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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 In the Matter of the) Docket No. UE-991262
5 Application of) Volume 1
6 PACIFICORP) Pages 1-85
7 For an Order Approving the)
8 Sale of Its Interest in (1) The)
9 Centralia Steam Electric)
10 Generating Plant, (2) The)
11 Ratebased Portion of the)
12 Centralia Coal Mine, and (3))
13 Related Facilities, for a)
14 Determination of the Amount of)
15 and the Proper Ratemaking)
16 Treatment of the Gain)
17 Associated with the sale; and)
18 for an EWG Determination)

11

12 In the Matter of the) Docket No. UE-991409
13 Application of)
14 PUGET SOUND ENERGY, INC.,)
15 for (1) Approval of the)
16 Proposed Sale of PSE's Share)
17 of the Centralia Facilities,)
18 and (2) Authorization to)
19 Amortize Gain Over a Five-Year)
20 Period.)

16

17 In the Matter of the) Docket No. UE-99125
18 AVISTA CORPORATION,)
19 for Authority to Sell Its)
20 Interest in the Coal-Fired)
21 Centralia Power Plant.)

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20 A hearing in the above matter was
21 held on October 28, 1999, at 9:43 a.m., at 1300
22 Evergreen Park Drive Southwest, Olympia, Washington,
23 before Administrative Law Judge MARJORIE R. SCHAER
24 and CHAIRWOMAN MARILYN SHOWALTER and COMMISSIONER
25 WILLIAM R. GILLIS.

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1 Barbara L. Spurbeck
Court Reporter

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3 The parties were present as
follows:

4 AVISTA CORP., by R. Blair Strong,
Attorney at Law, Paine, Hamblen, Coffin, Brooke &
5 Miller, 717 West Sprague Avenue, Suite 1200, Spokane,
Washington, 99204.

6 PUGET SOUND ENERGY, by Matthew R.
Harris, Attorney at Law, Summit Law Group, 1505
7 Westlake Avenue North, Suite 300, Seattle, Washington
98109.

8

9 THE COMMISSION, by Robert
Cedarbaum, Assistant Attorney General, 1400 S.
Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
10 Washington 98504-0128.

11 PUBLIC COUNSEL, by Charles F.
Adams, Assistant Attorney General, 900 Fourth Avenue,
12 #2000, Seattle, Washington 98164.

13 PACIFICORP, by George M. Galloway,
Attorney At Law, Stoel Rives, 900 S.W. Fifth Avenue,
14 Suite 2600, Portland, Oregon 97204-1268.

15 INDUSTRIAL CUSTOMERS OF NW
UTILITIES, by Michael T. Brooks, Attorney at Law,
16 Duncan, Weinberg, Genzer & Pembroke, 1300 S.W. Fifth
Avenue, Suite 2915, Portland, Oregon 97201.

17

18 IBEW LOCAL 125, by John Bishop,
Bennett, Hartman & Reynolds, 851 S.W. Fifth Avenue,
Portland, Oregon 97204 (Via Teleconference Bridge).

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20 OPERATING ENGINEERS, LOCAL 612, by
Robert Lavitt, Schwerin, Campbell, Barnard, 18 West
Mercer Street, Suite 400, Seattle, Washington
21 98119-3971.

22 NW ENERGY COALITION, by Nancy
Hirsh, 219 First Avenue South, Suite 100, Seattle,
23 Washington 98104.

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INDEX OF EXHIBITS

3

4	EXHIBIT:	MARKED:	OFFERED:	ADMITTED:
5	T-101	55	--	--
6	102-107	56	--	--
7	T-108	56	--	--
8	109-112	56	--	--
9	T-201	57	--	--
10	202-208	57	--	--
11	T-209	57	--	--
12	210-212	57	--	--
13	T-213	57	--	--
14	214	57	--	--

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1 JUDGE SCHAER: Let's be on the record.
2 This morning the Commission is holding a joint
3 hearing in three separate dockets. The first, Docket
4 Number UE-991255, Avista Corporation, doing business
5 as Avista Utilities, in its application to sell its
6 interest in the coal-fired Centralia Power Plant.

7 The second docket, UE-991409, Puget Sound
8 Energy application for approval of the sale of
9 Puget's interest in the Centralia Power Plant to
10 TECWA. That's capital T-E-C-W-A, Inc.

11 The third docket, Number 991262, Pacific
12 Power and Light Company, application for approval to
13 sell its interest in the Centralia Steam Electric
14 Generating Plant to TECWA Power, Inc.

15 The first order of business this morning
16 will be to take appearances, and I would like you to
17 indicate if you are appearing in what dockets of the
18 three I have just indicated that you are planning to
19 appear in, or would it be more appropriate at this
20 point to take up the issue of whether these
21 proceedings should be consolidated so we know what
22 people are appearing in?

23 CHAIRWOMAN SHOWALTER: It seems like if we
24 decide to consolidate them, everybody's in the same
25 one.

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1 JUDGE SCHAER: Okay. We'll go ahead, then,
2 and I will first take appearances in Docket Number
3 UE-991255, starting with the company, please.

4 MR. STRONG: Yes, ma'am. My name is R.
5 Blair Strong, with the Law Firm of Paine, Hamblen,
6 Coffin, Brooke & Miller, and I will be appearing on
7 behalf of the company as co-counsel with Mr. David J.
8 Meyer, who's the senior vice president, general
9 counsel of Avista Corporation, and I would request
10 that my address be added to the address list, so that
11 I will receive copies of the filings in this matter.

12 JUDGE SCHAER: And Mr. Strong, we usually
13 ask at this point, with more than one counsel, which
14 one of you will be the contact point for the
15 Commission or for other parties.

16 MR. STRONG: In this proceeding, I shall be
17 the contact.

18 JUDGE SCHAER: Thank you.

19 MR. STRONG: And I'll introduce other
20 persons who are here present with me. Mr. Tom
21 Dukich, Ron McKenzie, Bill Johnson and Kelly Norwood
22 are in the room, also from Avista Corporation. And
23 for the purpose of expediting service during this
24 proceeding, and since it is going to be something of
25 an expedited proceeding, we hope, we would request

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1 that Mr. Ron McKenzie's name be substituted for
2 Thomas Dukich on the service list to aid in the
3 prompt dispatch of mail to him.

4 JUDGE SCHAER: All right. Who else would
5 like to appear in the Water Power application? For
6 Staff, Mr. Cedarbaum.

7 MR. CEDARBAUM: Robert Cedarbaum,
8 Assistant Attorney General, representing Commission
9 Staff. My business address is the Heritage Plaza
10 Building, 1400 South Evergreen Park Drive, S.W.,
11 Olympia, zip code is 98504.

12 JUDGE SCHAER: Thank you. And Public
13 Counsel.

14 MR. ADAMS: Yes, Your Honor. My name is
15 Charles F. Adams, Assistant Attorney General, and I
16 will be appearing as Public Counsel in this
17 proceeding. Do you want us to recite our addresses
18 in each one of these?

19 JUDGE SCHAER: Yes, please.

20 MR. ADAMS: My business address is 900
21 Fourth Avenue, Suite 2000, Seattle, Washington,
22 98164. Thank you.

23 JUDGE SCHAER: And then, for intervenors,
24 why don't we take you first, Mr. Bishop, so I don't
25 forget you.

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1 MR. BISHOP: Okay, thank you. My name is
2 John Bishop, with the law firm of Bennett, Hartman &
3 Reynolds, 851 S.W. Fifth Avenue, Portland, 97204.
4 I'm not admitted to practice in Washington, just for
5 the record. I represent the International
6 Brotherhood of Electrical Workers, Local 125, and I
7 think our interest is specifically in Docket Number
8 UE-991262, the PacifiCorp application.

9 JUDGE SCHAER: So is it correct that you do
10 not want to intervene in the Water Power portion of
11 the proceedings?

12 MR. BISHOP: Right, that's correct.

13 JUDGE SCHAER: Okay. Then I will get back
14 to you in a bit. Others who wish to intervene in
15 this portion of the proceedings?

16 MR. BROOKS: Yes, Michael Brooks, from the
17 law firm of Duncan, Weinberg, Genzer & Pembroke, 1300
18 S.W. Fifth Avenue, Suite 2915, Portland, Oregon,
19 97201, representing the Industrial Customers of
20 Northwest Utilities, and I'm here today with Linc
21 Wolverton.

22 MS. HIRSH: Nancy Hirsh, with the Northwest
23 Energy Coalition, 219 First Avenue South, Suite 100,
24 Seattle, Washington, 98104, with the Northwest Energy
25 Coalition.

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1 JUDGE SCHAER: And you, sir?

2 MR. LAVITT: Robert Lavitt, with Schwerin,
3 Campbell, Bernard, and that's at 18 West Mercer
4 Street, Seattle, Washington, Suite 400, 98119, and
5 that's appearing on behalf of the Operating
6 Engineers, Local 612, for this docket number and for
7 all of them.

8 JUDGE SCHAER: All right. Let's next take
9 up appearances in Docket UE-991409. Mr. Strong.

10 MR. STRONG: Yes, ma'am. For the record, I
11 didn't give you my address. I'll be pleased to do
12 that.

13 JUDGE SCHAER: Please do so now.

14 MR. STRONG: It's the law firm of Paine,
15 Hamblen, Coffin, Brooke & Miller, 717 West Sprague,
16 that's spelled S-p-r-a-g-u-e, Avenue, Suite 1200,
17 Spokane, Washington, 99204.

18 JUDGE SCHAER: Thank you.

19 MR. STRONG: Thank you.

20 JUDGE SCHAER: And then, for Puget Sound
21 Energy, I'm going to assume that the appearances are
22 the same as they were for the prior docket, unless
23 someone wants to inform me otherwise. Mr. Strong,
24 are you appearing in the Puget proceeding?

25 MR. STRONG: To the extent -- yes, to the

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1 extent they're consolidated, I will be.

2 JUDGE SCHAER: All right. And Mr. Harris,
3 do you want to add --

4 MR. HARRIS: Do you want me to go ahead and
5 go through the whole drill with the address and phone
6 number?

7 JUDGE SCHAER: Yes.

8 MR. HARRIS: Okay. It's Matthew R.
9 Harris, Summit Law Group, the address is 1505
10 Westlake Avenue North, Suite 300, Seattle,
11 Washington, 98109. The telephone number is
12 206-676-7000. Fax number is 206-676-7001. In the
13 past, we've exchanged e-mail addresses at this point.
14 It's matth@summitlaw.com.

15 JUDGE SCHAER: Okay. Are the other
16 appearances in Docket Number UE-991409 the same as
17 those as were made in Docket Number UE-991255?

18 MR. CEDARBAUM: Yes, for Staff.

19 MR. ADAMS: Yes, for Public Counsel.

20 MR. BROOKS: Yes, for ICNU.

21 MS. HIRSH: Yes, for Northwest Energy
22 Coalition.

23 JUDGE SCHAER: All right. Finally, we will
24 take appearances in Docket Number UE-991262, and I
25 believe, Mr. Bishop, this was the docket you were

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1 interested in. This is the Pacific Power portion.

2 MR. BISHOP: That's correct.

3 JUDGE SCHAER: And you have previously
4 given your appearance information?

5 MR. BISHOP: Yes, and I have an e-mail
6 address, too. I don't know how necessary that will
7 be, but --

8 JUDGE SCHAER: Sometimes it's very useful.

9 MR. BISHOP: Okay.

10 Bishopj@bennetthartman.com.

11 JUDGE SCHAER: Then for the company?

12 MR. GALLOWAY: For the applicant, George M.
13 Galloway, of the law firm of Stoel Rives, LLP.
14 Mailing address is 900 S.W. Fifth Avenue, Portland,
15 Oregon, 97204. My telephone number is area code
16 503-294-9306. My fax number is area code
17 503-220-2480. My e-mail address is
18 gmalloway@stoel.com, appearing for the applicant
19 today. And with me, from the company, is Andrea
20 Kelly.

21 JUDGE SCHAER: And are the interventions --
22 I mean, the appearances are the same in this
23 proceeding as in the others?

24 MS. HIRSH: Yes.

25 JUDGE SCHAER: Mr. Strong and Mr. Harris,

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1 are you appearing in this proceeding?

2 MR. HARRIS: No.

3 MR. STRONG: To the extent they're
4 consolidated, yes.

5 JUDGE SCHAER: Okay. And you, sir?

6 MR. LAVITT: I just wanted to add my e-mail
7 to the record, to the extent that's useful. It's
8 lavitt@workerlaw.com.

9 JUDGE SCHAER: All right. The next thing
10 I'd like to take up are the motions for intervention,
11 and I would start with you, Ms. Hirsh. And before we
12 do that, let me take just a moment to see if everyone
13 who wanted copies of the issues lists received
14 copies. Ms. Hirsh's organization, I believe, is the
15 second organization listed in the issues list, and so
16 to the extent that any of you hadn't seen the issues
17 that she proposed to bring on behalf of that
18 organization, you may want to take a look at them
19 now.

20 MS. HIRSH: We submitted a letter, a
21 request of intervention several weeks ago.

22 JUDGE SCHAER: Yes, is there anything that
23 you want to add orally to your written motion to
24 intervene?

25 MS. HIRSH: No, but the principal concerns

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1 that we have involve the distribution of the gain
2 from the sale of this proceeding, this resource, and
3 then we believe that the companies' power replacement
4 decisions are a critical element to the public
5 benefit determination in this case.

6 JUDGE SCHAER: Okay. Is there any
7 objection to intervention by the Northwest Energy
8 Coalition?

9 MR. CEDARBAUM: Your Honor, I have an
10 objection just on a limited basis. As the two issues
11 that Ms. Hirsh just listed, I think certainly the
12 first one is a relevant and proper issue, proper
13 treatment of the gain of power supply benefits, so I
14 don't object to the intervention by the Energy
15 Coalition as to that issue.

16 As to the second issue, though, as I
17 understand it, it's what are these companies going to
18 do to replace the power that they no longer will
19 receive from Centralia. That seems to me to be an
20 issue that's not really within the scope of this
21 proceeding, but it's one the Commission's perspective
22 we look at in prudence reviews and general rate cases
23 and least cost planning processes and that other
24 agencies look at in terms of environmental impact on
25 those sorts of matters.

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1 So to the extent that that issue is going
2 to be raised, I would object to the intervention, but
3 as to the first point, I think that's clearly within
4 the scope of this case.

5 JUDGE SCHAER: Any other objections? A
6 brief response, Ms. Hirsh.

7 MS. HIRSH: Given the history of the plant
8 and its operation, we think that whether the
9 companies sell or not and the continued operation of
10 the plant in the form that it would operate, whether
11 it sold or not sold, could have an impact on the
12 environment, given power replacement decisions by the
13 companies.

14 So we could argue that perhaps no sale
15 would be better for the environment than perhaps
16 decisions that are made post-sale, given resource
17 decisions. So that's why we think it's a related
18 issue to the sale of the plant.

19 JUDGE SCHAER: I think that at this time
20 I'm going to grant the Northwest Energy Coalition
21 motion for intervention. I think you have raised
22 issues that are germane to the proceeding, and I
23 think that we will discuss issues more fully, but the
24 Commission thinks the decision we're looking at is is
25 the public interest served by the sale, as opposed to

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1 the sale not occurring. That's the comparison that
2 we think appropriate, and part of our judgment of
3 whether the sale -- what that comparison includes
4 does depend on whether companies that are selling
5 firm resource have some plan in mind for meeting the
6 needs that that resource has met. So I am not going
7 to limit the intervention at this point, although --
8 CHAIRWOMAN SHOWALTER: I want to intervene
9 here. We have this very topic, don't we, on a motion
10 to reconsider? So I think that it is in the air,
11 what the Commission's opinion is on that very
12 question. However, the Northwest Energy Coalition
13 wants to intervene on issues that are uncontestably
14 within the scope. So it seems like, for purposes of
15 intervention, it should be granted. However, what
16 issues are germane to be raised doesn't need to be
17 decided at this particular day, and one issue, in
18 particular, is in a formal proceeding.
19 MR. CEDARBAUM: Then I assume from that,
20 then, that based on the evidence that the Energy
21 Coalition may offer and your ruling in the Colstrip
22 matter, that I still have the right to object on the
23 basis of relevance or other evidentiary grounds when
24 that evidence is offered into the record?
25 JUDGE SCHAER: I would think so, Mr.

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1 Cedarbaum. At this point, all I intended to say is
2 that we are not going to prohibit that issue to be
3 raised, but if issues are raised that you think are
4 outside the scope of the proceeding, you're welcome
5 to move to strike testimony, you're welcome to object
6 to the admission of or cross-examination of issues
7 that you think are beyond the scope of this
8 proceeding, and I think that will be the appropriate
9 time for the Commission to act on those.

10 MR. CEDARBAUM: Thank you.

11 JUDGE SCHAER: Is that -- are we on the
12 same -- okay. And then, the next motion, I believe,
13 was you, sir?

14 MR. BROOKS: Yes, Michael Brooks, on behalf
15 of ICNU. We filed a petition with the Commission in
16 this proceeding on September 7th. We also filed a
17 list of issues that we intend to raise last Thursday.
18 And based on the information contained in the
19 petition and the issues that we intend to raise,
20 which were filed last week, we would move for
21 intervention.

22 JUDGE SCHAER: Have you looked at the list
23 that was handed out, and do the three bullets at the
24 top of the second page pretty fairly reflect the
25 issues that you presented, sir?

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1 MR. BROOKS: Yes, they do.

2 JUDGE SCHAER: Okay. Is there any
3 objection to intervention by ICNU? Hearing none, I
4 believe that your intervention is within the scope of
5 this proceeding, and that intervention is granted.

6 MR. BROOKS: Thank you.

7 JUDGE SCHAER: Going next to you, sir.

8 MR. LAVITT: Operating Engineers, Local
9 612, Robert Lavitt. We had filed papers a few,
10 several weeks ago moving for a motion to intervene on
11 behalf of Operating Engineers 612.

12 Rather than submitting additional issues
13 that would have been duplicative of what's already
14 been articulated by the other buying and selling
15 parties, the union's primary interest here is, as I
16 tried to summarize on what's been included in page
17 three of this issues statement, is in the impact that
18 the proposed transaction would have on the jobs at
19 the Centralia mine, as well as the power plant, but
20 in particular, the mine, as well as the impact it
21 would have on the conditions of work and health and
22 safety at the mine, as well as how the proposed
23 transaction would impact those employees' families,
24 as well as the surrounding community there.

25 So at this time, I don't know if that's an

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1 issue that would be -- if the Commission would
2 address whether or not that would be appropriately
3 addressed in the course of these proceedings, but
4 that would be the operating engineers' primary
5 interest in this transaction, safeguarding the impact
6 and looking at how the proposed transaction would
7 impact those elements.

8 JUDGE SCHAER: Okay. Is there any
9 objection to intervention by Local 612?

10 MR. CEDARBAUM: Yes, Your Honor. Maybe the
11 writing's on the wall, but I'll give it a try anyway,
12 if anything, just to find out what my rights are
13 later in the proceeding. But Staff does object to
14 the intervention. And this is, I think, different
15 than the Energy Coalition, because there's no
16 precedence for how unions have been treated by the
17 Commission as intervenors in prior merger
18 proceedings, but it appears, from the list of the
19 issues of this union and looking at their motion to
20 intervene, that those issues really are beyond the
21 scope of the interests that this Commission can
22 protect, union contract issues, worker safety issues
23 are all matters that this Commission has no control
24 over, and that other agencies may have control over.
25 Another item listed in the motion to

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1 intervene is the uninterrupted operation of the coal
2 mine and the power plant. Again, that's something
3 the Commission can't control in this case. You can't
4 say that this plant has to continue to operate, even
5 if it's not sold. Again, those types of issues still
6 might come up in a prudence review, but you can't
7 prevent that from happening.

8 So again, maybe the writing's on the wall
9 with my first stab at this, but we would object to
10 the intervention, and we look at this as being
11 different than the Energy Coalition situation, and
12 that our position is also consistent with the
13 Commission's action in prior cases, most recently in
14 the Scottish Power/PacifiCorp merger. The unions
15 were allowed in, but their issues on worker safety
16 and labor contracts was not found to be germane in
17 that proceeding.

18 JUDGE SCHAER: Any brief response?

19 MR. LAVITT: Yes, thank you. But I think
20 the relevant point there, if you're looking at the
21 Scottish Power proceeding, was that, in fact, the
22 unions were permitted to intervene and they do have
23 an interest in this.

24 Even if some evidence or witness testimony
25 at some point might be deemed not germane at a future

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1 point, then so be it. The Commission will indicate
2 that and rule accordingly. But at this stage, it
3 would be premature and it would be inappropriate to
4 exclude the union's petition to intervene at this
5 time.

6 MR. CEDARBAUM: Your Honor, if I could just
7 -- again, just to distinguish the Scottish Power
8 case. The safety issue that we were talking about
9 there was the safety to customers from the operation
10 or the merger with the Scottish Power, not worker
11 safety, which is the union's interest in this
12 proceeding. That issue was governed by OSHA and the
13 Washington counterpart on worker safety matters, and
14 I don't see how this Commission would be getting
15 involved in those types of issues.

16 JUDGE SCHAER: I'd like to hear now from
17 Mr. Bishop on his motion, because I think we may want
18 to discuss both unions' involvement and what is
19 appropriate before the Commission and what is outside
20 our scope with both of those in mind.

21 So I'm going to ask you, Mr. Bishop, to
22 briefly restate your petition to intervene, and then
23 we'll see if there's an objection, and then we'll
24 have more of a conversation about both of these. Go
25 ahead, please.

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1 MR. BISHOP: The IBEW, Local 125, is the
2 exclusive bargaining representative for approximately
3 125 of the employees of the Centralia Steam Plant.
4 It has represented those employees since 1971, and
5 bargaining for and enforcing bargaining agreements
6 that govern the terms and conditions of their
7 employment there, and in particular, protecting job
8 security in that plant.

9 Our petition relates to -- I don't know so
10 much -- I had difficulty hearing the previous
11 intervenors' arguments, frankly, so I can't really
12 state where we differ or are similar, but our primary
13 interest is in protecting the job security of a large
14 group of employees that this union has represented
15 for 28 years, and feel that the application by
16 PacifiCorp is in their interest and, frankly, also in
17 the interest of the public that is affected by the
18 plant. And so far, it ensures continued job security
19 and working for people in that area.

20 So we aren't speaking so much as to the
21 safety issues that were addressed by Staff Counsel or
22 the other uninterrupted operation so much, and I
23 think indirectly we are, but it's a general petition
24 in favor of the sale, insofar as it enhances the job
25 security of a group of our members and, frankly,

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1 supplies other job opportunities for others in the
2 area that the jurisdiction of IBEW covers.

3 JUDGE SCHAER: Is there any objection to
4 intervention by IBEW?

5 MR. CEDARBAUM: Yes, Your Honor, for the
6 same reason -- actually, the one reason I listed
7 before, the contract issues have been specifically
8 found by this Commission in other merger-type
9 proceedings or proceedings under the transfer
10 property statutes not to be germane to the scope of
11 the proceedings itself, that those are interests this
12 Commission isn't protecting through this proceeding.
13 So we have the same objection to this union as the
14 prior union.

15 JUDGE SCHAER: Any brief response, Mr.
16 Bishop?

17 MR. BISHOP: Yes, to the extent that we
18 represent a substantial, it seems to me, subset of
19 the public interest affected by the sale, and that is
20 the employees who live and work around the Centralia
21 Steam Plant, and the statutory language governing
22 intervention referred to whether or not the petition
23 discloses a substantial interest in the subject
24 matter of the hearing and whether the petitioner can
25 say whether it's in the public interest, I think we

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1 significantly are speaking on behalf of the public
2 interest.

3 JUDGE SCHAER: Okay. Anything further from
4 counsel for Local 612?

5 MR. LAVITT: Just to --

6 JUDGE SCHAER: Can I ask you to pull up to
7 the table? You can unhook that chair by some secret
8 means that Mr. Dukich probably knows. Pull it on up,
9 because Mr. Bishop can't hear you unless you speak
10 directly into a microphone.

11 MR. LAVITT: Certainly, thank you. I think
12 Mr. Bishop's point is well-taken, and I would
13 emphasize that there is a unique interest that
14 Operating Engineers 612, in addition to IBEW bring,
15 which is that this is the only opportunity and
16 ability for those who are employed and who work at
17 both the plant and the mine to have input into this
18 proceeding, and that is a substantial, not only a
19 unique perspective and interest, but also a
20 substantial portion of those directly impacted by
21 this transaction that reside in the Centralia
22 community, and thus are properly and appropriately
23 intervening in this proceeding.

24 JUDGE SCHAER: Thank you.

25 MR. CEDARBAUM: Your Honor, if I could just

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1 briefly respond to that point. Public Counsel is an
2 intervenor, will be an intervenor in all three
3 proceedings, and represents those type of people, as
4 ratepayers, in cases before the Commission. So the
5 Commission's discretion, under its intervention rule,
6 I think would warrant, for the sake of administrative
7 convenience and keeping this hearing going past the
8 15 minutes that I've taken up on this issue, that for
9 that purpose, that the intervention's not warranted.

10 JUDGE SCHAER: Mr. Adams, did you want to
11 speak to that?

12 MR. ADAMS: I guess I'm being dragged into
13 this. I guess I would indicate, first of all, just
14 as a very technical thing, I think we would believe
15 that we are not an intervenor, but we're a party of
16 right.

17 But I guess my view is we take a rather
18 liberal view of who should be allowed to intervene,
19 but we would be looking more carefully at the
20 testimony that's filed by these parties when we get
21 to the point of filing testimony. We may have
22 objections. As ratepayers -- many of their folks may
23 not be ratepayers, so they have -- they're a
24 different piece of the public, if you will, than
25 simply ratepayers.

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1 JUDGE SCHAER: Okay. I'm going to call a
2 stop to this conversation at this point. The
3 Commission will take these two motions to intervene
4 under advisement. I'd ask both counsel to continue
5 to participate today, in terms of planning the
6 scheduling and discovery and other items, and then we
7 will issue a prehearing conference order in short
8 order that will address the issue of these
9 interventions, whether they're granted and whether
10 they may be limited in scope to certain issues.

11 MR. BISHOP: Thank you.

12 JUDGE SCHAER: Okay. The next item I would
13 like to take up is looking at what's been prefiled by
14 the different applicants and just determine what, if
15 anything, in your filing should be marked at this
16 time as prefiled testimony. And let's go in the same
17 order again, starting with Avista, Mr. Strong. Let's
18 go off the record for a moment.

19 (Discussion off the record.)

20 JUDGE SCHAER: Back on the record. While
21 we were off the record, Mr. Strong had a moment to
22 confer with his client. Would you like to tell us
23 what your plan is, Mr. Strong?

24 MR. STRONG: Your Honor, our intention
25 would be to, at the time of supplemental filing on

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1 the 5th, we would submit all the testimony and
2 exhibits that we intend to file in this proceeding as
3 one package and will number the exhibits and
4 testimony accordingly at that time. They may
5 duplicate what the parties have already seen, which
6 has already been filed in some fashion with the
7 Commission.

8 JUDGE SCHAER: Thank you. And next, I will
9 ask you, Mr. Harris, what are PSE's intentions?

10 MR. HARRIS: We've already filed our
11 testimony and exhibits. There are two pieces of
12 testimony and ten exhibits, and we're happy to go
13 through them right now and number them, if you'd
14 like.

15 JUDGE SCHAER: Okay.

16 MR. HARRIS: This is in Docket Number
17 991409.

18 MR. HARRIS: The first is KRK-T, direct
19 testimony of Karl Karzmar.

20 JUDGE SCHAER: Hold on just a moment,
21 please. I've got Mr. Gaines on top, so --

22 MR. HARRIS: I can do it in that order, if
23 you'd like.

24 JUDGE SCHAER: Is that how yours are?

25 CHAIRWOMAN SHOWALTER: Yes.

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1 MR. HARRIS: Let's start with Mr. Gaines.
2 Then the first would be WAG-T, the direct testimony
3 of William Gaines.

4 JUDGE SCHAER: Okay.

5 CHAIRWOMAN SHOWALTER: So that is what?
6 Does that have an exhibit number?

7 MR. HARRIS: Well, that's how we've
8 numbered it, and normally --

9 CHAIRWOMAN SHOWALTER: That's number one?

10 MR. HARRIS: I always wait for her to
11 assign it, or she gets angry with me.

12 JUDGE SCHAER: I just love it when you put
13 those nice exhibit lists on top, but --

14 MR. HARRIS: You know, I've got one I can
15 hand to you right now if it would make it easier.

16 JUDGE SCHAER: That would be lovely. Do
17 you have an extra copy of his testimony? I would
18 appreciate that, because I have everything else, it
19 appears.

20 MR. HARRIS: Do you need just his testimony
21 or his exhibits?

22 JUDGE SCHAER: I've got his exhibits. Just
23 his testimony. Thank you.

24 (Discussion off the record.)

25 JUDGE SCHAER: We're back on the record.

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1 While we were off the record, there was a
2 recommendation made that we take up the issue of
3 consolidation before we start numbering exhibits so
4 that we can hopefully keep ourselves organized. So
5 let's go to the issue of consolidation at this time.

6 I think most of the parties raised this as
7 an issue. I think only one party took a position on
8 it, and that was Puget saying we should not
9 consolidate. So Mr. Harris, why don't you tell us
10 why you think that, and then we'll hear from others.

11 MR. HARRIS: Puget doesn't have a firm
12 position on this issue, we just -- and we believe
13 that the consolidation issue is determined ultimately
14 by the issue list, the determination of the issues
15 that are going to be covered in the proceeding. If
16 the Commission is going to address solely the issue
17 of the appropriate regulatory treatment of gain and
18 any power cost savings, then it appears -- in the
19 context of deciding whether the transaction is in the
20 public interest, then it appears to us that the
21 appropriate and most efficient way to proceed is in
22 separate proceedings. And that's our position now.

23 If there are issues that are common to --
24 that the Commission wants to take up that are common
25 to all three of the sellers, then we're happy to

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1 consolidate those issues and have a consolidated
2 hearing that addresses the common issues. We think
3 it would be inefficient for the Commission to have to
4 address those issues repeatedly and then have
5 separate proceedings to address the issues that are
6 unique to each seller.

7 JUDGE SCHAER: Are there other comments on
8 the issue of consolidation?

9 MR. GALLOWAY: Yes, Your Honor.

10 JUDGE SCHAER: Mr. Galloway.

11 MR. GALLOWAY: I suspect PacifiCorp's views
12 are not a lot different than those that have just
13 been articulated. We believe there are common
14 issues. We believe those common issues would be best
15 addressed in a consolidated proceeding. We're not
16 aware of a reason why the separate issues could not
17 also be addressed in the context of a consolidated
18 proceeding, as long as we were all careful to make
19 sure we delineated between those issues which are
20 common to all companies and those issues which are
21 unique to each company.

22 We would worry, for example, about a
23 determination of appropriate ratemaking treatment
24 being done on a generic basis when each of the three
25 companies comes before the Commission with a

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1 different rate history.

2 Similarly, we would worry about a common
3 and generic treatment of the consistency of the sale
4 with least cost plan. But our belief in this has
5 been that if we're careful about it, that
6 consolidation would not prevent that kind of
7 delineation between the common and the separate
8 issues.

9 Another housekeeping matter which I think
10 the parties are aware of, which may bear on your
11 ultimate decision, is that with the proposed
12 procedural hearing schedule that the parties have
13 talked about, we have made it known that PacifiCorp
14 may not be able to be present for the first day of
15 those proceedings because of a competing hearing in
16 another state, but, again, that seems to be the kind
17 of thing that could be managed if we dealt, perhaps
18 in the first instance of a consolidated proceeding,
19 with the issues that are unique to Avista and Puget
20 and then reserved for subsequent time in the hearings
21 the common issues.

22 On the matter of efficiency, it also struck
23 us that, because PacifiCorp is the majority owner of
24 the plant and has been the most active in its role as
25 operator of the plant in conducting the auction and

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1 such, that there are some issues that I think we
2 recognize that PacifiCorp has the most information on
3 and is probably in the best position to provide
4 evidence to the Commission, and it struck us as
5 inefficient, if the cases were not consolidated, to
6 place the burden, separate burden on each of the
7 applicants for providing that sort of information.

8 JUDGE SCHAER: Okay. Any other counsel
9 wish to speak to this? Mr. Strong. Pull that
10 microphone up, please, so Mr. Bishop can hear you.

11 MR. STRONG: I think Avista Corporation
12 would prefer that the proceedings be conducted
13 separately in this matter, recognizing that the bulk
14 of the issues probably are going to concern
15 company-specific accounting and issues -- perhaps
16 market power issues, which are company-specific, but
17 it doesn't have a strong objection to proceeding in a
18 a consolidated manner, I guess, especially with
19 respect to those issues which are truly universal,
20 and perhaps Mr. Galloway spoke to some of those
21 issues that are -- that would require data to be
22 furnished by PacifiCorp, for instance, with respect
23 to all of the companies.

24 But we can see some risk in getting too
25 much consolidated into one proceeding and haggling

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1 over a lot of company-specific issues in consolidated
2 proceedings, which would be best had with respect to
3 each company.

4 JUDGE SCHAER: Does anyone else wish to
5 address this? Mr. Cedarbaum and then Mr. Adams.

6 MR. CEDARBAUM: Thank you, Your Honor. I
7 think we all recognize this is within the
8 Commission's discretion to do what they think is
9 best, but our recommendation would be not to
10 consolidate, for the following reason. One, that --
11 one of the issues that we all recognize will be
12 addressed in all three proceedings is the accounting
13 treatment, and that is specific to each company.

14 At the same time, I think we all recognize
15 that we're going to come out at this prehearing today
16 with some issues that are probably general to all
17 three applications. But it makes sense to us to keep
18 them on a not consolidated and to hold joint hearings
19 on the issues that turn out to be issues in common to
20 the three applications.

21 And what we would also recommend, to try to
22 smooth that process, would be that after all the
23 evidence was filed and perhaps a few days before the
24 hearing, that we have a telephone conference with the
25 ALJ or another prehearing conference where we talk

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1 about which day for what issues, joint issues,
2 separate issues, and work out that kind of a process.

3 So it would be -- and also, the reason --
4 other reasons why not to consolidate would be that if
5 the Commission's decision on accounting treatment for
6 one utility is appealed by a party to that case, then
7 we would have a separate record for that particular
8 case going up to the court and we wouldn't have to
9 worry about a lot of evidence in that record that's
10 not germane to that court case.

11 We would also eliminate, I think, the
12 concern that Mr. Galloway was expressing of making it
13 easier for each company not to intervene in the other
14 company's proceeding as to the accounting treatment.
15 They can all appear at the joint hearing on common
16 issues and provide evidence on that, but when we get
17 to the hearing as to each particular case, then they
18 can sit back and not worry about what's happening to
19 their case when the accounting treatment of another
20 company is being considered.

21 So again, our recommendation is not to
22 consolidate, but that's within your control, and if
23 you see otherwise, then that's fine, too.

24 JUDGE SCHAER: Mr. Adams.

25 MR. ADAMS: Your Honor, I think we agree a

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1 little bit with everyone at this point, because I
2 think we probably will be addressing at least the
3 issue of the merits, whether it should be sold or not
4 in the first place more than anyone else. That's
5 pretty much a common issue, it seems to me. We're
6 dealing a lot with the basic operating information of
7 the plant and, as Mr. Galloway has said, probably
8 they would be the source of a lot of that
9 information.

10 So that issue strikes me of a consolidated
11 one, as the plant is being run in partnership with
12 all these three.

13 When we get to the accounting treatment,
14 obviously there may be differences in how that's
15 handled. Frankly, I guess I don't really care much
16 whether they're consolidated or not. We've got a
17 hearing schedule that's going to pretty much put them
18 all together. We don't want to get into a situation
19 where we're having to file three complete, distinct
20 sets of testimony and everything else.

21 So when we address it, I think Mr. Galloway
22 worded it carefully, and specify how the accounting
23 treatment would be recommended for each company, or
24 keep that issue as the filing on those to that point,
25 if you will, of the testimony as three separate

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1 filings, I don't think we particularly care one way
2 or another.

3 JUDGE SCHAER: I guess I'd like to hear,
4 also, Mr. Brooks, or Ms. Hirsh, how it would affect
5 you, as an intervenor, in the amount of work you have
6 to do if you're appearing in three proceedings or if
7 you're appearing in one proceeding?

8 MR. BROOKS: We don't really have a
9 position with respect to consolidation. The way the
10 proposed schedule is set up now, there's one filing
11 date for testimony, and that way, we can take and
12 file all three sets of testimony on that same day.
13 Also, the way the hearing is set up, we can make one
14 trip to Olympia and deal with each of the separate
15 issues at that time.

16 So from an efficiency, timing point of
17 view, consolidation or no consolidation, it's about
18 the same amount of work for us.

19 JUDGE SCHAER: Ms. Hirsh.

20 MS. HIRSH: We don't have a specific
21 position, other than to push for efficiency and to
22 limit the amount of paper that we're duplicating for
23 each proceeding. If there are duplicative issues, we
24 don't want to submit lots of paper and have lots of
25 paper submitted, from the environmental perspective,

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1 of developing records for each of the cases. That
2 doesn't make a lot of sense for us.

3 JUDGE SCHAER: Go ahead, sir.

4 MR. LAVITT: Similarly, minimizing trips to
5 Olympia and minimizing duplicative pleadings would be
6 the union's paramount interest in this.

7 MR. BISHOP: I would echo that.

8 JUDGE SCHAER: Thank you, Mr. Bishop. We
9 had some discussion, and to me it made more sense if
10 --

11 CHAIRWOMAN SHOWALTER: I'd like to --

12 JUDGE SCHAER: I'm sorry.

13 CHAIRWOMAN SHOWALTER: It's clear that, you
14 know, you can go one way or the other, but it seems
15 to me the cleanest way is Mr. Cedarbaum's. That is,
16 it does allow a joint hearing on what is in common,
17 but doesn't sort of confuse what are the separate
18 issues. It sounds like that might, in that instance
19 for the joint stuff, cause triplicate paperwork, but
20 it seems like there ought to be a way around that.
21 That is, I don't know if this is possible, but if the
22 paperwork itself has the three cause numbers on it
23 and it's submitted electronically and we each only
24 get one copy, instead of three copies of this joint
25 testimony or testimony in a joint cause number, it

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1 seems like it would work the best.

2 MR. GALLOWAY: An issue -- and I don't
3 think any of us have strong feelings on any of this,
4 and it may come down to practicalities. There is
5 information that is almost uniquely in possession of
6 PacifiCorp, for example, as direct evidence. The
7 cost of the scrubber investment and the plans for
8 installing the scrubbers.

9 I suspect the prospect of having to install
10 scrubbers at Centralia and the costs of that, the
11 risks of that, weigh in for each of the applicants in
12 their decision to sell the plant, and I think each of
13 them would wish that to be part of the evidence as to
14 why selling the plant is in the public interest. If
15 they're separate proceedings, it's not clear to me
16 how, without putting Water Power, Avista, and Puget
17 to the test of putting in evidence on that sort of
18 thing, it seems to add an element of inefficiency,
19 because the evidence, for example, from PacifiCorp in
20 respect to the scrubber decision ought to be
21 something that PacifiCorp can present, and it ought
22 to have full force if the other applicants wish it
23 to.

24 CHAIRWOMAN SHOWALTER: Can't that be filed
25 as part of the joint, on the day of the joint

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1 testimony? In other words, can't there be a
2 discussion of what evidence, testimony or documents
3 is joint, and that's filed in a joint sense. In this
4 case, you would file it jointly and the other two
5 companies probably wouldn't have to do anything.

6 MR. GALLOWAY: But then we end up with sort
7 of a messy record as to what's in and what's out if
8 they're not consolidated.

9 MR. CEDARBAUM: I guess I -- I didn't bring
10 the testimony with me, so I'm going from my
11 recollection, but it seems to me that each company's
12 testimony has a block of testimony dealing with the
13 sale and a block of testimony dealing with the
14 treatment, accounting treatment of the sale, and that
15 it's the first block that is a joint issue.

16 We could deal with that on a joint hearing
17 day, whatever that is. The second block is a
18 separate issue, which we deal with on that separate
19 morning or afternoon that we designate for that
20 company's testimony.

21 CHAIRWOMAN SHOWALTER: So each of the three
22 dockets would have in it the combined joint
23 testimony.

24 MR. CEDARBAUM: So I guess the Records
25 Center downstairs has to make three copies for each

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1 of those files, but the parties all have everything,
2 so we've got it in our files.

3 JUDGE SCHAER: So would you expect three
4 files to be maintained --

5 MR. CEDARBAUM: It would have to be.

6 JUDGE SCHAER: -- so if one of the
7 companies wanted to go to court, there would be, in
8 each file, a set of testimony from PacifiCorp about
9 why the scrubbers are needed and what's going on with
10 that?

11 MR. CEDARBAUM: Yes.

12 JUDGE SCHAER: And you think that would be
13 more efficient than consolidating and then having
14 separate sessions --

15 MR. CEDARBAUM: I think that's --

16 JUDGE SCHAER: -- on the accounting issues
17 with perhaps separate orders on that portion?

18 MR. CEDARBAUM: Sorry. I think that's more
19 efficient than having a record go to the court that
20 has evidence on, if Avista appeals, evidence on
21 PacifiCorp and Puget's accounting treatment.

22 JUDGE SCHAER: I was going to kind of frame
23 some thoughts that we've discussed and then open this
24 up to the Commissioners, but did you have any other
25 ideas you wanted to bring up at this point, or did

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1 you, Bill?

2 COMMISSIONER GILLIS: No.

3 JUDGE SCHAER: Some of the things that we
4 had discussed were, our understanding, and let me
5 check to see if this is a correct understanding, that
6 all three of these applications for sale would have
7 to be approved in order for the sale to take place,
8 so that if we were to approve PacifiCorp and Avista,
9 but not PSE, or to approve PSE, but not Avista, that
10 the entire sale would be halted. Is that a correct
11 understanding?

12 MR. GALLOWAY: On the current state of the
13 contracts --

14 JUDGE SCHAER: Okay.

15 MR. GALLOWAY: -- Transalta is only
16 obligated to buy if they are able to acquire a
17 hundred percent interest in the facility.

18 JUDGE SCHAER: And then it occurred to me
19 that what if PSE put on a really fine case and
20 proved, better than anyone, that the sale should take
21 place, but one of the other companies kind of dropped
22 the ball, and so their case individually may not show
23 that the sale should take place, but the
24 Commissioners think, boy, with that PSE evidence
25 which was so good, we would want to go ahead and

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1 approve this, but we can't take that into
2 consideration, because it's not in this part of it.
3 How are you picturing it?

4 MR. CEDARBAUM: But it is part of that
5 piece of the proceeding.

6 JUDGE SCHAER: So that you want that piece
7 to be consolidated, then.

8 MR. CEDARBAUM: No, no, that's part of the
9 joint hearing that's a record in each case.

10 CHAIRWOMAN SHOWALTER: Maybe I don't
11 understand what consolidated means. I don't know if
12 this is consolidated or joint, but if there are
13 documents, and on the head of it it has three cause
14 numbers on it, three docket numbers, so that
15 someone's testimony is submitted in all three cases,
16 I don't know if that's consolidated or joint, but I
17 was envisioning it as being joint. Maybe I'm wrong.
18 I thought consolidated was putting it into one docket
19 number.

20 JUDGE SCHAER: Well, no, usually when we
21 consolidate, we keep all of the docket numbers in our
22 standard order of consolidation, but it says the
23 Commission may issue joint orders or separate orders
24 in each docket, so that I had contemplated what this
25 might look like at the end when we're in a hurry to

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1 get an order out by March 6th is either one order on
2 the first issue and then three different accounting
3 orders, or one order overall, but with three separate
4 sections on accounting.

5 Now, I'm not sure really what the different
6 distinction is between a joint hearing and a
7 consolidated hearing, and maybe we should hear more
8 from Mr. Cedarbaum on that.

9 MR. CEDARBAUM: I guess the two practical
10 problems that I saw which led me to think that not
11 consolidating was the better way to go was the one
12 about the court record. And the second one was
13 preventing, from either our perspective as a
14 prevention in helping the companies, from their
15 perspective, the situation where they each feel
16 compelled to intervene in the accounting piece of
17 each others' case to protect their own interests,
18 which, you know, we thought would make the proceeding
19 more difficult to handle, that when we get to
20 accounting, we ought to be looking at just that
21 particular company's accounting proposal and everyone
22 else's proposal for that company, and that's dealt
23 with without any kind of intervention or evidence or
24 participation from the other companies on that issue.
25 But we also recognize there are common

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1 issues on the public interest finding on the sale
2 itself that they all need to be able to talk about.
3 So that's why we thought keeping them unconsolidated,
4 so that we can keep the cases separate for the
5 separate purposes, but having a joint hearing where
6 we can have that common evidence put into the record,
7 each record, was the most practical, efficient way to
8 go, but it's not perfect, so --

9 CHAIRWOMAN SHOWALTER: Is there an issue to
10 -- if you consolidate, and so then everyone is, in
11 fact, a party to the whole case, that when it comes
12 to accounting, I don't know if there are confidential
13 issues or not, but that it becomes more difficult to
14 carry out the separate accounting discussions when
15 the other companies are parties?

16 MR. CEDARBAUM: I think it gets harder to
17 prevent that from happening, because we're all --
18 everyone is a party in each others' case for all
19 purposes.

20 CHAIRWOMAN SHOWALTER: Right.

21 MR. CEDARBAUM: And it's hard to limit how
22 -- their participation, either now or later, once we
23 get into the hearing.

24 MR. GALLOWAY: Well, I'm starting to think
25 out loud. Would it not be possible to consolidate,

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1 but consolidate with an explicit understanding that
2 certain issues are common issues in respect to which
3 all parties would participate fully, and that other
4 issues would be deemed separate issues -- we've named
5 a few -- where the applicants would be precluded from
6 participating in that aspect of the case in respect
7 to other applicants, and their failure to participate
8 would not be deemed to or construed by anyone as an
9 acknowledgement that they were taking any position or
10 were acquiescing to the treatment that was being
11 proposed for one of the other applicants.

12 I think I would be comfortable -- I don't
13 think PacifiCorp has an independent interest in the
14 accounting treatment that is required for PSE. The
15 only reason we would feel compelled to comment on
16 that issue is if we somehow felt that our failure to
17 do so would be construed as acknowledging some
18 treatment, but it seems to me that's the sort of
19 thing that we could handle either by stipulation or
20 by provisions of the order, and we would achieve what
21 seems to me the major efficiency gain, which is that,
22 on the common issues, you need only put evidence in
23 one docket.

24 I don't think PacifiCorp wants to be in a
25 position of offering testimony in three separate

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1 dockets as to the common issues, but some of
2 PacifiCorp's testimony may indeed be critical to what
3 the Commission needs to consider in each of the
4 documents.

5 MR. CEDARBAUM: I think that would take
6 care of at least one of my concerns, if everyone --
7 if no one else has an objection to that, Staff's
8 willing to go with that. We'd have a little bit of
9 trouble figuring out a court record, but we can
10 overcome that.

11 MR. GALLOWAY: Well, I think, in terms of
12 the court record, that looks a lot like the issue of
13 if one of us gets approval and the other doesn't. If
14 there is a failure to consummate this transaction, as
15 required by the contract, the transaction will go
16 away and there won't be any practical ability to
17 appeal.

18 CHAIRWOMAN SHOWALTER: But where the issue
19 could come up is because Avista seeks approval
20 without a determination of its accounting and agrees
21 to defer that to another case, basically, we could
22 get in the situation of -- well, I guess we couldn't,
23 because we would just defer. I guess, in this case,
24 they wouldn't have an appeal, given your position.

25 MR. GALLOWAY: If there is an appeal of

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1 this case, it would be moot.

2 JUDGE SCHAER: I think that what I would
3 like to do, I heard one of you mention that
4 accounting, among other possible issues, would be
5 separate. I think it would make sense for the
6 Commission to consolidate these matters using our
7 standard order that says we may issue separate orders
8 to each applicant on certain matters, but I also
9 would like counsel to talk to each other and try to
10 come up with language for what's going to be joint
11 and what's going to be separate so that we can
12 reflect that in the prehearing order.

13 And if there's something other than
14 accounting issues, that we can just get it spelled
15 out, so everybody's got a road map and everybody
16 knows where we're going, and then I do think that it
17 will make it easier, administratively, for the
18 Commission if we have one proceeding and we have
19 number series for each party. And I would expect
20 that even if a party appealed, that they order the
21 portions of the record they think are relevant.

22 And I would be surprised if, for example,
23 Avista appealed and wanted to bring up PacifiCorp's
24 accounting evidence as part of that record. So I
25 think maybe it would stay here at the Commission.

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1 We'll burn that bridge when we get there, but I don't
2 see it being a practical problem; I see it more being
3 a practical solution. And is there any other comment
4 on this issue, or should we go ahead?

5 MR. ADAMS: Your Honor, I just might
6 indicate, too, that I think, from our perspective,
7 when we file testimony on the accounting kind of
8 issues, we can break it out by headings of the way
9 it's filed to make it very specific, this is PSE and
10 this is PacifiCorp, to help both the record and the
11 parties understand where the differences are.

12 JUDGE SCHAER: I think that would be very
13 helpful, and I would recommend that all the parties
14 plan to do that, even if you were to have two
15 exhibits of testimony, each with their own exhibits,
16 or three on those portions, so that we would know
17 which ones to take in each of the separate sessions
18 that we do for the different companies on those
19 issues.

20 MR. HARRIS: Your Honor, if I could ask
21 just a clarifying question. Are you envisioning,
22 then, both a joint proceeding, with all parties
23 addressing the joint issues, and then actual separate
24 hearings to address the issues that we identify as
25 separate issues?

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1 JUDGE SCHAER: Well, what my hope is is
2 that we can have portions of the hearing, as we get
3 closer to the time, maybe even schedule specific days
4 or parts of days where we would say, okay, PacifiCorp
5 can't be here on Friday, the 7th, let's do PSE's
6 separate issues that morning and Avista's that
7 afternoon.

8 MR. HARRIS: Okay.

9 JUDGE SCHAER: And then PacifiCorp would
10 know it wasn't prejudiced by not being able to be
11 here. And then we would fit them in on Monday and go
12 on to the other issues, or however it works out. I'm
13 just thinking aloud here. I would expect that there
14 will be portions of the hearing, and it will be very
15 clear that if you're not here because we're doing
16 PacifiCorp, I won't default your client. And we'll
17 just have it all set up to run smoothly.

18 MR. GALLOWAY: It seems to me we can also
19 help this situation if we're careful, when we
20 articulate the issues, to make them company-specific
21 where we believe they are. Even if the decision of
22 whether a sale is in the public interest for reasons
23 of replacement power costs, I think we have to be
24 disciplined to make sure that we do the analysis of
25 replacement power costs for each of the companies,

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1 and that the issue be phrased in that fashion so that
2 we don't fall into picking and choosing data that's
3 relevant to different applicants.

4 JUDGE SCHAER: Certainly. So what would be
5 a reasonable date? A week from today, a week from
6 Friday for the counsel to get together and kind of
7 frame what's in and what's out, or what's joint and
8 what's separate, I guess.

9 MR. GALLOWAY: When will we know what the
10 issues are in the Commission's mind?

11 JUDGE SCHAER: I don't expect to be issuing
12 a scoping order, as such, that says these issues are
13 in or these issues are out. There will probably be
14 some discussion in terms of intervenors and who's
15 allowed in and for what purposes they're allowed in
16 for, but we do not contemplate issuing such an order
17 in this proceeding.

18 Is there anything else you want to say on
19 that?

20 MR. GALLOWAY: To some extent, there are
21 issues, particularly issues raised by Public Counsel,
22 that we don't think are germane, and before we can
23 determine whether those are joint issues or separate
24 issues, somehow we have to figure out whether they
25 are appropriate issues, or at least understand that,

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1 by agreeing whether they're separate or joint, we're
2 not acknowledging their appropriateness in the first
3 place.

4 JUDGE SCHAER: Well, let's go forward at
5 this point. We were doing the marking of exhibits.
6 Let's get through with that, talk about discovery,
7 talk about scheduling, and then let's have a more
8 general discussion of the issues that are on the list
9 that we each have in our hands close.

10 At this point, we were marking for
11 identification the exhibits of Puget Sound Energy.

12 MR. CEDARBAUM: Your Honor, could I --

13 JUDGE SCHAER: Yes, Mr. Cedarbaum.

14 MR. CEDARBAUM: I'm sorry to interfere with
15 the flow, but I just wonder whether it might make
16 sense, for purposes of identifying exhibits, if we
17 first figure out what the joint issues are, what
18 separate issues are, and then, if you want to, you
19 can mark all the testimony that goes to those joint
20 issues in one batch and issues that go to separate
21 issues or testimony that goes to separate issues in a
22 separate batch.

23 JUDGE SCHAER: What I had contemplated
24 doing after your last suggestion was marking exhibits
25 with a different hundred series for each party, and

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1 then I think, within those exhibits -- I'm not sure.
2 Let me ask this question. You've got your exhibits
3 here, Mr. Harris, but do you think you might need to
4 take them home and reorganize them to some extent so
5 that they have the issues separated in the way that
6 the parties are going to discuss and decide upon or
7 --

8 MR. HARRIS: We can do that, if it's
9 helpful. The way the testimony is now, I don't think
10 we could mark it for joint purposes and separate
11 purposes. The testimony is mixed together right now.
12 And if we're in a consolidated proceeding, we'll
13 offer it the first time it comes up, and it will be a
14 part of the record from that point forward. If you
15 want us to go back and divide the testimony after we
16 come up with this issue list, it sounds like an
17 unwieldy process to divide them, but we could.

18 JUDGE SCHAER: Well, Mr. Galloway, do I
19 have your testimony and exhibits already, also?

20 MR. GALLOWAY: You do.

21 JUDGE SCHAER: Would it be useful for you
22 to take another look at organization of those, in
23 terms of what we've been talking about as common
24 issues or separate issues, or would you like just to
25 have them marked today?

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1 MR. GALLOWAY: I think I would prefer to
2 keep the testimony as it is, mark it all. I think if
3 there's a practical concern here, it's the one I
4 described earlier, which is that we get in a pattern
5 of a lot of cumulative testimony and the applicants
6 sort of speaking as to each others' separate issues,
7 but I think we can deal with that pretty simply, and
8 that if all the evidence gets put in, if it is, in
9 fact, the decision to consolidate the proceedings,
10 that we put all the evidence in on the consolidated
11 proceedings, but there are limits placed on what the
12 applicants can do in respect to each others' separate
13 issues. I think that should take care of everybody's
14 problems, and we can proceed pretty expeditiously.

15 MR. STRONG: Your Honor, maybe there's a
16 little bit of a simpler solution. Maybe if we waited
17 until the first round of everybody's testimony was
18 filed, and then we could convene at that time and
19 discuss, after we've seen everybody's testimony,
20 which of those issues raised in the testimonies
21 appear to be common issues and ought to be assigned
22 to that batch, and which appear to be
23 company-specific sorts of issues and assign to that
24 company's specific hearing.

25 And we're dealing a little bit at a

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1 disadvantage in the abstract, even in trying to
2 number the testimony, since we don't know what all
3 the issues are and what testimony might be received
4 on these issues. It might be better just to take a
5 step back and think about it after we've read
6 everybody's testimony.

7 MR. GALLOWAY: I'm not sanguine about our
8 ability to delineate as to all of the testimony,
9 whether it is exclusively a joint issue or
10 exclusively a separate issue, and I think you would
11 almost have to go through line-by-line some of our
12 testimony, and even there, I'm not sure some of the
13 lines would pertain to both. That's why I was
14 inclined to put everything into the one docket.

15 MR. HARRIS: I'd only add, Your Honor, that
16 given the tight time schedule we're on, I'd be
17 nervous about slowing it down in any way.

18 CHAIRWOMAN SHOWALTER: Is this just a
19 problem -- if the worst that happens is we have to
20 get out two notebooks, if that's what we're talking
21 about, that's not a big burden, I think. In other
22 words, is the reason to try to separate the testimony
23 to put it in a good organization that's very logical,
24 that's great, but if we can't do it, I certainly
25 don't mind referring back to the first notebook or

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1 the second notebook, which was consolidated when it
2 gets to the later accounting treatment.

3 MR. ADAMS: Your Honor, I do think that
4 when we file it, as we, the Respondents, we will
5 define a lot of issues that are very kind of out
6 there right now, but who knows. You know, we don't
7 know what position we're going to be taking on some
8 of these issues. So until we kind of define some of
9 the issues that we see and Staff sees and other
10 intervenors see, and the companies will then respond,
11 it seems to me we will start to crystallize where the
12 breaking point is on some of these issues.

13 So going forward at this point, I think we
14 would be better off just to give a series of numbers
15 and do it generically, and then start worrying about
16 that issue later on, when we see what's on the table.

17 JUDGE SCHAER: What I'm going to do is
18 this. I'm going to give PSE the 100 series, I'm
19 going to give PacifiCorp the 200 series, I'm going to
20 give Avista the 300 series, I'm going to give
21 Commission Staff the 400 series, I'm going to give
22 Public Counsel the 500 series, I'm going to give ICNU
23 the 600 series, I'm going to give Northwest Energy
24 Coalition the 700 series, and I'm going to give Local
25 612, if it is allowed to intervene, the 800 series,

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1 and Mr. Bishop, you get the 900 series.

2 I'm going to mark for identification today
3 the testimony and exhibits of PSE and PacifiCorp, and
4 then, if there is a reason to re-number these or if
5 there are different exhibits substituted for
6 something, we'll deal with that going forward, but
7 let's get some of this identified, so people have an
8 opportunity to refer to it by exhibit number when
9 they're responding or sending data requests.

10 I'm going to ask Water Power, when you file
11 your testimony on the 5th, to start out with T-1 for
12 your first -- T-301 for your first witness, and
13 provide a list numbered in the order described in the
14 Commission's procedural rules for your testimony.
15 And I'm going to ask other parties, as they file, to
16 start with your hundred series, 401, 501, 601, and go
17 ahead and put in a list that numbers the exhibits
18 that you are pre-filing, and we will use those
19 numbers for identification as we write about others'
20 testimony, and that's how they will be admitted when
21 they get to hearing.

22 If some of them are stricken or something
23 else happens, we'll deal with that at that time. So
24 I'm going to mark for identification, as Exhibit
25 T-101, WAG-T, which is the direct testimony of

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1 William Gaines. As 102, WAG-1, sale arrangement
2 agreements. As 103, WAG-2, final reclamation costs.
3 As 104, WAG-3, open letter to bidders. As 105,
4 WAG-4, present value analyses. As 106, the 1998 form
5 10-K. And as 107, WAG-6, the 6/30/99 10-Q.

6 As Exhibit T-108, I'm going to mark the
7 direct testimony of Karl Karzmar. As 109, KRK-1, the
8 estimated net book gain. As 110, KRK-2, estimated
9 book value of plant. As 111, KRK-3, the estimated
10 cost associated with sale. And as KRK-4, the journal
11 entries.

12 Next I'm going to mark for identification
13 the exhibits provided by PacifiCorp. Does that begin
14 with Exhibit T-CAM-2, Mr. Galloway?

15 MR. GALLOWAY: I'm sorry. I didn't hear
16 either of you.

17 JUDGE SCHAER: Go ahead and speak to Ms.
18 Kelly for a moment. She's keeping you organized.

19 MR. GALLOWAY: I am told, hopefully, that
20 on the last page of Mr. Miller's testimony, which has
21 been previously marked as our Exhibit 1, there
22 appears a listing of the seven exhibits accompanying
23 his testimony.

24 JUDGE SCHAER: Is he your sole witness?

25 MR. GALLOWAY: No, we have three witnesses.

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1 JUDGE SCHAER: Okay. So beginning with
2 Exhibit CAM-T, that would be Exhibit 201, T-201.
3 Exhibit CAM-1 will be Exhibit 202. Exhibit 3,
4 electric generating plant, will be Exhibit 203. Wait
5 a minute. That's just another line. Exhibit CAM-2
6 will be Exhibit 203. That's the agreement for the
7 operation of Centralia.

8 Exhibit 204, for identification, is Exhibit
9 CAM-3. Exhibit CAM-4 will be Exhibit 205, for
10 identification. Exhibit CAM-5 will be Exhibit 206,
11 for identification. Exhibit CAM-6 will be Exhibit
12 207, for identification. And Exhibit CAM-7 will be
13 Exhibit 208 for identification.

14 As Exhibit T-209, I'm marking the direct
15 testimony of Roger Weaver. As Exhibit 210, his
16 exhibit RW-1. As Exhibit 211, his exhibit RW-2. As
17 Exhibit 212, his Exhibit RW-3.

18 As Exhibit T-213, we have the direct
19 testimony of Anne Eakin. As Exhibit 214, AEE-1. Is
20 that all of your testimony and exhibits, Mr.
21 Galloway?

22 MR. GALLOWAY: It is.

23 JUDGE SCHAER: Thank you. Let's be off the
24 record for a moment.

25 (Discussion off the record.)

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1 JUDGE SCHAER: Let's take our morning
2 recess at this time. Let's be off the record and try
3 to be back by 11:10, please.

4 (Recess taken.)

5 JUDGE SCHAER: Back on the record. At this
6 point in the proceeding, I would like to zip through
7 a couple of details and get them resolved, so that we
8 have some time to spend talking about issues. So
9 first of all, do the parties want to have the
10 discovery rule triggered in this proceeding?

11 MR. HARRIS: Yes.

12 JUDGE SCHAER: And having heard that you
13 do, I will trigger the Commission Discovery Rule.
14 WAC 480-09-480 will be available in this proceeding.
15 It's my understanding that the parties have agreed
16 among themselves to a seven-calendar-day turnaround
17 on data requests. Does anyone have a problem with
18 that? Okay.

19 Mr. Cedarbaum had indicated an interest in
20 putting forward a discovery cutoff date. Do you want
21 to pursue that now or do you want to pursue that
22 informally after the hearing?

23 MR. CEDARBAUM: I think informally off the
24 record, and I could just hopefully submit that as an
25 agreement amongst the parties later.

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1 JUDGE SCHAER: Thank you. I have been told
2 that the parties would like a protective order
3 issued. And I believe, Mr. Galloway, you had
4 indicated that on behalf of PacifiCorp?

5 MR. GALLOWAY: That's correct.

6 JUDGE SCHAER: A protective order will be
7 issued in this proceeding and will accompany the
8 order of consolidation, so that we'll only issue one
9 protective order that will cover the whole
10 proceeding, unless we don't consolidate, and we'll do
11 three.

12 Okay. Scheduling. I believe that the
13 parties have discussed scheduling and have reviewed
14 certain dates with the Commission's schedule. Mr.
15 Cedarbaum, would you please reflect those into the
16 record at this point?

17 MR. CEDARBAUM: My recollection, I don't
18 have it written down --

19 JUDGE SCHAER: Does anyone have it written
20 down in front of them?

21 MR. CEDARBAUM: I think I've got it.
22 Avista will be filing supplemental testimony, and
23 apparently they're repackaging its currently-filed
24 direct testimony on November 5th. Staff, Public
25 Counsel, Intervenors will file their direct cases

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1 December 8th. Company rebuttal testimony is filed
2 December 22nd. And the hearing, as I understand it,
3 will be set for January 7th and then 10th and 11th.
4 That's a Friday, Monday and Tuesday. And briefs
5 filed January 28th.

6 JUDGE SCHAER: Is everybody in agreement on
7 the schedule?

8 MR. HARRIS: Yes.

9 MR. ADAMS: Your Honor.

10 JUDGE SCHAER: Mr. Adams.

11 MR. ADAMS: I do want to bring up one
12 issue, not relating to the schedule, that I just
13 bring it up now to kind of protect myself or other
14 parties in the future, and that is we will be filing
15 simultaneously on the 8th, the Intervenors, Public
16 Counsel and Staff.

17 I don't know at this point, without seeing
18 that testimony, whether there would be any issues in
19 someone else's filing that we might request the
20 opportunity to respond to, and I would just ask that
21 we be able to bring that up when we see the
22 testimony. This is strictly, at this point, an
23 unknown, because we may have inconsistencies where we
24 feel it necessary to rebut not the companies, but
25 some other intervenor's filing.

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1 JUDGE SCHAER: Mr. Adams, if you're going
2 to bring that up, you'll need to bring it up in a
3 very timely manner, because I'm going to want you, if
4 you are seeking to filing other testimony, if that
5 request is granted, to file at least a week before
6 the 22nd of December, so that the applicants all have
7 an opportunity to review that testimony and respond
8 in their rebuttal filings.

9 MR. ADAMS: That would be fine.

10 JUDGE SCHAER: Okay. Anything else on the
11 schedule at this point? Okay. We have already
12 discussed exhibit marking for the other parties.

13 Parties need to file materials with the
14 Commission, an original plus 19 copies of anything.
15 The Commission also very much appreciates your filing
16 anything that you file with us in an electronic
17 format. I would ask that you file that in
18 WordPerfect or compatible form, and we are able to
19 handle Word, so if that's all you have, you can do
20 that. And in particular, if you wish to e-mail
21 attachments, have your electronic documents, then it
22 makes it very easy for our Records Center to
23 distribute those electronically to anyone who needs
24 them, and we'll often post them on our website for
25 members of the public who are interested in this

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1 proceeding.

2 So please, even if it's just a letter,
3 sometimes when we're trying to do things fast in a
4 proceeding like this, if we can pull something up
5 electronically, and have the questions and write down
6 the answers and zip it back out, it does make things
7 go faster.

8 At least three days before the first
9 hearing day, I would like to have the parties talk to
10 each other, put together a tentative order of
11 witnesses, and provide that to the Commission.

12 The Commission does encourage alternative
13 dispute resolution, so that if there are any portions
14 of this proceeding that the parties would wish to
15 seek resolution of outside the hearing room, please
16 feel free to go forward with that.

17 And the other thing, for purposes of
18 schedule, I've asked the parties to consult about
19 which issues they would see as being joint issues and
20 which separate, so that everyone will be following
21 the same road map as they put things together for
22 presentation. I would like to have that reduced to
23 writing and filed with the Commission by a week from
24 today, which I believe will be November 3rd, and I
25 will not be issuing a pre-hearing conference order

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1 until I have that information, so that it may be
2 included.

3 Is there anything else that we need to
4 bring up, any other details we need to address on how
5 this proceeding will be handled administratively?

6 MR. GALLOWAY: One very minor housekeeping
7 detail, but it's proving to be important. Discovery
8 requests to PacifiCorp should be sent to Anne Eakin
9 at PacifiCorp, in lieu of Alex Miller, who was first
10 addressed. We sent around a letter to that effect
11 requesting that change be made, but we're having some
12 mechanical problems getting things responded to
13 promptly if things are not sent to Anne Eakin.

14 JUDGE SCHAER: We are trying to do this
15 procedure on a fast track to accommodate deadlines
16 that parties have for other business arrangements, so
17 we will be asking you to use e-mail, use other tools
18 in contacting each other or in contacting the
19 Commission to keep things moving in an expedited way.
20 If there are anything that all counsel need to
21 discuss with me, as long as all counsel are included
22 in the e-mail, you may contact me by e-mail and we'll
23 try to make sure that any minor administrative
24 matters are handled or anything that needs more
25 resolution is taken through the proper channels and

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1 resolved for you as quickly as possible, and
2 consistent with due process.

3 MR. CEDARBAUM: Just one housekeeping
4 matter for Staff. If we could receive copies of all
5 data request responses, whether they're our data
6 requests or other parties' data requests, we'd
7 appreciate that.

8 JUDGE SCHAER: Mr. Adams.

9 MR. ADAMS: Your Honor, could we also do
10 that with all filings of interventions? So far, we
11 have not received any of that paperwork. And if we
12 could just kind of go back to square one, where the
13 various parties have filed interventions, if they
14 would just send us copies.

15 JUDGE SCHAER: I'm going to ask any parties
16 here present or present on the bridge line if there
17 are people who have appeared today in this proceeding
18 that you have not filed copies of your intervention
19 motions, your issue statements, or any other matter
20 that you have filed with the Commission, if you will
21 make certain that those are served on all of the
22 parties that have appeared in this proceeding today.

23 Let's move, then, to a discussion of the
24 issues, and I'm going to ask the Commissioners to, at
25 this point, raise questions about different areas

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1 they would like to discuss, and then we will see how
2 much of this we can accomplish in about the next 40
3 minutes.

4 CHAIRWOMAN SHOWALTER: Thanks. I guess I
5 would like to hear from Mr. Cedarbaum of Public
6 Counsel's issues, and I think maybe the Energy
7 Coalition's issues, what you think isn't or shouldn't
8 be relevant or should be limited or at least gets to
9 the outer edges.

10 And I realize, you know, it might make --
11 perhaps the two parties who put the issues should go
12 forward first, but I don't have much time, and I
13 think -- I just sense from Mr. Cedarbaum that he
14 feels that there are some things that are beyond the
15 limits, and I think I already do understand your
16 point of view on the labor issues.

17 MR. CEDARBAUM: I guess, with respect to
18 Public Counsel's issues, we came into the hearing
19 this morning with the background of having listened
20 to the discussion at the public meeting from a couple
21 weeks ago and Mr. Lazar's presentation and his
22 ability to convince the Commissioners to set this for
23 hearing on public interest issues.

24 So the list that Public Counsel has
25 provided, I think, reflects, in many respects, the

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1 issues that Mr. Lazar discussed at that meeting. And
2 so we sort of take that to mean that the Commission
3 was at least interested in those issues and wanted to
4 hear more.

5 There are issues on the list, though, that
6 we think, if not go beyond the scope of the
7 Commission's review, lead to some speculative subject
8 matters that we think the Commission could, I
9 suppose, limit the parties' ability to go into those
10 issues now or wait until the evidence is offered and
11 then take objections for evidentiary reasons at that
12 point in time. But those issues are -- if you look
13 at -- and I'm sorry, it's a little hard for me to
14 compare the list that was distributed today with the
15 October 21st letter that I got from Mr. Adams.

16 But the issues that we would put into kind
17 of a speculative arena and ones that we think the
18 Commission could limit today would be the issue with
19 respect to risk of carbon tax, site restoration
20 obligations, the quantification of those. That was
21 an issue listed by Public Counsel. Residual real
22 estate values of the site, in terms of their
23 quantification. Whether or not Centralia can be
24 operated more cost-effectively with increased
25 consolidation of ownership seemed to be an issue with

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1 Staff that called for speculation.

2 The issue with respect to financing as an
3 IPP not only seemed to be speculative, but more of a
4 rate case issue than really a transfer of property
5 issue. Looking at what Mr. Adams included in
6 subcategory number three of his October 21st letter,
7 there were issues with respect to remaining Centralia
8 assets, such as the Skookumchuck Dam and water
9 rights. That also seemed to border on speculation.

10 And then the next issue was how the gains
11 should be implemented in rates. That seemed to us to
12 be actually beyond the scope of this proceeding.
13 That's a different -- how they should be implemented
14 in rates is really a rate case issue, as opposed to
15 whether they should be passed through the ratepayers,
16 which I guess is an issue to be looked at in this
17 proceeding. But you may determine that there is a
18 pot of dollars that ratepayers should benefit from,
19 but how that happens we think is best left for a rate
20 case proceeding, because there may be other factors
21 in that rate case that would influence how you'd want
22 to pass those dollars through the ratepayers.

23 CHAIRWOMAN SHOWALTER: On that particular
24 point, do the different parties' petitions make a
25 difference? That is, Avista has said, Defer it, but

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1 Puget wants to know. They want to know how we're
2 going to treat this, if there is a benefit to be
3 shared.

4 MR. CEDARBAUM: Well, with respect to the
5 companies that would -- their proposals would have
6 some amount of the gain go to ratepayers. I still
7 don't think there's a proposal on how that will
8 occur. It's just that -- I'm sorry, I'm being
9 corrected by Mr. Elgin. PSE's would, through the
10 amortization during the rate plan, would actually
11 have an impact on how those dollars were passed
12 through to ratepayers.

13 But I think what I was thinking about was
14 more that there may be proposals on passing through
15 those gains to ratepayers, either by offsetting
16 regulatory assets or some other mechanism that is
17 really something that we would look at in a rate case
18 setting, in terms of implementation, as opposed to
19 whether or not ratepayers will actually benefit from
20 the dollars being flowed through to them.

21 CHAIRWOMAN SHOWALTER: It seems like what
22 you're saying, with respect to Puget's petition, that
23 your response to their petition is, no, we shouldn't
24 decide that now, we should defer it later, but that
25 because they raised it in their petition, it becomes

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1 an issue as to how to --

2 MR. CEDARBAUM: Well, I think the issue
3 that we'll be looking at with respect to Puget, and
4 this was brought up in Mr. Harris' list of issues, is
5 the impact of the Colstrip order and whether that's
6 applicable to the Centralia proceeding.

7 MR. STRONG: Your Honor.

8 JUDGE SCHAER: Yes, Mr. Strong.

9 MR. STRONG: Just so there's no
10 misunderstanding as far as where Avista is at this
11 point in time, when we filed the supplemental
12 testimony, Avista will be presenting proposals as to
13 how the gain or loss or whatever on the sale should
14 be treated. And that's one reason why there is going
15 to be supplemental testimony. And so our testimony
16 will be addressing those issues with respect to
17 Avista.

18 MR. GALLOWAY: And Your Honor, as to
19 PacifiCorp, we would wish the Commission to address,
20 at least conceptually, how the portion of the gain to
21 be shared with customers is to be handled for
22 rate-making purposes. PacifiCorp proposes, and I
23 think Mr. Cedarbaum alluded to, that the customers'
24 portion of the gain be used to write down certain
25 regulatory assets of the company, as opposed to

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1 another proposal having a cash rate reduction.

2 It would be important to PacifiCorp's
3 evaluation of the Commission's order and whether it
4 wished to go forward with the sale to know how all
5 that was going to be handled.

6 CHAIRWOMAN SHOWALTER: I interrupted you,
7 and you were going down a list.

8 MR. CEDARBAUM: I just have two more, I
9 think. The very last two issues under my list comes
10 under the more global issues. The last two bullets,
11 again, go to -- at least portions of those issues go
12 to implementation issues. One is how should any
13 change in cost of capital be addressed, and how
14 should management or administrative cost reductions
15 be implemented.

16 Those, again, seem to me to be rate case
17 type issues, as opposed to the issue of whether cost
18 of capital will be reduced and whether the sale
19 reduces management and administrative costs. So
20 there was pieces of those two bullets which we saw as
21 being outside the scope.

22 That was our list, but, again, I think the
23 Commission does have the ability now to limit issues
24 if it sees issues beyond the scope or issues that may
25 be irrelevant or speculative, but it's a little hard

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1 for us to know, given the Wednesday meeting, when Mr.
2 Lazar raised these issues and you seemed interested
3 in them.

4 MR. ADAMS: May I respond?

5 JUDGE SCHAER: Go ahead, Mr. Adams.

6 MR. ADAMS: I sense here that we don't want
7 to have a prolonged discussion on each point, but the
8 point is we were trying to define some kind of
9 parameters, and some of this we probably will not
10 address.

11 On the other hand, we really don't know,
12 until we get into more of the details of the
13 proposal, as to whether these things should or should
14 not be raised. I think the companies already, by
15 their responses, indicated that some of these they're
16 going to be addressing, and obviously we should be
17 able to address those.

18 One issue that wasn't very specific, but is
19 kind of included in that last bullet, under three,
20 how should the gain on sale be implemented, with
21 Avista, and in particular, PacifiCorp, they have
22 interstate allocation issues. And that's something
23 this Commission's going to need to address, because
24 obviously PacifiCorp doesn't want to end up with all
25 the states together coming up with 120 percent of the

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1 value of the plant. So I think there's going to be
2 some of those kind of mechanics that are going to
3 have to be addressed.

4 We're not trying to raise issues of how
5 specifically each rate class should be benefited or
6 whatever in some future rate case, but in terms of
7 the generic kind of thing -- and an issue like cost
8 of capital does become relevant if, and I don't know
9 whether we will address this or not, but in looking
10 at a decision to sell the plant, if, in fact, by
11 selling off your baseload resources you reduce the
12 cost of capital basically in an overall conceptual
13 sense, then maybe that's a plus for selling it.

14 On the other hand, if you make the utility
15 more risky because you've gotten rid of all our
16 baseload, so you're exposed completely to the
17 marketplace for the ratepayers' future power sources
18 and you've increased the risk, this is an issue that,
19 it seems to me, the Commission's got to look at in
20 determining whether it's in the public interest to
21 sell this plant. You're looking at exposure to
22 ratepayers down the line for 20 or 30 years if you
23 will have vested yourself in that particular baseline
24 resource.

25 So I guess we don't know specifically yet

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1 what we will address, but I think all of those issues
2 are well within the kinds of issues that the
3 Commission should be considering if they appear
4 relevant. And certainly any of the parties have the
5 opportunity to raise the issue when they specifically
6 see our testimony, if they think it's beyond the
7 scope, and move to exclude it. That's obviously -- I
8 think any party has the right to do that.

9 But I think, at this time, to get real
10 narrow on some of these issues, I think, is mistaken.
11 We should wait and see when the testimony comes in.

12 CHAIRWOMAN SHOWALTER: I don't know if
13 anybody else wants to respond to this discussion.

14 JUDGE SCHAER: Is there anyone else who
15 would like to comment on this question of the points
16 raised by Public Counsel? Or I guess I'd like to ask
17 just a little bit more broadly. I know, Mr.
18 Galloway, you indicated an earlier comment that you
19 weren't sure what your client would need to do until
20 you knew how some of these issues might be
21 considered.

22 And if that's true, I guess I'd like you to
23 expand a bit on which issues caused you that concern,
24 so that we might know -- we might have some
25 discussion of what their place in this proceeding may

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1 or may not be.

2 MR. GALLOWAY: I don't think it's a long
3 list. I think that the critical issues, assuming the
4 sale is approved, are how the gain would be allocated
5 between shareholders and customers, and then, with
6 respect to that portion that is allocated to
7 customers, how the sharing with customers would be
8 implemented.

9 JUDGE SCHAEER: And are there issues on the
10 lists raised by other parties that you think go
11 beyond framing that, that you have concern about, or
12 what did you want to say about whether or not certain
13 issues were limited? Maybe you didn't want to say
14 anything and I should leave you alone, but I thought
15 you indicated that you had some questions.

16 MR. GALLOWAY: There are issues, and I
17 think Mr. Cedarbaum touched on several of them, which
18 either are speculative or I think ask the wrong
19 question, which is is there a better or a different
20 deal that could have been done.

21 And I think the traditional Commission
22 approach to that has been to look at the deal that is
23 on the table and decide whether that deal is in the
24 public interest and not get caught up in deciding
25 whether there was a different way to structure the

00074

1 ownership of the facility or a different party went
2 and bought it and all that.

3 To back up a little bit, when we addressed
4 the issue of providing an issues list, we were
5 mindful of the fact that the Commission, not many
6 weeks ago, issued an order in respect to the Colstrip
7 sale by Portland General. And while I would not want
8 to -- by Puget Sound -- I would not want to endorse
9 the conclusions of that order, it seems to me the
10 Commission has very recently gone through an exercise
11 of deciding what's relevant, what's not. It
12 delineated the issues in that proceeding that it was
13 going to look at.

14 I'm not aware, conceptually or
15 philosophically, why the proposed sale of Centralia
16 is any different than the proposed sale of Colstrip,
17 and expected that at the end of the day, after the
18 Commission hears the evidence that the parties are
19 going to put forward in this proceeding, it will
20 filter them through pretty much the same filter that
21 it used in respect to Colstrip.

22 And I think, again, in the context of the
23 Colstrip order, the Commission decided what it was
24 not going to decide, decided what issues were beyond
25 the scope of the proceedings, seemed to have a pretty

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1 easy time doing that.

2 Given the existence of the recent Colstrip
3 order, I would be inclined for us not to spend a lot
4 of time arguing about what issues are in or what
5 issues are out of this proceeding. There's a lot of
6 semantics in this in terms of what are sub-issues or
7 what are the real issues.

8 I don't think there's a huge amount of
9 difference among us as to what the nature of the
10 dialogue that's going to go on in our testimony. I
11 think the Commission, a month ago, indicated what it
12 thought was important, and I guess I would propose
13 that we go forward without attempting to limit, in
14 any significant way, the issues that the parties can
15 raise, with the understanding that if somebody raises
16 -- I mean, for example, if Mr. Lazar contends that
17 this should have been done as a leveraged buyout, I
18 think we're free, in rebuttal testimony, to say
19 that's a different deal, it's irrelevant, and the
20 Commission's free to disregard that.

21 I don't get a sense that this is the sort
22 of proceeding that's going to get hugely bogged down
23 or become terribly inefficient by people pursuing
24 irrelevant issues, and that we'll probably spend more
25 time trying to define them precisely than we'll waste

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1 by having people raise irrelevant issues.

2 JUDGE SCHAER: Is there anyone else who
3 wishes to speak to the issues that have been
4 presented on the issue lists? Ms. Hirsh.

5 MS. HIRSH: I would just respond to Mr.
6 Cedarbaum's comments about -- that the allocation of
7 the gain is an issue for this proceeding, but once
8 the allocation has been determined, that how it's
9 actually determined to go to ratepayers is a
10 proceeding for a rate case.

11 I would argue that that -- I would share in
12 PacifiCorp's determination that that is an issue for
13 this proceeding, and would like to see the resolution
14 of that, how the disposition of the gain to
15 ratepayers is done actually in this proceeding. At
16 least not done in this proceeding, but a sketched out
17 plan for what that looks like. That determines to us
18 how the public benefits from this sale.

19 JUDGE SCHAER: Okay.

20 MR. BROOKS: And I guess, on that issue,
21 ICNU sees that somewhat differently, that even the
22 allocation issue itself wouldn't necessarily have to
23 be dealt with in this case. One position is that
24 could be deferred until the next rate case for each
25 of the applicants.

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1 JUDGE SCHAER: Okay. Mr. Lavitt, did you
2 have anything to add at this point?

3 MR. LAVITT: I did. Not on this particular
4 -- on the issue just discussed, but in terms of an
5 earlier comment made by Mr. Cedarbaum. I just wanted
6 to point out that, with respect to Local 612, I think
7 there was a mischaracterization of the union's
8 interest here in this, in a fashion that I think was
9 overly narrow.

10 Certainly, the union understands this is
11 not a forum to discuss WSHA or other workplace safety
12 issues, as the term of art would have it, but that
13 the union's interest extends beyond only the issues
14 that fall directly under the collective bargaining
15 agreement. And we understand that.

16 And I just want to make sure the
17 Commission's aware that the union also has -- brings
18 a voice to this process that expresses an interest
19 about the cost and quality of service to consumers
20 and the long-term viability, et cetera, of the plant
21 in connection with the transaction that's at issue
22 here. So I just wanted to point that out in response
23 to what was raised earlier by Staff counsel.

24 JUDGE SCHAER: All right. Mr. Lincoln
25 (sic), did you have anything you wanted to add at

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1 this point?

2 MR. BISHOP: Mr. Bishop?

3 JUDGE SCHAER: Mr. Bishop, I'm sorry.

4 MR. BISHOP: I had to break off for just a
5 second there, right in the middle of a critical
6 point. I apologize.

7 JUDGE SCHAER: Well, we're just kind of, at
8 this point, asking counsel if there's anything
9 further they want to say about the issues that are
10 presented before the Commission.

11 MR. BISHOP: No, not for me.

12 JUDGE SCHAER: Okay, thank you. All right.
13 Anyone else who's in the hearing room? Mr. Adams.

14 MR. ADAMS: Just one thing. I wanted to
15 make sure that the Commission was aware that, in the
16 issue list -- I guess you put everything together in
17 about three pages. The second page of our issues
18 list is not reflected in that listing, and I didn't
19 know if that was because you assumed that they were
20 overlapped with others or what, but I just wanted to
21 make sure that -- our letter has issues that Mr.
22 Cedarbaum addressed, which are not contained in your
23 three-page summary, so I'd just alert you to that.

24 JUDGE SCHAER: Thank you for that. I'll
25 check with advisory staff and see where we are on

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1 that, and if I need to supplement this list, I will
2 do so. I would like to you to make sure that a copy
3 of that letter is provided to everyone who has
4 appeared here today so that we know that they have
5 all the points that you wish to raise.

6 Do any of the applicants feel the need to
7 look at that information at this point so that you
8 can comment on it, if you wish, on the second page of
9 Mr. Adams' letter? Did you all receive copies of
10 that?

11 MR. HARRIS: We received a copy of that,
12 Your Honor.

13 JUDGE SCHAER: Did you, Mr. Strong?

14 MR. STRONG: Yes.

15 JUDGE SCHAER: Did you, Mr. Galloway?

16 MR. GALLOWAY: Yes.

17 JUDGE SCHAER: Does anyone have anything
18 further they would like to raise about those points?

19 MR. ADAMS: Your Honor, only the
20 intervenors we didn't know at that time are the only
21 ones who did not receive the letter. We sent it to
22 everyone else.

23 JUDGE SCHAER: Sure.

24 CHAIRWOMAN SHOWALTER: I think Mr.
25 Galloway's comments are probably very well taken,

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1 that it's pretty hard to limit this in advance with
2 the one issue that we've taken under advisement,
3 which is the intervenor on labor issues, we can deal
4 with that, and there may be -- I don't know where
5 we're going to come out on that, but we may have
6 something to say on the scope of that.

7 But on these other issues, it seems like
8 it's very difficult to set it out abstractly in
9 advance, and given everybody's recent experience in
10 Colstrip, we're probably, you know, thinking more or
11 less along the same lines of scope, give or take a
12 little gray area which we could deal with in the
13 proceeding.

14 JUDGE SCHAER: Is there anything further to
15 come before us this morning?

16 MR. CEDARBAUM: Your Honor, I have one
17 thing.

18 JUDGE SCHAER: Go ahead, Mr. Cedarbaum.

19 MR. CEDARBAUM: With respect to the issues,
20 joint and separate issues list that you want next
21 week, I guess my recommendation is for you to
22 reconsider the timing of that, I mean, for two
23 reasons. One is we are apparently going to have a
24 prehearing order from the Commission that will scope
25 out the issues for us and tell us what's in and

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1 what's not in.

2 Secondly, in listening to Mr. Adams, in
3 Public Counsel's issues list, which was certainly
4 much, much broader than anyone else submitted, he was
5 not clear as to what issues Public Counsel actually
6 will raise. So I don't -- it just seems to me that,
7 at this point in time, there's really not a whole lot
8 to be gained by us trying to detail the issues until
9 we've seen the testimony.

10 So my hope would be that you would
11 reconsider that requirement and let us submit that
12 sometime after December 22nd, which would still give
13 us time to make a workable process from here and that
14 will be convenient or for everyone.

15 And I say this given the understanding that
16 I have from listening to Mr. Galloway this morning
17 and lack of objections from other counsel, that none
18 of the companies wish to question each other on the
19 other companies' accounting treatment, assuming this
20 goes ahead on a consolidated basis.

21 JUDGE SCHAER: Mr. Cedarbaum, I think you
22 have misspoken a bit, and so I want to correct that.
23 I do not expect that the prehearing order will have
24 an extensive discussion of issues and what's in and
25 what's out. I think that the Chairwoman has

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1 indicated that Mr. Galloway's comments are well-taken
2 by us, probably not worth a lot of effort to go
3 through that. It may be discussed to some extent in
4 rulings on interventions, but beyond that, I would
5 expect that this is the list we're going forward
6 with.

7 If counsel agree that it would make more
8 sense to do -- I was picturing you having this when
9 you wrote your testimony, so that you could in some
10 way design your testimony to be either in one section
11 or the other, but if this would not be useful to
12 counsel when they're doing their testimony, then
13 perhaps I could say that as long as we get it
14 probably by about January 3rd or 4th, in the week of
15 the Friday hearing and a few days before the
16 hearing,, that should be sufficient for our needs.

17 I just think that, during that week, I've
18 already asked counsel to get together and discuss
19 order of witnesses and how we can efficiently present
20 the hearing in three days. I see this as a part of
21 that, as it would help us know what to consider in
22 separate session and what to consider in consolidated
23 session.

24 MR. CEDARBAUM: Well, I don't know what the
25 other parties think about it. I just thought, since

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1 we didn't nail down a list of issues, specific
2 issues, an issues statement before the testimony was
3 filed is going to be difficult and maybe not very
4 helpful, and that the point, from my perspective, the
5 point of that list was to say -- was to show what
6 issues we would all have fair game shot at and what
7 issues we wouldn't, because they were separate. And
8 as long as that happens before the hearing, I'm
9 satisfied.

10 JUDGE SCHAER: Okay.

11 MR. HARRIS: We would agree with that
12 proposal, Your Honor, and encourage you to push the
13 date back until after all the testimony has been
14 filed, so we can see what issues are actually on the
15 table.

16 JUDGE SCHAER: I believe the last testimony
17 filing is December 22nd.

18 MR. HARRIS: That's correct.

19 JUDGE SCHAER: And I'm trying to be nice
20 here and not make you file something in the week
21 between Christmas and New Year's, which is why I'm
22 saying it will need to be in the week immediately
23 following, which will -- I know the 7th is a Friday,
24 so I think I'm going to put a date of January 4th,
25 which is the Tuesday of that week, and hope that you

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1 are all recovered from the weekend and able to
2 consult, put that together for us, because we are
3 going to meet a few days before the 7th for our own
4 organization.

5 I would mention to Mr. Lavitt and to Mr.
6 Bishop that the Commission does have its own WAC rule
7 chapter on procedure, WAC 480-09, and there is in
8 that section a rule that has guidelines for complex
9 cases that tells how to identify your testimony,
10 describes how different portions of our proceedings
11 go forward, and I would encourage you to obtain that
12 and work with the other parties.

13 It's a fairly civilized practice here,
14 because you do pre-file your testimony, you do have
15 an opportunity to send and receive data requests, but
16 you will need to be prepared to have your testimony
17 filed in early December, which is going to come much
18 faster than it seems like right now.

19 Is there anything further we need to
20 discuss before we go off the record? Then the last
21 statement I'd like to make is that the court reporter
22 would like you to tell her if you'd like a copy of
23 the transcript. And with that, this hearing is
24 adjourned. We're off the record.

25 (Proceedings adjourned at 11:48 a.m.)