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 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

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 4 In the Matter of the Joint )DOCKET NO. U-180680

 Application of )

 5 )

 PUGET SOUND ENERGY, ALBERTA )

 6 INVESTMENT MANAGEMENT CORPORATION,)

 BRITISH COLUMBIA INVESTMENT )

 7 MANAGEMENT CORPORATION, OMERS )

 ADMINISTRATION CORPORATION, and )

 8 PGGM VERMOGENSBEHEER B.V. )

 )

 9 For an Order Authorizing )

 Proposed Sales of Indirect )

10 Interests in Puget Sound Energy )

11

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 PREHEARING CONFERENCE, VOLUME I

13

 Pages 1-83

14

 ADMINISTRATIVE LAW JUDGES RAYNE PEARSON AND

15 ANDREW O'CONNELL

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 November 16, 2018

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 1:00 P.M.

18

 Washington Utilities and Transportation Commission

19 1300 South Evergreen Park Drive Southwest

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 1 OLYMPIA, WASHINGTON; NOVEMBER 16, 2018

 2 1:00 P.M.

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 P R O C E E D I N G S

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 6 JUDGE PEARSON: Let's be on the record.

 7 Good afternoon. We are here today in the matter of the

 8 joint application of Puget Sound Energy, Alberta

 9 Investment Management Corporation, British Columbia

10 Investment Management Corporation, OMERS Administration

11 Corporation, and PGGM -- I forgot to try to pronounce

12 this before I said it in the hearing room, so bear with

13 me, Vermogensbeheer B.V. for an order authorizing

14 proposed sales of indirect interest in Puget Sound

15 Energy in Docket U-180680.

16 Today is Friday, November 16th, 2018, and

17 the time is approximately 1:00 p.m. My name is Rayne

18 Pearson. Sitting to my right is Andrew O'Connell, and

19 we are administrative law judges with the Washington

20 Utilities and Transportation Commission, and we will be

21 co-presiding in this matter.

22 So I will take appearances first, then we

23 will address the petitions for intervention that have

24 been filed, and I will turn the rest of the hearing over

25 to Judge O'Connell at that point.

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 1 So let's begin by taking appearances, and we

 2 will start with the applicants, and the Company can go

 3 first.

 4 MS. STROM CARSON: Good afternoon, Your

 5 Honors. I'm Sheree Strom Carson with Perkins Coie,

 6 representing PSE, one of the joint applicants. And also

 7 representing PSE are Jason Kuzma and David Steele. And

 8 I have attorneys for the other joint applicants who are

 9 here also.

10 JUDGE PEARSON: Okay. If they want to step

11 forward one at a time to the mic.

12 MR. GREEN: Good afternoon. Derek Green

13 with Davis Wright Tremaine on behalf of BCI.

14 JUDGE PEARSON: Okay. Thank you.

15 MR. GANNETT: Craig Gannett, Davis Wright

16 Tremaine on behalf of PGGM, and my partner, Steve

17 Greenwald, is on the phone. Thanks.

18 JUDGE PEARSON: Thank you.

19 MS. BAIRD: This is Shoshana Baird with

20 McDowell Rackner Gibson for OMERS.

21 JUDGE PEARSON: Thank you.

22 MR. BERMAN: Good afternoon, Your Honors.

23 Stan Berman from the law firm Sidley Austin,

24 representing Alberta Investment Management Corporation,

25 usually called AIMCo.

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 1 JUDGE PEARSON: Okay. Thanks.

 2 And that's it for the joint applicants,

 3 correct?

 4 MS. STROM CARSON: That's correct.

 5 JUDGE PEARSON: Okay. Staff?

 6 MS. CAMERON-RULKOWSKI: Jennifer

 7 Cameron-Rulkowski, Assistant Attorney General, appearing

 8 on behalf of Commission Staff. And I am joined by Harry

 9 Fukano, and also on the case is Sally Brown, both

10 assistant attorneys general.

11 JUDGE PEARSON: Thank you.

12 And Public Counsel?

13 MS. GAFKEN: Good afternoon. Lisa Gafken,

14 Assistant Attorney General, and I'm appearing on behalf

15 of Public Counsel.

16 JUDGE PEARSON: Thanks.

17 All right. And The Energy Project?

18 MR. FFITCH: Good afternoon, Judge Pearson

19 and O'Connell. Simon ffitch, appearing on behalf of The

20 Energy Project.

21 JUDGE PEARSON: Thank you.

22 And, Mr. Pepple, are you on the phone?

23 MR. PEPPLE: Yes, Your Honor, I am.

24 JUDGE PEARSON: Okay.

25 MR. PEPPLE: I'm Tyler Pepple for the

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 1 Alliance of Western Energy Consumers.

 2 JUDGE PEARSON: Thank you.

 3 Ms. Liotta, are you there?

 4 MS. LIOTTA: Yes, I am. Good afternoon,

 5 Your Honors. Rita Liotta, representing the Federal

 6 Executive Agencies.

 7 JUDGE PEARSON: Thank you.

 8 And the Washington and Northern Idaho

 9 District Council of Laborers?

10 MS. FRANCO-MALONE: Good afternoon, Your

11 Honors. It's Danielle Franco-Malone with the firm of

12 Schwerin Campbell Barnard Iglitzin & Lavitt, here on

13 behalf of the Washington and Northern Idaho District

14 Council of Laborers.

15 JUDGE PEARSON: Thank you.

16 And the International Brotherhood of

17 Electrical Workers Local 77?

18 MR. MEDLIN: Yes, Bradley Medlin of Robblee

19 Detwiler on behalf of IBEW Local 77 and also United

20 Association Local 32.

21 JUDGE PEARSON: Great. Thank you.

22 And, Mr. Lockhart, are you on the phone?

23 MR. LOCKHART: Yes, I am.

24 JUDGE PEARSON: Okay. You may go ahead and

25 enter your appearance.

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 1 MR. LOCKHART: My name is [interruption on

 2 bridge line] petition to intervene, Richard Lockhart.

 3 JUDGE PEARSON: Okay. Thank you,

 4 Mr. Lockhart.

 5 And, Ms. Wheeless, are you on the phone?

 6 MS. WHEELESS: Yes, Your Honor. This is Amy

 7 Wheeless of the Northwest Energy Coalition. We will not

 8 be represented by counsel at this time.

 9 JUDGE PEARSON: Thank you.

10 Anyone else who wishes to enter an

11 appearance either in the room or on the bridge line?

12 Okay. Hearing nothing, we will turn to the

13 petitions for intervention. And first I'll ask if there

14 are any petitions for intervention that have not been

15 filed yet in writing with the Commission. Okay.

16 Hearing none, we can proceed.

17 So first I'd like to identify the objections

18 to any petitions for intervention. I'm aware of the

19 written oppositions that have been filed opposing the

20 petitions to intervene by the Washington and Northern

21 Idaho District Council of Laborhood -- Laborers, sorry,

22 the International Brotherhood of Electrical Workers

23 Local 77, and the United Association Local 32, and

24 Mr. Lockhart. Is there an objection to any other

25 petition to intervene?

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 1 MS. STROM CARSON: The joint applicants have

 2 no other objections.

 3 JUDGE PEARSON: Okay. So then there are no

 4 objections, I'm just going to go through, to the

 5 petitions for intervention filed by The Energy Project,

 6 the Alliance of Western Energy Consumers, the Federal

 7 Executive Agency, and the Northwest Energy Coalition; is

 8 that correct? Okay. Then hearing no objections, those

 9 petitions for intervention are granted.

10 So we'll turn now to the petitions for which

11 there is an objection.

12 And, Ms. Carson, would you like to take them

13 up one at a time or maybe group the unions together and

14 Mr. Lockhart separately?

15 MS. STROM CARSON: Yeah, I think that would

16 be sufficient to address Mr. Lockhart separately and the

17 unions together.

18 JUDGE PEARSON: Okay. So let's go ahead and

19 address the unions first. I'll give you an opportunity

20 to explain your opposition, and then I will give each of

21 the potential intervenors the opportunity to respond.

22 MS. CAMERON-RULKOWSKI: Your Honor, Staff

23 also objects to those petitions for intervention.

24 JUDGE PEARSON: Well, then I will hear from

25 you too. Thank you.

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 1 Anyone else who has objections? Just those

 2 two parties?

 3 MS. GAFKEN: Public Counsel does not have

 4 objections to any of the petitions for intervention, but

 5 we were planning on weighing in on the unions' requests

 6 and also Mr. Lockhart's.

 7 JUDGE PEARSON: Okay.

 8 MR. FFITCH: Your Honor, The Energy Project

 9 does not have an objection to any of the petitions to

10 intervene.

11 JUDGE PEARSON: Okay. Thank you.

12 So, Ms. Carson, I'll have you go first, and

13 then we can hear from Staff, and then we can hear from

14 Ms. Gafken, and then we can hear from the -- those who

15 filed petitions. So go ahead, Ms. Carson.

16 MS. STROM CARSON: Thank you, Your Honors.

17 We have filed oppositions to the WNIDCL, the IBEW, and

18 the UA, the plumbers and pipefitters union, and so I

19 will try to hit some of the highlights from our filed

20 response.

21 I think it's important to look at these

22 interventions in the -- under the scope that the

23 Commission has laid out for us in this proceeding. The

24 Commission has determined that the adjudication is to be

25 a limited, narrow adjudication focused squarely on the

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 1 requirements of the no-harm public interest standard in

 2 the proposed transactions. And issues that don't bear

 3 on these issues on -- the issues before the Commission

 4 should not be addressed in this proceeding. And while

 5 discovery is permitted, it needs to be limited and

 6 narrow and focused only on the no-harm standard.

 7 So there is a slight difference between the

 8 WNIDCL and the other unions, the IBEW and the UA

 9 plumbers and pipefitters union. Those two are existing

10 unions collective bargaining units for PSE employees.

11 The WNIDCL does not represent PSE employees. As I

12 understand, it would like to represent PSE's

13 subcontractors' contractors' employees, but is not a

14 union group currently.

15 The Commission has many times taken up the

16 issue of whether or not these union groups should be

17 allowed in when there's a transfer of ownership

18 interest. And back in -- when Puget Holdings became the

19 owner for PSE in the merger proceeding back

20 in 2007, 2008, the Commission rejected the WNIDCL

21 petition to intervene finding that there was no

22 substantial interest and it was not in the public

23 interest for the group to intervene.

24 And this is because collective bargaining

25 agreements, pensions, benefits, pay of union employees

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 1 is not a matter that's within the jurisdiction of the

 2 Commission, and the Commission has acknowledged that

 3 many times. So the Commission has clearly said ten

 4 years ago when Puget Holdings became the owner of PSE

 5 and even more recently in the Avista case, that there is

 6 not a substantial interest present here, which is

 7 necessary for intervention.

 8 Now, it is true that in the recent Avista

 9 case, when the ALJ initially denied intervention by the

10 WNIDCL, it was later allowed in after interlocutory

11 review by the Commission. But it's important to

12 recognize that that is a very different situation from

13 what we have here. That was -- the Avista case, of

14 course, was a complete change of ownership interest, and

15 it's being analyzed under the net benefits standard, and

16 the Commission has ruled that it is the no-harm standard

17 that applies here. And the Commission even said in that

18 case when it did allow the WNIDCL in for very -- with a

19 very limited scope, it said that it would be helpful to

20 analyze the net benefits, that safety and reliability

21 and under a net benefit to customer standard.

22 So that's not what we have here. This is a

23 much more limited transaction. It's a limited scope.

24 The standard is different, and there is no -- there is

25 neither a public interest that justifies these unions

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 1 intervening nor is there a substantial interest.

 2 I would say that in terms of the IBEW and

 3 the UA, PSE works with those and plans to continue to

 4 work closely with those organizations and other forums

 5 to address collective bargaining issues, but this is not

 6 the place to do it. And it's appropriate for the

 7 Commission to deny intervention for these union groups.

 8 JUDGE PEARSON: Thank you.

 9 Ms. Cameron-Rulkowski?

10 MS. CAMERON-RULKOWSKI: Thank you, Your

11 Honor. As you know, we have not filed a written

12 opposition, so I'm going to start by going through the

13 standard for intervention, which I will then refer to my

14 argument.

15 The Commission will grant an intervention if

16 the petitioner has a substantial interest in the subject

17 matter of the hearing or if the petitioner's

18 participation is in the public interest, and this is WAC

19 480-07-355.

20 Regarding a substantial interest, the

21 Commission applies a zone of interest test to determine

22 whether a petitioner has shown that there is a nexus

23 between the organization's purpose and an interest

24 protected by a Washington statute within the

25 Commission's jurisdiction. This language is from the

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 1 Verizon transfer of control proceeding in Docket

 2 UT-090842, Order 5, at paragraph 14, entered in 2009.

 3 In the pending Hydro One, Avista transfer of control

 4 proceeding, which Ms. Carson just referred to, which is

 5 in Docket U-170970, the Commission confirmed application

 6 of this standard at paragraph 14 of its Order 3.

 7 Regarding whether the petitioner's

 8 participation is in the public interest, the Commission

 9 considers whether the petitioner's participation would

10 enhance the Commission's understanding and analysis of

11 the matter at hand. This explanation of the standard is

12 also from the Verizon transfer of control proceeding,

13 Order 5, at paragraph 14.

14 The Commission also applies the

15 Administrative Procedure Act to its analysis of the --

16 of a petition for intervention and considers whether the

17 intervention sought is in the interests of justice and

18 will not impair the orderly and prompt conduct of the

19 proceedings. This is from RCW 34.05.443, Subsection 2.

20 Pursuant to the APA, if the presiding

21 officer decides to grant a petition for intervention,

22 the presiding officer may impose conditions upon the

23 intervenor's participation in the proceedings.

24 Conditions may include, A, limiting the intervenor's

25 participation to designated issues in which the

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 1 intervenor has a particular interest demonstrated by the

 2 petition; and B, limiting the intervenor's use of

 3 discovery, cross-examination, and other procedures.

 4 This is in RCW 34.05.443, Subsection 2.

 5 I agree with the arguments that Ms. Carson

 6 has made regarding no substantial interest. The three

 7 labor organizations do not have a substantial interest

 8 in this proceeding. Specifically, IBEW and the United

 9 Association expressed their interests to be in wages,

10 hours, and other -- and other issues that really go

11 toward -- go toward issues that the Commission would

12 not -- would not adjudicate.

13 These organizations' participation in this

14 proceeding would also not be in the public interest,

15 because I don't believe that it would actually help the

16 Commission make a decision. The IBEW has offered

17 information related to wages, hours, safety standards,

18 storm responsiveness, training, construction, staffing,

19 service quality, customer service, and other information

20 related to the 2008 commitments. The information that

21 United Association Local 32 offers is very similar.

22 This type of information really concerns

23 PSE's operations, however, and is not the issue that is

24 before the Commission, which is whether the transfer of

25 a 43.99 percent ownership interest in PSE is in the

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 1 public interest. And the -- this information that

 2 the -- these two organizations are offering is unlikely

 3 to be helpful to the Commission in considering the

 4 matter at hand.

 5 Regarding the Washington and Northern Idaho

 6 District Council of Laborers, I do not believe that

 7 their participation would be in the public interest

 8 either. Although the petition throws out the term

 9 safety and reliability, it is not clear from the

10 petition what information the Laborers have on these

11 subjects and how it would help the Commission decide,

12 again, the matter at hand, which is the transfer of a

13 43.99 percent ownership interest in PSE and whether that

14 is in the public interest.

15 The Laborers were not granted intervention

16 in the precursor proceeding to this one, Docket

17 U-172375, which involved much broader issues than the

18 instant proceeding. And Staff asks that the Commission

19 deny their intervention here as well. Commission Staff

20 also recommends that the Commission deny the

21 intervention of the United -- of UA Local 32 and IBEW.

22 JUDGE PEARSON: Okay. Thank you.

23 Ms. Gafken?

24 MS. GAFKEN: Thank you. As I stated

25 earlier, Public Counsel has no objections to any of the

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 1 petitions for intervention, and while I'll elaborate in

 2 more detail in a moment, I want to make a couple of

 3 general observations. Public Counsel does appreciate

 4 the perspective and contributions of the multiple

 5 parties that intervene in these cases. You know, one

 6 party can't bring to bear all perspectives because we

 7 come at this from a variety of perspectives, and having

 8 that diversity of interest and perspectives usually

 9 leads to a better result.

10 And so with that in mind, the Commission did

11 find that the WNIDCL's participation was in the public

12 interest in the recent Avista docket, which has already

13 been referred to, U-170970, and they -- they were

14 expressly limited to addressing safety and reliability.

15 This is not the forum to address collective bargaining

16 issues and the like. There's other -- other places to

17 do that, but here before the Commission, safety and

18 reliability is absolutely within the Commission's

19 bailiwick. All three of the labor groups, I believe,

20 offers a unique perspective that's not represented by

21 the other parties sitting around this table. And for

22 that reason, we would not only not object to their

23 petition but support them.

24 JUDGE PEARSON: Okay. Thank you.

25 Ms. Franco-Malone?

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 1 MS. FRANCO-MALONE: Thank you, Your Honors.

 2 I just briefly would like to give a bit of background on

 3 my client, the Washington and Northern Idaho District

 4 Council of Laborers. We represent more than ten

 5 thousand members in Washington State including 350

 6 members who perform work as part of the contracted out

 7 workforce for PSE including contractors such as Baker

 8 Concrete, Infrasource Underground, Traffic Management,

 9 Inc., CB&I Services, Michels, BOSS Construction, and

10 Rhine Demo.

11 We believe that the Laborers' intervention

12 should be granted, first, because the Washington and

13 Northern Idaho District Council of Laborers and our

14 members have a substantial interest in the proposed

15 transaction. The UTC adopted a zone of interest test in

16 the 2009 Verizon case, Order 5, that the attorney

17 general representing Staff mentioned a moment ago.

18 That test assesses whether the nexus between

19 the purpose of the organization and an interest

20 protected under the statute within the Commission's

21 jurisdiction. And in the Verizon case, the Commission

22 noted that, quote, public policy favors the inclusion of

23 individuals or organizations in administrative matters

24 affecting their interests.

25 So what are the interests that we want to

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 1 protect in this proceeding that are related to the UTC's

 2 jurisdiction? Making sure that when work is contracted

 3 out, work that our members end up performing, it is that

 4 certain minimum standards are met. We want to make sure

 5 that after the transition, PSE is utilizing contractors

 6 with the most robust training curriculum possible, that

 7 they are using contractors with good safety track

 8 records and not simply hiring the cheapest option

 9 possible even when those contractors have a poor track

10 record on safety issues.

11 The work that our members perform is

12 inherently dangerous work. Traffic control in

13 particular is one of the most dangerous professions in

14 the state. It has the fourth highest workers' comp

15 rate. We have a direct invested interest in making sure

16 that that work is carried out safety.

17 We believe that intervention should also be

18 granted under the second prod of the WAC because our

19 participation would be in the public interest. The

20 UTC's test for this prong was also articulated in the

21 Verizon case where the Commission noted that it had wide

22 latitude to grant intervention when doing so would

23 enhance the Commission's understanding and analysis of

24 the issues at hand. The Commission went on in that case

25 to find that the union involved would be able to bring,

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 1 quote, different and perhaps unique perspectives on

 2 matters related to safety and reliability to the -- of

 3 service to the consumer based on the observations of its

 4 members in the field.

 5 The UTC found that the union had proper

 6 evidence that, quote, bears a sufficient nexus to the

 7 public interest and granted intervention in that case.

 8 More recently it has been noted just a year ago the

 9 Commission again relied on this same reasoning to find

10 that the participation of the Laborers served the public

11 interest in nearly identical circumstances to those here

12 where Laborers members performed work for contractors

13 that service the utility.

14 In that case, the Commission found that,

15 quote, no other party offers WNIDCL's unique perspective

16 of the employees who perform work on the Avista system

17 whose jobs are integral to ensuring that customers

18 receive safe and reliable service. This -- the

19 Commission went on, (as read) This information will

20 assist us in our determination of whether the proposed

21 acquisition will provide a net benefit to customers of

22 the company. It concluded by noting that, (as read) We

23 find the work performed by WNIDCL's members have a

24 direct nexus to the provision and safe and reliable

25 service, which is of principal concern in this

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 1 proceeding.

 2 That same reasoning applies in full force to

 3 this transaction. We have a unique perspective on the

 4 importance of retaining a well-trained contracted

 5 workforce to ensure the safety and reliability of the

 6 system. I would note that we are the only potential

 7 intervenors with a perspective on how PSE's utilization

 8 of contractors impacts safety and reliability on the

 9 front lines. This unique perspective will allow us to

10 further the UTC's analysis on whether the transaction

11 will meet the no-harm standard.

12 We have experience about what it actually

13 looks like and means for safety and reliability when the

14 Commission requires no commitments whatsoever regarding

15 a utility's labor supply chain standard. The unique

16 perspective that we would add is crucially important

17 because a utility's contracting practices are integral

18 to safety and reliability.

19 I would note that Macquarie was the only

20 member of the previous consortium to have adopted a

21 responsible contractor policy. That policy provided

22 that utilization of responsible contractors, quote,

23 ensures that services are provided by adequately

24 trained, experienced, and motivated workers who deliver

25 high quality products and services. Will Macquarie's

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 1 departure results in a worsening of the trend that we

 2 have observed during the consortium's tenure of relying

 3 on bottom rate contractors. This is a potential harm

 4 that the Laborers are uniquely positioned to explore and

 5 that will aid the UTC's analysis.

 6 I would like to just briefly respond to a

 7 couple of the arguments that have been made. First, I

 8 believe the fact that the UTC denied the Laborers'

 9 intervention back in the 2007 PSE case is of no moment

10 and is a red herring.

11 First, I would note that in that case, the

12 Laborers did not articulate any of the interests that

13 have been articulated here. Instead, they merely relied

14 on the fact that their members were ratepayers. But

15 more importantly than that, the decision in that case

16 was issued by an ALJ whereas the more recent decision

17 from last year approving the Laborers' intervention was

18 by the full Commission.

19 I would also like to forcibly push back on

20 the suggestion PSE has made that the Laborers' interests

21 are, quote, contractive collective bargaining issues.

22 That's just not true. As I've noted, we're in a unique

23 position to offer testimony related to key safety and

24 reliability issues like whether PSE has contracting

25 policies in place that will ensure safe and reliable

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 1 service. And this is what the UTC recognized as much

 2 last year.

 3 It's just a misstatement to say that our

 4 interests are those of contractual collective bargaining

 5 issues. And as Ms. Carson noted, we don't even have

 6 collective bargaining relationships with PSE, so that's

 7 simply a misstatement. What we do care about are PSE's

 8 contracting policies that impact safety and reliability.

 9 I just would also like to briefly address

10 the notion that we have less of an interest because we

11 represent the contracted-out workforce. We strongly

12 disagree with that suggestion. First and foremost, I

13 would point out that from the Commission's decision last

14 year in the Avista case granting our intervention, they

15 directly rejected that argument. The UTC disagreed with

16 the idea that because the Laborers did not represent

17 employees of the utility, that we somehow did not have

18 an interest.

19 Instead, the Commission held that, quote,

20 the nature of the work is the relevant consideration

21 rather than the technical nature of the employment

22 relationship between Avista and WNIDCL's members. This

23 conclusion was well founded because the reality is that

24 utilities increasingly rely upon an army of contract

25 workers to perform work on the front lines of their

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 1 system.

 2 The Commission has recognized the various

 3 ways that a utility's employment practices for its

 4 in-house workforce related to safety and reliability

 5 such as training, retention, and staffing levels, and

 6 those same considerations apply to the contracted-out

 7 workforce. Puget has an almost 20-year history of

 8 outsourcing core utility functions. In 2017, over half

 9 of its operating expenditures went to outsourced

10 activities. We believe that the fact that the members

11 that we represent are contracted out in no way lessens

12 our interest or the public interest in our involvement.

13 The fact that this case is being decided

14 under the no-harm interest, we -- likewise does not mean

15 that our interests would not be -- promote the public

16 interest. Even under this limited review, the

17 Commission has a responsibility to ensure that the

18 merger will not have a detrimental impact on safety and

19 reliability. Whether we are here to offer information

20 about whether the transaction meets the net benefit test

21 or the public interest test, we still offer a unique

22 perspective on how the transition will impact safety and

23 reliability.

24 Further, in last year's order granting the

25 Laborers' intervention, the UTC actually explicitly

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 1 acknowledged that our intervention would be beneficial

 2 whether it was under the net benefit or the no-harm

 3 standard. The Commission explicitly held that the

 4 Laborers' participation would assist it in, quote, our

 5 determination of whether the proposed acquisition will

 6 be in the public interest. So the fact that this

 7 transaction is being decided under the public interest

 8 test does not mean that we do not have a role.

 9 Similarly, the fact that this is an

10 abbreviated adjudication does not mean that we do not

11 have a role. The entire point of the Commission's order

12 for an adjudication was to provide increased

13 transparency. Construing the intervention standard more

14 narrowly than usual would not further that objective.

15 And the UTC's order for an adjudication note that,

16 quote, evidentiary hearing will assist the Commission in

17 its evaluation of any demonstrable risks the proposed

18 transaction may pose. The UTC has indicated that it

19 wants information about the potential risks in this

20 transaction and allowing the Laborers to intervene to

21 help explore any potential risks furthers that

22 objective.

23 Finally, I would note that we will abide by

24 any restrictions that are placed on our participation

25 that the ALJs deem appropriate. In the Avista

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 1 proceeding, there were limitations placed on the

 2 Laborers' participation. We abided by those

 3 restrictions. Nobody has suggested we didn't. We would

 4 be happy to do so in this case. We have no intention of

 5 broadening the issues. We will cooperate with the other

 6 parties to avoid duplication, and there's no reason to

 7 believe that our participation will unnecessarily

 8 encumber the proceedings. Thank you very much.

 9 JUDGE PEARSON: Thank you.

10 Mr. Medlin?

11 MR. MEDLIN: Yes, I'll give a little

12 background on my clients, IBEW 77 and UA 32. So

13 collectively, they represent a little over one thousand

14 employees who work at PSE, and that includes people who

15 maintain both the electrical and the gas side of the

16 system. And the perspective of actual employees can't

17 really be represented by anyone else because we are the

18 workers performing the work. And as the Commission

19 recently ruled in Avista, that such a unique perspective

20 can assist a Commission in making its determination.

21 And I would submit that the actual employees have a

22 unique role in helping to assist in making that

23 determination. And I would think that IBEW 77 and UA 32

24 would enhance the Commission's understanding.

25 There were some discussion about the test

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 1 for intervention. I won't repeat all of the stuff

 2 before, but I'll just highlight that the Commission has

 3 permitted labor organizations to participate in the

 4 past. There's mention of the Verizon decision where a

 5 union was permitted to intervene on safety and

 6 reliability issues. There was the PacifiCorp case where

 7 the union was also allowed to participate where the

 8 Commission found that they would enhance analysis of the

 9 issues, and then there has been a lot of discussion

10 about the recent Avista decision, again, where a labor

11 organization was allowed to participate and the

12 Commission felt that it would enhance the proceedings in

13 its understanding of the issues.

14 And I will just point out in that case, as

15 has been noted maybe a little subtly, is that the

16 Laborers were permitted intervention and they didn't

17 actually represent any employees of Avista. They were

18 actually for the third-party contractors, where in this

19 case, my clients, IBEW 77 and UA 32, are the actual

20 employees who perform the work. And the Commission

21 noted in the Avista decision that that was the unique

22 distinction about in -- its consideration about

23 considering the people who actually work on the system.

24 I will say that our primary focus for IBEW

25 77 and UA 32 relates to safety, reliability, customer

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 1 service, and staffing. Those are our areas where we

 2 have the most interest. And the joint applicants

 3 themselves have referenced us and our employees in their

 4 application. On page 12 of their application, they

 5 refer to increasing company safety culture with

 6 employees.

 7 We are those employees. They make reference

 8 to the 2008 commitments, many of which relate to us, the

 9 workers. They have -- they make a discussion on page 26

10 of their joint application about improving customer

11 satisfaction while both UA 32 and IBEW employees are the

12 frontline face with customers, both in the call center

13 and in responding to people's homes to gas emergencies

14 and electrical reconnects. So we have a unique

15 perspective on that aspect as well.

16 I also have reviewed the prefiled testimony,

17 and even their CEO, Kimberly Harris, makes reference to

18 us in her prefiled testimony. She talks about, she

19 says, (as read) These objectives began the safety then

20 focus on the people who serve our customers, our

21 employees. She also makes reference to PSE, (as read)

22 We are committed to knowing what is important to our

23 customers, and we strive to deliver quality service to

24 all customers safely, reliably, and affordably.

25 Well, we agree with that. We also have

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 1 concerns around safety, reliability, and customer

 2 service. And she also in her prefiled testimony makes

 3 reference to the Get to Zero initiative, which seeks to

 4 transform how customers actually interact with agents,

 5 and she refers to the service agents. Well, IBEW

 6 represents those service agents who handle those

 7 customer calls and UA 32 represents the agents who are

 8 in the field for gas problems. So we have a unique

 9 perspective on those issues.

10 There's been some discussion about the

11 no-harm standard. That is the law of this case as the

12 November 6th order has ruled.

13 I will just note the Staff counsel has

14 objected to us as well. Staff counsel noted in their

15 own comments that that no-harm standard requires

16 consideration of several factors. And among those

17 factors and quoting from their comments that were filed

18 in this case, (as read) Whether there are commitments by

19 the purchaser to important public service obligations

20 such as customer service, safety, reliability, resource

21 adequacy, including energy efficiency, and then an

22 analysis of whether customers are protected from rate

23 increases. Well, we have direct concerns and

24 information on safety, customer service, and

25 reliability. Those are already factors that are going

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 1 to be considered in the no-harm standard.

 2 Addressing some of the issues that were

 3 raised and concerns. I think the first one was really

 4 the two, this isn't a collective bargaining negotiation.

 5 That's correct. We're not here to negotiate a

 6 collective bargaining agreement. We have collective

 7 bargaining agreements that are in place through 2020 and

 8 2021. They are not going to change. This Commission

 9 can't change those, and we have no interest in trying to

10 change those here. I think there was some reference to

11 our petition to intervene that somehow we were asking

12 for that, and I will just clarify we were not. We were

13 just trying to sort of fully explain who we are and what

14 our relationship is to PSE.

15 There was a discussion about us not being

16 able to enhance the Commission's understanding. Again,

17 we are the frontline people who represent PSE on both

18 the gas and electrical side. I don't know who would be

19 in a better position to enhance the Commission's

20 understanding of that.

21 There was an issue about claiming that

22 perhaps we would interrupt the proceeding. I think, as

23 I've already stated, our concerns relate to safety,

24 reliability, customer service, and staffing, and that is

25 what we are focused on.

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 1 There was some comments about some of the

 2 things we'd included in our -- either in our petition or

 3 in our comments about storm events, staffing, storm

 4 responsiveness, and training. I think in some respects,

 5 those are sort of integrated into the issues of

 6 reliability and staffing. If you have a storm event

 7 that knocks out your system, it's not going to be very

 8 reliable. Issues of training go directly to safety. If

 9 you don't have a well-trained workforce to handle

10 emergency or electrical or gas line, you have explosions

11 or people get electrocuted or die.

12 There was a suggestion that our public

13 comments that were submitted in the open meeting

14 suggested that we are trying to impinge upon wages and

15 benefits and things such as that. We are not. I think

16 we were just trying to give examples of safety and

17 customer service issues that were concerning to us. So

18 I'd be happy to answer any questions.

19 JUDGE PEARSON: Okay. Thank you.

20 All right. Let's turn now to Mr. Lockhart.

21 MS. STROM CARSON: Could I add one more

22 point that I meant to mention earlier but didn't? I --

23 I -- one standard, as Mr. Medlin said, was whether or

24 not there are commitments in place that will protect the

25 public interest and including safety and reliability.

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 1 And in this case, there are those commitments in place.

 2 Those commitments were put in place ten years ago, and

 3 the number one commitment relates to service, quality,

 4 and safety. PSE and Puget Holdings commit to continue

 5 the service quality measures currently in place for PSE

 6 or as it may be modified in any future proceeding.

 7 So there are mechanisms in place that have

 8 served PSE, its customers, well and the Commission as

 9 well over the past ten years. There's also a commitment

10 in place that PSE will honor its union agreements.

11 That's number eight, I believe. Puget Holdings and PSE

12 commit that PSE will honor its labor contracts.

13 So there are commitments in place already

14 that serve PSE and its customers well. And in the

15 brief, I outlined that those service quality measures

16 include several safety metrics, not only for PSE

17 employees, but also for service providers. There's

18 service provider metrics that are monitored. So when

19 PSE commits to these things, it is in the public

20 interest. The public interest is protected by these

21 commitments that are in place.

22 And then, you know, once again, we have to

23 remember what's here. This is not a change in the

24 parent company of PSE as it was with Avista and all

25 these other cases. This is a case where there's a

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 1 minority upstream ownership interest in PSE's parent

 2 company that's changing hands. So it's a very different

 3 situation. Thank you.

 4 JUDGE PEARSON: Thank you.

 5 Okay. Let's turn to Mr. Lockhart's petition

 6 before you start, Ms. Carson.

 7 Is there any other party that objects to or

 8 supports this petition for intervention?

 9 MS. CAMERON-RULKOWSKI: Commission Staff

10 also opposes the petition.

11 JUDGE PEARSON: Okay.

12 MS. GAFKEN: Public Counsel is also going to

13 weigh in. We were taking the position of no objection,

14 but I do have some things to say.

15 JUDGE PEARSON: Okay.

16 All right. Ms. Carson.

17 MS. STROM CARSON: Thank you, Your Honor.

18 PSE and the joint applicants object to Mr. Lockhart's

19 intervention in this proceeding. Mr. Lockhart's

20 comments as well as his petition to intervene are

21 focused on transmission planning and a few transmission

22 projects. Mr. Lockhart has been a frequent stakeholder

23 and participant in various forums, IRP, FERC, other

24 places opposing these transmission projects.

25 Mr. Lockhart's primary residence as we

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 1 understanding it is in California, but he has let it be

 2 known in his response that he also has a home in

 3 Washington State in PSE's service territory, but that in

 4 and of itself does not create a substantial interest or

 5 make his intervention in the public interest.

 6 Mr. Lockhart as a residential customer of

 7 PSE is represented by Public Counsel, and in the past,

 8 the Commission has not allowed and granted intervention

 9 for individual residential customers in these cases

10 because their interests are represented by Public

11 Counsel. The interest that Mr. Lockhart raises in his

12 comments and petition are appropriately or more

13 appropriately addressed in other forums, but not here

14 before the Commission. Thank you, Your Honor.

15 JUDGE PEARSON: Thanks.

16 Ms. Cameron-Rulkowski?

17 MS. CAMERON-RULKOWSKI: Mr. Lockhart does

18 not appear to have a substantial interest in the subject

19 matter of the hearing. As I stated before, in order to

20 demonstrate a substantial interest, the petitioner must

21 show that there was a nexus between the intervenor's

22 purpose and an interested -- and an interest protected

23 by a Washington statute within the Commission's

24 jurisdiction.

25 Mr. Lockhart has expressed concern about

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 1 transmission planning and costs. While it is true that

 2 these matters certainly are within the purview of the

 3 Commission, they are not the subject matter of the

 4 instant proceeding. It is not enough that a

 5 petitioner's stated interest that the Commission can

 6 adjudicate, rather that interest must correspond with

 7 the matter that is before the Commission for decision.

 8 The subject matter of this proceeding is

 9 whether the transfer of a 43.99 percent ownership

10 interest in PSE is in the public interest.

11 Mr. Lockhart's interest is in PSE's capital asset,

12 planning, and construction process and not in the

13 subject matter of the hearing.

14 Staff also does not believe that

15 Mr. Lockhart's intervention would be in the public

16 interest. To determine whether a petitioner's

17 participation is in the public interest, the Commission

18 considers whether the intervention would enhance the

19 Commission's understanding and analysis of the matter at

20 hand.

21 Mr. Lockhart's participation and knowledge,

22 which certainly can be valuable in other proceedings,

23 will not assist this Commission in deciding the matter

24 at hand, which is the transfer of a 43.99 percent

25 ownership interest in PSE. Mr. Lockhart's issues are

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 1 best considered in an integrated resource plan

 2 proceeding and/or a general rate case considering the

 3 investments Lockhart -- considering the investments and

 4 expenditures that are the subject of Mr. Lockhart's

 5 concerns.

 6 In his comments, Mr. Lockhart proposes seven

 7 conditions. All of these conditions relate to

 8 transmission, and one of them involves a prudence review

 9 of a project that has not yet been completed. The

10 Commission has consistently considered the prudence of

11 capital investments after the facilities are in service.

12 The Commission does not grant preapproval or

13 prerejection of expenses in investments, and these

14 prudence are issues typically considered in a general

15 rate case.

16 This has been true for over 25 years. For

17 example, in 1994, the Commission said, the Commission

18 has stated consistently that the prudence review of new

19 resource acquisitions will be conducted in general rate

20 cases only. This is from Docket UE-920433, the 19th

21 supplemental order at page 6. The order date is

22 September 27th, 1994, and it's citing Docket U-85-87,

23 7th supplemental order issued June 1, 1992.

24 Finally, Mr. Lockhart's intervention is

25 inconsistent with the Administrative Procedure Act,

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 1 which limits intervention to participation that will not

 2 impair the orderly and prompt conduct of the

 3 proceedings. Mr. Lockhart's participation is likely to

 4 impair the orderly and prompt conduct of this proceeding

 5 because his interests are outside the subject matter

 6 before the Commission in this proceeding.

 7 Staff believes that the Commission should

 8 deny Mr. Lockhart's petition for intervention in this

 9 proceeding, but continue to welcome his participation in

10 the other proceedings where his interests are properly

11 before the Commission.

12 JUDGE PEARSON: Thank you.

13 Ms. Gafken?

14 MS. GAFKEN: Thank you. Mr. Lockhart

15 petitions to intervene on behalf of ratepayers who, as

16 he describes it, have either been harmed or will be

17 harmed if certain proposed conditions are not imposed.

18 And I will not talk about the merits of the proposed

19 conditions, but I do want to talk through a few things

20 and including Public Counsel's role.

21 As I -- and I read Mr. Lockhart's petition.

22 As I read his petition, he's alleging certain harms that

23 are caused by the outgoing owner or the consortium of

24 owners and the outgoing owners being replaced by new

25 owners of similar type. The joint applicants have

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 1 placed the benefit of Macquarie's ownership at issue

 2 through testimony and comments regarding accomplishments

 3 that have occurred over the last ten years. And has

 4 been noted many times this afternoon, the standard in

 5 this case is no-harm, but it seems to me that if there

 6 is a harm that's identified that has occurred under the

 7 prior ownership, then perhaps that's relevant.

 8 You know, something about the scope that I

 9 wanted to note earlier and forgot to mention it, it is

10 more narrow than the Avista case; however, it's not

11 minuscule. I mean, there's many questions that are

12 relevant to that inquiry, questions about what harm

13 exists, the scope of the harm, and what mediation of

14 whatever harm exists is necessary. So anyway, I did

15 want to get that in there.

16 I want to point to an old case, even older

17 than the ones that Ms. Cameron-Rulkowski pointed to.

18 There's yet another power case --

19 JUDGE PEARSON: Can I get you to move a

20 little closer to the microphone and speak up?

21 MS. GAFKEN: Yes.

22 JUDGE PEARSON: Thank you.

23 MS. GAFKEN: So the caption is Power versus

24 Washington Water Power and the citation is 99 Wn.2d 289

25 296 (1983.) Power, as many of us know, was a nonprofit

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 1 consumer advocacy group seeking attorneys' fees, in that

 2 case, for work done in a PURPA case before the UTC. In

 3 that case, Power suggested that any segment of the

 4 public with a particular viewpoint was entitled a

 5 separate representation.

 6 The court in that case disagreed pointing to

 7 RCW 80.01.100, which contemplates an adequately funded

 8 and staffed public counsel. The court reasoned that the

 9 statute provided adequate representation that was

10 required under PURPA to avoid an attorneys' fee award.

11 Power does not, I think, stand for the

12 proposition that other customer view points should be

13 excluded. The court's decision was made in the context

14 of PURPA attorneys' fee request, and today the practice

15 before the Commission routinely includes segmented

16 customer interests and appropriately so.

17 The UTC has brought discretion regarding

18 whether to grant the petition for intervention. The

19 WAC, as noted earlier, is WAC 480-07-355, Subsection 3,

20 allows intervention for parties with a substantial

21 interest or for those whose participation is in the

22 public interest. Further, WAC 480-07-355, Subsection 4

23 allows the UTC to dismiss an intervenor after notice of

24 an opportunity to be heard.

25 So taking all of that into consideration, if

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 1 the -- if the UTC views Mr. Lockhart's participation as

 2 useful, it has the discretion to allow his intervention.

 3 And should that intervention become unwieldy or beyond

 4 the scope of the proceeding, there is a process to

 5 remedy that. So for those reasons, Public Counsel does

 6 not object to Mr. Lockhart's intervention petition.

 7 JUDGE PEARSON: Thank you.

 8 And, Mr. Lockhart?

 9 MR. LOCKHART: Yes, can you hear me?

10 JUDGE PEARSON: Yes.

11 MR. LOCKHART: Okay. Thank you. So as you

12 know, I'm not represented today by counsel. But as

13 stated in my petition to intervene, I am uniquely

14 qualified to intervene in this proceeding to ensure that

15 the public interest will not be harmed, but propose

16 change in ownership.

17 I had pointed out the abuses of the system

18 the past owner has attempted to promulgate on PSE

19 customers in the interest of the building unneeded

20 transmissions in order to enhance their profits. I

21 stated that I seek to intervene in this proceeding to

22 ensure that the proposed acquisition complies with

23 Washington law and will not harm PSE's customers.

24 In the paragraph 3, of course joint

25 application said I'm not a customer. Well, they now

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 1 acknowledge I am a customer. But more importantly, as

 2 you are -- as you well know, there are two organizations

 3 that are very concerned about what's going on in

 4 transmission planning at Puget. The citizens are saying

 5 it's identity and the coalition of neighborhood for

 6 sensible energy. Those folks fully support what I'm

 7 doing here, but they don't feel that they can afford to

 8 intervene formally so that I can be their witness

 9 because they have limited funds. They're all volunteer

10 people with other jobs. They're spread very thin.

11 Puget has forced them to participate in six different

12 proceedings, potentially a seventh one if it goes to

13 EFSEC.

14 They have to conserve their money. They

15 can't be spending it here because we're not asking here

16 for the Commission to deny these two projects. I'm

17 using these two projects as an example of the abuses

18 that we've had and the concern that those abuses will

19 continue going forward with this new ownership group.

20 As has been stated several times, that if a

21 petitioner's participation's in the public interest,

22 then they can be an intervenor. There was discussion

23 about a prudence review that happened back in 1994, but

24 of course that was well before there was any ownership

25 transfer issue like this.

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 1 In order to protect PSE customers, the

 2 Commission needs to address these problems of abuses

 3 with the transmission planning that has arisen from

 4 foreign ownership. The Commission can do it by placing

 5 the conditions I proposed on Commission approval of this

 6 ownership transfer. By allowing my intervention in this

 7 proceeding, the Commission can develop a more robust

 8 understanding of the transmission planning problems that

 9 have risen in the current ownership and can make the

10 decision on how they feel best to address these problems

11 that -- with that robust understanding in hand. Thank

12 you.

13 JUDGE PEARSON: Thank you, Mr. Lockhart.

14 Anything further? Okay. Then I believe

15 we've heard everything from everyone regarding the

16 petitions to intervene, so we will take those matters

17 under advisement and include our decision related to

18 each petition in the prehearing conference order that

19 will follow.

20 So at this point, I'm going to turn the rest

21 of the hearing over to Judge O'Connell.

22 JUDGE O'CONNELL: Good afternoon. I want to

23 start with some of the smaller remaining items before we

24 tackle the procedural schedule. We've already entered a

25 protective order with highly confidential provisions,

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 1 and the discovery rules are available. So I want to

 2 address the issue of service. Designated person for

 3 service, if any party has not designated a lead

 4 representative for service, please do so via email to

 5 myself and to Judge Pearson.

 6 The service list additions of support staff,

 7 if there are any other representatives or support staff

 8 who should receive electronic courtesy copies of all

 9 documents filed in this proceeding, please email that to

10 us as well.

11 Electronic service, as a reminder,

12 Commission has adopted new procedural rules that provide

13 for electronic service of all documents. So absent a

14 request for paper service, the Commission will only

15 serve documents electronically. I also want to remind

16 everyone that the new rules require parties to serve

17 each other by delivering electronic copies. Paper

18 copies are not sufficient, but paper copies can be

19 delivered to a party that requests paper in addition to

20 the electronic copy.

21 The Commission requires electronic filing of

22 documents for formal filings; however, in this case, the

23 Commission will also require the original and four paper

24 copies to be filed with the Commission for internal

25 distributions. If filings include information

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 1 designated as confidential or highly confidential,

 2 please file the original and four copies of the fully

 3 unredacted version, the original and one copy of any

 4 partly redacted version, and the original and one copy

 5 of the fully redacted version.

 6 And I want to address the usual first data

 7 request that parties send out to every other party, the

 8 one requesting that every data request and any response

 9 to that data request be copied to the party. We intend

10 to address this in the prehearing conference order to

11 require that parties send data requests and responses to

12 every other party saving the need for the parties to

13 send these first data requests and responses. Is there

14 any objection to including that in the order? Okay. So

15 hearing nothing, we will include that in the prehearing

16 conference order.

17 So that brings me to the procedural

18 schedule. We've received two proposals for procedural

19 schedule. Have there been attempts to recognize the

20 differences in them?

21 MS. CAMERON-RULKOWSKI: Your Honor, perhaps

22 I could say that we have -- and the parties can jump in

23 if they think I'm mischaracterizing this, but I think we

24 have two general areas of disagreement. The one area of

25 disagreement is on how -- when the actual dates start

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 1 and when they end. So in other words, how fast the

 2 schedule goes.

 3 And then another area of disagreement that

 4 we have is whether to hold a -- whether to hold a

 5 settlement conference before response testimony or after

 6 response testimony. And I suggest -- I suspect in order

 7 to resolve the differences, we would need to have a

 8 decision from -- from the Bench on the -- how long this

 9 is supposed to take and the placement of the settlement

10 conference. And at this point, I would ask any other

11 parties to join in. And this is just the procedural

12 schedule. I haven't talked about discovery.

13 JUDGE O'CONNELL: Go ahead, Ms. Gafken.

14 MS. GAFKEN: I'm not sure that I would

15 characterize it as a disagreement on how long -- when

16 the start date is. I think, you know, 120 days likely

17 from somewhere near the open meeting is what we were

18 anticipating, but we ran into some troubles trying to

19 fit into that time frame. And so a number of us, those

20 that are listed on top of the proposed schedule that I

21 passed out earlier, worked to try to get a schedule that

22 would be expeditious while also accommodating scheduling

23 hiccups.

24 One of the scheduling hiccups involves my

25 witness who has a long planned trip from February 4th

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 1 through the 15th. So it's unfortunate timing for us,

 2 but that -- that did pose some problems. We do have a

 3 fundamental disagreement, if you will, about when

 4 settlement conferences should -- could take place, but I

 5 think we can hammer that out.

 6 JUDGE O'CONNELL: Mr. ffitch?

 7 MR. FFITCH: I'll just, I guess, add some

 8 thoughts about where we are right now. Obviously we

 9 support the sort of joint petitioner's proposed

10 schedule. Couple thoughts. One, in answer to the

11 Bench's question, yes, these schedules were exchanged

12 amongst the parties before they were brought here today

13 and presented to the Bench. So the -- all the parties

14 have seen each other's schedules in advance. Clearly,

15 we haven't reached a full agreement on them yet, but

16 there was an exchange beforehand.

17 And I guess the second thing I'd like to

18 observe is that the intervenors' schedule, if you will,

19 really keyed off of Public Counsel witness problem.

20 Looked at that proposed hearing date that came initially

21 from Staff and simply adjusted in order to accommodate

22 Public Counsel's witness problem by moving to a hearing

23 date that was very soon after that witness became

24 available and returned from the trip.

25 And so the, you know, very limited delay

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 1 just based solely on that witnesses's availability and

 2 then as a group, we just tried to adjust all the other

 3 dates to -- to work around that. It's really -- really

 4 just builds in a couple of weeks, I think, into the

 5 schedule. So we think that it's still within the

 6 expressed intent of the Commission to have this be a

 7 prompt proceeding. It doesn't really go -- go outside

 8 those parameters.

 9 We don't think that -- the Commission itself

10 did not put specific -- specific deadline or timelines

11 in the order. Just used the word prompt. There was

12 some discussion at the hearing, but as reduced to a

13 final order, we didn't -- we don't have the Commission

14 telling us this has to be done in X days. So we think

15 we're within the ballpark of what the Commission

16 recommended.

17 There is also the question of when to

18 schedule a settlement conference, and maybe I will stop

19 now and let Mr. Pepple address that. We support the way

20 it's been presented in this joint schedule.

21 JUDGE O'CONNELL: Ms. Carson?

22 MS. STROM CARSON: Thank you, Your Honor.

23 Well, the good news is that we were able to come up with

24 a schedule that fits within a 120-day time frame. Well,

25 it's actually a little longer than 120 days, but it both

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 1 meets that parameter that we all heard Chairman Danner

 2 set forth at the open meeting to try for a 120-day

 3 procedural schedule and also accommodates Public

 4 Counsel's witness. We had originally had dates. Staff

 5 had proposed a date that did not work for the witness,

 6 but we were able to identify a date just a few days or

 7 about a week earlier for an evidentiary hearing when

 8 Public Counsel's witness would be here.

 9 So we think that this is consistent with

10 what the direction was from the Commission. Both the

11 Chairman and Commissioner Balasbas expressed their view

12 that this could be handled in 120 days or less, and so

13 we think this is a good match with what they're looking

14 for. We also think it's very important to have a

15 settlement conference early to start talking with the

16 parties about what's a reasonable settlement, and I

17 think it's important to recognize we have the week of

18 December 3 for the initial settlement conference. This

19 is, you know, actually several months after the case was

20 filed.

21 So people have had a chance to look at the

22 case. Settlement conferences are a good opportunity to

23 exchange information and help people understand the case

24 better if they have questions. So we -- it's very

25 important to the joint applicants to have this December

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 1 settlement conference before testimony is due. And I

 2 mean, one thing we find is, you know, the schedule moves

 3 along quickly, and if you don't take this opportunity

 4 before everybody's filed their testimony, then it

 5 just -- momentum carries you to a hearing, and you miss

 6 out on the opportunity for settlement. So we strongly

 7 encourage a December settlement conference.

 8 JUDGE O'CONNELL: Thank you.

 9 Mr. Pepple, Mr. ffitch identified that you

10 might have some input, so I turn it over to you.

11 MR. PEPPLE: Thank you, Your Honor. So, you

12 know, we -- our preference is also for the settlement

13 conference and Public Counsel and The Energy Project --

14 or for the procedural schedule that Public Counsel and

15 The Energy Project support. I think I would note that

16 both schedules I think contemplate a four-month time

17 frame. I think the difference really is that the Staff

18 and PSE's schedule incorporates a time for the order as

19 well in that four months and ours does not.

20 And we're simply recognizing the fact that,

21 you know, we can't find the Commission in terms of when

22 it issues an order other than the outside statutory

23 deadline. So we didn't think it was really appropriate

24 to include an assumed target order date, and we didn't

25 really think that that was what the Commission intended

0052

 1 when they were talking about sort of the unofficial form

 2 of deadline. We are trying to adhere to Chairman

 3 Danner's goal of a four-month procedural schedule here,

 4 we're just not including the time that it will take the

 5 Commission to issue an order.

 6 Now, with respect to the settlement

 7 conference, you know, we -- we appreciate PSE's and

 8 Staff's strong desire of a settlement conference before

 9 testimony. And in that regard, I think with the respect

10 to the procedural schedule that, you know, we put

11 forward, you know, we would suggest that we, you know,

12 pencil in a settlement conference around January 3rd or

13 so, which would put a settlement conference before the

14 first round of testimony in our schedule.

15 The real problem that, you know, I at least

16 have with a settlement conference on the week of

17 December 3rd, is that there's just not going to be

18 enough time between now and then for me to identify all

19 the issues and to formulate a position for my client.

20 You know, we issued data requests on the day that the

21 Commission opened an adjudication here, and we haven't

22 received any responses yet.

23 We filed our protective order signature

24 pages on the day that the protective order was issued.

25 We just got some confidential information today. And

0053

 1 it's, you know, pretty lengthy stuff. I expect that the

 2 responses we get to data requests are going to include a

 3 number of documents that we'll have to go through. It's

 4 just, you know, I don't want to hold a settlement

 5 conference when I know that I'm simply not going to be

 6 in a position to settle. I'd much rather have a

 7 settlement conference at a time when it's productive to

 8 do so.

 9 And so, you know, I think we can kind of get

10 our ducks in a row by early January, but, you know, two

11 weeks from now when we have no information yet is just

12 not a realistic scenario. And we -- I won't talk about

13 it now, but we do have some concerns with discovery

14 parameters that Puget is proposing as well. So I'll

15 defer that until later.

16 MS. CAMERON-RULKOWSKI: From Staff's

17 perspective, it's very important to have a settlement

18 conference, the settlement conference, before we file

19 testimony. These -- these types of cases often do

20 settle, and from the standpoint of efficiency and

21 engagement, Staff believes it's -- again, it's vital

22 that we have that settlement conference before the

23 parties file their response testimony. And we do not

24 support scheduling in the procedural schedule a

25 settlement conference for after the response testimony.

0054

 1 It's also problematic to have a settlement

 2 conference that is very, very close to the response

 3 testimony deadline. Mr. Pepple had just mentioned that

 4 perhaps we could have a settlement conference on January

 5 4th. That -- that is only a few days before the

 6 response testimony deadline and the Public Counsel's and

 7 all procedural schedules, and that doesn't allow any

 8 time for follow-up and really to reach a full

 9 settlement. And I would say that it's true that AWEC

10 has many outstanding data requests at this point, but

11 those will be fulfilled quite soon and the information

12 will be there.

13 MS. STROM CARSON: Yes, I would agree with

14 that. We have received 42 data requests from AWEC, not

15 counting subparts. It's more like 60 or so, 60 or 70.

16 So we are -- yes, we are responding to those. They set

17 dates for when they were due. Those dates have not come

18 up, but we're working diligently and will provide

19 responses to those.

20 MR. PEPPLE: Your Honor, do you mind if I

21 respond really quickly?

22 JUDGE O'CONNELL: Actually, I think I would

23 like to hear from you, Mr. Pepple.

24 MR. PEPPLE: Okay. Well, I guess, you know,

25 I mean, it's one thing to receive responses, it's

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 1 another to actually have the time to absorb them and,

 2 you know, determine whether -- you know, it's like I

 3 said, we're asking for documents here. We're going to

 4 have to review those documents. I expect a number of

 5 them are going to be quite voluminous. You know, we

 6 need to actually understand what they say and review

 7 them and then potentially issue data requests on the

 8 documents we receive.

 9 So, you know, I'm not disputing that we're

10 going to receive responses before December 3rd, I simply

11 question whether we will be in a position to actually

12 understand everything that -- included in those

13 responses.

14 JUDGE O'CONNELL: Okay.

15 MR. PEPPLE: And like I said, we're willing

16 to hold a settlement conference before the first round

17 of testimony. I identified January 3rd just, you know,

18 because, you know, there's obviously holidays before

19 that, but we're willing to be flexible on that issue.

20 And like I -- you know, like I also said, I think, you

21 know, we could even be flexible in the sense that we

22 could support the Puget and Staff procedural schedule,

23 we just -- I simply cannot agree to a settlement

24 conference the week of December 3rd. It just seems

25 unrealistic.

0056

 1 JUDGE O'CONNELL: Okay. I want to come back

 2 to some of the things that you brought up, but first I'd

 3 like to hear from Ms. Gafken.

 4 MS. GAFKEN: Thank you. I agree with all of

 5 the points that Mr. Pepple raised, but I wanted to take

 6 it a little bit further as well. I mean, looking at --

 7 well, let me back up. I have some serious concerns

 8 about whether discussions will be productive or that

 9 we'll have the opportunity to have productive

10 discussions by the 3rd for all the reasons that have

11 already been noted. Public Counsel also has some

12 discovery out as well, and we are anticipating those

13 answers, but we do need the time to go through it.

14 Under the Staff, Pub- -- PSE proposed

15 schedule, testimony would be due in about a month, and

16 that's a really tight time frame to receive the data

17 request responses, process them, perhaps ask another

18 round of follow-up data -- data requests. So December

19 18th for the testimony date was also a date that I was

20 going to push on a bit, whether that's moving it to

21 Christmas Eve or somewhere further out. I mean, I think

22 our proposed schedule addresses that issue, but we do

23 have some concern about being able to fully work the

24 case up by December 18th and then also having productive

25 discussions by December 3rd will be challenging.

0057

 1 I will also note that while there is a

 2 desire to hold settlement conferences before testimony

 3 is filed, it is by no means necessary in order for the

 4 momentum of settlement to occur. I'll point to Puget's

 5 last rate case where settlement happened after all

 6 testimony was filed, and all we were doing was waiting

 7 for the hearing to occur, and there was a multiparty

 8 complete settlement. I think -- well, no, I'm sorry, it

 9 was a partial. Partial parties, partial issues

10 settlement that -- that came up.

11 JUDGE O'CONNELL: I recall.

12 MS. GAFKEN: At the very -- yeah, at the

13 very end of that case. So I think if settlement is

14 going to happen, it's going to happen regardless of when

15 we have an official settlement conference.

16 MR. O'CONNELL: Well, I want to bring up

17 that I noticed a big difference between the two proposed

18 schedules is about three weeks between the filing of

19 responsive testimony. And what I'd like to hear from

20 the intervenors, Public Counsel, and Staff is how long

21 is reasonable for you to prepare your responsive

22 testimony considering that you will be asking data

23 requests and need to use those in your responses?

24 MS. CAMERON-RULKOWSKI: Could I just jump

25 in? One of the things that -- that was challenging in

0058

 1 putting the schedule together was the holidays. So we

 2 have a sort of dead period during the holidays, and

 3 depending on where the dates fall, the schedule moves

 4 because of those holidays. So it's not -- so I guess I

 5 would point out, I'm not quite sure what the question

 6 is, but that does drive some things in this schedule.

 7 So if we're looking at a particular two-week or

 8 three-week period, we have to consider whether those

 9 holidays are in there. That's all.

10 MS. GAFKEN: And I think that's a very apt

11 observation. And so, you know, under either schedule, I

12 think there's work that's happening during the holiday

13 season, which, you know, I'm happy to do; however, you

14 know, with the PSE, Staff proposal there's

15 cross-answering and rebuttal testimony that's being

16 developed through the holidays. Under our proposed

17 schedule, we get through the holidays before the first

18 round is due. I think it's a little bit more humane to

19 do it that way.

20 And so taking into consideration the holiday

21 constraints and receipt of discovery, I do think that

22 our schedule is quite reasonable. We really did take

23 pains to not extend out the process any further than

24 necessary while still being mindful of the meaningful

25 opportunity to participate.

0059

 1 JUDGE O'CONNELL: Okay. I have some

 2 thoughts that I'd like to share, but before I do, I'd

 3 like to hear from the other intervenors if they have any

 4 perspective on the amount of time they need to prepare

 5 responsive testimony.

 6 So, Mr. Pepple, are you still on the line?

 7 MR. PEPPLE: I am. You know, I mean, we

 8 support the January 9th due date simply because, you

 9 know, I mean, there's a lot to go through and there's a

10 lot to understand. And so, you know, we think that

11 that's a reasonable amount of time to give us to prepare

12 some testimony. But like I said, you know, we could --

13 we could get there on a December 18th deadline, but

14 we're going to be scrambling up to the end to make sure

15 that we, you know, have fully digested all the

16 information, which is exactly why, you know, a

17 settlement conference the week of December 3rd is going

18 to be problematic for us.

19 JUDGE O'CONNELL: Okay. Ms. Franco-Malone,

20 do you have any input?

21 MS. FRANCO-MALONE: I'll just echo that The

22 Energy Project, AWEC, and Public Counsel and note that

23 we also have the X factor of waiting for our petition

24 for intervention to be resolved, which makes the

25 impending potential really early settlement dates and

0060

 1 responsive testimony sort of an extra hurdle for us, but

 2 other than that, I'll just echo what's already been

 3 said. Thank you.

 4 JUDGE O'CONNELL: Okay. Is there anything

 5 else from Mr. ffitch or Mr. Medlin?

 6 MR. FFITCH: I guess I'll just add on this

 7 whole question of how much time to take. I think that

 8 the Commission has made a decision that there should be

 9 an adjudication here, and so I think it's important to

10 design it so that it's productive. If there's too much

11 emphasis on speed for its own sake to get it over with,

12 becomes just a mechanical exercise which generates

13 nothing of use to the Commission.

14 I think it's important to look at all of the

15 ordering paragraphs in the Commission's order granting

16 the adjudication and see what the reasons were, and one

17 of the, you know, leading reasons is this is a case of

18 first impression. It's beneficial to the Commission to

19 have a record for looking at this type of transaction

20 that they haven't looked at before. They're also

21 looking to more transparency. They're also looking for

22 an opportunity for intervenors to have a serious look at

23 the transaction.

24 So I think our proposed schedule is very

25 close to the kind of general time frame that the

0061

 1 Commission asked for, but building in a couple more

 2 weeks for us to file our testimony, complete our

 3 discovery not only helps, but helps this Commission get

 4 the best possible record in this time frame to get some

 5 value out of the adjudication they've ordered.

 6 JUDGE O'CONNELL: Mr. Medlin, do you want to

 7 add anything on the timing for responsive testimony?

 8 MR. MEDLIN: No, obviously we're waiting for

 9 the decision for intervention. We've coordinated with

10 other intervenors on trying to get a schedule that would

11 work.

12 JUDGE O'CONNELL: Have I forgotten anyone?

13 MS. WHEELESS: Yes, this is Amy Wheeless

14 from the Northwest Energy Coalition, and I think

15 Mr. ffitch stated it very well that being for the sake

16 of speed is not in the best interest of this docket.

17 MR. LOCKHART: And this is Mr. Lockhart, and

18 I -- I would be flexible to work with any of the

19 schedules that have been proposed.

20 JUDGE O'CONNELL: Okay. Thank you. I'd

21 like to take a brief moment to talk with Judge Pearson,

22 so for the moment, let's be off the record.

23 (A break was taken from

24 2:21 p.m. to 2:33 p.m.)

25 JUDGE O'CONNELL: Let's be back on the

0062

 1 record. So I want to share with you our thoughts and

 2 intent on a couple of procedural aspects and after that,

 3 if it's helpful to take a break to allow you the

 4 opportunity to discuss and possibly reach an agreement.

 5 If not, we'll come back after the break and take any

 6 feedback that's necessary that we haven't already taken

 7 and any other procedural matters.

 8 So first as to the hearing dates, scheduling

 9 conference, and responsive testimony, we have had

10 discussions and think that it's appropriate for

11 responsive testimony to be due after the holidays. We

12 also note that we see the benefit if the parties are

13 able to agree on a settlement conference, we see the

14 benefit in having one before responsive testimony is

15 filed.

16 Second, as far as hearing dates go, looking

17 at the week that was proposed in Public Counsel's

18 procedural schedule, that week, as we discussed earlier,

19 is no longer available due to conflicts. The week of...

20 JUDGE PEARSON: The 26th.

21 JUDGE O'CONNELL: March --

22 JUDGE PEARSON: February 26.

23 JUDGE O'CONNELL: What's the week after

24 that?

25 JUDGE PEARSON: I have to pull my calendar

0063

 1 back up. The week of March 3rd.

 2 JUDGE O'CONNELL: The week of March 4th, we

 3 also have conflicts with that week. So we have

 4 discussed with the Commissioners and gotten approval for

 5 a hearing date that could be in that time period with

 6 those restrictions, either the week of February 26th or

 7 March 11th. The dates would be February 27th, February

 8 31st.

 9 JUDGE PEARSON: No, no, March 1st.

10 JUDGE O'CONNELL: March 1st, sorry, March

11 1st, March 12th or March 13th.

12 MS. CAMERON-RULKOWSKI: Your Honor, would

13 you be so kind just to repeat the available hearing

14 dates?

15 JUDGE O'CONNELL: The available hearing

16 dates are February 27th, March 1st, March 12, March

17 13th.

18 MS. CAMERON-RULKOWSKI: Thank you, Your

19 Honor.

20 JUDGE O'CONNELL: It's also our intent to

21 place limitations on discovery, and I know we haven't

22 talked about that yet, but I want to give you our

23 thoughts, and perhaps the parties can come to an

24 agreement on that as well. And if you're unable to, we

25 can come back from the break and discuss those

0064

 1 limitations.

 2 To the extent they have not yet been

 3 provided, we expect the applicants to provide all the

 4 previous data requests and responses to parties that are

 5 given party status as soon as necessary -- or any

 6 necessary confidential agreements have been entered.

 7 Is there any objection to this expectation,

 8 Ms. Carson, or the other applicants?

 9 MS. STROM CARSON: No, as I'm understanding

10 it, you're saying to provide confidential information as

11 soon as confidentiality agreements have been signed?

12 JUDGE O'CONNELL: And to the extent that any

13 of the previous data requests that Staff asked of the

14 applicants prior to the open meeting, that that

15 information will be provided to any of the parties.

16 MS. STROM CARSON: Yes, those have been

17 provided to the parties unless there are -- you know,

18 are some that have intervened and are granted

19 intervention, then we will provide them to those parties

20 as well.

21 JUDGE O'CONNELL: Okay. With that in mind,

22 we intend to limit the number of data requests. We

23 think that this limitation is appropriate in this case

24 and also because the data requests, the prior data

25 requests, will be provided by the applicants. We intend

0065

 1 to allow each party to ask up to a certain number of

 2 data requests in preparation of filing responsive

 3 testimony and in addition, up to a certain amount in

 4 preparation of cross-answer and rebuttal testimony.

 5 We also intend to limit the response time

 6 for data requests. I see that both proposals have

 7 included limitations, so I'm assuming that there might

 8 already be agreement as to limitations on timing for

 9 responses. So we think that these limitations on

10 discovery will encourage focused data requests and

11 prompt responses.

12 JUDGE PEARSON: Okay. I just wanted to ask

13 or raise one issue.

14 Mr. Pepple, are you there?

15 MR. PEPPLE: Yes, I am.

16 JUDGE PEARSON: Okay. So at the recessed

17 open meeting on November 5th, you mentioned wanting to

18 learn more information regarding the identity of

19 affiliates of OMERS. Can you refresh my memory?

20 MR. PEPPLE: So I think what I was talking

21 about was the corporate structure in terms of, you know,

22 the different subsidiaries between the buyer and

23 purchase and sale agreement and OMERS itself, trying to

24 learn a little bit more about that. I'm not sure if

25 that's responsive to your question.

0066

 1 JUDGE PEARSON: Okay. So, Ms. Carson, is

 2 there -- or if any representative from OMERS wishes to

 3 respond to this, is there going to be any issue with

 4 providing that type of information if it's requested?

 5 MS. STROM CARSON: So let me make sure I

 6 understand. You're asking for information about the

 7 ownership structure above the entity that's investing in

 8 Puget Holdings; is that right?

 9 JUDGE PEARSON: Mr. Pepple, is that correct?

10 MR. PEPPLE: I -- maybe. I mean, for what

11 it's worth, I think we've already asked the questions

12 that we are interested in with respect to that issue of

13 Puget --

14 JUDGE PEARSON: Okay. And that's fine --

15 (Multiple speakers)

16 JUDGE PEARSON: -- but you haven't received

17 responses yet?

18 (Multiple speakers)

19 MR. PEPPLE: -- right after adjudication was

20 opened. So yeah, I mean, I think my understanding is,

21 you know, there's a -- there's a limited partnership

22 that's the buyer in the purchase and sale agreement and

23 that partnership has a general partner, which is then

24 owned by another corporation that has a trust and that

25 trust is owned in part by OMERS and in part by a third

0067

 1 party. It's something like that at least, and we had

 2 some questions about how that all worked and what the

 3 relevance was.

 4 JUDGE PEARSON: And have you received a

 5 response to those questions?

 6 MR. PEPPLE: We have not.

 7 JUDGE PEARSON: Okay. And that's fine. I

 8 just -- what I was asking is whether that type of

 9 information was going to be made available, if there was

10 going to be any issue with that. I wanted the joint

11 applicants to answer that question.

12 MS. STROM CARSON: Well, my understanding is

13 I think there are some concerns about how far upstream

14 these data requests go. And when you're going far

15 upstream from the actual investor in Puget Holdings,

16 then I think there are concerns. I can't tell you

17 exactly. I don't have that question in front of me, but

18 I know there are concerns with particularly some of

19 these are -- are pension fund managers, and when there

20 are questions about the pension funds themselves, they

21 have limited ability to respond to -- to those.

22 So I mean, there are -- it's kind of a

23 complicated issue to respond to right here, but I think

24 there are some potential concerns that the buyers have.

25 And I don't know, Ms. Baird, did you want to

0068

 1 add anything?

 2 MS. BAIRD: I can speak to that if that

 3 would be helpful. Shoshana Baird for --

 4 JUDGE PEARSON: Can you please come closer

 5 to the microphone and speak louder?

 6 MS. BAIRD: Yes, is this better? So, for

 7 example, to the extent that there are questions

 8 regarding affiliates of trust entities upstream, we may

 9 have some concerns about whether or not those -- those

10 sorts of inquiries are things we could answer, have

11 information on or would be within the scope of this

12 proceeding. But that seems like that would be a

13 separate issue as to the narrowness of the inquiry as

14 opposed to the limited number. So I'm not sure how --

15 we would certainly appreciate guidance on what would be

16 appropriate scope of this proceeding and would welcome

17 feedback from either of Your Honors.

18 JUDGE PEARSON: Okay. Thank you.

19 JUDGE O'CONNELL: Okay. So with that, given

20 our thoughts on the procedural schedule and limited

21 discovery, you want to take a break at this point to

22 hopefully allow you to confer, see if there can be a

23 meeting of the minds, and then we'll come back and

24 discuss if there isn't an agreement and other procedural

25 matters? If there is, we'll entertain and agree to a

0069

 1 procedural schedule, okay?

 2 JUDGE PEARSON: And I just want say one more

 3 thing before we go off the record. Our intention in

 4 providing those dates is for the parties to pick the

 5 earliest possible of those dates based on their

 6 availability. So not for any other reasons to push the

 7 date out farther, but it to be strictly based on when

 8 everyone is available.

 9 JUDGE O'CONNELL: Okay. Thank you. With

10 that, we'll be off the record.

11 (A break was taken from

12 2:43 p.m. to 2:58 p.m.)

13 JUDGE PEARSON: So we are going to go ahead

14 and grant the petitions for intervention filed by all

15 three labor unions and deny Mr. Lockhart's petition for

16 intervention, and we will explain our reasons for both

17 decisions in the prehearing conference order that will

18 be forthcoming. Okay. So we will be back in recess

19 until further notice.

20 (A break was taken from

21 2:59 p.m. to 3:51 p.m.)

22 JUDGE PEARSON: Let's go back on the record.

23 All right.

24 MS. CAMERON-RULKOWSKI: We have -- we do not

25 have an agreed schedule, but we have a schedule to

0070

 1 present to you and -- but let's go to what we have

 2 agreed on first, which is the discovery limitations if

 3 Your Honors would entertain that at this time.

 4 JUDGE O'CONNELL: Please continue.

 5 MS. CAMERON-RULKOWSKI: All right. And so

 6 we have all agreed to limit discovery going forward from

 7 today to 30, including subparts, and then in the

 8 rebuttal phase, it would be limited to ten. So you can

 9 take the language from the Company's proposed procedural

10 schedule and just replace those numbers, the 25 number

11 with 30. And that means that any data requests that

12 have been propounded as of today are grandfathered in.

13 They don't count towards the 30 total.

14 JUDGE O'CONNELL: Okay. I would like to ask

15 for some clarification from the parties on what you mean

16 by including subparts, when you say 30 DRs.

17 MS. CAMERON-RULKOWSKI: Right. So if

18 someone issues DR 1, sub A, B, C, D, E, F, that's going

19 to count as possibly five or six depending on how the

20 question is phrased.

21 JUDGE O'CONNELL: So all of the subparts

22 would count as an individual DR towards this number?

23 MS. CAMERON-RULKOWSKI: That's correct.

24 JUDGE O'CONNELL: Okay.

25 MS. GAFKEN: One thing. So

0071

 1 Ms. Cameron-Rulkowski in the presentation said that

 2 going forward, and that's an important piece, but I

 3 don't know that just taking the language that was

 4 proposed works because that language, correct me if I'm

 5 wrong, only refers to before the testimony. And so in

 6 recognition, if there has already been some discovery

 7 propounded, that's grandfathered in and so moving

 8 forward, the limits are in effect.

 9 JUDGE O'CONNELL: Thank you, Ms. Gafken. I

10 think that's an important distinction. Appreciate that.

11 MS. CAMERON-RULKOWSKI: So then the other

12 thing we discussed is since the schedule is stretching

13 out a little bit longer than the Company's proposed

14 schedule, we would -- we have agreed to go back to the

15 standard ten business days for discovery for response --

16 for responses to data requests now and then following

17 response testimony, that would go to seven business

18 days, following rebuttal testimony, it would go to five

19 business days, which is -- we've seen that before.

20 All right. On to the more complicated

21 piece. We have availability --

22 MR. PEPPLE: Jennifer?

23 MS. CAMERON-RULKOWSKI: Yes?

24 MR. PEPPLE: Sorry. Sorry, do you mind if

25 I -- one more point on the data request before we

0072

 1 continue?

 2 MS. CAMERON-RULKOWSKI: Oh, Mr. Pepple,

 3 please.

 4 MR. PEPPLE: Sorry about that. So I just

 5 wanted to note that -- so we -- we're agreeing to, you

 6 know, a limit. I have some concerns with sort of

 7 picking a number and deciding that that's the number

 8 that somebody can -- can ask. In my opinion, anybody

 9 should be able to ask as many relevant data requests as

10 they want. However, you know, given that, we also

11 discussed that, you know, if a party uses their

12 allotment of data requests and there are additional, you

13 know, relevant data requests that they can, you know,

14 show good cause to ask, you know, that the parties would

15 at least -- we would work together to try to, you know,

16 get an exception. It's sort of a soft cap rule and, you

17 know, hopefully the Commission would entertain that, you

18 know, in the event that we needed to file a motion.

19 MS. CAMERON-RULKOWSKI: I think the parties

20 are in agreement that we would consult in -- in that

21 sort of situation and that the procedural rules do

22 provide for any discovery disputes to be resolved. Is

23 that sufficient, Mr. Pepple?

24 MR. PEPPLE: Yes, I just wanted to note my

25 objection for the record, frankly.

0073

 1 JUDGE O'CONNELL: Okay. Well, on that

 2 point, it is our intent to set a number limit on the

 3 data requests. And as always, if there is good cause to

 4 change a decision that we make, we will entertain good

 5 cause for changing it. I expect that everyone is going

 6 to be able to tailor their requests to meet whatever

 7 limitations we put in place.

 8 So with that, I would like to hear, what is

 9 the -- besides the hearing dates perhaps, what is the

10 rest of the procedural schedule that has been agreed to?

11 MS. CAMERON-RULKOWSKI: So we're -- as I

12 stated before, we do not have an agreed schedule, but I

13 will give you all of the dates that many of the parties

14 agree to. And I also need to point out that these --

15 the witnesses of BCI were not able to be contacted, and

16 so we do not know their availability yet, but we do know

17 that everyone else is available for a hearing on March

18 13th.

19 And now I'll start at the other -- at the

20 top end. We have a settlement conference date of

21 December 18th; response testimony, January 18th;

22 rebuttal and cross-answering testimony, February 15th;

23 discovery cut off, February 25th; cross-exhibits, March

24 6th; the hearing date, again, March 13; simultaneous

25 briefing, April 3rd. And then at this point, I'll go

0074

 1 ahead and yield to Ms. Carson.

 2 JUDGE PEARSON: So just one question, you

 3 said everyone is available on March 13th or that's

 4 Staff's preferred date?

 5 MS. CAMERON-RULKOWSKI: My understanding is

 6 that all of the witnesses are available on March 13th

 7 except that we don't know about the witnesses for BCI

 8 because they couldn't contact them.

 9 JUDGE PEARSON: Okay. And earlier when --

10 MS. CAMERON-RULKOWSKI: The witness, excuse

11 me.

12 JUDGE PEARSON: Is that the date that you

13 had in mind earlier when you received an email, was that

14 March 13th date?

15 MS. CAMERON-RULKOWSKI: Yes, Your Honor, it

16 was.

17 JUDGE PEARSON: Okay. Ms. Carson?

18 MS. STROM CARSON: Yes, Your Honors. My

19 client, PSE, respectfully objects to this schedule. PSE

20 and the joint applicants were here at the open meeting

21 and heard the Chairman say that a 120-day procedural

22 schedule would be ample, would be sufficient. And a

23 120-day procedural schedule includes the time for the

24 hearing and the time for the order, and that's the way

25 we interpreted it, that's the way we understood it.

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 1 Now what we're looking at is eight months.

 2 This is not an expedited schedule. Two of the

 3 Commissioners talked about the importance and the

 4 ability to have this heard on an expedited basis. This

 5 is not expedited. The order -- Order 01 makes clear

 6 that there's supposed to be very narrow scope in terms

 7 of discovery, in terms of the issues, that the

 8 commitments are in place and have been in place, and

 9 this ownership structure was fully vetted ten years ago,

10 numerous commitments that protect the Company,

11 customers, interested stakeholders.

12 It's just not necessary to stretch it out

13 this far. And we actually had a schedule that worked

14 that would be consistent with what the Commissioners

15 said at the open meeting, and would allow an order to

16 come out within 120 days or shortly after 120 days. And

17 it is important to the joint applicants to get this new

18 board in place, to not have this drag out for months and

19 months and months.

20 So for these reasons, we respectfully object

21 to this. We ask that the Commission, you know, consider

22 and, in fact, move forward with the schedule that was

23 contemplated back at the open meeting, and that we

24 complete this by March 22nd as we proposed.

25 JUDGE O'CONNELL: Okay. With that, I'd like

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 1 to know who -- which parties are supporting the new

 2 proposal for a procedural schedule. Are any?

 3 MS. GAFKEN: Public Counsel supports the

 4 schedule that Ms. Cameron-Rulkowski relayed to the

 5 Bench. I'll also note that --

 6 MR. PEPPLE: AWEC does as well.

 7 MS. GAFKEN: I'll also note that it's

 8 consistent with the guidelines that Your Honors provided

 9 to the parties before this discussion occurred.

10 MS. CAMERON-RULKOWSKI: It's my

11 understanding that of the original dates that we were

12 given, that March 13 was the only one that all the

13 parties were available, and so Staff supports this

14 schedule. And I would also like to say that the

15 representations that I have made to Your Honors today

16 are what I understood to be the case at the time.

17 JUDGE O'CONNELL: Mr. ffitch?

18 MR. FFITCH: The Energy Project supports the

19 schedule relayed by Ms. Cameron-Rulkowski.

20 JUDGE O'CONNELL: Ms. Franco-Malone?

21 MS. FRANCO-MALONE: As does -- as do the

22 Laborers.

23 JUDGE O'CONNELL: And, Mr. Medlin?

24 MR. MEDLIN: Yes, IBEW and UA 32 both

25 support that proposal.

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 1 JUDGE O'CONNELL: Ms. Wheeless, are you on

 2 the line?

 3 MS. WHEELESS: Yes, I am, and the Northwest

 4 Energy Coalition supports the schedule that

 5 Ms. Cameron-Rulkowski relayed.

 6 JUDGE O'CONNELL: Thank you.

 7 JUDGE PEARSON: All right. Sorry, I just

 8 needed to confer with Judge O'Connell for a second. So

 9 I just want to clarify that it's my understanding and

10 belief that Chairman Danner was looking at a hearing 120

11 days from the date of the recessed open meeting, not for

12 the proceeding to be concluded, and that is why we gave

13 you the dates that we gave you to decide among.

14 So of those dates that we gave you,

15 Ms. Carson, would one of them -- one of the earlier

16 dates work better for PSE, do you have a preference?

17 MS. STROM CARSON: Well, yes, February 27th

18 or March 1st.

19 JUDGE O'CONNELL: And I'm curious, then, if

20 we can briefly hear from the other parties what the

21 conflicts are with those dates.

22 MS. CAMERON-RULKOWSKI: Maybe it's easiest

23 if I speak to that because I was taking notes. So the

24 27th, February 27th, did not work for I think -- oh,

25 dear, for three of the parties. It did not work for the

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 1 Laborers, it did not work for the unions, and it did not

 2 work for AWEC. March 1st I believe there was -- I'm

 3 sorry.

 4 MS. FRANCO-MALONE: Also, NWEC, I believe,

 5 also, right?

 6 MS. CAMERON-RULKOWSKI: And NWEC, yes, I'm

 7 sorry, yes. That's right.

 8 And then March 1st, I think that one did not

 9 work for the two unions.

10 JUDGE PEARSON: And what's the conflict?

11 MR. MEDLIN: So I have a labor conference

12 that day scheduled for March 1st.

13 JUDGE PEARSON: Okay. Do you have someone

14 who could stand in for you?

15 MR. MEDLIN: No.

16 JUDGE PEARSON: Here?

17 MR. MEDLIN: It's in Seattle.

18 JUDGE PEARSON: Okay. I meant here or at

19 the labor conference. Do you have -- is there another

20 attorney that you work with that could fill in for you,

21 because we can't base the schedule on the availability

22 of just one party. We can't let that control when we

23 set this hearing for.

24 MR. MEDLIN: Yeah, I can't -- I don't know

25 off the top of my head right now. I'd have to confer.

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 1 JUDGE PEARSON: Okay. Is there anything

 2 else that's unresolved at this point?

 3 MS. CAMERON-RULKOWSKI: I don't believe so,

 4 Your Honor.

 5 JUDGE PEARSON: Okay. So I think what --

 6 Sorry, Ms. Gafken, did you have something to

 7 say?

 8 MS. GAFKEN: I did have one more issue to

 9 raise for consideration. So I'm not sure you're

10 referring to scheduling items or something else.

11 JUDGE PEARSON: I meant scheduling items and

12 just unresolved issues as far as this prehearing

13 conference goes more globally, I guess.

14 MS. GAFKEN: It's something of a scheduling

15 issue. I wanted to bring up public comment hearings and

16 the public comment exhibit. Is this an okay time to do

17 that or should I wait?

18 JUDGE PEARSON: So we had the public comment

19 hearing. It was on November 5th. We don't intend to

20 schedule additional public comment hearings, but if you

21 want to speak to the exhibit, that's fine.

22 MS. GAFKEN: Okay. So a question about the

23 public comment exhibit, there were comments that came in

24 for the open meeting. Are we to include those or

25 comments going forward?

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 1 JUDGE PEARSON: You can include comments

 2 going forward, and I will have our paralegal compile

 3 them and we'll mark them as a bench exhibit, the ones

 4 that were filed that were due on October 24th. I'll

 5 have them put into one document as the comments from the

 6 recessed open meeting and we will mark them as a bench

 7 exhibit.

 8 MS. GAFKEN: Okay. And so for clarity, the

 9 Commission is stating that under WAC 480-07-498, that

10 the open meeting was a public comment hearing?

11 JUDGE PEARSON: Correct, we noticed it, we

12 gave people the opportunity to provide both written and

13 oral comments. And I don't think that the Commissioners

14 are interested in attending another public comment

15 hearing on this, because they have provided that

16 opportunity and heard lots of comments on this.

17 JUDGE O'CONNELL: I would also note that

18 that doesn't prevent the public from submitting comments

19 from now until the --

20 JUDGE PEARSON: That's correct. Until the

21 record is closed, yes.

22 JUDGE O'CONNELL: Ms. Franco-Malone?

23 MS. FRANCO-MALONE: I would just like to

24 make one observation with regard to the proposed

25 procedural schedule that Ms. Cameron-Rulkowski

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 1 addressed, and just noting that the parties worked

 2 backwards from that date on when various deadlines would

 3 be sensible including potential settlement conference

 4 and that we were using March 13th as the date that we

 5 understood would work for all the parties. And that

 6 just it's those backwards dates might have looked

 7 different if we had been looking at March 1st versus

 8 March 13th.

 9 JUDGE O'CONNELL: Okay. So I think at this

10 point, what we're going to do is take the proposed

11 procedural schedule under advisement along with all of

12 the other preferences that have been aired today, and we

13 will decide the procedural schedule going forward. We

14 will issue that in the prehearing conference order

15 shortly. Is there any other issue that we have not

16 touched on today that we need to?

17 JUDGE PEARSON: I would just ask,

18 Ms. Cameron-Rulkowski, that you provide Staff's proposed

19 schedule to us in writing via email. I don't know how

20 much I want to rely on my notes.

21 MS. CAMERON-RULKOWSKI: I would be happy to

22 do that.

23 JUDGE PEARSON: Thank you.

24 JUDGE O'CONNELL: Okay. With that, thank

25 you all very much. Thank you for your efforts today and

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 1 we will be adjourned.

 2 (Adjourned at 4:08 p.m.)

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 3 STATE OF WASHINGTON

 4 COUNTY OF THURSTON

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 6 I, Tayler Garlinghouse, a Certified Shorthand

 7 Reporter in and for the State of Washington, do hereby

 8 certify that the foregoing transcript is true and

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

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13 Tayler Garlinghouse, CCR 3358

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