

Docket No. U-180680 - Vol. I

In the Matter of: Puget Sound Energy Transfer

November 16, 2018



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint) DOCKET NO. U-180680
Application of)
)
PUGET SOUND ENERGY, ALBERTA)
INVESTMENT MANAGEMENT CORPORATION,))
BRITISH COLUMBIA INVESTMENT)
MANAGEMENT CORPORATION, OMERS)
ADMINISTRATION CORPORATION, and)
PGGM VERMOGENSBEHEER B.V.)
)
For an Order Authorizing)
Proposed Sales of Indirect)
Interests in Puget Sound Energy)

PREHEARING CONFERENCE, VOLUME I

Pages 1-83

ADMINISTRATIVE LAW JUDGES RAYNE PEARSON AND
ANDREW O'CONNELL

November 16, 2018

1:00 P.M.

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504

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* * * * *

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1 OLYMPIA, WASHINGTON; NOVEMBER 16, 2018

2 1:00 P.M.

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4
5 P R O C E E D I N G S

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.

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 ffitich, appearing on behalf of The
20 Energy Project.

21 JUDGE PEARSON: Thank you.

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

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

24 JUDGE PEARSON: Okay.

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

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. Wheelless, are you on the phone?

6 MS. WHEELLESS: Yes, Your Honor. This is Amy
7 Wheelless 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?

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

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

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

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

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

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

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

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

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

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

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.

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

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

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 prerrejection 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,

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

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

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,

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

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

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

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. PEPPLER: 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

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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

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.

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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. PEPPLER: 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. PEPPLER: Okay. Well, I guess, you know,
25 I mean, it's one thing to receive responses, it's

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. PEPPLER: 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.

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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.

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

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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.

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. PEPPLER: 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

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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

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. WHEELLESS: Yes, this is Amy Wheelless
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

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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

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

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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

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. PEPPLER: 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. PEPPLER: 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.

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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. PEPPLER: 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. PEPPLER: -- 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

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

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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

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

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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

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. PEPPLER: Jennifer?

23 MS. CAMERON-RULKOWSKI: Yes?

24 MR. PEPPLER: Sorry. Sorry, do you mind if
25 I -- one more point on the data request before we

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1 continue?

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

4 MR. PEPPLER: 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. PEPPLER: Yes, I just wanted to note my
25 objection for the record, frankly.

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

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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.

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. PEPPLER: 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.

1 JUDGE O'CONNELL: Ms. Wheelless, are you on
2 the line?

3 MS. WHEELLESS: 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, NWEA, I believe,
5 also, right?

6 MS. CAMERON-RULKOWSKI: And NWEA, 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.

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

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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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.



Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358

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