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1       BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2    COMMISSION

3     In the Matter of the Petition     )  
4     of                                     )  
5     AVISTA CORPORATION, D/B/A         ) DOCKET NO. UE-061411  
6     AVISTA UTILITIES,                 ) Volume I  
7     For an Order Approving Avista's   ) Pages 1 - 27  
8     Update of its Base Power Supply   )  
9     and Transmission Costs.           )  
10     -----

8                     A prehearing conference in the above matter  
9     was held on September 27, 2006, at 3:05 p.m., at 1300  
10    South Evergreen Park Drive Southwest, Olympia,  
11    Washington, before Administrative Law Judge C. ROBERT  
12    WALLIS.

13                     The parties were present as follows:  
14                                     AVISTA CORPORATION, by DAVID MEYER, Vice  
15    President and Chief Counsel for Regulatory and  
16    Governmental Affairs, 1411 East Mission, Post Office  
17    Box 3727, Spokane, Washington 99220-3727; telephone,  
18    (509) 495-4316.  
19                                     WASHINGTON UTILITIES AND TRANSPORTATION  
20    COMMISSION, by ROBERT D. CEDARBAUM, Assistant Attorney  
21    General, 1400 South Evergreen Park Drive Southwest,  
22    Post Office Box 40128, Olympia, Washington 98504;  
23    telephone, (360) 664-1188.  
24                                     INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,  
25    by MELINDA J. DAVISON, Attorney at Law, Davison Van  
   Cleve, 333 Southwest Taylor, Suite 400, Portland,  
   Oregon 97204; telephone, (503) 241-7242.  
                                   PUBLIC COUNSEL, by JUDITH KREBS, Assistant  
   Attorney General, 800 Fifth Avenue, Suite 2000,  
   Seattle, Washington 98104; telephone, (206) 464-6595.  
   Kathryn T. Wilson, CCR, Court Reporter

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1 PROCEEDINGS

2 JUDGE WALLIS: This prehearing conference  
3 will please come to order. This is a conference in  
4 Commission Docket UE-061411 that is a matter of the  
5 petition of Avista Corporation, doing business as  
6 Avista Utilities, for an order approving Avista's  
7 update of its base power supply and transmission costs.

8 This prehearing is being held in Olympia,  
9 Washington, in the Commission's hearing room in  
10 Olympia, and today's date is Wednesday, September 27 of  
11 the year 2006. The presiding officer today is C.  
12 Robert Wallis, administrative law judge, and this  
13 docket is as indicated, a request by Avista for the  
14 approval of rates to implement an update of its base  
15 power supply and transmission costs. May we have  
16 appearances at this time, please?

17 MR. MEYER: For the Company, David Meyer, and  
18 before I give you my particulars, again, I would like  
19 to apologize for being late to this. We had, as you  
20 know, scheduling difficulties with an airline, and it's  
21 made for frustration and a long day for you around the  
22 table, so my apologies.

23 JUDGE WALLIS: Thank you for keeping us  
24 posted. You enabled us to update our schedule on a  
25 frequent basis, and I'm glad that it ended well with

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1 all persons present and participating.

2 MR. MEYER: Thank you. My particulars, David  
3 Meyer, attorney for Avista; address, 1411 East Mission,  
4 PO Box 3727, Spokane, Washington. The zip is  
5 99220-3727; telephone, (509) 495-4316. My fax is (509)  
6 495-8851, and the e-mail address is david.meyer@avista  
7 corp.com.

8 JUDGE WALLIS: For Commission staff?

9 MR. CEDARBAUM: I'm Robert Cedarbaum,  
10 assistant attorney general appearing for Commission  
11 staff. My business address is the Heritage Plaza  
12 building, 1400 South Evergreen Park Drive Southwest in  
13 Olympia, Washington, 98504. My direct dial phone  
14 number is area code (360) 664-1188. The fax is area  
15 code (360) 586-5522, and my e-mail is  
16 bcedarba@wutc.wa.gov.

17 JUDGE WALLIS: For Public Counsel?

18 MS. KREBS: I'm Judith Krebs, assistant  
19 attorney general for Public Counsel. My address is 800  
20 Fifth Avenue, Suite 2000, Seattle, Washington,  
21 98104-3188. My phone number is (206) 464-6595. Fax,  
22 and it's a new fax number as well, (206) 389-2079, and  
23 my e-mail is judyk@atg.wa.gov.

24 JUDGE WALLIS: For petition for  
25 intervention?

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1 MS. DAVISON: My name is Melinda Davison.  
2 I'm appearing on behalf of the Industrial Customers of  
3 Northwest Utilities. Also with me, not today, but  
4 appearing is S. Bradley Van Cleve, and we are with the  
5 law firm of Davison Van Cleve, 333 Southwest Taylor,  
6 Suite 400, Portland, Oregon, 97204. Phone number is  
7 (503) 241-7242. Fax is (503) 241-8160, and e-mail is  
8 [bvc@dvclaw.com](mailto:bvc@dvclaw.com).

9 JUDGE WALLIS: Thank you. Let me ask for  
10 record purposes if there is any person in this room who  
11 intends to participate in this docket and is acting in  
12 a representative capacity for oneself or others? Let  
13 the record show there is no response. Let me direct  
14 the same question to the bridge line and ask if there  
15 is any person on the bridge line who would like to  
16 participate in this docket as a party. Let the record  
17 show that there is no response.

18 The first matter of business, according to  
19 our rule, is consideration of the petition to  
20 intervene. There has been a petition filed in this  
21 docket. Let me ask if everyone has a copy of that  
22 petition.

23 MR. MEYER: We do.

24 MS. KREBS: Yes, Your Honor.

25 JUDGE WALLIS: It appears that everyone does.

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1 Let me ask if there is objection to participation by  
2 ICNU as an intervenor?

3 MR. MEYER: No objection, Your Honor.

4 MS. KREBS: No.

5 MR. CEDARBAUM: No objection.

6 JUDGE WALLIS: The petition is granted. The  
7 Commission has not yet issued a complaint and order  
8 suspending tariff revisions. In pre-prehearing  
9 discussions, I believe that the Company indicated a  
10 waiver of its right to consideration of that issue at  
11 an open public meeting; is that correct?

12 MR. MEYER: That is correct.

13 JUDGE WALLIS: Do you consent to an order  
14 being entered by the Commission in the form of orders  
15 typically entered following the open meeting?

16 MR. MEYER: We do.

17 JUDGE WALLIS: Is there any objection to that  
18 procedure?

19 MR. CEDARBAUM: No.

20 MS. KREBS: No.

21 MS. DAVISON: No.

22 JUDGE WALLIS: Very well. A couple of other  
23 routine matters and then we will go into the issues  
24 that appear to be custom for this, not customary but  
25 custom for this proceeding. First of all, let me ask

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1 if the parties wish to invoke the discovery rules.

2 MR. CEDARBAUM: Yes.

3 JUDGE WALLIS: Do parties anticipate that  
4 there will be a need for special time frames or a  
5 discovery cutoff insofar as responses to discovery  
6 requests are concerned?

7 MR. CEDARBAUM: Your Honor, Staff would  
8 anticipate an acceleration of turnaround time on data  
9 requests depending on the schedule that's adopted. As  
10 Mr. Meyer indicated off the record, Staff has  
11 distributed a schedule that's acceptable to Staff, and  
12 in that particular schedule, we would ask for a  
13 reduction of the data requests and turnaround time from  
14 ten business days to five business days after Staff,  
15 Public Counsel, and Intervenor file responsive  
16 testimony, but again, that's really dependent upon the  
17 ultimate schedule the Commission establishes.

18 JUDGE WALLIS: Let's defer further  
19 discussions until we have engaged in the discussion on  
20 the schedule generally. Is a protective order desired?

21 MR. MEYER: It is, Your Honor.

22 JUDGE WALLIS: Will a standard order be  
23 sufficient, or would you like a highly protective order  
24 or an extremely high protective order?

25 MR. MEYER: Standard form will work fine,

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1 thank you.

2 JUDGE WALLIS: Very well. The filing  
3 requirements for this docket, I believe, are stated as  
4 12. I have negotiated a reduction of that number, and  
5 when we take a break in these proceedings, I will  
6 gather my notes on that topic and we will establish a  
7 number for file copies. I believe it will be six or  
8 fewer, but let me double-check the list that I have.

9 Let's proceed with the discussions relating  
10 to possible motions and procedural schedule. Is there  
11 a logical order in which we should approach those?

12 MR. MEYER: My reaction to that is if it  
13 would be helpful, we can go off the record for a few  
14 minutes to discuss a procedural schedule. I don't  
15 think we are going to reach agreement because I think  
16 at least two of the parties have a different approach  
17 in mind that doesn't lend itself to the sort of  
18 procedural schedule that Staff and the Company  
19 envisioned, but we have not had that chance to have a  
20 face-to-face discussion. It may not take very long,  
21 but I think that might make some sense.

22 JUDGE WALLIS: Is there objection to that  
23 suggestion?

24 MS. DAVISON: No, that's fine.

25 (Discussion off the record.)

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1                   JUDGE WALLIS: Let's be back on the record  
2 following the discussion of the scheduling issues. The  
3 parties wish to engage in a motion and response  
4 procedure and have some differing views on how that  
5 would interrelate with a procedural schedule on the  
6 merits of the docket and desire the opportunity to make  
7 their arguments to the record.

8                   So in looking first at the question of a  
9 dispositive motion, I understand that both Public  
10 Counsel and the Intervenor wish to present arguments in  
11 favor of such a process. Who would like to begin;  
12 Ms. Davison?

13                   MS. DAVISON: Thank you, Your Honor. This is  
14 Melinda Davison on behalf of ICNU. We would like the  
15 opportunity to present a motion to dismiss, and just  
16 very briefly, the motion to dismiss would focus on the  
17 fact that this filing does not meet the requirements of  
18 WAC 480-07-505 and 510, and that the Commission's rules  
19 explicitly state that a remedy for failure to meet the  
20 requirements of those two rules is under 480-07-500 sub  
21 4, summary rejection for failure to comply, and it says  
22 that the Commission may summarily reject any filing for  
23 a general rate proceeding that does not conform to its  
24 requirements, and we believe that this is a general  
25 rate filing because it is in excess of three percent,



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1 and we would like to present to the Commission our  
2 detailed legal arguments as to why this filing does not  
3 comply with the Commission's rules and as a result  
4 should be dismissed.

5 We talked off the record, and the parties  
6 were in agreement on a briefing schedule that had the  
7 motion filed on October 27th, the answers on November  
8 15th, and a reply on November 22nd, and the caveat to  
9 that is that Avista would like the proposed schedule  
10 that Staff circulated earlier would stay in place.

11 ICNU does not support Staff's schedule.  
12 Regardless of whether a motion is filed or not, we  
13 believe that that particular schedule would result in a  
14 six-and-a-half month rate case as opposed to the  
15 typical ten-month schedule. We do not see a need for  
16 an expedited schedule in this case, and we would argue  
17 that if a schedule is set, although our preferred  
18 position is that we would go ahead and brief this issue  
19 and then have a prehearing conference after the  
20 Commission issues its decision on the motion, but if,  
21 Your Honor, you would like to go ahead and set a  
22 schedule, as a compromise, ICNU is willing to take  
23 Staff's schedule and move it out 30 days. Although,  
24 I'll tell you that we really believe that schedule  
25 should be moved out 60 days to put it more in alignment

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1 with a typical rate case. We believe that the issues  
2 that are presented in this case are of sufficient  
3 complexity that it is important that we have the  
4 ability to conduct full discovery and to adequately  
5 prepare our testimony.

6 So that is, in a nutshell, our position on  
7 the schedule, Your Honor.

8 JUDGE WALLIS: Thank you. Ms. Krebs?

9 MS. KREBS: Yes. Ms. Davison summarized our  
10 position to a great degree. I just want to add a few  
11 things.

12 One is that in addition to not meeting the  
13 procedural requirements of the WAC for general rate  
14 cases, there is also the substantive issue of whether  
15 or not this is indeed single-issue rate-making, and  
16 therefore, not just in excess of three percent but in  
17 excess of three percent and requiring the kind of  
18 analysis of the Company's full books, soup to nuts, as  
19 opposed to one particular aspect of their costs.  
20 That's a threshold legal question and therefore needs  
21 to be decided prior to the expenditure of great effort  
22 on the facts of the case.

23 Once that's decided and if we do not prevail,  
24 then the question is what are the parameters of the --  
25 should they get the 8.8 percent. Should it be

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1 something different, but the threshold legal question  
2 needs to be answered first before the rest of the case  
3 can proceed.

4           Again, this is a tariff suspension case, and  
5 Ms. Davison pointed that out that that is a ten-month  
6 statutory allowed time frame, and this commission has  
7 very clear rules and case law on what is required for  
8 showing of expedited relief. The Company has not come  
9 forth with any showing.

10           So even if the Commission were not to agree  
11 that this was a general rate case, it's enough like a  
12 general rate case that it's prejudicial to the parties  
13 for the Company to request an expedited schedule  
14 without showing why they require it and instead  
15 shifting the burden to the other parties to show why it  
16 shouldn't have an expedited schedule. That runs  
17 counter to everything this commission has said.

18           Finally, the discussion that the Company will  
19 engage in around the PSE PCORC and the fact that was  
20 resolved in a four- to five-month period, my  
21 understanding in the settlement agreement is on record,  
22 is that four- to five-month period was agreed to by the  
23 parties when they agreed to the PCORC, so it wasn't a  
24 situation where the Commission ruled on what was the  
25 appropriate time frame for deciding these things. The

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1 parties themselves having already agreed to give PSE  
2 the right to file a PCORC through a settlement  
3 agreement also agreed on what the time frame would be.

4           Again, Staff's schedule plus 30 days is  
5 acceptable to us, if, indeed, there is a need to set a  
6 schedule today, and the schedule that has been outlined  
7 beginning on October 27th for briefing is also  
8 acceptable. Thank you.

9           JUDGE WALLIS: Very well. Staff?

10           MR. CEDARBAUM: Thank you, Your Honor. As I  
11 indicated off the record, Staff will not be filing its  
12 own dispositive motion but will reply to the motions  
13 filed by others, but Staff is supportive of setting a  
14 schedule that accommodates the filing of motions and  
15 replies and such, and the October 27th, November 15th,  
16 and November 27th schedule that was mentioned is  
17 acceptable to Staff.

18           That does lead us, I think, down two  
19 alternative possible schedules for the remainder of the  
20 case. One schedule would follow the schedule that  
21 Staff circulated earlier today, which begins with the  
22 December 13th filing, and then a second prehearing  
23 conference if the Commission's order on the motion is  
24 issued after December 13th.

25           The other alternative is the one suggested by

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1 ICNU and Public Counsel that there is a delay from  
2 December 13th of about 30 days. Either of those  
3 alternatives is acceptable to Staff. I think that the  
4 second prehearing conference alternative has some  
5 potential ugliness. We don't really know what the  
6 Commission's order will say and how it's going to  
7 impact a resetting of the schedule, but Staff is  
8 amenable to that as well as the alternative 30-day  
9 delay that was mentioned by ICNU. Thank you.

10 MS. KREBS: Your Honor, this is Judy Krebs  
11 with Public Counsel. I forgot to mention one thing,  
12 which is that Public Counsel is requesting a public  
13 hearing on the matter.

14 JUDGE WALLIS: Mr. Meyer?

15 MR. MEYER: Thank you. Before I talk more to  
16 the substance and the merits, I want to make sure we  
17 have on the record certain dates, so let me just take  
18 care of those, and these are Staff-proposed dates, and  
19 I'll explain some of the background on how we got to  
20 these dates and just tell you for the record that the  
21 Company would support the schedule that Staff has  
22 proposed.

23 Those dates are December 13th, Staff, Public  
24 Counsel, and Intervenor testimony; January 4th, Company  
25 rebuttal; hearings January 24th through the 26th;

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1 briefs on February 16th. I believe Staff, there was a  
2 caveat that the data request response time would be  
3 reduced to five business dates from the date of  
4 December 13th forward, so I will note that.

5           While it's not reflected in the handout  
6 earlier of Staff, at least the Company's understanding  
7 of this schedule could lead to a target date, or let's  
8 call it an aspirational date, for an order of mid  
9 March, and on the supposition that this schedule would  
10 accommodate an order in that time frame, the Company  
11 could support that.

12           Let me just say a few things about these  
13 other dates as well, and then I want to return to the  
14 merits of this discussion. The Company does view as  
15 really the preferred alternative for the scheduling of  
16 the dispositive motions those dates that counsel for  
17 ICNU provided so long as, and this is a very important  
18 caveat, so long as that briefing process does not  
19 disrupt the December 13th date for the prefiling of  
20 Staff, Intervenor, and Public Counsel testimony, and  
21 the Company believes that even if the Commission does  
22 not decide those motions prior to the date for the  
23 prefiling of that testimony that that testimony  
24 deadline should hold.

25           If on the other hand the Commission should

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1 decide that it would like to address and resolve those  
2 dispositive motions before Staff and Intervenor  
3 testimony, then I have some other dates that I will  
4 tell you are not agreed to by other parties but would  
5 accommodate a Commission decision and still provide an  
6 interval of time between the Commission's ruling on  
7 those motions and the December 13th date for the  
8 prefiling of testimony, and those dates are as follows:

9           The filing of any dispositive motions by  
10 October 9th; the answer by the nonmoving parties on  
11 October 23rd, and any reply by October 30th with the  
12 hope that the Commission could resolve those issues by  
13 mid to late November and still providing a two- to  
14 three-week interval before the prefiling of December  
15 13th.

16           Again, I want to stress that is not our  
17 preferred alternative. Our preferred alternative on  
18 the briefing schedule is the one that was first  
19 discussed so long as it does not disrupt that December  
20 13th date.

21           Let me return more importantly to the hearing  
22 schedule, the process. You've heard already from both  
23 Public Counsel and from ICNU that a month or a  
24 two-month delay, perhaps a month delay, would represent  
25 an accommodation to the Company. It would represent a

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1 compromise of sorts on their part recognizing our  
2 desire to move this case along. Let's step back and  
3 review the bidding, if you will.

4           When this case was filed, we had asked for a  
5 February 1st implementation date, and that  
6 implementation date was arrived at after we looked at  
7 the nature of filing and how other cases have been  
8 processed by this commission. The Puget PCORC filing  
9 processed by agreement of the parties within four to  
10 five months. Similar to that PCORC filing of Puget,  
11 this filing simply requests an update to our production  
12 and transmission costs that are related to Avista's  
13 ERM.

14           The Commission, and more importantly the  
15 parties, to your very point the Public Counsel, agreed  
16 that they could process those kind of filings in a  
17 four- to five-month period, and their settlement  
18 agreement reflects that. The Company believes that the  
19 same sort of time line is unrealistic and feasible for  
20 Avista. Avista should be given the same avenue for  
21 cost recovery, stress timely cost recovery, that is  
22 afforded to Puget with respect to their PCORC cost  
23 filing.

24           This commission has recently indicated in its  
25 order in the PacifiCorp general rate case Docket



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1 UE-050684 and UE-050412 that new resources must be  
2 considered in general rate cases or power-cost-only  
3 rate cases, and their page reference is Page 35 at  
4 Paragraph 91. So the Commission has recognized,  
5 whether it's with respect to Puget's PCORC or whether  
6 it's with respect to language in the recent PacifiCorp  
7 order, or even with respect to Avista's ERM process  
8 that there is short of a general rate case some other  
9 process by which there can be cost review for sure but  
10 timely cost recovery as well. So there is ample  
11 precedent for this, and the time line we set out is  
12 reasonable.

13 Now, back to the comment that somehow another  
14 month or two delay would be an accommodation. We had  
15 asked for February 1st in our filing date. We then in  
16 discussions with the parties voluntarily agreed to slip  
17 that another month beyond what we had asked for to  
18 essentially recognize some of the issues that have been  
19 discussed off the record and on the record today.

20 So we can talk about accommodation, but we  
21 accommodated up front, and then we gave some more. In  
22 discussions with Staff, they suggested that we delay it  
23 another couple of weeks to look for a mid March order,  
24 and we agreed to that. So total it up, the Company has  
25 agreed to slip its proposed effective date by

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1 essentially six weeks, give or take, so there has been  
2 accommodation already on the part of the Company, and  
3 again, I want to stress that this takes us beyond the  
4 time that it would ordinarily take to resolve a Puget  
5 PCORC filing.

6 I guess one more point to make with respect  
7 to that December 13th date, that's not an unrealistic  
8 date. That's three-and-a-half months after the filing  
9 of this case. I believe on other occasions, perhaps it  
10 was off the record, but counsel for ICNU indicated that  
11 it generally takes three months to prepare an  
12 intervenor case. That's three-and-a-half months after  
13 we filed this case, so it is our strong view that that  
14 December 13th date should hold in any event,  
15 irrespective of how we time the argument around the  
16 motions to dismiss.

17 I won't get into the discussion today because  
18 we will save that for arguments with respect to the  
19 motion to dismiss in terms of whether there are  
20 violations of any Commission rules or whether this  
21 constitutes single-issue rate-making. Those will be  
22 left for briefing. Again, as I've indicated, and as we  
23 will argue in due course, I think that the Commission  
24 has already crossed that bridge and has decided those  
25 issues and held the door open for power-cost-only rate

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1 cases. Again, the PacifiCorp order, the Puget PCORC  
2 example are the two that come immediately to mind.

3           So with that, I hope I made the Company's  
4 position clear, and unfortunately, we could not reach  
5 agreement today. The Company believes it has a process  
6 that would not only accommodate briefing on the legal  
7 issue but would hold to a date, while not to our liking  
8 as a month and a half out beyond what we asked for,  
9 that is still acceptable to the Company, and so with  
10 that, I conclude my remarks.

11           JUDGE WALLIS: Very well. Does anyone desire  
12 a brief response?

13           MS. DAVISON: Your Honor, very briefly, I'll  
14 just make two points. The three-month time period that  
15 Mr. Meyer was referring to that I mentioned off the  
16 record refers to the point in which discovery is  
17 invoked. That would take us to January, which is our  
18 compromise date as opposed to -- essentially, the first  
19 30 days have been lost, so I don't think it's really  
20 fair as you consider that to count those days. We have  
21 not engaged in discovery. We haven't retained an  
22 expert to work on this case yet.

23           Then as it relates to Puget, I believe that  
24 that is a very unique set of circumstances that I do  
25 not believe constitutes precedent for this case. Thank

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1 you.

2 JUDGE WALLIS: Ms. Krebs?

3 MS. KREBS: I only have one comment, which is  
4 that not only are the discovery rules, they weren't  
5 offered. They weren't asked for. They aren't invoked.  
6 As a matter of rule, this is also not an adjudication  
7 until this moment, and so the setting of a -- not this  
8 moment, but the setting of a prehearing conference, so  
9 the companies pull things all the time. The issue is  
10 the case begins when the prehearing conference is set.  
11 That is when the adjudicative case begins. So I just  
12 point out that it is not accurate to point to the  
13 filing date and say the parties sat on their rights.  
14 Thank you.

15 JUDGE WALLIS: Staff?

16 MR. CEDARBAUM: Just a couple of comments,  
17 Your Honor. The dates that Mr. Meyer indicated of  
18 October 9th, October 23rd, and October 30th for an  
19 accelerated briefing schedule on the motions, that is  
20 not an agreeable schedule to Staff given the competing  
21 workload in the Puget Sound Energy rate case.

22 The other comment I would have is that the  
23 Staff-proposed schedule that's been distributed was  
24 created not because of any precedent setting from the  
25 Puget Sound Energy PCORC. It was just a schedule that

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1 in my discussions with Staff could be accommodated. It  
2 was proposed to the other parties as our proposal but  
3 subject to their comments and concerns and interests.

4           Consequently, while that schedule is  
5 acceptable to Staff as I stated before, if the  
6 Commission believes that other interests need to weigh  
7 in and have a different result with an extended  
8 schedule by 30 days, that's also acceptable to Staff.

9           JUDGE WALLIS: Very well. I believe strongly  
10 that we should not set schedules in any given matter on  
11 the basis of what time was required for completion of  
12 some other matter. I think it's necessary for us to  
13 look at what has to be done, what other competing items  
14 are on the calendar, and parties resources.

15           I believe that not the original but what I  
16 take to be an agreed briefing schedule is appropriate;  
17 that is, for the filing of motions, if any, to be no  
18 later than October 27th, answers on November 15th, and  
19 I would suggest that the replies, if any, be filed on  
20 November 27th, which is the Monday following the  
21 Thanksgiving weekend.

22           From there, I believe that it will require  
23 the Commission at least a couple of weeks to perform  
24 the analysis and come to a conclusion, and I would  
25 anticipate an order in mid December. I am not, of

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1 course, promising an order on that schedule, but that's  
2 my best guess on the basis of what we know now.

3 MR. MEYER: Can you give me that date again?

4 JUDGE WALLIS: Mid December.

5 MR. MEYER: An order on...

6 JUDGE WALLIS: The motion. And more likely  
7 looking at the schedule in the latter part of the  
8 second full week, which would be in the range of the  
9 13th through the 15th. Again, that is not a promise.  
10 It is a prognostication made on the basis of a crystal  
11 ball that is often cloudy.

12 I think with a little bit of massaging, we  
13 can meet the interests of the parties by the following  
14 schedule, and then I will explain: The filing of  
15 Staff, of Public Counsel and Intervenor responses on  
16 January 12th; the Company rebuttal on January 30th;  
17 hearings during the second full week in February, the  
18 12th through the 15th, based on whatever else is  
19 scheduled during that period, and I will review that.

20 Public hearing to be determined within 30  
21 days after today's date by consultation by Public  
22 Counsel among the parties and with Commission staff;  
23 briefs on March 6th, and if luck is with us and the  
24 wind fully in our sails, we would aim for an order the  
25 first week in April.

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1           I believe the parties indicated that you  
2 would conduct a settlement conference but that its  
3 schedule is to be determined; is that correct?

4           MR. CEDARBAUM: Yes.

5           JUDGE WALLIS: All right. The schedule that  
6 I am proposing I believe meets the basic interests of  
7 the parties in that it does extend the filing date by a  
8 month of the Staff, Public Counsel, and Intervenor  
9 materials. The time for the Company rebuttal is  
10 shortened from the original proposal, but the original  
11 proposal involved holidays during that period, and  
12 otherwise, I believe that this will give the parties  
13 the opportunity to engage in the discovery and  
14 preparation of testimony that is required for a  
15 proceeding of this complexity.

16           In particular, I do not believe that the  
17 statutory limitation of ten months means that parties  
18 are entitled to a ten-month period between the stated  
19 effective date and the entry of a Commission order, but  
20 that is the maximum based on a complex proceeding and  
21 any evaluation of the schedule that the proceeding must  
22 itself meet its own challenges and other things that  
23 are going on at the time.

24           Again, I firmly do not believe that a faster  
25 schedule is either prejudice as such or that it

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1 constitutes expedited relief. Expedited relief is an  
2 interim measure that has rules unto itself, and it does  
3 not refer to a situation in which we are seeking to  
4 resolve all of the contested issues in a proceeding on  
5 a schedule that is appropriate to the procedure that is  
6 required for that proceeding.

7           Mr. Meyer indicated that this would  
8 constitute an extended schedule from what he perceives  
9 as other comparable proceedings, but I note that there  
10 is the difference here of the proposed dispositive  
11 motion. I do not expect that parties will wait until  
12 the entry of a Commission order resolving the motion to  
13 begin preparation for the case but that they will take  
14 the opportunity to begin that preparation before the  
15 entry of that order.

16           So do parties have any questions about this  
17 ruling or how the proceeding would be undertaken?

18           MR. CEDARBAUM: Your Honor, just one brief  
19 question. We would still like to have the reduction of  
20 the turnaround time for data requests.

21           JUDGE WALLIS: Yes. I did not mention that,  
22 but parties did request the discovery turnaround to be  
23 shortened to five business days following the filing of  
24 Staff, Public Counsel, and Intervenor responding  
25 testimony, and that request will be granted.



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1 MR. CEDARBAUM: Thank you.

2 JUDGE WALLIS: Any other procedural questions  
3 or issues?

4 MR. MEYER: Just a minor housekeeping issue.  
5 I think in some of the other prehearing conferences,  
6 you ask for additional names to go on a service list.

7 JUDGE WALLIS: Thank you. I will ask that  
8 each of you identify others in your organization to  
9 receive copies of notices from the Commission and  
10 information from other parties. Generally, counsel  
11 will identify a paralegal or legal secretary or another  
12 staff person, perhaps.

13 The purpose of this is twofold. One is to  
14 reduce the possibility that counsel may be away at the  
15 time a message is sent and someone else might not pick  
16 up on it. This gives you some backup. The other is to  
17 provide the remaining folks, the other folks prompt  
18 notice so that they don't have to wait for a busy and  
19 sometimes preoccupied counsel to forward that  
20 information.

21 So if you will write that information down,  
22 the names of other individuals that you want to be on a  
23 subsidiary notification list, not people who would  
24 receive service in the event of an order, but people  
25 who would receive copies of other communications,

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1 please write that down and give it to me before you  
2 leave today, and I will see that there is an attachment  
3 to the order that lists that information for all of the  
4 parties.

5 MS. KREBS: Your Honor, could we provide that  
6 by e-mail?

7 JUDGE WALLIS: If you can do that promptly,  
8 please, and send that directly to Ms. Walker and  
9 Ms. Koech, if you would, please. Because of other  
10 commitments, I don't expect that the prehearing  
11 conference order will be entered imminently. It likely  
12 will take a week for production and service, but let me  
13 ask if the parties believe at this point that the  
14 proposal will satisfy their, if not their first best  
15 desires that it meets the real needs that you have,  
16 with the understanding that if you get into a situation  
17 where there is a real conflict that the Commission  
18 always will entertain motions to adjust the schedule  
19 that are appropriately supported.

20 MS. DAVISON: Your Honor, we appreciate your  
21 efforts with the schedule, and it is acceptable to  
22 ICNU. Thank you.

23 JUDGE WALLIS: Very well.

24 MS. KREBS: Yes, Your Honor, it's very  
25 acceptable to Public Counsel. Thank you.

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1                   JUDGE WALLIS: Is there anything further to  
2 come before the Commission at this time?

3                   MR. MEYER: Just thanking you for helping us  
4 work through this difficult scheduling issue and  
5 appreciate the good effort. Thank you.

6                   JUDGE WALLIS: Thank you. This conference is  
7 adjourned.

8                   (Prehearing conference adjourned at 4:55 p.m.)

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