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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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4 In the Matter of the Petition of ) Docket UE-121373  
5 PUGET SOUND ENERGY, INC., ) Pages  
6 For Approval of a Power Purchase )  
7 Agreement for Acquisition of Coal )  
8 Transition Power, as Defined in )  
RCW 80.80.010, and the Recovery )  
of Related Acquisition Costs )

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ORDER CONFERENCE, VOLUME IV

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Pages 337-404

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Administrative Law Judge Gregory J. Kopta

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3:00 p.m.

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January 16, 2013

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Washington Utilities and Transportation Commission

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10 ALSO PRESENT:

11 Chairman Jeffrey Goltz  
12 Commissioner Philip Jones

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1 Olympia, Washington January 16, 2013

2 3:02 p.m.

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

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6 JUDGE KOPTA: Let's be on the record in  
7 Docket UE-121373, captioned "In the Matter of the Petition  
8 of Puget Sound Energy, Inc., for Approval of a Power  
9 Purchase Agreement for Acquisition of Coal Transition Power  
10 as Defined in RCW 80.80.010 and the Recovery of Related  
11 Acquisition Costs."

12 My name is Gregory J. Kopta. I'm an  
13 administrative law judge substituting for Judge Moss who was  
14 previously presiding in this case, who was unavailable to be  
15 here today.

16 With me here on the bench are Chairman Jeff  
17 Goltz and Commissioner Phil Jones.

18 We are here for an order conference for  
19 clarification of Order 03, the Final Order Granting Petition  
20 Subject to Conditions in this docket.

21 And let's begin by taking appearances,  
22 beginning with the Company.

23 MR. KUZMA: Good afternoon, your Honor. My  
24 name is Jason Kuzma on behalf of Puget Sound Energy.

25 JUDGE KOPTA: For Commission Staff?

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1 MS. BROWN: Sally Brown, Senior Assistant  
2 Attorney General.

3 With me is Greg Trautman, also Assistant  
4 Attorney General.

5 JUDGE KOPTA: Public counsel?

6 MR. FFITCH: Simon ffitch, Senior Assistant  
7 Attorney General with the Office of Public Counsel.

8 MS. HIRSH: Nancy Hirsh with the Northwest  
9 Energy Coalition.

10 JUDGE KOPTA: Is there anyone else in the  
11 room who would like to make an appearance?

12 MR. TAYLOR: Paul Taylor, TransAlta.

13 MR. PHILLIPS: Keith Phillips from the  
14 governor's office, your Honor.

15 JUDGE KOPTA: Anyone on the phone who would  
16 like to make an appearance?

17 MS. BROWN: This is Joshua Weber for ICNU.

18 JUDGE KOPTA: Anyone else?

19 All right. So we've convened this order  
20 conference pursuant to WAC 480.07.840 at the request of  
21 Puget Sound Energy in a letter that they submitted to the  
22 Commission on January 14 of this year.

23 PSE specifically states that it has concerns  
24 that the reporting requirements as set forth in Order 03 may  
25 impose undue risk or costs to PSE.

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1                   And PSE also has questions about the  
2 Commission's decision regarding deferral of costs.

3                   So I'm -- we are assuming that that is the  
4 scope of the issues that are going to be presented and  
5 discussed today.

6                   But before we get to those, a couple of  
7 points: First of all, I would like to remind the parties of  
8 the constraints that we are under in terms of an order  
9 conference. And I will let the rules speak for itself. This  
10 is WAC 480.07.840 (1): "Purpose: The purpose of an order  
11 conference is to clarify the meaning of a final order when  
12 parties disagree about the order's meaning or requirements.  
13 Parties to an order conference may ask for clarification of  
14 the meaning of an order to:

15                   "(a) Explore and resolve any barriers to  
16 compliance;

17                   "(b) Ensure that any compliance filing can be  
18 accurately prepared and presented;

19                   "(c) Propose technical changes that may be  
20 required to correct the application of principle to data; or

21                   "(d) Correct patent error.

22                   "The conference is not a forum for discussing  
23 or challenging the evidentiary, legal or policy decisions  
24 expressed in the order. Parties may pursue those remedies  
25 through a petition for reconsideration or other means."

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1                   So more specifically here, for example, on  
2 the Company's first point, if they seek clarification of the  
3 nature or scope of the reporting requirements, for example,  
4 that would be something we can discuss today.

5                   If they want to try and present evidence of  
6 any risks or costs, that sort of thing should be presented  
7 in a petition for reconsideration.

8                   The second aspect of the rule is that an  
9 order conference -- and I'm quoting from (2) -- "does not  
10 constitute a formal interpretation of an order. The final  
11 order that is the subject of an order conference will remain  
12 the sole expression of the commission's decision unless  
13 supplemented through an additional order."

14                   Therefore, although we will hear the parties'  
15 concerns about the order as a request for clarification, we  
16 anticipate that any clarification that the Commission will  
17 give on the meaning of the order would come in a  
18 supplemental order as opposed to orally from the bench.

19                   Our primary purpose for having this  
20 transcribed is so that we have a record of what the parties'  
21 positions are, since there wasn't sufficient time for there  
22 to be written filings from the Company or responses.

23                   So the procedure that we have contemplated is  
24 to give the Company an opportunity to flesh out its concerns  
25 and for the commissioners to ask any questions that they



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1 might have.

2                   And then we anticipate taking a brief recess  
3 to allow the other parties time to consider what their  
4 response is going to be or if they have any supplemental  
5 questions; to reconvene and give other parties an  
6 opportunity to provide a response on the record, and then go  
7 off the record for a brief discussion about the points, at  
8 which we would then go back on the record to memorialize, to  
9 the extent necessary, including any anticipated supplemental  
10 order on clarification to the extent that the Commission is  
11 inclined to provide one. So that's the game plan for this  
12 afternoon.

13                   Any questions before we proceed?

14                   Mr. Ffitch?

15                   MR. FFITCH: Good afternoon, Commissioners  
16 and Judge Kopta.

17                   A couple points, your Honor. A question  
18 about the confidentiality of the hearing itself. That had  
19 been mentioned in the notice. And are you going to be  
20 addressing that at this point?

21                   Is the hearing confidential at this time?

22                   JUDGE KOPTA: At this point we would do what  
23 we usually do, which is make all efforts to avoid discussing  
24 confidential information. We don't want to cut off people  
25 on the bridge line or seal the hearing room.

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1                   So to the extent possible, we will ask the  
2 parties not to raise any confidential information or to  
3 discuss it on the record or while we are in session.

4                   If it becomes necessary to discuss it, then  
5 we will address it at that time, in which case we may need  
6 to close the proceedings. But I'm hoping that we don't have  
7 to do that.

8                   We just provided notice because there was  
9 some concern that there might be information, and so just  
10 providing some warning to folks that may be trying to weigh  
11 whether to participate in person or on the bridge line to  
12 know that they may not be able to fully participate if they  
13 call in as opposed to being here physically.

14                   MR. FFITCH: There was some confusion on my  
15 part, and we did not have our expert call in because I was  
16 not aware that he would even have an opportunity. So I will  
17 let him know that he can call in. That would be Mr.  
18 Woodruff, and he would be able to listen to the  
19 conversation.

20                   The other point I wanted to advise the bench  
21 about was that I did have a matter which I believe is within  
22 the scope of the rule with regard to the confidentiality of  
23 the Bench Request No. 2, which I've already discussed with  
24 Mr. Kuzma. And I believe we've got an understanding that  
25 confidentiality of most of that information is no longer

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1 necessary.

2                   And there was one matter kind of related to  
3 that with regard to a clarification of paragraph 68 that  
4 discusses Bench Request 2 that I would like to raise at an  
5 appropriate time.

6                   JUDGE KOPTA: All right. Well, why don't you  
7 hold that until you make whatever comments that you're going  
8 to make in response to the Company.

9                   I hesitate to have this be a wide-ranging  
10 discussion beyond those that the Company has presented. But  
11 we can certainly during the break discuss off the record  
12 whether that's something that we want to raise at this point  
13 or at a subsequent juncture.

14                   MR. FFITCH: Thank you, your Honor.

15                   JUDGE KOPTA: Did you want to say  
16 something?

17                   CHAIRMAN GOLTZ: First of all, this rule is  
18 one that I've never operated under before. It was adopted  
19 in 2003 for effective 2004.

20                   And I understand that historically it has  
21 been used before, and it's been used, for example, in  
22 context of a rate case where there's confusion on compliance  
23 filing, confusion on the math, and something that is more  
24 easily resolvable in a more informal discussion as opposed  
25 to a bunch of post-hearing motions.

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1                   And so -- however, it's not limited to that.  
2   And it seems to me that this is an appropriate process for  
3   hearing the matters raised in Puget's petition.

4                   And it seems to me on the issue of  
5   confidentiality, Mr. ffitich, that if we're talking about  
6   risks and costs regarding reporting requirements or the  
7   deferral of cost issue, I don't recall confidential  
8   information being anywhere close to those sorts of issues.  
9   So I don't foresee that being a problem.

10                  I also may suggest, Judge Kopta, that maybe  
11   people are here waiting to hear what Puget has to say, ready  
12   to respond. Maybe the thing to do is to hear the concerns  
13   sort of from everybody, not just Puget. But we have some  
14   other people here that have expressed a desire to say  
15   something, as I understand it.

16                  And also, Mr. ffitich, if we can -- unless the  
17   concerns Mr. ffitich has have been resolved in some other  
18   way; I don't know -- but hear everybody's sort of opening,  
19   and let everyone ponder it for a few minutes while we take a  
20   break and then come back.

21                  JUDGE KOPTA: That's fine. To the extent  
22   that there are parties who want to say something before we  
23   take a break, we will allow that.

24                  Since this is the first time the Company will  
25   be expanding on its concerns, we did not want to require

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1 parties immediately to respond but instead have at least a  
2 short period of time to consider their response.

3 CHAIRMAN GOLTZ: Correct.

4 THE COURT: So I really leave it up to the  
5 parties to let us know the extent to which you're prepared  
6 to say something now or after the Company's finished, or  
7 whether you want some additional time to consider it before  
8 giving us your views.

9 So with -- yes, Commissioner Jones.

10 COMMISSIONER JONES: Just briefly, to set the  
11 stage for this, I've been a commissioner seven years. This  
12 is the first time to experience this.

13 So as a prudent matter, I think I'm here to  
14 listen. I'm going to be very cautious about any sort of  
15 communication. That's the way I interpret the WAC, is to  
16 its points of clarification, fairly narrow. But I'm here to  
17 listen.

18 JUDGE KOPTA: All right then. Mr. Kuzma, the  
19 floor is yours.

20 MR. KUZMA: Well, Puget would like to offer  
21 President and Chief Executive Officer Kimberly Harris to  
22 present Puget's positions with respect to the barriers to  
23 compliance with the order as written.

24 JUDGE KOPTA: That would be fine.

25 We caution Ms. Harris that obviously she's

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1 here in a representative capacity as opposed to a witness  
2 capacity. So your statement will be accorded the weight  
3 that would come from counsel as opposed to sworn testimony,  
4 just to make sure we don't have objections from anybody.

5 MS. BROWN: Objection.

6 THE WITNESS: I'm kind of excited to be  
7 sitting here again.

8 JUDGE KOPTA: Getting used to being in the  
9 lawyer's chair again.

10 MS. HARRIS: I agree with Commissioner Jones.  
11 And thank you very much for holding this hearing so quickly.  
12 I know that time is very tight in this matter, and I'm not  
13 sure that any of us anticipated being here today. I know  
14 that I didn't.

15 This is a very unique situation. I don't  
16 believe, although we talked about compliance and  
17 mathematical and putting together tariffs in a general rate  
18 case, but I think we all understand that this was a very  
19 unique situation.

20 So as far as barriers of compliance, our  
21 issue is that we will not be able to comply with the order  
22 and that we will not be able to go forward with the  
23 transaction with the order as stated.

24 There are three distinct reasons and criteria  
25 for that: The first one being what I would call the ongoing

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1 prudence issues, mainly because it puts the burden on the  
2 Company as far as the ongoing prudence throughout the  
3 contract term, but the conditions that we would be reopening  
4 and reviewing are not within the Company's control. So the  
5 ongoing prudence issue is an issue.

6                   The deferral of costs into a further rate  
7 case does not provide that type of certainty that the  
8 Commission or that the Company would be able to adhere to.

9                   And last, but definitely not least, the  
10 return on equity. And in the compliance on that piece, we  
11 believe that the terms and conditions in the order do not  
12 comply with the legislation in that an electric company to  
13 enter into this transaction was to receive an incentive.  
14 And as we interpreted the incentive, it was to at least  
15 receive a return that would keep us whole in the eyes of the  
16 rating agencies. So that would include anything that we  
17 would need to retain that whole as far as with S&P with the  
18 imputed debt on this power purchase agreement. And the  
19 order does not comply with those terms and conditions.

20                   So with these three criteria, I guess our  
21 barriers to compliance is we will not move forward with the  
22 transaction.

23                   JUDGE KOPTA: Mr. Chairman?

24                   CHAIRMAN GOLTZ: Let me ask a couple of  
25 questions, because I'm not sure I follow all of that, or it

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1 doesn't comport with my understanding of what is in the  
2 order.

3                   The deferral issue, you're saying we should  
4 just do that now instead of waiting, punting it to a rate  
5 case -- or not punting it, but deferring the deferral. Is  
6 that what you're saying?

7                   Is this a timing issue?

8                   MS. HARRIS: It is a timing issue. But I  
9 think it's also a certainty issue. From the Company's  
10 standpoint, if we wait and file that deferral in the next  
11 rating proceeding, it is then divorced from this proceeding  
12 and really kind of the terms and conditions of this  
13 Centralia proceeding. So it just becomes part of another  
14 general rate case.

15                   And at that time we know that Staff will then  
16 file its motion or it will be part of its testimony to deny  
17 that deferral. So it seems that it should just be dealt  
18 with at this time.

19                   CHAIRMAN GOLTZ: Didn't you view the order as  
20 basically saying let's just pick a convenient time and some  
21 sort of -- you know, save the effort and do it then as  
22 opposed to doing it now, and have it all wrapped up into one  
23 proceeding and do it now and then have another proceeding  
24 later?

25                   Do you know what I mean?



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1 MS. HARRIS: I guess we didn't perceive it  
2 that way. When we looked at the legislation and we all sat  
3 down and talked about this transaction, the term  
4 "preapproval" meant something to us.

5 So I guess we looked at it as all the terms  
6 and conditions so we could put this one -- so we could have  
7 the hearing and understand what we were entering into at one  
8 time.

9 CHAIRMAN GOLTZ: Right. And the order  
10 specifically finds Puget's entering into this contract as  
11 prudent.

12 MS. HARRIS: Well, it says that it would find  
13 it prudent. But even there, Chairman, it has an ongoing  
14 possibility to reopen the contract from time to time.

15 CHAIRMAN GOLTZ: That's the other issue.

16 But I'm just looking at the deferral issue,  
17 which in other words, I guess I was -- is this a matter of  
18 we don't quite trust you, Commission, because unless you do  
19 it right away who knows what's going to happen in a couple  
20 years or a year from now?

21 MS. HARRIS: I would never say that. It  
22 could be inferred.

23 CHAIRMAN GOLTZ: But you know what I mean?

24 And if that's a big deal, I don't quite get  
25 -- I viewed that as being kind of well, let's just do this

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1 later because it would be more efficient to do it later as  
2 opposed to do this right away. But that gives you  
3 heartburn, is what you're saying?

4 MS. HARRIS: I think from the Company's  
5 perspective, again, we did believe that everything would be  
6 part of this proceeding. So I can see where you may think  
7 that that's not a big issue.

8 I think it just gives us another area of  
9 uncertainty.

10 CHAIRMAN GOLTZ: On the ongoing prudence,  
11 what you're referring to is the reporting requirements.  
12 That's what Mr. Kuzma's letter talked about, was the ongoing  
13 reporting requirements.

14 MS. HARRIS: The retaining authority, yes.

15 CHAIRMAN GOLTZ: So the ongoing reporting  
16 requirement is to basically let us know what's going on with  
17 the plant.

18 And I don't know if you were at the hearing,  
19 but I can assure you that Mr. Kuzma did a fantastic job,  
20 when we asked about this question, of assuring us that it  
21 was highly, highly unlikely that the scenario that we're  
22 contemplating of the plant not operating for any significant  
23 period of time, that it was just very, very unlikely.

24 So when your petition -- when your letter  
25 says worrying about the risks of that, I guess I don't

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1 understand the risks that you're worried about. Isn't it  
2 everything -- your concern premised upon that highly  
3 unlikely event of the plant not operating for a significant  
4 period of time?

5 MS. HARRIS: Yes. The Company's view is that  
6 it's a highly unlikely event.

7 And any conversation that we've had with  
8 TransAlta is it's a highly unlikely event.

9 But if it occurs, it's not within the control  
10 of the Company.

11 So if it controls, then you've retained  
12 authority to relook at this contract. And we think that  
13 that is an ongoing prudence issue.

14 CHAIRMAN GOLTZ: And your concern and  
15 ambiguity I perceive in your reading of the order, because  
16 we're looking at uncertainties in the order here, is  
17 assuming the consequence is relooking at the underlying  
18 prudence of the contract.

19 And I'm not sure that's in there. Look at  
20 that, but I'm not sure that the consequence of a report that  
21 was to be filed with the Commission of a long -- or let's  
22 make the facts simple -- permanent closing of the plant,  
23 that the consequence of that is the evaluating the  
24 underlying prudence of the contract. I don't see that's  
25 what we said.

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1 MS. HARRIS: I'm trying not to ask you  
2 questions.

3 CHAIRMAN GOLTZ: Just not answering.

4 MS. HARRIS: What would the consequence be?  
5 I mean, what we are worried about is further  
6 penalties. If we --

7 CHAIRMAN GOLTZ: I'm sorry. You're worried  
8 about?

9 MS. HARRIS: Penalties. What would the  
10 consequence be if five years down the road, ten years down  
11 the road, we reopen the contract, and lo and behold there  
12 was an extended period of time where they were not  
13 operating?

14 CHAIRMAN GOLTZ: Well, let me tell you first  
15 of all, since you asked -- the only one -- I think your  
16 Company was very persuasive in advocating and convincing  
17 everybody, the parties, that this power was needed; that it  
18 was in effect the least cost resource for the Company and  
19 for the ratepayers, and it was a prudent thing to enter  
20 into. And I think the order reflects that.

21 The concern was -- and maybe we can all think  
22 about this over recess -- but the concern was if the plant  
23 shuts down, then, you know, the -- this whole mix, this  
24 grand elegant legislation that Ms. Hirsh talked about in her  
25 oral arguments, where you have all of these different

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1 pieces, that there's going to be, to use an example, a bunch  
2 of folks in Lewis County without jobs in the plant. And so  
3 if it shuts down, I guess we want to know about that.

4                   And the concern was whether that still is  
5 coal transition power, then. That contract is still for  
6 power, but is that power still coal transition power.  
7 Doesn't mean that it's not a prudent contract; just means it  
8 might not be coal transition power

9                   MS. HARRIS: Would it be at that time, then,  
10 if it's no longer coal transition power, would there be an  
11 argument that we should not be earning a return on that?

12                   CHAIRMAN GOLTZ: There's probably that  
13 argument.

14                   But that's different from underlying prudence  
15 of the agreement. What you raised in your presentation was  
16 there's an underlying prudence issue in the contract.

17                   And in my view, this was a prudent contract.  
18 It continues to be a prudent contract. And it's the least  
19 cost, it's the best deal for ratepayers, it's a long-term  
20 hedge, all the reasons that you and your lawyers and  
21 witnesses so persuasively argued.

22                   So I guess what I'm saying is I don't  
23 understand the way you started this issue of the ongoing  
24 prudence. I don't see that. Now maybe my colleague  
25 disagrees.

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1                   By the way, we're down to two commissioners  
2 only for the purposes of entering the final order.

3                   So anyway, that's the point here.

4                   But anyway, then the last issue you raised is  
5 the ROE. And I gather that wasn't raised in Mr. Kuzma's  
6 letter. But you're saying just the amount is an issue that  
7 you're concerned about, or is it something different than  
8 the amount?

9                   MS. HARRIS: So if I may clarify as far as  
10 the use of the word "prudence" -- and at first I was going  
11 to say you may see a difference between retaining authority  
12 and us using the term "ongoing prudence."

13                   But in paragraph 58 it says, "In such  
14 unlikely circumstances, the Commission may initiate a  
15 proceeding to consider whether it remains prudent."

16                   So "remains prudent" and "retaining  
17 authority," maybe that's where we're making that  
18 distinction, but remains prudent for PSE to continue taking  
19 deliveries under the contract.

20                   COMMISSIONER JONES: On that point, Ms.  
21 Harris, go to paragraph 58 and 69. This is just more of a  
22 clarification.

23                   So if this is -- are you there?

24                   In paragraph 68, I think what the chairman  
25 was referring to, Mr. Kuzma did work with us and TransAlta,

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1 I would assume, and provided us with historical information  
2 from 2008 to 2012, talking about the operation of the plant  
3 when resupply might be considered. And there's a number  
4 there of ten percent.

5 And then paragraph 69, I think what we're  
6 saying is, as the chairman said, we impose a condition only  
7 to the extent of a reporting requirement. And then this  
8 would enable the Commission to know if TransAlta exercises,  
9 et cetera, et cetera.

10 And then, "If the Commission Staff's  
11 continuing review suggests that the contract has lost its  
12 identity as a coal transition agreement, the Commission may"  
13 -- not shall -- may initiate proceedings to determine  
14 whether this is the case and what consequences flow.

15 So there's a certain flow of information  
16 there from paragraph to paragraph that indicates that based  
17 on the evidentiary record, only ten percent over the past  
18 four years has been resupply, but the Commission retains its  
19 interests for the various reasons he mentioned, you know,  
20 that the coal transition PPA and the interlocking nature of  
21 these three agreements, the MOA, the bill, the PPA.

22 So what can we clarify here that would give  
23 you a little more comfort to reduce the uncertainty?

24 Would it be a quantitative number on --  
25 TransAlta was not a party to this proceeding, as you know.

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1 So I'm trying to get at what would reduce or what would be  
2 some means to reduce uncertainty.

3 MS. HARRIS: I'm not sure it's a threshold  
4 that we're looking for.

5 I think it's just the nature of the order  
6 with the, if you want to say ongoing authority or retaining  
7 authority or whether it's an ongoing prudence review.  
8 Whatever that review is, it's outside the control of the  
9 Company.

10 So in the future, if something that TransAlta  
11 does changes the circumstances of the contract, we may be  
12 penalized or we will definitely be going through hearings.  
13 We will be doing something.

14 We entered into a prudent contract on behalf  
15 of our customers and did everything possible to make sure  
16 this was the least cost alternative. And we brought that  
17 evidence to the Commission, and the Commission approved it  
18 and says it's prudent. At that time, that prudence should  
19 hold. And we shouldn't have to revisit the terms and  
20 conditions of the contract.

21 It's kind of like another look back. And I  
22 think that that uncertainty -- so I'm not sure you can  
23 clarify it or put a threshold on it. I'm not sure you could  
24 make me comfortable with that ongoing authority

25 COMMISSIONER JONES: So if I follow your



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1 logic, then, you are not asking at this order conference  
2 hearing -- and I understand the purpose to be a  
3 clarification. So your clarification is you just want this  
4 reporting requirement eliminated.

5 MS. HARRIS: Well, I think our clarification  
6 is a barrier for compliance.

7 CHAIRMAN GOLTZ: Can I ask separate  
8 questions?

9 Is just the reporting requirement itself,  
10 without any thought of consequences from that, is that a  
11 burden?

12 I mean, is there something in the nature of  
13 providing this information that's costly, problematic,  
14 something like that?

15 MS. HARRIS: If the information is something  
16 that's readily available and that we would have -- we  
17 wouldn't have to create, I wouldn't think that there would  
18 be any issue with it.

19 CHAIRMAN GOLTZ: I think we said confer with  
20 Staff and try and help figure this out.

21 So your concern is really with the  
22 possibility of an uncertain consequence.

23 And actually you're talking more about the  
24 possibility of certain consequences if we say it's  
25 imprudent; you have to terminate the contract or something

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1 like that.

2 MS. HARRIS: Yes. And I would think even by  
3 way of our conversation where you were saying that there was  
4 a prudence review and that that prudence was already  
5 determined, but then the order using the --

6 CHAIRMAN GOLTZ: Yes, I saw that there.

7 MS. HARRIS: So you can see --

8 CHAIRMAN GOLTZ: I understand.

9 MS. HARRIS: It peaks interest in our mind.  
10 So I think in any event we would want to clarify what the  
11 terms and conditions of a continuing review would look like  
12 or why is it necessary. It might be --

13 CHAIRMAN GOLTZ: Right. To be just frank  
14 here with sort of what was going through my head during the  
15 hearing, and we asked for some information, which we got,  
16 which was -- for example, Mr. Kuzma provided this -- how  
17 many workers are there at the plant? When you do these  
18 shutdowns are they terminated, are they let go?

19 And the answer came back, as I recall, well,  
20 we just haven't shut down the plant that much. And if we do  
21 shut it down for a number of months, no, they're kept  
22 employed.

23 Part of the whole purpose of this grand  
24 compromise was to keep folks there working. And I sort of  
25 thought we were urged, actually, to consider all the

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1 purposes of the statute in reviewing this.

2                   So it was of some concern to me when I saw  
3 the resupply provisions that if that could end up resulting  
4 in the plant being shut down and workers being out on the  
5 street and the economy of Lewis County being impacted, that  
6 strikes me as that's not what was intended by this whole  
7 thing. It was intended that they keep on going. So that  
8 gave rise in my mind, at least, to this provision.

9                   But again, we were given lots of assurances  
10 that that really wasn't -- that it hasn't happened and it  
11 likely, very likely wouldn't happen.

12                   So we were the ones probably looking at this  
13 possible very improbable circumstance and just wondering if  
14 that happens, does that make a difference. And I think the  
15 question was, well, we don't know, but it might. So let's  
16 hear about it if it happens.

17                   Okay. The last point that you raised was  
18 return on equity. And that wasn't in Mr. Kuzma's letter. I  
19 gather it's the equity adder. And it's unclear whether your  
20 concern is it just wasn't enough, or it was -- or if it was  
21 something else?

22                   MS. HARRIS: Well, it's inadequate to offset  
23 the imputed debt of the contract in the eyes of the rating  
24 agency.

25                   And so although I agree with you when we sat

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1 down and negotiated this grand scheme of things to make sure  
2 that individuals didn't lose their job and Lewis County was  
3 kept whole and that the State of Washington would have  
4 cleaner power, part of it was that if an electric company  
5 negotiated a contract that it would be provided an incentive  
6 and at least not be harmed by the imputed debt aspect of a  
7 PPA.

8                   CHAIRMAN GOLTZ: So you're saying that the  
9 amount, the 34.7 million estimated present value of the  
10 equity adder is worse off than you would have been but for  
11 this contract?

12                   MS. HARRIS: Yes.

13                   CHAIRMAN GOLTZ: And that's assuming that  
14 instead of the -- instead of a PPA, you would have built the  
15 plant?

16                   MS. HARRIS: Well, actually what we had --  
17 and it raises an interesting discussion. Because when we  
18 all sat down in this grand scheme -- I'm trying to remember  
19 the exact words you used.

20                   CHAIRMAN GOLTZ: I embellished a little bit,  
21 perhaps because Mr. Phillips is here.

22                   MS. HARRIS: We were contemplating what would  
23 be available and that we would build our own plant. And  
24 that was part of our IRP.

25                   And as we moved forward with this

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1 transaction, we all recall there was a first transaction  
2 with TransAlta. And TransAlta had been into our IRP, and it  
3 was the lowest cost -- after negotiations, it was the lowest  
4 cost alternative for our customers. And we entered into  
5 that agreement, and I would say very late into that time  
6 frame, and I call it the eleventh and a half hour.

7 And I had given notification, not only to  
8 TransAlta, but to the governor and all the parties that were  
9 interested, that we had reached an agreement with TransAlta  
10 and we would be bringing it to our board.

11 And at that time, Ferndale was proposed. And  
12 I have to tell you, it's a difficult step to stop everything  
13 and call the governor and tell her it's not the least cost  
14 alternative and there's nothing you can do and that we are  
15 standing by our customers and we will bring the least cost  
16 alternative to our customers. And we brought that, and that  
17 was Ferndale.

18 But Ferndale is a unique opportunity. We  
19 couldn't anticipate Ferndale being offered. We can't  
20 anticipate a plant which by virtue of a 20-year PPA has no  
21 debt and basically is the least -- we could not anticipate  
22 that Ferndale would be available. But it was. And we moved  
23 forth with that transaction.

24 And at that time, I believed that the  
25 TransAlta transaction was over. But as we sat down and

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1     tried to think how could we bring all this back together, we  
2     do have a continuing need. We have a need out to the  
3     future. And if that need out into the future could be  
4     negotiated and if that need out into the future could keep  
5     that plant running and keep everybody's jobs available, we  
6     were willing to sit down if it was the least cost  
7     alternative and move forward with that transaction.

8                     At that time, though, we're not comparing to  
9     it to Ferndale. Ferndale is off the table. It's already  
10    been addressed with that need.

11                    So I can't say that we would build our own  
12    plant. I think that's probably not likely.

13                    But we actually filed evidence on what's  
14    really available out there; if we don't move forward with  
15    the TransAlta transaction, what is available to our  
16    customers. And that's what's filed. So it's real.

17                    CHAIRMAN GOLTZ: Well, we're probably going  
18    over -- beyond what was contemplated in the order  
19    conference.

20                    MS. BROWN: No kidding. When you're  
21    finished, I would like to make a standing continuing  
22    objection.

23                    CHAIRMAN GOLTZ: But this would be clearly  
24    relevant to a motion to reconsider. And in that regard,  
25    what I wanted to find out -- actually, I have one other

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1 question. And then Mr. Jones or Judge Kopta may have some  
2 questions.

3 But we have here a situation where I believe  
4 the time for filing a petition for reconsideration I believe  
5 is Tuesday. Are we all in agreement? I hate to make a  
6 representation and mess that up, but I believe it's Tuesday.

7 MS. BROWN: That's correct.

8 MS. HARRIS: Yes.

9 CHAIRMAN GOLTZ: So what other time  
10 sensitivities are there in the MOA?

11 Is there something that needs to get done by  
12 a certain date?

13 Do you have to decide by Friday -- putting  
14 aside the deadlines that we have here in this proceeding, is  
15 there some date by which you have to either act or not act  
16 or give notice or not give notice?

17 MS. HARRIS: We're operating that Tuesday is  
18 really that deadline.

19 CHAIRMAN GOLTZ: That's our statutory  
20 deadline for reconsideration.

21 But that's not the deadline -- if the  
22 deadline for petition were Wednesday, you'd have until  
23 Tuesday.

24 What's your deadline on the MOA?

25 Is there anything coming up?

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1                   Does TransAlta have to meet a local  
2 government payment, for example, sometime in the next couple  
3 months that would be an important event?

4                   MS. BROWN: Chairman, the PPA or the MOA?

5                   CHAIRMAN GOLTZ: Either under the PPA or the  
6 MOA.

7                   MS. HARRIS: First of all, I was reluctant to  
8 answer anything under the MOA because we're not a party to  
9 the MOA.

10                  But actually, it's the terms and conditions  
11 of the PPA itself that we are to accept or reject within the  
12 same time frame as the time frame for reconsideration.

13                  CHAIRMAN GOLTZ: Right. But if there's a  
14 petition for reconsideration filed, then that gets extended.

15                  MS. HARRIS: Correct.

16                  CHAIRMAN GOLTZ: And I guess my question  
17 might be better addressed to somebody else, which --

18                  MS. HARRIS: Probably.

19                  CHAIRMAN GOLTZ: Under the MOA -- I guess I'm  
20 hypothesizing -- I know that under the MOA, TransAlta makes  
21 on an annual basis, I believe, payments for the benefit of  
22 the local community. And if one of those payments is coming  
23 up, they're probably going to want to know, do we want to  
24 make this or not?

25                  So is there something like that that



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1 basically has a practical timeline within which all this  
2 gets wrapped up?

3 Maybe we can just -- I'm gathering no.

4 MS. HARRIS: It's beyond the scope of  
5 knowledge of this nonwitness.

6 MS. BROWN: That's actually not funny.

7 JUDGE KOPTA: I'm glad we have that embodied  
8 and memorialized.

9 Ms. Brown, you wanted to say something?

10 MS. BROWN: I don't actually find that funny.

11 On behalf of Commission Staff, I do want to  
12 make a standing objection to this.

13 This is not -- according to the Commission's  
14 rule, which was read by your Honor as we began this, this  
15 conference is not a forum for discussing even, much less  
16 challenging, the evidentiary, legal, or policy decisions  
17 expressed in the order.

18 So like you, Commissioner Jones, I have not  
19 seen this before, and I've been here since 1991.

20 And what Ms. Harris has offered is argument,  
21 not evidence. It's unsworn argument. It's not helpful for  
22 the Commission in its decision making process.

23 To the extent that the Chairman referred to  
24 the deliberative process underlying the Commission's order,  
25 I object to that.

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1 I'm not quite sure what this animal is. But  
2 I am not happy on behalf of Commission Staff and I wanted to  
3 make that known.

4 JUDGE KOPTA: Point taken.

5 And I agree that this particular issue, the  
6 return on equity, is not something that would be subject to  
7 clarification.

8 I'm inclined to allow at least the discussion  
9 that we've had up to this point because Ms. Harris, I think,  
10 made it clear from her opening comments that these are all  
11 three interrelated concerns that the Company has, and I  
12 think the Commission needs to be aware of those. There's no  
13 point in addressing clarifications alone if that's not going  
14 to address all of the Company's concerns.

15 That said, I think certainly the idea here is  
16 to identify the issues that the Company has and to  
17 categorize them as how best to address them.

18 And certainly the return on equity issue  
19 would be properly addressed in a petition for  
20 reconsideration. But hopefully we've had that discussion.  
21 And hopefully the other parties will respect that that's not  
22 something that we want to have an extensive debate on  
23 because we can do that in writing if the Company decides to  
24 file a petition for reconsideration.

25 Instead I think the focus should be on trying

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1 to clarify what the Company's concerns are with compliance  
2 with the order as it is currently crafted. I think that is  
3 something we can address here. And I would hope that the  
4 remainder of the time that we have would be focused on those  
5 issues.

6 Did you have anything further, Ms. Harris?

7 MS. HARRIS: No.

8 JUDGE KOPTA: Commissioner Jones?

9 COMMISSIONER JONES: Just on that last point,  
10 I'm inclined to agree with counsel on the point. The equity  
11 adder is not either in the notice of issues.

12 I'm inclined to ask some questions based on  
13 the previous discussion on debt imputation, but I think I  
14 would hate to see the record be established, even though  
15 it's unsworn, on an issue like debt imputation where I think  
16 there's a lot of argument back and forth.

17 So I'm quite uncomfortable with that last  
18 exchange of views on equity adders and how to impute that.  
19 That would be entirely appropriate to raise on a petition  
20 for reconsideration. But if we're focused on clarification  
21 questions today, I don't think it's appropriate at all.

22 JUDGE KOPTA: And that's duly noted, Mr.  
23 Commissioner.

24 MS. HARRIS: If I may, I apologize for going  
25 beyond the scope. I was trying to give some context to the

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1 chairman's question to me of would we build.

2 JUDGE KOPTA: And I understand. And one of  
3 the reasons I'm not going to do anything more about what's  
4 already been said is because you were responding to  
5 questions from the bench. And I don't think that it's fair  
6 to hold you accountable for questions that are coming from  
7 up here. I mean, you responded.

8 CHAIRMAN GOLTZ: They're coming from my --

9 JUDGE KOPTA: It's all the chairman's fault.

10 COMMISSIONER JONES. Back to basics, if I  
11 could, before we leave this I have one more question of  
12 clarification.

13 JUDGE KOPTA: Certainly.

14 COMMISSIONER JONES: Back to the deferral,  
15 Ms. Harris. So you may want to go to -- I'd like to go to  
16 the record on this, paragraphs 98 and 99.

17 So I'm trying to understand your concern. In  
18 paragraph 99 we're saying, quote, As a general matter, it is  
19 more appropriate to consider the issue of deferral  
20 accounting in the context of a general rating proceeding."  
21 And I think we've said that before in other orders. There's  
22 nothing new with that.

23 But then we say, "There is ample time for PSE  
24 to initiate such a proceeding before the time" it takes --  
25 before it begins taking power under this contract in

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1 December of 2014.

2 So my question is, is there any dispute about  
3 the facts or interpreting December 2014?

4 That's when you start taking power, correct,  
5 under this PPA?

6 MS. HARRIS: Yes, sir. If we move forward  
7 with the PPA, that is correct.

8 COMMISSIONER JONES: So is there any  
9 confusion about -- what's the confusion here?

10 Is it again that you wish to have us make a  
11 decision -- and I think that would be more appropriate for a  
12 petition for reconsideration for you to make that request --  
13 but is there any ambiguity in the statement about ample  
14 time, or is it just that you want us to opine and make a  
15 determination on deferral accounting now?

16 MS. HARRIS: I don't believe -- I definitely  
17 don't have some sort of clarification on paragraph 99 of the  
18 timing. So I don't know that that's really what we were  
19 focusing in on on the language.

20 But it's just really -- we need to make a  
21 decision very soon, you know, now, on whether to move  
22 forward or not, and that causes us concern because of the  
23 uncertainty. So I don't know if it's on specific language  
24 per se, but just really the practice altogether.

25 COMMISSIONER JONES: Okay. Thank you, Judge.

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1                   JUDGE KOPTA: One question that I have still  
2 is on the reporting requirement then, that section. Putting  
3 the word "prudence" aside, is it the Company's view that if  
4 we -- if the Commission were to clarify that the reporting  
5 requirement is simply a reporting requirement, that who  
6 knows what will happen in the future -- the order says that  
7 the Commission may initiate proceedings, but there's no  
8 obligation.

9                   Is it the Company's view that if that  
10 language were not in there; i.e., that the Commission may  
11 initiate proceedings, that the Commission would be precluded  
12 from relooking at the agreement if it simply said all we  
13 want to do is have you report on what the status of the  
14 contract implementation is, four, five, ten years from  
15 now?

16                   MS. HARRIS: So can I clarify?

17                   If I can read back, Judge Kopta, what I think  
18 you're getting to --

19                   JUDGE KOPTA: Sure.

20                   MS. HARRIS: -- is if there was just a  
21 sentence that said the Company would continue reporting on  
22 the status of employees -- I'm not sure whether we will have  
23 that information. And that's -- I'm not sure that the  
24 Company is the best entity. I mean, I don't have that  
25 information, for example, in other PPA's that I -- you know,

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1 that we have entered into. If we are that best source of  
2 information, I'm sure that there's other ways of getting  
3 that information, which is kind of difficult for the Company  
4 to sign onto.

5 But if your question is if it's just a  
6 reporting requirement and it doesn't say that Commission  
7 Staff or the Commission can initiate a proceeding based off  
8 the any reporting requirement, I guess that wouldn't be  
9 retaining authority. And so I think it changes the nature  
10 of our concern.

11 I also think it changes the nature of the  
12 order.

13 JUDGE KOPTA: Right. Well, I just wanted to  
14 get your interpretation of what the statute says.

15 And what you -- how you were interpreting the  
16 order is the Commission retaining authority that it  
17 ordinarily wouldn't have; so that for example, if the  
18 Commission simply approved the PPA at this point, maybe it  
19 said, "Gee, to the extent that you have the information we'd  
20 like to see how it's being implemented," that if ten years  
21 down the road TransAlta says, "We got a great source from a  
22 gas-fired plant that we can get cheaper. We can close down  
23 and continue providing power at this rate," that at that  
24 point it's a done deal. There's nothing the Commission can  
25 do. And it just has to say, "Well, that was the risk we

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1 ran." Is that where you're saying the Company is coming  
2 from?

3 MS. HARRIS: I would believe -- I mean, I  
4 think that's what we're all signing up to. And, you know,  
5 I'm not sure that we can look into the future and tell  
6 what's going to happen with whether it be gas prices, power  
7 prices, coal, or even whether the --the continuation of the  
8 facility as a whole.

9 I know that I don't want to use the word  
10 "prudence" and I don't want to go beyond the scope.  
11 Management makes the best decision that it has with the  
12 facts that it has been before it at the time. And those  
13 facts are what we know or what we should have known. And I  
14 believe the Company has proven that.

15 So if there's a determination that we made  
16 the best decision and the least costly decision on behalf of  
17 our customers, I'm not sure that the Commission should be  
18 relooking at it ten years down the line.

19 JUDGE KOPTA: Okay. Thank you. I believe  
20 that's it for you at this point.

21 Did anyone else want to make a statement at  
22 this juncture, or shall we take a recess?

23 CHAIRMAN GOLTZ: I think Mr. Phillips and Mr.  
24 Taylor, I believe, did. So why don't we hear from them.

25 And if Mr. ffitch has -- I guess I view this



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1 as sort of, here's concerns and then we'll recess and then  
2 we will get responses. So everyone can kind of respond with  
3 some -- with five or ten minutes of contemplation.

4 JUDGE KOPTA: Mr. Phillips, would you like to  
5 share your views?

6 MR. FFITCH: Can I inquire of the bench how  
7 the comments of nonparty individuals are being fit into the  
8 framework of the rule that we're operating this conference  
9 under?

10 They don't appear to me to be a matter of the  
11 notice that's gone out. No party has been offered the  
12 opportunity to bring either members of the public or its own  
13 witnesses back to testify to the Commission on any subject.

14 So I'm kind of echoing Ms. Brown's comments  
15 here. I'm not sure what this conference is turning into.  
16 It's pretty unrecognizable from what we see here in the  
17 rule.

18 And I'm particularly concerned that we're  
19 having, again, nonparty members of other institutions being  
20 invited up to make -- I don't know what they're going to  
21 say.

22 We've already heard a tremendous amount of  
23 argument and un-factually related statements from Ms.  
24 Harris. And I don't know what we're going to hear now. And  
25 the ability of other parties to deal with that is pretty

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1 limited at this stage.

2 JUDGE KOPTA: And I appreciate your concerns.

3 Again, I will reiterate that these are all  
4 representations of representatives of companies. It's not  
5 facts. We're not reopening the record. This is not  
6 evidentiary in any way, shape, or form.

7 It is simply the equivalent of argument, and  
8 a discussion about what the meaning of the order is to those  
9 persons who were not involved in drafting it.

10 I don't know what Mr. Phillips is going to  
11 say. But I will be giving him the courtesy to speak because  
12 this is a unique proceeding that involves not just the  
13 Company, but also TransAlta and the governor.

14 We are in uncharted waters. And at this  
15 point, as the Commission usually does, I err on the side of  
16 including too much and deciding later that we will not  
17 consider it as opposed to precluding it.

18 So I recognize your objection. I understand  
19 your position.

20 But at this point, I think the Commission,  
21 would benefit from hearing additional information and taking  
22 it into consideration in terms of whether and the extent to  
23 which it chooses to clarify its most recent order.

24 CHAIRMAN GOLTZ: I understand that what we  
25 heard from Ms. Harris at the start was this is a huge

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1 barrier to compliance, which was relevant under Subsection 1  
2 (a) of the rule, the barrier being we aren't going to sign  
3 the agreement.

4 And I view this as one step in that ultimate  
5 process. As I mentioned earlier, we found this contract to  
6 be prudent, in the best interests of ratepayers, and the  
7 best interest of the Company. And so to say that it's not  
8 going to be implemented is of some concern.

9 So Mr. Phillips?

10 MR. PHILLIPS: Thank you, Judge Kopta. And  
11 good afternoon, your Honor, Chairman Goltz, Commissioner  
12 Jones. Thank you for the opportunity to participate in the  
13 conference.

14 And I suppose I could apologize for being the  
15 unusual animal in this proceeding because I feel like that.  
16 So I'll be right up front with it.

17 For the record, I'm Keith Phillips. I'm here  
18 today on behalf of Governor Gregoire and our new Governor  
19 Inslee at their request and direction. Both governors have  
20 expressed to me their very, underscore, strong interest in  
21 making sure that the statutory plan for our transition from  
22 coal power to cleaner energy sources gets accomplished. And  
23 they have directed me to engage with you accordingly.

24 And my understanding or view on this, being  
25 not a lawyer and not a very good witness either, is I'm here

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1 to simply provide a perspective during an informal or  
2 apparently on the record technical conference. Let me  
3 proceed accordingly. Thank you.

4                   The governors have been briefed on the  
5 concerns, some of them at least, with the terms of the  
6 Commission's approval in this case and some of the attendant  
7 risks to the State's public interest if this doesn't  
8 proceed.

9                   Both of them have basically asked me to relay  
10 to you a request that you re-engage the parties by whatever  
11 appropriate means to achieve the statutory objectives. And  
12 I would add in both their cases, this is an earnest request,  
13 understanding they have no authority to direct this or to  
14 compel it or not looking to monkey with your business. So I  
15 would say please.

16                   At the risk of swimming in the deep end of  
17 the pool just a bit, let me attempt to speak to the merits  
18 ever so briefly and not get any questions, because I think  
19 that your Honor has already advised I don't have to answer  
20 questions, I hope.

21                   On the issue of allowed equity, I believe the  
22 purpose of the legislation, or at least one of the intents,  
23 was to create an incentive that was strong enough to  
24 encourage private investment in order to make the transition  
25 possible. And I think the key to that incentive was that

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1 the return on equity be at least large enough to offset the  
2 investment advantage of acquiring or owning a generation  
3 facility outright. How that relates to untreated debt, I do  
4 not have the knowledge to comment.

5 Now the way I heard this described, the  
6 Commission's decision described, was in real estate terms;  
7 that the value of the equivalent plant was set by the last  
8 house that was sold on the block, if you will.

9 In my view, and this is the common person's  
10 view, if you will, if that last house on the block was a  
11 seller who really had no choice and had to move and there  
12 was only one buyer in sight, they might have taken a loss on  
13 that. And I don't know that a good realtor would say that  
14 the larger, nicer house down the road where folks had  
15 invested a little more and were not under any pressure to  
16 sell at a loss is necessarily the right index, if you will,  
17 for securing or buying the next house on the block. And I  
18 don't know that a buyer could find another must sell  
19 opportunity to meet their needs.

20 So I guess I would summarize that as the fire  
21 sale doesn't necessarily seem like the right interpretation  
22 of the equivalent plant for the need going forward, or do I  
23 think it provides a strong enough incentive to make the  
24 transaction work in the Company's minds, at least from the  
25 outside.

1                   On the issues of recovery of future ramp-up  
2 costs and resupply that Ms. Harris also raised, my view is  
3 the key legislative objective that a number of us in the  
4 room discussed was the critical importance of providing  
5 long-term certainty to the parties that were being asked to  
6 step in, participate in, and engage in the transition. And  
7 that certainty took lots of characters and political  
8 meanings: Certainty in the grid stability, certainty in the  
9 jobs and the community's future, and getting the air  
10 pollution controls and getting the greenhouse gas emission  
11 controls and the dates of the plant's closure, a lot of  
12 discussion around certainty.

13                   And I think my, again, outside views from a  
14 market perspective, that certainty is important to offset or  
15 balance or mitigate, maybe, the short term challenges and  
16 risks that the companies would have to take with this  
17 arrangement to make sure that the long -- over the long  
18 term, the benefits exceed the costs and that there's an  
19 opportunity, at least, for a return. And that certainty was  
20 needed to underwrite the transition for the companies who  
21 are willing to move from the current energy sources to the  
22 cleaner ones we wanted them to get to.

23                   And in my view, the order on these matters  
24 introduces the risk that future Commission proceedings might  
25 not provide for the recovery of what are basically known

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1 ramp-up costs over the life of the proceedings.

2                   And I have not seen the power purchase  
3 agreement, so I don't know the terms. But it is possible  
4 that one company has to decide today what the arrangement is  
5 going to be long term. And it's a unilateral decision. If  
6 they buy it, they have to live with it. And both companies  
7 then get some certainty around that.

8                   But if the Commission might have the ability  
9 to come back and say not all of those ramp-up costs are  
10 appropriate or that the -- there may be a question of  
11 prudence on the underlying contract, and that's just the  
12 equity adder, then at least one company has lost its  
13 certainty, by the decision they have to make today, as to  
14 whether eight, nine years from now they'll still have that.

15                   And I think deferring those decisions  
16 frustrates the statutory purpose of giving enough certainty  
17 to ensure the success of the transition.

18                   Now again, I don't have insider information  
19 on this. But I believe this particular power purchase  
20 agreement, in terms of timing, is fairly critical to that  
21 success. And if it does not go through, I believe we are at  
22 least with a good prospect of a near-term sort of -- bad  
23 prospect of a near-term and a sudden closure of the coal  
24 plant. And that's just what I've been able to pick up  
25 around the general conditions.

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1                   And if that closure happens, it will  
2 precipitate actions needed to make sure that the grid  
3 remains stable. And from one estimate that's a couple  
4 hundred million dollars, at least, for the transmission  
5 system that ratepayers would have to pick up one way or the  
6 other. And it will take a couple years. So even at best  
7 pace, the grid itself will be at serious risk, at least  
8 during the winter, to a couple of double events that could  
9 shut down portions on the west side.

10                   Closure now would likely force a new  
11 generation source to be brought online using current  
12 technology, foreclosing, I think, the opportunity to get to  
13 a cleaner source in the future if we've got some time to  
14 work towards it in an orderly way.

15                   The closure now would result in the loss of  
16 the funding under the agreement between the State and  
17 TransAlta. So the low income and public energy efficiency  
18 assistance, the clean technology investments, and the  
19 community economic development funds would be lost.

20                   And probably most importantly, rather than  
21 secure the jobs, which is the intent of the bill, the  
22 statute, but as I also interpret it, the intent of the  
23 Commission's order in this case, rather than that happening,  
24 I think the job loss would be near term or now or very soon,  
25 with pretty significant impacts to an area that's already



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1 distressed in the state. And while the State would pull out  
2 its tools, all available means to help with that job  
3 transition, I don't think we could prevent, even at best  
4 government support, the significant impact to the community  
5 and harm to the families that still depend on that  
6 particular plant.

7                   So avoiding these particular impacts was very  
8 high on Governor Gregoire's list in terms of a priority. I  
9 have now heard that it is now a high priority for Governor  
10 Inslee.

11                   And on their behalf, I would just urge the  
12 Commission to help us resolve the remaining issues with the  
13 power purchase agreement so we can stay on the better path.  
14 Thank you.

15                   JUDGE KOPTA: Thank you, Mr. Phillips.

16                   And anticipating other parties' concerns,  
17 many of Mr. Phillips' remarks do go to something that would  
18 be more appropriately considered as part of reconsideration.  
19 We recognize that, but at the same time we appreciate  
20 hearing the governor's office views on the transaction and  
21 on the impact of the order.

22                   And as a result of what we do today, if we  
23 have any clarification of the order, that would not factor  
24 in because it's not really a clarification.

25                   But as I say, we appreciate your comments and

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1 your coming and sharing them with us.

2 MR. PHILLIPS: Thank you, your Honor.

3 JUDGE KOPTA: And Mr. --

4 MS. HIRSH: Judge Kopta, may I make a few  
5 comments?

6 JUDGE KOPTA: I believe we're going to have  
7 Mr. Taylor, recognizing too that this is subject to the same  
8 concerns that public counsel raised before. Mr. Taylor is  
9 also representing a nonparty and may have the same concerns  
10 noted.

11 MS. BROWN: Don't forget Staff.

12 JUDGE KOPTA: And Staff. This side of the  
13 room.

14 MR. TAYLOR: It's always nice to be a  
15 nonparty and a nonresident alien.

16 Thank you. My name is Paul Taylor, for the  
17 record. I'm president of TransAlta USA and also president  
18 of TransAlta Centralia Generation, which is the company that  
19 is contracting with Puget Sound Energy to sell the power.

20 TransAlta appreciates the opportunity to come  
21 and speak today. We recognize we are not a party to this  
22 hearing; but as everybody understands, we have a keen  
23 interest in the outcome of this deliberation.

24 The coal transition contract between Puget  
25 Sound Energy and TransAlta is the culmination of three years

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1 of hard work by a lot of parties. TransAlta and Puget Sound  
2 Energy have gone through, you know, I would say a very  
3 challenging negotiation period to get to where we were. And  
4 I believe that, you know, they've done a good job and we've  
5 done a good job in bringing forward a contract that meets  
6 the needs of their customers in providing low cost power.

7                   And you're keenly aware of the benefits that  
8 have arisen from this contract in terms of TransAlta making  
9 an agreement to shut down our plant ahead of the 2035 useful  
10 life of the agreement and the tradeoffs that go along with  
11 that, so I won't spend any time going through that.

12                   In exchange for that, TransAlta was -- agreed  
13 to or was provided with a commitment that we would -- that  
14 the State would re-establish our ability to enter into  
15 long-term contracts. And that's really what this contract  
16 is all about, is TransAlta being able to do a long-term  
17 contract. And attached to that, our expectation was that  
18 there would be a degree of certainty.

19                   So if the contract was a "long-term contract  
20 but," then it's not a long-term contract. So our view is  
21 that the contract has to sustain through the life of the  
22 plant. And that's how we entered into our negotiation with  
23 Puget.

24                   And since this agreement was done with the  
25 State in 2011, a lot has changed. And we have in good faith

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1 invested in putting in the SNCR's at the plant as we  
2 committed to.

3 CHAIRMAN GOLTZ: Sorry; SNCR's?

4 MR. TAYLOR: The technology to deal with NOx  
5 problems. And we continued to make investments in the  
6 plant. We have --

7 COMMISSIONER JONES: Just for the record,  
8 could you verify, doesn't it mean -- for the court reporter?

9 MR. TAYLOR: Selective non-catalytic.

10 COMMISSIONER JONES: Reduction?

11 MR. TAYLOR: Yes.

12 COMMISSIONER JONES: Thank you.

13 MR. TAYLOR: And to a question that was  
14 raised earlier, we have made the initial installment in the  
15 55 million dollar commitment to the community enhancement  
16 fund. We made that at the end of December.

17 The next installment is due at the end of  
18 December 2013.

19 And we continue to be a strong corporate  
20 citizen in our community.

21 And through the period of this -- not only  
22 the agreement, but also the contract negotiation, the world  
23 has changed a lot. You know, we've seen our expectations  
24 for the power prices come down substantially. We as a  
25 company have taken on a 350-million-dollar writedown on that

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1 plant. And through all of that, our commitments remain the  
2 same. We haven't come back and looked for a different deal.  
3 And I think that speaks to our long-term commitment to the  
4 State of Washington and this power plant, which is, in a  
5 sense, trying to speak to the concern that the Commission  
6 raised in the order.

7                   And while -- I don't want to talk about that,  
8 but I also want to say that we understand Puget Sound  
9 Energy's concerns about the UTC order and the certainty that  
10 they're looking for, because the way I look at this is these  
11 are two parties entering into an agreement. We have a  
12 relatively short period of time to agree that it's going  
13 forward. If Puget Sound Energy agrees and we agree, then  
14 we're locked together.

15                   And if somewhere down the road Puget Sound  
16 Energy is not able to recover their costs, they can't get  
17 out of the agreement. So they have obligations to us to  
18 take the power, and they can't recover those costs. So I  
19 think it's a legitimate concern that they have.

20                   But in terms of the issue of jobs, you know,  
21 we recognize that that is a concern of the Commission. That  
22 clearly came through in your order. And so I wanted to  
23 comment on that.

24                   And I want to be clear. It has never been  
25 our objective to go through this lengthy process of



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1 dispatch support the economics. And to limit or restrict  
2 that would actually put those jobs at risk, which I believe  
3 is the issue you were trying to address in your order.

4                   So in conclusion, addressing the jobs issue  
5 alone doesn't resolve all the issues that Puget Sound Energy  
6 has brought forward, but we think it would go some way to do  
7 that.

8                   But I do want to highlight the consequences  
9 of not continuing with the coal transition PPA. The  
10 agreement embodied between the State and TransAlta and  
11 captured in the bill, in my view, would be in jeopardy if we  
12 couldn't conclude this contract.

13                   Given the conditions in the UTC order and  
14 assuming Puget said they couldn't get the certainty, it's  
15 hard to see a future condition that would say that we could  
16 come to an agreement on the longer-term contract if we can't  
17 solve some of these issues.

18                   And absent our ability to do long-term  
19 contracts, we will have to look at the overall viability of  
20 the plant in terms of the shorter time period and look at  
21 reconsidering how that's dealt with. We'd have to  
22 reconsider the community transition funds, and we'd have to  
23 reconsider our operating practice at the plant. That's  
24 somewhere we don't want to go.

25                   We think that what is here is in good

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1 measure, good for Puget Sound Energy and their customers.  
2 It's good for our company, it's good for our plant, and it's  
3 good for our employees.

4                   So we encourage you to -- you know, we get  
5 the issues you're trying to cover. And we think we can  
6 address some of them. And we ask to you think about some of  
7 the other ones. And we thank you for the opportunity to  
8 present today.

9                   JUDGE KOPTA: Thank you, Mr. Taylor.

10                   Again, as with Mr. Phillips, your comments  
11 are mostly directed towards issues that would be better  
12 addressed in petitions for reconsideration. So they will  
13 probably not be something that the Commission addresses  
14 further in this conference. But we appreciate your views  
15 and sharing them with us this afternoon.

16                   MR. TAYLOR: Thank you. I appreciate your  
17 time.

18                   JUDGE KOPTA. Thank you.

19                   CHAIRMAN GOLTZ: Unless people have other  
20 concerns with the order, then we'll take a break and then  
21 hear responses to what we've heard.

22                   MS. BROWN: Well, Ms. Hirsh wanted to be  
23 heard.

24                   MS. HIRSH: This is Nancy Hirsh with  
25 Northwest Energy Coalition. I just wanted to comment on one



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1 of the issues raised, which was reporting. And we were an  
2 advocate in our testimony for a reporting requirement. And  
3 we appreciate the fact that the Commission included a  
4 reporting requirement.

5 And we supported it for two reasons. One is  
6 to, you know, bring the Commission into the MOA process, at  
7 least a little, by being more informed of what the funding  
8 situation is on an annual basis from TransAlta.

9 And we recognize and appreciate the issues  
10 you raised in the order about your legal limitations for  
11 engaging in the MOA. You're not a part of it. We recognize  
12 that.

13 But being more informed as to the status of  
14 the financial contributions of TransAlta to the community  
15 economic development and the energy technology funds is a  
16 key piece of information in your decision making.

17 And then the other element of reporting that  
18 was of interest to us is on resupply, but for a different  
19 reason than some of the other parties. As we said in our  
20 testimony, our interest in resupply and in understanding  
21 what the mix of resources being used to fulfill the contract  
22 are related to greenhouse gas emissions and getting better  
23 information.

24 We know what the greenhouse gas footprint is  
25 from the Centralia coal facility. We don't from the other

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1 mix of resources being used. And that's helpful  
2 information, and we don't generally have access to that. So  
3 that was the key piece of the reporting requirement for us.  
4 And we appreciate you including that in the order.

5 JUDGE KOPTA: So do you have any position in  
6 terms of whether there needs -- the order needs any  
7 additional clarification on the reporting requirements?

8 MS. HIRSH: We would have to agree with the  
9 Company that it provides a lot of uncertainty for them as a  
10 condition of decision making in the future, and that that  
11 puts the whole long-term nature of the contract at risk.  
12 And I recognize the uncertainty that provides for the  
13 Company.

14 But we don't have an official position on it,  
15 no.

16 JUDGE KOPTA: Okay. Does anyone else want to  
17 raise any issues at this point before we take a brief recess  
18 to allow parties to consider responses to what has been  
19 discussed so far?

20 MR. FFITCH: Your Honor, yes, just briefly.

21 First of all, with regard to Bench Request  
22 No. 2, I discussed this with Mr. Kuzma. The information  
23 that is in Bench Request No. 2 -- I believe the Company  
24 confirmed this -- is not confidential with respect to the  
25 production of Centralia except for one quarter, the most



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1 substitute the Bench Request 2 tomorrow with the corrected  
2 version that has all but the fourth quarter of 2012 public.

3 JUDGE KOPTA: Great. Thank you.

4 Anything further at this point?

5 If not, we will take a recess for ten minutes  
6 and then come back at -- well, let's say 4:30 by the clock  
7 in the hearing room. So we are in recess.

8 (Recess taken 4:17 - 4:33 p.m.)

9 JUDGE KOPTA: All right. Let's be back on  
10 the record after our recess.

11 We will now hear from other parties. And  
12 just to kind of let you know what our thinking is, much of  
13 what's been discussed, if not most of what's been discussed,  
14 is issues that are more appropriately addressed on petitions  
15 for reconsideration, which we certainly would invite from  
16 parties because the issues are important ones that the  
17 Commission should consider.

18 So to the extent that you want to reserve  
19 your responses to written responses to any petitions for  
20 reconsideration, you certainly may. Or you may have an oral  
21 response that is tailored to the anticipation that you will  
22 have another opportunity to address these issues should  
23 there be petitions for reconsideration filed. I merely tell  
24 you that so that you may or may not tailor what your  
25 comments are at this point.

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1                   But just to let you know what our thinking  
2 is, that at this juncture, although I had originally  
3 suggested the procedure that we would have an off the record  
4 discussion, I don't think that that's going to be necessary  
5 or appropriate at this point since there's much more for  
6 reconsideration than there is for clarification.

7                   So what we would anticipate is after the  
8 other parties have an opportunity to have a response, that  
9 they will -- we will then adjourn this and anticipate that  
10 petitions, one or more, for reconsideration will be filed on  
11 Tuesday to present these issues formally to the Commission  
12 for determination. So with that --

13                   MS. BROWN: So would the Commission entertain  
14 a motion for reconsideration on the decision to hold this  
15 hearing on clarification?

16                   JUDGE KOPTA: We will entertain almost any  
17 motion you care to file, Ms. Brown.

18                   I won't tell you what the disposition of that  
19 motion will be.

20                   MS. BROWN: I had to ask.

21                   JUDGE KOPTA: So in any event, Ms. Brown or  
22 Mr. ffitch?

23                   MS. BROWN: Just a couple of points, your  
24 Honor. Thank you.

25                   I mostly would like to reserve Staff's

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1 position for a proper response to any formal written motion  
2 for reconsideration, although there are a couple of points  
3 that I do just want to raise here today just in light of  
4 what we've heard. Apart from my procedural objections, I  
5 have a standing objection to what I'm going to say.

6 But in terms of a motion for clarification is  
7 intended to receive guidance from the decision maker to  
8 eliminate confusion or add certainty or lend certainty to an  
9 interpretation of the order.

10 And here I don't believe one of the  
11 companies' -- PSE's primary point is not really a certainty  
12 issue at all. I mean, the Commission's order landed on the  
13 34 million dollar figure. And that is what it is.

14 So the only -- I think what the Company  
15 argued is that -- and this is the first that at least  
16 Commission Staff has heard this -- and I have not understood  
17 PSE to ever argue or provide evidence going to the point  
18 I've heard today from Ms. Harris, and that is if you give us  
19 only 34 million, we won't cover our costs somehow. I had  
20 not heard that before.

21 I also never heard the Company suggest even  
22 that the cost of the contract should include somehow the  
23 debt the rating agencies will impute into the contract.

24 And in terms of -- to the control point,  
25 clearly Commission Staff has no control over what the rating

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1 agencies do or decide, and neither does the Commission.

2                   The other point that I wanted to make is that  
3 the Company now wants certainty that PSE will get its return  
4 on equity regardless of whether TransAlta shuts down  
5 permanently, regardless of whether we're talking coal power,  
6 even though this is termed a coal transition power purchase  
7 agreement, regardless of what may happen because, as Ms.  
8 Harris suggests, it's beyond the Company's control what  
9 happens in terms of the source of the energy.

10                   As for -- there are several other points that  
11 we discussed during our break, my co-counsel and I and  
12 Commission Staff. And I think I will just leave it at that.

13                   I wanted to make those points, though, today  
14 so that there's at least -- I just want certain parties in  
15 the room -- or certain, I should say, nonparties in the room  
16 to know that a lot of what we heard today was not a part of  
17 the administrative record. And it's new. And it's not on  
18 record, not even evidence. And so that basically goes to  
19 the source of my primary objection here.

20                   But with that, I will leave it for Commission  
21 Staff's written response on behalf of -- well, on behalf of  
22 itself.

23                   JUDGE KOPTA: Okay. Thank you Ms. Brown.

24                   Mr. Ffitch?

25                   MR. FFITCH: Thank you, your Honor. I would

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1 echo the comments of counsel for Staff and just add a couple  
2 of points.

3                   We do believe that essentially everything  
4 that we have heard from the Company and TransAlta  
5 spokespeople today is in the nature of a request for  
6 reconsideration and is improperly brought to this conference  
7 today; and that if they wish to pursue those arguments under  
8 the Commission's rules, they have an opportunity and a  
9 vehicle that's clearly provided for to file a petition or  
10 motion for reconsideration. And that will then allow all  
11 parties, including our office, to respond to that. So I  
12 think that's our avenue for addressing any issues that we've  
13 heard today.

14                   I would just add I really feel compelled to  
15 say that I'm really quite disturbed at the approach that's  
16 been taken by Puget Sound Energy to this proceeding today,  
17 and I think it clearly is an effort to go beyond the  
18 Commission's rules.

19                   And the Company is well represented by  
20 competent counsel. It appeared from my advantage point that  
21 the Company came into this hearing today with a very vague  
22 notice to the Commission and parties with the intent of  
23 making presentations to the Commission that were clearly  
24 beyond the scope of the rule. And I find that very  
25 disturbing.



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1                   That intent included efforts to have  
2 statements made about factual matters on the record unsworn,  
3 which we would ask the Commission to not give any  
4 significant weight to. There are mechanisms for bringing  
5 new facts before the Commission if a party wishes to do  
6 that, and those haven't been used. The Company's had a full  
7 adjudicative proceeding in order to present facts and  
8 evidence to the Commission. And the approach that's been  
9 taken today is, I think, very disappointing to see taking  
10 place.

11                   And that kind of leads to another point which  
12 I think may be important for people to remember. This is  
13 not a legislative hearing. The stage -- the legislative  
14 hearings have been held on this matter.

15                   And one thing that the legislature did as a  
16 result of those hearings, as the Commission is aware, is to  
17 create an adjudicative proceeding for this Commission to  
18 decide, based on the law, the law being the statute and  
19 other applicable law, and the facts brought forward by the  
20 Company and other parties, as to whether this contract is  
21 the least cost contract, as to whether it provides adequate  
22 protection for ratepayers. That's what this case is about.

23                   There are some folks who aren't in the room  
24 today. There's about a million of them. They are Puget's  
25 customers. And they are being asked to carry special

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1 burdens under the statute. And the expectation on the part  
2 of those customers is that the decision in this matter will  
3 be made by an independent decision making body within the  
4 exercise of its statutory obligations based on the law and  
5 facts.

6 And we would urge the Commission to keep  
7 those folks in mind to as it's considering this matter.  
8 They weren't able to be here today, but they are counting on  
9 a fair decision being made in this matter.

10 I think I will reserve any other argument on  
11 this until we've had a chance to see an actual appropriate  
12 request from Puget Sound Energy.

13 JUDGE KOPTA: Thank you, Mr. ffitch.

14 Ms. Hirsh, did you have anything further?

15 MS. HIRSH: Nothing further to add, your  
16 Honor.

17 JUDGE KOPTA: I believe counsel for ICNU is  
18 on the phone. Is there anything that you would like to  
19 say?

20 MR. WEBER: Thank you, your Honor. ICNU will  
21 reserve a response for any written petitions.

22 JUDGE KOPTA: All right. Thank you.

23 All right. With that, as I said -- nothing  
24 further?

25 As I indicated when we came back from the

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1 break, the Commission at this point will not be issuing  
2 anything by way of clarification, but instead will  
3 anticipate that the issues that we've discussed today will  
4 be raised in one or more petitions for reconsideration. And  
5 the Commission will consider those petitions and responses  
6 based on what is filed, and we will proceed on that basis.

7                   So unless there's anything further, we are  
8 adjourned. Thank you.

9   (Whereupon, the proceedings were  
10   adjourned at 4:45 p.m.)

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CERTIFICATE OF REPORTER)

3 STATE OF WASHINGTON )

) ss

4 COUNTY OF KING )

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7 and for the State of Washington, do hereby certify that the  
8 witness whose testimony appears in the foregoing deposition  
9 was duly sworn by me; that the testimony of said witness was  
10 taken by me to the best of my ability and thereafter reduced  
11 to typewriting under my direction; that I am neither counsel  
12 for, related to, nor employed by any of the parties to the  
13 action in which this deposition was taken, and further that  
14 I am not a relative or employee of any attorney or counsel  
15 employed by the parties thereto, nor financially or  
16 otherwise interested in the outcome of the action.

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