you'll bring it to my
19 attention, I'm sure, and I'll have to deal with it. And you
20 know how mean I am, so let's...

21 MS. DAVISON: Judge Moss?

22 JUDGE MOSS: I've said a lot about it, Mr. ffitich,
23 but I know it's unusual, and that's why I said a lot about it,
24 because I appreciate your concern, and I know this is deviation
25 from long-standing practice, although I believe some judges have

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1 done this in some general rate cases in recent times, I think.
2 I believe, yeah, Judge Friedlander did it in the Avista case.

3 MR. FFITCH: That's correct, Your Honor, but not at
4 this early stage of the schedule.

5 JUDGE MOSS: Not as early a stage, but we'll see.
6 I mean, if you get to this stage and it's like, Oh,
7 my gosh, you know, then you'll bring it to my attention I'm
8 sure.

9 Ms. Davison?

10 MS. DAVISON: The only issue I wanted to bring to
11 your attention is that just sitting here today, not knowing what
12 will happen down the road that gives me a little heartburn, is
13 the fact that we don't have the ability to conduct discovery on
14 rebuttal and cross-answering testimony.

15 And so I guess, Your Honor, I would ask that if new
16 information arises that requires discovery, if we at least would
17 have the ability to request that on a limited basis.

18 JUDGE MOSS: I think that certainly you will have the
19 opportunity to request that on a limited basis should that
20 arise.

21 Now, as you all know, we don't expect any new stuff
22 to come on rebuttal and cross answering. Now, that is a tactic
23 that we have tried to move the parties away from for years, and
24 with good success, I think, in the energy sector, not so much in
25 another sector that will go unmentioned.

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1 But, yes. That's to the extent something new is
2 introduced. And, certainly, I'll entertain probably favorably
3 the need for some inquiry, but I don't expect that to happen
4 quite frankly, so...

5 MS. CARSON: Your Honor?

6 JUDGE MOSS: Ah, there you are. It's this sound
7 system.

8 MS. CARSON: Along those same lines, I am concerned
9 that there could potentially be the need for some discovery on
10 Public Counsel and Intervenors' testimony.

11 I mean, we don't typically have a lot of discovery.
12 But if they're putting forth, you know, formulas or, you know,
13 other data that's different from ours, we would want to ask
14 questions about it.

15 So do we...

16 JUDGE MOSS: So you could move very quickly in the
17 time available to let me know that there's something like that
18 that you need to inquire into, and I will...

19 MS. CARSON: Okay. We're happy to do that.

20 JUDGE MOSS: If I can't figure it out, then I'll
21 probably say okay.

22 MS. CARSON: Okay.

23 JUDGE MOSS: All right. So, yes.

24 And this does make an important point. As always, I
25 will be flexible in administering this case and managing this

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1 case. Now, you know, let's not let anything get out of hand,
2 but, you know, my goal -- as you all know, you all have known me
3 for years -- I want to be fair. I want to give everybody an
4 opportunity to develop their case.

5 What I really want at the end of the day is I want
6 the Commission to have the record it needs to decide these
7 matters. And maybe it sounds trite, but, you know, the
8 Commission makes its decisions in the public interest. That's
9 what we do. We're not deciding for you or for you or for you.
10 We're deciding in the public interest, so we need a full record
11 adequate to the task. And we try to do what we can to help make
12 that happen, so that's what this is all about from my
13 perspective. And I have some role in writing the order, so it's
14 very helpful to me.

15 All right. Anything on else on that subject,
16 procedural schedule?

17 All right. Now, going back to my agenda here. Some
18 have already done this -- I'm getting into the technical stuff
19 now -- the electronic submission filing serving process.

20 If you want to waive service between yourselves by
21 mail and hand delivery and just get things electronically, you
22 need to file a letter with the Commission so that we have that
23 on record so nobody sues us later.

24 We'll continue our practice of sending courtesy
25 copies, but we are still required by law to send you everything

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1 by mail, so you're going to get it whether you like it or not.

2 I have already discussed the ADR matter, alternative
3 dispute resolution matter. We're going to make Judge Kopta
4 available to you, and he will be contacting you directly on
5 that.

6 On the decoupling and the ERF dockets, we need an
7 original plus 16 copies for internal distribution.

8 And, again, if what you file includes confidential or
9 highly confidential -- well, in this case, we're not
10 anticipating it, but any kind of confidential information, file
11 the original and 16 of the fully unredacted version -- because
12 anybody who gets in the Commission is entitled to look at the
13 confidential material -- and one copy of the redacted version --
14 or an original and one copy so really two copies of the
15 redacted. That's for the Commission's file so if there's a
16 public records request, we can respond to that.

17 Filings are through the Commission Secretary. You
18 all know that. I'm not going to give you the details of that,
19 even though I wrote them all down here.

20 I did indicate a date for the exchange of
21 cross-examination exhibits there, just a couple days before the
22 hearing on May 14th. We've had great success over the years in
23 accomplishing that without the need for a prehearing conference,
24 and I'll hope that we'll do that again.

25 I will, closer in time to the hearing, ask for a

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1 witness list and the order of witnesses and the usual sort of
2 things we do in that regard.

3 And then as I have mentioned already, I, of course,
4 will enter a prehearing conference order memorializing all of
5 this, and I will enter an order in the TransAlta matter
6 memorializing the processing dates that I've discussed there.

7 Is there anything else anyone wishes to bring to my
8 attention today?

9 Mr. ffitch?

10 MR. FFITCH: Your Honor, a question on the cross
11 exhibits.

12 May we have leave to file only the paper and
13 distribute -- rather, distribute the paper cross exhibits on the
14 14th, follow up with final electronic copies after the hearing
15 determines the actual final exhibit list?

16 JUDGE MOSS: Well, I think we -- in the last round,
17 we decided that we wanted to move back to the old process of
18 doing it all on the same day. If it's administratively
19 infeasible, then I would ask that you do it the next day if it's
20 just too cumbersome to do both in a single day. I understand
21 the problems, the challenges, but we did internally -- we've
22 discussed all this. We tried the experiment of doing it in the
23 way you suggested, and, frankly, it just didn't work out from
24 our perspective. It created workload and problems and confusion
25 that we just don't want to continue that process. So we're

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1 going to try to move back to having everything done on the same
2 day.

3 MR. FFITCH: Thank you, Your Honor.

4 JUDGE MOSS: Yeah.

5 Yes, ma'am?

6 MS. GOODIN: Judge Moss, should we assume that this
7 hearing will be only one day for both dockets?

8 JUDGE MOSS: I have reserved two days for it. I'm
9 hoping that we can get through it in one day. My sense of the
10 scope of the issues and so forth is such that I think a one-day
11 hearing would probably be adequate, but I have reserved the 17th
12 also.

13 MS. GOODIN: Thank you.

14 MR. FFITCH: Your Honor, I apologize. I have a note
15 to request the inclusion of a public comment hearing in the
16 schedule.

17 JUDGE MOSS: Yes. Thank you for mentioning that,
18 Mr. ffitich. We have discussed that and decided that we will do
19 this in the same manner that we have done it in PCORC
20 proceedings, which is to say that we will schedule a public
21 comment hearing at six p.m. on the 16th, leaving us time for a
22 quick sandwich after the evidentiary hearings that day.

23 And we will, of course, entertain written comments up
24 to the close of the record, and I understand there's already
25 some comments that have been received. And I haven't seen them

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1 but...

2 Okay. Anything else?

3 I have recently set records for the shortest
4 preconference that I've ever held. I think this may be the
5 longest. But in any event, I think it was very useful. I hope
6 it was -- it was certainly useful from my perspective, and I
7 hope it was useful from your perspectives as well.

8 And I look forward to working with you as we move
9 forward through this case over the next couple of months and
10 bring it to a good resolution for all concerned.

11 So thank you for being here. The record's closed for
12 the day. We're in recess.

13 (Proceeding concluded at 10:51 a.m.)

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