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1 BEFORE THE WASHINGTON STATE

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 WASHINGTON UTILITIES AND )

TRANSPORTATION COMMISSION, )

5 )

Complainant, )

6 )

vs. ) Docket UE-152253

7 )

PACIFIC POWER & LIGHT COMPANY,)

8 )

Respondent. )

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PREHEARING CONFERENCE, VOLUME I

11

Pages 1 - 65

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ADMINISTRATIVE LAW JUDGE MARGUERITE FRIEDLANDER

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9:30 A.M.

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DECEMBER 22, 2015

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Washington Utilities and Transportation Commission

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1 A P P E A R A N C E S (Continued)

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1 OLYMPIA, WASHINGTON; DECEMBER 22, 2015

2 9:31 A.M.

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5 JUDGE FRIEDLANDER: Okay. Let's get

6 started. My name is Margaret Friedlander. I'm the

7 Administrative Law Judge for this proceeding before the

8 Washington Utilities and Transportation Commission.

9 This is the time and place set for a prehearing

10 conference in the Pacific Power & Light Company's

11 expedited rate filing or known as an ERF, E-R-F.

12 The matter has been designated by the

13 Commission Staff as Docket UE-152253.

14 We're going to go ahead and take appearances

15 by the parties. Just to let you know, I do not need

16 your addresses, as long as they're accurate and correct

17 in the filings that you've made. We can skip the phone

18 numbers and the fax numbers as well.

19 So we'll begin with Pacific Power.

20 MS. McDOWELL: Thank you, Your Honor. And

21 good morning, everyone. This is Katherine McDowell here

22 on behalf of Pacific Power. With me today is Matt

23 McVee, in-house counsel for Pacific Power.

24 JUDGE FRIEDLANDER: Thank you. Appearing

25 today on behalf of Staff?

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1 MS. CAMERON-RULKOWSKI: Appearing on behalf

2 of Commission Staff, Jennifer Cameron-Rulkowski,

3 Assistant Attorney General, and with me are also Patrick

4 J. Oshie, Christopher M. Casey and Julian H. Beattie,

5 also Assistant Attorneys General.

6 JUDGE FRIEDLANDER: Okay. Thank you.

7 Appearing today on behalf of Public Counsel?

8 MR. FFITCH: Good morning, Your Honor.

9 Appearing for Public Counsel, Simon J. ffitch, Senior

10 Assistant Attorney General, for the Public Counsel Unit

11 of the Washington State Attorney General's Office.

12 JUDGE FRIEDLANDER: Thank you. We have

13 three petitions for intervention. Who's appearing today

14 on behalf of the Energy Project?

15 MR. PURDY: I am, Your Honor. Brad Purdy.

16 JUDGE FRIEDLANDER: Okay. Thank you. And

17 could you spell your last name for the court reporter.

18 MR. COWELL: Yes. P, as in papa, U-R-D, as

19 in delta, Y.

20 JUDGE FRIEDLANDER: Thank you. Appearing

21 today on behalf of Boise White Paper?

22 MR. COWELL: Yes. Thank you, Your Honor.

23 Appearing on behalf of Boise is Jesse E. Cowell,

24 C-O-W-E-L-L.

25 JUDGE FRIEDLANDER: Thank you.

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1 And finally, appearing today on behalf of

2 Sierra Club?

3 MS. SMITH: Gloria Smith.

4 JUDGE FRIEDLANDER: Okay.

5 Are you the attorney of record or is Alexa

6 Zimbalist?

7 MS. SMITH: Alexa Zimbalist is my assistant.

8 I'm the attorney of record.

9 JUDGE FRIEDLANDER: Okay. Thank you.

10 And we usually, for purposes of the service

11 list, have the attorney and one representative of the

12 organization. Is there someone else on -- or in the

13 Sierra Club that would receive service?

14 MS. SMITH: Travis Ritchie -- I supervise

15 Travis Ritchie. He's a staff attorney with the Sierra

16 Club also.

17 JUDGE FRIEDLANDER: Okay. Thank you. Is

18 there anyone else in the hearing room or on the

19 conference bridge who wishes to make an appearance?

20 Okay. Hearing nothing, let's take up the

21 three petitions to intervene, and we'll begin with the

22 Energy Project. Mr. Purdy?

23 MR. PURDY: Yes.

24 JUDGE FRIEDLANDER: Are there any objections

25 to intervention by the Energy Project?

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1 MS. McDOWELL: No objection, Your Honor.

2 MR. OSHIE: No objection.

3 MS. CAMERON-RULKOWSKI: None from Staff,

4 Your Honor.

5 JUDGE FRIEDLANDER: Thank you.

6 So you are admitted into the proceeding,

7 Mr. Purdy, on behalf of the Energy Project.

8 MR. PURDY: Thank you.

9 JUDGE FRIEDLANDER: You're welcome.

10 And we'll go to the Sierra Club. Are there

11 any objections to intervention by the Sierra Club?

12 MS. McDOWELL: No objection, Your Honor.

13 JUDGE FRIEDLANDER: Thank you.

14 MR. FFITCH: No objection, Public Counsel.

15 MS. CAMERON-RULKOWSKI: Your Honor, Staff is

16 not objecting to Sierra Club's intervention, but Staff

17 does want to raise the concern that the Sierra Club

18 confine itself to the interests that it expressed in its

19 petition for intervention, and that's specifically the

20 depreciation schedule and the installation of the SCR

21 systems on the Jim Bridger units, and Staff is concerned

22 that issues are not brought into this proceeding that

23 are better addressed in other proceedings.

24 JUDGE FRIEDLANDER: Thank you.

25 Did you have anything to reply, Ms. Smith?

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1 MS. SMITH: Sierra Club has no objection to

2 that. We are very interested in the interim retrofit of

3 the Bridger coal plant. We've litigated that issue in

4 other states, and we have no interests in broadening the

5 issues in this docket.

6 JUDGE FRIEDLANDER: Okay. Thank you.

7 And I will grant the petition.

8 And is there any objection to Boise White

9 Paper's intervention request?

10 MS. McDOWELL: No objection, Your Honor.

11 MR. FFITCH: No objection from Public

12 Counsel.

13 MS. CAMERON-RULKOWSKI: No objection from

14 Staff.

15 JUDGE FRIEDLANDER: Okay. Great. Thank

16 you.

17 So the intervention is granted.

18 Let's move into the motion to dismiss. It's

19 my -- before we go there, it's my understanding that a

20 protective order has already been entered in this case,

21 and I would imagine that discovery has already begun.

22 MS. McDOWELL: Yes, Your Honor.

23 JUDGE FRIEDLANDER: Okay. Great.

24 So let's go on to the motion to dismiss.

25 Mr. Cowell, do you want to brief the Court on that?

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1 MR. COWELL: Yes, I'd be glad to. Thank

2 you, Your Honor.

3 So first of all, Boise is appreciative of

4 the opportunity to discuss its motions. And to start

5 off, I'd like to just state Boise's position and all the

6 content within Boise's motion is appropriate for

7 discussion here at the prehearing conference.

8 I'd just bring the Court's attention to --

9 excuse me, the judge's attention to the prehearing

10 conference rule, which states that the results of a

11 prehearing conference will control the course of this

12 proceeding. So in that light, and with the prehearing

13 conference rule also stating that it's proper to discuss

14 the identification of issues and kind of a general

15 clause, that any other issue that may aid the Court in

16 its determination in this proceeding, that it's

17 appropriate to discuss everything that's within Boise's

18 motion.

19 So that said, moving specifically to Boise's

20 motions. In -- before formulating an issue in these

21 motions, Boise looked at the precedent that seemed to be

22 controlling that had come out in the PSE remand

23 proceeding, including the Thurston County Superior Court

24 order that partially reversed the Commission's initial

25 PSE order that had dealt with Puget Sound Energy's

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1 expedited rate filing combined with multi-year rate plan

2 package. So we looked at that, and then we looked at

3 how the Company presented this filing, and we came to

4 the conclusion that there is a dilemma or possibly even

5 a series of dilemmas. The Company called this a

6 catch-22, but in kind of stating this issue that's

7 before us, I'd like to state that Boise doesn't believe

8 that we've created a catch-22, but we're trying to deal

9 with a series of dilemmas that's before us based on

10 precedent and how the Company structured its filing.

11 So to start off with, I would agree with

12 Staff's characterization that Pacific Power's filing is,

13 quote, very similar in context to the recent PSE case

14 that I just referred to. Both center upon a multi-year

15 rate plan in conjunction with an expedited rate filing.

16 And so in our view, here's the initial

17 dilemma. In the initial PSE final order, which was

18 Order 7, and eventually there were 15 orders in that

19 case. The Commission acknowledged that the expedited

20 rate filing, multi-year rate plan combination was,

21 quote, somewhat of an experiment. So this is before the

22 judicial review, before the remand, the Commission said,

23 look, this is somewhat of an experiment.

24 And so the question now before us is did the

25 PSE experiment turn out to be a successful experiment

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1 such that it would justify PacifiCorp's -- and, again, I

2 agree with Staff's characterization -- a very similar

3 filing of a combination of an expedited rate filing and

4 a rate plan combination. In Boise's view, the answer

5 would be no, that the Company's filing now is not

6 justified.

7 Now, again, as I mentioned, the very similar

8 ERF rate plan combination was remanded back to the

9 Commission by the Thurston County Superior Court after

10 judicial review. And once that had happened, the

11 Commission acknowledged the Court's determination that

12 it, quote, should have undertaken a full analysis of ROE

13 in the rate plan and expedited rate filing context. So

14 the dilemma that seems to be before us is whether the

15 Company has filed a direct case which would allow the

16 Commission to conduct a, quote, full analysis of ROE and

17 another place, the Commission said a thorough-going

18 analysis of ROE.

19 Boise's contention is that a full or

20 thorough-going analysis of ROE cannot be undertaken in

21 the manner that the Company presented its case. Now,

22 this is based on Boise's view that the Company is

23 explicitly holding in reserve at least a part of

24 Mr. Strunk's return on equity testimony. They said they

25 expressly reserved the right to seek the higher ROE as

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1 supported by Mr. Strunk's explicit statement that he had

2 demonstrated that a higher ROE or 10.0 percent ROE was

3 appropriate for the Company.

4 Staff also states that the Company's filing,

5 quote, does not include a comprehensive cost of capital

6 presentation. And Staff also points out in their

7 response to Boise's motions -- and I'll clarify that

8 Staff is not supporting Boise's motions -- but they do

9 point out a risk that the Commission faces in light of

10 the Superior Court's ruling. And in view of that, Staff

11 suggests that the Company should be made to supplement

12 evidence on cost of capital.

13 Now, Boise pointed out in its motions that

14 the Commission in 2014 granted a motion to dismiss when

15 a company, quote -- when a company failed to, quote,

16 file a direct case that provides full support for its

17 rate request.

18 JUDGE FRIEDLANDER: I remember that one. It

19 was mine. Thanks.

20 MR. COWELL: Okay. And, you know, again, in

21 doing this whole process -- I wasn't aware of that, Your

22 Honor -- and, you know, obviously I'm just looking at

23 what's before us? What's the precedent? Where is it

24 directing us? And again, in that order, it says that

25 because of that, because there wasn't full support in

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1 the direct case, that such a filing, quote, necessarily

2 results in dismissal. And so the argument that the

3 Company should supplement its whole case later in the

4 proceeding was also rejected in that order.

5 So in filing a motion to dismiss, Boise is

6 asking the Commission to determine whether it can

7 conduct a full analysis of the Company's return in

8 equity simply on the basis of the direct case. If the

9 Commission determines that it cannot, Boise would argue

10 that a motion to dismiss is appropriate, not

11 supplementation.

12 If the Commission can, then a thorough-going

13 analysis of return on equity will be a primary focus of

14 this case by dint of that determination, and this will

15 necessarily involve consideration of Mr. Strunk's

16 testimony purportedly demonstrating that a 10 percent

17 ROE is appropriate for the Company. And this

18 effectively amounts to, in Boise's view, a Company

19 request for an ROE change, which is a definitional

20 characteristic of a general rate case. And so it's for

21 this reason that Boise has also filed an alternative

22 motion to treat this proceeding as a general rate case.

23 And in doing so, Boise, first of all, makes

24 the point that at least substantively, the Company's

25 filed what would meet the Commission definition of a

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1 general rate case.

2 Staff, in its response, had argued in a

3 different context, but they had stated that it would be

4 inappropriate to elevate form over substance when Staff

5 was arguing that the Commission should consider a

6 different general rate case rule for determination of

7 analyzing the Company's filing. And Boise likewise

8 believes that, at the very least, in substance, this is

9 essentially a general rate case.

10 Specifically, as Boise pointed out in its

11 motions, we have a cumulative rate increase request,

12 it's about 6 percent, and depending on how one

13 interprets the text of the general rate case

14 definitional rule, the second year rate plan increase is

15 over 3 percent.

16 Also, if we get to the point that the case

17 is not dismissed, then it's going to be -- because it's

18 a determination that there's sufficient ROE evidence

19 already in the Company's direct case, in which

20 circumstance, the Commission is going to be reviewing

21 the evidence that a higher ROE is appropriate. And

22 again, that would meet the Commission's definition of

23 what constitutes a general rate case.

24 Now, in Boise's motions, we've very clearly

25 stated that we fully recognize that the Commission can

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1 exempt various rules when it's in the public interests,

2 and that's, in fact, what the Commission did in Puget

3 Sound's ERF and multi-year rate plan combination case.

4 So knowing that, the remainder of our

5 alternative motion discusses why Boise does not believe

6 it is in the public interest to treat this as anything

7 but a general rate case, and I won't go into all the

8 details. It's in the motion. But essentially that we

9 have the complexity and breadth that you would see in a

10 general rate case, and in particular, as we kind of lay

11 out, we have a stark similarity between the very issues

12 that were in PSE's prior rate case that the Commission

13 contrasted in PSE's ERF, and with the Company's own

14 recent general rate case.

15 And considering all these factors, Boise

16 believes that it would be appropriate to treat this as a

17 general rate case.

18 And as a final point, I want to clarify, the

19 Company, whether explicitly or impliedly, stated that we

20 are taking the position that coming out against the

21 concept of an ERF, and we're not. Our position is the

22 combination of an expedited rate filing with a

23 multi-year rate plan, which is what the -- was before

24 the Thurston County Superior Court and judicial review.

25 And what the Commission commented on in its own

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1 precedent in the PSE remand proceeding is what we're

2 looking at because the Company has filed a very similar

3 case. And in that context, the ERF with the multi-year

4 rate plan that the Company is filing should, in the

5 alternative, be treated as a general rate case. It

6 would be prudent and appropriate to do so.

7 JUDGE FRIEDLANDER: So let me ask a couple

8 of clarifying questions.

9 MR. COWELL: Sure.

10 JUDGE FRIEDLANDER: You mentioned

11 Mr. Strunk's testimony.

12 MR. COWELL: Yes.

13 JUDGE FRIEDLANDER: You said that he's

14 holding testimony in reserve. Where do you get that

15 from in his direct?

16 MR. COWELL: I am actually taking that from

17 the petition, Your Honor.

18 JUDGE FRIEDLANDER: Okay. So there's no --

19 you're not citing to anything in his testimony that says

20 he's --

21 MR. COWELL: Well, I -- sorry.

22 JUDGE FRIEDLANDER: No, go ahead. Go ahead.

23 MR. COWELL: So two points: So in paragraph

24 9 of our alternative motion, we first point out that

25 Company has explicitly reserved its right to seek the

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1 higher ROE supported by Mr. Strunk's testimony. And

2 then in paragraph 10, we point out that Mr. Strunk has

3 purportedly demonstrated that an ROE of 10.0 percent

4 continues to be appropriate for Pacific Power.

5 So the Company, in saying that it's not

6 updating rate of return, which would include ROE, is

7 effectively -- it's like holding this contingent delayed

8 release mechanism. We have this testimony that's out

9 there, and the Company is saying, look, we're not

10 seeking an increase of ROE, but it's in -- it's in their

11 filed case. So that either the Commission's not going

12 to look at it because the Company is saying, we're not

13 asking for an increase, or it is, in which case ROE is

14 out there in this case.

15 There's testimony that Mr. Strunk is

16 explicitly stating demonstrating a 10.0 percent higher

17 ROE is appropriate, and in which case we've got a

18 broader proceeding on our hands which would justify a

19 general rate case or at least a general rate case-like

20 treatment.

21 JUDGE FRIEDLANDER: Okay. And so Boise

22 White Paper is just concerned about the ROE, though.

23 They're not concerned -- you're not concerned about cost

24 of capital or capital structure not being an element of

25 the case?

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1 MR. COWELL: I'd say it this way, Your

2 Honor. And, again, in looking at the precedent of what

3 the Commission needs to consider, it's going to -- I can

4 state with certainty, at least based on my reading of

5 the precedent, that it needs to take a full or a

6 thorough-going analysis of ROE. Now, that would, I

7 would presume, necessitate a wider look, because ROE is

8 a component of capital. But for sure, it needs to take

9 a very thorough look at ROE, and that very well may open

10 up the door to a larger examination. But that's

11 essentially why we're saying this should be treated like

12 as a general rate case or at least with process that

13 would approach a normal general rate case process.

14 Because it allows parties to -- it doesn't unnecessarily

15 constrain them knowing that ROE may be a central focus

16 in this case.

17 JUDGE FRIEDLANDER: Okay. That was one of

18 the questions that I had.

19 Ms. McDowell?

20 MS. McDOWELL: Thank you, Your Honor.

21 Katherine McDowell here on behalf of Pacific

22 Power. I appreciate the opportunity to respond to

23 Boise's motions.

24 To begin with, the standard on motions to

25 dismiss that this Commission follows is that they should

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1 be used sparingly and with care, and in this case there

2 is no basis for dismissing the Company's filing.

3 Most importantly, in response to Boise's

4 motion, Staff has reviewed the filing and submitted a

5 declaration that the Company's filing complies with the

6 Commission's filing requirements for rate cases. That's

7 not for ERFs, that's for general rate cases.

8 So under even the higher standard, Staff's

9 review has indicated that the Company has satisfied the

10 Commission's filing requirements. That may be implicit

11 in the fact that the case was recommended for

12 suspension, the filing was accepted and the adjudicatory

13 process has begun, but Staff has made it expressed or

14 explicit in the declaration it filed in response to this

15 motion. So in terms of just meeting the Commission's

16 filing requirements, we think that box has been clearly

17 checked.

18 With respect to the implications of the PSE

19 orders on this case, as our response details, we believe

20 that Boise has overstated the impact of those holdings,

21 and that even under a broad reading of those orders, the

22 Company has addressed the evidentiary issues by filing

23 cost of equity testimony in this case, notwithstanding

24 the fact that the Company is not seeking to change its

25 return on equity or any component of the cost of

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1 capital. We have, out of an abundance of caution, given

2 the PSE precedent, filed testimony of our cost of

3 capital expert in our last case, basically indicating

4 that -- you know, taking the evidence from the last

5 case, updating it and indicating that providing

6 evidentiary support for holding ROE and the other

7 components of cost of capital constant in this case.

8 Now, Boise suggests that the Company's

9 reservation of its right to put on a full cost of

10 capital case, in case the Commission decides that it

11 wants to see a full cost of capital case, does not

12 convert the Company's filing into something that, you

13 know, it isn't. I mean, we have done that in a

14 footnote, as a reservation of rights, understanding that

15 the Commission does have the discretion to say, this is

16 what we want to see in this case. If that's the case,

17 we put that reservation of rights in there instead of

18 having to refile testimony that would restate the

19 positions.

20 So we simply put that in there indicating

21 that if the Commission decides to go a different course

22 than the one that the Company has proposed here, we

23 would be able to rely on Mr. Strunk's testimony, but we

24 don't believe that that procedurally has any impact on

25 the Company's request or the nature of the Company's

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1 filing here.

2 Now, while the Staff also opposes Boise's

3 motion, Staff has raised the question of whether the

4 Company should supplement its filings with evidence on

5 the specific issues they flagged are the current credit

6 rating and cost of debt.

7 And just to first address the legal issue,

8 we think that the Commission looked at this issue in

9 Order 11 on the PSE remand, where the question was

10 raised, does that remand require the Commission to look

11 broadly at all of the components of capital -- of cost

12 of capital, including capital structure and debt as

13 opposed to just focusing on ROE, return on equity. And

14 the Commission made clear that the remand was focused on

15 ROE, and that to the extent issues came in about capital

16 structure or debt, it was only as they pertain to ROE

17 that those issues were not opened up by the remand.

18 So we believe that based on that Order 11,

19 and ultimately the final order which addressed only ROE

20 and had no mention of either debt or capital structure,

21 that the PSE case does not stand for the proposition

22 that all components of cost of capital must be addressed

23 to comply with whatever precedent PSE orders set. So

24 for this reason, we don't believe that the

25 supplementation proposed by Staff is legally required.

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1 Notwithstanding that, we do respect Staff's

2 position and appreciate their input on what should be

3 included in this case and what would be helpful to be

4 included in this case.

5 So for that reason, we are open to a process

6 for supplementing the record, as long as we can do it

7 within the confines of an expedited process so it can be

8 done without delay. And given the fact that these are

9 discrete -- very discrete pieces of evidence Staff has

10 pointed to, we would be open to a process to supplement

11 the record in that manner.

12 One thought we had was that we could

13 supplement the record in response to bench requests.

14 That would be a very quick and expeditious way to put in

15 current cost of debt and current credit rating. Those

16 are not items that we think require significant

17 testimony. Those are really factual items that could be

18 elicited and the record could be filled out in that

19 manner. So we are open to a process like that that

20 would address Staff's concerns without delaying or

21 converting this case into something that it's really not

22 intended to be.

23 Now, turning to Boise's alternative motion,

24 we do agree that ultimately the issue really posed by

25 that motion is about whether this case should be

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1 expedited or not, and we appreciate Staff's support for

2 handling this case in an expedited manner. We do think

3 we can probably get to an outcome with Staff in terms of

4 a schedule that would be workable for Staff and meet our

5 goals for the kind of schedule that has been adopted

6 previously in limited issue filings. And in Footnote 17

7 of our petition, we've cited some of those cases. You

8 know, something like five, six months, in that zone.

9 That tends to be the schedules that have been adopted in

10 these limited-issue filings. They're more open to that.

11 We don't think that there's any reason to

12 convert this case based on cost of capital issues or

13 otherwise into a full 11-month rate case as Boise

14 suggests. The petition meets the requirement for a

15 limited issue filing under 480-07-505. The annual

16 increases are under 3 percent. The tariffs for customer

17 classes are limited to under 3 percent, and the Company

18 did not request a change to its authorized rate of

19 return or its capital structure, so those are the

20 requirements of the rule. We have met those.

21 And we also believe -- and this is probably

22 more important, given the Commission's discretion on

23 these issues -- that the petition is consistent with the

24 Commission's stated policy alternatives to seek --

25 either policies to seek alternatives, to traditional,

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1 continual rate case filings. And that's why the Company

2 has tried to put the ERF together with the rate plan

3 following the PSE precedent and the Commission's policy

4 directives.

5 Now, if the Commission does believe it's

6 necessary, the Commission does have the ability to grant

7 an exemption from any part of its rules that it believes

8 an exemption is warranted. And the public policy

9 rationale in -- that is required, the public interest

10 finding that's required for such an exemption we believe

11 is met in this case. The petition offers several

12 benefits in addition to promoting the types of policies

13 that the Commission has previously identified in the PSE

14 case and the Staff has identified in PacifiCorp's prior

15 rate cases. The list of benefits is in our petition.

16 It includes a stay-out provision that would result in a

17 three-year gap between rate cases. And there's a

18 proposed increase to low-income funding in 2016 and '17.

19 Additional Commission basis reports that would be filed

20 to make the process transparent and auditable and

21 ultimately predictable and limited rate increases.

22 For all of those reasons, we believe our

23 petition is supported by the evidence and meets the

24 Commission's rules and the Company's initial burden for

25 filing, and for these reasons, we would ask the

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1 Commission to deny Boise's motions.

2 Thank you, Your Honor.

3 JUDGE FRIEDLANDER: Thank you.

4 So Mr. Strunk's testimony, does it solely

5 address ROE or does it also go into cost of capital

6 issues?

7 MS. McDOWELL: Mr. Strunk's testimony solely

8 addresses cost of equity.

9 JUDGE FRIEDLANDER: And you mentioned that

10 the Company is not opposed to filing cost of capital

11 information, but it sounded like you wanted that --

12 you're more amenable to filing it if it's in the form of

13 a response to a bench request than in testimony; is that

14 correct?

15 MS. McDOWELL: Yes. And that's really just

16 a function of not wanting to build in another round of

17 testimony into the proceeding and extend the schedule.

18 You know, we're -- you know, we can probably manage to

19 do that testimony quickly if people would prefer to see

20 it in that manner, but either way, our goal is to do

21 this in the most expeditious way possible, and given the

22 limited nature of the information requested, we think a

23 bench request might be the best way to go.

24 JUDGE FRIEDLANDER: Okay. Thank you.

25 MS. McDOWELL: Thank you.

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1 JUDGE FRIEDLANDER: Staff?

2 MS. CAMERON-RULKOWSKI: Thank you, Your

3 Honor.

4 Commission Staff will rely primarily on its

5 briefing in its response, and I just have a few quick

6 points.

7 I would reiterate that Staff did review the

8 filing by Pacific Power in detail, and it did determine

9 that essentially the Company has met its burden of going

10 forward, and it would meet a summary judgment standard.

11 The issue from the PSE judicial review case

12 is, yes, that was limited to return on equity to cost of

13 equity; however, the real issue in the background there

14 is the risk of staleness to cost of capital testimony,

15 and that's why Staff has suggested that the Company

16 supplement the evidentiary record with additional cost

17 of capital evidence, and specifically what Staff

18 believes that the parties are going to need as they

19 embark on their own cost of capital analysis.

20 Boise is arguing in the alternative that the

21 filing be redesignated as a general rate case, and Staff

22 believes, however, that that doesn't really produce a

23 different result. Under the statute, we have got a

24 statutory deadline for this case of October 8th, 2016,

25 and whether this case is designated as a general rate

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1 proceeding or not, we still have that suspension date.

2 And so Staff is unclear about what we would actually --

3 what actually would change if the case were designated

4 in a particular way. Perhaps that would mean the full

5 cost of capital would need to be filed. We're not

6 exactly sure. However, it doesn't seem like it would

7 change much.

8 And then I would simply say that Staff

9 doesn't oppose proceeding through a bench request for

10 supplementing the record. I think testimony is

11 generally the most helpful, but we do understand that

12 there's concern about delaying the process, and Staff --

13 I'll just finally say that Staff does support moving

14 this case forward on an expedited schedule, and I

15 believe we'll get to specifics about the schedule later.

16 And that concludes my argument for Staff.

17 JUDGE FRIEDLANDER: Okay. Thank you.

18 Mr. ffitch?

19 MR. FFITCH: Thank you, Your Honor.

20 I'd like to also not repeat arguments that

21 have been made, but touch on a few highlights and just

22 explain our position.

23 We do support in general the Boise motion.

24 First of all, with regard to the ERF issues, Public

25 Counsel has frequently stated in a number of cases that

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1 we do not oppose and we're comfortable with the use of

2 an expedited rate filing in appropriate situation. In

3 our understanding of what's appropriate for an ERF, is

4 essentially a simple update type of rate case where a

5 company has had a fully litigated rate case recently and

6 can simply come in and update those costs and have a

7 clean case without new or complicated issues, and that

8 would include cost of capital that has been recently set

9 after full litigation.

10 In this case, we think the ERF is not really

11 an appropriate designation of this case because the case

12 includes depreciation issues. It includes prudence

13 issues with regard to the Jim Richard plants. It

14 includes attrition theories or some type of alternative

15 rate setting for the second year of the proposed case,

16 and it includes the cost of capital issues. And so we

17 just -- we don't think it's really appropriate to call

18 it an ERF.

19 We also agree that it's most properly

20 designated as a general rate case for the reasons

21 stated. The net effect is 6 percent. That's what the

22 Company is asking for, and elevating, you know, form

23 over substance to say that that's not a general rate

24 case, we think it sort of does violence to the spirit of

25 the rule.

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1 And it also, as has been extensively

2 discussed here, there is the cost of capital issue

3 that's in the case. And I think just to follow up on

4 Ms. Rulkowski's statement, I think that's the difference

5 of designating it as a general rate case. The main

6 difference is that cost of capital, then, is clearly at

7 issue.

8 So I guess I would go on to say, though,

9 that even if it's not a general rate case, I think

10 what's critical for the Commission to decide here is a

11 schedule that's commensurate with the issues so that --

12 you know, I'm agreeing here with Ms. Cameron-Rulkowski

13 on a point that whether or not you define it as a

14 general rate case, the Commission has got to act by

15 October. And whether it's a rate case or an ERF or a

16 general rate case, the schedule -- the Commission's got

17 quite a bit of discretion about how to set the schedule.

18 So what we're asking here at the end of the

19 day from the customer perspective is a fair schedule

20 that has adequate time to address all the issues, which

21 may well include cost of capital.

22 A couple of other points on cost of capital.

23 We agree with the suggestion of Staff that there is a

24 staleness issue here. The cost of capital that's in

25 place right now was not set in the last general rate

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1 case. That was a holdover cost of capital from a 2013

2 rate case, and the Commission expressly just said, we're

3 not going to really address that in the 2014 case

4 because that's in litigation. So we think there's a

5 staleness question with the entire issue of cost of

6 capital.

7 Just as an aside, Ms. McDowell sort of

8 arguing that, under the remand decision, only ROE would

9 be a necessary determination, without addressing that

10 issue one way or the other, I think, you know, our view

11 is that the rate of return, aka cost of capital, is

12 actually under other legal authority an essential

13 ingredient in setting rates, fair, just and reasonable

14 rates for customers. So we think you need to have a

15 record on cost of capital, not just ROE.

16 And one other point that hasn't been

17 mentioned yet, which we wanted to point out to the bench

18 is maybe a statement of the obvious, but we have pending

19 appeals and we may get a decision. We may well get a

20 decision during the pendency of this case. And one of

21 the issues on appeal is capital structure. So if there

22 is a decision regarding capital structure from the court

23 of appeals, that may affect this litigation as well and

24 throw cost of capital into the mix as an issue.

25 So I think that may be most of the things I

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1 wanted to raise. I guess a couple of other sort of

2 stray points. There's a similarity with -- I might

3 describe them as the problems that Puget ran into in its

4 case. It also sought to rely on a kind of a stand pat

5 cost of capital from a previous case, and ultimately the

6 Court decided that wasn't really appropriate. There had

7 to be a fresh decision made. And so it's not reassuring

8 to just have the Company say, we're not changing

9 anything. We don't need to prove anything because we're

10 not changing anything. I don't know if that's a totally

11 fair characterization, but in terms of the stand pat

12 argument, that's -- that's what Puget, you know,

13 requested to do in their rate plan case.

14 I guess the only other thought sort of

15 relates to the ERF versus GRC point that occurred to me

16 in listening to counsel, is that it's interesting to --

17 the purpose of an ERF is essentially efficiency, I

18 think, and to try to address rate needs in an efficient

19 way for the Company, as well as for other parties. And

20 in this case, actually, the fact that PacifiCorp has

21 chosen to fully comply with the general rate case filing

22 requirements, is almost an indication that, you know,

23 there isn't quite the argument in favor of easing the

24 Company's administrative burden, if you will. They've

25 already accepted that burden and put that basic filing

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1 information into the record.

2 So I think those are all the thoughts that I

3 have, Your Honor, with regard to the issues that have

4 been raised. Thank you.

5 JUDGE FRIEDLANDER: Okay. Thank you.

6 I did have a couple of questions. First of

7 all, you mentioned that the cost of capital information

8 may be a bit stale. Do you know offhand when the last

9 time cost of capital was litigated in a Pacific Power

10 case?

11 MR. FFITCH: The 2013 general rate case,

12 Your Honor, is my recollection.

13 MS. CAMERON-RULKOWSKI: The date of that

14 order is December 4, 2013, I believe.

15 JUDGE FRIEDLANDER: So it's a little over

16 two years, then?

17 MR. FFITCH: And then probably the test year

18 that was used for the information relied on by the

19 witnesses in that case would be older than December

20 2013.

21 JUDGE FRIEDLANDER: So you had mentioned I

22 think 2014, that was the case that the Commission

23 declined to decide cost of capital because of the

24 ongoing litigation; is that correct?

25 MR. FFITCH: Correct. And they also looked

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1 at the statute that allowed them to not revisit an issue

2 within two years. I think that was one of

3 the available theories --

4 JUDGE FRIEDLANDER: Okay. Gotcha. Okay.

5 And then the only other question is just to

6 clarify, you do think that the Superior Court's order

7 and Judge Murphy's order in particular requires cost of

8 capital to be litigated in any rate case; is that

9 correct?

10 MR. FFITCH: Your Honor, I guess I don't

11 feel prepared right now to talk about specifically what

12 Judge Murphy's order held. It is our position that in a

13 rate case, a company has the burden of proof to

14 establish one of the key cost components for setting

15 fair, just and reasonable rates, and that is the cost of

16 capital.

17 JUDGE FRIEDLANDER: Okay. Thank you.

18 What I want to do is go to the intervenors,

19 and then I'll get back to Mr. Cowell to respond, and I

20 think I may have some additional questions for

21 Ms. McDowell.

22 Ms. Smith, did you have anything to add?

23 MS. SMITH: Sure. Just very briefly.

24 Sierra Club also supports Boise's motion. For us, we

25 think the ERF isn't necessarily an appropriate

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1 mechanism. Because as I think Mr. ffitch mentioned, the

2 currency component of the Bridger retrofit is actually a

3 fairly large, complicated and controversial issue. We

4 think that expedited review by the Commission would

5 burden the parties in working up their case. We

6 anticipate a fair amount of discovery back and forth and

7 testimony. And so, you know, if we were to go with an

8 expedited schedule it would place the burden on the

9 parties, and we're not really taking countervailing

10 prejudice to the Company should a fuller schedule unfold

11 for this proceeding. Frankly, that's all I have on

12 this.

13 JUDGE FRIEDLANDER: Okay. And so that

14 relates to I think the alternative motion. The motion

15 to dismiss, though, relating to the sufficiency of the

16 return on equity evidence, do you have any position on

17 that?

18 MS. SMITH: Fair enough. No, Sierra Club is

19 neutral on that.

20 JUDGE FRIEDLANDER: Okay. Thank you.

21 Mr. Purdy, the Energy Project?

22 MR. PURDY: Yes. Thank you, Your Honor.

23 The Energy Project is not as far along in

24 its knowledge of this case as the other parties, but it

25 does support Boise White's motion, and I won't repeat

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1 the arguments made by Mr. Ffitch, but I think they were

2 compelling in his characterization of what circumstances

3 justify an ERF rather than a GRC. And it does seem to

4 me to be possible that there -- this case in some way or

5 another does involve actually an examination of cost of

6 capital. And so for those reasons, I would simply not

7 repeat the others and join in the motion.

8 JUDGE FRIEDLANDER: Thank you. And, again,

9 as with Sierra Club, it sounds like you're supporting

10 the alternative motion, but I'm not hearing that you're

11 also supporting Mr. Cowell's argument that the return on

12 equity testimony is insufficient based on the Court's

13 ruling?

14 MR. PURDY: At this point, we don't have a

15 position on the PSE testimony.

16 JUDGE FRIEDLANDER: And, Ms. Smith, you had

17 something to add?

18 MS. SMITH: I agree. Sierra Club takes the

19 same position on the return of equity. We're neutral.

20 We're not taking a position.

21 JUDGE FRIEDLANDER: Okay.

22 MS. SMITH: We do -- as you succinctly

23 pointed out, we support the alternative motion.

24 JUDGE FRIEDLANDER: Okay. Thank you.

25 Mr. Cowell, did you want to respond to

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1 what's been said so far?

2 MR. COWELL: Just briefly, Your Honor.

3 I think that, based on Boise's position and

4 what I've also heard, that to the extent that we have

5 a -- and I'm just going to go to the alternative motion

6 discussion here. To the extent that we have a

7 controversy over how to designate this process and the

8 length of process, I think it would be prudent to err on

9 the side of caution. And in terms of

10 Ms. Cameron-Rulkowski mentioned what do we have to gain

11 by a designation, I would say that there is a gain at --

12 going to Public Counsel's comment, that we're not going

13 to unnecessarily restrict any review by just treating

14 this as a general rate case. But even if we don't, I

15 chose the phrasing to treat "as a general rate case," to

16 purposefully allow maximum flexibility that even if

17 it's -- however one would designate it, call it an

18 expedited case and shave off a month or so, you know, it

19 technically would be expedited.

20 But as, again, I think it was well stated by

21 Mr. ffitch that, even if it's not technically a general

22 rate case, that the process is critical that the

23 schedule be commensurate with the general rate case like

24 issues that we have before us.

25 And the final point, we mentioned this in

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1 our motions, that the Commission itself affirmed the

2 original concept of an expedited rate filing by Staff to

3 be a simple and straightforward process. You used those

4 exact words. And looking at the totality of what the

5 Company's filing includes, the various issues and the

6 complexity, as Sierra Club mentioned, just on one of

7 their main -- in one of their main issues, that we're

8 not dealing with that original concept of an expedited

9 rate filing with what's before us in the Company's

10 filing.

11 JUDGE FRIEDLANDER: Thank you.

12 Ms. McDowell?

13 MS. McDOWELL: Yes, Your Honor. I just

14 wanted to clarify -- excuse me a moment.

15 Your Honor, I just wanted to clarify exactly

16 what went on in the Company's previous rate proceedings

17 with respect to cost of capital. So cost of capital was

18 fully litigated in both the 2013 and 2014 cases. We

19 had, in both cases, full presentation of evidence,

20 cross-examination, Commission examination on cost of

21 capital, all aspects of cost of capital.

22 In the 2014 case, the Commission, after

23 hearing all that evidence, decided not to update the

24 capital structure or the cost of equity, but the

25 Commission did update the cost of debt, and the

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1 Commission did update the rate of return. So it's not

2 accurate to say that the Commission did not address cost

3 of capital in the 2014 case. It certainly did address

4 it. It addressed it by deciding to hold two of the --

5 basically make no change in two of the components, but

6 to ultimately update the cost of debt and change and

7 reduce the rate of return. So I just want to be clear

8 that it's not -- it isn't accurate to say that they just

9 took a pass on the issue in the 2014 case.

10 JUDGE FRIEDLANDER: So the Commission did

11 rule on the cost of debt and was it the credit rating?

12 MS. McDOWELL: It was the overall rate of

13 return.

14 JUDGE FRIEDLANDER: Rate of return, okay.

15 MS. McDOWELL: So because cost of debt

16 changed and was reduced, rate of return changed as well.

17 JUDGE FRIEDLANDER: Exactly, okay. All

18 right.

19 Okay. So is there any other discussion on

20 this before I make a ruling?

21 Okay. So I look at this as two motions, two

22 parts. The first part of Boise White Paper's motion is

23 the straight-up motion to dismiss based on the Court's

24 ruling that there has to be adequate presentation of a

25 return on equity component, even in an ERF, and I will

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1 grant you that the Court's decision was fairly obtuse.

2 But I do agree with that, that there has to be some

3 return on equity component within an ERF, and I think

4 that was adequately stated in the PSE remand case as

5 well. However, I'm not going to get into the merits of

6 that case, and the Court itself didn't get into a

7 specific level of return on equity testimony or exhibits

8 that have to be demonstrated.

9 Our Staff currently is fine with and feels

10 that the initial filing was adequate in the passing the

11 prima facie test for going forward, and I am going to go

12 along with that. So the motion to dismiss is denied.

13 Now, on the other hand, the alternative

14 motion is a little bit trickier. Staff is correct.

15 This is a tariff revision, and the Commission has until

16 October of next year to decide this case. We can call

17 it a general rate case. We can call it an ERF. We can

18 call it something else entirely, but ultimately the

19 Commission does have the length of time given by

20 regulation to decide this case that is going to be

21 needed.

22 My main concern here is making sure that all

23 parties have an opportunity to comment fully and receive

24 due process, but also that we try and get this done in

25 an expeditious manner. The alternative motion, I look

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1 at it as an attempt to clarify what this proceeding is,

2 and to that extent, I guess I would just say it's an

3 expedited rate filing at this point.

4 Now, you all are going to be working in a

5 moment on a schedule. I'm hoping that you can work

6 collaboratively and cooperatively and come up with a

7 schedule that will meet all of your needs. If that

8 becomes impossible or unworkable, then I'll intervene

9 and make up the schedule myself. It would be in all of

10 your best interests, though, I think, for you to have

11 more participation in what the schedule looks like than

12 for me to make it up.

13 So I'm going to -- that's about the best

14 clarification I can give you, Mr. Cowell, as far as what

15 the proceeding is. It's going to depend on what you all

16 bring out of it.

17 As far as cost of capital, the Company has

18 offered to present cost of capital information.

19 Personally I would prefer testimony. We -- we are

20 not -- if you can provide it quickly, as is stated -- as

21 has been stated, that's wonderful. I know that will

22 meet your needs, and it should hopefully meet the

23 parties' needs as well. I would feel more comfortable

24 with testimony than a bench request.

25 Is there anything further on the motion

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1 itself?

2 MR. FFITCH: I defer to Mr. Cowell. I do

3 have a question if he doesn't seek clarification, Your

4 Honor. With regard to -- and you partially answered it

5 by indicating that the Company, I believe, should file

6 additional cost of capital testimony to supplement what

7 they filed?

8 JUDGE FRIEDLANDER: Yes. I believe that

9 Ms. McDowell had offered to file testimony in the form

10 of cost of debt and their credit rating; is that

11 correct?

12 MS. McDOWELL: In response to Staff's

13 suggestion --

14 JUDGE FRIEDLANDER: Right.

15 MS. McDOWELL: -- that the record be

16 supplemented in that manner. While we don't agree that

17 it's legally required, to facilitate the processing of

18 this case and respond to Staff's concerns, we are

19 willing to do that in an expedited manner.

20 JUDGE FRIEDLANDER: And I guess my question

21 of clarification would be, what does an expedited manner

22 entail?

23 MS. McDOWELL: We think that we can have

24 that testimony prepared within ten days -- I'm hearing

25 January 8th is the date upon which we would be able to

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1 submit that testimony.

2 JUDGE FRIEDLANDER: Okay. Thank you.

3 And, Mr. ffitch?

4 MR. FFITCH: Can I inquire of counsel about

5 the capital-structure issue, where that would stand?

6 And maybe also comment on, you know, looking into the

7 crystal ball, what happens if we get a ruling from the

8 Court on that issue?

9 MS. McDOWELL: So we are proposing to file

10 testimony in response to the issues that Staff has

11 identified. Capital structure is not one of those

12 issues. The capital structure the Commission has

13 adopted has been in place for many years. It is on

14 appeal now, and we have, in our petition, have addressed

15 that by saying, you know, if there's an order that comes

16 down, the Commission will need to address that and we'll

17 need to focus on that, depending on the nature of the

18 order. And I don't think we can do any better than

19 that, and I think it's out of our hands. Whatever the

20 Court says, it says. If the Court affirms the

21 Commission, then we move forward. If the Court does

22 something different, then we will need to sort it out

23 just like the PSE remand.

24 JUDGE FRIEDLANDER: Mr. ffitch?

25 MR. FFITCH: Thank you. That's helpful I

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1 think.

2 So just for my own clarification, is it

3 correct for me to understand that the cost of capital is

4 an issue in this proceeding?

5 JUDGE FRIEDLANDER: I would say to the

6 extent that the Company has already filed a return on

7 equity testimony and that they're going to be filing

8 testimony on cost of debt, as those two elements relate

9 to the capital structure, yes, to rebut testimony that

10 they file. It's hard to talk in generalities when we

11 haven't seen the testimony yet, but to the extent that

12 the Company files testimony relating to those issues,

13 yes, they are fair game.

14 MR. FFITCH: Thank you, Your Honor.

15 MS. McDOWELL: I think the only thing I'd

16 add to what you just observed is that our position, that

17 we are not proposing to change any elements of the cost

18 of capital remains, and that is, you know, not unlike

19 many issues in many rate cases where we don't propose

20 any change in that treatment. Typically, those issues

21 are not the focus of much attention or litigation, but,

22 you know, they -- I think there is precedent that

23 parties are free to raise, you know, issues in response

24 to the Company's testimony. And I agree with you that

25 to the extent we put in testimony, parties may respond

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1 to it.

2 JUDGE FRIEDLANDER: This is a bit of a

3 conundrum from the Court's order that I have wrestled

4 with over the last couple of days. When a company does

5 not propose a change in the capital structure or cost of

6 the return on equity, it would be very difficult for me

7 to require testimony that is going to say anything other

8 than we do not require or do not want to change anything

9 related to the ROE, in which case we're a bit back where

10 we started to begin with. It's kind of circular.

11 So I appreciate the fact that the Company

12 has proposed to file this information, and we can go

13 forward at this point, but, Mr. ffitch, you had

14 something you wanted to add.

15 MR. FFITCH: Yes. Thank you, Your Honor.

16 I guess our view of that issue is that the

17 statement by a company in any given rate case, that the

18 cost of capital to be employed going forward for the new

19 rate effective year is X has to be proven by current

20 valid evidence. And if X is their existing cost of

21 capital, they still have to prove that that's still the

22 cost of capital. Because as the Commission has said,

23 cost of capital is dynamic, so there's no legal

24 presumption that the cost of capital that was set a year

25 ago or two years ago is correct, and there's a reduced

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1 burden of proof on that.

2 If the Company wishes to retain -- because

3 it may well be too high -- so if the Company wishes to

4 retain a preexisting cost of capital, we've got to prove

5 that that's now still a fair, just and reasonable cost

6 of capital.

7 JUDGE FRIEDLANDER: Fair enough. I wasn't

8 referring to the merits of the Company's position. I'm

9 simply saying that the Court is requiring some kind of

10 testimony on ROE. If there is no change proposed, it's

11 hard for me to say that testimony is inadequate when all

12 it says is, we don't propose any change to ROE. And

13 so -- inadequate as far as the motion to dismiss, I

14 should say.

15 Again, not getting into the merits of the

16 case, are you all comfortable with me stepping out and

17 you working on a procedural schedule?

18 MS. CAMERON-RULKOWSKI: Your Honor, I could

19 jump in -- and stop me, other parties, if I'm going too

20 far -- but we have tried to work out a schedule before

21 this, and we have not come to a consensus. I would say

22 maybe we have a couple of factions, and perhaps it would

23 be -- perhaps we could present proposed schedules to you

24 at this point, and --

25 JUDGE FRIEDLANDER: Enter into discussion

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1 about the dates?

2 MS. CAMERON-RULKOWSKI: We could go ahead

3 and go on the record and talk about those proposed

4 schedules if the other parties wanted to do that.

5 MS. McDOWELL: I have no objection to

6 proceeding in that way. We have had discussions leading

7 up to the prehearing conference about scheduling.

8 JUDGE FRIEDLANDER: Okay. Excellent.

9 Who wants to go first as far as proposing

10 the schedules, Ms. Cameron-Rulkowski?

11 MS. CAMERON-RULKOWSKI: I'd be happy to.

12 May I pass out Staff's proposed schedule?

13 JUDGE FRIEDLANDER: Yes, yes, please.

14 MR. FFITCH: And, Your Honor, just for the

15 record, Simon ffitch, other parties also prepared and

16 circulated a proposed schedule, and I'll be happy to

17 hand you a copy of that.

18 JUDGE FRIEDLANDER: Absolutely. Thank you.

19 MR. FFITCH: This is a proposal from Public

20 Counsel, Boise and Sierra Club.

21 JUDGE FRIEDLANDER: Are there any other

22 proposals I should be looking at? Energy Project?

23 MR. PURDY: No. The Energy Project has no

24 particular schedule in mind yet, Your Honor. Thank you.

25 JUDGE FRIEDLANDER: All right. Well, just

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1 speak up if any of these dates conflict with something

2 you have going on I guess.

3 MR. PURDY: Yes.

4 MS. McDOWELL: Your Honor, if I can just

5 interject.

6 JUDGE FRIEDLANDER: Yes.

7 MS. McDOWELL: The Company's petition had

8 requested an order with a rate effective date of May

9 1st, and you'll notice that this schedule is a June 1st

10 effective date. We have discussed this schedule with

11 Staff and can support the June 1st alternative proposed

12 by Staff, in lieu of our original request for a May 1st

13 effective date. We have not proposed our independent

14 schedule because we have discussed the June 1st

15 alternative with Staff and support that schedule.

16 JUDGE FRIEDLANDER: Okay. Thank you.

17 MS. CAMERON-RULKOWSKI: And then as far as

18 Staff is concerned, Staff has proposed, I can do June 1,

19 but the July 1 would probably be more reasonable for

20 Staff. But Staff does strongly support moving this

21 forward on an expedited schedule and so has proposed

22 both of these.

23 JUDGE FRIEDLANDER: Okay. Thank you.

24 I don't see settlement conferences on here,

25 though.

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1 MS. CAMERON-RULKOWSKI: No, Your Honor.

2 These were just the bare bones dates, and this wasn't

3 intended to exclude other elements of a procedural

4 schedule.

5 JUDGE FRIEDLANDER: Okay. I see. So

6 somewhere in that mix, we would also employ settlement

7 conferences as needed or as available?

8 MS. CAMERON-RULKOWSKI: Absolutely.

9 Absolutely, Your Honor.

10 JUDGE FRIEDLANDER: Okay. So why don't you

11 walk me through the schedule first,

12 Ms. Cameron-Rulkowski, and then I'll give to you,

13 Mr. ffitch.

14 MS. CAMERON-RULKOWSKI: So essentially,

15 Staff looked at trying to get this done by a certain

16 date and then backed out dates from there, in terms of

17 what we thought would be a reasonable -- what we thought

18 would be a reasonable turnaround time.

19 JUDGE FRIEDLANDER: Okay. And so this would

20 offer Staff enough time to conduct discovery and file

21 both a response and cross-answering -- cross-answering

22 testimony?

23 MS. CAMERON-RULKOWSKI: That's our hope,

24 Your Honor.

25 JUDGE FRIEDLANDER: Okay. And as you

0049

1 mentioned, we do have until October 8th, so I suppose if

2 that proved unworkable, we could mess with some -- we

3 could modify some dates.

4 Mr. ffitch, do you want to walk me through

5 your proposed schedule?

6 MR. FFITCH: Thank you, Your Honor.

7 The overview is that Public Counsel, Boise

8 and Sierra Club did agree with an effort to expedite the

9 schedule somewhat over the -- a full ten-month schedule.

10 And so we have, essentially working off of a nine-month

11 timeline, a target final order date of September 8th, to

12 try to shorten the schedule somewhat commensurate with

13 the major issues that we see.

14 The -- we also did include we think most of

15 the intermediate dates that would normally be needed in

16 the schedule. We have settlement -- initial settlement

17 conference before testimony, you'll see on March 11th,

18 and then subsequent to the filing of testimony on March

19 29th.

20 With respect to public comment hearings,

21 Your Honor, in the Pacific Power rate cases, typically

22 the Commission -- or frequently the Commission has

23 scheduled a hearing in Walla Walla and in Yakima on sort

24 of a combined road trip, and so we would request the

25 Commission consider doing that again. Obviously meeting

0050

1 the Commission's needs in terms of scheduling

2 convenience and so on, but we believe it's best to do

3 that after the responsive party testimony is filed, as

4 is shown here.

5 JUDGE FRIEDLANDER: Before we move on, did

6 the Commission schedule any public comment hearings in

7 the PSE ERF?

8 MR. FFITCH: I don't recall, Your Honor.

9 JUDGE FRIEDLANDER: Okay.

10 MR. FFITCH: I think that whether or not

11 that occurred, I would say that if -- here we're looking

12 at after many years of rate -- you know, annual rate

13 increases for this population, the Company is again

14 proposing two more, I would think the public would like

15 to be heard on the request, if possible.

16 JUDGE FRIEDLANDER: And you're recommending

17 two of those; is that correct?

18 MR. FFITCH: Well, the Commission has often

19 done a sort of a two-day perhaps -- I believe they've

20 done sort of a midday in Walla Walla, and then -- or

21 evening in Walla Walla and then midday the next day in

22 Yakima or vice versa. Those seem to be workable in a

23 number of cases, so...

24 JUDGE FRIEDLANDER: Okay.

25 MR. FFITCH: We would support that kind of

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1 approach if the Commission would like to do that.

2 JUDGE FRIEDLANDER: Okay.

3 MR. FFITCH: We have proposed, similar to

4 the other parties, simultaneous posthearing briefs, just

5 one round to help expedite the schedule.

6 And I would note that our schedule, you

7 know, as compared with the other proposal from Staff and

8 the Company, obviously the second proposal, the July 1st

9 effective date is closer to ours and does allow more

10 time for the complicated issues in the case. We're

11 about 30 days apart from that in our proposal. Ours is

12 only 30 days later than that. Actually, we prefer our

13 schedule, but there seems to be a little bit of room for

14 discussion there perhaps. I haven't talked to my other

15 counsel about that, but big picture, we're 30 days apart

16 from that July 1st effective date schedule.

17 JUDGE FRIEDLANDER: You are, except for when

18 you start getting into the evidentiary hearing, which

19 looks to be about two months' difference.

20 MR. FFITCH: Oh. Sorry, I was perhaps

21 looking at --

22 JUDGE FRIEDLANDER: Well, the response

23 testimony is a month, and then it looks like rebuttal

24 goes to about five weeks, and then we're looking at two

25 months when it comes to the hearing.

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1 MR. FFITCH: I stand corrected. You're

2 correct, Your Honor. I was looking at the testimony

3 date.

4 JUDGE FRIEDLANDER: Okay. So given that,

5 the fact that the testimony dates are about a month off,

6 would you find it adequate to conduct discovery in the

7 amount of time it would necessarily be given you in the

8 July 1st effective date?

9 MS. CAMERON-RULKOWSKI: Your Honor, while

10 they're considering that, I'd like to mention that

11 Mr. Kouchi of Commission Staff just informed me that in

12 the PSE case, there was one public comment hearing

13 scheduled, and that took place in Olympia.

14 JUDGE FRIEDLANDER: Okay. Thank you. I

15 appreciate that.

16 MR. COWELL: Your Honor?

17 JUDGE FRIEDLANDER: Yes.

18 MR. COWELL: Can I offer an opinion on that?

19 JUDGE FRIEDLANDER: Absolutely.

20 MR. COWELL: So in just speaking with

21 Boise's analyst, again, we've joined with Public Counsel

22 and Sierra Club and do support this as a compromise from

23 a full general rate case, size, schedule. But if we

24 were to try to reach an effective compromise even

25 further, we believe that at the bare minimum, we would

0053

1 need at least until an effective date of August 1st to

2 extend the current Staff's second proposal here, the

3 July 1st effective date, that those are a bit too

4 ambitious and accelerated from our point of view.

5 JUDGE FRIEDLANDER: Okay. And so when would

6 you be suggesting response and rebuttal testimony come

7 in?

8 MR. COWELL: Your Honor, while -- so for the

9 initial Staff, Public Counsel intervenor response

10 testimony, just sticking with the originally -- the

11 proposed date of Public Counsel and Sierra Club of April

12 14, which is slightly less than a month beyond Staff's

13 proposal.

14 JUDGE FRIEDLANDER: Okay. And then for

15 rebuttal testimony, May -- actually they have Public

16 Counsel -- the Public Counsel schedule is May 13th for

17 rebuttal, cross-answering testimony. Is that what

18 you're also suggesting?

19 MR. COWELL: Yeah, effectively, Your Honor.

20 More so looking to shorten maybe the tail end.

21 Also I wanted to point out in the Public

22 Counsel and Boise, Sierra Club proposal, we had a couple

23 footnotes there, and regardless of what eventually will

24 be agreed on in the schedule, we've proposed some

25 accelerated response times of data requests to try to

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1 fit this whole thing within an expedited process if

2 that's the direction we're going.

3 JUDGE FRIEDLANDER: So I'm really concerned

4 about whether or not parties have the opportunity -- a

5 reasonable opportunity to conduct discovery, and from

6 your schedule, Mr. ffitch, I have that discovery ends

7 May 30th. From Staff's two schedules, I'm unclear, so

8 maybe Ms. Cameron-Rulkowski can tell me where discovery

9 cutoff would be on the June 1st and July 1st dates.

10 MS. CAMERON-RULKOWSKI: We don't have a

11 discovery cutoff, but I think we'd anticipate that

12 discovery would go on until we needed to prepare for

13 hearing.

14 JUDGE FRIEDLANDER: Okay. It typically does

15 end approximately a week or two prior to hearing, so...

16 MS. CAMERON-RULKOWSKI: And that would be

17 acceptable to Staff.

18 JUDGE FRIEDLANDER: Okay. And is that

19 enough time for Boise, Public Counsel and the Energy

20 Project, as well as Sierra Club, to conduct discovery?

21 MR. PURDY: For the Energy Project, Your

22 Honor, yes.

23 MR. COWELL: Sorry, Your Honor, what date

24 are we looking at?

25 JUDGE FRIEDLANDER: We're looking at one or

0055

1 two weeks prior to -- if we were on the July 1st

2 schedule, which is the most liberal, shall we say, of

3 Staff's and the Company's, that would be hearing set for

4 the 25th and 26th of April. A week or two before that,

5 we would cut off discovery. Would that allow enough

6 time for the intervenors to have conducted adequate

7 discovery for hearing? So we're looking at around

8 mid-April cutting off discovery, as opposed to May 30th

9 in the alternative schedule.

10 MR. FFITCH: I think conceptually, from our

11 perspective, that's reasonable. I think that if we run

12 into a problem at that point, a party could ask for

13 leave to propound additional discovery if there was a

14 special problem.

15 I would say that with regard to your overall

16 question about maybe an alternative schedule or how much

17 time do we need for discovery, I would support the

18 proposal from Boise to think about an August 1st date as

19 sort of a compromise between our proposal and Staff's

20 July 1st proposal. I really am concerned that we have

21 the Bridger issues in the case. We have depreciation

22 issues. We have the sort of special issues raised by

23 the two-step rate plan. We have got cost of capital.

24 This company has been filing every year for many --

25 quite a few years. I don't think there's an intrinsic

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1 need for -- need for speed for the sake of it here. We

2 are willing to work on a shorter schedule than ten

3 months, but I don't think there's any prejudice to the

4 parties if we work with an August 1st final order date.

5 MS. McDOWELL: So, Your Honor, if I might.

6 We do not support the July 1st effective date, so I just

7 want to be clear.

8 JUDGE FRIEDLANDER: Okay.

9 MS. McDOWELL: That's not our -- we have

10 agreed to the June 1st effective date schedule --

11 JUDGE FRIEDLANDER: I see.

12 MS. McDOWELL: -- which is a compromise from

13 where we began, which was May 1st. So just to be clear

14 where the bookends are, we have not agreed to the July

15 1st effective date schedule, so I just want to be clear

16 that any move to August, we would strongly object to. I

17 mean, at this point right now, a July 1 effective date

18 takes us six months out and -- or seven months out,

19 excuse me, so the June 1st schedule we were looking at

20 is a schedule that gives parties six months from the

21 time of filing. And we think for a limited issue,

22 expedited rate filing, a six-month schedule is as long

23 as the Commission has ever looked at.

24 I mean, both the PSE ERF was conducted in

25 less time and the other case that people tend to point

0057

1 to, which is the PSE gas-only case, that was cited I

2 think in the context of the Cascade rate case as a

3 model. That was I think a five-month schedule. So

4 we've cited those cases in Footnote 17 of our petition

5 in support of what we had proposed, the May 1st date,

6 which was a five-month schedule. We can agree to a

7 six-month schedule. Staff has proposed it. We think

8 it's a reasonable compromise.

9 We do not agree to a July 1st schedule

10 because we think that's too far out, and we certainly

11 don't agree to an August schedule. We think, you know,

12 as a part of limiting the issues in this case, the

13 Company proposed to have the case proceed in an

14 expedited fashion, and that was part of I think the

15 public policy concerns that the Commission is trying to

16 get at more limited cases, expedited and resolved more

17 quickly to get us out of, you know, 11 months, 11

18 months, 11 months.

19 So anyway, that's our proposal, June 1st,

20 which is a six-month schedule, and we think that's

21 reasonable in this case.

22 JUDGE FRIEDLANDER: Okay. Thank you.

23 MS. SMITH: Your Honor, this is Gloria

24 Smith. Can I weigh in?

25 JUDGE FRIEDLANDER: Yes, please.

0058

1 MS. SMITH: Thank you.

2 I think one of Sierra Club's main

3 concerns -- well, we have several, but the first one is

4 making sure that there is adequate time for discovery.

5 We are also interested in meaningful settlement

6 discussions, and we strongly support a public hearing in

7 this case.

8 The Company is proposing rate recovery for

9 hundreds of millions of dollars to retrofit a

10 controversial coal plant. I think on that issue alone,

11 a public hearing is in order.

12 There may be a few issues in this case, but

13 they're all fairly complicated. In our experience

14 dealing with the (inaudible) of over a year ago, there

15 was a lot of discovery back and forth because sometimes

16 the Company's responses just raise additional questions,

17 so we had a number of rounds of discovery. We feel like

18 there's no countervailing need for the Company's benefit

19 that would require us to, you know, sort of do the close

20 range of trying to meet all these deadlines, you know,

21 without being able to fully develop our case.

22 So with the discovery that we're concerned

23 about, we honestly believe a meaningful settlement is an

24 important component here, and then the public hearing.

25 So we absolutely can't agree to the June 1st day.

0059

1 The July date is approaching something that

2 we might be able to support, but as I think the Company

3 mentioned, to start with an end date and then try to

4 work backwards, all the important pieces don't

5 necessarily fit in. August might be workable.

6 JUDGE FRIEDLANDER: Okay. So Mr. Cowell had

7 proposed the potential for the August 1st date, I

8 believe, and you would be amenable to that or Sierra

9 Club would be amenable to that?

10 MS. SMITH: Sierra Club would. It will

11 certainly help to set up the August 1st dates as well.

12 JUDGE FRIEDLANDER: Mr. ffitch, what do you

13 think about the August 1st date?

14 MR. FFITCH: Your Honor, we would support

15 that. We think that's a fair compromise between the

16 full ten months, and it is a shorter schedule,

17 substantially shorter than ten months, and I think it

18 appropriately allows time for these issues to get

19 explored in discovery and adequately supported for the

20 Commission.

21 JUDGE FRIEDLANDER: Does anyone else wish to

22 comment? Mr. Cowell?

23 MR. PURDY: Your Honor, this is Brad Purdy.

24 Unfortunately you're cutting out. I'm hearing part of

25 this. Are you stating that the -- we're talking about

0060

1 an August 1st effective date?

2 JUDGE FRIEDLANDER: No, not an effective

3 date. The effective date remains in October. This

4 would be a projected or a proposed date for a final

5 order.

6 MR. PURDY: Oh, okay.

7 JUDGE FRIEDLANDER: For a decision of

8 resolution in the case, and of course all of this will

9 also have some impact maybe made by whatever decision

10 the Courts make as well if we get one during the

11 pendency of this case.

12 So, Mr. Cowell, you were going to speak?

13 MR. COWELL: Yeah. I was just going to

14 clarify. I mean, I think it's appropriate for the

15 Company to try to paint the big broad picture and where

16 they stand and whether they're agreeable to compromise,

17 and I would say likewise for us, and even discussing an

18 August 1st effective date, we're on our second run of

19 compromise here because we're trying to be reasonable

20 there. And as I'm just hearing from our consultant, I

21 mean, this is -- that August itself may create tension

22 for us, but again, we're trying to reach a fair middle

23 ground.

24 JUDGE FRIEDLANDER: Thank you. Does anyone

25 else wish to add more perspective?

0061

1 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

2 Staff has already reviewed this filing, and Staff did

3 propose these dates believing that we reasonably can

4 work through these issues and that they are not so

5 incredibly complex that we will need some of the spans

6 of time that the other parties are proposing, and so we

7 think the July 1 order date is quite doable and would be

8 a good compromise.

9 JUDGE FRIEDLANDER: Okay. Let me just let

10 you all know right now, I'm going to take this under

11 consideration, and I will get back to you in the

12 prehearing conference order with a schedule. I

13 appreciate all of your comments. However, what I really

14 want is for Staff especially and all of the rest of the

15 parties to let me know a proposed -- or at least one

16 proposed settlement date because I don't know all of

17 your schedules for the June 1st effective -- June 1st

18 order date and a July 1st order date. So if you can

19 come up with and email me some proposed settlement

20 dates, just so that I have them in case I go with either

21 of those schedules, that would be helpful.

22 I do want to build in some dates for that

23 for settlement.

24 MS. CAMERON-RULKOWSKI: I'd be happy to do

25 that, Your Honor. And if I may, if we -- if we do go

0062

1 with the June 1 and July 1 effective date, there is

2 something that Staff used very favorably from Public

3 Counsel's proposed schedule, and that would be to

4 expedite the response time to data requests.

5 JUDGE FRIEDLANDER: Okay.

6 MS. McDOWELL: Your Honor, we don't have

7 objection to expediting responses, assuming that the

8 schedule is reasonably expedited, and so we're open to

9 that.

10 I do want to just be clear here that we are

11 talking as the end dates, the effective dates, the

12 Company's compliance process is usually expedited.

13 JUDGE FRIEDLANDER: Sure.

14 MS. McDOWELL: And we can do it quickly.

15 We've done it in three or four days previously.

16 JUDGE FRIEDLANDER: Right.

17 MS. McDOWELL: Typically there's about a

18 week built into the schedule for Staff review, but I

19 just want to be clear that we're not to confuse final

20 order dates, which is what is in the public counsel

21 schedule with order effective dates. I think the

22 effective date is the date that we tie it to, you know,

23 the end of the suspension period. That's normally what

24 we look at. But to get the final order, you have to

25 back out, you know, at least a few days to allow for the

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1 particular compliance process.

2 JUDGE FRIEDLANDER: Right. Understood.

3 Thank you. I will build that into the schedule as well.

4 MS. McDOWELL: Thank you.

5 JUDGE FRIEDLANDER: Is there anything else

6 before we adjourn?

7 MS. CAMERON-RULKOWSKI: Your Honor, from

8 Staff, one point if I may. The Commission has scheduled

9 its spring forum for the week of April 11 through the

10 15th, so we would greatly appreciate if we didn't have

11 response due at that time or a hearing or something else

12 where Staff and possibly the Administrative Law Division

13 is involved.

14 JUDGE FRIEDLANDER: Thank you for reminding

15 me about that.

16 MR. FFITCH: Your Honor, too -- I'm sorry to

17 interrupt.

18 JUDGE FRIEDLANDER: No, that's fine.

19 MR. FFITCH: Two smaller administrative

20 points. We do have a public notice report item on our

21 proposed schedule.

22 JUDGE FRIEDLANDER: Yes.

23 MR. FFITCH: That is simply to -- there's

24 normally a consultation process between the Commission

25 Staff and the Company and Public Counsel about the

0064

1 format of the public notice, and then often that's

2 worked out mostly pretty amicably, but this is sort of a

3 report back if there are any issues to bring back to the

4 Commission.

5 JUDGE FRIEDLANDER: Okay.

6 MR. FFITCH: And then the other matter was

7 the request that we could send Your Honor names for our

8 administrative staff to be included on the electronic

9 service list.

10 JUDGE FRIEDLANDER: Absolutely. If you can

11 send those to me by email, if you can by the end of

12 today, if not by tomorrow sometime, that would be

13 beneficial, and I will include those in the service list

14 at the end of the order.

15 MR. FFITCH: Thank you, Your Honor.

16 JUDGE FRIEDLANDER: Yes. Is there anything

17 else before we adjourn? All right. Thank you very

18 much. And I will get this prehearing conference out

19 shortly. Thank you.

20 MS. McDOWELL: Thank you.

21 MR. PURDY: Thank you, Your Honor.

22 JUDGE FRIEDLANDER: We are adjourned.

23 (Prehearing conference concluded at 10:55 a.m.)

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1 C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Lisa Buell, a Certified Shorthand Reporter and

7 Notary Public in and for the State of Washington, do

8 hereby certify that the foregoing transcript of the

9 prehearing conference on December 22, 2015, is true and

10 accurate to the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 and seal this 6th day of January, 2016.

13

14

15

16 LISA BUELL, RPR, CRR, CCR

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18 My commission expires:

19 DECEMBER 2018

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