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

2 JUDGE TOREM: We'll be on the record. This
3 is Administrative Law Judge Adam Torem. This is Docket
4 UG-060518. This is the Avista decoupling matter set
5 for hearing today based on a notice sent out after an
6 open meeting on February 28th, 2008. Today's date is
7 March 24th, 2008, a little bit after the one o'clock
8 start time we had today.

9 Today we have a very limited agenda. The
10 question that was set in the notice was an opportunity
11 for comment on the limited issue as to whether the
12 substantive value of an evaluation plan and final
13 evaluation report have been irreparably undermined
14 through Avista's delay, and what remedy or sanction, if
15 any, is appropriate for this Commission to take, so we
16 are going to remind folks of that limited scope this
17 afternoon and take appearances.

18 After appearances, Chairman Sidran may direct
19 some questions and perhaps entertain opening arguments,
20 opening comments. I understand there have been some
21 filings of prefiled direct testimony from Avista, a
22 motion from Public Counsel to submit oral testimony
23 today. We will deal with those shortly after we take
24 appearances, beginning with the Company.

25 MR. MEYER: Your Honor, appearing for Avista,

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1 David Meyer.

2 JUDGE TOREM: Public Counsel?

3 MR. FFITCH: Simon ffitch, assistant attorney
4 general for Public Counsel.

5 JUDGE TOREM: The Energy Project?

6 MR. EBERDT: Chuck Eberdt from The Energy
7 Project.

8 JUDGE TOREM: Northwest Industrial Gas Users?

9 MR. FINKLEA: This is Ed Finklea representing
10 the Northwest Industrial Gas Users.

11 JUDGE TOREM: Is the Northwest Energy
12 Coalition present?

13 MS. HIRSH: Nancy Hirsh.

14 JUDGE TOREM: Commission staff?

15 MR. TRAUTMAN: Greg Trautman, assistant
16 attorney general for Commission staff.

17 JUDGE TOREM: Were there any other parties I
18 failed to call? Chairman Sidran?

19 CHAIRMAN SIDRAN: I do want to just preface
20 this proceeding by asking the parties to focus on the
21 particular issues that we are most interested in
22 hearing about, and I don't know if anyone is interested
23 in an opening statement. Speaking for myself, I don't
24 think that is necessary, but if anyone wants that
25 opportunity, I think we wil afford that.

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1 My main message I think I conveyed at the
2 open meeting on this topic is that we are not here to
3 resolve issues about the evaluation plan and its
4 content. We are here to determine whether the
5 evaluation plan can proceed, if it can proceed, whether
6 the time frames that were initially envisioned in the
7 settlement agreement and the order adopting it need to
8 be modified in some way, and the parties have submitted
9 testimony and argument in that regard.

10 So I would like to encourage you to stay
11 focused on the topic that is before us. I noticed in
12 the some of the pleadings and some of the testimony
13 there was discussion devoted to the substantive issues
14 that exist among the parties about various aspects of
15 the evaluation plan, and while those are issues that
16 may need our attention, they don't require our
17 attention this afternoon, because presumably, if this
18 is going to go forward, there will be time for the
19 parties to work out some of those issues. Some of them
20 appear to have been worked out even in the course of
21 last-minute filings, and that's all well and good, but
22 I really do hope people will focus on the reason why we
23 set the hearing, which I think was quite clear in our
24 notice. With that, Judge Torem, if there is a party
25 that wishes to offer any opening comments, I think we

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1 should allow that.

2 JUDGE TOREM: Does the Company wish to have
3 opening comments today?

4 MR. MEYER: We don't, Your Honor, unless one
5 is requested by the Commission.

6 JUDGE TOREM: Any other parties wishing to
7 make an opening statement in this proceeding? None
8 from Commission staff? Public Counsel?

9 MR. FFITCH: Your Honor, it's probably not an
10 opening statement but just further inquiry. We do have
11 prefiled testimony now from the Company, and in
12 response to that, we have a motion asking for an
13 opportunity for our witnesses to make some limited
14 direct testimony, so I'm inquiring how we would proceed
15 on those matters.

16 JUDGE TOREM: We will take that up as soon as
17 we find out if there are any opening statements, but
18 that would be the next order of business. What I would
19 propose is do the Commissioners wish to accept the
20 prefiled testimony that came in from Avista, and if
21 they do not, perhaps, then your motion would be taken
22 up one way or the other second.

23 So let me ask, are there any parties on the
24 bridge line that wish to make an opening statement?
25 Ms. Hirsh, did you want to make an opening statement?

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1 MS. HIRSH: I did submit a written statement
2 or testimony earlier on March 17th, but I did want to
3 convey specifically on the question asked by the
4 Commission of whether the delay in developing the
5 evaluation plan inhibits the evaluation and delays the
6 time line, and based upon the meeting that Avista had
7 with parties, the Coalition feels like there is ample
8 time, although compressed, to work through the issues,
9 identify what are the key pieces of data that need to
10 be evaluated, what are the structures and systems that
11 Avista has put in place or failed to put in place that
12 need to be looked at and examined and that we can
13 identify those in sufficient time for the evaluation
14 plan to be developed, the RFP issues, and then even
15 after the RFP is issued and we are reviewing potential
16 evaluators and contractors, it's our belief that we can
17 continue to fine-tune the evaluation plan document even
18 as we are reviewing evaluators and hopefully bringing
19 them in on the process of fine-tuning the evaluation
20 tool that we will utilize.

21 The one thing we would suggest is that the
22 development of the criteria in the RFP and what we are
23 looking for in an evaluator be done by the Company and
24 be done in parallel with the development of the
25 evaluation plan. In order to hit the target of March

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1 31st, we need to move ahead on those elements of this
2 process as well as just the evaluation plan itself.
3 Thank you.

4 JUDGE TOREM: Were you saying March 31st like
5 next Monday or April 30th?

6 MS. HIRSH: I'm sorry, April 30th.

7 JUDGE TOREM: On the bridge line, any opening
8 statement, Mr. Finklea?

9 MR. FINKLEA: The Gas Users don't believe
10 that the delay thus far has caused any actual harm in
11 the planning and development, just a minor
12 inconvenience, but we think that it will require
13 everybody to work very promptly from here on out.

14 JUDGE TOREM: Mr. Eberdt, did you want the
15 opportunity to speak one way or the other?

16 MR. EBERDT: No, sir, thank you.

17 JUDGE TOREM: Then Chairman Sidran, any
18 questions from those opening statements, or should we
19 move on to the prefiled testimony by Avista?

20 CHAIRMAN SIDRAN: Let's move on.

21 MR. MEYER: This is just a process point, and
22 it's entirely to be helpful to the Commissioners. I
23 wanted to make you aware that we have certain
24 individuals that are seated behind me that are here in
25 order to be helpful to the Commission should they have

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1 questions. They are Mr. Kelly Norwood; Mr. John
2 Powell; Mr. Hirschhorn, who has prefiled testimony, and
3 we also have Dr. Jane Peters, who has prefiled
4 testimony.

5 I think to her left is Mr. Terry Fry. He's
6 with Nexant, the consulting firm, and then also
7 Mr. Ryan Bliss to her right who is with her firm.
8 Again, to the extent that there is information you were
9 interested in, they are available as resources.

10 JUDGE TOREM: Avista has sent in prefiled
11 testimony of two witnesses, and I think there is a
12 motion at this point to explain why it was filed
13 outside of the request and for us to accept that
14 testimony?

15 MR. MEYER: Yes, Your Honor, and again, it
16 was entirely an effort to be helpful and to provide
17 some advance notice, some explanation of what we were
18 intending to say so we could address some of the issues
19 as best we can anticipate that you might have. It was
20 entirely in an effort to be constructive.

21 JUDGE TOREM: It's my interpretation by
22 looking at Mr. Hirschhorn's prefiled testimony that it
23 was responsive to much of the items and issues raised
24 by Public Counsel, and in fact, exceeded most of the
25 requests or demands of Public Counsel in that regard?

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1 MR. MEYER: I think that is a fair rough
2 characterization of it. Again, frankly, the first half
3 of Mr. Hirschhorn's testimony was largely stage setting
4 which repeated some of the background history, most of
5 which was already in our comments.

6 The back half of his testimony really was
7 designed to respond to specific written comments that
8 Public Counsel had made. Certainly with respect to
9 Dr. Peters' testimony, her testimony was designed to
10 address head-on the two issues that the Chairman
11 raised.

12 JUDGE TOREM: Mr. Ffitch, from Public
13 Counsel's perspective, your motion did not ask to
14 strike but simply meant to be offered an opportunity to
15 again be helpful to the Commission in response to the
16 issues raised after the original deadline in this; is
17 that correct?

18 MR. FFITCH: That's correct, Your Honor. We
19 are interested in getting to the ultimate questions
20 here of developing a workable evaluation plan. For
21 that reason, we conditionally do not object to the
22 testimony with the request that we have an opportunity
23 to have Ms. Kimbal provide some direct testimony on
24 topics that are covered in the testimony, particularly
25 Mr. Hirschhorn's list of questions for guidance from

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1 the Commission and the additional matters we've
2 identified as request for guidance.

3 We also have available on the bridge, if the
4 Commission wishes, Mr. Brosch, who we can tender to
5 testify about some components of designing an
6 evaluation plan if the Commission is interested in that
7 information.

8 JUDGE TOREM: I can tell you the Commission
9 is not interested in how to design that plan today.
10 That's on the parties. It's been on the parties from
11 the settlement agreement and it's been on the parties
12 since Order 4 was issued on February 1st, 2007.

13 The Commission is not going to accept a delay
14 from Avista for us to do the parties' work that had to
15 go on in the collaborative. The Commissioners will
16 correct me if I'm wrong in stating that on their
17 behalf, but I thought it was made clear to me that
18 today is to know what's the effect of the delay, and it
19 sounded from everyone's written comments as well as the
20 testimony that we previewed, and a delay is not going
21 to derail the pilot project.

22 MR. FFITCH: Your Honor, we understand that.
23 Just to characterize, I may have sort of misstated what
24 we offer Mr. Brosch for, and that is to talk about
25 process, what an evaluation process would look like,

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1 including some of his experience with selection of
2 evaluators. Again, the Commissioners may not want to
3 get into that, but that's what his testimony would be
4 about.

5 The other thing I would say at this point is
6 we are cognizant of the Commission's preference and are
7 willing to proceed appropriately, but we feel we are in
8 a bit of a difficult situation because the Company has
9 put in testimony covering a number of process and
10 substantive areas of the plan, including a draft
11 evaluation plan, and if those are going to come into
12 the record, we would like an opportunity to touch on
13 the salient points without getting into great depth,
14 especially on the technical substantive side of the
15 plan.

16 CHAIRMAN SIDRAN: This is Chairman Sidran.
17 In the interest of time, let me respond directly to
18 this. If the circumstances were different, I would
19 strike most of what Avista has submitted because it's
20 not responsive and it does get into the issues about
21 the process and the design of the evaluation and so
22 forth, but in the interest of time and because our
23 rules are generally relaxed, it seems to me that rather
24 than trying to parse what Avista has submitted into
25 those pieces that are admissible because they are

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1 responsive and those that should be stricken because
2 they are not responsive and then try to do the same
3 thing with your submissions, it's just easier to say
4 that, and I think I can speak for us collectively, we
5 are prepared to let it all in, but we don't need to
6 hear from your expert about the design of the plan nor
7 do we wish to hear from Avista or anyone else about the
8 design of the plan itself today.

9 The reason that there were 11 months provided
10 for this process to design the evaluation plan was in
11 the earnest desire that all of the parties would
12 through a collaborative process arrive at hopefully
13 consensus about the design of the evaluation plan, and
14 we would be ready to go. If necessary, issues that
15 could not be resolved would then be resolved by the
16 Commission and the evaluation would proceed. That did
17 not happen as a result of the Company's violation of
18 the settlement agreement and the Commission's order.

19 So the remedy will not include the Commission
20 joining the collaborative and trying to work that out,
21 not this afternoon and not tomorrow, until the parties
22 have done what was envisioned in the original
23 settlement agreement and the order, which is to try to
24 arrive at, hopefully again, a consensus about what the
25 evaluation will look like. If that can't happen, then

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1 the Commission will be available to resolve those
2 issues that can't be resolved by the parties.

3 So I think our intent here is to let it all
4 in because it's easier; that is, to allow the testimony
5 that has come in. I can tell you, Mr. ffitch, that the
6 reason we don't need to hear from your consultant about
7 what the design of the evaluation should be is because
8 that is not something we are going to take up this
9 afternoon and we are not going to consider it, and in
10 my judgment, we are not going to offer guidance to the
11 Company in response to Mr. Hirschhorn's questions
12 because those are questions that we expect the parties
13 to resolve in the process they were given now 13 months
14 to do, and we assume that they will get around to doing
15 it.

16 The issue that we want to decide today is can
17 evaluation go forward and be as meaningful given the
18 fact that 11 or more months have now transpired without
19 an evaluation plan being developed, and if it can go
20 forward, do there need to be any adjustments in the
21 other time lines that are contained in the settlement
22 agreement and order, do those time lines need to be
23 adjusted. That's what we would like to hear about
24 today, and I don't want to speak for my colleagues.
25 They may have some questions or comments they want to

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1 offer about guidance for the collaborative process, but
2 we are not going to remedy Avista's failure here by
3 inserting ourselves into the process to try to craft
4 either in this hearing or in our order what the
5 evaluation plan should be.

6 COMMISSIONER OSHIE: Just like to take this
7 opportunity to not just support as well what the
8 Chairman has said, because I do agree, but I think the
9 door is open a bit to talk about the expectation of
10 this hearing as well, which is how has the information
11 that would have been, should have been gathered by the
12 Company been jeopardized by this delay, and I have a
13 question having gone through the filed documents and
14 having understood at least what we have said in our
15 orders.

16 There is one issue I don't believe is
17 addressed, and that is the issue of whether or not
18 low-income customers are going to be unduly or
19 unreasonably affected by the operation of this program,
20 and actually, the question really is broader than that,
21 and we stated it in Order UE-050648. That's a combined
22 docket with UE-050412, a PacifiCorp order, and therein
23 we said, if there is going to be -- we offered some
24 guidelines for decoupling program, and one of the
25 guidelines and what we expected to see in the

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1 evaluation is the impact of the mechanism on low-income
2 customers, and it's very broad because it could mean
3 from A, as an example, one end of it is are they going
4 to be more affected by the program as far as the effect
5 on income, effect on their comfort within the home?
6 Are they going to react to this because it's going to
7 be an increase in their cost for natural gas, that they
8 are going to reduce their thermostats?

9 And it goes all the way to a more
10 complicated question, which is, since low-income
11 customers cannot generally afford the kind of
12 weatherization and other energy efficiency products
13 that might be available to other customers, will the
14 impact of the change in fixed costs or increasing the
15 costs of purchases by volume affect them in that way as
16 well? Are they going to pay more than other customers
17 not just because they are using the same amount of gas,
18 not because their volumes have increased?

19 So it's a broad question. We asked it in a
20 broad way. I don't think that's been effectively
21 responded to by any of the parties, and I don't really
22 know, and I'm not sure any of the parties who are here
23 can say we have all that information. I think in the
24 transcript, which I reviewed prior to today's hearing,
25 of the settlement hearing of last year, I believe

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1 Mr. Roseman, who was representing The Energy Project at
2 the time?

3 MR. EBERDT: That's correct.

4 COMMISSIONER OSHIE: There was a discussion
5 of the impact of -- and how many low-income customers
6 may be affected, and statistically, the Company
7 responded in a broad way but not specifically as to who
8 is going to be affected by the program, what low-income
9 customers are going to be most affected by its
10 operation.

11 These are questions I would like to have
12 answered, and I think it's a legitimate question for
13 the parties to respond to this afternoon is can we get
14 there with the information that we have, or has that
15 opportunity been lost by the effect of the delay.

16 JUDGE TOREM: So I think perhaps to pick up
17 with the Commission's interest, the questions still
18 are, you had a December 31st, 2007, deadline that was
19 missed. It appears from what's been filed, and all of
20 the parties have agreed, that the new deadline for
21 filing a draft evaluation plan should be April the
22 30th, 2008, and I think this was pointed out at the
23 open meeting, instead of a December hearing and going
24 to the following December, 11 or 12 months, now we've
25 gone from a mid-January evaluation that the deadline

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1 was missed to a three-and-a-half month time frame. Is
2 that sufficient? Is there any party that wishes to
3 speak to the effect that no, a good draft evaluation
4 plan can't be filed by April 30th, 2008? No party
5 filed anything in writing, so I'm not expecting a
6 response.

7 If that's the case, then there appear to be
8 in the original order and settlement agreement an
9 implication at least that this commission would review
10 the draft plan and at some point thereafter get back to
11 the parties, or when it was filed, perhaps Avista would
12 have asked the Commission to approve it by a certain
13 deadline or file comments on it. There is nothing in
14 the settlement agreement or transcript that speaks
15 exactly to that, but there is as an implication that it
16 was not going to be filed just for the records center
17 to put it in a folder. So at that point, what was
18 going to happen?

19 Now, the Commission has seen a proposed time
20 line on which the same day it's filed, the Company
21 would go out with an RFP. Public Counsel has responded
22 that may not give the Commission and deprive this body
23 the opportunity to do the review I just mentioned and
24 has an alternate deadline proposed to give this body
25 one month to complete that.

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1 Not knowing make what we might get, we have
2 no idea if one month might be sufficient, and I'm not
3 certain what the calendar month of May 2008 holds for
4 the Commissioners and whether they have time to respond
5 that quickly, but Chairman Sidran, correct me if I'm
6 wrong, the Commission does not object to an April 30th
7 deadline of this year for filing of the draft plan but
8 needs to know what the parties propose we do with it
9 and needs to know how long we have to do that, but
10 again, the Commission does not want to have to change
11 its schedule dramatically to accommodate Avista's
12 delay, and give us a realistic time frame of what you
13 expect if it was filed on time and when an RFP may have
14 been issued, and then maybe the Commissioners can
15 comment as to what accommodations they are willing to
16 make to give you the feedback, approval, or whatever
17 you were seeking with the original deadline plan as to
18 when we can get back to you after April 30th 2008, or
19 if it's even necessary, you just want to go out because
20 the Commission knows that Avista bears the burden at
21 the end of this pilot project if the evaluation doesn't
22 convince the Commission that it should be extended
23 whether simultaneously from June 30th, 2009, when the
24 pilot is scheduled to end, or at some future date if
25 the pilot is turned into an actual decoupling program.

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1 Mr. Meyer, do you want to respond to that?

2 MR. MEYER: Surely, and I'm well aware of the
3 admonishment of the Chair that we are not here to
4 discuss the merits of the plan. That's not what this
5 comment is intended to do. It's just the process point
6 that you raised, and that was really one of the three
7 questions that we wanted to hear back from the
8 Commission, and does the Commission want to review the
9 draft evaluation plan before we put it out, and if the
10 answer to that is in the affirmative, then we are open
11 to any reasonable amount of time the Commission needs
12 for that purpose. If it doesn't want that process,
13 then we are prepared to go right to the RFP.

14 We are fine. We would love to have
15 Commission comment if that's the way the Commission
16 would like to set this up. Otherwise, we will just
17 proceed and go with the RFP.

18 CHAIRMAN SIDRAN: Here's where I think we are
19 on this. I believe the intent here back when the order
20 approved the settlement was to give the parties the
21 time they asked for to arrive at an evaluation plan
22 that if there were going to be disputes would be
23 submitted in time to the Commission by December 31st of
24 2007 so that any disputes could be resolved prior to
25 the evaluation being performed, because it seems to me

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1 that there is actually a consensus, and I have to
2 commend Public Counsel for taking what I think is a
3 very positive and constructive approach in this context
4 having, and I assume still being opposed to decoupling
5 as a policy matter.

6 Everyone is interested in having the best
7 possible evaluation done and making sure we have the
8 best designed evaluation and that it's done within a
9 reasonable amount of time. So the expectation, I
10 think, and certainly speaking for myself, the earnest
11 desire was that the Commission would not have to review
12 and approve the evaluation plan because we have enough
13 respect for the collective parties that if they all
14 agreed that the evaluation plan was sound that that was
15 going to suffice for our purposes.

16 Now, it could be that in the end the
17 Commission disagrees with the parties, and we might
18 find that out once we have the chance to review the
19 actual plan, but as Judge Torem suggested, this is
20 Avista's proposal. This is Avista's evaluation report,
21 and Avista bears the burden at the end of the day as to
22 whether this pilot will continue or be modified.

23 So if Avista and the parties were all able to
24 agree on the plan, I don't see the need for the
25 Commission to review the plan. My thinking at the time

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1 that the order was initially entered was there was
2 simply built into the time frame the opportunity for
3 the resolution of disputes about the quality of the
4 proposed evaluation plan so that that could be resolved
5 before the plan, hopefully to reduce disputes at the
6 back end, presuming a request for renewal, during the
7 renewal process having to listen to disputes about,
8 well, the plan was defective and the evaluation was
9 defective in various ways that had we anticipated and
10 addressed in the beginning, we could have solved and
11 therefore avoided those potential complications.

12 Which is all a long way of saying that if the
13 parties actually have consensus on a plan, I don't know
14 that I would feel the need, speaking for myself, that I
15 would feel the need to review it before it proceeded.
16 If it turned out there was a defect, we will find out
17 about that if and when Avista seeks to extend the
18 decoupling program.

19 MR. MEYER: That is helpful guidance. Thank
20 you.

21 COMMISSIONER JONES: Before I answer and give
22 guidance on that question, I would like to confirm a
23 couple of things. One is how many meetings have been
24 scheduled among the parties before April 30? I know
25 there is one scheduled for March 27th of this week.

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1 MR. MEYER: That's right, this Thursday, and
2 that is the only meeting that has been scheduled to
3 date. We will see what progress is made, and I assume
4 at that time if we haven't resolved all the remaining
5 issues, then at that time, we will schedule another one
6 mindful of that end of April date.

7 COMMISSIONER JONES: And are all parties
8 committed to attending that meeting?

9 MR. TRAUTMAN: Yes, Staff is.

10 MR. FINKLEA: Yes.

11 MR. EBERDT: Yes.

12 MR. FFITCH: Public Counsel is committed to
13 attending that particular meeting. Again, this is one
14 of the areas that I think we were prepared to have
15 Ms. Kimbal address how this process is going and some
16 of the scheduling issues that have been raised. We've
17 proposed a schedule here that --

18 COMMISSIONER JONES: Mr. ffitich, I was going
19 to ask a follow-up question, if Ms. Kimbal could
20 answer. I would just like to go around to the parties.
21 Ms. Hirsh, are you attending?

22 MS. HIRSH: Yes, the Coalition will be
23 attending.

24 COMMISSIONER JONES: The next question is
25 more specifically addressed to Staff and Public Counsel

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1 and any other party. In your proposed time line,
2 Public Counsel asked for about a month and a half, as I
3 read it, for the comments and the draft evaluation plan
4 to the issuance of the final RFP, so my first question
5 is for Staff.

6 Does Commission staff agree that based on
7 what you know right now that one month and a half,
8 that's about six weeks, is sufficient time, or do you
9 even want time to look at the evaluation plan, or have
10 you heard enough comments to date to be satisfied with
11 Mr. Hirschhorn's filing and the draft evaluation plan?

12 MR. TRAUTMAN: Staff is satisfied with
13 Mr. Hirschhorn's filing.

14 COMMISSIONER JONES: Then Public Counsel,
15 maybe Ms. Kimbal, you could explain why you think a
16 month and a half or six weeks or your comments on the
17 time line.

18 MS. KIMBAL: I think we had that time line
19 anticipating that the Commission would be providing
20 some feedback and guidance in response to the final
21 draft that's filed with the Commission, so that's why
22 there is sort of a two-week delay after receiving some
23 Commission guidance to then going forth and issuing an
24 RFP if there are some tweaks to a draft RFP.

25 COMMISSIONER JONES: So if the Commission

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1 were not to have any comments on the draft evaluation
2 plan submitted on April 30th, and assuming the
3 Commission or the Company consults fully with the
4 parties, is there an alternative proposal that you
5 might consider?

6 MS. KIMBAL: I think certainly everything
7 could be much simplified and move a lot faster if the
8 parties are able to reach consensus, and that's our
9 hope. I think we are a little bit more feeling that
10 more work has to be done to really flesh out the draft
11 plan, so in my mind, we will need much more than the
12 one meeting we have scheduled over the next five weeks
13 to make sure we have a thorough list and identify all
14 the issues that really should be examined in this
15 evaluation, and Commissioner Oshie raises another one
16 that we have missed, and when you have a compressed
17 time line, which we have, we want to make sure we are
18 identifying all the issues we should be, and it is
19 really limited to the factual information that should
20 be presented in the evaluation.

21 CHAIRMAN SIDRAN: Well, one of the few perks
22 of being a commissioner is we control the time, not the
23 parties. So whether the Commission itself will need
24 any time, and if so, how much time, to review is
25 something that is basically impossible to determine at

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1 this point.

2 I want to clarify something with respect to
3 time. As I understand from the testimony that's been
4 filed in the pleadings, is it true that there is a
5 consensus about the time line that Public Counsel has
6 proposed, which is on Attachment A to Public Counsel's
7 motion for leave to present oral direct testimony?
8 It's not entirely clear to me, so I'm asking, starting
9 with the Company, is there agreement about this
10 particular time frame?

11 MR. MEYER: Let me answer directly. This in
12 our view, and I think it will be corroborated when we
13 get to the testimony of some of our witnesses, that by
14 the time you work through this time line, that will
15 still allow sufficient time for whichever independent
16 evaluator is chosen to do the evaluation.

17 So working backwards from that, what this
18 time line does, and we don't object to this time line,
19 but it does answer two of the questions that involve
20 the Commission directly, and if that's where the
21 Commission wants to be as part of its involvement in
22 this process, that's perfectly acceptable. The first
23 is that this Attachment A assumes that the Commission
24 will want to take the time to look at the draft
25 evaluation plan and provide comment, giving itself as

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1 much time as it needs before that evaluation plan is
2 put out to bid. That's number one.

3 Number two, as I read it, it also presupposes
4 that the Commission itself will select the evaluator,
5 and that's an open question. If that's the appetite of
6 the Commission, then that's certainly acceptable to the
7 Company, but it presupposes that, so those two issues
8 sort of have been answered, if you will, in this
9 particular attachment, but in terms of the way it lays
10 itself out over the calendar year, this would still
11 allow for an evaluation in a timely fashion, and in
12 that sense, we do not object.

13 CHAIRMAN SIDRAN: Which part of your answer
14 was the direct part?

15 MR. MEYER: The direct part would be we can
16 accept it, and it does answer the two questions that
17 have been posed.

18 CHAIRMAN SIDRAN: I do want to hear testimony
19 from the witnesses, but I want to wrap my mind around
20 what sounds like at least some level of consensus from
21 the pleadings that have been filed in the testimony.
22 There appears to be consensus that there is no
23 irreparable harm from the delay, and there appears to
24 be consensus that there is sufficient time without
25 apparently extending the deadlines, if you will, that

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1 are in the existing order for an evaluation to be
2 completed. Does any party take issue with that or the
3 way I framed that?

4 MR. FFITCH: There is, I guess, a nuance on
5 that, Your Honor, that I feel I have to point out is
6 that our position is that we don't know at this time
7 whether there will be impairment, and we believe that's
8 in large part because if we bring in an evaluator who
9 looks at the whole process and says, Boy, I wish we had
10 known this. I wish we had been collecting this data,
11 that that could still develop, but at this time, we are
12 not asserting there is irreparable impairment.

13 We do have some witnesses that if we hear
14 from them we may learn some new things today. We have
15 some questions for Dr. Peters, and that may bring some
16 other things to light, but with those caveats, we would
17 agree.

18 CHAIRMAN SIDRAN: That is a fair point, and
19 it was in your motion, so I appreciate the
20 clarification, and I have to say that for me is the
21 central issue as well. We are telescoping what the
22 Company said would be an 11-month process into 11
23 weeks, and the parties presumably had some reason why
24 they thought it would take 11 months and they are going
25 to do it in 11 weeks, so I look forward to hearing just

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1 why things are now going to be so much more
2 expeditious, but I look forward to that. I actually
3 would like to hear testimony from the witnesses, and I
4 assume in the context of that that someone will respond
5 to Commissioner Oshie's point about the low-income
6 class of ratepayers.

7 JUDGE TOREM: For those that are here from
8 the Company, have you swear in Mr. Hirschhorn?

9 MR. MEYER: Yes. Do you choose to swear in
10 both witnesses at once?

11 JUDGE TOREM: I think we will swear them in,
12 unless the Chairman has any other guidance, as a panel.
13 You have Dr. Jane Peters, is that correct?

14 MR. MEYER: Yes.

15 JUDGE TOREM: And Ms. Kimbal and Mr. Brosch?

16 MR. BROSCH: Yes. Mike Brosch is on the
17 phone.

18 JUDGE TOREM: For those witnesses that I
19 think are present, Brian Hirschhorn, Ms. Mary Kimbal,
20 and Ms. Jane Peters, if you will make sure that you are
21 near a microphone that you can get to. Are there any
22 other witnesses we need to swear in?

23

24

25

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1 Whereupon,

2 THE PANEL,

3 having been first duly sworn, were called as witnesses
4 herein and examined and testified as follows:

5

6 MR. MEYER: As a preliminary matter for the
7 record, I assume you would like to mark the two
8 portions of testimony and their exhibits? I would ask
9 that Mr. Hirschhorn's direct testimony consisting of 13
10 pages be marked for identification as Exhibit No 1-T,
11 and that his accompanying exhibit, which consists of a
12 draft of the decoupling mechanism plan, be marked as
13 Exhibit No. 2.

14 JUDGE TOREM: Remind me the number of pages
15 in Exhibit 2?

16 MR. MEYER: Two has four pages.

17 JUDGE TOREM: So Mr. Hirschhorn's testimony
18 will be Exhibit 1. The draft plan will be Exhibit 2.

19 MR. MEYER: 1-T for the testimony.

20 JUDGE TOREM: All right.

21 MR. MEYER: Likewise for Dr. Jane Peters, I
22 would ask that her direct testimony be marked as
23 Exhibit 3-T, and her qualifications as well as those of
24 her firm would be marked as Exhibit No. 4.

25 JUDGE TOREM: It appears that Exhibit 4 would

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1 be 22 pages, and her direct testimony would be a total
2 of five pages?

3 MR. MEYER: Yes.

4 JUDGE TOREM: You are offering those to be
5 admitted now?

6 MR. MEYER: Yes.

7 JUDGE TOREM: Any objection to the admission
8 of those exhibits?

9 CHAIRMAN SIDRAN: I'm going to object. I do
10 not believe we should admit Mr. Hirschhorn's Exhibit
11 No. 2, the draft plan. I don't have any problem
12 allowing testimony around this issue, but this
13 document, which I believe is identified as No. 2, which
14 is the draft evaluation plan, I think just for the sake
15 of consistency that is not the subject of this hearing,
16 and I just as soon not let it in. It's not relevant.

17 JUDGE TOREM: Would you like to withdraw that
18 one?

19 MR. MEYER: Yes.

20 JUDGE TOREM: Exhibit 2 is withdrawn. Any
21 objections to the other exhibits?

22 MR. FFITCH: Your Honor, Public Counsel would
23 not object if I'm correct in understanding that we can
24 ask questions of the two witnesses sponsoring that
25 testimony.

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1 JUDGE TOREM: In essence, we've already
2 answered whether there should be any objections and how
3 they will be ruled upon by the prior notations of the
4 Chairman, and the prior notation included a granting of
5 your motion. So Exhibits 1-T, 3-T, and 4 are admitted.
6 Public Counsel's motion to ask and supply direct
7 testimony is also granted at this time.

8 Chairman Sidran, do you want to hear anything
9 from these witnesses or simply proceed with questions?

10 CHAIRMAN SIDRAN: I will leave that to
11 counsel. If there is anything already within the
12 prefiled testimony that any one of the witnesses wishes
13 to offer, and since I guess the burden is on the
14 Company, the Company can go first, but if there is
15 something that the department of redundancy department
16 has not already been submitted, I think we will hear
17 that now. Otherwise, we should just open it up to
18 questions.

19 JUDGE TOREM: Let me suggest, Mr. Meyer, that
20 you look back to Attachment A, question as to Public
21 Counsel's testimony and motion that was submitted, and
22 look at the dates on that and survey your witnesses as
23 to the acceptability of the dates that would replace
24 those that were originally in Order 04. So that would
25 be the April 30th date, the May 9th date, reacclimation

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1 of the March 31st date, 2009, being amenable, a
2 question mark next to the April 30th date, and then the
3 reconfirmation of the June 30th, 2009, end of the pilot
4 date.

5 It would appear from the Chairman's comments
6 earlier that anything between May 9th and March 31st
7 that involves this commission may be irrelevant to what
8 the Commission wants to see today, unless there is some
9 impasse between the parties that needs to be resolved.
10 So maybe if he approaches the questions, Chairman
11 Sidran, would that suffice for witness testimony?

12 CHAIRMAN SIDRAN: I want the parties to offer
13 any testimony they want to offer that's not already in
14 the record on any topic, but I take the point of your
15 question, and if the witnesses want to respond to --
16 again, my question, which I think counsel has responded
17 to, was simply that there is consensus, with Public
18 Counsel's caveat noted, there is consensus around the
19 time line that Public Counsel has suggested that the
20 Company has accepted this Attachment A in terms of an
21 outline, and we have attached our own caveat, which is
22 the Commission is the master of its own calendar, and
23 if and when our advice is sought, we will render it
24 when we can.

25 JUDGE TOREM: Mr. Meyer, we will give you

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1 first shot at these witnesses, and then, Mr. ffitch,
2 give you a chance to ask direct questions of Ms. Kimbal
3 to comment as needed on what's been filed and any other
4 testimony that's made at this time. Mr. Meyer?

5 MR. MEYER: I only have the one follow-up
6 question to respond to the point you raised with
7 respect to the four dates in that time line, and I will
8 ask Mr. Hirschhorn at this time whether those dates,
9 and please identify them as you respond, are acceptable
10 to the Company in terms of certain milestones.

11 MR. HIRSCHKORN: The first date is the April
12 30th for filing the plan with the Commission. That
13 date certainly still looks achievable. All the parties
14 are pushing forward. We have another meeting scheduled
15 this week. We will schedule as many meetings as we
16 need to to resolve any issues and present the
17 appropriate issues in the evaluation plan to be
18 evaluated.

19 The second date I believe is March 31st,
20 2009; is that correct? May 9th, 2008, comments filed
21 with Commission for any party not endorsing the draft
22 evaluation plan, that date would be fine with the
23 Company, and as I said, we are trying to reach
24 consensus on the plan, so if we can't, that certainly
25 would be a reasonable date.

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1 March 31, 2009, final evaluation report filed
2 with the Commission, even with Public Counsel's
3 proposed or alternative time line here, working
4 backwards from when the evaluator would be selected
5 September 26th, an evaluation report can be completed
6 and filed with the Commission in that time frame.
7 Given what we know now about the issues and what the
8 evaluation plan would incorporate, even starting as
9 late at September 26th of this year, that is still very
10 doable.

11 April 30th, 2009, what Public Counsel is
12 proposing is a one-month delay in terms of what was in
13 the original settlement agreement in terms of Avista
14 filing to extend the term of the mechanism beyond the
15 pilot period. In the settlement agreement, it was
16 envisioned that both the Company's request and the
17 evaluation plan would be filed March 31, 2009. We are
18 still shooting for that. The 30 days between the two
19 to me makes sense. It would give all parties a chance
20 to review that evaluation prior to that filing. So
21 that does make sense to me, and that would be
22 acceptable to the Company.

23 Then June 30th is the end of the pilot
24 period, the time at which we would cease the deferrals
25 under the pilot program. That's in the order. That's

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1 in the settlement agreement. The alternative plan is
2 acceptable to the Company. We are proceeding on a more
3 ambitious schedule, which hopefully we can address
4 through a consensus a lot of these dates in between
5 there and we won't have to come to the Commission for
6 additional guidance.

7 JUDGE TOREM: The June 30th, 2009 date for
8 the end of the pilot program will not be extended
9 unless the Commission acts on the Company's request to
10 do so?

11 MR. HIRSCHKORN: Right.

12 JUDGE TOREM: As I read the settlement
13 agreement, it said on or before March 31st. Was there
14 any thought that the Company would file a request for
15 its final evaluation plan ahead of that originally?

16 MR. HIRSCHKORN: It left the possibility open
17 for the Company to do that. It would be very difficult
18 to look at the pilot all the way through 2008 filing
19 any sooner. That was the original thought in filing
20 with the filing day of March 31st, 2009.

21 JUDGE TOREM: Did the original plan also
22 give this commission 90 days, three months, in which to
23 make up their mind before the pilot would expire on its
24 own as to what to do with the pilot?

25 MR. HIRSCHKORN: That wasn't specifically

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1 addressed, but that is somewhat implied in terms of the
2 date the Company would file by March 31st, 2009, to
3 extend it and the end of the pilot program, June 30th.
4 It's more or less implied in that.

5 JUDGE TOREM: I think your prefiled testimony
6 acknowledged that if the Commission does not have
7 sufficient time from April 30th until June 30th to get
8 its arms around and make a decision about the final
9 evaluation report, the Company is understanding that
10 the pilot program, whether it works for the Company and
11 for ratepayers and for conservation as well, may expire
12 before it can be resumed; is that correct?

13 MR. HIRSCHKORN: Yes, it is set to expire.
14 We provided two potential options for the Commission to
15 consider if that's the case, if the Commission does not
16 have enough time to review all the information.

17 JUDGE TOREM: Commissioners, other questions
18 for Mr. Hirschhorn?

19 MR. MEYER: I just want to make sure that we
20 respond directly to Commission Oshie's question if you
21 pose the question again.

22 COMMISSIONER OSHIE: Thank you, Mr. Meyer.
23 Is this panel just specifically for the Commission? I
24 thought maybe other counsel had questions of the panel
25 and generally, we would follow then the attorneys'

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1 questions of the panel witnesses, so I don't want to
2 jump the gun. I do have some questions about the
3 Company's intentions with regards to how it plans to
4 develop its evaluation of this program on low-income
5 customers, if it's even thought about it, but
6 Mr. ffitch or Mr. Trautman?

7 MR. TRAUTMAN: Staff has no questions.

8 MR. FFITCH: I do have questions for all
9 three witnesses, Your Honor.

10 JUDGE TOREM: Do you want to ask those or did
11 you want to ask Ms. Kimbal your direct-exam questions
12 first?

13 MR. FFITCH: If I may, I would just follow-up
14 on the Company's questioning of the witnesses and then
15 turn to Ms. Kimbal.

16 JUDGE TOREM: Let's turn the whole panel over
17 to you.

18 MR. FFITCH: I'll defer to Mr. Meyer to see
19 if he is done with his direct exam.

20 MR. MEYER: Let me just ask, and we can talk
21 more about it in due course, Commissioner Oshie's
22 question about the impact, and I'll address this to
23 Dr. Peters. Dr. Peters, you were asked about the
24 impact and how one would measure the effect, if you
25 will, of the program on low-income customers as we do

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1 the evaluation plan. I didn't ask that as artfully as
2 the commissioner, but do you ever any preliminary
3 thoughts?

4 DR. PETERS: Just a couple of things. First
5 of all, the question needs to be in the evaluation
6 plan, but the data, as far as we can tell from our
7 looking at what is going on at Avista at this point,
8 would be able to answer that question as you posed it,
9 as long as the question is in the evaluation purview,
10 and I think it is, then the data will appear to be
11 there.

12 CHAIRMAN SIDRAN: Maybe I can ask a follow-up
13 question. Dr. Peters, does Avista know who the
14 low-income customers are?

15 DR. PETERS: So far, that appears to be the
16 case.

17 CHAIRMAN SIDRAN: How do they know that?

18 DR. PETERS: They use cap agencies to
19 identify low-income customers. They also have a
20 low-income rate, I believe. Not a rate, but they were
21 able to identify the low-income customers in their
22 program that we were doing the verification audit.

23 CHAIRMAN SIDRAN: But my understanding is
24 that would be a subset, just those low-income customers
25 who are receiving assistance through a cap?

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1 DR. PETERS: Right. Typically, we can
2 identify low-income customers based on census track
3 data, identify areas of high propensity to have
4 low-income customers, and that's usually where cap
5 agencies are serving people, so there usually is a
6 pretty good correlation to identify sort of the
7 probability that there is low-income in a particular
8 area and what the number of customers are in that area.
9 So it's not outside the ability to do it within the
10 type of data that they are collecting.

11 COMMISSIONER OSHIE: So the Company would do
12 this in a very broad way? The Company does not have
13 specific information about individual customers, but it
14 would have to rely on -- if 25 percent of that
15 particular census region would be identified as
16 low-income, then the Company would use that statistic
17 to also identify or to -- it would use that statistic
18 to essentially extrapolate that and say 25 percent of
19 our customers then are also low-income.

20 DR. PETERS: That's not a common approach
21 that's used across the country for identifying
22 low-income. If you have a low-income rate, you still
23 don't get all your low-income customers because they
24 won't all sign up, so you almost always have to use a
25 designation based on census data to identify what the

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1 propensity is in your population and where they likely
2 are located.

3 COMMISSIONER OSHIE: Does the Company have a
4 general sense of the take rate then of low-income
5 customers that participate in those programs, a
6 percentage?

7 DR. PETERS: I don't know. I haven't
8 examined that.

9 COMMISSIONER OSHIE: How would it do that?

10 DR. PETERS: Pretty much what we were
11 describing. First of all, you would know what the
12 relative poverty rate in your area you are serving, and
13 you could probably also query cap agencies as to the
14 size of their populations that they serve, and that can
15 give you a rough estimate of the low-income population
16 in the area, and then you can compare that to what your
17 adoption is for your program.

18 COMMISSIONER OSHIE: So what you would be
19 proposing to do is use that information. You could
20 roughly identify those customers that participate in
21 the low-income programs of the Company and then
22 extrapolate that to the general population of its
23 customers to say, this would be the impact?

24 DR. PETERS: No. The low-income customers?

25 COMMISSIONER OSHIE: Yes. Hypothetically, 25

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1 percent of the customers could be identified as
2 low-income, so you would generate some statistical
3 analysis of the customers you can identify and then
4 extrapolate that to the general population of customers
5 to come up with the figure?

6 DR. PETERS: I kind of got confused where you
7 are extrapolating to the general population, because we
8 are talking about low-income.

9 COMMISSIONER OSHIE: If the Company had
10 hypothetically 25 percent of its customers qualified as
11 low-income, but you couldn't identify them
12 individually, you can identify those that participate
13 in the cap programs, and so you would try to use those
14 cap numbers to extrapolate benefits or impacts upon
15 that general population.

16 DR. PETERS: Yes.

17 COMMISSIONER OSHIE: How would you as an
18 expert in this field, what impacts would you be looking
19 for in developing a program for the Company, impacts
20 upon low-income customers?

21 DR. PETERS: If I were trying to evaluate
22 whether it had effects on low-income customers?

23 COMMISSIONER OSHIE: Exactly.

24 DR. PETERS: Typically when we look at
25 low-income programs, we are looking to see whether

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1 there is a change in the affordability or in their
2 ability to pay their bills. Those types of things are
3 affected by their participation in the program.

4 COMMISSIONER OSHIE: Anything else you would
5 look at?

6 DR. PETERS: No. It's pretty difficult to
7 measure comfort effects on any population, but there
8 are studies that have tried to see whether or not
9 programs can improve comfort value in the nonenergy
10 impact for low-income customers, quite a bit of
11 research down in California for that. It's really a
12 rather costly effort to go after those sorts of
13 impacts, and those would be difficult to get at.

14 COMMISSIONER OSHIE: When you said that the
15 Company had the data available to analyze the impact on
16 low-income customers, just trying to get you to
17 identify --

18 DR. PETERS: The cost. Just based on rate
19 impacts and effects of load reduction and on whether or
20 not they are able to pay their bills, those types of
21 things. Those are fairly easy. Those are what we call
22 program impacts, primarily.

23 COMMISSIONER OSHIE: I'm just trying to get
24 my arms around -- if the customers can't be identified,
25 then you are just measuring those impacts generally?

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1 If the price goes up of a therm by a dime, then "X"
2 would happen to all customers but in particularly
3 low-income customers? I'm trying to figure out exactly
4 what you would --

5 DR. PETERS: You are asking questions that
6 seem to me to be a little different than the questions
7 of whether the decoupling mechanism is working or not.

8 If the questions are in there as to what the
9 effects are on low-income customers and you have
10 low-income customers in the program, you can directly
11 measure that. In terms of extrapolating to low-income
12 customers who are not in the program, we are assuming
13 we know from estimate of what percentage that is.
14 That's all we were talking about.

15 COMMISSIONER OSHIE: Okay.

16 CHAIRMAN SIDRAN: First let me comment, I
17 support Commissioner Oshie's general point that
18 evaluation must include an evaluation of the impact on
19 low-income customers. How that's done will be, of
20 course, something that presumably will be developed in
21 an evaluation plan. But in terms of how we proceed,
22 since the Company bears the burden here on the ultimate
23 issue, I suggest that what we do is let the Company's
24 witnesses offer any additional direct testimony if
25 there is any, let the counsel for the other parties

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1 offer any cross-examination of the Company's witnesses,
2 then let the Bench ask any follow-up questions, and
3 then we will turn to -- at this point, I guess it's
4 only Public Counsel that's offering a witness, and she
5 can offer any additional direct she wishes to offer,
6 and then we will repeat that process, because I really
7 don't want to start flipping back and forth between the
8 witnesses. It confuses me. I don't know about my
9 colleagues, but let's just focus on any
10 cross-examination of the Company's witnesses from
11 counsel, and then we will have any questions that may
12 remain from the Bench.

13 MR. FFITCH: Thank you, Your Honor. Should I
14 proceed then with my questions?

15 CHAIRMAN SIDRAN: Yes.

16 MR. FFITCH: I've done quite a bit of editing
17 on the fly here and I'm going to continue that, so
18 there may be pauses as I go through here to stay within
19 the parameters. One issue, Mr. Hirschhorn, that was
20 teed up in the Commission's notice was the question of
21 remedies and/or potential sanctions; is that correct?

22 MR. HIRSCHKORN: Yes, that's correct.

23 MR. FFITCH: With respect to this hearing.

24 MR. HIRSCHKORN: Yes.

25 MR. FFITCH: If you turn to your Exhibit 1,

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1 Page 12, Lines 7 through 9, you state there that the
2 Company would not object to underwriting the reasonable
3 costs of the evaluation effort; is that correct?

4 MR. HIRSCHKORN: Yes, that's correct.

5 MR. FFITCH: And the Company still stands by
6 that representation today?

7 MR. HIRSCHKORN: Yes, we do.

8 MR. FFITCH: Is Avista compensating
9 Dr. Peters' firm, Research Into Action, for the work
10 they've done in preparation for this hearing?

11 MR. HIRSCHKORN: Yes, we are.

12 MR. FFITCH: How does Avista intend to record
13 those costs, above the line or below the line?

14 MR. HIRSCHKORN: Those would be recorded
15 below the line.

16 MR. FFITCH: Is Avista providing any
17 compensation to Mr. Fry or his firm, Nexant, for their
18 consultation efforts which are referred to in
19 Dr. Peters' testimony?

20 MR. HIRSCHKORN: Yes, I would certainly
21 assume so.

22 MR. FFITCH: Would those be recorded above
23 the line or below the line?

24 MR. HIRSCHKORN: They would be below the
25 line.

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1 MR. FFITCH: Are there any other potential
2 evaluators in addition to Research into Action and
3 Nexant that Avista has shared a rough-draft evaluation
4 plan with?

5 MR. HIRSCHKORN: To date, no.

6 MR. FFITCH: Does Avista at this time have
7 any plans to share a draft evaluation plan with any
8 potential evaluators before the final RFP is ready to
9 be shared?

10 MR. HIRSCHKORN: I think that would be a
11 great idea based on the feedback we've received from
12 Research Into Action as well as Nexant. They suggested
13 that we do exactly that to get their feedback so we
14 don't have to go back and revisit the entire plan.

15 MR. FFITCH: Are you proposing that Avista
16 would unilaterally communicate with other potential
17 evaluators prior to the issuance of an RFP?

18 MR. HIRSCHKORN: It certainly wouldn't have
19 to be unilaterally. I think at this point, we would
20 like to try and achieve a consensus on everything we
21 possibly can in development of both a plan and the
22 final evaluation report amongst the group working on
23 that.

24 MR. FFITCH: Do you not see any potential
25 problems with biasing future evaluators by having

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1 Avista approach evaluators unilaterally prior to the
2 issuance of the final RFP?

3 MR. HIRSCHKORN: Would you repeat that? I
4 missed the first part of that.

5 MR. FFITCH: Let me rephrase that. Wouldn't
6 you agree that if Avista unilaterally approaches
7 potential evaluators prior to the issuance of the final
8 RFP that that could introduce potential bias to the
9 evaluator's approach to the project?

10 MR. HIRSCHKORN: Yes, it could if they were
11 approached unilaterally by the Company.

12 MR. FFITCH: Thank you, Mr. Hirschhorn. I
13 think those are all my questions, and Dr. Peters, good
14 afternoon.

15 DR. PETERS: Good afternoon.

16 MR. FFITCH: I apologize for the pauses here
17 as I edit on the fly and try to focus my questions.
18 Could you please tell us with whom at Avista you have
19 spoken with about the decoupling evaluation?

20 DR. PETERS: Boy, I don't know if I can get
21 all the names. John Powell, Brian Hirschhorn, Kelly
22 Norwood, David Meyer, and Bruce Folsom.

23 MR. FFITCH: Now, it's true, is it not,
24 Dr. Peters that DSM verification is currently a
25 required component of the pilot decoupling mechanism?

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1 DR. PETERS: That's my understanding.

2 MR. FFITCH: As you state in your own
3 testimony -- that's on Page 2, if you want to refer to
4 it -- your firm performed the 2006 DSM verification
5 analysis that's required by the mechanism; correct?

6 DR. PETERS: That's correct.

7 MR. FFITCH: Avista retained you to do that
8 evaluation in June 2007; is that correct?

9 DR. PETERS: Correct.

10 MR. FFITCH: Am I correct that Avista has
11 retained you actually to do the DSM verification for
12 2007 and 2008 also?

13 DR. PETERS: Correct.

14 MR. FFITCH: Mr. Fry's firm, Nexant, is a
15 subcontractor to your firm on Avista's DSM verification
16 analysis?

17 DR. PETERS: That's correct.

18 MR. FFITCH: Would you agree that preferably
19 the evaluator that we are ultimately going to find
20 here, we hope, would have available to it the complete
21 2008 DSM verification results prior to issuing a final
22 evaluation report?

23 DR. PETERS: That's correct.

24 MR. FFITCH: What is your best estimate or
25 assessment as to when the 2008 DSM verification could

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1 be complete.

2 DR. PETERS: We have agreed to complete it by
3 February 28th, if the data are all provided to us by
4 January 15th of 2009, that is. We would probably begin
5 earlier on the project than January.

6 MR. FFITCH: In your conversations or
7 meetings with Avista staff about the decoupling
8 evaluation before you submitted your testimony here,
9 did any of the Avista staff members mention the
10 following issue: that the Commission has expressed
11 specific interest in the proportion of lost margins due
12 to Company sponsored DSM as compared to the total lost
13 margins deferred for recovery in rates under the
14 decoupling mechanism?

15 DR. PETERS: I can't say if I recall if they
16 mentioned that other than if it were in some document
17 that I might have read, but I don't recall reading it
18 beforehand.

19 MR. FFITCH: Do you recall specifically
20 taking that factor into consideration in reaching your
21 conclusion about whether the process was impaired by
22 delay, your ultimate testimony here today?

23 DR. PETERS: I'm not sure how to answer that.
24 I guess the answer would be no since I'm not really
25 sure how it would pertain.

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1 MR. FFITCH: Dr. Peters, does anyone at
2 Research into Action, including yourself, have an
3 accounting background?

4 DR. PETERS: No.

5 MR. FFITCH: Has any of your evaluation work
6 involved examining accounting journal entries?

7 DR. PETERS: Not recently; a long time ago.

8 MR. FFITCH: Do you have any experience with
9 deferral accounting?

10 DR. PETERS: No.

11 MR. FFITCH: Do you think that Research into
12 Action, in your opinion, would have a competitive
13 advantage compared to other potential evaluators of
14 Avista's decoupling mechanism in responding to an RFP
15 given that you've seen a rough draft evaluation plan,
16 visited with Avista staff, and have had an opportunity
17 to become more familiar with the plan prior to the RFP
18 process?

19 DR. PETERS: Yes. That would usually be
20 considered a competitive advantage.

21 CHAIRMAN SIDRAN: Mr. ffitch, I'm going to
22 ask you to stay focused on the particular issue of this
23 hearing, and I understand the thrust of your question,
24 but we are trying to focus here not on the selection of
25 the evaluator but on this witness's opinion that the

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1 evaluation has not been compromised by the Company's
2 delay.

3 MR. FFITCH: Thank you, Your Honor. Those
4 are all the questions I have. Thank you, Dr. Peters.

5 DR. PETERS: Sure.

6 JUDGE TOREM: Is there any follow-up
7 questions from the Bench for Avista's witnesses?

8 CHAIRMAN SIDRAN: Yes. I have a question for
9 Ms. Peters. I take it your company intends to bid on
10 this evaluation; is that correct?

11 DR. PETERS: We have no such intentions or
12 not intentions at the moment. I've actually been told
13 that it's not to go to a Northwest firm by other
14 people, so I would expect we would be allowed to bid.
15 If we are allowed to bid, we would consider getting
16 publicly with Nexant.

17 CHAIRMAN SIDRAN: This is a question perhaps
18 the Company wants to weigh in through Mr. Hirschhorn.
19 The reason I ask this question is obviously, an expert
20 who offers testimony that a piece of business that they
21 might be interested in doing and testifying on behalf
22 of the Company, that testimony might be given more or
23 less weight, if you will, dependent upon whether that
24 expert intends to seek that.

25 So the reason I'm asking is that when you

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1 testify that you don't think that the capacity to do
2 this evaluation is in any way undermined by the delay,
3 I would like to know if we can know that today whether
4 or not your opinion is offered as a prospective bidder
5 on this study or not.

6 DR. PETERS: It's not offered as a
7 prospective bidder. As a prospective bidder, I would
8 say there is absolutely no problem in time because of
9 that, but not as a prospective bidder, just as a
10 another competitor out there, I would say all
11 competitors would think there is plenty of time based
12 on this schedule, and as a person who has actually
13 looked at the evaluation plan, I would say that that
14 would be something that people would be able to respond
15 to as evaluators as it stands now. So it's definitely
16 a piece of work that's obvious from what's been created
17 so far as to what it's intended to do and is doable
18 within the time frame.

19 CHAIRMAN SIDRAN: I'd like your response to
20 what I understand Mr. Hirschhorn's testimony to be,
21 which is, I think, and he should correct me if I'm
22 wrong, he agreed with Public Counsel's proposition
23 that, I believe the words were unilaterally sharing the
24 draft evaluation with a potential bidder would
25 potentially bias the evaluator's bid. You are shaking

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1 your head.

2 DR. PETERS: Yes. It happens all the time,
3 but yes, unilaterally sharing does give some advantage
4 to that entity.

5 CHAIRMAN SIDRAN: Thank you. That's all I
6 have.

7 MR. EBERDT: Is it possible for me to ask a
8 question here?

9 JUDGE TOREM: Of course.

10 MR. EBERDT: Dr. Peters, when you were trying
11 to respond to Mr. Oshie's question, which certainly
12 opened up a whole area that we haven't really
13 specifically addressed in the evaluation, you had said
14 at one point that there are ways to get at certain
15 kinds of information without getting a lot more
16 expensive. I'm wondering if it doesn't also get a lot
17 more time consuming.

18 DR. PETERS: You are correct.

19 MR. EBERDT: So I guess I'm wondering, when
20 we try to isolate what the impact would be on
21 low-income people how we would go about making the
22 distinction, and maybe this is an out of line question
23 for this topic today, but how do we go about making the
24 distinction between lower consumption for one reason or
25 another reason, whether for conservation or whether

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1 they are sacrificing, what would you have to do to
2 ferret that out?

3 CHAIRMAN SIDRAN: Mr. Eberdt, I'm going to
4 accept your offer to reign you in. It's an excellent
5 question and one that I expect to be explored in the
6 collaborative process that leads to a plan, but we are
7 not here today to try to sort through those particular
8 issues other than whether or not, for example, a
9 low-income dimension of the plan is necessary and
10 useful.

11 MR. EBERDT: What I guess I wanted, what does
12 that do to the time frame?

13 CHAIRMAN SIDRAN: That's a fair question, and
14 I believe she answered it would cost more and take
15 longer. Is that your testimony?

16 DR. PETERS: Yes. I think you are getting
17 into program evaluation issues at that point, and when
18 you start doing that, it's different than what I see in
19 this evaluation plan, which is what I term a regulatory
20 or policy evaluation, and program evaluation is a
21 different kettle of fish.

22 JUDGE TOREM: Mr. Eberdt, any other
23 questions?

24 MR. EBERDT: No, thank you.

25 COMMISSIONER JONES: This is Commissioner

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1 Jones, and I've got a few questions for Dr. Peters. In
2 your testimony, it gets back to the issue of the
3 quality and sufficiency of the DSM data and the dates
4 for the calendar year 2008. You state that it's your
5 understanding that the data for all four quarters,
6 including the three final months, will be available on
7 January 15th, '09.

8 DR. PETERS: Yes. That's what I've been led
9 to believe.

10 COMMISSIONER JONES: Is this the same data
11 that would be used by the independent evaluator to
12 evaluate all the aspects of the evaluation plan on the
13 effectiveness of the lost margin and all the issues in
14 the evaluation plan, or is this just what you've
15 traditionally done for the Company in the DSM
16 verification?

17 DR. PETERS: I've been assured that we would
18 be provided with the information we need for the
19 verification by January 15th, and the Company has
20 assured me that the data that we see today that they
21 are collecting on a regular basis will also be
22 available for all the other aspects of the evaluation
23 that are outlined in the plan at the moment.

24 COMMISSIONER JONES: Are you completely
25 assured by that, because later you state that you

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1 appear to be assured because of your firm's research
2 into and prior involvement in auditing those results,
3 and then Mr. Bliss, I guess, visited for one day the
4 site, and that would be in Spokane at Avista's
5 headquarters, so it was based on one site visit.

6 DR. PETERS: The site visit last week, plus
7 we received data from them last summer for the 2006
8 year, and we are in the process of discussing the
9 contract for this 2007 year while the data that we will
10 be getting for the 2007.

11 COMMISSIONER JONES: Another line of
12 questioning, I read through your vitae and your other
13 clients and your other work that you have done. Have
14 you done a scoping exercise and assisted a company in
15 developing an evaluation plan or looking at what needs
16 to be an evaluation plan for any regulated public
17 utility in this country?

18 DR. PETERS: You mean for program
19 evaluations; yes.

20 COMMISSIONER JONES: Which companies were
21 those?

22 DR. PETERS: I've done evaluation plans for a
23 lot of different utilities. Boston Edison, Detroit
24 Edison, back in the days when they all existed,
25 Wisconsin Electric when they all existed. I've been

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1 recently doing plans for the Energy Trust of Oregon
2 when they initiated. I did plans for all the
3 Massachusetts utilities about three years, four years
4 ago.

5 COMMISSIONER JONES: That's sufficient.

6 MR. MEYER: May I have just a moment?

7 DR. PETERS: Mr. Meyer reminded me that was
8 program evaluations. If you are asking about the type
9 of evaluation of a decoupling plan?

10 COMMISSIONER JONES: Yes. I'm sorry if I
11 misstated.

12 DR. PETERS: The answer is no.

13 COMMISSIONER JONES: Since you are based in
14 Portland, are you not?

15 DR. PETERS: I am.

16 COMMISSIONER JONES: Have you had a chance to
17 look at the evaluation plan done by Christiansen and
18 Associates of the Northwest Natural decoupling
19 mechanism?

20 DR. PETERS: No, I have not.

21 COMMISSIONER JONES: And one final question,
22 and it may not be appropriate since you haven't looked
23 at this, and maybe you are more on the data analysis
24 side, but one of the arguments companies use to justify
25 decoupling mechanisms is that it removes the financial

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1 disincentive for conservation activities, and part of
2 that is through tariff mechanisms, but part of that is
3 through, how should I say, management and culture and
4 changing the incentives in an organization to do more
5 conversation.

6 Have you ever looked at a study that looks
7 at, for example, the management structure, the
8 performance incentives, goals that managers have to
9 pursue more conservation and achieve more DSM?

10 DR. PETERS: I would have to say only
11 indirectly as part of a team that's doing that sort of
12 analysis for Seattle City Light. I was not doing that
13 much of that specific work, but I was involved in a lot
14 of interviews around that analysis, collecting some of
15 the data.

16 COMMISSIONER JONES: When you say for the
17 record that you think that a high-quality evaluation
18 plan could be done on the time frame suggested by
19 Public Counsel, what time frame are you referring to?
20 Are you referring to September 26th, 2008, through
21 March 31st, 2009, or an earlier date?

22 DR. PETERS: Well, initially, my
23 understanding is that was filed after our testimony,
24 and I did look at that today at lunch prior to this,
25 and obviously, it's truncating it by about a month,

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1 month to month and a half, and that's always
2 challenging, but it's within -- consultants are used to
3 rushing to do things because a client needs it, so it's
4 doable in that framework, yes.

5 COMMISSIONER JONES: I think in
6 Mr. Hirschhorn's prefiled direct testimony, I think
7 Avista originally suggested selecting an evaluator on
8 August 1st, 2008, so that would be roughly an
9 additional month and a half.

10 DR. PETERS: That would be preferable from a
11 consultant's point of view.

12 COMMISSIONER JONES: With a preliminary eval
13 report due in January 1st and then a final report to
14 the Commission due on March 31st.

15 DR. PETERS: Right, but it's still doable.

16 JUDGE TOREM: Mr. ffitch, I think that is all
17 the questions that other counsel, unless there is
18 someone on the bridge line that wants to jump in now,
19 and the Commissioners have, so I think we are going to
20 be ready for Ms. Kimbal's direct testimony. Chairman
21 Sidran, is that right?

22 CHAIRMAN SIDRAN: I think we will turn to
23 Ms. Kimbal. I'm going to want to invite Mr. Norwood to
24 testify. Mr. Hirschhorn in his testimony offers you
25 up, Mr. Norwood, with regard to steps the Company is

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1 taking to insure regulatory compliance, but I think in
2 terms of the flow here, what I think would make sense
3 is to turn to Ms. Kimbal, and after we've resolved the
4 immediate issues in terms of the testimony as to the
5 time frame and so forth, we can then turn to this other
6 related issue.

7 JUDGE TOREM: With that procedural note, Mr.
8 ffitch, did you want to have a five-minute break so you
9 can incorporate anything else you heard into your
10 direct exam?

11 MR. FFITCH: That would be helpful if that's
12 acceptable to the Bench.

13 JUDGE TOREM: Chairman, Sidran, is that all
14 right with you?

15 CHAIRMAN SIDRAN: I think what we will do is
16 take what would be a normal recess, which we would
17 normally take at three, but why don't we do that now,
18 and then we won't break at three. So why don't we come
19 back in 15 minutes at five to three.

20 JUDGE TOREM: We are at recess until five to
21 three.

22 (Recess.)

23 JUDGE TOREM: Mr. ffitch, I believe it's back
24 to you and direct testimony for Ms. Kimbal.

25 MR. FFITCH: Thank you, Your Honor. In the

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1 intervening time, we've reviewed our notes and believe
2 that issues that Ms. Kimbal had intended to address
3 have been covered. I have no questions for her at this
4 time, and I would offer her for examination by the
5 Bench or by other counsel.

6 JUDGE TOREM: Let me survey other counsel.
7 Mr. Meyer, any questions for Ms. Kimbal?

8 MR. MEYER: No questions.

9 JUDGE TOREM: Any representatives on the
10 bridge line?

11 MR. EBERDT: I have no questions.

12 JUDGE TOREM: Mr. Trautman?

13 MR. TRAUTMAN: No, Your Honor.

14 JUDGE TOREM: Ms. Hirsh?

15 MS. HIRSH: No.

16 JUDGE TOREM: Are there any other witnesses
17 that need to be presented?

18 MR. FFITCH: Your Honor, we have Mr. Brosch
19 available. However, based on previous direction from
20 the Bench, the topics he was going to address regarding
21 a process for an evaluation were not going to be
22 inquired into, so we would not have any questions for
23 him either, and we would ask that he be excused at this
24 time.

25 JUDGE TOREM: Let me ask the Commissioners if

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1 they have any questions for Ms. Kimbal and then
2 anything they might have for Mr. Brosch, and we will
3 see about that request.

4 COMMISSIONER OSHIE: No questions.

5 JUDGE TOREM: There are not any objections,
6 Commissioners, to letting Mr. Brosch go? Any other
7 counsel have any need to ask questions of Public
8 Counsel's consultant Mr. Brosch?

9 MR. MEYER: No, Your Honor.

10 MR. TRAUTMAN: No, Your Honor.

11 JUDGE TOREM: Hearing none, Mr. Brosch, thank
12 you very much for attending today and your input, and
13 we look forward to the draft plan coming in later.

14 MR. BROSCH: Yes, thank you.

15 JUDGE TOREM: We've had all the witness
16 testimony and shortened that by nature of the break.
17 Where are we at this point? What do the Commissioners
18 need to do?

19 CHAIRMAN SIDRAN: Unless someone has
20 something else, I would like to get to closure around
21 the issue of whether there is any irreparable harm from
22 the delay and Avista complying with the Commission's
23 order regarding the evaluation plan, and if anyone has
24 anything else they want to offer on that, I think we
25 should wrap that up, and then I want to have

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1 Mr. Norwood testify with respect to the comment in
2 Mr. Hirschhorn's testimony regarding the Company's
3 compliance with Commission's order.

4 JUDGE TOREM: Is there any other comments
5 from the Company on the irreparable harm issue?

6 MR. MEYER: No other comment.

7 JUDGE TOREM: Staff has none. Public
8 Counsel?

9 MR. FFITCH: No, Your Honor.

10 JUDGE TOREM: Ms. Hirsh? On the bridge line?

11 MR. FINKLEA: Nothing further from the Gas
12 Users.

13 MR. EBERDT: I don't know that I have a real
14 germane comment. It seems to me there are still some
15 questions that are unanswered, and at this point, it's
16 hard to tell what the damage is or not.

17 JUDGE TOREM: As far as the irreparable harm
18 goes --

19 MR. EBERDT: It's hard to know.

20 JUDGE TOREM: We will take it at that.

21 Mr. Norwood, if you can find a spot at the table, I
22 will swear you in.

23

24

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1 Whereupon,

2 KELLY NORWOOD,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 CHAIRMAN SIDRAN: Good afternoon,

7 Mr. Norwood. So as I mentioned, in Mr. Hirschhorn's

8 testimony, which is Exhibit 1-T, at Page 12, Line 10,

9 it says in pertinent part, quote, "The Company has

10 taken additional steps to insure that all regulatory

11 requirements and commitments are met in the future.

12 These steps include, one, added redundancy in the

13 review of Commission orders and rules to identify

14 compliance items, and two, regular review of regulatory

15 requirements and commitments," end quote, and then it

16 offers you up as a witness to answer further questions

17 in this regard.

18 So I do have some questions, and my first

19 question is, who is responsible at Avista for

20 monitoring compliance with Commission orders and rules?

21 MR. NORWOOD: Ultimately, that is my

22 responsibility to insure that we are complying with

23 Commission orders, and we do have a process to do that.

24 CHAIRMAN SIDRAN: Did you have that process

25 in place before this current issue that's before us

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1 arose?

2 MR. NORWOOD: We did.

3 CHAIRMAN SIDRAN: Why don't you tell us what
4 did not work.

5 MR. NORWOOD: We have a process where we use
6 a tickler file, and I have a copy of it here with me.
7 It has over 150 items on it, and what we do is when we
8 get a Commission order or a new rule-making, we have a
9 process where those individuals in my department or in
10 other areas of the Company that are involved in
11 regulatory matters are to insure that they get on the
12 tickler file, and historically, we do a pretty good job
13 of that, but this particular item did not make it on
14 the tickler file, and that's a problem.

15 So what we have done in this last month is to
16 make modifications, and what we've done is added an
17 individual to review all orders, all rule-makings so
18 that there is redundancy in reviewing those orders and
19 making sure that any requirements end up on the tickler
20 file. So now we have not only the individual working
21 on the matter having the responsibility to put it on
22 the tickler file but also an independent individual to
23 review all orders and rule-makings to also insure that
24 that is on the tickler file. Every two weeks, we have
25 a meeting and we review the tickler file to make sure

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1 we are up-to-date and meeting the requirements.

2 In this particular item, it didn't make it on
3 the tickler file, so therefore, it wasn't an item we
4 were tracking, and obviously, we should have been
5 tracking that item. We've also asked internal audit at
6 Avista to review the procedures and they have done
7 that, and they believe with the additions that we've
8 made that that should provide confidence that we will
9 be able to comply with all future requirements.

10 CHAIRMAN SIDRAN: Where in the 100 or 150
11 items that you are crafting with respect to Commission
12 orders, where would you place decoupling in terms of
13 its importance to the Company as an issue of concern as
14 to, for example, how this all plays out in the ultimate
15 end of the pilot?

16 MR. NORWOOD: I put all of these requirements
17 really at the same level. If we have agreed in the
18 stipulation or the Commission has ordered certain items
19 to take place, I view them as equally important, and I
20 think this is an item that we should have complied
21 with. We didn't, so I view it as very important to the
22 Company.

23 CHAIRMAN SIDRAN: I want to review a little
24 recent history because I think to err is human, and I
25 can understand there are lots of things to keep track

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1 of, but I have to say that I find the Company's failure
2 to track this particular issue breathtaking because of
3 the context. Not only because of the importance I
4 would think to the Company of the decoupling pilot and
5 how it turns out, but also from the context in which
6 this issue arose, and the context relates to other
7 issues that came before the Commission in 2007 of
8 noncompliance. So let me review that with you for a
9 moment and then I will ask you my question.

10 So first, do you recall early in 2007 meeting
11 with Commission staff about certain noncompliance
12 issues related to prior accounting treatment of
13 repurchased debt?

14 MR. NORWOOD: I do.

15 CHAIRMAN SIDRAN: In fact, as a result of
16 that discussion, Avista filed a petition in February of
17 2007 to request approval of accounting treatment with
18 respect to that repurchased debt; correct?

19 MR. NORWOOD: That's correct.

20 CHAIRMAN SIDRAN: I won't go into a lot of
21 the history, but just to note that the docket number
22 here for future reference was UE-070311, and that
23 docket was ultimately consolidated because the Company
24 had a pending general rate case when this issue was
25 before us, so the docket I just mentioned was

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1 consolidated with the general rate case.

2 That case was settled, and as part of that
3 settlement, the Company agreed to write off 3.85
4 million dollars of repurchased debt costs against its
5 2007 earnings and paid a penalty of \$15,000. That
6 order was entered in December of 2007.

7 MR. NORWOOD: Yes.

8 CHAIRMAN SIDRAN: So from February 2007 until
9 December of 2007, the Company as a result of
10 discussions with Staff around this issue was aware of
11 Staff's concern about the Company's failure to monitor
12 compliance with Commission orders and rules; correct?

13 MR. NORWOOD: That's correct.

14 CHAIRMAN SIDRAN: Later in 2007 in Docket
15 U-071805, an issue arose over the Company's repurchase
16 of a building, and I won't belabor the details, but the
17 result of that was that in September of 2007, the
18 Company filed a petition for an approval of its
19 repurchasing of that asset, and in September of 2007,
20 the Company agreed to pay a \$5,000 penalty for that
21 incidence of noncompliance; correct?

22 MR. NORWOOD: That is correct.

23 CHAIRMAN SIDRAN: So really during the entire
24 year of 2007, the Company is on notice in discussions
25 with Staff about these two prior issues of

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1 noncompliance with Commission orders or rules. It has
2 an order to pursue this evaluation plan process that is
3 supposed to be taking place throughout 2007, and your
4 testimony is this fell through the cracks because the
5 Company's tickler system did not identify this as an
6 issue the Company was supposed to be paying attention
7 to; correct?

8 MR. NORWOOD: It's more than just the tickler
9 system. It's people. It is our responsibility that we
10 can't -- the tickler file is a tool that we use
11 together with the meetings and communications, but yes,
12 the answer to your question is yes. It fell through
13 the cracks during 2007.

14 CHAIRMAN SIDRAN: Given the importance of
15 decoupling and this pilot to the company and all the
16 discussion that surrounded the decision to authorize
17 this, and I'll point out the Company had been
18 recovering revenue from its customers during this time
19 under this pilot, which this commission agreed to
20 largely out of a belief that it was something worth
21 trying, but as I said earlier, it was a close question.

22 It's more than just a crack in my view. It's
23 a crevasse because of the context in which this arose,
24 and I have to tell you that in my view, there is
25 something wrong at the Company when something like this

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1 can fall through the cracks at a company that has at
2 the very time other compliance issues pending, is in
3 conversations with Staff about issues of monitoring
4 compliance, has, what I think most people would say,
5 the very important issue pending before the Commission,
6 to have this fall through a crack is breathtaking.

7 So I want to know whether you are satisfied
8 that whatever the changes are that are referenced in
9 Mr. Hirschhorn's testimony and what you've just
10 described here today are adequate to assure that the
11 Commission will not be spending any more of its time or
12 any of the other parties' time and resources addressing
13 Avista's failure to comply with orders and rules and
14 regulations?

15 MR. NORWOOD: Yes. I am confident that we
16 will comply, and I would like to provide a little bit
17 of context for both items that you bring up. We did
18 fail to get the accounting treatment that we needed on
19 the building. My recollection was we sold the building
20 in 1986, and the order was issued at that time, and
21 that item should have gone on a tickler file back in
22 1986 that said if the building was ever repurchased, we
23 need to go back and revisit that.

24 So that was a 20-year-old item that we should
25 have been keeping track of, and now we are, but I've

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1 been with the Company for 27 years now. We have not
2 always had this system in place, but I'm confident with
3 this system, and as internal audit has reviewed it,
4 they also believe this will provide compliance.

5 Now, there is always going to be a case where
6 when there is people involved, there are going to be
7 mistakes that are made, and with the item with the
8 accounting treatment on the repurchased debt that was
9 also raised last year, that was something that began in
10 2002. That doesn't excuse the fact that we should have
11 done something different back in 2002, but the one
12 item, the building was something we identified ourself
13 as a company and brought to Staff's attention.

14 We have had history, I think, of wanting to
15 do things right to comply with all the Commission's
16 rules, and that has not changed. So some of these
17 items are dated, and they came up last year, but I do
18 believe that with this system that we have in place
19 that we can be confident that we will comply with all
20 the orders and all the requirements.

21 CHAIRMAN SIDRAN: I appreciate that. Let me
22 be clear. I take your point that these other matters
23 are the kind of matters that because of the passage of
24 time or because of human error may have escaped the
25 Company's notice. That's why the penalties were in the

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1 relative scheme of things what they were, and that's
2 why in the course of the assessment of those penalties,
3 the Commission did not engage in the colloquy that you
4 and I are having now.

5 What's different about this particular matter
6 is it arose during those other proceedings about an
7 issue that's not some minor accounting, quote/unquote,
8 detail long in the past but about an issue that the
9 Company apparently cares a great deal about given the
10 to securing our approval of this pilot program. That's
11 why I'm quite comfortable using the word "breathtaking"
12 when I say this is an item that fell through the
13 cracks.

14 Again I point out, there is a very heavy
15 price being paid by all involved, including yours
16 truly, because all of this time and effort is an
17 expense that we are all incurring entirely because the
18 Company dropped the ball.

19 MR. NORWOOD: I also want to apologize myself
20 to the Commission and the Commission staff and to the
21 other parties because as you say, we are going through
22 all of this because of our failure to comply, so I
23 apologize for that.

24 CHAIRMAN SIDRAN: In these earlier
25 conversations with Staff back in 2007, my understanding

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1 is there was a discussion about the Company having some
2 individual who would be, in effect, the compliance
3 officer. Do you recall those conversations?

4 MR. NORWOOD: Yes, I do.

5 CHAIRMAN SIDRAN: Is there such a person now,
6 or who is the person where the buck stops at Avista
7 compliance issues?

8 MR. NORWOOD: For corporate compliance,
9 Marianne Durkin (phonetic) is our chief counsel for the
10 Company. She is ultimately responsible for corporate
11 compliance. She has the internal audit department is
12 doing a corporate wide, corporate compliance evaluation
13 at this point in time, but within our department, it is
14 myself, and then Pat Erbar (phonetic) is the person
15 that is overseeing our tickler file.

16 CHAIRMAN SIDRAN: So if the Commission wanted
17 to know the one person that the Commission can expect
18 to be accountable at Avista for compliance issues of
19 the kind like this failure to meet the evaluation plan
20 time line, who would that be?

21 MR. NORWOOD: That would be me.

22 CHAIRMAN SIDRAN: That's all I have. Thank
23 you.

24 JUDGE TOREM: Other Commissioner questions?

25 COMMISSIONER OSHIE: No questions.

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1 JUDGE TOREM: Other counsel have any
2 questions of Mr. Norwood on what he's expressed today?
3 None from Commission staff, Public Counsel, Ms. Hirsh,
4 none; Mr. Eberdt?

5 MR. EBERDT: No questions.

6 JUDGE TOREM: Mr. Finklea?

7 MR. FINKLEA: None from us, Your Honor.

8 JUDGE TOREM: It's hard to follow Chairman
9 Sidran's comments, but I do want to call your
10 attention, Mr. Norwood, to the seventh and final
11 finding of fact in the original order that came here
12 when it addresses this evaluation from Order 04.

13 It says, An evaluation of the pilot partial
14 decoupling program, regardless of whether Avista seeks
15 to continue the program after the three-year pilot
16 period expires, is important to determining the value
17 of decoupling mechanisms for regulated utilities in
18 Washington State.

19 So it reminds me of My Cousin Vinnie when
20 they want to know if we can pile any more on, but it
21 appears that Avista's program here, pilot as it is, may
22 have an impact on other regulated utilities in the
23 state in having a solid, dependable, transparent
24 program that is important not only to everyone in this
25 room but a variety of parties whose future requests for

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1 decoupling programs may yet come before this
2 commission.

3 So with that in mind, I want to again ask
4 from you whether you are sure you are going to be able
5 to comply on the Company's behalf with this April 30th
6 filing deadline everybody has agreed is apparently the
7 deadline on which a draft pilot program will be filed
8 with this commission.

9 MR. NORWOOD: Yes, but I want to make a
10 comment around that. We believe that we can file a
11 quality evaluation plan or program, a report, by March
12 31, 2009. When the original decoupling mechanism was
13 proposed, the settlement agreement was put together,
14 the order was issued, it did not specifically address
15 whether year-end '08 data would be available to do
16 that.

17 As we have worked in the collaborative
18 process, our desire as a collaborative group is to
19 incorporate the '08 data all the way through the end of
20 December. That way, you have two full years of data
21 available to evaluate the program. So we are going to
22 work together as a group to try to incorporate all the
23 '08 data in evaluating the decoupling mechanism, and we
24 believe we can do that and still get the report filed
25 by March 31, '09.

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1 And as Ms. Peters mentioned, I don't know who
2 the evaluator is going to be, but whoever the evaluator
3 would be, we would get them started earlier than the
4 end of '08 so they can get a lot of the preliminary
5 work done, so as we roll into January and February of
6 '08, a lot of the preliminary work is done and it's a
7 matter of incorporating the final work in 2008. That's
8 why we've asked for or called for a January 1st, '09
9 preliminary report from the evaluator, and then the
10 final report would not be due until March 31, '09,
11 which is what the plan calls for.

12 JUDGE TOREM: This April 30th deadline for
13 the draft plan again, the basis of my question, no
14 problem with complying with that?

15 MR. NORWOOD: We do not believe there will be
16 a problem complying with that. I believe we made great
17 progress in the last meeting, and I'm hopeful that we
18 will be able to continue to make progress. As we have
19 visited with Dr. Peters, her input has been basically
20 that the plan should stay a draft plan, and that once
21 you hire the evaluator, the evaluator should have the
22 opportunity then to suggest other items that should be
23 included to have a meaningful evaluation at the end.

24 So in our view, I think we can have a good
25 plan April 30th, get an RFP out, and then whoever is

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1 selected as an evaluator, have them also help us shape
2 the evaluation so that what we get as an end result is
3 a very good product, and that's what we are after.

4 JUDGE TOREM: My recollection of review of
5 the documents here, Mr. ffitch and Mr. Eberdt, your two
6 parties did not agree and enter into the settlement
7 agreement, so I would expect if there was going to be
8 any lack of consensus, it might come from those two
9 parties that didn't enter the settlement agreement in
10 December 2006.

11 If there is consensus on the draft plan and
12 it comes in April 30th with everything that Public
13 Counsel wants to see in it and everything, Mr. Eberdt,
14 that your client, The Energy Project, wants to see in
15 it, I believe Chairman Sidran indicated if the parties
16 are in agreement, there is no reason for this
17 Commission to pass judgment or comment on the draft
18 plan. Does Public Counsel believe there should be a
19 delay if there is a consensus draft plan submitted in
20 the putting out of the RFP, Mr. ffitch?

21 MR. FFITCH: Not necessarily, Your Honor. I
22 think that we just wanted to provide an opportunity
23 primarily for the Commission to resolve any disputes
24 that were presented but also just to have an
25 opportunity to give its blessing, if you will, to be

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1 comfortable that the plan was going to -- kind of a
2 check-in to make sure the parties had presented
3 something that was going in the direction that the
4 Commission had in mind, and I also would like to offer
5 our witness, Mary Kimbal, really a chance to address
6 that rather than have me testify if that's permissible.

7 JUDGE TOREM: I don't see why not.

8 Ms. Kimbal?

9 MS. KIMBAL: I don't really have anything to
10 add to that. I think the big question is if we can all
11 reach agreement on April 30th, and we've had some --
12 our time line clearly contemplates that the draft plan
13 we file with the Commission has certain components that
14 we haven't begun drafting yet, such as a draft RFP and
15 some kind of an -- that describes how the stakeholders
16 would work together as a collaborative to interface
17 with the evaluators.

18 So it's from that perspective that I say we
19 have our work cut out for us over the next five weeks,
20 but I'm hopeful that we can reach consensus, and that's
21 certainty the goal we are all striving for.

22 Then in terms of feedback from the
23 Commission, I think really it's just a check-in, as
24 Mr. ffitich, indicated that certainly today,
25 Commissioner Oshie has raised something for us that we

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1 missed, so if there is something else that we have
2 missed, it would be great to hear that from you.

3 CHAIRMAN SIDRAN: I will give Public Counsel
4 some guidance and the parties. This is not the
5 Commission's plan. This is Avista's plan. This is
6 Avista's burden. This is Avista's proposal that is
7 being tested in this pilot. That's why I say that I,
8 for one, do not envision the Commission approving the
9 evaluation plan lest it put us in the awkward position
10 of finding out when it's done that there is something
11 that we should have thought of, and that's not why we
12 are here.

13 We are prepared to address irreconcilable
14 differences among the collaborative parties in trying
15 to develop a plan that Avista is ultimately going to be
16 accountable for, but it's not going to be the
17 Commission's plan and it's not going to be a plan that
18 the Commission certifies as this is a good evaluation
19 plan. I don't think that was ever our intent.

20 So if necessary, we will make the time to
21 resolve issues that must be resolved in order for the
22 evaluation plan to go forward, but it's not a matter of
23 checking in with us to see if we are going to bless the
24 plan. I don't believe we are prepared to do that. We
25 are prepared to resolve disputes, but we are not

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1 prepared to adopt the plan as our own and will reserve
2 the right once the evaluation is done to identify
3 things that weren't thought of that should have been
4 thought of.

5 JUDGE TOREM: Mr. Eberdt, I know I had asked
6 the same question of you. Do you have an answer, or do
7 you want to take Chairman Sidran's advice and we will
8 leave it at that?

9 MR. EBERDT: I think I would be smart to keep
10 my mouth closed.

11 MR. FFITCH: Your Honor, I'm willing, I
12 guess, to be not smart and make a comment, I think, if
13 I may, on the issue of the plan. I understand Chairman
14 Sidran's comments. I think that helps us. There has
15 been though a number of times during the hearing today
16 discussion about how this is Avista's evaluation and
17 Avista's burden, if you will, and I'm concerned that
18 maybe inadvertently here, there is kind of a bordering
19 of Avista's position about decoupling and the ultimate
20 evaluation itself and the evaluator's work. It's very
21 important to us, as we've indicated in our comments,
22 and I think there is a consensus among the parties here
23 that the evaluator and the plan and the proposal is
24 intended to be objective and independent of Avista's
25 burden, which may very likely be to continue to

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1 advocate for decoupling, and we would hope that we can
2 go forward and try to keep those two things separate so
3 that the evaluation plan and the evaluator's work is
4 not part of Avista's ultimate own policy position, and
5 I'm making assumptions about it and maybe I'm wrong.
6 They may change their minds about decoupling at some
7 point in the process, but I just wanted to add that
8 thought to the discussion here.

9 CHAIRMAN SIDRAN: I take your point. What
10 I'm trying to say is the burden of persuasion that this
11 departure from traditional rate-making is one that
12 should in effect become public policy in this state
13 lies with the Company, which I don't want to put words
14 in your mouth, but from your position on this issue
15 from the beginning, I assume that's where you would
16 like the burden of proof to lie.

17 MR. FFITCH: Yes, Your Honor.

18 CHAIRMAN SIDRAN: If the Company is smart,
19 they will want the evaluation to withstand the kind of
20 rigorous scrutiny that I'm sure will be provided by
21 Public Counsel, by Commission staff, by the other
22 intervenors, and ultimately by the Commission itself.
23 So it may be that they will pick an evaluator or choose
24 a process that is subject to question in that regard,
25 but since they bear the burden of persuasion, that's a

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1 choice that they will have to make.

2 JUDGE TOREM: Is there any other information
3 you might need in helping to craft an order to answer
4 the questions from the notice comment as to both the
5 schedule that we should set as a new deadline for the
6 filing of the draft plan, any other modifications to
7 the schedule set in Order 04, and any other information
8 on a potential sanction, if any, that might be imposed
9 on the Company? Hearing none, is there any other input
10 from the parties? Thank you all your time in the
11 preparation for today. It's now about 3:30. We are
12 adjourned.

13 (Prehearing adjourned at 3:29 p.m.)

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