

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
 2 COMMISSION

3 PETITION OF PUGET SOUND POWER)
 & LIGHT COMPANY FOR AN ORDER)
 4 REGARDING THE ACCOUNTING) Docket No. UE-920433
 TREATMENT OF RESIDENTIAL)
 5 EXCHANGE BENEFITS)

-----)
 6 WASHINGTON UTILITIES AND)
 TRANSPORTATION COMMISSION,)
 7) Docket No. UE-920499
 Complainant,)

8 vs.)

9 PUGET SOUND POWER & LIGHT)
 COMPANY,)
 10 Respondent.)

-----)
 11 WASHINGTON UTILITIES AND)
 TRANSPORTATION COMMISSION,) Docket No. UE-921262
 12 Complainant,) Volume 29
 vs.) Pages 4939 - 4985

13)
 PUGET SOUND POWER & LIGHT)
 14 COMPANY,)
 Respondent.)
 15 -----)

16 A hearing in the above matter was held on
 17 November 23, 1993 at 9:30 a.m., at 1300
 18 South Evergreen Park Drive Southwest,
 19 Olympia, Washington, before Administrative Law Judge
 20 ALICE L. HAENLE.

21 The parties were present as follows:

22
 23 WASHINGTON UTILITIES AND TRANSPORTATION
 COMMISSION STAFF, by ROBERT CEDARBAUM, and
 24 SALLY BROWN, Assistant Attorneys General, 1400 South
 Evergreen Park Drive Southwest, Olympia, Washington
 98504.
 25 Donna Davis, CM, CSR, Court Reporter

1 PUGET SOUND POWER & LIGHT, by JAMES
2 M. VAN NOSTRAND, and STEVEN C. MARSHALL, Attorneys at
3 Law, 411 108th Avenue NE, Bellevue, Washington 98006.

4 FOR PUBLIC, CHARLES F. ADAMS,
5 Assistant Attorney General, 900 Fourth Avenue, Suite
6 2000, Seattle, Washington 98164.

7 FOR WICFUR, MARK P. TRINCHERO, Attorney at
8 Law, 1300 SW Fifth Avenue, Suite 2300, Portland, Oregon
9 97201.

10 FOR BPA, BARRY BENNETT, Attorney at Law,
11 905 NE 11th, Portland, Oregon 97208.

12 FOR PACIFICORP, BRIAN K. HEDMAN, 920 SW
13 Sixth, Portland, Oregon 97204.

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1 I N D E X
2 WITNESS: DIRECT CROSS REDIRECT RECROSS JUDGE
3 (None.)

4 EXHIBIT MARKED ADMITTED
5 T-2001 4948
6 T-2002 4948
7 T-2003 4948
8 2004 - 20009 4948
9 T-2010 4948
10 2011-2022 4948
11 C-2023 4948
12 2024-2032 4948
13 C-2033 - C-2035 4948
14 2036-2037 4948
15 C-2038 - C-2042 4948

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1 P R O C E E D I N G S

2 JUDGE HAENLE: The prehearing conference
3 will come to order.

4 This is a prehearing conference in the
5 prudence review portion of consolidated docket Nos.
6 UE-920433, UE-920499, and UE-921262.

7 In its eleventh supplemental order, the
8 Commission indicated that it would give the Company the
9 opportunity to file additional materials to demonstrate
10 the prudence of new contracts. And this prehearing
11 conference was set up to begin that process.

12 The prehearing conference is taking place on
13 November 23, 1993, at Olympia before Administrative Law
14 Judge Alice L. Haenle. Notice of the prehearing
15 conference was issued on October 28, 1993.

16 I would like to take appearances at this
17 time, please, beginning with the company. And let's
18 make this a full appearance, with your name, your
19 client's name, and your business address. Mr. Marshall
20 or Mr. Nostrand.

21 MR. VAN NOSTRAND: For respondent Puget
22 Power, James M. Van Nostrand, Perkins Coie, 411 108th
23 Avenue N.E., Bellevue, Washington.

24 JUDGE HAENLE: Mr. Marshall.

25 MR. MARSHALL: Stephen C. Marshall for Puget

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1 Sound Power and Light Company.

2 JUDGE HAENLE: At the same address?

3 MR. MARSHALL: Yes.

4 JUDGE HAENLE: For the Commission.

5 MR. CEDARBAUM: Robert Cedarbaum and Sally

6 Brown for the Commission. Business address is the

7 Heritage Plaza Building, 1400 South Evergreen Park

8 Drive Southwest, Olympia, 98054.

9 MR. ADAMS: For public counsel, Charles F.

10 Adams and Robert Manifold, 900 Fourth Avenue, Suite

11 2000, Seattle 98164.

12 JUDGE HAENLE: I believe I received a

13 message from his office a couple of days ago that Mr.

14 Manifold would be the one who would be handling this

15 case and you would be filling in for him because he was

16 out of town.

17 MR. ADAMS: That's correct.

18 MR. BENNETT: Barry Bennett representing

19 Bonneville Power Administration, 905 N.E. Fourth,

20 Portland, 97208.

21 JUDGE HAENLE: Thank you.

22 MR. TRINCHERO: On behalf of the Washington

23 Industrial Committee for Fairness in Utility Rates,

24 Mark P. Trincherro and Grant Tanner, 1300 S.W. Fifth
25 Avenue, Suite 2300, Portland 97201.

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1 JUDGE HAENLE: Is there anyone who needs to
2 enter an appearance on behalf of an intervenor?

3 MR. HEDMAN: Brian K. Hedman with
4 Pacificorp, 920 Southwest 6th, Portland, Oregon, for
5 Jim Paine.

6 JUDGE HAENLE: You will need to, Mr. Hedman,
7 fill out an appearance form at the next break, please.

8 Anyone else who needs to enter an appearance
9 for an intervenor?

10 We did have a petition to intervene from
11 the BPA. At the time I received it I let them know
12 that the Commission had in mind that intervenors would
13 not have to reapply for intervenor status in this
14 prudence review portion. So, I will -- it's not
15 necessary.

16 You're already in. I don't know what that
17 means I do with the petition. I'm going to deny the
18 petition because it's not necessary, I guess, just to
19 avoid having --

20 MR. BENNETT: I suppose we could withdraw
21 it.

22 JUDGE HAENLE: Why don't you do that.

23 MR. BENNETT: I'll withdraw the petition.

24 JUDGE HAENLE: Thank you.

25 In the way of procedural matters, there has

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1 already been at the Company's request a protective
2 order issued in this matter. It was the 12th
3 supplemental order. It was issued on October 20, 1993.
4 A number of you have already filed the exhibits that
5 you need to file that agrees to be bound by the terms
6 of the protective order.

7 At the January 4, 1993, initial session from
8 the last stage of the hearing, we had invoked the
9 procedures for obtaining discovery. I assume that we
10 would need those procedures for obtaining discovery in
11 this portion of the hearing as well, Mr. Marshall?

12 MR. MARSHALL: Yes.

13 JUDGE HAENLE: And Mr. Cedarbaum?

14 MR. CEDARBAUM: Yes, your Honor. We would
15 like to continue those.

16 JUDGE HAENLE: I believe that this is an
17 appropriate matter in which to have those procedures
18 invoked. So, those will be available.

19 Before we went on the record, I told you
20 that the Commission had in mind that this prudence
21 review ordered in the eleventh supplemental order would
22 be, although it has the same docket number, would be
23 treated as a separate segment in terms of what

24 materials would be considered. That is, that the
25 Commission will write its order based on the materials

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1 that are entered as exhibits and the testimony taken in
2 this segment of the hearing without reference to things
3 that have gone before.

4 Now, I understand that the Company hadn't
5 been advised of this at the time that it filed its
6 materials, and that's one of the things we're going to
7 need to discuss is the matter in which the Company can
8 indicate to the parties what other materials are going
9 to be relied upon and provide copies of those
10 materials.

11 We're going to discuss the schedule in a
12 minute, and we can discuss that procedure in connection
13 with discussing the schedule.

14 The part that I want to make very clear to
15 you now is that, if you intend to rely on a piece of
16 evidence and want the Commission to consider it in
17 determining the prudence of these contracts, you will
18 need to ask that that piece of evidence be entered into
19 the record during this proceeding. You may not rely on
20 anything that has come prior in time to this prehearing
21 conference. That includes any testimony. That
22 includes exhibits. That includes anything that's come
23 before.

24 So, what the Commission wants to be sure
25 everyone understands is exactly what evidence each of

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1 the parties is relying on.

2 Before we went on the record we pre-marked a
3 number of documents as exhibits. I'm not going to go
4 back through all of those numbers. But materials were
5 provided by the Company back in October, and the
6 Company has kindly provided an exhibit index with them
7 all listed out.

8 I'm not going to go through those markings
9 individually at this time. They begin with Mr.
10 Sonstelie's testimony, and we have agreed that, in
11 order to keep this segment of exhibits distinguishable
12 from what has come before, we will begin with the
13 number 2001. So, Mr. Sonstelie's testimony is T-2001.
14 Then Mr. Litchfield's testimony, JWL-1, is T-2002. Mr.
15 Knutsen's testimony, CAK-1 is T 2003. And his exhibits
16 are 2004 through 2009.

17 Mr. Lauckhart's testimony is T-2010. And
18 his exhibits are 2011 through 2051.

19 Please note that a number of those exhibits
20 are marked as confidential and need to be treated in
21 that manner. I'm going to put a C in front of the
22 numbers for those exhibits. And those are the
23 following exhibits. C-2023, which is JRL-14; C-2033,

24 JRL-24; C-2034, JRL-25; and C-2035, JRL-26. And
25 C-2038, which is JRL-29, through C-2042, which is

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1 JRL-33.

2 I will put a copy of this that I filled out
3 with the official exhibits if there are any questions.
4 If you have any questions about a number, please see
5 me, and we'll get it straightened out.

6 (Marked Exhibits T-2001, T-2002, T-2003,
7 2004-2009, T-2010, 2011-2022, C-2023, 2024-2032,
8 C-2033-C-2035, 2036, 2037, C-2038-C-2042)

9 JUDGE HAENLE: I guess the next thing in
10 line is probably the schedule. Now, I know that the
11 Company has requested when it made its filing that this
12 matter be wrapped up by the end of the year. Then
13 yesterday I got a request from the Company with a
14 proposed schedule as Attachment 1.

15 Do you all have that?

16 MR. CEDARBAUM: No.

17 JUDGE HAENLE: Let's go off the record so
18 copies can be provided, please.

19 (Discussion held off the record.)

20 JUDGE HAENLE: Let's be back on the record.

21 During the time we were off the record, the
22 parties had a brief opportunity to review the Company's
23 material. Now, the Commission ordinarily sets a

24 schedule and gives it to me to announce at the
25 prehearing conference. And, indeed, I do have a

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1 schedule that the Commission has established. At least
2 at this point established. It did at the time it set
3 the schedule have the Company's notice 19 materials in
4 front of it and understood what the Company's request
5 was going to be.

6 No one else put in a proposal as far as I
7 know about any other schedule dates. Let me tell you
8 what they are and if anyone else has comments I can
9 take those comments.

10 Cross of the Company, March 21 through 25;
11 pre-file staff, intervenor, and public counsel experts,
12 May 4; cross of staff, intervenor, and public experts,
13 June 6 through 10; prefiled Company rebuttal July 1;
14 cross of Company rebuttal, August 1 through 5. Briefs
15 due -- and the Commission I think is anticipating
16 simultaneous briefs -- August 26. And an order
17 sometime prior to October 1.

18 Now, that isn't the schedule that the
19 Company had proposed obviously, Mr. Marshall. But as I
20 indicated, the Commission did have your materials in
21 front of it at the time it set that schedule.

22 Anyone have comments?

23 MR. CEDARBAUM: I do have. Well, Mr.

24 Marshall has comments.

25 MR. MARSHALL: Our comments -- and we can --

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1 JUDGE HAENLE: Louder, please.

2 MR. MARSHALL: Our comments go back actually
3 to September of 1991 when the issue came up in PRAM 1.
4 At that time the Company proposed and others including
5 WICFUR concurred with the prudency review should be
6 done in the PRAM proceeding.

7 WICFUR in particular pointed out that in the
8 original notice of inquiry that there should be
9 reasonable and quick assurance of the recovery of
10 resource costs. And they said September of 1991, "This
11 means that the prudence reviews to the extent they are
12 necessary in my mind should be undertaken as rapidly as
13 possible in the context we have here; that is, with the
14 annual PRAM adjustment. I don't know that we need to
15 be also bureaucratic, you know, the right occasion to
16 undertake these rates. Puget signs a contract with a
17 supply side resource. That contract is submitted to
18 this Commission, and then it just sits there until we
19 have litigated the case sometime out in the future. I
20 don't know why a contract submitted for a supply or
21 demand side resource can't be noticed for approval and
22 review at that time or noticed for approval and review
23 at the time of the annual PRAM adjustment. Other

24 Commissions do it that way either formally or
25 informally."

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1 That was 1991, WICFUR testimony, Pages 453
2 and 454.

3 JUDGE HAENLE: Testimony or colloquy from
4 counsel?

5 MR. MARSHALL: Colloquy from counsel for
6 WICFUR.

7 Our point is that these contracts that are
8 now the subject of review have been on file with the
9 Commission for a long time now. And under the NOI and
10 under the PRAM decoupling philosophy, there should be
11 reasonable and quick assurance of the recovery of these
12 resource costs. To stretch this out for this long a
13 time until October of next year is contrary to the
14 intent of the NOI. It's contrary to the idea that
15 there should be certain and reasonable recovery of
16 these costs.

17 There isn't any reason the parties couldn't
18 have reviewed these contracts long before now. The
19 contracts at issue are only eight in number. They are
20 not controversial. They are all with projects that are
21 in operation. No one has claimed that these projects
22 are at costs above avoided costs. No one has claimed
23 that these projects are inoperable or have failed in

24 some major way.

25 In the colloquy again in September of 1991

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1 when the parties were examining when to review the
2 prudence, it was determined at that time that if there
3 were major problems with the contracts that they would
4 be brought up when they were first submitted to the
5 Commission or at the very latest in connection with the
6 PRAM hearing, and anything minor that the parties
7 didn't have some reason to believe --

8 MR. CEDARBAUM: Your Honor, I guess I just
9 have to interrupt. This is argument about the
10 substance of this case. The Commission issued its PRAM
11 order earlier in this proceeding. It set up a
12 mechanism that it wanted to go forward with. It
13 obviously had all of those in its mind when it set up
14 that procedure, and it went forward and told the
15 company to file its prudence case. That's the basis
16 upon which we're going ahead in this proceeding.

17 All Mr. Marshall has done is try to argue
18 Company's case on what is or is not a sufficient
19 showing of prudence. We can get into that once we get
20 into the testimony. But we're talking about scheduling
21 right now.

22 MR. MARSHALL: That's not my point at all.
23 On the scheduling of this, this can be expedited in

24 fairness to all parties. All parties had these
25 contracts and it had them for a long time.

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1 MR. CEDARBAUM: Your Honor --

2 MR. MARSHALL: Let me finish.

3 JUDGE HAENLE: I believe there was an
4 objection made, Mr. Marshall. Have you finished your
5 response to the objection?

6 MR. MARSHALL: What I was trying to do is I
7 am trying to point out why we need an expedited review
8 of this. It's not by way of rearguing what the test or
9 standard ought to be, but by way of pointing out why
10 the schedule can be on a much shorter time frame. That
11 is, that the parties have had these contracts. It is
12 not unfair to make these dates a lot earlier than they
13 are.

14 And because it does fit with the entire
15 intent of the NOI, which is to have a rapid recovery
16 and quick assurance of recovery of these costs, to now
17 put the assurance of the recovery of these costs off
18 yet another year is definitely not consistent with the
19 original NOI and the orders that everybody has operated
20 under.

21 By pointing out the colloquy in 1991, it was
22 pointed out that two years have passed since the
23 parties had notice that these contracts are going to be

24 reviewed. They have had the contracts since that time.
25 There is no reason why we need to have the length of

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1 time that the initial proposed schedule that you have
2 indicated would contemplate.

3 Moreover, I think that we could expedite
4 this by narrowing the issues. We have proposed for
5 something to be taken up here today that the parties
6 get together very soon and see what exactly it is that
7 we can agree on and what remains under dispute.

8 The eight contracts I'm sure that there are
9 some of the contracts for which parties have no
10 objection at all. Of the remaining contracts, I
11 believe that we could at least have a definition of
12 what it is that is at issue so that we can eliminate
13 the need to have lengthy briefs and lengthy
14 cross-examination and save all the parties time and
15 effort.

16 Our whole intent is a procedural one of
17 cutting down the complexity and length of time of this
18 proceeding.

19 MR. CEDARBAUM: May I make a remark?

20 JUDGE HAENLE: Yes, you can in just a
21 second.

22 The Commission generally encourages parties
23 to see what kind of issues they can define, see whether

24 they can narrow any of the issues. But I do need to
25 remind you, Mr. Marshall, that the Commission in its

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1 order was very clear that it wanted all of the material
2 that you're relying on to support these contracts, to
3 support the prudence of these contracts. And I don't
4 know how any agreement among the parties might fit into
5 that structure or that framework.

6 I assume you have not begun yet these
7 discussions that you referred to in terms of narrowing
8 the issues. But I want to refer you back to the order
9 and be sure you understand that the Commission does
10 want a full prudence review here. I don't want to get
11 in the position where the Commission is not offered the
12 full chance to review a contract because of an
13 agreement among the parties or doesn't want it to be in
14 that manner.

15 MR. MARSHALL: Again, typically what could
16 happen in a general rate case or this, if the parties
17 stipulate to the narrowing of the issues, they could
18 bring it to the Commission to see if the Commission
19 agrees. What we are trying to do is to eliminate
20 issues that are not reasonably in contention by any of
21 the parties that wouldn't be of any moment to the
22 Commission.

23 Also, in terms of timing of narrowing the

24 issues, typically at least in court practice where that
25 occurs is beginning with a prehearing conference. The

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1 parties under the direction of the Court will get
2 together to see what issues they can agree on so as to
3 narrow the amount of time that needs to be spent before
4 the Court or, in this case the Commission.

5 I think this is an appropriate time to begin
6 scheduling that and to have the discussions start.

7 JUDGE HAENLE: You're all certainly welcome
8 to get together at any point to discuss settlement as I
9 indicated.

10 MR. MARSHALL: Again, most of the time in
11 proceedings before the Court, that's done under the
12 direction of the Court. But the Court will actually
13 affirmatively request the parties to meet at a specific
14 time and place so that they can get as much done as
15 they can among themselves to eliminate the time spent
16 before the Commission.

17 JUDGE HAENLE: We will be discussing
18 discovery schedule in a few minutes after we're done
19 discussing schedule so we can cover that at this time.

20 I believe Mr. Cedarbaum has comments next.

21 MR. CEDARBAUM: Just a couple points. First
22 of all with regard to the notion that staff and other
23 parties have had all the information before them since

24 1991 with which to evaluate these contracts, it's my
25 understanding that there is a file room up at Puget's

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1 office or maybe at Perkins Coie which is jam packed
2 with archive boxes full of material that has just
3 become available to the parties for their review even
4 though the Company was asked for all information on
5 which it was relying for prudence in the earlier phase
6 of this case.

7 So, we have got a lot of discovery to do in
8 this proceeding based on information that was not
9 available to us even though it was requested.

10 Secondly, the Commission clearly stated in
11 its order issued earlier in this proceeding that the
12 Company had not yet carried its burden of proof with
13 regard to prudence of these contracts. And so if you
14 take all of Mr. Marshall's statements with regard to
15 the history since 1991 and place the happiest face on
16 it from his point of view, the Commission had all that
17 before it and still at this point has held that the
18 Company has not carried its burden.

19 So, we certainly have no problem with the
20 schedule whatsoever. We think that this is going to be
21 a case which is going to be heavily front loaded with
22 discovery. We anticipate substantial data requests.
23 We anticipate at least one round of depositions.

24 Perhaps more than that. We think that sufficient time
25 to carry out that discovery is absolutely necessary,

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1 and the dates set go hand in hand with that notion.

2 Finally, it's my understanding that the
3 Commission wanted this proceeding to tie in with the
4 PRAM 3 true-up, which will be scheduled around October
5 1 or in that time frame. So, the notion was to have
6 rates from this case tie in with the PRAM 3 true-up,
7 which will be later on in 1994.

8 So, it makes sense from that perspective as
9 well.

10 One final comment, and we haven't actually
11 gotten to the materials that Mr. Marshall handed out
12 this morning, which essentially as I take it is a
13 motion for the Company's proposed schedule.

14 I don't know what you want to do with that,
15 whether that's going to be accepted by the Commission
16 or not. I would move to strike it from the record
17 completely. It's my understanding -- and perhaps Mr.
18 Adams can speak to this in more detail -- but it's my
19 understanding that much of the information, if not all
20 of the information, contained in those materials has
21 already been stricken by the Commission -- let me back
22 up.

23 That material was attached to the Company's

24 petition for reconsideration and submitted earlier in
25 this case. And it has already been stricken by the

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1 Commission. This is just another attempt by the
2 Company to place that information before the Commission
3 and have it become a part of this record. And it's
4 purely argumentative.

5 So, we would want this material to be not
6 accepted at all. We would want it rejected by the
7 Commission and returned to the Company, which would be
8 consistent with the Commission's earlier striking of
9 that information with the Company's petition for
10 reconsideration.

11 JUDGE HAENLE: There is material in the
12 Company's submission that is not the subject of a
13 current motion to strike, is there not, Mr. Cedarbaum?

14 MR. CEDARBAUM: Again, I was not involved in
15 this case until this morning leading up to this
16 prehearing conference. I'm not sure of the exact
17 details. Perhaps Mr. Adams or Miss Brown can fill in
18 more of the details.

19 It's my understanding that the declaration
20 of William Weaver which is attached to the petition or
21 the motion that is submitted this morning or handed out
22 this morning is exactly what the Commission has already
23 stricken. That was attached to the Company's petition

24 for reconsideration.

25 So, having already been stricken, I don't

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1 think it ought to be reoffered and made part of this
2 record in some other form or for any other purpose.

3 Actually, I think that that in many ways
4 just goes to argument and not -- it certainly seems to
5 me to be broader than the stated purpose that the
6 Company has resubmitted it for.

7 JUDGE HAENLE: I know that the Commission
8 requested comments on what portions, if any, of the
9 Company's submission should be stricken. I'm not sure
10 that I recall that the Commission has acted on that
11 yet.

12 MR. MARSHALL: They have not.

13 MR. ADAMS: Your Honor, the Commission
14 struck the filing and allowed official requests for
15 striking portions. Mr. Weaver's attachment and
16 affidavit or whatever as I recall was rejected and was
17 stricken right on the spot. The question was other
18 references made by the Company that perhaps should be
19 stricken as being outside the record.

20 MR. MARSHALL: There was an indication it
21 might be stricken, and there was further argument on
22 that. We pointed out that this submission was the
23 identical type of submission that we made following the

24 PRAM 2 order. That is, it reflected what the market
25 reaction was and reflected certain accounting problems

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1 created by the order itself.

2 We pointed out that the Commission --

3 JUDGE HAENLE: My question was only whether
4 the Commission had actually acted on it or not, Mr.
5 Marshall.

6 Does anyone have a document in front of them
7 indicating that the Commission has acted on it?

8 MR. MARSHALL: They have not finally acted
9 on it. That's irrelevant. This --

10 JUDGE HAENLE: Excuse me. I need to know
11 whether the Commission has actually acted on the
12 request. It seems to me something was stricken and
13 asked for comments on some other portion. I don't have
14 any of that in front of me now.

15 MR. CEDARBAUM: My understanding is the
16 Commission has issued a letter with regard to the
17 material that was attached to this motion that we
18 received this morning. We can take a break and go
19 retrieve that.

20 MR. ADAMS: Your Honor, just to fill in the
21 letter. There was a letter asking for responses to the
22 various requests for the petitions for reconsideration.
23 In that letter there was a specific paragraph that

24 dealt with this specific exhibit. I think you'll find
25 that. It's a letter of about the first week or two --

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1 MS. BROWN: October 6.

2 MR. ADAMS: I think that fairly spells out
3 what the Commission is going to do with this.

4 JUDGE HAENLE: Did you have comments on the
5 schedule, Mr. Adams?

6 MR. ADAMS: Yes, your Honor. I believe -- I
7 think I would support the Commission's proposed
8 schedule as being reasonable and reasonably
9 expeditious.

10 Again, very briefly but perhaps to correct
11 the record, we asked back in February for virtually all
12 of the documents, I guess many of which are now being
13 produced. They were not provided. The testimony of
14 Mr. Blackmon, contrary to Mr. Marshall's
15 representation, rejected some of the costs based on
16 prudence. That's part of the case.

17 At least public counsel has challenged in
18 the prior proceeding some of the contracts. We
19 received a letter -- and I don't know whether it's part
20 of the file -- on October 5 from Mr. Nostrand
21 indicating the availability of some of the materials
22 they retrieved from archives and requested expeditious
23 treatment. It took us to the end of October before we

24 were able to get our witness there because they kept
25 rejecting because of the confidentiality and no

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1 protective order. Subsequently, it is my
2 understanding, there are now more boxes available.

3 And we provided data requests to the Company
4 dated November 2. They have still not been responded
5 to. It's been indicated to us that the 10-day rule
6 does not apply because we haven't had the prehearing
7 conference.

8 The bottom line of this is we are being told
9 we need expeditious treatment. But when we try to get
10 in there to speed up the process, we have been not
11 allowed to proceed expeditiously.

12 So, I think the kind of schedule the
13 Commission has proposed is extremely reasonable, given
14 the complexity of these issues.

15 Finally, I think the gist of the
16 Commission's order in the underlying case is that the
17 burden in this proceeding is on Puget and not the other
18 parties. We don't have any objection meeting with the
19 Company and trying to narrow issues. But it is not the
20 intent of counsel that we have to identify what we
21 think is imprudent at this point. It's the Company
22 that must go forward to show prudence. And we'll try
23 to work with them to narrow the issues.

24 MR. MARSHALL: Yes. With regard to the
25 proposed schedule for consideration at the prehearing

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1 conference which we filed for obvious consideration by
2 you at this time, we have attached Mr. Weaver's
3 declaration in order to show two things:

4 First, the need for an expedited review
5 based on the accounting issue identified in his
6 declaration. We had proposed earlier that that be done
7 by year end. We are proposing in this that it be done
8 by January 20 because that would be the date on which
9 review is taken of the company books at year-end.
10 Rather than have it be at the end of December it could
11 be as late as January 20 and still resolve these
12 accounting issues before that time.

13 This declaration is in aid of showing that
14 there is a definite need to have this proceeding
15 expedited. It would be unfair to the Company to have
16 the Company out there with these things unresolved.
17 And the declaration also went to the aid of showing
18 that it's not unreasonable to the other parties to do
19 that.

20 Whether they agreed that all the data that
21 could possibly relate to these contracts has been
22 produced earlier or not, they will have to admit that
23 these contracts are on file with the Commission, had

24 been on file with the Commission for a long time, that
25 they had been the subject of discussion and review and

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1 thought by the parties for a long time.

2 Mr. Adams mentioned that there was some
3 material that we made available early on. The
4 non-confidential materials were made available and
5 could have been reviewed at any time by any of the
6 parties. Mr. Blackmon is the only one so far who has
7 gone through and spent any time with that.

8 The confidential materials are now available
9 to everybody. They can look at those under the
10 protection of the Commission's protective order.

11 I think we're trying to make out of these
12 eight contracts something far more complicated than
13 needs to be made. Again, there is no question that
14 these contracts are below avoided costs. They are
15 contracts that are in operation --

16 JUDGE HAENLE: Let's not get into the
17 merits, Mr. Marshall.

18 MR. MARSHALL: I'm not getting into the
19 merits.

20 JUDGE HAENLE: It sounds to me like you're
21 getting into the merits.

22 MR. MARSHALL: I'm giving the reasons why
23 this can be expedited. I'm responding to what Mr.

24 Adams and Mr. Cedarbaum said about what is known and
25 what is unknown.

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1 The simple matter is that a lot is known
2 about these contracts already. And I have yet to hear
3 exactly what is unknown about these that would make a
4 difference. In other words, there is no reason that I
5 have heard articulated why these contracts can't be
6 reviewed on the schedule that we have indicated. There
7 has been no specific discussion about any specific
8 issue in any of the eight contracts where somebody has
9 said there is a specific cost that shouldn't be allowed
10 even though these contracts have been available.

11 Again, we believe that there is ample reason
12 to have them reviewed on the schedule that we proposed
13 because of the problems with the accounting. The
14 parties had the materials that would enable them to
15 undertake the review. There is no reason why the
16 review can't be made earlier rather than a year from
17 now.

18 JUDGE HAENLE: Okay. What I will do is take
19 your comments back to the Commission and see if they
20 want to reconsider the schedule they have set up. I
21 will let you know there is going to be a prehearing
22 conference order coming out of this, and I will let you
23 know in the prehearing conference order what the

24 response is. You have made a motion to strike and I
25 will make note of the Commission's desires if that's

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1 all right with the parties.

2 In the meantime, let's assume this schedule
3 is going to go forward as it's set out, and let's talk
4 about setting a discovery schedule, assuming for today
5 that the schedule will go forward as I have indicated
6 it is.

7 If the Commission indeed decides it wants to
8 change the schedule in some manner, then we will need
9 to get back again and discuss another discovery
10 schedule. Let's go off the record to discuss that
11 right now.

12 (Recess.)

13 JUDGE HAENLE: Let's be back on the record.

14 During the time we were off the record, the
15 parties were discussing discovery. We set a date of
16 December 15 when the Company's materials are due.
17 These are the materials from the prior record which
18 they wish to have the Commission consider in
19 determining the prudence of these contracts.

20 I think after some discussion we decided the
21 best way to do it would be to have each document
22 separate with an eye toward marking them separately.
23 But I had asked for a master list of what these

24 materials were as well and asked that the other parties
25 when they put theirs together at the time they pre-file

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1 their materials also include such a master list.

2 I don't want this to be all one giant
3 document because I think it would be very hard to make
4 use of such a document. What I do want them -- I want
5 them set up so that we can consecutively number them,
6 and I want a master list provided with them.

7 As far as I'm concerned, Mr. Marshall, you
8 can start with No. 2052 and number them for
9 identification in that manner and include those numbers
10 on your master list.

11 We discussed also that the counsel would
12 agree that these exhibits which are materials from the
13 prior record would not require a sponsoring witness for
14 authenticity or identification, but that they would
15 still be subject to argument about admissibility on
16 other grounds, such as relevance.

17 Is there any portion of our discussion about
18 those procedures that I missed and that needs to be
19 included in the record?

20 MR. MARSHALL: I thought we agreed that we
21 would mark the exhibit rather than the name of a
22 sponsoring witness, we would just call it prior record
23 or some other such designation to clearly identify that

24 as falling within this category of material?

25 JUDGE HAENLE: If you want to do it in that

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1 manner, that's fine with me. The master list of those
2 materials would do that for me. But if you want to put
3 something in the upper corner, that would be fine as
4 far as I'm concerned.

5 Anything else on that particular aspect?

6 We also discussed a couple of other
7 matters. The proposal was made -- there were several
8 proposals made. I think Mr. Cedarbaum made several.
9 First, a two-week window before each stage of the
10 hearing during which time discovery requests could not
11 be made.

12 Second, that the parties would later agree
13 on the dates for depositions, but anticipate that the
14 work toward having the depositions of the company
15 witnesses completed by the end of February.

16 And, third, that the parties work toward a
17 shorter turnaround time for responding to data requests
18 beginning with the staff/intervenor/public counsel
19 pre-filing times. And I believe he cited the five-day
20 turnaround response time that the parties had agreed to
21 at that stage of the 1262 general case.

22 In addition to that, Mr. Marshall indicated
23 that the Company wanted to -- I didn't finish writing

24 it down. Just a second -- that in general the Company
25 didn't feel that it would have enough time for

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1 discovery and that in partial mitigation of that the
2 Company would propose to begin serving data requests on
3 all of the parties right away rather than waiting until
4 the parties had prefiled their testimony.

5 Did I miss any portion of the discussion
6 about discovery other than the Company requesting that
7 the schedule times be changed to allow the Company
8 additional time for discovery?

9 MR. CEDARBAUM: One thing that just came to
10 mind, that would be consistent with the prior phase of
11 the case. But there were data request numbers by
12 blocks that the parties took for themselves. I would
13 suggest we do the same thing, starting with later
14 numbers, but we can talk about that off the record and
15 do that informally.

16 JUDGE HAENLE: That sounds fine to me if it
17 will allow you to help identify what they are. You can
18 discuss that among yourselves informally, certainly.

19 Did you want to briefly recap your comments
20 about those discovery issues, Mr. Marshall?

21 MR. MARSHALL: Yes. We pointed out that the
22 proposed schedule here for staff and intervenors'
23 filing on May 4 with cross-examination on June 6 to 10

24 was only a four-week period, which didn't give us
25 sufficient time to do both data requests and

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1 depositions. It was certainly much shorter than the
2 five months or four months or whatever the parties are
3 calculated that they have to do similar discovery of
4 the Company.

5 What we would propose to do is to try to
6 increase that period of time by having the staff
7 pre-file earlier. We also proposed that we, given the
8 nature of some of the comments already being made about
9 the contracts, could begin making data requests now
10 rather than waiting until May 4 when the staff and
11 intervenors file their prefiled testimony.

12 The reason we didn't do depositions in the
13 general case is because we had an identical problem.
14 That is, we had too few days in order to do both data
15 requests and depositions. That, we think, needs to be
16 addressed. It needs to be in some fashion proportional
17 to the time available for the other parties to do both
18 data requests and depositions.

19 We need at least two months in order to do
20 an adequate job. Again, if the issues aren't narrowed.
21 Our hope is that the issues of the parties can be
22 narrowed.

23 JUDGE HAENLE: Mr. Cedarbaum?

24 MR. CEDARBAUM: Just a few comments, your
25 Honor.

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1 First of all, we would oppose any notion or
2 any request that the Company be allowed to make data
3 requests of the staff prior to the staff filing its
4 case. That is, first of all, contrary to the
5 Commission's discovery rule in WAC 480-09-408,
6 subparagraph A, which specifically prohibits that type
7 of practice.

8 Secondly, as I indicated off the record, I
9 think it interferes with the staff preparation of its
10 testimony. It distracts staff from the preparation of
11 that testimony in order to respond to Company data
12 requests.

13 And, thirdly, I think that a party ought not
14 to be placed in the position of giving another party a
15 snapshot or a preview of its case prior to the filing
16 of its case.

17 For those reasons we would object to that
18 proposal by the Company. We don't, however, object to
19 the staff having a five-day turnaround time to respond
20 to the Company's data requests after our case is filed,
21 provided that the Company also agree to that same
22 shortening of time after they filed their rebuttal case
23 and that's consistent with the Commission's first

24 supplemental order in this proceeding on Page 4, which
25 set out a discovery schedule.

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1 So, we're just asking that that be
2 continued.

3 JUDGE HAENLE: You didn't address that, Mr.
4 Marshall. If the five-day turnaround were adopted,
5 would you agree to that on rebuttal?

6 MR. MARSHALL: The five-day turnaround
7 really doesn't help us that much with the basically
8 two-week schedule that we would have to make data
9 requests. We, of course, appreciate that, I suppose.
10 But it doesn't really address the issue.

11 JUDGE HAENLE: The question is would you
12 agree to a five-day turnaround for the Company's point
13 of view as well?

14 MR. MARSHALL: I think the thing that needs
15 to be addressed is there is inadequate time to make
16 data requests of the staff in that four-week period,
17 which has been shortened to two weeks. Even if we have
18 a five-day turnaround, it doesn't help us much.

19 JUDGE HAENLE: I understand that's your
20 position. And the Commission may act on that.
21 Starting as a starting point, if this schedule remains
22 as it is now, the proposal is that there be a five-day
23 turnaround on data requests after the pre-filing of the

24 other parties.

25 The question that I'm placing to you is:

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1 Would the Company agree to that five-day turnaround
2 under those circumstances for its rebuttal portions?

3 MR. MARSHALL: Yes, it would.

4 JUDGE HAENLE: Okay. Thank you.

5 Did you have comments, Mr. Adams, that we
6 missed?

7 MR. ADAMS: Your Honor, no. Yes. One, I
8 would agree to the staff proposal. I think it is
9 reasonable. I agree to the five-day turnaround. I
10 think that's reasonable as we did in the general rate
11 case.

12 I also think there is a lot of puffery going
13 on by the Company that now needs discovery on issues we
14 were just told that nobody raised in the general rate
15 case. Mr. Blackmon challenged that. The Company has
16 available at this point the cross and testimony of Mr.
17 Blackmon. And they can adequately after the pre-filing
18 of our case get any additional information they need
19 from Mr. Blackmon or any of our other witnesses.

20 JUDGE HAENLE: That reminds me. When you
21 submit these materials from the previous portions of
22 the case, you're going to need to do it with an
23 original and nineteen copies as you would any other

24 exhibit. You can discuss among yourselves whether you
25 want to serve everybody else with copies. Maybe you

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1 already have the record. Maybe you don't. But for the
2 Commission we need an original and nineteen.

3 JUDGE HAENLE: Mr. Bennett?

4 MR. BENNETT: Nothing, your Honor.

5 JUDGE HAENLE: Mr. Trincherero?

6 MR. TRINCHERO: WICFUR would gladly submit
7 to the five-day turnaround period on the data requests
8 from the Company.

9 In addition, I might point out that the
10 two-week prior to hearing date data request cut-off
11 period might also be shortened to a five-day prior to
12 hearing date cut-off in light of the fact that we're
13 turning around data requests within five days. That
14 would in part alleviate Mr. Marshall's concern about
15 the Company's lack of time for discovery.

16 Furthermore, if the Commission were to
17 consider changing the schedule in order to address Mr.
18 Marshall's concerns, I would recommend that the 6/6
19 through 6/10 hearing date be moved back.

20 JUDGE HAENLE: I'm sorry. I don't
21 understand. Moved back to what?

22 MR. TRINCHERO: Be delayed if we are to
23 change the schedule in order to solve Mr. Marshall's

24 purported problem with discovery time.

25 Finally, I also concur in staff's objection

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1 to the request that data requests on parties be
2 commenced prior to that party's filing of its direct
3 case.

4 JUDGE HAENLE: Anything else?

5 MR. CEDARBAUM: I agree with counsel's
6 statement. I assumed that by having the five-day
7 turnaround time that that shortened the window in which
8 data requests would not be asked from two weeks to one
9 week. So, I would agree with that.

10 JUDGE HAENLE: Anything else?

11 MR. MARSHALL: We did have in the general
12 case an issue that came up just before the cut-off on
13 data requests before the filing of the staff and
14 intervenors' case. We experienced a huge number of
15 data requests, people getting them just in under the
16 wire.

17 We would propose that there be some sort of
18 effort by the parties to get their data requests out
19 long before the last minute in this first series of
20 data requests. It was impossible for the Company to
21 respond adequately to those requests because they were
22 made in that fashion. And, thus, if the parties wait,
23 we have only got one set of data requests so far. They

24 have been from public counsel. If parties wait until
25 the last minute, we won't be able to do an adequate job

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1 of responding.

2 My proposal would, therefore, be that,
3 except for good cause, that the data requests be cut
4 off a month before the parties filed their initial
5 testimony, staff/intervenors, the good cause being
6 that, if they discover that there is a need to
7 supplement something that they haven't done before,
8 that they could do that.

9 That will still give the parties ample time
10 to make their data requests of the Company. They have
11 already had a month to date. They have several more
12 months remaining. This proposal would not be a burden
13 on them. It would help end the last-minute problem.

14 MR. CEDARBAUM: Can I respond?

15 JUDGE HAENLE: Yes.

16 MR. CEDARBAUM: It's the staff's intent to
17 get as many of our data requests out as soon as we can
18 and make that effort all the way through this case.
19 But I think it's also important that the staff -- and
20 perhaps other parties will agree -- that prior to the
21 filing of their case, there is sometimes a need to have
22 more information in order to put their cases together.

23 There is also oftentimes needs to follow up

24 on data requests because the initial response is either
25 insufficient or incomplete or it prompts additional

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1 questions.

2 And so for those reasons, again, we'll make
3 every effort to get our data requests out as soon as we
4 can and to be as complete as we can. But we're not
5 going to waive our right to ask data requests prior to
6 the filing of our case if we think it's necessary.
7 We're not going to ask for unnecessary data.

8 JUDGE HAENLE: Anybody else?

9 MR. ADAMS: I would just say I don't think
10 an order is necessary at this point. But I think you
11 can count on we would certainly give our best efforts
12 to not cause any last-minute problem. Obviously we
13 have already asked some data requests. We hope to do
14 it early in this case.

15 JUDGE HAENLE: Assuming that -- maybe I
16 should say basing our comments on the schedule that I
17 read into the record, I would have the following
18 thoughts:

19 First of all, that I feel that a two-week
20 window is appropriate before the stage of the Company
21 case. But I think that the five-day window would be
22 better after the pre-filing of the
23 staff/intervenor/public counsel materials. So, that

24 would be there are no data requests after that time.

25 I am not willing to put a prohibition on

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1 that -- the one-month window that Mr. Marshall asked
2 for. But I would urge the parties that they are
3 certainly more likely to get their data requests
4 responded to if they provide them early and urge them
5 to get them in early so that the Company can fully
6 respond. Don't wait until the last minute, or you
7 won't have the material.

8 I would expect the parties to agree on dates
9 for depositions. I'm not going to try to set any limit
10 on when the depositions can be done. But I would warn
11 the parties that failure to cooperate with the
12 deposition requests would be brought to the
13 Commission's attention and, I assume, considered by the
14 Commission.

15 I think the five-day turnaround after the
16 staff/intervenor/public counsel is a good idea and
17 would ask the parties to work toward a shorter
18 turnaround time. But I will set a five-day turnaround
19 for responses after the staff/intervenor/public counsel
20 pre-filing, which would also include the Company's
21 rebuttal.

22 MR. CEDARBAUM: We're talking about working
23 days?

24 JUDGE HAENLE: Working days, yes. The
25 two-week window is a two calendar week window. The

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1 five-day window are five working days.

2 And I am not going to -- I don't feel that
3 it's appropriate for the Company to start serving its
4 data requests on other parties before they pre-file. I
5 don't think that's productive in terms of trying to
6 anticipate what a party's position is going to be.

7 I don't have the problem that some of you
8 seem to have with the idea of giving away what your
9 position is going to be. I just think it's kind of a
10 waste of time for the Company to ask data requests
11 about what it assumes the parties' positions are going
12 to be because they might, indeed, be different than
13 that. It's not a matter of not tipping your hand.
14 It's a matter of not doing unnecessary steps, in my
15 opinion.

16 So, that's as far as we have gotten, I
17 guess, on any discovery scheduling. It's going to be
18 up to all of you to cooperate on scheduling depositions
19 if depositions are necessary.

20 I'll remind you, also, as I told you before
21 we went on the record, that discovery responses need to
22 be made directly to Mr. Cedarbaum. It should not be
23 routed through Steve McLellan, who is the Secretary of

24 the Commission.

25 The only exception is response to bench

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1 request. Any response to bench requests should be sent
2 through the Secretary of the Commission so that it can
3 be properly distributed.

4 I'll remind you also that when you provide
5 confidential materials you will need to segregate the
6 confidential materials, put them all together in an
7 envelope, and be sure your original and nineteen copies
8 do not contain confidential materials. And do not
9 include confidential materials in the courtesy copies
10 that you send me. I do not want the confidential
11 materials to be sent in that manner.

12 Was there anything else we need to discuss
13 other than the status of the other intervenors?

14 Is there anything we have missed? What I
15 will be doing is putting out a prehearing conference
16 order. I will make the transcript of this session
17 available to the Commissioners. If they decide that
18 they want to revise the schedule, I'll ask them to let
19 you know that as soon as possible. And I would expect
20 that you would be notified about that in the prehearing
21 conference order.

22 I would also rule on Mr. Cedarbaum's motion
23 to strike the submission of the Company dated the 19th

24 of November.

25 My thought about the other intervenors is

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1 the following:

2 The notice of the prehearing conference
3 contained language indicating that if a party wished to
4 preserve its party status that it would need to show up
5 at this prehearing conference. The result then is that
6 those parties who have not sent representatives to this
7 prehearing conference -- and I'll note that it is now
8 11:30 and the prehearing conference began at 9:30 -- I
9 don't recall. I don't know if I dismissed them as
10 intervenors.

11 I in some manner would now terminate their
12 intervenor status. They have indicated by their
13 failure to show up that they no longer have an interest
14 in this proceeding.

15 What I would propose to do further than
16 that, though, is include this in the prehearing
17 conference order: As all of you are obviously very
18 aware, it's been snow and ice out there for a couple of
19 days. There is the possibility that someone might not
20 have appeared because of the weather. And I would
21 indicate that, if someone wished to during the ten-day
22 period when a party can ask for a modification of the
23 prehearing conference order, ask that my ruling on its

24 intervenor status be reversed, the Commission I would
25 imagine would consider weather to be good cause.

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1 Is there anything else we need to discuss?

2 MR. ADAMS: I don't mean to nitpick. When
3 you say terminate intervenor status, there are still
4 ongoing issues in the underlying case.

5 JUDGE HAENLE: That is what I had in mind.
6 Status in this portion of the case starting with this
7 prehearing conference onward, not having to do with the
8 prior orders and the petitions for administrative
9 review and the responses and all of that that are
10 ongoing now. You're absolutely right. And I will try
11 to make that very clear in the prehearing conference
12 order. Thank you for that.

13 I think what the practical effect may be is
14 that those parties will continue to get things served
15 to them by the Commission. I'm not going to ask that
16 they be stricken from the master service list. But it
17 means those of you who are pre-filing things and
18 distributing to parties about the prudence portion
19 going from now on would not need to serve those parties
20 would be my reading of the practical effect.

21 Mr. Cedarbaum?

22 MR. CEDARBAUM: If there is no response by
23 one of those parties, can we assume that their

24 intervention remains stricken in this proceeding?

25 JUDGE HAENLE: What I would put into the

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1 pre-conference order, I'll include that their status
2 for this portion is somehow terminated. If they want
3 to request a reversal of that ruling that they would
4 need to do so. If they did not do that within the ten
5 days, I would assume that they did not want to request
6 a reversal of the ruling and will waive any rights that
7 they had in that regard then.

8 Anything else we need to discuss?

9 MR. HEDMAN: Did you want to identify who
10 the contact person should be?

11 JUDGE HAENLE: Several of you are here on
12 behalf of somebody who is actually going to be the
13 contact person. I would like one person named from
14 each party and service on that person will be
15 considered sufficient and you're responsible for your
16 own internal intervention.

17 Who will that be for the Company, Mr.
18 Marshall?

19 MR. MARSHALL: Mr. Van Nostrand.

20 JUDGE HAENLE: All right.

21 For the Commission?

22 MR. CEDARBAUM: Me.

23 JUDGE HAENLE: Mr. Cedarbaum.

24 Mr. Adams, I assume it's Mr. Manifold?

25 MR. ADAMS: That is correct.

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1 JUDGE HAENLE: Mr. Trinchero?

2 MR. TRINCHERO: It will be me.

3 JUDGE HAENLE: Mr. Bennett?

4 MR. BENNETT: Yes, me.

5 JUDGE HAENLE: And for Pacificorp?

6 MR. HEDMAN: James Paine. He is with Stoel,
7 Rives, Boley, Jones, and Grey, 900 Southwest Fifth
8 Avenue, Suite 2300, Portland, Oregon 97204-1268.

9 JUDGE HAENLE: Anything else we need to
10 discuss this morning? All right. I'll adjourn the
11 prehearing conference then, and a prehearing conference
12 order will issue.

13 (At 11:40 a.m. the above hearing was
14 recessed)

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