

Docket No. U-180680 - Vol. II

In the Matter of: Puget Sound Energy Transfer

January 9, 2019



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



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1 A P P E A R A N C E S

2
3 ADMINISTRATIVE LAW JUDGES:

4 RAYNE PEARSON
5 ANDREW O'CONNELL
6 Washington Utilities and
7 Transportation Commission
8 1300 South Evergreen Park Drive SW
9 Olympia, Washington 98504
10 (360) 664-1160

11 FOR COMMISSION STAFF:
12 (Via bridge line)

13 JENNIFER CAMERON-RULKOWSKI
14 Office of the Attorney General
15 1400 South Evergreen Park Drive SW
16 PO Box 40128
17 Olympia, Washington 98504
18 (360) 664-1186
19 jcameron@utc.wa.gov

20 FOR PUBLIC COUNSEL:
21 (Via bridge line)

22 LISA GAFKEN
23 Office of the Attorney General
24 800 - 5th Avenue, Suite 2000
25 Seattle, Washington 98104
(206) 464-6595
lisa.gafken@atg.wa.gov

FOR PUGET SOUND ENERGY:
(Via bridge line)

SHEREE STROM CARSON
Perkins Coie LLP
10885 NE 4th Street, Suite 700
Bellevue, Washington 98004
(425) 635-1422
scarson@perkinscoie.com

1 A P P E A R A N C E S (Cont.)

2 FOR THE ENERGY PROJECT:
(Via bridge line)

3 SIMON FFITCH
4 Attorney at Law
321 High School Road Northeast
Suite D3, Box 383
5 Bainbridge Island, Washington 98110
(206) 669-8197
6 simon@ffitchlaw.com

7 FOR AWEC:
(Via bridge line)

8 TYLER PEPPLER
9 Davison Van Cleve PC
1750 SW Harbor Way, Suite 450
Portland, Oregon 97201
10 (503) 241-7242
tcp@dvclaw.com

11 FOR WNIDCL:
12 (Via bridge line)

13 DANIELLE FRANCO-MALONE
Law Offices of Schwerin Campbell
Barnard Iglitzin & Lavitt LLP
14 18 W Mercer Street, Suite 400
Seattle, Washington 98119
15 (206) 257-6011
franco@workerlaw.com

16 FOR THE FEA:
17 (Via bridge line)

18 RITA LIOTTA
US Navy
1 Avenue of the Palms, Suite 161
19 San Francisco, California 94130
(415) 743-4718
rita.liotta@navy.mil

20 FOR NWECC:
21 (Via bridge line)

22 WENDY GERLITZ
Northwest Energy Coalition
23 811 - 1st Avenue, Suite 305
Seattle, Washington 98104
24 (503) 449-0009
wendy@nwenergy.org

25

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1 A P P E A R A N C E S (Cont.)

2 FOR PGGM:
(Via bridge line)

3 STEVEN GREENWALD
4 CRAIG GANNETT
5 Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
6 Seattle, Washington 98101
(206) 757-8048
7 stevegreenwald@dwt.com
craigannett@dwt.com

8 FOR BCI:
(Via bridge line)

9 SCOTT MACCORMACK
10 Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
11 Seattle, Washington 98101
(206) 757-8263
scottmaccormack@dwt.com

12 FOR OMERS:
(Via bridge line)

13 SHOSHANA BAIRD
14 McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
15 Portland, Oregon 97205
(503) 290-3625
shoshana@mrg-law.com

16 FOR AIMCo:
(Via bridge line)

17 STAN BERMAN
18 Sidley Austin LLP
701 Fifth Avenue, Suite 4200
19 Seattle, Washington 98104
(206) 321-3221
sberman@sidley.com

21 ALSO PRESENT:

22 CHRIS MCGUIRE

23 * * * * *

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1 OLYMPIA, WASHINGTON; JANUARY 9, 2019

2 3:05 P.M.

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

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6 JUDGE O'CONNELL: Let's be on the record.

7 Good afternoon. Thank you for all appearing in person
8 or on the phone. We're here for a status conference in
9 the matter of the joint application of Puget Sound
10 Energy, Alberta Investment Management Corporation,
11 British Columbia Investment Management Corporation,
12 OMERS Administration Corporation, and PGGM
13 Vermogensbeheer B.V. for an order authorizing proposed
14 sale -- sales of indirect interests in Puget Sound
15 Energy. It's Docket U-180680.

16 Today is Wednesday, January 9th, 2019, and
17 the time is approximately 3:05 p.m.

18 My name is Andrew O'Connell, and sitting
19 next to me is Rayne Pearson. We're administrative law
20 judges with the Washington Utilities and Transportation
21 Commission, and we are co-presiding over this status
22 conference.

23 We are holding this conference to resolve
24 issues regarding the procedural schedule as a result of
25 several parties to the case indicating that they had

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1 reached a settlement in principle and wish to modify the
2 procedural schedule.

3 First, we will take appearances beginning
4 with the joint applicants, and a short appearance will
5 be sufficient.

6 Ms. Carson?

7 MS. CARSON: Good afternoon -- yes. Good
8 afternoon, Your Honors. Sheree Strom Carson with
9 Perkins Coie representing PSE, one of the joint
10 applicants. And there are other regulatory counsel on
11 the line representing other joint applicants.

12 JUDGE O'CONNELL: Okay. Thank you.

13 If those other joint applicants would care
14 to please identify themselves.

15 MR. GREENWALD: This is Steven Greenwald,
16 Davis Wright Tremaine, on behalf of PGGM.

17 MR. GANNETT: Craig Gannett, also on behalf
18 of PGGM.

19 MS. BAIRD: This is Shoshana Baird from
20 McDowell Rackner Gibson on behalf of OMERS.

21 MR. BERMAN: This is Stan Berman of Sidley
22 Austin on behalf of Alberta Investment Management
23 Corporation, AIMCo.

24 MR. MACCORMACK: And Scott MacCormack on
25 behalf of BCI.

1 JUDGE O'CONNELL: Okay. Thank you.

2 And for Commission Staff?

3 MS. CAMERON-RULKOWSKI: Jennifer

4 Cameron-Rulkowski, Assistant Attorney General, on behalf
5 of Commission Staff.

6 JUDGE O'CONNELL: And Alliance of Western
7 Energy Consumers?

8 MR. PEPPLER: Good afternoon. Tyler Pepple
9 for AWEC.

10 JUDGE O'CONNELL: The Energy Project?

11 MR. FFITCH: Good afternoon, Your Honors.
12 Simon Ffitch, Attorney at Law, for The Energy Project.

13 JUDGE O'CONNELL: The Northwest Energy
14 Coalition?

15 MS. GERLITZ: Northwest Energy Coalition
16 doesn't have a counsel of record in this case.

17 JUDGE O'CONNELL: And who is speaking on
18 behalf of Northwest Energy Coalition?

19 MS. GERLITZ: This is Wendy Gerlitz with --
20 I'm the policy director with the Northwest Energy
21 Coalition.

22 JUDGE O'CONNELL: Thank you.

23 Public Counsel unit?

24 MS. GAFKEN: Good afternoon. This is Lisa
25 Gafken, Assistant Attorney General, appearing on behalf

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1 of Public Counsel.

2 JUDGE O'CONNELL: Mr. Medlin?

3 MR. MEDLIN: Yes, this is Bradley Medlin of
4 Robblee Detwiler on behalf of IBEW and UA 32.

5 JUDGE O'CONNELL: And, Ms. Franco-Malone?

6 MS. FRANCO-MALONE: Yes, Your Honor.
7 Danielle Franco-Malone of Bernard Iglitzin & Lavitt on
8 behalf of the Washington and Northern Idaho District
9 Council of Laborers.

10 JUDGE O'CONNELL: Thank you.

11 And, Ms. Liotta?

12 MS. LIOTTA: Yes, Your Honor. This is Rita
13 Liotta representing the Federal Executive Agency.

14 JUDGE O'CONNELL: Okay. Thank you.

15 I note that we have representatives from all
16 parties in the matter, so thank you all for attending on
17 such short notice.

18 I want to get straight to addressing a
19 potential date for a settlement hearing in this matter.
20 I'd like to first -- so we've received the letter from
21 settling parties as well as a response from
22 Ms. Franco-Malone and Mr. Medlin. I'd like to first
23 hear from the settling parties as to why they believe
24 the current hearing dates should be moved up. Should I
25 address my questions to Ms. Carson if that's okay?

1 MS. CARSON: That's fine. I'm happy to
2 respond and then others can join in as well.

3 So the parties -- I just want to give a
4 quick backdrop. The parties did have a settlement
5 conference as scheduled on December 18th. After that
6 date, negotiations continued with parties where
7 settlement appeared possible. We did yesterday reach
8 agreement on a full multiparty settlement in principle
9 with the joint applicants, Commission Staff, AWEC, The
10 Energy Project, and the Northwest Energy Coalition. We
11 were also informed yesterday that Public Counsel may
12 join in the settlement, but needs to confirm authority.

13 I have touched base with Ms. Liotta with
14 FEA, and she has informed me that she does not oppose
15 the settlement or an expedited hearing date for the
16 settlement. And Commission Staff reached out to the
17 other nonsettling parties, WNIDCL, IBEW and UA, who are
18 not -- who oppose an expedited hearing date and
19 schedule.

20 It was a -- it is a common procedure and, in
21 fact, required by the rules that when a settlement in
22 principle is reached, that we notify the Commission and
23 ask for the procedural schedule to be suspended, which
24 is what we did yesterday when we filed our letter. It
25 is also a very common procedure when settlement is

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1 reached at a relatively early stage for the procedural
2 schedule to be modified such that the hearing date is
3 moved up from -- from the original litigated schedule
4 hearing date, and that is what we are requesting.

5 It is an important term of the settlement
6 from the joint applicants' perspective and agreed to by
7 other parties that we would seek an expedited hearing
8 date for this settlement hearing. It's important to PSE
9 and its board members to -- there's onboarding of new
10 directors, board members, offboarding of those that are
11 leaving. It's important to move through this transition
12 period and get back to business as usual as soon as
13 possible.

14 And so for these reasons, we are -- this is
15 an important term of the settlement, to have an
16 expedited hearing date, and we request the Commission
17 follow its frequently used procedure and do so.

18 JUDGE O'CONNELL: Okay. Thank you.

19 Let me ask Ms. Liotta really quickly,
20 Ms. Carson represented that you have no opposition to
21 the settlement or the proposed schedule by the settling
22 parties; can you confirm?

23 MS. LIOTTA: Yes, Your Honor, that's
24 correct. I informed Ms. Carson today of FEA's position.

25 JUDGE O'CONNELL: Okay. Thank you.

1 Judge Pearson and I have discussed the
2 proposed modifications to the procedural schedule with
3 the Commissioners. We and the Commissioners believe the
4 settlement can be addressed in a shorter time frame than
5 the current schedule, but now I want to turn to the
6 parties that oppose the settlement, to hear from them
7 regarding the proposed February 8th date for a
8 settlement hearing.

9 Let's start with Ms. Franco-Malone. I read
10 your response, and I want to give you the opportunity to
11 explain here what conflict there is with February 8th.
12 Ms. Franco-Malone?

13 MS. FRANCO-MALONE: Yes, Your Honor. Thank
14 you. I am currently scheduled to argue a motion to
15 dismiss in Thurston County Superior Court on February
16 8th and also the only counsel for the Washington
17 Northern Idaho District Council of Laborers in this
18 proceeding. We also have out-of-state witnesses who
19 have been planning to come into the state for the March
20 1st hearing date, that all the parties had taken great,
21 you know, pains to find a date that worked for
22 everybody.

23 For the past several months since that date
24 has been selected, it's been held and people have been
25 making arrangements to be here in Washington for that

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1 hearing date. I do not yet know whether the witnesses
2 who had been planning to come into Washington State for
3 that hearing date would be available for the dates --
4 the date that has been apparently agreed upon by the
5 parties to the settlement. We just learned of it late
6 yesterday.

7 But I think our bigger objection goes to,
8 you know, the lack of any reason that we heard why the
9 date needs to be accelerated by three weeks. This is
10 already an accelerated timeline that the parties are
11 working under. We do acknowledge and recognize that the
12 WAC provides for the parties to notify the Commission
13 when a settlement has been reached and allows for the
14 suspension of the procedural schedule. But I would
15 submit that that is more appropriate in an instance
16 where there are -- there is a long period of time
17 between the date that the settlement has been reached
18 and the date that a hearing has been set.

19 In this case, we're talking about a mere
20 three weeks and I -- I have not heard a significant
21 reason that would require the parties to amend the
22 procedural schedule that had been agreed upon just to
23 move it forward by three weeks. So it seems to me that
24 there's no good reason to do that, and both -- both
25 myself and Mr. Medlin in our letters have articulated

1 the real prejudice that we believe our clients will
2 suffer if the accelerated schedule is implemented and
3 the ways in which that will impede our ability to
4 present evidence and testimony and argument related to
5 the settlement agreement.

6 JUDGE O'CONNELL: Okay. I notice that in
7 your response, you mention that the proposed schedule
8 does not allow a meaningful opportunity for you to
9 present evidence opposing the settlement. Will you
10 please explain?

11 MS. FRANCO-MALONE: Sure, Your Honor. I was
12 looking -- that comment was based on the proposed
13 schedule, which involves us seeing the settlement for
14 the first time, we haven't seen it, on January 15th, of
15 seeing the testimony in support of that settlement on
16 January 18th, and then having just over a week in order
17 to put together our testimony to respond to the
18 substance of that settlement.

19 We would contend that that's -- that's not
20 an adequate amount of time to put together testimony,
21 assess the terms of the settlement, and put forward our
22 evidence, testimony, and arguments. In regards to
23 that -- the proposed terms of the settlement, we think
24 that keeping the March 1st hearing date would allow a
25 less compressed schedule that would give us a more

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1 meaningful opportunity to assess the terms of the
2 proposed settlement and provide hopefully testimony that
3 will be of use to the Commissioners and Your Honors in
4 assessing whether to accept the proposed settlement or
5 not.

6 JUDGE O'CONNELL: Okay. I'm aware that on
7 this coming Friday, January 11th, there is a filing
8 deadline in the current procedural schedule for Staff,
9 Public Counsel, and intervenor response testimony and
10 exhibits in response to the joint applicants' filing.
11 So my understanding is that you and as well as the other
12 parties are already well on your way to addressing the
13 joint applicants' filing.

14 And I'm curious as to your position on being
15 able to take what you've already done, and then with the
16 additional time that's been proposed in the proposed
17 schedule, to address any of the changes or additions
18 that have been made as a result of the settlement
19 agreement.

20 MS. FRANCO-MALONE: Sure, Your Honor. So I
21 certainly hope as well that we will not have to start
22 from scratch, because we were planning on filing
23 testimony on Friday and were well on our way to having
24 that finalized. But that said, without having seen the
25 terms of the settlement, I am not in a position to

1 speculate as to how much additional work or evidence or
2 information we might want to gather to respond
3 specifically to the terms of the proposed settlement.

4 I also don't know whether the terms of the
5 proposed settlement might yield areas in which we would
6 want to seek leave to conduct further discovery, which
7 is also something that the rules contemplate. I'm just
8 not in a position to address that without having seen
9 the terms of the settlement yet.

10 JUDGE O'CONNELL: Thank you.

11 That does bring a question to my mind for
12 Ms. Carson. Have the terms of the settlement been
13 shared with the other parties?

14 MS. CARSON: The terms that were reached
15 yesterday have not been fully shared; however, I think
16 it's important to recognize that the terms that were
17 reached yesterday are very similar to the settlement
18 proposal that was sent out December 21st after the
19 settlement conference by the joint applicants. So
20 everyone has had an opportunity to review those
21 provisions, those additional commitments, and the
22 additional commitments that were agreed upon yesterday
23 are -- are minor additions and revisions to what was
24 circulated December 21st.

25 And I -- and I should say that even what has

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1 been added has -- was all put out during the settlement
2 pretty much. So this is not a situation where the
3 nonsettling parties are prejudiced because they're not
4 going to see the settlement until next week. They're
5 well aware of what every party's proposal was, and
6 they've seen a draft of the settlement or of the
7 settlement commitments. So it's very similar to what
8 was finally agreed upon. And -- and we're happy to
9 circulate those to all the parties to see if other
10 parties are willing to get on board with those terms.

11 JUDGE O'CONNELL: Okay. Thank you.

12 Well --

13 MS. GAFKEN: This is Lisa Gafken, and I just
14 wanted to -- as it's already been stated, Public Counsel
15 at this point neither supports nor opposes the
16 settlement, and it's -- it's possible that we may join
17 the settlement. We are waiting for final authority on
18 that, but I'll just note that the -- this argument is
19 very similar to arguments made in Puget's last rate case
20 where there was a settlement and Public Counsel was not
21 a part of that one.

22 The argument there made -- was made that we
23 were aware of terms that were being talked about and
24 that -- that argument was rejected. That you really
25 don't know what the settlement is until you have a

1 settlement that's filed. I'm not at this point
2 advocating for any particular procedural schedule, but I
3 did want to point that out.

4 JUDGE O'CONNELL: Okay. Thank you.

5 And from the letter of the settling parties,
6 I gathered that Public Counsel, even if you do end up
7 being opposed to the settlement, you are not opposed to
8 the proposed procedural schedule; is that true?

9 MS. GAFKEN: Yes, I'm not -- well, I'm not
10 objecting and I'm also not advocating. I was not part
11 of the discussion that landed on that particular term.
12 I know that that's an important term to the settling
13 parties and part of the settlement that if we join,
14 then, you know, the bed has already been made so to
15 speak. But I'm not advocating here one way or another.

16 JUDGE O'CONNELL: Is Public Counsel
17 available on February 8th?

18 MS. GAFKEN: I actually don't know for
19 certain if my witness is available on February 8th.
20 He's out of the country right now. I've been trying
21 to -- I've been trying to obtain that information. I am
22 available and my analyst is available, you know,
23 internal analyst, but I'm not 100 percent certain if
24 my -- my expert is available. And, you know, that would
25 be certainly something to take up if we need to cross

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1 that bridge in terms of in-person or telephonic
2 appearance. But he is out of state, and so that's --
3 that's a -- that's a concern that I have.

4 JUDGE O'CONNELL: Okay.

5 MS. GAFKEN: My hope is that should we have
6 to cross that bridge, that, you know, we can do so
7 reasonably.

8 JUDGE O'CONNELL: Okay. Thank you.

9 Mr. Medlin, turning to you now. The
10 settling parties indicated that you did not agree to the
11 February 8th date or the proposed schedule, and I have
12 reviewed the response that you filed this afternoon with
13 the Commission explaining your disagreement. I would
14 like to offer you the opportunity to explain your
15 position.

16 MR. MEDLIN: Thank you. Yeah, that's
17 correct. The IBEW and UA 32 oppose it. Similar to
18 Ms. Franco-Malone, we were only made aware of it
19 yesterday after it was already being filed and
20 presented. My clients have relied upon the schedule we
21 already agreed upon with the parties, which is March
22 1st, which was already on an expedited basis, and that's
23 what we've been working back from.

24 As far as availability, I know one of my
25 witnesses, as of right now, is not available on the 8th.

1 I think there's an issue with that we still haven't seen
2 the settlement agreement, so we don't know what the
3 precise terms are. I don't want to rehash all of the
4 things Ms. Franco-Malone said, but I think there should
5 be some consideration given since the labor unions are
6 essentially going to be the nonsettling parties, and
7 Ms. Franco-Malone and I are the two attorneys
8 representing those parties as to what works for our
9 schedule as well. I really wish people would have
10 consulted with us beforehand, but it is what it is, I
11 guess.

12 JUDGE O'CONNELL: Okay. Well, I am quite
13 sensitive to Ms. Franco-Malone's conflict with Thurston
14 County Superior Court and her oral argument, and at this
15 point, I'm curious if there is another option available
16 for a settlement hearing date besides the 8th. Because
17 if we could avoid the situation where a party to the
18 case and their representative is unavailable due to a
19 court date, I would prefer to avoid that conflict.

20 So I'd like to ask Ms. Franco-Malone about
21 your availability on the day before, on February 7th.

22 MS. FRANCO-MALONE: Let me pull up my
23 calendar. Just a moment. I am free on February 7th. I
24 don't know whether any of my witnesses are and I -- I
25 would contend that moving the date up any earlier than

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1 what the settling parties had come up with only
2 exacerbates the prejudice to my client.

3 JUDGE O'CONNELL: I understand.

4 I'd like to hear from the other parties as
5 to their availability on February 7th starting with
6 Mr. Medlin.

7 MR. MEDLIN: I am currently looking at my
8 calendar. I am available on February 7th. I don't know
9 about my potential witnesses. If I just may offer, I
10 know the following week, the week of February 10th
11 through 15th, is a little more open for my witnesses who
12 I've already checked with on the latter part of that
13 week for availability.

14 JUDGE O'CONNELL: Okay. Thank you for that.

15 Well, let me hear from the joint applicants,
16 and we'll go through them in turn.

17 Ms. Carson, what is availability for you and
18 your client on February 7th?

19 MS. CARSON: PSE is available on February
20 7th.

21 JUDGE O'CONNELL: Okay. And, Commission
22 Staff?

23 MS. CAMERON-RULKOWSKI: Commission Staff is
24 available on the 7th.

25 JUDGE O'CONNELL: And, Mr. Pepple?

1 MR. PEPPLER: AWEC is also available on the
2 7th.

3 JUDGE O'CONNELL: Mr. ffitch?

4 MR. PEPPLER: I received a notice from
5 Mr. ffitch that the power went out in his office, so he
6 may have dropped off.

7 MR. FFITCH: I am -- I am here, Your Honor.
8 This is Simon ffitch. Power is back on. Power company.
9 We have availability on February 7th.

10 JUDGE O'CONNELL: Okay. And, Ms. Gerlitz?

11 MS. GERLITZ: Yes, we can be available on
12 the 7th.

13 JUDGE O'CONNELL: Ms. Gafken?

14 MS. GAFKEN: I hate to be the black fly in
15 the ointment, but if it turns out to be the day that is
16 chosen, so be it, I will rearrange my schedule, I am out
17 of the office on the 7th. So at this point, Public
18 Counsel is not available.

19 JUDGE O'CONNELL: Okay. Mr. Medlin
20 mentioned that he had already checked on the following
21 week. Is -- are you still out of the office that
22 following week?

23 MS. GAFKEN: No, I have much, much greater
24 flexibility that following week.

25 JUDGE O'CONNELL: Okay. Ms. Liotta, what is

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1 your availability for February 7th?

2 MS. LIOTTA: Yes, FEA is available February
3 7th.

4 MS. GAFKEN: I -- I'm sorry, this is Lisa
5 Gafken. To finish answering your question about the
6 week of February 11th, I am available every day except
7 Thursday.

8 JUDGE O'CONNELL: That would be Thursday,
9 the 14th, I believe?

10 MS. GAFKEN: That's correct.

11 JUDGE PEARSON: Okay. So in light of the
12 conflicts that several parties have voiced, what about
13 the 15th? What are the parties' availability on the
14 15th? Let's start with the Company. And that would be
15 the afternoon of the 15th because we do have an open
16 meeting that morning.

17 MS. CARSON: PSE and the joint applicants
18 are available on the 15th.

19 JUDGE O'CONNELL: And, Commission Staff?

20 MS. CAMERON-RULKOWSKI: Commission Staff is
21 available the afternoon of the 15th.

22 JUDGE O'CONNELL: Mr. Pepple?

23 MR. PEPPLE: AWEC is also available on the
24 15th.

25 JUDGE O'CONNELL: Mr. ffitch?

1 MR. FFITCH: Energy Project is available on
2 the 15th.

3 JUDGE O'CONNELL: Ms. Gerlitz?

4 MS. GERLITZ: Yes, we are available on the
5 15th.

6 JUDGE O'CONNELL: Ms. Gafken, I'm circling
7 back around to you, but I believe you mentioned the 15th
8 you would have more flexibility; is that correct?

9 MS. GAFKEN: Yes, I'm available on the 15th.
10 The same caveat applies to the witness availability, and
11 I assume if he's not able to fly out, I would be able to
12 make him available by phone. But I'm hoping that's a
13 bridge that we won't have to cross. But yes, Public
14 Counsel is available on the 15th.

15 JUDGE O'CONNELL: Okay. Thank you.

16 And, Mr. Medlin?

17 MR. MEDLIN: Yes, I am available and my
18 witnesses are available on the 15th.

19 JUDGE O'CONNELL: Ms. Franco-Malone, do you
20 have a conflict with the 15th?

21 MS. FRANCO-MALONE: I am available on the
22 15th.

23 JUDGE O'CONNELL: Do you have any
24 information about your witnesses' availability?

25 MS. FRANCO-MALONE: I did get through to one

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1 of them today and did learn that at least one witness is
2 available on the 15th. I don't know -- I do not know
3 for sure if that works for others.

4 JUDGE O'CONNELL: Okay. And, Ms. Liotta?

5 MS. LIOTTA: Yes, FEA is available, Your
6 Honor, on the 15th.

7 JUDGE O'CONNELL: Okay. So I'd note that
8 all the parties appear to have availability on the
9 afternoon of February 15th.

10 I want to ask Mr. Medlin and
11 Ms. Franco-Malone, would that date address or remedy
12 some of your concerns about moving the hearing date
13 forward?

14 MS. FRANCO-MALONE: Just speaking for
15 myself, this is Danielle Franco-Malone, it would not.
16 It would lessen the prejudice as compared to February
17 8th. However, without knowing for sure whether my
18 witnesses would be available, and, again, just the even
19 shorter amount of time that we would have to prepare
20 testimony and argument, we still believe that it would
21 not be appropriate, again, particularly in light of the
22 fact that I still have -- am not clear on the need for
23 moving it forward by three weeks. So we would continue
24 to object to change the procedural schedule, although I
25 think it's fair to say that our position is that

1 February 15th would prejudice us less than February 8th.

2 JUDGE O'CONNELL: And, Mr. Medlin, do you
3 have a position?

4 MR. MEDLIN: Yeah, I mean, obviously I'm a
5 little concerned if Ms. Franco-Malone's witness isn't
6 available. They're an important, interested party as
7 well. The 15th does work better than the 8th. Again,
8 my preference is still that the hearing remain on the
9 already expedited date, which is March 1st, which we'd
10 already agreed to and everyone has been working back
11 from, and now we're kind of having to do cartwheels to
12 get everyone available. That's my response.

13 JUDGE O'CONNELL: Okay. Thank you.

14 Ms. Carson, let me circle around back to
15 you. What is PSE's opinion on holding the hearing on
16 February 15th? And I do recall that in your letter, you
17 emphasized that the settling parties had agreed to seek
18 an earlier settlement hearing date, but I would like to
19 hear what you think about the 15th.

20 MS. CARSON: Thank you, Your Honor. If the
21 15th is the earliest possible date that will work for
22 the Commission and the parties, we're agreeable to it.
23 It did sound like there was a potential for February
24 7th. Ms. Gafken wasn't clear. It sounds like she could
25 be -- she could be available potentially on the 7th,

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1 although she's currently scheduled to be out of the
2 office. So I would think that's still a possibility.
3 But, you know, we -- if that is not a possibility and if
4 February 15th is the earliest possible date, then we're
5 agreeable to that.

6 JUDGE O'CONNELL: Okay. Thank you. That
7 did remind me that I did want to ask Ms. Gafken a little
8 bit more, but I forgot. Thank you.

9 Ms. Gafken, I'm curious on the availability
10 on February 7th if -- what kind of conflict that is and
11 is there another attorney on the case that is
12 sufficiently apprised of all the issues to be available
13 to attend on February 7th if you are not?

14 MS. GAFKEN: There is not another attorney
15 on the case. I am sole counsel on this matter. On the
16 7th I have a family obligation that I'm taking a
17 personal holiday for that. My son's 11th birthday.

18 JUDGE O'CONNELL: Okay. Thank you.

19 MS. GAFKEN: And so quite frankly, I would
20 advocate for the 15th being the date since everybody is
21 available, and I didn't hear any objections to that
22 date. I think the 15th is -- is the date that we should
23 go with.

24 JUDGE O'CONNELL: Okay. What I'm hearing
25 from all the parties is that there is still not

1 agreement on the hearing date for the 15th, although
2 that would lessen the asserted prejudice by
3 Ms. Franco-Malone and Mr. Medlin. We are going to take
4 everything that the parties have said in writing and
5 here at the hearing into consideration, and we're going
6 to issue a decision in the coming days.

7 Is there anything else we should discuss
8 regarding the schedule, particularly timing for
9 responding to the settlement? And I'm --

10 MS. CAMERON-RULKOWSKI: This is Jennifer --
11 oh, sorry.

12 JUDGE O'CONNELL: Please go ahead,
13 Ms. Cameron-Rulkowski.

14 MS. CAMERON-RULKOWSKI: This is Jennifer
15 Cameron-Rulkowski, and of immediate concern is the
16 testimony, the response testimony, due date on Friday.
17 Can the parties consider that to be suspended?

18 JUDGE O'CONNELL: Yes.

19 MS. CAMERON-RULKOWSKI: Thank you, Your
20 Honor. That was the pressing question that I had.

21 JUDGE O'CONNELL: And I'd like to hear from
22 Ms. Gafken from Public Counsel briefly about the amount
23 of time between the filing of the settlement and
24 potential opposing testimony. As my understanding is
25 that you're not opposing the schedule at this time, the

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1 proposed schedule?

2 MS. GAFKEN: Yeah, I -- I guess I'm -- I'm
3 not sure -- this is Lisa Gafken. I'm not sure that I'm
4 the most appropriate party to address when the
5 opposition testimony should come in. On the -- on the
6 schedule that's proposed, Public Counsel's testimony, if
7 we do join the settlement, it comes in a little bit I
8 guess a step after everyone else's testimony, and that
9 just reflects the later joining of the settlement
10 itself.

11 So I still think that that's an appropriate
12 way to -- to fashion it. I don't think that I would be
13 able to at the time that we have knowing, you know -- I
14 need to wait to see what my authority is and know
15 whether we are joining or not joining the settlement
16 before I can really start finalizing things.

17 So I do think that -- that stutter step
18 testimony on the supporting end is appropriate. I don't
19 think that I'm the most appropriate party to address
20 when opposition testimony would come in. I think
21 with -- with a February 15th hearing date, that does
22 allow for -- for more time in the process and, you know,
23 under -- under the WAC, there is the opportunity for
24 opposing parties to provide their point of view and
25 their evidence. So there does need to be some time for

1 that to happen, but I think Mr. Medlin and
2 Ms. Franco-Malone could address their needs a bit better
3 than I could.

4 JUDGE O'CONNELL: Yes, I want to turn to
5 Mr. Medlin and Ms. Franco-Malone now. And my question
6 is regarding time necessary to respond to the filing of
7 testimony in the settlement agreement. And I'm asking,
8 in light of my understanding that you've been preparing
9 testimony that's due this Friday, that date is no longer
10 going to be imposed on you for the filing deadline, and
11 having already done that background work, how much time
12 do you believe is necessary for you to form a response
13 to a settlement?

14 MS. FRANCO-MALONE: This is
15 Ms. Franco-Malone, and what I would propose is that
16 if -- assuming for the purposes of this call, if the
17 hearing were to be scheduled for February 15th, what I
18 would suggest is using the same time frame that the
19 settling parties proposed in the letter from yesterday,
20 which included a deadline of testimony opposing the
21 settlement being filed seven days before the hearing
22 date. I think that allowing the parties opposing the
23 settlement as much time as possible to prepare their
24 testimony and argument in relation to the settlement
25 would be appropriate. And given that the settling

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1 parties apparently believed that seven days before the
2 hearing date would be sufficient, I would think that
3 that would be a logical point of reference for whenever
4 the hearing is rescheduled.

5 JUDGE O'CONNELL: Thank you.

6 Mr. Medlin?

7 MR. MEDLIN: Yeah, I would -- I was going to
8 say, I was also going to propose February 8th, which
9 would be a week before the 15th hearing date that we're
10 sort of working back from. That I think would give us
11 sufficient time. Again, we haven't seen the settlement
12 agreement, so I don't know precisely what is in there
13 and what has changed.

14 So I'm kind of having to speculate on how
15 much time is necessary when I haven't seen the document
16 at issue that you're kind of asking us to give our
17 opinion on. But my proposal would be if they said
18 before, it should be one week before the hearing, then
19 we should do that on February 8th.

20 JUDGE O'CONNELL: Okay. Thank you.

21 Ms. Carson, I am aware that gathering all of
22 the necessary language and information for a settlement
23 agreement is quite involved and takes some time, but
24 would I be correct in assuming if the settlement
25 agreement is ready to be submitted sooner than your

1 proposed filing date for the settlement, that the
2 party -- the joint -- sorry, the settling parties would
3 do so?

4 MS. CARSON: I'm sorry, was the question if
5 the settlement agreement is -- is finalized before the
6 15th, can -- will we file it sooner; was that the
7 question?

8 JUDGE O'CONNELL: Yes.

9 MS. CARSON: Sheree Carson. Yeah, it is a
10 pretty short time to finalize it given, you know, the
11 several joint applicants as well as settling parties,
12 but we are willing to circulate the commitment list that
13 we've agreed to. I mean, it's still undergoing some
14 editing, but the substance is there, and we're willing
15 to circulate that to the nonsettling parties so they can
16 see in essence the substance of the settlement, which as
17 I said before, is not much different than what they saw
18 three weeks ago. But we're happy to circulate that
19 today or tomorrow.

20 JUDGE O'CONNELL: I'm not going to require
21 that, but I do think that would be a good practice, and
22 you need not include Judge Pearson and I on that. We
23 will wait for the full settlement to be filed.

24 MS. CARSON: Okay.

25 JUDGE O'CONNELL: Okay. So is there

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1 anything else that we should discuss at this conference?

2 Hearing nothing, thank you all for your
3 attendance on such short notice. Both Judge Pearson and
4 I appreciate it very much. And with that, we will be
5 off the record. Thank you.

6 (Adjourned at 3:45 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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