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P R O C E E D I N G S

JUDGE MOSS: Let's be on the record. Good afternoon, everyone. We are convened in the Commission's hearing room in the matter styled: In Re the Matter of Avista Corporation doing business as Avista Utilities Request Regarding the Recovery of Power Costs Through the Deferral Mechanism, Docket No. UE-010395. This is actually our second prehearing conference in this proceeding. I might even say this is sort of a Phase 2, almost, in that we had an intervening settlement that was approved by the Commission, and that had a proviso in it that in the event of certain material developments, then we could revisit the matters under consideration in this docket, and that is where we are today, so Avista filed, I believe it was August 2nd?

MR. MEYER: That's correct.

MR. FFITCH: Your Honor, I apologize for interrupting. I'm just recalling that there may be people who wanted to listen in on the bridge, and I hadn't inquired whether it was open or not.

JUDGE MOSS: Is anyone on the bridge line?

MR. BROOKHYSER: Yes, Your Honor. This is Donald Brookhyser for BP Energy.

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1                   JUDGE MOSS: We'll take appearances in just a  
2 minute. I just wanted to see whether or not it was on,  
3 and you have confirmed that for me, so I'll get back to  
4 the bridge line folks in a moment. Was that all you  
5 wanted to do, Mr. ffitich, was to confirm we are, in  
6 fact, broadcasting?

7                   MR. FFITCH: Yes.

8                   JUDGE MOSS: Thank you for bringing that to  
9 my attention. In any event, as I was saying, back on  
10 the 2nd of this month, Avista did file a petition, and  
11 one of the points we want to discuss today is what  
12 exactly the nature of that petition is. That may have  
13 some bearing on how we do some docketing at this stage  
14 or further down the line.

15                   I will just note in particular now that the  
16 settlement agreement that I mentioned earlier provided  
17 that Avista could ask the Commission in this docket to  
18 alter, amend, or terminate, and we will want to discuss  
19 that a little bit, particularly in connection with  
20 prospective filings that are alluded to in the petition  
21 itself, but the first order of business, as usual, is  
22 to take appearances, so let's do that, and we will  
23 start with Mr. Meyer for the Company.

24                   MR. MEYER: Appearing on behalf of Avista,  
25 David Meyer.

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1           JUDGE MOSS: We will take the short form of  
2 appearances, as Mr. Meyer just did, except for those  
3 who are entering their appearance for the first time.  
4 I think we had Mr. Sanger before, didn't we?

5           MR. VAN CLEVE: We may have, Your Honor. I'm  
6 Brad Van Cleve on behalf of the Industrial Customers of  
7 Northwest Utilities.

8           JUDGE MOSS: Same firm?

9           MR. VAN CLEVE: Same firm.

10          MR. FFITCH: Simon ffitch, assistant attorney  
11 general, Public Counsel.

12          MR. TROTTER: This is Don Trotter, assistant  
13 attorney general, and I also want to enter the  
14 appearance of Jonathan Thompson, assistant attorney  
15 general. This is the first time he has appeared in  
16 this docket, but he has the same address as I do.

17          JUDGE MOSS: Mr. Thompson, I'm just going to  
18 confirm for the record that your e-mail would be  
19 jthompso --

20          MR. THOMPSON: That's correct.

21          JUDGE MOSS: -- @wutc.wa.gov, and otherwise,  
22 the contact and address information would be the same  
23 as for Mr. Trotter?

24          MR. THOMPSON: Yes.

25          JUDGE MOSS: The Industrial Customers had

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1 previously intervened in the case, so, of course, they  
2 remain in the case in that status. I know we do have  
3 at least one person on the bridge line, so let me ask  
4 people on the telephone, is there anyone on the phone  
5 line that intends to petition to intervene?

6 MR. BROOKHYSER: Yes, sir. This is Donald  
7 Brookhyser. I represent BP Energy, and we filed a  
8 petition to intervene yesterday. I'm from the law firm  
9 of Alcantar and Kahl. My address is 1300 Southwest  
10 Fifth Avenue, Portland, Oregon, 97201. My e-mail is  
11 deb@a-klaw.com, and my phone number is (503) 402-8702,  
12 all of which, of course, is included in the petition to  
13 intervene also.

14 JUDGE MOSS: I was going to ask you about  
15 that, and I have not seen that petition. We'll find  
16 out if there is any opposition to it. Anybody else on  
17 the teleconference bridge line? Apparently not.

18 While Mr. Meyer is consulting with his  
19 client, let me ask if anyone has a copy of the petition  
20 to intervene from BP?

21 MR. FFITCH: No, Your Honor.

22 MR. TROTTER: No.

23 JUDGE MOSS: Mr. Meyer, do you have a copy of  
24 it?

25 MR. MEYER: No.

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1 JUDGE MOSS: I suppose you will be unable to  
2 ascertain whether you have an objection to it until you  
3 see it.

4 MR. MEYER: I think the prudent thing to do  
5 is see the petition first.

6 JUDGE MOSS: Let's be off the record.

7 (Discussion off the record.)

8 JUDGE MOSS: We have had an opportunity and  
9 through some assistance, we have obtained copies of the  
10 BP Energy Company petition to intervene. I will  
11 mention that this apparently arrived at the Commission  
12 via e-mail, so I don't have a time-stamped copy, or for  
13 that matter, one with signatures, but I assume that the  
14 petition is complete, such as it is, and it apparently  
15 was sent in over your signature, Mr. Brookhyser?

16 MR. BROOKHYSER: Correct. We have mailed the  
17 original to the Commission.

18 JUDGE MOSS: Have all counsel present in the  
19 room had an opportunity to review this?

20 MR. MEYER: We have.

21 JUDGE MOSS: Is there any objection to the  
22 proposed intervention?

23 MR. TROTTER: Staff will oppose the petition.  
24 The interests articulated in the petition is not very  
25 clearly stated. It appears that BP Energy Company

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1 sells electricity and natural gas to Avista  
2 Corporation. The other two entities to whom it sells  
3 to are not subject to the jurisdiction of the  
4 Commission. It's not clear that a seller of natural  
5 gas or electricity has any interest that it could stand  
6 upon to intervene in this case. It's also not clear  
7 how, in any event, the BP Company would assist the  
8 Commission in resolving the issues before it, so on  
9 those two bases, we will oppose the petition.

10 JUDGE MOSS: Anybody else want to be heard;  
11 Mr. ffitch?

12 MR. FFITCH: Just briefly, Your Honor, Simon  
13 ffitch for Public Counsel. I would agree with the  
14 comments of Mr. Trotter. From the face of the  
15 petition, I don't see any statement that would disclose  
16 any interest of BP Energy that would be of special  
17 relevance to these proceedings, and I would have a  
18 concern about undue broadening of the issues and  
19 participation that might create additional burdens on  
20 the Commission and other parties.

21 JUDGE MOSS: Anybody else in the room?

22 MR. MEYER: For Avista, while I'm advised we  
23 were generally aware that they had an interest in the  
24 outcome of this proceeding, we were not aware of their  
25 actual desire to intervene as a full party. Avista for

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1 its part, while it doesn't oppose the intervention,  
2 does share concerns about broadening the issues.

3 JUDGE MOSS: All right, Mr. Brookhyser, last  
4 word from you. You have been challenged here in terms  
5 of the statement of a substantial interest in the  
6 outcome of the proceeding and also on the question of  
7 whether BP's participation would promote the  
8 Commission's processes in the particular interest  
9 generally, so you will get the last word on this.

10 MR. BROOKHYSER: Thank you, Judge, and first,  
11 let me apologize for the inconvenience that this  
12 late-filed petition caused for you and your staff. I  
13 appreciate the opportunity.

14 As a supplier of electricity to Avista, we  
15 obviously are very interested in Avista having adequate  
16 revenues and adequate cash flow to pay its suppliers,  
17 as the events in California indicated. Utilities do  
18 not have such adequate rate-making, and adequate  
19 revenues have a definite impact on the utility and the  
20 suppliers, so we have a very definite interest in  
21 making sure that Avista is financially healthy and has  
22 the cash flow to pay us.

23 I think our participation will not broaden  
24 the issues, and I think we share an interest with  
25 Avista in certainly making sure that an adequate

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1 rate-making scheme is put into place, and I think we  
2 probably offer some different perspective for the  
3 Commission's benefit in that we can provide some  
4 guidance as to what will happen from a supplier's  
5 standpoint if Avista does not have the adequate  
6 revenues in terms of suppliers having to put in place  
7 additional credit requirements, for instance. So for  
8 these reasons, I think we do have an interest that  
9 should be protected. We will not broaden the issues.  
10 Thank you.

11 JUDGE MOSS: Thank you, Mr. Brookhyser. The  
12 commissioners are sitting in this proceeding, by the  
13 way. Although they are not present in the room for  
14 purposes of our prehearing conference, they have  
15 decided to sit in the hearing in this proceeding, and I  
16 am going accordingly to take this matter to them rather  
17 than making a decision from the Bench today, so I will  
18 brief them on the proposed request, petition for  
19 intervention, and the arguments related to that, and  
20 we'll make that part of a prehearing conference order  
21 and try to get that out quickly, depending primarily on  
22 my ability to get to the commissioners with it.

23 MR. BROOKHYSER: Thank you, Judge.

24 JUDGE MOSS: Any other petitions to  
25 intervene? In the meantime, are there any other

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1 appearances?

2 MR. FFITCH: Your Honor, just to note that we  
3 did receive a copy of a letter that went to the  
4 Commission from the Area Agency On Aging, and in that  
5 letter, the agency indicated they were considering  
6 intervention but were not able to have their board  
7 meeting until later in the month, and depending on the  
8 outcome of that situation, they may make a request at  
9 that time.

10 JUDGE MOSS: Have you had some contact with  
11 the organization, Mr. ffitch?

12 MR. FFITCH: I have had a telephone  
13 conversation. They made an inquiry about Commission  
14 procedures.

15 JUDGE MOSS: I did discover their  
16 correspondence in my daily distribution today, and I  
17 did have an opportunity to read that; my first thought  
18 being that they should probably be in consultation with  
19 you, so I'm pleased to hear that that has occurred.

20 I will say, we are going to talk about  
21 procedural schedule here very shortly, and if things  
22 work out the way I anticipate, a decision on the 17th  
23 is going to be a little late in the process for them,  
24 and of course, it will be a late-filed petition at that  
25 point having not been made by today, so as you

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1 communicate further with them, I think it would be  
2 important to be mindful of the perhaps compressed  
3 schedule that we will determine here in a few minutes  
4 and also the element of good cause that they would need  
5 to show. Although, I will say that in other cases in  
6 which I have sat, situations where you have these types  
7 of entities that have boards and have to approve and so  
8 on and so forth, that could, itself, be could cause for  
9 some delay, and they have put us on notice that they  
10 have an interest. In any event, I just pass those  
11 things along.

12 MR. FFITCH: I will do that, Your Honor.

13 JUDGE MOSS: The prehearing conference notice  
14 for today did make some mention of this proceeding  
15 qualifying for discovery, I think is the way it was  
16 phrased under 480-09-480. I went back and reviewed the  
17 transcript from our first prehearing conference and  
18 confirmed my recollection that we had not, in fact,  
19 invoked the discovery rule in this proceeding, and I  
20 will do so now.

21 Although, I understand some informal  
22 discovery has been taking place, and I'm sure that will  
23 continue, there is the related question of a protective  
24 order, and we did not get to that in our earlier  
25 proceedings either. Do the parties see some need for a

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1 protective order to facilitate discovery at this stage  
2 of the proceeding?

3 MR. MEYER: The Company does, and we do  
4 request that. The discovery we've seen to date may  
5 have had a few instances where confidential matter  
6 would be required to be disclosed, but we can't  
7 anticipate what the remaining discovery will be, so I  
8 think the prudent course is to ask that such an order  
9 be entered.

10 The most recent example or pattern, if you  
11 will, at least that we are familiar and comfortable  
12 with, is the form of protective order that was issued  
13 in our last general rate proceeding, Docket No.  
14 UE-991606, and for its part, Avista would be  
15 comfortable with that form of protective order.

16 JUDGE MOSS: I was not involved in that case.  
17 I would assume that the protective order that was  
18 entered in that proceeding is what we sometimes refer  
19 to as our standard form. Did it have any of the  
20 amendments we sometimes allow for more highly  
21 confidential material; do you recall?

22 MR. MEYER: I'm not recalling offhand. I  
23 don't think that it -- I have extra copies if you would  
24 like to peruse it. I think it's standard form. Would  
25 you like an extra copy?

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1                   JUDGE MOSS: That's all right. Does anybody  
2 else have anything to say on the subject of a  
3 protective order, any suggestion that we should not  
4 have one, for example, or anybody recognize a need for  
5 some special category of protection? Obviously, you  
6 all have had some opportunity to exchange information.  
7                   Then I think what we will do is I'll take a  
8 look at that order from that prior proceeding, assuming  
9 it conforms to our current practice with regard to  
10 protective orders, and I'll draft that up and enter it  
11 accordingly. If I identify or recognize any  
12 difficulties in that regard, I'll get back to the  
13 parties and we will take care of whatever we need to  
14 take care of. In the meantime, I hope you all will be  
15 comfortable proceeding with the discovery process as if  
16 that order were in place. It may take a couple of  
17 days, of course, depending on people's schedule, but we  
18 will get that out in short order.

19                   Are there any other requests or motions  
20 before we get into some discussion of the issues and  
21 segue into the process and procedural schedule that we  
22 will need to follow in order to address those issues?  
23 Mr. Trotter?

24                   MR. TROTTER: Thank you. I have three items,  
25 Your Honor. This particular petition was accompanied

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1 by a tariff with an effective date sometime in mid  
2 September, and so it did not come in the more  
3 traditional course, so I would recommend that the  
4 Commission suspend that tariff at its earliest  
5 opportunity so that detail is not overlooked because of  
6 the way that this particular matter has been docketed.  
7 That's my first item.

8 JUDGE MOSS: The tariff was filed with a  
9 proposed effective date of September 15th; right?

10 MR. MEYER: That is correct.

11 JUDGE MOSS: Assuming, Mr. Trotter, that the  
12 Commission intended to act one way or the other prior  
13 to that date, would that have any impact on your  
14 suggestion? Do you think it's a prudent step to take  
15 regardless?

16 MR. TROTTER: It just needs to take action  
17 before the effective date.

18 JUDGE MOSS: So if there were some  
19 possibility that the Commission might not be able to  
20 act by September 15th, then we could suspend it at that  
21 time, couldn't we?

22 MR. TROTTER: Right, and when it acts, it  
23 just needs to be mindful that if it does something  
24 different, reject the tariff or do the appropriate  
25 things so it does not otherwise go into effect.

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1                   JUDGE MOSS: You don't want it to slip  
2 through the cracks; that's your concern.

3                   MR. TROTTER: Yes.

4                   JUDGE MOSS: What's your second item?

5                   MR. TROTTER: The settlement stipulation that  
6 the Commission accepted in this docket did give Avista  
7 the authority to file a petition to alter, amend, or  
8 terminate the settlement plan. The petition that was  
9 filed did not indicate which of those three options it  
10 was responding to, so I just wanted to ask the Company  
11 on the record to indicate whether it intended its  
12 petition to alter, amend, or terminate the settlement  
13 stipulation.

14                   JUDGE MOSS: Let's take that up. I raised  
15 that point earlier myself. Mr. Meyer?

16                   MR. MEYER: The Company does not wish to  
17 terminate. It wishes to, you characterize it as alter  
18 or amend the settlement, and I think that would be a  
19 fair characterization. In addition, just so it's  
20 clear -- I know it is clear in our prefile testimony  
21 filed on August 2nd -- is that part of the request in  
22 that regard is that the deferred accounting mechanism  
23 would also, given what we are proposing by way of a  
24 petition, have an extended deadline that would carry it  
25 through the end of December, December 31 of 2003. If

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1 that wasn't clear, it should have been clear.

2 JUDGE MOSS: I have not lined the dates up  
3 myself, but part of your petition would be to extend  
4 the present approval of a deferral accounting mechanism  
5 to a later date?

6 MR. MEYER: So it matches the end of the  
7 period for which we are seeking a surcharge.

8 JUDGE MOSS: Mr. Trotter, anything more on  
9 that? We have the suggestion from the Company that  
10 what it's proposing to do here is alter or amend rather  
11 than to terminate, and so among the amendments, if you  
12 will, would be an amendment to the period during which  
13 the deferral mechanism would be effective, so I think  
14 that's a reasonable description. What's your third  
15 item?

16 MR. TROTTER: The third item is the data  
17 request response time. Under the rule, it's 10 working  
18 days. We had some brief discussion off the record  
19 about potential hearing dates in early September, and I  
20 had assumed that it might be later than the ones we  
21 discussed, so I'm going to propose that that time  
22 period be shortened, and depending on a discussion of  
23 schedule that it be shortened to three working days.

24 JUDGE MOSS: Other parties? The proposal is  
25 to shorten the period for responses to data requests to

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1 three working days.

2 MR. MEYER: We had talked earlier, as  
3 Mr. Trotter indicated, about shortening. I was  
4 comfortable at that time shortening it to five days on  
5 a best-effort basis. Certainly, if we can do better  
6 than that, it's great for all concerned. If for some  
7 reason we extend beyond that -- hopefully, there are  
8 good and sufficient reasons for that, but shooting for  
9 a target date of five days, and we're working to do  
10 what we can to expedite discovery. It's in our best  
11 interest to get it to you as well. So five days is  
12 where I would like to see it.

13 JUDGE MOSS: Three days, five days, do I hear  
14 four days? So the debate is between three and five.

15 MR. VAN CLEVE: We would support the three  
16 days. If the schedule is as compressed as what we  
17 talked about off the record, it appears that there is  
18 going to be very little time to conduct discovery, and  
19 I do want to mention that ICNU is a little behind on  
20 discovery.

21 Back in April, on April 11th, we requested  
22 from the Company all of the discovery that had  
23 informally been provided to Staff, and that was due on  
24 April 23rd. The Company never responded. We didn't  
25 follow up on it because we were pursuing settlement.

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1 We renewed that same request on August the 3rd, and we  
2 have yet to hear anything from the Company. So at this  
3 point, we have no discovery.

4 JUDGE MOSS: Mr. Meyer, those responses could  
5 be readily provided to Industrial Customers, couldn't  
6 they?

7 MR. MEYER: May I just clarify? Those  
8 circumstances, as I understand them, Staff had  
9 propounded roughly 100 discovery items in connection  
10 with the prior deferral filing. Many, if not most,  
11 related to the specifics in the prefile testimony in  
12 that case. This surcharge filing doesn't touch on all  
13 of the issues that were the subject of those first 100  
14 responses. We never, because of the prior settlement,  
15 responded to Staff, and ICNU's request was, "Please  
16 provide copies of whatever you do give to Staff." We  
17 didn't give Staff anything, so consequently we didn't  
18 get anything. So from discovery numbers 100 through --  
19 what are you up to now, about 150?

20 MR. TROTTER: Approximately, correct.

21 MR. MEYER: We will be happy to provide  
22 copies of those as we get them out to all parties,  
23 including ICNU.

24 JUDGE MOSS: That's something that didn't  
25 occur to me. Because things did move very quickly in

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1 our earlier stage, a lot of that was not provided, so  
2 where does that leave us Mr. Van Cleve; still  
3 supporting three days?

4 MR. VAN CLEVE: I would suggest if we could  
5 have the ability to make data requests in the next  
6 couple of days, have a turnaround and make one more  
7 request and be able to receive those documents before  
8 our testimony is due. So I think what we need to do is  
9 figure out when the testimony will be due and kind of  
10 work backwards and see how much time we need.

11 MR. FFITCH: For Public Counsel, we would  
12 just note that the Company is asking for a very  
13 expedited schedule. We think it's too expedited.  
14 Certainly, if the schedule is, in fact, adopted along  
15 those lines, it means that discovery has to be  
16 extremely prompt. I think they go hand-in-hand.

17 JUDGE MOSS: We may return to this  
18 momentarily, but preliminarily, at least, it would be  
19 my inclination to go ahead and grant Staff's request  
20 for a three-day working turnaround. That sort of  
21 reverses the situation under the best efforts. You  
22 either get it done in three days or you don't, and then  
23 they complain and I snarl at you, and that's how it  
24 works, but we will all do the best we can, I'm sure.

25 All of you have been involved in these

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1 proceedings before the Commission many times, and I  
2 rely on your professionalism to rise to the needs of  
3 the case, and I'm sure it will. So I will impose the  
4 three-day unless some of our further discussion today  
5 indicates we can prolong things a little bit. Anything  
6 else, Mr. Trotter?

7 MR. TROTTER: Not at this time.

8 JUDGE MOSS: Does anybody else have anything  
9 prior to discussing the issues and talking more about  
10 the process and procedural schedule about which it  
11 appears there needs to be some discussion.

12 In terms of the issues, let's talk about what  
13 we need to do in this part of the proceeding. As I  
14 understand it, what is being asked for at this stage of  
15 the proceedings is that the Commission approve a  
16 surcharge to be a part of Avista's rates going forward  
17 from September 15th until -- is it December 31st, 2003?

18 MR. MEYER: Correct.

19 JUDGE MOSS: 27 months, and that is all that  
20 is before us, aside from the extension of the deferral  
21 mechanism to coincide in terms of time. So that is the  
22 sort of the broad description. The contemplation, I  
23 take it, from Avista's perspective is that the filing  
24 that is proposed for November, which would be a general  
25 rate increase filing, would be separately docketed, and

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1 this proceeding would be over at this point. Is that  
2 consistent with Avista's view of things? I think there  
3 may be some differences of opinion on that.

4 MR. MEYER: That is consistent. We were  
5 fully intending to address prudency issues and other  
6 issues not directly related to the emergency need for  
7 the financial relief, to address those in the context  
8 of a rate case that we were going to file in any event  
9 in November of this year.

10 I know there has been some discussion about a  
11 Phase 2 filing on prudency-related issues in this  
12 docket as opposed to that docket, and I don't think  
13 that Avista is necessarily doctrinaire on that issue,  
14 that we're necessarily committed to having those heard  
15 at this point. At least as we can envision such issues  
16 in a general rate case, if it assists the process of a  
17 Phase 2 in this docket needs to be established, so be  
18 it. At some point, we or other parties may want to  
19 revisit whether that should be consolidated with any  
20 general rate case we file, but we don't have a  
21 knee-jerk reaction at this point in time to have Phase  
22 2 in this docket on the prudency issues.

23 JUDGE MOSS: And that is a key matter. I'm  
24 going to turn to Mr. Trotter first on this question of  
25 when and how we deal with the prudence matter. I think

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1 there was some suggestion along the lines that  
2 Mr. Meyer has indicated that prudence could be handled  
3 in a variety of ways. I want to know Staff's view on  
4 that.

5 MR. TROTTER: Staff's perspective is this:  
6 The prudence issue in this particular docket relates to  
7 dollars that have already been deferred or will be  
8 deferred. The issue in a rate case will typically be  
9 pro forma level of power supply expense, which may or  
10 may not, and probably would, deal with prudence costs  
11 incurred in the past but rather what is the appropriate  
12 level of cost to be incurred in the future. So it's  
13 not necessary to tie the two dockets together.

14 We anticipate that if the rate case is filed,  
15 it would be very complicated. The Company is already  
16 on notice it must address numerous power supply issues.  
17 They say they are going to bring forth the PCA, power  
18 cost adjustment clause, and there is a statutory time  
19 limit in such a case, and we think that this case also  
20 has a time limit, but keeping them separate, at least  
21 having that option to keep it separate and perhaps  
22 consolidate at a later date, if it makes sense, is the  
23 wiser course.

24 The notice of hearing does set out a number  
25 of issues, many of which were earlier called for by the

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1 Commission to be addressed. Those issues were, perhaps  
2 it is fair to say, were finessed in some manner by the  
3 settlement stipulation. We now have a proposal to  
4 amend that stipulation, and the notice of hearing does  
5 say there are issues that the Commission wants to hear  
6 about in this context, particularly under the  
7 stipulation there would be no rate impact. Now there  
8 is a rate impact, and that tees up lot of issues that  
9 we were hoping would not necessarily need to be  
10 addressed.

11 So we do not agree that this docket goes away  
12 necessarily when a rate case is filed; that there may  
13 still be an issue of a block of dollars out there for  
14 which prudence needs to be demonstrated, and it should  
15 be demonstrated in this docket; although, I will grant  
16 that there may come a point in time where we would  
17 agree that it's appropriate to consolidate.

18 JUDGE MOSS: So just to be sure I understand,  
19 your suggestion at this juncture is that we keep the  
20 prudence of these costs, this cost and occurrence, as  
21 an issue in this proceeding but with the idea that that  
22 could be -- the evidence and argument related to that  
23 issue could be deferred to another phase of this  
24 proceeding?

25 MR. TROTTER: Yes.

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1           JUDGE MOSS: And that we might or might not  
2 consolidate that with any general rate case that was  
3 filed, say, in November.

4           MR. TROTTER: Yes.

5           JUDGE MOSS: In fact, I was just taking a  
6 look back at the notice of second prehearing conference  
7 that was entered August 1st, 2001, and help me if I'm  
8 not reading this correctly, Mr. Trotter, but looking at  
9 Paragraph 12 of that, I see there that the Commission  
10 has identified a set of issues, and as I understand the  
11 notice, the suggestion is that Issues A, B, C, and D,  
12 would be heard in this phase. Issues E, F, G, and H,  
13 and "I" would be heard in some subsequent phase.

14          MR. TROTTER: I think that's what's generally  
15 contemplated here.

16          JUDGE MOSS: Is that consistent with what  
17 Staff would want to see happen in this proceeding?

18          MR. TROTTER: Yes.

19          JUDGE MOSS: Is that consistent with what  
20 other parties would like to see happen in this  
21 proceeding?

22          MR. FFITCH: Simon ffitch for Public Counsel.  
23 Maybe without stating whether this is consistent or not  
24 with what's just been said, I will tell you what our  
25 view is of where we are procedurally. Avista has asked

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1 for some form of emergency relief in a surcharge.  
2 Certainly, Avista can do so. Any regulated utility  
3 company may ask the Commission for interim emergency  
4 relief and a surcharge, and we think that having  
5 received that request, the Commission could take it up,  
6 and it's reasonable to set up some sort of expedited  
7 schedule, a reasonable expedited schedule to review  
8 that, and I'll just note that the Pacific Northwest  
9 Bell order does specifically note that there has to be  
10 an adequate hearing, even on an emergency request.

11 We are comfortable with that so far. We do  
12 not believe that this phase of the case where we are  
13 simply looking at the Company's need for emergency  
14 relief is the time to address the deferred power cost  
15 issues, and I think I'm saying is consistent also with  
16 the notice of prehearing conference. I think that the  
17 problem, if you want to call it a problem here, is that  
18 Avista has blended its desire to revisit deferred power  
19 cost issues in the stipulation with a request for  
20 emergency relief. We think the most appropriate course  
21 here is for the emergency relief request to be taken up  
22 under the Commission's previously announced standards  
23 for such requests, and I'm specifically referring to  
24 the Pacific Northwest Bell case.

25 I suppose if we were engaging in more

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1 aggressive pleading practice, one might have expected a  
2 motion to dismiss this petition because it was not  
3 clearly filed under the Commission's standards for  
4 interim rate relief. Short of asking the Commission to  
5 require refiling, Public Counsel would request that the  
6 Commission treat the request as a request for interim  
7 relief under the existing standards.

8 JUDGE MOSS: What would you cite me to for  
9 those standards besides the 28-year-old PNB case?

10 MR. FFITCH: That case has been repeatedly  
11 revitalized by subsequent references by this Commission  
12 and inclusion in various agreements that have been  
13 approved by the Commission. I don't think it's merely  
14 a 28-year-old dead letter at all.

15 JUDGE MOSS: Your word, not mine. I was just  
16 interested. I wasn't criticizing your reference to the  
17 case or suggesting that it has no continuing viability.  
18 I was wondering whether you were referring to anything  
19 else in terms of saying that there is some standard  
20 that the Company failed to meet in terms of making an  
21 emergency rate or interim rate relief. I'm not  
22 familiar with the statute or rule that speaks directly  
23 to that, or am I missing something? Because that's  
24 what I'm concerned about is that I'm not missing  
25 something.

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1           MR. FFITCH: The PNB case is a case which  
2 really addresses this type of relief in the context of  
3 the Commission's general authority to take up such  
4 requests, and I guess I certainly would not say that  
5 the PNB case is the entire extent of the authority for  
6 the Commission to grant such relief or for the Company  
7 to as for it. There is a body of law that you look to  
8 the Commission's general statute. There is the Puget  
9 Sound Navigation Company case --

10           JUDGE MOSS: That's still good law in the  
11 sense that we still don't have a statute that expressly  
12 provides for interim rate filings but that's a power  
13 that's necessarily implied.

14           MR. FFITCH: Yes, correct. So I'm referring  
15 to that, the PNB decision, as kind of an embodiment, a  
16 still viable Commission statement of where it gets the  
17 authority to look at these requests, and suggesting  
18 that the first phase of this case should be a look at  
19 whether the Company is entitled some relief under that  
20 standard and not a review of all of the substantive  
21 issues in the deferred power cost case that are  
22 included in the notice and in the prior orders in this  
23 docket and the previous deferred power cost dockets. I  
24 think those are more properly taken up at a later time.  
25 In fact, it's our position that it is inappropriate to

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1 allow any recovery of those deferred costs until those  
2 issues have been resolved --

3 JUDGE MOSS: On what basis then would we  
4 grant any sort of surcharge then, because I understand  
5 that the surcharge is intended to recover those  
6 deferred power costs, or at least a portion of them.  
7 Isn't that what the surcharge is for?

8 MR. MEYER: That is correct.

9 JUDGE MOSS: So how can we do both?

10 MR. FFITCH: If they are limiting their  
11 request to a before-the-fact request for recovery of  
12 deferred power costs, then you can't do it, in our  
13 view, if that's the extent of the request.

14 JUDGE MOSS: What I'm trying to understand,  
15 Mr. ffitch, is what position you are taking here. You  
16 seem to be saying on the one hand that there is some  
17 basis for going forward with consideration of whether  
18 the Company requires and therefore should be granted  
19 some sort of an emergency rate relief, but the  
20 Commission doesn't just say, "Oh, you need some money.  
21 We'll authorize a 30 percent surcharge." There has to  
22 be some cost incurrent principle behind that, and as I  
23 understood it, that cost incurrence in this instance is  
24 the power cost component that's included in the rates.  
25 So I'm trying to understand the basis for your

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1 suggestion that there is something to consider; yet,  
2 you then seem to say if it's deferred power cost, you  
3 can't, so I'm just trying to get the picture here.  
4 MR. FFITCH: Let me try to clarify. I think  
5 there is certainly a distinction that you can make  
6 between amounts that would be needed by the Company to  
7 avoid the kind of clear jeopardy, financial jeopardy  
8 that is part of the PNB test. The calculation of those  
9 amounts could arise from some different sources.  
10 That's different than going back and looking at  
11 dollar-for-dollar recovery of deferred power costs that  
12 have been placed in these accounts. That may or may  
13 not have any direct relationship to preserving the  
14 financial viability of the Company under the PNB test,  
15 and I guess I've been giving the Company the benefit of  
16 the doubt in reviewing their petition and their  
17 testimony that, as I say, they've blended the two  
18 things in this petition, and they both addressed the  
19 deferral issues as well as made a number of quite broad  
20 allegations about their general financial situation and  
21 raised a number of issues beyond simply the fact that  
22 there are sizable amounts in the deferred power cost  
23 accounts.  
24 So again, perhaps giving the Company the  
25 benefit of the doubt in the way that they've cast their

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1 petition, we are saying the Commission, if they want to  
2 come in with an emergency or interim rate petition,  
3 they can do that. We would ask you to look at the  
4 petition in this light rather than as a preapproval of  
5 any deferred power costs.

6 JUDGE MOSS: You refer to the deferral  
7 issues, and one of those is prudence; right?

8 MR. FFITCH: One of those is prudence. The  
9 threshold issue, before you even get to prudence, is  
10 whether these costs should ever have been placed in a  
11 deferral account at all.

12 JUDGE MOSS: I thought the Commission  
13 approved that. That's how we got here.

14 MR. FFITCH: The Commission actually lists  
15 that in the notice of hearing for this phase of the  
16 docket as Issue G.

17 JUDGE MOSS: I recognize that, and I have a  
18 marginal note that says, Wasn't that resolved earlier.

19 MR. FFITCH: Not in our view, Your Honor. We  
20 have consistently opposed this mechanism --

21 JUDGE MOSS: I recognize you have opposed it.  
22 The Commission has approved it, has it not?

23 MR. FFITCH: The Commission has approved it  
24 subject to --

25 JUDGE MOSS: -- prudence --

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1           MR. FFITCH:  -- and the issue of  
2  appropriateness of recovery of any of the costs through  
3  a deferral mechanism, and if you go back to the  
4  order -- I think it's the last order in the 010395  
5  docket -- when the Company amended the deferral  
6  mechanism, they were allowed to do that subject to  
7  being required to come back this March, if I've got my  
8  dates right, specifically to file a petition to  
9  establish or to address four issues, one of which was  
10 the appropriateness of the recovery.

11           So in our view, that is a threshold question  
12 that has never been addressed, and we think it's still  
13 there.  If you get past that, you have the prudence  
14 question.  You also have the question of cost of  
15 capital offsets and the mitigation issues.  So we think  
16 all of those have to be addressed before any deferred  
17 power cost recovery is allowed.  We are, again,  
18 amenable to a petition for interim relief.

19           JUDGE MOSS:  It does sound to me like we are  
20 going to have some very interesting things develop this  
21 fall, but I think for present purposes, where I view  
22 that we are is that we are looking at this question of  
23 whether the Company requires immediate relief, and  
24 that's why we discussed off the record having a fairly  
25 expedited process to consider that narrow issue.

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1           My understanding of the petition is that it  
2 is seeking to have a surcharge approved with the  
3 collections of that surcharge amount being fully  
4 subject to refund. Does that satisfy your concerns,  
5 Mr. ffitich, in that you would have an opportunity to  
6 raise and argue these issues, present evidence with  
7 respect to them, whatever the set of issues may be that  
8 you have included, in your term, deferral issues?  
9 Prudence is one of them. That's the obvious one.  
10 There are several others you mentioned.

11           You will have an opportunity at a later date,  
12 either in a subsequent phase of this proceeding or in  
13 connection with another proceeding such as a general  
14 rate case where prudence was included, what have you,  
15 whatever mechanism is used to take that up, you would  
16 have an opportunity to make all your arguments then,  
17 and whatever collections have been made would be fully  
18 subject to refund. Does that satisfy your concerns?  
19 Does that give you the insurance you feel you need?

20           MR. FFITCH: I guess a better way to put it,  
21 Your Honor, is we would respectfully request that what  
22 the Commission do is limit the issues in the first  
23 phase to a consideration of what, if any, interim  
24 relief the Company is entitled to under the existing  
25 test for interim rate relief rather than conduct a

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1 preliminary proceeding to allow conditional approval of  
2 any deferred power costs, and if the first -- we are  
3 comfortable with your formula if the issues in the  
4 first phase are simply related to interim rate relief  
5 and are not preapproving any recovery of deferred power  
6 costs.

7 JUDGE MOSS: And that's consistent with  
8 Staff's view of the case, isn't it, Mr. Trotter, in  
9 that you just wanted to focus on those first few issues  
10 identified in this case?

11 MR. TROTTER: We did not understand the  
12 Company's request to constitute preapproval of  
13 anything, other than emergency rate relief.

14 JUDGE MOSS: I don't understand that way  
15 either. Mr. Meyer, does the Company understand it some  
16 different way?

17 MR. MEYER: No. I think there is agreement  
18 around the table as to the sort of issues that would be  
19 addressed in Phase 1, and then Phase 2 relates to  
20 prudence. We are not asking for preapproval and  
21 prejudging the result of Phase 2.

22 JUDGE MOSS: So there would be no  
23 preapproval. I think we are all on the same page. I  
24 think it's important to have it on the record that that  
25 is the case. I think, Mr. ffitich, we are all on the

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1 same page that no one is contemplating at this juncture  
2 that there would be anything in this first phase that  
3 would constitute a preapproval of recovery of deferred  
4 power costs; that it would be a mechanism that if the  
5 Company satisfies whatever standard is appropriate for  
6 receiving some sort of emergency temporary interim rate  
7 relief, the Commission could order that, imposing that  
8 surcharge subject to refund, and then we would later  
9 take up these various issues as to whether the Company  
10 should recover any of those costs and so on and so  
11 forth.

12 That's the lay of the land, and I see nods of  
13 assent. Mr. Van Cleve, we haven't been ignoring you  
14 here, but I want to turn to you before leaving this  
15 subject and see if you are also on the same page with  
16 everyone else here.

17 MR. VAN CLEVE: Your Honor, we do have a  
18 concern, and I'm not sure how we would address it, and  
19 that is whether the Company would be financially  
20 capable of paying refunds down the road. In other  
21 words, they might come in, if a refund was ordered, and  
22 make the argument that it would jeopardize their credit  
23 ratings and they couldn't raise capital and that kind  
24 of thing and make the same argument that they needed  
25 additional interim rate relief.

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1 JUDGE MOSS: That would break some new  
2 ground.

3 MR. VAN CLEVE: One other issue that I think  
4 should be addressed in this phase, and I think it's  
5 included within what we've been talking about, but that  
6 is whether interim rate relief is appropriate at all in  
7 this type of an amortization of a deferral as opposed  
8 to a general rate case.

9 JUDGE MOSS: So is the suggestion then that  
10 you would want to impose some sort of a standard or  
11 test as to the appropriateness of interim rates outside  
12 the context of a general rate proceeding?

13 MR. VAN CLEVE: I think that might be  
14 appropriate, and that may well be a legal issue that we  
15 need to address in briefing, and I didn't see that in  
16 the schedule that was suggested in the petition.

17 JUDGE MOSS: Perhaps we do need to take a few  
18 moments to discuss the standards under which the  
19 Commission might proceed, and I will say we will have  
20 this discussion without anybody being locked in, and by  
21 that, I mean this strikes me as an issue that may yet  
22 have to be briefed in this case, and I don't want to  
23 cut anybody off from the opportunity to research and  
24 brief, but we've had suggestions, I think, certainly  
25 from Mr. ffitich, and I don't recall if Mr. Trotter also

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1 alluded to the PNB case --

2 Let me ask you, Mr. Meyer, what the Company's  
3 preliminary view of the legal issue is in terms of what  
4 standards it needs to satisfy to be entitled to -- I'm  
5 just going to call it interim rate relief for lack of a  
6 better term.

7 MR. MEYER: From the Company's perspective,  
8 the Commission has recognized repeatedly that under  
9 appropriate circumstances, interim rate relief can be  
10 granted under its general enabling authority, no  
11 additional statutory authorizations, no additional  
12 rule-makings. They have sufficient general enabling  
13 authority to do it.

14 Then the question is, how over time has the  
15 Commission exercised that general enabling authority,  
16 and I think we've all referred to and have had reason  
17 to look back at the PNB case back in 1975 or '77 -- I'm  
18 not sure which -- and that did articulate five or six,  
19 call them standards if you will, call them criteria,  
20 several of which are rather general in nature.

21 The Company's position in this case is that  
22 through the petition and through the testimony that we  
23 have prefiled in this case that we had, in one form or  
24 another, satisfied those previously articulated  
25 criteria. So even if one were to accept the

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1 proposition that those criteria remain viable, remain  
2 the appropriate criteria today in 2001, we believe  
3 we've satisfied them in any event, so I'm sure we can  
4 argue whether they are applicable, whether they  
5 continue to be applicable. We believe we've satisfied  
6 them with our testimony.

7 We don't necessarily take a position at this  
8 time because we believe we satisfied those criteria as  
9 to whether or not those remain appropriate as criteria  
10 moving forward, given volatile markets, largely because  
11 we believe we satisfied them sufficiently. Does that  
12 help?

13 JUDGE MOSS: Yes, it does. Thank you. But  
14 Mr. ffitch, I do understand that it is the Public  
15 Counsel's position the PNB case, the Washington  
16 Utilities and Transportation Commission against Pacific  
17 Northwest Bell Telephone Company in Cause No.  
18 U-72-30 -- and I happen to be looking at a copy of the  
19 Second Supplemental Order denying a petition for  
20 emergency rate relief that was entered by this  
21 Commission on the 10th of October in 1972.

22 I take it, Mr. ffitch, from some of your  
23 comments that you believe that the standards enunciated  
24 in that decision, such as they are, continue to apply  
25 with full force, and that it is Public Counsel's

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1 position that the Company's filing and evidence does  
2 not satisfy those standards; that you would be opposing  
3 their surcharge request in this proceeding? That's a  
4 question.

5 MR. FFITCH: That's two questions, if I could  
6 break them up. The first is whether that's the  
7 standard, and I think generally we would degree. Now  
8 certainly, we are at the beginning of this case. We  
9 haven't filed briefs yet. I think that the Pacific  
10 Northwest Bell standard is still a viable and a guiding  
11 standard for the Commission. There may be other cases  
12 and authorities we would also point to in the course of  
13 actually filing a brief.

14 As to whether we believe that Avista has met  
15 that standard at this point, we are still reviewing  
16 their testimony and their filings. We are conducting  
17 discovery. I guess not having completed that, I guess  
18 we have not yet satisfied ourselves that they have met  
19 that standard. I would like to return to just another  
20 point I think Mr. Van Cleve raised, and I think this  
21 was implicit in what I was arguing about the standard,  
22 which is that essentially, the interim rate relief  
23 authority exercised by the Commission typically is  
24 coupled with a request for general rate relief by a  
25 company, and that was essentially my point; although, I

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1 didn't make it in quite the way that Mr. Van Cleve did  
2 that you have those issues that are typically raised in  
3 that way.

4           And then we have this other case, this  
5 deferred power cost case in which the costs have never  
6 been accrued by the Commission and in which there is  
7 even a threshold issue about whether the deferral  
8 mechanism itself is even appropriate, and we've never  
9 reached those issues, and we would urge the Commission  
10 not to leapfrog those very important threshold  
11 questions under the guise of an interim rate relief  
12 request. We are willing, certainly, to take a look at  
13 a legitimate request for interim rate relief by the  
14 Company under the existing Commission standards.

15           JUDGE MOSS: Again, I think the case has been  
16 described or the Company's intent in filing the case  
17 has been described in a fashion that I hope we all  
18 understand and that I believe should alleviate your  
19 concern about leapfrogging these issues in such a way  
20 that they are never addressed and preapproving or  
21 approving, if you will, the ultimate recovery, because  
22 again, any surcharge the Commission would grant or  
23 allow in this case would, as the Company requested, I'm  
24 sure, be made subject to refund. So as those issues  
25 are taken up in subsequent phases of this docket or

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1 perhaps in conjunction with the general rate case that  
2 will be filed in a couple of three months, those issues  
3 would certainly be open to be addressed at that time.

4 I'm still a little confused about this  
5 concept of whether the deferral mechanism is  
6 appropriate. Certainly, the Commission could take that  
7 up and consider that on a prospective basis, but as I  
8 see things sitting here today, the Commission has  
9 previously, by at least two if not three orders,  
10 allowed Avista to use a deferral mechanism to account  
11 for these costs at least for a definite period of time,  
12 which it has extended once or twice, so that's in  
13 place. It's happening today. So whether or not that  
14 is ultimately something the Commission ought to be  
15 doing I suppose can be heard and considered, but isn't  
16 that happening today?

17 MR. FFITCH: Your Honor, I'm talking about  
18 the -- let me make sure I've got the phrasing correct  
19 here. Going back to the notice for this hearing,  
20 Paragraph 12 --

21 JUDGE MOSS: I've got that in front of me,  
22 but as I mentioned, I had a marginal note too about  
23 that notice.

24 MR. FFITCH: The phrasing there is the  
25 appropriateness of recovery of the power costs through

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1 a deferral mechanism, so our concern from the outset  
2 has been that by the very fact of creating the  
3 mechanism, there is a tendency to create an expectation  
4 of recovery, so we therefore oppose this mechanism from  
5 the beginning.

6 It was approved. We have lived with it now  
7 for awhile, and here we are at the day when it is  
8 creating a tremendous expectation of recovery when not  
9 dollar one of those funds has ever been found to be  
10 properly recoverable, and this issue here is not simply  
11 the creation of the deferred account. I will agree  
12 with you that the commissions who have passed that,  
13 they has approved the creation of a deferred account,  
14 but it's the appropriateness of the recovery through  
15 this mechanism. It's single issue rate-making, and it  
16 also, I think, raises a spectre down the line of any  
17 company that has money in a deferred account coming in  
18 and asking for this kind of emergency surcharge to  
19 recover it and later on proving it up on any number of  
20 different kind of issues, and it creates a very  
21 dangerous precedent if it's cast in that fashion and  
22 treated in that fashion as opposed to being treated --  
23 Avista's needs for interim relief being treated in the  
24 proper and ordinary fashion, and that's the distinction  
25 we are trying to preserve here and keep in the

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1 Commission's mind so that as these are addressed, we  
2 don't create some bad precedents and we don't prejudge  
3 some issues that aren't really ripe yet.

4 JUDGE MOSS: I think there may be a subtlety  
5 here that you and I are failing to appreciate as  
6 between ourselves, but we can let that go for now,  
7 because I think my main concern at this juncture in our  
8 prehearing conference phase today is that you and I  
9 both be satisfied that these issues are not going away  
10 by virtue of what happens in this phase of this  
11 proceeding. All we are looking at, and that's what I'm  
12 really trying to do, is narrow this phase of this  
13 proceeding down to its essence so that we can get  
14 through it quickly.

15 The Company has come in and said, "Look, we  
16 need this relief quickly. The financial markets are  
17 looking over our shoulder. If we don't get some things  
18 in place by certain certain date -- I forget when it  
19 is, sometime in September -- then there are  
20 consequences will flow from that, so that's why the  
21 Company is asking us to operate in an expedited fashion  
22 here, and having taken that up internally, the  
23 Commission has set aside a couple of days for hearing  
24 in September, but I want to be sure that we are focused  
25 on this very narrow issue of whether the Company's

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1 circumstances are such such as to satisfy the  
2 Commission that it would be appropriate to grant a  
3 surcharge or not; that that's all we are looking at  
4 here, and that's something that can be done in a fairly  
5 short period of time, I think.

6           The Company has already filed its testimony.  
7 You all have had some time to look at that. I presume  
8 you are working on yours, so that's my main concern,  
9 and are you yet comfortable with that idea that these  
10 issues are not being determined, they are not going to  
11 be decided, you are not going to need to file testimony  
12 on them at this phase, and I think there is some  
13 question, and you have raised a good question, as to  
14 how we are going to integrate this proceeding with  
15 subsequent proceedings and determine the need, if any,  
16 for refunds, for example, or adjustments to a  
17 surcharge, for example, because this case is atypical  
18 in terms of the line of authority that is -- I didn't  
19 go beyond the Pacific Northwest Bell case myself today  
20 to see if there had been 500 other cases throughout the  
21 United States on interim rates since 1972. That  
22 decision by the Commission in 1972, as you may all  
23 recall, does recite quite a bit of authority from other  
24 jurisdictions, and a little bit of authority in one  
25 case, I think, from our own jurisdiction. There no

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1 doubt have been some developments in the law in the  
2 last 29 years in this area.

3 I hesitate to say this one case is the be all  
4 and end all in terms of establishing a standard for  
5 emergency rate relief or interim rate relief, but what  
6 I do want to be clear about is what my understanding of  
7 what the Company has asked us to do here, and my  
8 understanding of what we do in this phase is simply  
9 decide whether the Company's circumstances are such  
10 that this order relief is required, and if such a  
11 finding is sustained on the basis of the evidence, then  
12 the Commission will order that relief. Whatever amount  
13 it is will be subject to refund, but we do need to talk  
14 a little bit about how we then tie such a determination  
15 to the subsequent proceedings, whatever they may be,  
16 whether subsequent phases of this case or the general  
17 rate case that the Company plans to file in November,  
18 because you've got to have something against which to  
19 measure an interim rate to find out if it was just and  
20 reasonable throughout the period of its effectiveness.  
21 That's how the whole refund question works when you put  
22 temporary rates into effect. You've got to have  
23 something against which to measure. Is it going to be  
24 the rate that comes out of a general rate case that's  
25 filed in November, or are we going to have further

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1 proceedings in this docket that determine the prudence  
2 and other issues related to the recovery of the  
3 deferred costs and find that some portion of them,  
4 perhaps, should not be recovered and adjust the  
5 surcharge recovery in light of that? How are we going  
6 to do that? What is the Company's idea on that?

7 MR. MEYER: Mr. Hirschhorn in his prefiled  
8 testimony gets into this a bit, but with a general rate  
9 filing to follow in November -- I'm assuming we have  
10 satisfactorily demonstrated the need for some sort of  
11 rate relief in that filing -- there would come a point  
12 at which when as a result of whatever Phase 2  
13 determination is made in this docket by way of prudence  
14 and all the issues we've already discussed, whatever  
15 that surcharge amount is, and given this period of  
16 amortization through the end of 2003, we would need to  
17 dovetail that with whatever additional rate relief, and  
18 so mechanically, you are going to need to take the two  
19 together.

20 I'm not saying they are additive, but that  
21 there would be adjustment to the rate the customer will  
22 pay based on the outcome of both proceedings, and to  
23 the extent, for instance, that refunds were required as  
24 a result of Phase 2 in this docket, then that might,  
25 under some circumstances, offset the amount of rate

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1 relief granted in a general rate proceeding. So it's a  
2 process where you find out where you are at at the end  
3 of the general rate request proceeding and figure out  
4 what, if any, refund obligation there is, and so the  
5 impact on the customer would be adjusted accordingly,  
6 if that helps.

7 JUDGE MOSS: I can see this going forward in  
8 a number of different ways. One that strikes me  
9 immediately is that -- and perhaps this will ultimately  
10 be the simplest way to proceed. I don't know -- we  
11 could go forward as we've discussed in Phase 1 of this  
12 proceeding and consider whether the Company has met the  
13 standards for emergency relief. We can do that by the  
14 middle of September.

15 Then we can have the next phase to this  
16 proceeding, which concerns only these power costs and  
17 their deferral and all the issues that people might  
18 raise about the treatment of such costs, whether it be  
19 prudence or other issues, and that whatever  
20 determination comes out of that Phase 2 could then  
21 become a part of the results in the general rate case,  
22 and that might be at that point we would decide to  
23 consolidate unless we get closer, depending on one  
24 timing and one thing and another. That's one possible  
25 way to handle it.

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1           Another possible way to handle it would be to  
2 consider some sort of a temporary surcharge or  
3 temporary rate that would carry through the  
4 effectiveness of whatever rates come out of the next  
5 rate case as opposed to the December 31st, 2003, and so  
6 then this issue then would be a part of the general  
7 rate case filing and handled in that fashion. So those  
8 are at least two possibilities. I'm sure you all can  
9 think of others, but I don't think we need to make a  
10 final determination on that today so long as everyone  
11 is satisfied that we are focused on this very narrow  
12 question in this first phase and that there will be a  
13 means by which we can go forward with the substantive  
14 underlying issues related to the treatment of these  
15 power costs over the longer term in either a subsequent  
16 phase of this proceeding or in separate proceedings.  
17 Mr. Trotter?

18           MR. TROTTER: Just a couple of comments in  
19 that regard. Number one, I suggest to you that the  
20 reason why this seems complex is because it is, and the  
21 typical standard interim rate relief application  
22 traditionally has been accompanied by a general rate  
23 case. We are not in that mode. This is being filed in  
24 the context of a settlement stipulation and a deferral  
25 mechanism. That causes significant complications and

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1 problems.

2 I will add that the petition here is not just  
3 for a surcharge but to amend the settlement  
4 stipulation, and one of the issues there is whether the  
5 deferral mechanism should continue, and if so, on what  
6 terms and conditions, and I would suggest to you that  
7 is one of the three issues that are teed up for this  
8 phase, and I think it's an important one that needs to  
9 be considered. I assume that was subsumed in your  
10 overarching issue statement regarding the propriety of  
11 interim rate relief. That is an issue that hopefully  
12 we can address in a short period of time, but it is a  
13 very important one and may bear on various parties'  
14 recommendations to the Commission.

15 But I think you've very clearly demonstrated  
16 that the complication here is because this is not a  
17 traditional interim relief application. It's  
18 unprecedented, I think, and whether it's permissible is  
19 something we continue to discuss and think about, but  
20 that's the core issue.

21 JUDGE MOSS: If there is one word that  
22 appears with some regularity in all of the cases that  
23 have to do with interim temporary emergency rates, it's  
24 "extraordinary," so yes, I think this case, like other  
25 similar cases has some extraordinary aspects to it, and

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1 we will, I believe, be able to work through those  
2 subsidiary points you raised, Mr. Trotter, and resolve  
3 them in a satisfactory way in the context of this first  
4 phase.

5 MR. VAN CLEVE: Your Honor, I think one issue  
6 that needs to be addressed is if the Company does prove  
7 that it is entitled to interim rate relief, the  
8 question arises, what relief would be appropriate?  
9 That may raise issues that require analysis of the cost  
10 that this is based on, and it's my understanding of the  
11 petition that there are some costs that have already  
12 been incurred, but there are also projections of future  
13 costs that will be incurred over the next few years,  
14 and it may be necessary to look at what those costs are  
15 on a preliminary basis to make a determination about  
16 what type of relief should be granted.

17 JUDGE MOSS: Wouldn't that get us back into  
18 the territory where Mr. ffitich doesn't want us to go,  
19 which is to say, preapproving some costs and  
20 disallowing others? I didn't think we wanted to go  
21 there in this phase. We could do that during the  
22 subsequent phase, and to the extent any of these costs  
23 upon which a surcharge is based were found to be  
24 inappropriate for recovery through rates, they would  
25 become part of a refund.

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1           MR. VAN CLEVE: It may be possible to draw  
2 the distinction between these costs that have already  
3 been incurred and future costs and deal with them  
4 differently. I'm not sure just because there is a  
5 showing of some type of financial emergency that that  
6 means that the Company is entitled to everything that  
7 they've asked for.

8           JUDGE MOSS: Keep in mind all we are looking  
9 at here is interim surcharge subject to refund. It  
10 could be a conceivable outcome is that the Commission  
11 would grant the surcharge as requested and six, eight,  
12 ten, twelve months into the recovery of that cost  
13 through the surcharge mechanism make a determination  
14 that none of these costs were prudently incurred, and  
15 the Company is not entitled to recover one penny of  
16 them, and therefore must refund with interest every  
17 penny it has recovered through the surcharge mechanism.  
18 I don't mean to stunt Mr. Dukich's growth by using this  
19 example, but I think you see my point. You are  
20 protected.

21           MR. VAN CLEVE: What I'm getting at, Your  
22 Honor, is that I would like for a party to be able to  
23 argue that if the Commission does grant interim relief  
24 that it be something other than what the Company has  
25 proposed and to not limit the basis upon which that

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1 proposal might be based.

2 JUDGE MOSS: I think certainly other parties  
3 may propose alternative -- Staff may come up with a  
4 proposal, for example, that says, We've looked at the  
5 Company's financial situation. We've looked at the  
6 account that has these power costs in it, the deferral  
7 account, and we believe that the financial markets and  
8 the other interested parties outside the Company can be  
9 satisfied in a fashion to relieve the Company from its  
10 dire circumstances, alleged dire circumstances, with a  
11 20 percent surcharge or 5 percent surcharge or no  
12 surcharge at all.

13 Somebody in this case may advocate that,  
14 Yeah, they've incurred these costs, and yeah, their  
15 bond rating is going to be from a triple B to a B  
16 minus, or whatever bond ratings do. You are not going  
17 to be precluded from arguing some alternative form of  
18 relief from the Commission, but we also are not going  
19 to decide the ultimate issue of whether these costs  
20 were, should or should not be recovered through rates.  
21 That's going to be decided at a later time.

22 MR. VAN CLEVE: I think that addresses my  
23 concern. The only other point I wanted to make, Your  
24 Honor, I think I share the same concern that Mr. ffitich  
25 has that we limit the scope of any future proceedings

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1 to prudence, and I just want to make a suggestion. I  
2 think it would be helpful for everyone to go back and  
3 look at the transcript from the hearing on the original  
4 deferral. That was on August 9th of last year. That  
5 was at the public meeting. There was considerable  
6 discussion about what the effect of the deferral and  
7 the Commission's order was and what issues were being  
8 preserved for later review, and I think one of those  
9 issues is whether the Company should be entitled to  
10 recover these types of costs through a deferral  
11 mechanism.

12 JUDGE MOSS: I don't mean to cut Mr. ffitch  
13 off from his issue or the issue that the Commission  
14 indeed itself has identified in the prehearing  
15 conference notice here. All I'm suggesting is that  
16 there is subtlety here that is escaping me, and I'm  
17 sure it will become abundantly clear to me before the  
18 case is over. If I said anything that suggested I was  
19 cutting anybody off from any issue in future phases, I  
20 take it all back. I would not want to do that and did  
21 not intend to do that. I'm just trying to talk about  
22 what this phase is not about, so I think Mr. ffitch  
23 understood that too.

24 Anything else? I do think this has been a  
25 useful discussion. It's often useful for me to perhaps

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1 take the floor for a little longer than you all would  
2 wish to explain how I'm seeing the case and have you  
3 all tell me where I'm missing things or need to flesh  
4 out more understanding of that. For my purposes, I  
5 think we've had that discussion, but I don't want to  
6 cut anybody else off.

7 I think everybody has had an opportunity to  
8 speak as to how they see the case, and I think we are  
9 all seeing it the same way. What we are looking at at  
10 this juncture is a question of whether Avista has made  
11 a showing that will support the granting of some sort  
12 of interim immediate emergency rate relief in the form  
13 of a surcharge subject to refund, and then we will take  
14 up all these other issues in either a subsequent phase  
15 in this proceeding, in a separate proceeding, or in  
16 some blend of processes and proceedings.

17 I think as we go forward -- one final word on  
18 this -- I do want the parties to be mindful as we go  
19 forward that it will be important to define with  
20 considerable clarity how the Commission at some point  
21 in the future is going to measure the question of  
22 whether there needs to be refunds of any amounts  
23 collected through the surcharge. Against what will  
24 that be measured? Is that going to be measured against  
25 some general rate as determined through a subsequent

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1 rate proceeding, or is that something that's going to  
2 be kept, if you will, isolated in this proceeding?

3 We don't want to find ourselves out there  
4 finding that some portion of these costs should not be  
5 recovered through rates and not have anything against  
6 which to measure that, and I've seen cases where that  
7 has happened, not in this jurisdiction, but it can  
8 happen. So we need to be careful about that, and you  
9 all need to be thinking about that as we consider how  
10 to do Phase 2 and how to handle that in conjunction  
11 with these other proceedings. I don't have an answer  
12 for you, but we'll come up with one before it's too  
13 late.

14 Let's talk then a little bit about process  
15 and procedural schedule, and we did previously have  
16 some discussion off the record on this, so I'm going to  
17 stay on the record at this time and just say that my  
18 inclination is in light of the internal consideration  
19 of this matter, were able to find two days, September  
20 5th and 6th, when the three commissioners would be  
21 available to sit on the Bench and hear the evidence in  
22 the case, so I want to establish that as the Phase 1  
23 hearing date.

24 Now, that works very well, as it turns out,  
25 with the schedule that Avista proposed through its

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1 petition, but I understand we may want to tweak a  
2 couple of the dates. The Avista petition was filed on  
3 July 18th, and Avista did prefile its testimony and  
4 direct exhibits on August the 2nd. Avista had proposed  
5 that Staff and Intervenor prefile testimony would  
6 follow on August 22nd. Mr. Trotter, did you want to  
7 suggest an adjustment to that date?

8 MR. TROTTER: Yes. We request the 24th, Your  
9 Honor. That way, we can make it at 1 p.m. on the 24th  
10 to distribute by electronic to the extent we can and  
11 fax to the extent we can't do it electronically to the  
12 parties, and then we would propose rebuttal to be filed  
13 the 29th, and the prehearing to mark exhibits and so  
14 on, we would recommend the 4th. If that's not  
15 available, then the 31st.

16 JUDGE MOSS: Anybody else want to be heard on  
17 these proposed dates?

18 MR. VAN CLEVE: Your Honor, those dates are  
19 okay with ICNU, except we would not be available on the  
20 31st, so if the prehearing could be on the 4th.

21 JUDGE MOSS: Anybody else want to be heard on  
22 the dates?

23 MR. FFITCH: Your Honor, the hearing dates  
24 conflict with hearing dates -- I'm counsel of record  
25 for a proceeding in Washington D.C. before FERC. I

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1 will attempt to make other arrangements on that case.  
2 Just stating that for the record.

3 JUDGE MOSS: I was unaware of that.

4 MR. FFITCH: I clearly should have  
5 communicated that sooner to the Commission; however,  
6 I'm available on either the 31st or the 4th. I would  
7 prefer the 4th, I believe, but that's just a matter of  
8 personal preference. The other dates are all right,  
9 Your Honor.

10 MR. MEYER: I do have a comment. Moving from  
11 the 22nd to the 24th as recommended by Staff is fine as  
12 long as we can bump our rebuttal to the 30th, not the  
13 29th, so that we are apart by one day on the rebuttal,  
14 and if Staff and others could live with the 30th for  
15 our rebuttal, we could live with the 24th for their  
16 redirect.

17 MR. TROTTER: That's okay.

18 JUDGE MOSS: We are going to hold Mr. Meyer  
19 to one o'clock, aren't we? We aren't going to give him  
20 an extra four hours. So you want the 30th?

21 MR. MEYER: I do, please.

22 MR. FFITCH: Can I add one thing that I  
23 forgot to mention before which is the very tight  
24 schedule is dependent, I think, on the Company's  
25 compliance with the discovery requirements, and we and

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1 other parties may well raise that issue if there is  
2 significant problems with discovery as we get closer to  
3 hearing or closer to testimony filing dates. We might  
4 be looking at a situation where that would become a  
5 basis for requesting adjustment of the schedule.

6 JUDGE MOSS: I think Mr. Meyer previously  
7 mentioned the idea that the Company recognizes it is in  
8 the Company's best interest to get this stuff out there  
9 as quickly as possible, and I'm sure part of his  
10 thinking was the fact that you might very well seek a  
11 continuance if you do not get adequate response in your  
12 discovery phase. So I think there is sort of a  
13 built-in compulsion, if you will, that will promote the  
14 free exchange of information in this proceeding. So  
15 I'm hopeful that such circumstances do not develop. If  
16 they do, I'm confident also that you will bring them to  
17 my attention by an appropriate motion.

18 MR. MEYER: May I add what's meant to be a  
19 constructive comment in that regard? If any party  
20 believes that it's having real trouble, given our  
21 response time or given how we are prioritizing  
22 responses as we try and get them to you as soon as  
23 possible, by all means, call me or Mr. Faulkner or  
24 Mr. Dukich as soon as possible so we are not faced with  
25 a motion coming out of left field that we weren't

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1 anticipating because we thought we were doing a  
2 reasonably good job, so stay in constant touch.

3 JUDGE MOSS: That's a useful recommendation,  
4 and I do encourage counsel to stay in touch by  
5 telephone, e-mail, what have you, and I think you can  
6 resolve a lot of this informally. Certainly that was  
7 my own practice experience years ago in D.C. that  
8 counsel who were willing to freely communicate their  
9 problems directly as opposed through motions practice  
10 tend to get things moving along more quickly, and I'm  
11 sure you all have had a lot of experience with this, so  
12 I encourage you to do that too, and I think you can  
13 resolve a lot of it.

14 On the other hand, given the very tight  
15 schedule, I will follow the practice that I have  
16 followed in prior proceedings that have been expedited  
17 of making myself available on very short notice for  
18 oral arguments with respect to disputes, and I will  
19 resolve them, and we won't spend a lot of time writing  
20 orders and so forth. We will just do it. The  
21 encouragement is there for good faith efforts, and I'm  
22 confident that will be the first line, but beyond that,  
23 I'm prepared to act quickly and decisively on any  
24 disputes that arise.

25 MR. TROTTER: This may harken back to a prior

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1 discussion. I don't want to reopen it in any way, but  
2 given the short schedule, the Company's direct case  
3 does cover a broad range of issues. I think they do  
4 get into the prudence issue in some regard. We don't  
5 anticipate addressing every point made by the Company  
6 but rather address the issues that the Commission has  
7 called us upon to address. So I just want to make that  
8 clear on the record in case some point the Company has  
9 made in its direct case we don't address at this time.

10 JUDGE MOSS: I'll be perfectly clear: We are  
11 not addressing the prudence of these costs in this  
12 phase of this proceeding or other issues subsumed under  
13 Mr. ffitich's description of the deferred costs issues,  
14 substantive issues. We will, of course, be looking at  
15 the level of the costs and things like that, so there  
16 will be no predetermination of those issues, okay? And  
17 you can quote that back at me later if things go awry.

18 Having said that then, I want to put our  
19 schedule on the record. Mr. ffitich, is there something  
20 else about that?

21 MR. FFITCH: There is the public hearing  
22 issue.

23 JUDGE MOSS: Let's address that now before I  
24 put the schedule on the record. We did have some  
25 discussion off the record at the outset of the day

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1 concerning the public's interest in this proceeding and  
2 perhaps the need to provide a process by which the  
3 public can comment orally. Now, we can accept written  
4 comments filed either through your office or directly  
5 with the Commission and sponsored by you at hearing,  
6 but I understood, Mr. ffitch, that you did believe we  
7 should have some sort of a process to allow for oral  
8 public testimony?

9 MR. FFITCH: Yes, Your Honor. Public Counsel  
10 is requesting an oral opportunity for public comment.  
11 Due to the emergency nature of the request, the fact  
12 that the Company is asking for a surcharge to actually  
13 take effect in the very near future, effective on  
14 September 15th, and due to the size of the request,  
15 very significant increase, approximately 37 percent, 38  
16 percent, my understanding also is that the Commission  
17 has already received quite a number of comments from  
18 Avista customers on the filing, and for these three  
19 reasons, we are asking the Commission to make some  
20 arrangements. Specifically, of course, it's always  
21 preferable to have a hearing in the service territory  
22 of the Company. That would be our first choice.

23 Understanding the logistical problems in  
24 Commission's schedules, an alternative suggestion would  
25 be to arrange for a video conference hookup. The

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1 Commission has, in my experience, been able to do that  
2 in prior cases where the commissioners sit in Olympia,  
3 for example. A Commission staff person is in the  
4 service territory at a meeting room with facilities  
5 that are linked, and the customers can speak to the  
6 Commission at that location. We would also request  
7 that there be adequate publicity of this event and that  
8 the Company assist with publicizing any hearing that  
9 the Commission establishes, and we would be happy to  
10 work with the Company and the Commission staff on the  
11 logistics.

12 JUDGE MOSS: And I would add just as a safety  
13 valve that we would always be able to use our  
14 teleconference bridge as a third but least preferred  
15 alternative to provide an opportunity to allow the  
16 members of the public to speak to the proposal.

17 As far as the publicity point is concerned, I  
18 don't honestly know what the Commission's practices are  
19 beyond issuing a notice and, of course, appropriate  
20 press releases and so forth occur. Did you have  
21 something in mind beyond the ordinary? Would you just  
22 work directly with Commission and public affairs staff  
23 to decide what you think is appropriate or to work with  
24 the Commission to determine what is appropriate?

25 MR. FFITCH: Your Honor, I think the reason I

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1 mentioned that is because I'm not sure that there has  
2 been, beyond the issuance of notice, there has always  
3 been a significant publicity given in the way of  
4 newspaper, radio, or other kinds of notice, posting of  
5 notices at community locations. I'm not aware that's  
6 been done extensively in the past, and I'm suggesting  
7 that there may be some of that that could be  
8 efficiently and economically done here that might  
9 assist, given the very quick time lines, in letting  
10 people know about the event.

11 It is hard to get the word out generally on  
12 events of this nature, and I'm asking, I guess, that  
13 perhaps the Commission look at some additional steps  
14 that might have been taken in the past. We can  
15 certainly talk with Staff about how to do that, but we  
16 are requesting that the Commission and its public  
17 affairs staff take a look at that. They are very  
18 experienced in setting up meetings and doing publicity  
19 and so on, so they probably could teach us a thing or  
20 two about it, but we would be happy to talk to them  
21 about details.

22 JUDGE MOSS: You don't need me to do anything  
23 in this connection at this juncture; is that right?

24 MR. FFITCH: I'm asking that the Commission  
25 direct its staff to investigate how to do adequate

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1 publicity to get people apprised of the hearings so  
2 that they can come, and we would be happy to work with  
3 that.

4 JUDGE MOSS: I'll leave it at this for now  
5 that I'm sure our public affairs staff will be willing  
6 to work closely with you in determining what would be  
7 appropriate for this proceeding, and to the extent  
8 public affairs and the Commission generally might look  
9 beyond this one case to making this process more  
10 effective, then probably better leave that to another  
11 day, and I won't even express my opinion about it, but  
12 I feel sure that the Commission staff will work closely  
13 with you, and I would ask that the Company also would  
14 be willing to cooperate in terms of making sure there  
15 is adequate publicity in the service territory, and I  
16 think I recall something that the Company has made some  
17 efforts to get the word out through advertising media.  
18 Do you know anything about that, Mr. Meyer?

19 MR. MEYER: Not directly. I know that  
20 notices of public meetings such as this find their way  
21 into the Spokesman Review, the general circulation  
22 paper, but we will be glad to assist.

23 JUDGE MOSS: If there is any problem in this  
24 connection, bring it to my attention, and I agree with  
25 you, Mr. ffitich. This is an area that could use some

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1 addressing in a more formal way, and we will use this  
2 case as a vehicle to do that to a degree. Particularly  
3 given the short time frame here, it is going to be  
4 important to get the word out and get the people  
5 informed.

6 MR. FFITCH: Thank you, Your Honor.

7 JUDGE MOSS: I think in terms of setting  
8 dates, I'm going to just suggest for the moment at  
9 least on a tentative basis that since the hearing dates  
10 will be September 5th and 6th that we will provide the  
11 opportunity for public comment either on the evening of  
12 the 5th or the 6th, and I will check with the  
13 commissioners to see what will work in terms of their  
14 other obligations, and my tentativeness is because I  
15 didn't look at their evening calendars, so I don't know  
16 what's available, but we will work it out, and I will  
17 announce it by subsequent notice.

18 MR. FFITCH: Thank you, Your Honor.

19 JUDGE MOSS: In terms of the other procedural  
20 dates, we've already passed the August 2nd date on  
21 which Avista filed its direct testimony and exhibits.  
22 The date that we have determined appropriate for Staff  
23 and Intervenor prefile testimony is August 24th. Staff  
24 and Intervenors are required to file their testimony by  
25 1 p.m. on that day and, of course, effect service

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1 simultaneously with filing, which brings to mind the  
2 question of whether the parties wish to open themselves  
3 to electronic service, that is to say, e-mail  
4 attachment, facsimile. The Commission's rules -- I  
5 think the statute even requires that it be mailed or  
6 sent by fax, but e-mail has worked well in other  
7 proceedings, and if you want to do it that way, you  
8 can, but we'll talk about that more later. Put it in  
9 your minds.

10 Avista rebuttal testimony will be filed and  
11 simultaneously served on August 30th. We will have our  
12 final prehearing on September 4th, and I want to do  
13 that in the morning, I think. Yes, let's do that in  
14 that morning so that it will give more time to prepare  
15 things prior to hearing. So will Avista be coming  
16 early the night before?

17 MR. MEYER: Probably coming over that  
18 morning.

19 JUDGE MOSS: Let's go ahead and make it 9:30  
20 then. The hearing will be September 5th carrying over  
21 to the 6th, as necessary, and the goal will be to have  
22 a Commission order in time for action by September  
23 15th, or in the absence of any grant of authority,  
24 there would be no compliance filing. As I understand  
25 the Avista petition, if the Commission order were to be

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1 entered as late as September the 14th, the Company  
2 would find adequate time to effect the compliance and  
3 implementation by the 15th, but it would clearly be  
4 desirable to have the order somewhat in advance of that  
5 date, and Mr. Meyer is nodding affirmatively for the  
6 record.

7 MR. MEYER: May I return to electronic? Did  
8 you have in mind that would be at the option of the  
9 party, either electronic or hard or both?

10 JUDGE MOSS: I think it has to be pretty much  
11 at the option of the receiving party because of the way  
12 the statute and the rules are set up, so if you all  
13 want to agree among yourselves that you will have your  
14 service electronically, fine. If you can't make that  
15 agreement among yourselves, then you will have to  
16 follow the traditional paper filing, mailing, whatever  
17 you use, and that's hopefully something that will  
18 change over the next few years, but we are not yet in  
19 the modern age.

20 MR. MEYER: We have a little bit of time  
21 before your testimony is due. I want to talk to my  
22 staff and see what their preference would be and just  
23 share thoughts.

24 MR. FFITCH: The main thing that comes to  
25 mind is some of the exhibits and so on. You can't send

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1 them by e-mail anyway.

2 JUDGE MOSS: It's always problematic, sure.

3 You all can work those things out among yourselves, and  
4 I think if a paper copy to follow and an electronic  
5 transmission is what's required. I think what's  
6 happened in other proceedings to my recollection is  
7 that everything that's available electronically is  
8 served that way, and that gives everyone sufficient  
9 material to work on through the midnight hour, and then  
10 by the morning mail, you have the exhibits and you are  
11 all set for the weekend's work.

12 MR. TROTTER: Did the Commission want to  
13 provide the oral argument or briefing or both?

14 JUDGE MOSS: It's true that the schedule does  
15 not speak to that. I'm glad you raised it,  
16 Mr. Trotter. Do you all want written briefs? We are  
17 going to have our hearing on the 5th or 6th, and it  
18 would be a fairly short turnaround on any briefs.

19 MR. FFITCH: Your Honor, Public Counsel would  
20 request -- I hate to say this when I think of the work  
21 involved, but we would ask for an opportunity to file a  
22 brief after the hearing.

23 JUDGE MOSS: It would have to be within a  
24 couple of days, few days. If the Commission is going  
25 to act by the 15th... Is the 15th absolutely critical?

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1 What difference would it make if it was the 21st  
2 instead of the 15th?

3 MR. MEYER: A few days are not critical,  
4 whether it's the Friday or the Monday, but we are doing  
5 what we can to hold to the mid September time frame.

6 JUDGE MOSS: I notice that Rosh Hashanah is  
7 the 17th, and I don't know or particularly care whether  
8 that's an issue for anybody in this case or not, but I  
9 don't want to tie anybody to that period of time  
10 because you may have friends or family and so forth.  
11 But it does strike me that we could allow for briefs,  
12 say, on the 12th. That's five days, and they would  
13 probably be short.

14 MR. MEYER: If they would be short, from the  
15 Company's perspective, we are going into hearings in  
16 Idaho, our Idaho request that week of the 12th.

17 JUDGE MOSS: Maybe an oral argument would be  
18 a better alternative in this case to briefs.

19 MR. MEYER: It may be that at the conclusion  
20 of the hearing on the 6th that there could be some  
21 summation by counsel.

22 JUDGE MOSS: Tell you what. I typically --  
23 Mr. ffitch, I cut you off a minute ago. Did you have  
24 something else to say?

25 MR. FFITCH: You Honor, I think we really

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1 would like to request the opportunity to file something  
2 in writing. These are complicated issues. There are  
3 some legal questions here. We are having to try to  
4 sift through oral argument, and the Commission may well  
5 feel that would be useful, but the opportunity to  
6 actually put something down in writing before the  
7 decision I think is going to be pretty important.

8 JUDGE MOSS: I'm not going to set a firm date  
9 at this juncture or a firm process, but I'm going to  
10 say that I appreciate your comments, Mr. ffitich, and  
11 particularly with regard to some of these issues being  
12 potentially complicated. As we get closer to the  
13 hearing, at the hearing, we will make a final  
14 determination as to whether we will have oral argument,  
15 written briefs, or some combination in order to have  
16 our post-hearing argument laid out, and if we do have  
17 written briefs, I would expect that we would have to  
18 have those filed simultaneous by the 12th. That would  
19 still give us time to get through process without  
20 putting the Company in jeopardy in terms of its  
21 suggestion with regard to certain financial triggering  
22 dates and one thing or the other. According to  
23 Mr. Meyer, we could let it slip a couple of days  
24 without any risk even.

25 So any other business we need to take up

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1 today?

2 MR. MEYER: I just have a concluding remark,  
3 if I may. I mean this sincerely, and this is directed  
4 not only to the commissioners but to yourself and all  
5 parties in the room. However we may end up with regard  
6 to various positions we take, the Company is  
7 appreciative of efforts to expedite the process, and I  
8 just wanted to convey that.

9 JUDGE MOSS: I appreciate that. There being  
10 no other business to conduct today, then we will be in  
11 recess. Thank you.

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13 (Prehearing concluded at 3:35 p.m.)

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