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1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3 In the Matter of the Petition    )  
4 of AVISTA Corporation d/b/a    )  
5 Avista Utilities For an Order   ) DOCKET NO. UE-011514  
6 Finding Avista's Deferred       )  
7 Power Costs Were Prudently     ) VOLUME I  
8 Incurred And Are Recoverable   ) Pages 1 - 66  
9 \_\_\_\_\_)

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9                   A pre-hearing conference in the above matter  
10 was held on December 6, 2001, at 9:30 a.m., at 1300  
11 South Evergreen Park Drive Southwest, Olympia,  
12 Washington, before Administrative Law Judge DENNIS MOSS.

13                   The parties were present as follows:

14                   THE WASHINGTON UTILITIES AND TRANSPORTATION  
15 COMMISSION, by DONALD TROTTER and JONATHAN THOMPSON,  
16 Assistant Attorneys General, 1400 South Evergreen Park  
17 Drive Southwest, Post Office Box 40128, Olympia,  
18 Washington, 98504. Telephone (360) 664-1189, Fax (360)  
19 586-5522, E-Mail dtrotter@wutc.wa.gov.

17                   AVISTA CORPORATION, by DAVID J. MEYER, General  
18 Counsel, E. 1411 Mission Avenue, Spokane, Washington,  
19 99202, Telephone (509) 495-4316, Fax (509) 495-4361,  
20 E-mail dmeyer@avistacorp.com.

20                   THE PUBLIC, by ROBERT W. CROMWELL, JR.,  
21 Assistant Attorney General, 900 Fourth Avenue, Suite  
22 2000, Seattle, Washington, 98164-1012, Telephone (206)  
23 464-6595, Fax (206) 389-2058, E-Mail  
24 robertcl@atg.wa.gov.

23  
24  
25 Joan E. Kinn, CCR, RPR  
Court Reporter

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1                   INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,  
2           by S. BRADLEY VAN CLEVE, Attorney at Law, Davison Van  
3           Cleve, 1000 Southwest Broadway, Suite 2460, Portland,  
          Oregon, 97205, Telephone (503) 241-7242, Fax (503)  
          241-8160, E-Mail mail@dvclaw.com.

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P R O C E E D I N G S

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JUDGE MOSS: Good morning everybody. My name  
3 is Dennis Moss. I'm the Administrative Law Judge for  
4 the Washington Utilities and Transportation Commission  
5 who has been assigned to preside over today's  
6 proceedings. We are convened in a pre-hearing  
7 conference in the case styled, in the Matter of the  
8 Petition of Avista Corporation doing business as Avista  
9 Utilities for an Order Finding Avista's Deferred Power  
10 Costs were Prudently Incurred and are Recoverable. Our  
11 Docket Number is UE-011514.

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We will follow our usual agenda, take  
13 appearances, take up any petitions to intervene. I have  
14 one pre-filed. We will take up motions and requests,  
15 talk about our process and procedural schedule, have  
16 some brief discussion of the issues, and take up any  
17 other business that may appropriately be disposed of  
18 today.

19

So let's begin with appearances, and we will  
20 start with the company, Mr. Meyer.

21

MR. MEYER: Thank you, appearing on behalf of  
22 Avista, David Meyer. I have given the particulars on my  
23 appearance form. Would you prefer more?

24

JUDGE MOSS: As long as the reporter has  
25 adequate information. I think we are all familiar

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1 players today, so we can keep things perhaps a little  
2 more brief.

3 Mr. Van Cleve.

4 MR. VAN CLEVE: Thank you, Your Honor, Brad  
5 Van Cleve on behalf of the Industrial Customers of  
6 Northwest Utilities. My business address is 1000  
7 Southwest Fifth Avenue, Suite 2460, Portland, Oregon  
8 97201. My telephone number is (503) 241-7242. My fax  
9 number is (503) 241-8160, and my E-mail address is  
10 mail@dvclaw.com.

11 JUDGE MOSS: Thank you.

12 And, Mr. Trotter, are you taking the lead for  
13 Staff?

14 MR. TROTTER: Yes, Your Honor, my name is  
15 Donald T. Trotter, Assistant Attorney General. To my  
16 right is Jonathan C. Thompson, also Assistant Attorney  
17 General. Our address is 1400 South Evergreen Park Drive  
18 Southwest, P.O. Box 40128, Olympia 98504-0128. My  
19 direct line is (360) 664-1189, and Mr. Thompson's is  
20 664-1225. Our fax number is (360) 586-5522. My E-mail  
21 is dtrotter@wutc.wa.gov. Mr. Thompson's is jthompso  
22 with the same at suffix.

23 JUDGE MOSS: All right, thank you very much.

24 And I suppose since I let Mr. Meyer take the  
25 short form of appearance, I would just ask the other

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1 parties if they have adequate contact information in  
2 their files.

3 Mr. Van Cleve, I assume you do?

4 MR. VAN CLEVE: Yes, Your Honor.

5 JUDGE MOSS: And Mr. Trotter?

6 MR. TROTTER: Yes.

7 JUDGE MOSS: Are there any other persons who  
8 wish to enter an appearance today?

9 MR. CROMWELL: Yes.

10 JUDGE MOSS: Mr. Cromwell, I'm sorry, I  
11 suppose I was thrown by three dark suits.

12 MR. CROMWELL: Robert Cromwell, an Assistant  
13 Attorney General on behalf of Public Counsel. My  
14 contact information is 900 Fourth Avenue, Suite 2000,  
15 Seattle, Washington 98164-1012. My telephone number is  
16 (206) 464-6559. My fax number is (206) 389-2058. My  
17 E-mail address is robertc1, the numeral one,  
18 @atg.wa.gov.

19 JUDGE MOSS: Thank you, Mr. Cromwell, and I  
20 apologize again for overlooking you there momentarily.

21 MR. CROMWELL: That's all right.

22 JUDGE MOSS: All right, I have one petition  
23 to intervene that was filed prior to today, and that is  
24 the petition by the Industrial Customers of Northwest  
25 Utilities. I think it's adequately explanatory. Let me

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1 just ask if there's any objection to the intervention of  
2 this group?

3 MR. MEYER: No objection.

4 MR. TROTTER: None.

5 MR. CROMWELL: No.

6 JUDGE MOSS: There being no objection, the  
7 petition will be granted.

8 I heard some subtle sound on the conference  
9 bridge line, let me just ask if there is anyone on the  
10 conference bridge line who wishes to enter an  
11 appearance.

12 Apparently not.

13 All right. A couple of matters that  
14 typically come up at the outset of these proceedings are  
15 requests for the invocation of the discovery rule, WAC  
16 480-09-480. I assume that is something the parties  
17 would wish to have invoked in this proceeding?

18 I see nods of acknowledgement, and that will  
19 be invoked.

20 Now what about a protective order? Sometimes  
21 we need that, sometimes we don't.

22 Mr. Meyer is indicating by nodding that  
23 probably would be an appropriate thing to do.

24 MR. MEYER: That's correct.

25 JUDGE MOSS: All right. Standard form of

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1 protective order will be adequate?

2 MR. MEYER: Yes, it will.

3 JUDGE MOSS: All right, then I will have the  
4 Commission enter that order, and the parties may in the  
5 interim proceed as if that order were in place.  
6 Everyone is familiar with its terms. We have all used  
7 it before.

8 Now we come to the fun part of the process,  
9 the procedural schedule. Avista's filing requests an  
10 order by February 18, 2002, and proposed a procedural  
11 schedule which we can turn to in just a moment. I want  
12 to link that discussion, however, with certain other  
13 pending matters, and I don't know if the parties have  
14 discussed this among themselves. I will provide an  
15 opportunity for that if you haven't had an adequate  
16 opportunity to do that off the record before we make any  
17 decisions about what we're going to do in this way.

18 In addition to the prudence filing that we  
19 have before us today pursuant to our notice, there are  
20 related matters, I would call them somewhat related  
21 matters at least, concerning Avista that have been filed  
22 in recent days. That would include the Avista request  
23 for an interim rate increase in which the company has  
24 requested an order by March 15, 2002, also an accounting  
25 order, if not approved by January 1st, 2002, perhaps

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1 absent hearing process, then also by March 15, 2002.  
2 Then, of course, we have the general rate proceeding  
3 which will obviously take a bit longer to process than  
4 that.

5           I will tell you that while we can set some  
6 tentative hearing dates today, we can't set final dates  
7 until I have an opportunity to review that with the  
8 commissioners and check their calendars, but we can talk  
9 about that, and we can also be sure that we set  
10 appropriate intervals for the various steps that have to  
11 be processed in terms of filing the testimony and  
12 rebuttal testimony and that sort of thing. Of course,  
13 the company has filed its testimony with its petition,  
14 so we already have that, and the parties have had some  
15 opportunity to consider that, I assume, prior to today.

16           So I guess one other point I want to raise  
17 before we get into hearing from you people, you folks,  
18 is the question of how many hearing days might be  
19 required for the various aspects that I'm raising. Keep  
20 in mind I'm not suggesting that we set procedural  
21 schedules in the other proceedings today. We're not  
22 really officially convened in those other dockets. But  
23 we do need to plan carefully so that we don't run into  
24 conflicts that are irreconcilable over the next several  
25 months. So let me just ask if the parties have had an



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1 opportunity to discuss this among themselves.

2 Mr. Trotter, did you have something?

3 MR. TROTTER: Just a quick comment, that it's  
4 my understanding that the company will be filing  
5 supplemental testimony to address the issue of the cost  
6 of capital offset, and they plan to do that in the near  
7 future. Perhaps Mr. Meyer can confirm that.

8 MR. MEYER: Yes, while we believe there is  
9 testimony pre-filed that does address that issue, we  
10 will, nevertheless, be filing some additional  
11 supplemental testimony in this docket. It will be very  
12 brief, and it will -- we're planning on filing it by  
13 Monday or Tuesday of next week.

14 MR. TROTTER: And I have not had an  
15 opportunity to talk to the company about scheduling  
16 issues.

17 JUDGE MOSS: All right. Well, I will just  
18 lay this out, and then we will go off the record and let  
19 you all have an opportunity to discuss, and I will stay  
20 in the room to perhaps facilitate that discussion off  
21 the record, and then we will go back on and set some  
22 dates.

23 The Avista proposed schedule contemplated in  
24 this proceeding Staff and intervener testimony by  
25 January 7th, 2002, with Avista's rebuttal by January

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1 18th, 2002. Suggested hearing dates in the period  
2 January 28 through February 1st. Did not set a date for  
3 briefs, but asked for a Commission order, as I noted  
4 previously, by February 18, 2002.

5           So with those dates in mind, and that was all  
6 in the filing so everybody should be mindful of those,  
7 why don't we go off the record for a few minutes and  
8 talk about scheduling and coordination with the other  
9 proceedings, and then we will go back on and memorialize  
10 that discussion. Or let me ask if there is something  
11 anyone wishes to put on the record on this subject prior  
12 to what I'm suggesting?

13           Okay, apparently not, so let's be off the  
14 record.

15           (Discussion off the record.)

16           JUDGE MOSS: We have had some informal  
17 discussion off the record concerning the process and  
18 procedural schedule. It appears from that discussion  
19 that the parties are quite far apart in terms of the  
20 schedules that they would find acceptable, and so we are  
21 back on the record to have a full discussion of the  
22 competing proposals.

23           I will just outline the matter as discussed  
24 off the record and say that the company has proposed an  
25 alternative to its initial schedule that would be

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1 looking at a March 15th date for a Commission order or  
2 orders, not only in this prudence proceeding, but also  
3 in the interim rate matter and the accounting order,  
4 petition for accounting order concerning requests for  
5 deferred power, deferred treatment of certain power  
6 costs. And the company has proposed various alternative  
7 dates for the Staff and intervener testimony, the Avista  
8 rebuttal testimony, hearings, briefs, and again the  
9 Commission order on March 15th in this proceeding as  
10 well as in the others that will be taken up in separate  
11 pre-hearing conferences but which it is necessary to  
12 consider and coordinate given the volume of business  
13 confronting the Commission.

14           Mr. Trotter on behalf of the Staff has also  
15 proposed specific dates that would carry the matter into  
16 the April time frame for briefs, and, of course, an  
17 order following that would also fall in April.

18           Public Counsel has suggested yet another  
19 alternative that would take the briefing out to the end  
20 of May, and, of course, an order then would not be  
21 possible before June.

22           So that's the basic lay of the land, and what  
23 I'm going to do at this juncture then, and, Mr. Van  
24 Cleve, I'm going to get you in the loop here, I didn't  
25 do that off the record because it became apparent we

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1 need to do this on the record. I'm just going to ask  
2 each of the parties to put on the record their dates and  
3 the reasons and arguments that they have started to make  
4 at least this morning off the record concerning why they  
5 believe those dates are appropriate, and then I'm going  
6 to set a tentative schedule having heard all that.

7           So I will again begin with the company, it is  
8 their petition, and so, Mr. Meyer.

9           MR. MEYER: Thank you. Initially along with  
10 our prudence filing, we had recommended a series of  
11 dates. The filing was made November 13th. We had  
12 proposed that Staff and intervener testimony would be  
13 due on January 7th to be followed by company rebuttal on  
14 January 18th, leading to hearings the week of January 28  
15 through February 1st, and culminating in an order on the  
16 prudence docket by February 18th. In the meantime, we  
17 have had some discussions with Staff. Staff has  
18 indicated some problems meeting those dates. And also  
19 in the meantime we have filed a general rate case that  
20 has with it a request for interim relief on or before  
21 March 15th of 2002. In addition, as part of that filing  
22 or I should say in concert with that filing, we filed a  
23 petition for a deferred accounting mechanism to be  
24 effective January 1 of 2002. And in that particular  
25 matter, we had asked the Commission to either rule prior

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1 to January 1, 2002, on that request for a continuation  
2 of deferred accounting or to take that matter up on or  
3 before March 15 of 2002 as well, but with an effective  
4 date back to January 1 of 2002.

5           So essentially we have three matters that are  
6 before this Commission, all of which we are requesting  
7 expedited relief for. One of them is the prudence case,  
8 and the other two I have just mentioned, the interim  
9 request and the prudence, or I should say the deferred  
10 accounting request, we're requesting treatment by March  
11 15th. It seems to make sense in light of our more  
12 recent filing and in order to provide some additional  
13 time for Staff and intervener to suggest a modified  
14 schedule. That modified schedule would still allow for  
15 orders on those three matters by the March 15th date  
16 that I have described, and I will discuss in a minute  
17 why that date continues to be a very important date for  
18 the company.

19           The schedule that we would now propose, which  
20 would allow for joint hearings if not consolidated  
21 hearings, is as follows. The Staff and intervener  
22 testimony in this case would be due on January 21st.  
23 The company rebuttal would be due on February 1st.  
24 Hearings in this matter, evidentiary hearings, would  
25 proceed February 12th through the 15th, but with

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1 February 11th set aside for the final pre-hearing  
2 conference to arrange for marking of exhibits and other  
3 procedural matters. Briefs would be due on February  
4 28th if briefs are required, and an order would issue by  
5 March 15th of 2002.

6           Now the question of why the rush, things have  
7 changed, in fact, since this Commission issued its  
8 surcharge order a few months back. We have been  
9 downgraded by two of our primary rating agencies. And  
10 in their downgrades, they have talked about the need for  
11 certainty, certainty in several areas, certainty around  
12 recovery of deferred costs which total approximately  
13 \$200 Million. They recognize, as does the investment  
14 community at large, that those dollars are subject to  
15 refund to the extent they have been collected through  
16 the surcharge rates. There needs to be resolution,  
17 there needs to be prompt resolution, there needs to be  
18 some certainty and some closure around that. That is  
19 why in the prudence filing we ask that the prudence and  
20 the recoverability be determined, saving for the general  
21 rate case the question of the timing of that  
22 recoverability.

23           They also communicated or the investment  
24 community at large has communicated that we need  
25 certainty around a continuation of the deferred

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1 accounting mechanism at least until such time as we can  
2 fully litigate a PCA, the need for a PCA. Also, we  
3 need, simply put, additional interim relief, and that  
4 form the basis for our parallel filing, if you will, in  
5 connection with our general case. So there is  
6 substantial urgency around getting resolution on those  
7 issues.

8           But to bring the issue even closer to home,  
9 we have by the end of May the need to renew essential  
10 important credit lines. \$220 Million of bank credit  
11 lines will expire in May of 2002. An additional, I  
12 believe this figure is correct, \$125 Million of accounts  
13 receivable financing will expire at the same time in May  
14 2002. Those financing lines, if you will, are critical  
15 to the ongoing operation of the company. In order to  
16 make those renegotiations happen, in order for us to  
17 satisfactorily resolve issues banks may raise, you start  
18 a process of renegotiating bank lines well in advance of  
19 when they expire. We have pre-filed in the prudence  
20 case testimony of our CFO, Mr. Eliassen, and testimony  
21 of Mr. Peterson, who have extensively discussed the  
22 reasons why it is critical, critical to begin  
23 negotiating in March, as early as March of this year, or  
24 excuse me, of 2002 in order to allow for renewal of  
25 those lines. That process occurs over many weeks.

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1           And so in order to provide the basis for not  
2 only renewing those lines, but doing it on cost  
3 effective or more cost effective terms, there needs to  
4 be certainty. We simply can't wait until May, June, or  
5 July in order to have resolution of that. So we have  
6 very near term concerns in terms of refinancings, we  
7 have very loud and clear concerns being expressed by the  
8 credit rating agencies, there needs to be certainty.

9           So back with respect to the prudence filing,  
10 we have when we filed the case intentionally provided  
11 extensive documentation. We did that first part of  
12 November. We filed extensive work papers. And as I  
13 mentioned off the record, we have essentially started  
14 down this path on a couple of prior occasions providing  
15 in part some of the information that we're again  
16 providing in this docket. So the issues have become  
17 fairly well known by the parties. The particulars, of  
18 course, are in this filing, but certainly the context,  
19 the reason why we found ourselves in this situation has  
20 been discussed repeatedly in prior filings, so there is  
21 ample context, if you will, already provided. Yes, it's  
22 expedited, but yes, it's also very important that we get  
23 certainty in resolution. Thanks.

24           JUDGE MOSS: A couple of questions,  
25 Mr. Meyer. You mentioned May as the date in which



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1 several of these credit lines and so forth become  
2 problematic. Are we looking at the end of May or the  
3 beginning of May?

4 MR. MEYER: I believe it's the end of May.

5 JUDGE MOSS: End of May?

6 MR. MEYER: Yes.

7 JUDGE MOSS: All right. You also mentioned  
8 the negotiation process requires you used the term many  
9 weeks, are we talking eight weeks, are we talking six  
10 weeks?

11 MR. MEYER: Well, according to the pre-filed  
12 testimony of Eliassen and Peterson, that is a process  
13 that they intend to begin in earnest in March, begin in  
14 March.

15 JUDGE MOSS: So presumably after March 15  
16 given the schedule which you asked for?

17 MR. MEYER: Exactly.

18 JUDGE MOSS: So we're looking at about, well,  
19 we would be looking at ten weeks from that point in time  
20 to the actual termination of the lines?

21 MR. MEYER: That's correct.

22 JUDGE MOSS: If they were not successfully  
23 renegotiated.

24 MR. MEYER: And if for whatever reason we had  
25 an order that was less than satisfactory, you can

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1 imagine the situation of the company in scrambling to  
2 find other banks who would then step forward, because  
3 existing banks may have dropped out. And in the process  
4 then of trying to arrange substitute banks in a very  
5 short time frame should we get an order that's not  
6 satisfactory, you can imagine how problematic that would  
7 be. So that's why it's certainty on the front end,  
8 knowing that your banks are going to stay with you and  
9 you can get financing on good terms.

10 JUDGE MOSS: All right. Now I have been  
11 puzzling with the order. I would ask for argument. It  
12 seems to me, Mr. Cromwell, that you have advocated the  
13 schedule that is the furthest out. Mr. Van Cleve, I  
14 didn't get to you and ask when we were off the record  
15 whether you had a proposed schedule or not. Do you have  
16 a proposed schedule?

17 MR. VAN CLEVE: No, Your Honor, we would  
18 support the schedule proposed by Public Counsel.

19 JUDGE MOSS: Well, then it would be sensible  
20 in my belief that we hear from Mr. Cromwell next, and  
21 then we will hear from Mr. Van Cleve. And, Mr. Trotter,  
22 you have proposed a schedule that's somewhere between  
23 those, and so we will hear from you last.

24 Go ahead, Mr. Cromwell.

25 MR. CROMWELL: Thank you, Your Honor. I will

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1 start with our first premise, which is that the parties  
2 to this proceeding should not be prejudiced in their  
3 ability to present rebuttal evidence and cross-examine  
4 witnesses. Our position is that the schedule that the  
5 company proposes would impair our ability to do that and  
6 our right to due process.

7 I believe we did this off line, but  
8 Mr. Trotter recounted this is essentially a \$200 Million  
9 case with some fairly significant consequences to the  
10 rate payers that Avista serves. When you look at this  
11 case in the context of not only what is pending before  
12 the Commission, but what has in fact come before during  
13 the last year or so, you are looking at an aggregate  
14 impact to the rate payers of this company that's  
15 extremely severe as we head into a winter that is  
16 clearly going to be cold and as we are clearly in the  
17 middle of a recession. The consequences for this type  
18 of rate impact on certain segments of their rate payers  
19 will be indeed very, very severe.

20 The company has alleged an emergent  
21 situation, yet their need to negotiate these credit  
22 lines is clearly not a surprise. It is foreseeable, and  
23 it's something that they do know that they would have to  
24 do presumably since they entered into the lines that are  
25 existing now, presuming that they have a fixed term. I

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1 have not heard Mr. Meyer argue, nor did my review of the  
2 testimony lead me to believe that this company would be  
3 unable to revive those credit lines. The issue is under  
4 what terms. In fact, Mr. Meyer just noted for you a  
5 moment ago that the company has not even commenced  
6 negotiating these credit lines yet. He has alleged that  
7 there would be a need to scramble to do so were the  
8 Commission to enter an order that would be less than  
9 satisfactory or presumably less than that which the  
10 company has requested.

11 I would assert for your consideration that  
12 the company could begin that process now if it chose to  
13 do so. It's not at all uncommon when there is  
14 uncertainty in a factual situation regarding a contract  
15 of any sort for parties to negotiate contingent lines or  
16 contingent terms in a document. And as those facts  
17 develop, you throw aside one piece, and you start  
18 focusing down that road. And I can easily foresee that  
19 the company could negotiate based upon two or three  
20 optional presumptions as to what this Commission might  
21 produce given its experience with the Commission over  
22 the last year as well as prior to that term.

23 I would also note for your consideration that  
24 I have previously had discussions with Mr. Meyer. We  
25 have agreed to begin discovery. In fact, I have

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1 provided data requests to him, and his client has been  
2 responding at least in terms of us communicating with  
3 the one accounting witness that we retained, so we have  
4 been making a diligent effort to try and get this going  
5 as fast as we possibly can. However, that said, I have  
6 yet to retain a power supply witness, which given the  
7 nature of their case, is obviously quite critical.

8 As to the schedule that Mr. Meyer has  
9 proposed, I believe you noted that he did not include  
10 any time for briefing.

11 JUDGE MOSS: He did mention February 28 for  
12 briefs.

13 MR. CROMWELL: Right, I believe that was  
14 after your interest in it. If the company is confident  
15 of their filing, they could certainly waive their right  
16 for rebuttal, and that would trim a few weeks out of any  
17 proposed schedule that the Commission might consider.

18 I stand by the schedule that we would  
19 propose, which would be our filing along with Staff and  
20 other interveners on March 11, any company rebuttal at  
21 March 25th, hearings the week of April 22nd, briefings  
22 the week of May 27th, with a presumptive order at some  
23 point thereafter at the Commission's convenience. I  
24 would not presume to set a deadline on that.

25 I would also note for your consideration that

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1 I have not yet fully reviewed the general rate case  
2 filing the company has made, but I am not prepared at  
3 this point to make the assumption that consolidation  
4 would not serve the interests of judicial economy. I  
5 would certainly argue that an 11 month review period  
6 would allow the Commission to make a more informed  
7 decision than even the compressed schedule I'm proposing  
8 to you today.

9           And to step back for a second, I think the  
10 point of what all we do here before you is to present  
11 the best evidence possible for the Commission to make  
12 the most informed decision possible. And certainly the  
13 accelerated calendar that the company has proposed would  
14 not enable parties to do that, and I would be concerned  
15 that the Commission would not have an adequate record  
16 before it to make an informed decision on that basis.

17           I would also note for you my concern to the  
18 degree that we might consider in the interim proceeding  
19 as well as the accounting order when we get to  
20 scheduling those matters, and I'm perhaps presuming that  
21 you will be presiding over those; is that correct?

22           JUDGE MOSS: I think that's a reasonable  
23 assumption on your part.

24           MR. CROMWELL: Presuming that we're all the  
25 same folks at the table at that point, I would

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1 personally have a concern that if we are going to add  
2 even more work to the calendar that we're talking about  
3 today, doing it on the company's calendar makes it even  
4 less reasonable. Doing it on the schedule that the  
5 Commission Staff has proposed makes it certainly  
6 onerous. And I think that the schedule we have proposed  
7 would better permit that type of consideration.

8           That said, I also have frankly a couple of  
9 practical concerns. I believe it was expressed off  
10 line, but certainly this Commission has prior experience  
11 with the impact of trying to conduct significant  
12 litigation over the holiday season and the difficulty  
13 and imposition that incurs on all participating as well  
14 as the Commission Staff. I don't know that I could in  
15 any way support a schedule that would make those kinds  
16 of inconveniences on the folks that work for us. I  
17 don't think I can in fair conscience support that.

18           I think there's also an issue if we're  
19 looking down the road at joining the interim and the  
20 accounting order considerations to the schedule we're  
21 considering here today, you know, obviously we would  
22 have different testimony applying to those issues. I  
23 think that it raises the problem of trying to get  
24 multiple testimonies out the door on the same day.

25           What I would ask you to consider and what I

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1 tried to do in the schedule that I proposed to you was  
2 build in enough time for two things. One, that parties  
3 could reasonably conduct discovery, consider it, and  
4 respond in between the deadlines. So, for example, if  
5 after we file our direct testimony Mr. Meyer has a set  
6 of data requests he needs responses to, we could respond  
7 to that, he could consider it and incorporate it into  
8 his rebuttal. I think that the other piece would be  
9 having enough time built in so that if we are going to  
10 consider in the future incorporating the interim and the  
11 accounting order proceedings to this calendar, give us  
12 enough time so we've got at least a few days but  
13 preferably a week between filings that have to be made  
14 with different witnesses.

15           And I don't need to recount for you the  
16 practical difficulties of getting testimony in to this  
17 Commission when you've got witnesses across the country  
18 and that you're trying to just physically move that  
19 volume of paper around.

20           JUDGE MOSS: Well, in that connection, I will  
21 just throw in at this juncture that we can certainly use  
22 our modern technology to expedite that process in terms  
23 of sharing things among the parties and with the  
24 Commission with the hard copy filings which are still  
25 necessary for various reasons under our statutes to



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1 follow. So that's something we will use. We will use  
2 what is available to us to gain whatever efficiencies we  
3 can in those regards.

4 Does that complete your comments?

5 MR. CROMWELL: It does, yes. I would note  
6 one final thing for your consideration. In going back  
7 and reviewing this company's proceedings from this year,  
8 which I did not participate in, I noted in Docket  
9 UE-010395, the transcript from September 6th at page  
10 759, that Mr. Eliassen in response to questions from the  
11 Chairwoman indicated that it would be appropriate to  
12 take 11 months to consider the issues that the company  
13 would be subsequently raising. Now I understand  
14 Mr. Meyer is arguing that since September new situations  
15 have developed that have caused them to ask for this  
16 sort of accelerated calendar, but I would ask you to  
17 consider that the company had made that type of oral  
18 commitment to the Commission before, and I think it's  
19 fair to hold them to it.

20 JUDGE MOSS: Mr. Van Cleve.

21 MR. VAN CLEVE: Your Honor, ICNU supports the  
22 schedule proposed by Public Counsel, and we feel that  
23 both schedules proposed by the company do not provide  
24 enough time to analyze the very large volume of data on  
25 both gas and electric transactions that will be required

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1 to prepare testimony. I think Mr. Cromwell made the  
2 argument quite eloquently, so I won't repeat his points.

3           But I would like to say that I think if the  
4 company does face a problem, it's somewhat a problem of  
5 its own making. As I understand it, it's the large  
6 amount of the deferral balance which is causing the  
7 problem, and this deferral account contains transactions  
8 that date back to July 1st of 2000, almost 18 months  
9 ago. There's no reason that the company couldn't have  
10 started to deal with the moneys that were being put into  
11 that account. They were on notice from the beginning  
12 that they would have to demonstrate the prudence of  
13 those transactions. So we don't believe that the other  
14 parties' procedural rights should be cut off merely  
15 because the company chose to wait and make its prudence  
16 filing on 18 month old transactions now.

17           And I would also like to say that I hope that  
18 we don't pre-judge the schedule in the interim rate  
19 increase request or the request for the accounting order  
20 which we just received this week and really haven't had  
21 an opportunity to review. There may be some issues in  
22 those cases, maybe legal issues that need to be  
23 addressed before we proceed with the schedule. For  
24 instance, it may be that the request for the accounting  
25 order violates the Commission's order on the surcharge.

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1 That might be an issue that we want to brief before  
2 proceeding with that request. Also, there may be a  
3 legal issue about whether it is appropriate to have both  
4 an interim rate increase and a deferred accounting order  
5 at the same time. They may be inconsistent with each  
6 other. So since we're not here for a pre-hearing  
7 conference on those cases today, I would hope that we  
8 could leave open the opportunity to make arguments that  
9 a different schedule would apply to those issues.

10 JUDGE MOSS: Well we certainly have to leave  
11 open the possibility of arguing for a different  
12 schedule, but we're also trying to -- I think we  
13 certainly have four of the parties present today who  
14 will be central to the other proceedings. And whether  
15 there might be other interveners in those other  
16 proceedings, of course, remains to be seen, but we can  
17 certainly leave that open.

18 Yet we need to, let's be realistic here,  
19 we're all facing these matters together, we're all going  
20 to be involved in all of this, and so that's why I  
21 raised the subject of the possibility of joint schedule,  
22 joint hearing, that sort of thing, because we all have a  
23 lot of work facing us, not only in the matters  
24 concerning Avista, but as some of you are no doubt  
25 aware, if not all of you, there are other pending

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1 matters before the Commission that also are pressing,  
2 and so we're going to have to -- we're mindful of all of  
3 that as we sit here today even though we're not formally  
4 convened in any of those other matters, so that's why  
5 we're trying to think about it in that broader context.

6           But yes, we will take these matters up, and  
7 if we set a tentative schedule today, we will set a  
8 tentative schedule today, perhaps even better than  
9 tentative, but I will get to that in a minute, that --

10          MR. VAN CLEVE: But, Your Honor, I think one  
11 of the merits of Public Counsel's proposal is it leaves  
12 some flexibility to be able to deal with other issues  
13 that might come up in the other dockets. The company's  
14 schedule is so quick that I'm -- I fear that there might  
15 not be time to deal with those issues. For instance,  
16 you could have, as Mr. Cromwell requested, testimony due  
17 on different dates for those other issues and still have  
18 a joint hearing, but I'm not sure that you could  
19 accomplish that on the types of schedules that the  
20 company is proposing.

21          JUDGE MOSS: And it may turn out that we  
22 can't proceed jointly. That's a possible outcome too as  
23 we get to the pre-hearing conferences in the other  
24 matters. But the focus today truly is on the prudence  
25 case, and so -- but we're working on that in the context

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1 of these other matters. So let's hear from Mr. Trotter.  
2 MR. TROTTER: Thank you, Your Honor. Staff  
3 proposes the following schedule. Avista completes the  
4 filing of its direct case by next Monday, December 10th.  
5 The filings of the direct cases of Staff, Public  
6 Counsel, interveners, March 8. Avista files rebuttal  
7 March 15th. Hearings, March 25th through 27th, and rate  
8 payer hearing some time in that time frame. And a brief  
9 of the parties by parties due April 8, and the  
10 Commission order whenever the Commission can issue one.

11 JUDGE MOSS: Before you get into your  
12 argument, Mr. Trotter, let me ask you, and I want to  
13 hear from Mr. Cromwell on this point too, it's a piece  
14 of your schedule, and that's the public hearing. Now,  
15 of course, as I think about it, I think this is probably  
16 the first prudence case I have presided over here at the  
17 Commission. Is a public comment hearing typically  
18 something that's part of a prudence proceeding?

19 MR. TROTTER: You know, I'm not sure. This  
20 is a prudence proceeding without a tariff.

21 JUDGE MOSS: Well, there's no rate increase  
22 associated with the prudence docket.

23 MR. TROTTER: Right.

24 JUDGE MOSS: And that's why I'm thinking that  
25 that might not be something we need to consider.

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1           MR. TROTTER: I will let Mr. Cromwell speak  
2 to that. Just in my experience, I think the prudence  
3 cases have been in the context of a tariff filing, and  
4 we have had --

5           JUDGE MOSS: Well, it is in that context, and  
6 I think I can say with some degree of certainty that we  
7 will have public comment hearing in the general, in  
8 connection with the general.

9           MR. TROTTER: Right.

10          JUDGE MOSS: Which is where the rate impact  
11 would be resolved.

12          MR. TROTTER: Right.

13          JUDGE MOSS: And so that's where my thinking  
14 is, and that's why I raise the point.

15          MR. TROTTER: Yeah, I think the -- I put it  
16 in here without thinking all of those things through.  
17 It does seem to me that at least the amount of money  
18 that is recoverable will be determined in this docket,  
19 and so by the time it gets into the rate case, it's not  
20 a question of how much, but when. And so rate payers  
21 might say they have been deprived of a chance to comment  
22 on the amount and that's already been decided, so. But  
23 I will let Mr. Cromwell speak to that issue.

24          JUDGE MOSS: Mr. Cromwell.

25          MR. CROMWELL: Thank you, Your Honor. With

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1 risks of putting my toe back in the interim and general  
2 rate case waters, I think that the discreet question of  
3 prudence absent a tariff filing does pose the question  
4 of whether, to what degree the public would wish to have  
5 input into this aspect of the case. I think clearly  
6 most folks are concerned about what their rates are  
7 going to be. Obviously a determination in this case  
8 will have a very significant influence on the outcome of  
9 the general rate case, but the company is not  
10 technically asking for this cost to be amended in rates  
11 at this time in this proceeding.

12           So I suppose without consulting Mr. ffitich, I  
13 would be somewhat comfortable forgoing a public hearing  
14 if this were to be a discreet case with its own discreet  
15 schedule. I believe I would take the opposite position  
16 quite strongly were we at some point in the future to  
17 one degree or another to consolidate this case with the  
18 interim request, which I believe the public would wish  
19 to address quite vigorously as, in fact, occurred last  
20 summer. And then, of course, certainly in the context  
21 of the general rate case.

22           I think that, you know, I am to a certain  
23 degree comfortable leaving it to the Commission's  
24 discretion to weigh those interests and make the  
25 appropriate decision, but I would very strenuously

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1 assert the need for a public hearing, for a hearing for  
2 which the public could make direct comment to the  
3 Commission in the context of the interim and the general  
4 rate case if these are not all going to be considered on  
5 the same procedural calendar, i.e., an 11 month  
6 calendar.

7           JUDGE MOSS: What's the experience in prior  
8 cases for interim rates in that regard? Has there been  
9 public hearing? I mean interim rates are even proposed  
10 to be subject to refund, and I know the situation with  
11 respect to a general, but what's been Public Counsel's  
12 experience in terms of public hearings at the interim  
13 rate phase of a proceeding?

14           MR. CROMWELL: I can only tell you based upon  
15 my review of the record, Your Honor, and Mr. Meyer and  
16 Mr. Trotter probably are better informed than I on this,  
17 but I believe that in the last interim case the  
18 Commission held a public hearing, it had very good  
19 attendance, 70, 80 people, close to 100 people attended,  
20 and 70 or so testified to the Commission about the  
21 impact of the case on them.

22           JUDGE MOSS: Are you talking about the  
23 surcharge case?

24           MR. CROMWELL: I believe so, yeah, I'm  
25 probably using the wrong --



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1 JUDGE MOSS: Okay, well, I'm familiar with  
2 that.

3 MR. CROMWELL: All right.

4 JUDGE MOSS: But I was thinking in terms of  
5 the longer history of these sorts of things of the  
6 Commission. I mean I regard the surcharge as a special  
7 case.

8 MR. CROMWELL: Right. Perhaps Mr. Trotter  
9 can better address the history of those cases in the  
10 last decade or so. I certainly was not around when that  
11 -- maybe the last Puget round.

12 JUDGE MOSS: Maybe then no one has any  
13 insight on that.

14 MR. TROTTER: I don't have. Those orders  
15 speak for themselves. If I had to say something on the  
16 subject, my recollection is the Commission has provided  
17 for a public session on interim rate relief  
18 applications. That's just my gut reaction, but I would  
19 have to read the orders from the past. I just don't  
20 recall at the moment.

21 JUDGE MOSS: Okay, so we maybe don't have the  
22 institutional knowledge here today, which is fine, I  
23 don't have it, so I can't fault anyone else for not  
24 having it.

25 MR. MEYER: I think you will find precedent

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1 for a public hearing on the interim relief.

2 JUDGE MOSS: All right, thank you, Mr. Meyer,  
3 appreciate that.

4 All right, now, Mr. Trotter, I diverted us  
5 down that path and didn't get to your argument on the  
6 schedule, so let me give you an opportunity to put that  
7 on the record now.

8 MR. TROTTER: I appreciate that, Your Honor,  
9 thank you. The Staff's proposed schedule was carefully  
10 thought out. It is the amount of time the Staff needs  
11 to do a good job, not the best job, but an adequate job  
12 to present to the Commission and to you. The lines of  
13 communication with the company are open. We have had  
14 lots of work papers supplied. We have been going  
15 through those since day one. Mr. Meyer refers to his  
16 filing in the first part of November, and I think we got  
17 them on November 13th, so he's two days from mid  
18 November, but we did get them about three weeks ago.

19 This filing is different than the filing they  
20 made last spring in many fundamental ways, which we will  
21 be getting into in our discovery. But those factors  
22 were all considered when we put this schedule together.  
23 We knew those things when we put our schedule together.  
24 The company makes a claim for certainty, and but they  
25 also knew several things all along. They knew they

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1 needed to negotiate these credits lines since they were  
2 issued. They knew when they had to negotiate them and  
3 how much lead time they needed. They knew there was a  
4 prospect of a downgrade last summer. They testified to  
5 that. They knew the emergency surcharge would be  
6 subject to refund because they proposed it. They knew  
7 the deferred accounting was at risk because the  
8 Commission made that an issue. So all of these things  
9 were known by the company.

10 Again, that's, as I mentioned off the record,  
11 the Staff proposed a schedule last summer that would  
12 have resolved this prudence case by the time the company  
13 has now proposed, and the company opposed that. The  
14 schedule they have proposed now cuts about two months  
15 off of what the Staff had proposed, so they're even  
16 proposing a schedule more ambitious than what they  
17 opposed last summer.

18 The company's proposed schedule which they're  
19 supporting today is different than what was in their  
20 petition. They have added a couple of weeks onto the  
21 key distribution and the hearing dates, but they have  
22 also added two dockets, the interim rate relief docket  
23 and the accounting petition docket, neither of which is  
24 before us today. So adding two weeks but adding two  
25 substantial dockets is really no advance.

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1                   We do need time to, number one, get the  
2 company's direct case in total, get depositions held.  
3 Informal discovery is taking place. There have been  
4 discussions, we're making progress. The timing of this  
5 filing was controlled by the company. And we do need to  
6 get to the bottom of these issues, I don't think there's  
7 any dispute about that, but we need to do so in a way  
8 that can accommodate the needs of the parties and the  
9 Commission so that it has a record in which it can be  
10 satisfied that it's doing the right thing.

11                   We have Christmas break coming up, there is a  
12 President's Day week where people have committed time to  
13 be off two or three days, very modest, and some Staff  
14 members have scheduled these months ago. These are just  
15 the realities of trying to get the job done in the time  
16 allowed. So the Staff schedule I think is a reasonable  
17 compromise among the schedules you proposed. It gets  
18 the company what it needs well before the end of May.  
19 If the banks and Avista have to work a little harder to  
20 get those negotiations done more quickly, then so be it.  
21 But this is what the Staff needs, and it has weighed all  
22 of these factors in making its recommendation. Thank  
23 you.

24                   JUDGE MOSS: All right. In resolving this,  
25 I'm going to be faced with considering several factors

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1 that we have discussed, including the several issues  
2 that are raised by the various filings. The essential  
3 task today is to set the deadline, if you will, for the  
4 order in the prudence case, which is as I understand it  
5 a key element in the company's negotiation with the  
6 banks, and the company is looking at a March 15th date  
7 for that. Now, of course, thinking about the other  
8 arguments as well, weighing the possibilities of  
9 schedules that may be set, and we will have more  
10 argument I'm sure in the other proceedings as we get to  
11 the pre-hearings in those, what we're going to do today,  
12 I think I will go back to the concept of a tentative  
13 schedule, and we may make some adjustments one way or  
14 another when we have the pre-hearings in the other  
15 cases, which I'm going to see if we can do on a joint  
16 basis so that we can resolve everything in a final way.

17 My preference is always that the parties work  
18 out a schedule among themselves that will accommodate  
19 their various needs. The various proposals that have  
20 been suggested are quite far apart. I can say with some  
21 confidence that the Commission, of course, is keenly  
22 aware of the situation in the western energy markets  
23 that prevailed over the past 18 months. I probably need  
24 to amend that thought and start thinking in terms of two  
25 years. Certainly that situation has been one that has

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1 been unprecedented in history, at least in history as I  
2 know it, and has led to the need for some rather  
3 extraordinary efforts on the part of parties who are  
4 interested in these things and participate in them and  
5 on the part of the Commission.

6           And I think back to this time a year ago when  
7 we were faced with some rather urgent circumstances and  
8 proceeded in an expedited fashion and managed to  
9 accomplish the business at hand in a very short turn  
10 around. And what I witnessed from the Bench in that  
11 experience was that the parties were able to rise to the  
12 occasion and get things done in a shorter fashion than  
13 might have been considered ideal but that seemed  
14 necessary under the circumstances. We have since that  
15 time proceeded with considerable dispatch in any number  
16 of matters that have come before us, and the parties  
17 again have demonstrated their ability to work hard.

18           And, of course, we all have to make  
19 sacrifices. It's difficult. And this is certainly not  
20 tantamount to being in a war, but it is nevertheless the  
21 situation is one that is unusual and difficult, and we  
22 all have to make sacrifices in that context and work  
23 hard, and everyone has done that.

24           Having said all of that, and I'm not setting  
25 a date here, in fact, I'm going to recess and deliberate

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1 on this if I have to set these dates and also do some  
2 checking on a few things and see if we can get this  
3 nailed down. I certainly will not let you leave here  
4 today without a schedule. Just thinking it through  
5 though as I have heard all of your arguments and  
6 considered all of these dates, I want to put the  
7 question out whether there is any point in my recessing  
8 and allowing you all to discuss among yourselves a  
9 schedule that would lead to a Commission order under the  
10 hypothetical of proceeding on a joint basis in all three  
11 matters and a single order concerning the three issues,  
12 if you will, of course, there are subsidiary issues, but  
13 the three broad issues no later than April 1st, which  
14 happens to be a Monday.

15           If there's no point in even discussing that,  
16 then it may be that the company has considered March  
17 15th as the absolute outside date and therefore would  
18 not wish to discuss that and would prefer to rest on its  
19 advocacy for the March 15th date, then fine, tell me,  
20 and we will go into recess to give me an opportunity to  
21 consider all this.

22           But I just throw it out to you as a  
23 possibility that that would allow for some compromise  
24 among all of these various proposals which, you know,  
25 the furthest out we're talking sometime in June, the

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1 earliest, I will go back to Avista's original proposal  
2 and say mid February to be fair. That's the range, so  
3 I'm --

4 MR. TROTTER: Your Honor, would the April 1st  
5 date be an order date, and if so, how much time does the  
6 Commission need from briefs to order so we can factor  
7 that in?

8 JUDGE MOSS: This is where I put the gun to  
9 my head. The suggestions that, well, the -- I guess the  
10 only real suggestions we have had in that regard have  
11 come from the company, and it would appear to allow for  
12 about a two week period, for example, between February  
13 28 and March 15th. I will say that is adequate, and  
14 push came to shove, we could even carve a day or two off  
15 of that, assuming I can get an appropriate prescription  
16 from my doctor. Just kidding.

17 MR. TROTTER: Your Honor, I think we would at  
18 least from Staff's point of view appreciate the  
19 opportunity to just look at what the implications are of  
20 that and perhaps approach the company and other parties.

21 JUDGE MOSS: That's what I'm suggesting. If  
22 it is something that is at all doable that you all could  
23 work out among yourselves, that would be my first  
24 preference.

25 Mr. Meyer, is it something worth discussing?





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1 resolution of issues not only in this docket, but in the  
2 other two?

3 JUDGE MOSS: I'm thinking in terms of all  
4 three. That's what I want you all to talk about, if  
5 it's worth talking about. It's beginning to sound to me  
6 it may be worth talking about.

7 MR. MEYER: Sure.

8 JUDGE MOSS: And, you know, I don't -- I  
9 obviously can't insist that you work things out among  
10 yourselves. I'm just trying to encourage that and  
11 provide the opportunity for you to do that, and I was  
12 just suggesting that date as a date to work back from.  
13 And, you know, you can consider some shortening up in  
14 here in terms of, you know, the period allowed for  
15 briefs or the period allowed after rebuttal and prior to  
16 hearing, and those are some time frames that can be  
17 compressed.

18 Yes, it means you have to work harder.  
19 Everybody is -- there's, you know, we're all facing some  
20 weekend work over the course of the next few months.  
21 We're all facing some longer days and, you know,  
22 naturally the Commission regrets, I regret the prospect  
23 of interfering with people's plans for holidays, and it  
24 is the vacation period, so on and so forth. But, you  
25 know, I have been at this for 20 years, and I don't

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1 think I have every missed a Christmas day, but short of  
2 that, certainly have experienced periods in my career,  
3 and I'm sure you all have experienced periods in your  
4 careers, when it is necessary to take the minimum amount  
5 of time to preserve harmony within our families yet to  
6 accomplish the business at hand.

7           So again, it's a regrettable situation, but  
8 we all face these difficulties that are precipitated by  
9 circumstances that are beyond any of our direct control  
10 in terms of looking at the wholesale energy market and  
11 all the perturbations in that market that have occurred.  
12 We're all very familiar with it.

13           So let me put us in recess for I think I will  
14 go ahead and say until the top of the hour there by the  
15 wall clock, which will be 11:00, which will give you 10  
16 or 15 minutes, and I will go check on a couple of things  
17 while you do that, and we'll come back together at that  
18 point.

19           (Discussion off the record.)

20           JUDGE MOSS: Mr. Meyer, would you care to  
21 report.

22           MR. MEYER: I will be happy to. Recognizing  
23 that what we do here today addresses matters in this  
24 docket and may be tentative, if, however, if after you  
25 and the Commission take into account your scheduling

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1 concerns with respect to the interim case and the  
2 temporary deferred accounting mechanism matter, and if  
3 after having done that the Commission is willing to  
4 commit to an order on or before April 1st for those two  
5 matters plus the prudency matters, the company would  
6 find that acceptable. Then I can work back and give you  
7 some dates that only I have agreed upon.

8 MR. TROTTER: In that regard, Your Honor, may  
9 I comment?

10 JUDGE MOSS: Sure.

11 MR. TROTTER: I probably should have said  
12 this before the break, but in talking to Staff, we  
13 simply have not had adequate time to review the interim  
14 application as well as the accounting petition in order  
15 to give a good faith estimate of our needs for timing on  
16 those two documents, and so we kind of started off on  
17 the wrong foot there. When I talked to Staff, they just  
18 simply were not prepared to commit to any dates. So we  
19 can't -- so hence we were only able to talk in concept  
20 with the company, and we were not even in agreement on  
21 the dates regarding the concept. So it's just  
22 premature, but, you know, we're dedicated to looking at  
23 those filings. We're just -- we're not going to get  
24 that done today, so we can't commit to a package type  
25 schedule.

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1                   MR. CROMWELL: I would agree with  
2 Mr. Trotter, Your Honor. I can not commit to the type  
3 of April 1st deadline. I think we have already  
4 expressed the reasons why we don't believe that the  
5 company's asserted deadline is compelling. I won't  
6 reiterate those. We have proposed a schedule that we  
7 believe would allow for the interlacing of the other  
8 matters of this company as well as allow us to address  
9 the other dockets from Puget and other companies that  
10 we're dealing with over this time frame. We stand by  
11 the recommendation we have made.

12                   MR. MEYER: If you are interested, I can in  
13 due course give you the dates that would lead up to an  
14 April 1 order that I would propose.

15                   JUDGE MOSS: All right, go ahead and do that.

16                   MR. MEYER: Okay. And again, the premise is  
17 as I have previously described. Staff and intervener  
18 filings, February 11th. Company rebuttal, February  
19 25th. Hearings, March 5 through 8. Briefs, March 20th.  
20 Order, April 1.

21                   MR. TROTTER: And, Your Honor, on the  
22 hypothetical that the April 1 date is needed, which we  
23 disagree with, we would need a filing, Staff filing date  
24 of February 15th.

25                   JUDGE MOSS: Are you saying with that filing

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1 date you could meet that schedule in all three dockets?

2 MR. TROTTER: No.

3 JUDGE MOSS: Well, then what are you saying?

4 MR. TROTTER: I'm saying the 11th is  
5 unacceptable. The schedule itself is unacceptable. If  
6 it was imposed against all of our objections, we would  
7 ask, in addition to everything else we might ask for, a  
8 February 15th distribution date.

9 JUDGE MOSS: All right, well, I think it's  
10 unfortunate that we can't work something out since we  
11 have all the key people here today. I think the best I  
12 can do under the circumstances is to set a tentative  
13 schedule for the prudence case alone, which is the only  
14 case that was noticed for this prehearing conference.  
15 Since I have to set it and the parties can't agree among  
16 themselves, and I understand circumstances are  
17 difficult, I'm not being critical of anyone, it's just  
18 unfortunate, so what I'm going to do is set a tentative  
19 schedule today for the prudence proceeding.

20 And what I'm also going to do after we finish  
21 here is I'm going to go back, do a little background  
22 work, and I'm going to set a joint prehearing conference  
23 on a very short notice for further consideration of the  
24 procedural schedule in this matter and the interim rate  
25 proceeding and the accounting order matter that we have

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1 talked about the possibility of processing on a joint  
2 basis. I'm not inclined at this juncture to think about  
3 consolidating, but as Mr. Meyer pointed out earlier,  
4 from a process perspective, there's really no difference  
5 as a practical matter, so we will set that tentatively.

6           We will set some tentative dates today, but  
7 those are subject to revision at the time of this  
8 subsequent prehearing conference in this proceeding and  
9 the other two proceedings. I'm not going to try to set  
10 a date for that sitting here at the Bench, because I'm  
11 going to have to look at room availability and all sorts  
12 of things. And the parties can be, Mr. Trotter, I will  
13 ask that you in the meantime consult with Staff and so  
14 forth about the interim of that so everybody has got in  
15 mind what they want to advocate there. And, of course,  
16 I will encourage you to devote some additional effort  
17 among yourselves to working out an agreed schedule.  
18 That's always ideal if you can do that.

19           But I will say a couple of things in  
20 connection with all of this, and that is that you should  
21 be considering doing things on an expedited basis. You  
22 should be considering the earlier dates rather than the  
23 later dates we have discussed. We're certainly not  
24 going to push this thing out into June. You have in  
25 mind the date I suggested, and you should keep that date

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1 in mind as you think about this and work on this.

2 In the meantime, I think what I will do for  
3 purposes of today -- let me check the Bench  
4 availabilities here. Mr. Meyer, when you had indicated  
5 you thought four days of hearing would be necessary, did  
6 you have in mind all three or just the one?

7 MR. MEYER: All three.

8 JUDGE MOSS: Okay. With just the one, what  
9 are we looking at do you think?

10 MR. MEYER: I think two full days.

11 JUDGE MOSS: All right. Tentative schedule  
12 will be on prudence only. We will have the Staff and  
13 intervener testimony set for January 21st, the Avista  
14 rebuttal for February 1st. Actually, I can slip these  
15 dates a little bit. Let's strike those two dates.  
16 Instead of January 21st for the Staff and intervener,  
17 let's push that back to the 25th, and then we will push  
18 the Avista rebuttal back to February 8th, and I'm going  
19 to set hearing February 19, and we will anticipate two  
20 days. I will probably block an additional day.

21 MR. TROTTER: Your Honor, in that regard, I  
22 will have, I believe, two witnesses unavailable the week  
23 of the 18th.

24 JUDGE MOSS: The whole week?

25 MR. TROTTER: Yes. One is Mr. Buckley, who



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1 will be our principal power supply related witness, is  
2 unavailable that week.

3 JUDGE MOSS: Mr. Meyers, do you know the  
4 schedule for NARUC, will commissioners be back on the  
5 15th?

6 MR. MEYERS: My understanding is they will  
7 be, yes.

8 JUDGE MOSS: All right. We will set, I hate  
9 to do this but I am going to do it, all right, we will  
10 have your power supply witness on the 15th.

11 MR. MEYER: Mr. Buckley only?

12 JUDGE MOSS: Yep.

13 MR. MEYER: I'm advised that Mr. Norwood has  
14 difficulties on the 18th through the 22nd too along with  
15 Mr. Buckley.

16 JUDGE MOSS: Well, maybe I can have two  
17 witnesses on the 15th.

18 MR. MEYER: Yeah, I apologize.

19 JUDGE MOSS: February 15th we will have,  
20 okay, I will just set February 15th as a hearing day.

21 MR. MEYER: Okay.

22 JUDGE MOSS: And we will continue from day to  
23 day thereafter as necessary to complete the hearing, all  
24 right?

25 MR. MEYER: Thank you.

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1 CROMWELL: I'm sorry, Your Honor, so I could  
2 presume we carry over onto the 18th?

3 JUDGE MOSS: Well, the 18th actually is a  
4 holiday.

5 MR. CROMWELL: Oh, sorry, right, to the 19th?

6 JUDGE MOSS: An inconsequential holiday in  
7 some opinions, but a holiday nevertheless, so that would  
8 be the 19th.

9 All right, so Staff and intervener on the  
10 25th, rebuttal on February 8th, first hearing day will  
11 be February 15, we will continue on the 19th, 20th if  
12 necessary. Briefs, let's see, we will -- let's go ahead  
13 and have the briefs on March 1st, the anticipation being  
14 there would be a Commission order by the middle of  
15 March. All right.

16 MR. TROTTER: Your Honor.

17 JUDGE MOSS: Do I need to repeat those dates?  
18 Yes, Mr. Trotter.

19 MR. TROTTER: We would ask that you require  
20 the company to respond to data requests on a two day  
21 turn around basis.

22 MR. MEYER: Two days is extraordinarily  
23 tight.

24 JUDGE MOSS: How about three, Mr. Trotter?  
25 Two days is usually -- it just doesn't work. People

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1 don't do it. So how about three days? Three days is  
2 doable.

3           You know, I tell you, I will, let me go ahead  
4 and make my speech. I will -- you all have heard me say  
5 this before, I always expect parties to respond as  
6 expeditiously as possible to data requests, and I really  
7 frown on the practice of holding back, and I have not  
8 seen that practice with these parties in prior matters.  
9 So, you know, in terms of managing the case, that's  
10 usually the best I can do. If somebody wants to drag  
11 their feet and not respond, then you have to have a  
12 motion to compel, and I'm going to have to come in and  
13 chew people's ears off and all that sort of stuff, and I  
14 hope that we don't have any of that in this proceeding.  
15 I don't anticipate that we will.

16           But I understand, Mr. Trotter, you're quite  
17 correct, we need to provide for and emphasize the  
18 necessity for turning these things around as quickly as  
19 possible, and we can do that I think realistically  
20 setting three days, with the expectation that if the  
21 company can turn an answer around the same day, they  
22 will do so. Of course, likewise, you would do the same  
23 thing.

24           MR. TROTTER: Your Honor, I was going to make  
25 that request with respect to the distribution date of

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1 Staff's case on March 8th, and it's now five weeks  
2 earlier than that, so that's why I made the proposal.  
3 But if it's three days, then so be it.

4 JUDGE MOSS: Yeah, I think we can -- and  
5 again with the understanding that and, you know, another  
6 discovery practice that I frown upon is this, you know,  
7 there are 50 data requests and some party waits until  
8 they have the answer to all 50 data requests before they  
9 turn anything over. I don't like that. You turn the  
10 data over as you develop it, as you have it, as you pull  
11 it together.

12 And I see nods of affirmance from various of  
13 you, and that's the kind of expectation I have, and I  
14 hope that you all will live up to that. And if somebody  
15 is not apparently living up to that, then I expect to  
16 hear a motion, and we can take steps to enforce these  
17 things through sanctions or otherwise if necessary. But  
18 I mean I'm just going theoretically, because I don't  
19 anticipate that kind of problem with these parties.  
20 Everybody here is a professional.

21 Mr. Cromwell.

22 MR. CROMWELL: At the risk of trying to shave  
23 the onion a little more, if we're going to do three  
24 days, I'm just looking at the time span from the  
25 February 8th to the 15th, I would ask that we have a

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1 counting of weekend days on this with also, if there are  
2 to be any objections to data requests, that the  
3 objection will be returned or made orally to the  
4 requesting party upon receipt of the data request so  
5 that we're not hitting the three days, getting an  
6 objection back, trying to turn a motion around to you in  
7 a day, and then having hearings the next day  
8 essentially.

9 I'm just looking at that date to the 15th.  
10 If we're going to see some rebuttal from Mr. Norwood,  
11 you know, and I can get some data requests together on  
12 the 9th and fax it down to Mr. Meyer and E-mail it to I  
13 think it's Mr. Fink on the 9th, I would like to have  
14 those back by the 12th, because I'm also presuming that  
15 we will have to get together in front of you on the 14th  
16 to give you copies of exhibits and what not.

17 JUDGE MOSS: Right.

18 MR. CROMWELL: So I would ask, I guess, for  
19 that additional consideration, that weekends do count,  
20 that there is an expectation that parties may serve a  
21 data request at least on Saturday unless we're willing  
22 to kick back their rebuttal to the 7th. I'm just  
23 concerned about not being able to turn around any data  
24 requests prior to the hearing on rebuttal. If I'm  
25 getting rebuttal on the 8th and I can't serve data

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1 requests until the 11th, I'm not going to see them until  
2 the 14th.

3 JUDGE MOSS: All right, I will handle that  
4 problem in this way, Mr. Cromwell.

5 First of all, in terms of objections to data  
6 requests, I do expect those to be turned around  
7 promptly. Don't wait until the third day to say I  
8 object. I would expect if there were to be objections  
9 to data requests that those be communicated to the  
10 requesting party within 24 hours of receipt, and that  
11 can be done by E-mail.

12 Now that's problematic if the data requests  
13 come in on a Friday. In that event, then I don't think  
14 it's, while I do expect everybody is going to be working  
15 weekends throughout this period, I can't, well, I can,  
16 but I don't think I will, I'm not inclined to force  
17 weekend monitoring of E-mail and that sort of thing. So  
18 if you send your data requests on a Friday and they're  
19 not received until Friday afternoon at 3:00 or 4:00 in  
20 the afternoon, then I'm not going to penalize a party  
21 who fails to object until Monday morning or Monday  
22 afternoon even. So be mindful of that as you submit  
23 them.

24 I understand you're going to get this stuff  
25 on the Friday, but you can use, you know, the Saturday

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1 and Sunday if you want to work that weekend and  
2 formulate all your requests and get them in on Monday,  
3 and then you will have any objections by Tuesday  
4 morning. That's my expectation on that sort of thing.  
5 And then that still leaves time for response within the  
6 three day period.

7           Because I will do as I did when we were  
8 confronted with this sort of proceeding last year in the  
9 Air Liquide litigation, I will make myself available on  
10 a continuing basis to take care of any discovery  
11 disputes that arise through a telephone hearing or  
12 however we need to do it in order to keep this process  
13 moving, and I will make myself available at odd hours if  
14 necessary to keep this process moving.

15           So we will do -- everyone will do their best,  
16 that is my expectation, and I believe you all will live  
17 up to that expectation, as everyone has done in prior  
18 proceedings that have suffered from the press of time.

19           So we've got a couple of comments here. I  
20 think Mr. Cromwell's hand went up first, Mr. Trotter,  
21 and then I will get to you.

22           MR. CROMWELL: I guess I would continue to  
23 press for, given your last statement, that rebuttal be  
24 due the 7th so that I can get DR's out the 8th. Because  
25 if I can't get data requests out to Mr. Meyer until the

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1 11th and not get them back until the 14th, that  
2 essentially makes any discovery I want to do on rebuttal  
3 -- I guess the other way to look at it is if I get data  
4 requests back, you might get late submitted exhibits  
5 during the course of the hearing, but it sure would be  
6 nice to at least have a day to chew on them before  
7 having to cross-examine based upon them.

8           The other issue I would raise for your  
9 consideration is whether or not you would be willing to  
10 consider allowing expressly in the prehearing conference  
11 order that service by E-mail is acceptable for all  
12 purposes with the understanding that the paper copy will  
13 trail.

14           JUDGE MOSS: Yeah, I think we're going to  
15 have to do that.

16           MR. CROMWELL: And then perhaps if in the  
17 pre-hearing conference order you could recite the  
18 specific E-Mail address parties should use for services  
19 so that there's no misunderstanding as to where that  
20 might go.

21           JUDGE MOSS: Okay.

22           MR. MEYER: May I just briefly comment? If  
23 Public Counsel, staying with the 8th as a date for  
24 rebuttal, if they want to get requests out to us on the  
25 9th, which is a Saturday, even with the three day



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1 turnaround, that's Sunday, Monday, Tuesday the 12th, we  
2 will commit to getting a response back by the 12th,  
3 which is consistent with a three day turn around, that's  
4 Tuesday, and that's a few days before the hearing  
5 starts. So I'm not sure that we need to do further  
6 elaboration on this point if that's still consistent  
7 with the three day turn around.

8 JUDGE MOSS: All right.

9 MR. CROMWELL: Your Honor, if --

10 JUDGE MOSS: Mr. Meyer has made his  
11 commitment on the record. Mr. Cromwell, I'm sure you  
12 can rely on it.

13 MR. CROMWELL: Okay, if Mr. Meyer is willing  
14 to --

15 JUDGE MOSS: He just did.

16 MR. CROMWELL: Anything I want, I will send  
17 it out to him on the 9th, and Mr. Fink will presumably  
18 be suffering as well on that day.

19 JUDGE MOSS: We will all be suffering.

20 All right, thank you, Mr. Meyer, I appreciate  
21 the commitment in that regard.

22 Mr. Trotter, you had something.

23 MR. TROTTER: Yes, Your Honor, would you  
24 please set a date for when the company will complete the  
25 filing of its direct case?

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1 JUDGE MOSS: I think you said Monday or  
2 Tuesday?

3 MR. MEYER: Yes.

4 JUDGE MOSS: So shall we set Tuesday as the  
5 date?

6 MR. MEYER: Tuesday works.

7 JUDGE MOSS: One other thing, I think what  
8 we're going to have to do here is allow for electronic  
9 filing as well as service to be followed by paper  
10 filing. And what I'm going to ask you to do then is  
11 consider on filing dates, you're going to have to get  
12 your electronic filing in by I'm going to say 2:00 on  
13 the afternoon of the filing date. And if you choose to  
14 file hard copy, I will give you until 4:00.

15 And the reason I'm setting these times is  
16 because this stuff comes in to our record center, and  
17 our folks there have to stamp it, process it, and  
18 distribute it before they get to go home. And the  
19 practice that has been a longstanding practice of filing  
20 things at 4:56 in the afternoon of the due date is one  
21 that I am taking some personal initiative to bring to an  
22 end. And so I'm going to set these times in the  
23 afternoon for you all to do that.

24 And I set them as I do because it seems  
25 reasonable to me that if we weren't taking the

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1 exceptional step of allowing you to file electronically,  
2 then you would not have nearly as much time, so 2:00 in  
3 the afternoon does not seem like an unreasonable hour  
4 and then 4:00 for the paper, because that way it's all  
5 -- it can easily be distributed if it's on paper.  
6 Otherwise, our staff has to copy it, distribute it, and  
7 so forth, so.

8 MR. CROMWELL: Your Honor, just to clarify,  
9 that's either/or?

10 JUDGE MOSS: You can do it either way. Now  
11 again, because the statute says something about signed  
12 copies and blah, blah, there's some logistical  
13 requirements in the statute, you will still need to  
14 follow up with a paper filing every time. But in terms  
15 of logistics of the case to get the things to the  
16 parties and everybody who needs to look at them and so  
17 forth, the electronic will still work. But you will  
18 still have to make your filings by hard copy.

19 And we will adjust the number of copies that  
20 you need to submit to reflect which way you do it. I'm  
21 going to tell you now that if you're going to do a paper  
22 filing, you will need an original and 14. If you're  
23 going to do an electronic filing, why don't we set it  
24 at, oh, let's call it an original and 4, set the  
25 follow-up filing, an original and 4 for the follow-up

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1 filing, right.

2 MR. MEYER: Your Honor, I want to make sure I  
3 understand.

4 JUDGE MOSS: Sure.

5 MR. MEYER: Electronic, it's at the parties'  
6 option on the due date to file either electronically by  
7 2:00 or hard copy by 4:00. But if the party chooses to  
8 file electronically by 2:00, that party should follow up  
9 and it could be the next day with a hard copy.

10 JUDGE MOSS: And four.

11 MR. MEYER: And four.

12 JUDGE MOSS: Original and four.

13 MR. MEYER: Okay.

14 JUDGE MOSS: As the follow up.

15 MR. MEYER: Okay, got you.

16 MR. CROMWELL: Your Honor, just a question, I  
17 don't know if Mr. Meyer wants to make a record of  
18 Mr. Fink's E-mail address for electronic service  
19 purposes. I just know from talking to him already that  
20 it helps him to process to have these documents  
21 electronically directly rather than --

22 MR. MEYER: I would be happy to do that.

23 JUDGE MOSS: Go ahead.

24 MR. MEYER: It's the E-mail that would go  
25 directly to Mike Fink is rates@avistacorp, that's one

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1 word, A-V-I-S-T-A-C-O-R-P, .com, just to the attention  
2 of Mike Fink, F-I-N-K.

3 JUDGE MOSS: I'm going to go ahead and try to  
4 set this follow-up pre-hearing conference by the end of  
5 next week, so I will just go ahead and give you a heads  
6 up. I'm not sure what date and time because I have to  
7 check calendars and availabilities and so forth, but  
8 we're spending a lot of effort here setting all of this  
9 today, and, of course, it may change next week, we'll  
10 see.

11 MR. CROMWELL: I'm sorry, Your Honor, during  
12 next week?

13 JUDGE MOSS: Yeah, sometime next week.

14 MR. CROMWELL: I would commend to your  
15 attention that Tuesday morning there is scheduled a 271  
16 prehearing conference for the hearings that follow the  
17 next week.

18 JUDGE MOSS: Probably be a little later in  
19 the week than that.

20 All right, I think we've got a set of dates  
21 as a tentative schedule, and that will be published in  
22 the prehearing order, or I may wait on the prehearing  
23 order until after this next conference. I don't think  
24 anybody needs a pre-hearing conference order over the  
25 next couple of days. Do you, Mr. Trotter?

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1                   MR. TROTTER: Well, Your Honor, we're going  
2 to have to look at this. If it's not -- if we can not  
3 live with it, which we may not be able to, we may need  
4 to seek reconsideration of it.

5                   JUDGE MOSS: Okay.

6                   MR. TROTTER: So having something in front  
7 of --

8                   JUDGE MOSS: Maybe I better give you an order  
9 so you can have something to respond to within ten days.

10                  MR. TROTTER: Thank you.

11                  JUDGE MOSS: Okay, fair enough.

12                  All right, I will go ahead and get the  
13 preconference order out, and anybody who wants to can  
14 object to that and then -- but keep in mind we're going  
15 to have this other follow-up prehearing conference, at  
16 which time, if there is an objection, if it could come  
17 in before that, it would be helpful, and then we could  
18 take it all up at once.

19                  I do want to just encourage you one more time  
20 to try to all work together toward the idea of a joint  
21 proceeding. I just, the more I think about it and the  
22 more I consider the other things that the Commission has  
23 pending before it in the early months of 2002, time is  
24 going to be tight, and we need to build efficiencies in  
25 wherever we can, and I think that's one way we can

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1 certainly build some efficiencies into what's pending in  
2 regard to Avista. So you all work on that in the  
3 interim.

4 All right, I will get the prehearing order  
5 out. I will see to it that the Commission enters the  
6 appropriate protective order. I mentioned that for  
7 paper filings we need an original plus 14 copies for  
8 purposes of internal distribution at the Commission. I  
9 will put some language in the order concerning that and  
10 also concerning the option that I'm making available to  
11 parties in this proceeding to file electronically. And  
12 service, by the way, should be simultaneous with filing,  
13 so you can just do a group E-mail or whatever. That  
14 will take care of your service and your filing in one  
15 fell swoop.

16 MR. MEYER: I have been asked to ask, so I  
17 will, I think you said that E-mail responses to data  
18 requests were acceptable.

19 JUDGE MOSS: I think that works. Does  
20 anybody have a problem with it?

21 MR. CROMWELL: No, I think that's fine.

22 JUDGE MOSS: Yeah, that further builds  
23 efficiency into the process. Of course, some things are  
24 just too lengthy, bulky, unmanageable. But yeah, in  
25 these days of electronic spreadsheets and so forth,

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1 yeah. Everybody participating in this proceeding has  
2 the capability of the process.

3           Your filings, of course, as usual must be  
4 made to the Commission's secretary either by mail to the  
5 Secretary, WUTC, P.O. Box 47250, 1300 South Evergreen  
6 Park Drive Southwest, Olympia, Washington 98504-7250, or  
7 by other means of delivery as we have discussed. To the  
8 extent you do opt for paper filings, I want to stress  
9 that we require in addition an electronic copy so that  
10 we can make the appropriate postings to the Web site, on  
11 line library, whatever it may be.

12           To the extent there's confidential matter  
13 involved, remember that you need to segregate that both  
14 in your electronic and in your paper. And I ask that  
15 you follow the rule of the protective order with respect  
16 not only to the exchange of discovery materials but also  
17 any filings and put your confidential pages in as  
18 colored pages, not white paper, so that they can easily  
19 be recognized as confidential.

20           MR. CROMWELL: Your Honor, one other thing  
21 occurs to me.

22           JUDGE MOSS: Okay.

23           MR. CROMWELL: Robert Cromwell for the  
24 record. One thing that has come in handy in the 271  
25 proceeding is if parties in their E-mail in the subject



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1 line put the topic number first and then maybe a  
2 description of the E-mail. I'm just thinking down the  
3 road as we start getting into multiple cases, it will be  
4 easier to think about it by the docket number rather  
5 than just Avista.

6 JUDGE MOSS: That's a good suggestion, yeah,  
7 do include the docket number of the proceeding in your  
8 subject line. That's something we do internally and  
9 have found very useful, and I think it would be helpful  
10 to the external communications as well.

11 Thank you, Mr. Cromwell.

12 Whatever schedule we end up with, whether  
13 it's the one we're setting today or some other schedule,  
14 we will have a final pre-hearing conference shortly  
15 before the hearing in order to mark exhibits and  
16 exchange cross examination exhibits and eliminate some  
17 of the paperwork and things that slow us down otherwise  
18 at the hearing, so we will take care of that as we  
19 usually do.

20 I will remind you in my pre-hearing order, as  
21 always, that parties are encouraged to stipulate both as  
22 to facts and issues. Issues, of course, can be resolved  
23 through the settlement process and by other means of  
24 alternative dispute resolution. If the parties wish to  
25 request assistance with an alternative dispute

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1 resolution process, they should let me know, and I will  
2 work internally to see if we can furnish you with a  
3 mediator if that's something you would find beneficial  
4 or to otherwise work with you in that regard and  
5 facilitate that process in any way we can.

6           Is there any other business we need to take  
7 up today?

8           I thank you all for your patience and your  
9 diligence, and I will look forward to working with you  
10 as we go forward through the end of this year and on  
11 into the next, and I will get you that notice out fairly  
12 promptly on the next pre-hearing conference.

13           We're off the record.

14           (Hearing adjourned at 12:00 p.m.)

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