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Kathryn T. Wilson, CCR

Court Reporter

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P R O C E E D I N G S

JUDGE MOSS: Good morning, everyone. I'm known to all of you so I don't need to introduce myself. We are convened this morning for our first prehearing conference in the matter styled Washington Utilities and Transportation Commission against Avista Corporation, doing business as Avista Utilities, No. UE-011595, that being Avista's general rate filing and also encompasses a request for interim rates. We are also convened in our second prehearing conference in the matter of the petition of Avista Corporation, doing business as Avista Utilities for an order finding Avista's deferred power costs were prudently incurred and are recoverable, and that's Docket UE-011514.

We will take appearances, and we do have one prefile petition to intervene in the 595 docket. We will take up the various motions and requests, and we will focus on the process and procedural schedule that we want to follow and then have a few other remarks from everyone. We'll see if the parties have any other business that we need to conduct today.

Since this is the initiation of the general rate filing docket, I'll ask that the appearances be in the full form so that the information will be reflected in the transcript for everyone's use throughout the

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1 case. So we will start with the company; Mr. Meyer?

2 MR. MEYER: Appearing on behalf of petitioner
3 and applicant, Avista Corporation, David Meyer, general
4 counsel for Avista Corporation. My address is East
5 1411 Mission Avenue, Spokane, Washington, 99220. My
6 phone number is (509) 495-4316. My fax number is (509)
7 495-4361, and my e-mail address is
8 dmeyer@avistacorp.com.

9 JUDGE MOSS: Mr. Van Cleve?

10 MR. VAN CLEVE: I'm Brad Van Cleve appearing
11 on behalf of the Industrial Customers of Northwest
12 Utilities. I'm with the firm of Davison Van Cleve, PC,
13 1000 Southwest Broadway, Suite 2460, Portland Oregon,
14 97205. My telephone number is (503) 241-7242. My fax
15 number is (503) 241-8160, and my e-mail address is
16 mail@dvclaw.com.

17 JUDGE MOSS: Mr. ffitch?

18 MR. FFITCH: Good morning, Your Honor and
19 commissioners. Simon ffitch, assistant attorney
20 general for public counsel, 900 Fourth Avenue, Suite
21 2000, Seattle, Washington, 98164. Phone number is
22 (206) 389-2055. Fax is (206) 389-2058. E-mail is
23 simonf@atg.wa.gov.

24 JUDGE MOSS: Mr. ffitch, we previously had
25 Mr. Cromwell's appearance in the prudence matter. Who

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1 will be lead on these?

2 MR. FFITCH: Mr. Cromwell, Your Honor. Thank
3 you for reminding me. He was unavailable today so I'm
4 appearing for public counsel, but Mr. Cromwell will be
5 lead counsel on these matters.

6 JUDGE MOSS: The address information is the
7 same with the exception being that the e-mail contact
8 for Mr. Cromwell would be robertcl@atg.wa.gov.

9 MR. FFITCH: And Mr. Cromwell's phone number
10 is (206) 464-6595. He will be appearing in the Avista
11 interim and general dockets, the deferred accounting
12 docket, and the prudence docket for public counsel.

13 JUDGE MOSS: I missed a portion of the open
14 meeting yesterday and was under the impression that the
15 deferred accounting docket may have been taken care of?

16 CHAIRWOMAN SHOWALTER: We authorized the
17 deferred account. There doesn't need to be a hearing
18 to determine whether they are there.

19 JUDGE MOSS: Is that what we are referring
20 to, Mr. ffitch, Docket No. UE-011597?

21 MR. FFITCH: That's correct, Your Honor.

22 JUDGE MOSS: As I understand it, that matter
23 has not been set for hearing. The Commission approved
24 that deferred accounting yesterday in the open meeting.

25 MR. FFITCH: That's correct. I just wanted

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1 to make sure that Mr. Cromwell's appearance was noted
2 in all those dockets for completeness.

3 JUDGE MOSS: I want to avoid any confusion
4 about what we are here for. We're here just in the two
5 dockets. For staff?

6 MR. TROTTER: My name is Donald T. Trotter
7 assistant attorney general. With me is Jonathan
8 Thompson, also an assistant attorney general. Our
9 address is 1400 South Evergreen Park Drive Southwest,
10 P.O. Box 40128, Olympia, Washington, 98504-0128. Our
11 fax number is (360) 586-5522. My telephone is (360)
12 664-1189. Mr. Thompson is the same prefixes, except
13 his last four digits are 1125. My e-mail is
14 dtrotter@wutc.wa.gov, and Mr. Thompson is
15 jthompso@wutc.wa.gov, appearing for Commission staff.

16 JUDGE MOSS: I'll just note that the
17 Industrial Customers of Northwest Utilities has
18 petitioned and had its petition granted for
19 intervention in No. UE-011514. I also have the
20 organization's petition to intervene in Docket No.
21 UE-011595. That was filed some days ago, so I suspect
22 everyone has had a chance to read it, and let me ask if
23 there is any objection to the petition to intervene.

24 MR. MEYER: None.

25 JUDGE MOSS: There being no objection, the

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1 petition by the Industrial Customers of Northwest
2 Utilities in this proceeding is granted.

3 Now, also I'll note that we did invoke the
4 discovery rule and had some discussion regarding
5 discovery procedures in the 514 docket, and I believe
6 the discovery rule was invoked at the Commission's
7 opening meeting suspending the rate docket, and that is
8 notated in the suspension order. I believe that I have
9 that correct.

10 MR. MEYER: You do; although, I have a couple
11 of discussion points around that if you would like to
12 take it up now.

13 JUDGE MOSS: I would.

14 MR. MEYER: In part, this may depend upon the
15 schedule that's ultimately adopted, but in terms of
16 discovery, for purposes of not only the prudence but
17 also the interim increase, we would suggest that we
18 clarify and establish that there be instead of a
19 three-calendar-day turnaround that there be a
20 three-business-day turnaround. Although I wasn't here
21 yesterday, I understand that is the operative rule that
22 you discussed yesterday, the three-business-day
23 turnaround.

24 JUDGE MOSS: Let's hear if there is any
25 discussion on that, but I have once again failed to ask

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1 if there is anyone on the conference bridge line that
2 wishes to make an appearance. We do have the
3 appropriate switches today, and I hear no one.

4 MR. CROMWELL: Your Honor, I'm trying to
5 listen in before I board my plane.

6 JUDGE MOSS: We had noted your appearance in
7 the proceeding and had a discussion with Mr. ffitich
8 that you would be the lead, so thank you. Anyone else?

9 Let me ask to hear from other parties
10 regarding the suggestion that the three-business-day
11 response period be adopted in lieu of a
12 three-calendar-day response period for discovery, and,
13 of course, there is some interplay here. We've adopted
14 that in the prudence case. I would think it would be
15 appropriate to adopt it for the purposes of the
16 interim, and the question is calendar versus business
17 days. Any discussion on that?

18 MR. TROTTER: Your Honor, it's highly
19 dependent on the schedule. If the calendar day method
20 is the best efforts basis, and I think Your Honor gave
21 an example that if something comes in late on a Friday,
22 it's not expected to be responded to at 8 a.m. Monday
23 morning. We try to be responsive. I think all parties
24 have tried. The problem that we are facing is
25 numerous, a few holidays coming up plus weekends plus a

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1 schedule that's going to be very aggressive
2 potentially. So we would like to stick with the three
3 calendar days on a best efforts basis. There is a
4 holiday situation. We understand that, but again,
5 depending upon the schedule that's set, it appears to
6 be very aggressive, and the discovery process needs to
7 match that.

8 JUDGE MOSS: Anybody else?

9 MR. FFITCH: We would concur with staff, Your
10 Honor.

11 JUDGE MOSS: I think having a
12 three-calendar-day rule as an aspirational goal is
13 fine. I would not want to be entertaining complaints
14 about violations of Commission rules if somebody failed
15 to respond on a Monday to a Friday request, and so
16 we'll make the rule three business days, but as we
17 discussed in our prudence prehearing, the expectation
18 from the Bench is that the parties will endeavor to
19 respond at the earliest opportunity, and when they have
20 answers available, not wait until even the third day.

21 I suppose I should note, given the discussion
22 of holidays, that we did adopt a convention in our
23 prehearing conference in another matter yesterday that
24 Christmas Eve and New Year's Eve would not be
25 considered business days. So we will extend that

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1 special definition for purposes of these proceedings,
2 but again, those of you who are working on Christmas
3 Eve and New Year's Eve should go ahead and tend to
4 discovery just as you would other business.

5 MR. MEYER: I'm not trying to slice this too
6 thin, but since we are still on a calendar day mode,
7 can we pretend that December 24th and December 31st
8 don't exist on the calendar?

9 JUDGE MOSS: I think we'll leave the
10 aspirational goal in place. For purposes of anyone
11 coming forward with a complaint that a Commission order
12 has been violated, we'll stick with the business days.

13 MR. TROTTER: I think people have behaved
14 reasonably so far, so we are confident it can work.

15 JUDGE MOSS: I appreciate that comment. Are
16 there other discovery matters you wish to raise,
17 Mr. Meyer?

18 MR. CROMWELL: I would like to be heard on
19 one issue. One issue arose that Mr. Meyer and I have
20 discussed and not been able to agree on. I had asked
21 that Mr. Fink, who is processing discovery for the
22 company, add our secretary to the e-mail list so she
23 could most directly forward those documents into our
24 server where we file them, and of course, she does the
25 same with the hard-copy paperwork. Mr. Meyer in

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1 response asked that she execute a confidentiality
2 agreement. It was my understanding that that was not
3 common practice, so I guess I place the matter to you
4 to decide.

5 JUDGE MOSS: Mr. Trotter?

6 MR. TROTTER: I just wanted to comment. We
7 typically for staff members that do nothing more than
8 log in data requests, we check them off but do no
9 analysis, because they have no reason to deal with them
10 in an appropriate way.

11 MR. MEYER: We are not trying to be
12 doctrinaire about this, but just in terms of our own
13 housekeeping, typically, of course, if we have the
14 protective order certificate signed by various parties
15 and they become the designated recipient, by signing
16 that certificate, those people pledge that they will
17 take adequate precautions within their own shop, with
18 their own paralegals and secretaries, and that's good
19 enough.

20 But this is a bit of a horse of a different
21 color because -- and this is perhaps where the
22 disagreement lies -- here we are being asked to add yet
23 another person as the primary recipient, the initial
24 recipient of confidential information, and so I think
25 it puts this particular person in a somewhat different

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1 situation. I don't have a problem sending it directly
2 to Mr. Cromwell, and if he has this person process it
3 in the ordinary course, that's understandable, but I
4 think this is a horse of a different color.

5 JUDGE MOSS: Mr. Cromwell, I'm prepared to
6 rule on this, and I don't really need to hear further
7 about it. Do you have another point?

8 MR. CROMWELL: I will be out of the state for
9 the next week or so, and that and just the risk during
10 what I anticipate will be a rather tight schedule that
11 something e-mailed to me won't get processed in our
12 office if I happen to be out ill or down at the
13 Commission on another matter that this is really
14 helpful if our secretary has that directly by e-mail
15 from the company. That's all.

16 (Discussion off the record.)

17 JUDGE MOSS: I don't really see a significant
18 distinction in terms of ministerial function of the
19 staff of the attorneys who are responsible for these
20 documents, and of course, under our ethical
21 requirements in Washington state for lawyers licensed
22 to practice in this state, the attorneys are
23 responsible for supervising their staff and assuring
24 that they conduct themselves appropriately, and the
25 confidentiality matter would certainly be an important

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1 one that the attorneys would need to instruct their
2 staff in proper handling of those documents, and I just
3 frankly don't want to open the door to having to extend
4 this principle to paralegals and secretaries and
5 support staff who typically handle these documents on a
6 routine basis, and to my knowledge, we've never had a
7 problem arise from this sort of thing. It does not
8 seem unreasonable to me that the matter be directed by
9 e-mail to the support staff person, so we will not
10 extend the rule to require them to execute the
11 document.

12 MR. MEYER: Thank you.

13 JUDGE MOSS: Anything else on discovery? The
14 next matter I have is the question of protective order.
15 I believe it's already been entered, the protective
16 order in UE-011514, and let me ask if that is also
17 required in the 011595 docket?

18 MR. MEYER: Yes.

19 JUDGE MOSS: Would the same form of
20 protective order be adequate in that case?

21 MR. MEYER: Yes.

22 JUDGE MOSS: Then the Commission will enter a
23 protective order in the standard form, and just
24 thinking about the demands on everybody's schedule
25 today, I don't think that will occur today, or it may

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1 be next week, but the parties may conduct their
2 discovery if that order was in place. Everyone is
3 familiar with its terms and of course will be expected
4 to behave consistently with that. I don't want the
5 discovery held up.

6 MR. MEYER: May I raise one other very minor
7 processing point back on discovery, and the only reason
8 I raise it here is it was raised yesterday, and there
9 seemed to be some acceptability. Keeping track of
10 different turnaround deadlines on discovery, keeping
11 track of the three-day turnaround as opposed to a
12 10-day turnaround, it might be helpful to designate in
13 the discovery request itself whether it's a prudent or
14 interim request requiring a quick turnaround if that
15 request is P-whatever or I-whatever as opposed to a G,
16 which is a general. Apparently, that was the process
17 accepted yesterday, and I just throw it up for
18 consideration.

19 JUDGE MOSS: Mr. Trotter?

20 MR. TROTTER: Typically, what we do is simply
21 in the cover letter indicate to what docket they refer,
22 whether it's related to the general rate case, which
23 would be on the 10-day rule or the interim or prudence
24 case and just let it flow from that. If you want a
25 letter designation, I suppose we can do it. I don't

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1 think it would be necessary.

2 JUDGE MOSS: We will follow that convention.

3 I suppose since the prudence and interim are very
4 likely to proceed jointly -- we will discuss that in a
5 moment -- the most appropriate thing perhaps would be
6 to simply mark the ones for the general case with a G,
7 and everything also can be regarded as either within
8 the prudence or the interim matter, and they will
9 therefore be subject to the three-day turnaround rule;
10 whereas the ones marked with a G will be subject to the
11 10-day turnaround rule. Will that work? I see nods of
12 affirmance.

13 Anything else on discovery, protective order?
14 Any other preliminary motions -- I do not have any
15 business along those lines -- before we launch into our
16 discussion of process and procedural schedule? Turning
17 to that subject, we had some discussion at our
18 prehearing conference in the prudence matter about
19 proceeding jointly in the prudence and the interim
20 matters, and everybody seemed to think that might be a
21 good idea, and given the tight schedules that we are
22 all facing in these dockets as well as others, let me
23 just ask if proceeding jointly in those two processes
24 is a matter of proceeding that you would feel
25 comfortable with.

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1 MR. MEYER: Not only comfortable with but
2 would strongly recommend.

3 MR. FFITCH: I don't know if Mr. Cromwell is
4 still on the line, but I don't believe that we have
5 ever expressed a comfort level with proceeding jointly
6 on the interim and the prudence case. In fact, it's my
7 understanding that we argued for a different and a
8 longer schedule at the last prehearing conference on
9 the prudence case; i.e., a longer schedule for prudence
10 than for interim, so we can talk in more detail about
11 this particular schedule, but in general, we have a
12 concern about tying the prudence case to an interim
13 schedule.

14 JUDGE MOSS: Anybody else want to be heard on
15 the question of whether we should proceed jointly or
16 separately?

17 MR. VAN CLEVE: Yes, Your Honor. ICNU
18 doesn't have a problem with proceeding jointly except
19 for the due date for the staff and intervenor
20 testimony. Mr. Schoenbeck has expressed a concern that
21 the two cases involve totally different back sets, and
22 he thinks the quality of the testimony would be a lot
23 better if there could be a week between when the
24 testimony is due on the prudence issue versus the
25 interim rate issue, but otherwise, we don't have a

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1 problem with proceeding jointly.

2 JUDGE MOSS: In response to that concern by
3 Mr. Schoenbeck as related by you, Mr. Van Cleve, would
4 a single due date that's somewhat later work in the
5 same fashion as a separate due date for the filing?
6 Would that accommodate the concern?

7 MR. VAN CLEVE: I think that would be
8 helpful. As I noted yesterday, Mr. Schoenbeck has some
9 testimony due in Oregon, and one problem I see with the
10 current proposed schedule is we have four pieces of
11 testimony due in about 10 days, so if the date could be
12 delayed for the last two pieces of testimony, that
13 would be helpful.

14 JUDGE MOSS: But a single date would work?

15 MR. VAN CLEVE: Yes.

16 JUDGE MOSS: Anybody else want to be heard on
17 the question of joint versus single?

18 MR. TROTTER: The staff does require
19 additional time for the prudence case. We talked about
20 a schedule last time of a distribution date around
21 March 8th for our case. In view of the Commission's
22 proposed schedule that you handed out today, that does
23 not appear to be in the cards, but if it is in the
24 cards, if the Commission would consider that, that is
25 staff's wish.

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1 I think we can process the interim case more
2 quickly than that because of the difference in issues,
3 but staff believes that March 8th, the schedule that we
4 proposed to you last time, is the one that's
5 appropriate for the prudence case, and we can handle
6 the interim rate relief matter more expeditiously than
7 that.

8 CHAIRWOMAN SHOWALTER: Mr. Trotter, you
9 handed out a proposed schedule, and the first column on
10 it says "prudence/interim cases," and if staff
11 intervenor direct is 2/15, is that what you mean or
12 not?

13 MR. TROTTER: Turn to Page 2. The third
14 bullet says, Staff needs more time if even this -- is
15 proposing assumption on the order is required by April
16 1. Our proposed schedule last time was staff and
17 intervenors March 8th, rebuttal the 15th, hearings the
18 25th through 27th, and briefs April 8th, or if you
19 don't need briefs, then an order could flow, perhaps,
20 in mid April.

21 We didn't presuppose when the order would be
22 issued. That's your issue. But that's what staff felt
23 it needed to produce an acceptable case. We understand
24 that may not be doable, so that's why we came up with
25 this one.

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1 CHAIRWOMAN SHOWALTER: I understand what this
2 latest draft is now.

3 JUDGE MOSS: I think we will defer a ruling
4 on whether to proceed jointly or separately because the
5 matter seems to be tied up in the whole schedule in
6 question. So perhaps we should complete all of that
7 discussion first.

8 I do want to note before we go on with this
9 discussion that as we have our discussion on
10 scheduling, it's important for everyone to be mindful
11 that there is a considerable press of business before
12 the Commission at this time. Not only do we have the
13 Avista dockets, but we have before us general rate case
14 and interim rate request by Puget Sound Energy. We
15 have the Olympic Pipe Line Company rate proceeding
16 again, both general and interim rates involved there,
17 various dockets in the telecommunications sector that
18 are of some significance, a host of other matters that
19 require the Commission's attention during calendar year
20 2002 and for the balance of 2001.

21 So we have prepared a proposed schedule with
22 all of these matters in mind, and I've passed out a
23 handout that shows some of our thoughts with respect to
24 the three rate proceedings I mentioned, and also I
25 passed out before we began today a proposed schedule

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1 both for the interim rate and prudence proceeding and
2 also for the general rate proceeding that's before us
3 today.

4 So we would like to have some more discussion
5 by the parties on the question of scheduling in light
6 of these documents, and Mr. Trotter has mentioned too
7 that he did distribute a staff-proposed schedule, so
8 you have those proposals before you as well. So let's
9 open the floor for discussion about schedule.
10 Mr. Meyer?

11 MR. MEYER: Two observations. First of
12 all -- and I'll leave aside the general rate portion of
13 the handout, and I assume we are just talking now about
14 interim rates and prudence -- I'm quite comfortable
15 with the proposed schedule that you've laid out here.
16 In terms of the timing, I have a couple of questions
17 that don't necessarily go to the overall timing but the
18 need for prehearing briefs, need for oral argument, and
19 then perhaps a substitution of written briefs after the
20 hearing, but leaving that aside because that can be
21 woven into this schedule that you've set forth, we are
22 comfortable with that.

23 I believe I mentioned at the last prehearing
24 conference, and I think at the urging of the Bench, if
25 there was a consolidation of the prudence case with the

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1 interim case, and at that time, it was unsure whether
2 we would also be dealing with the request for a
3 temporary accounting mechanism, if you were to
4 essentially consolidate all three together that if
5 those three items could be resolved by the first of
6 April, that would be acceptable to the company. In
7 fact, I gave you a schedule then that would lead us in
8 that direction. In fact, I have extra copies of that
9 now.

10 What we have today in light of yesterday's
11 discussion is the fact that at least one of those three
12 issues is no longer set for hearing, so we are dealing
13 with the prudence and the interim. May I distribute
14 this? I hate to add more paper to this process. In
15 part, you will see that this adds an extra week to the
16 date by which staff and intervenors would file their
17 direct case, so at least in part, it's responsive to
18 some concerns already expressed that that first filing
19 date for staff and intervenors is just too close.

20 CHAIRWOMAN SHOWALTER: What I've noticed is
21 everyone seems comfortable with squeezing the time the
22 Commission has to write the orders.

23 JUDGE MOSS: The gained time here would
24 suggest squeezing a couple of weeks out of that
25 opportunity.

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1 MR. MEYER: Frankly, I'm more in favor of
2 what you initially proposed, but I was just passing
3 this out as an accomodation to those who argue they
4 need a little more time to get their staff and
5 intervenor direct case filed.

6 JUDGE MOSS: When you say "we" proposed, you
7 mean the Commission-proposed schedule?

8 MR. MEYER: Yes.

9 JUDGE MOSS: You say you are more comfortable
10 with that than even your own?

11 MR. MEYER: Yes, I am, with the caveats we
12 deal with the issue on briefs and oral arguments.

13 JUDGE MOSS: What are your views on that?

14 MR. MEYER: I wasn't in attendance yesterday,
15 but I think there were some similar reservations
16 expressed by certain parties yesterday at the
17 prehearing is that I think a posthearing brief may be
18 more meaningful than a prehearing memorandum or even an
19 oral argument following right on the heels of the
20 hearing. Again, it's a preference of the commissioners
21 and yourself that matters what you would find most
22 helpful, but it seems to me the time taken to craft a
23 brief, even though it's fairly short time frame, might
24 be more useful, but again, it's what you would find
25 helpful.

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1 CHAIRWOMAN SHOWALTER: We are balancing time
2 on the far end. Actually, a prehearing brief helps
3 comprehend the hearing. Posthearing briefs helps
4 comprehend what you heard, but it moves out the time we
5 have to deal with the order because we probably wait to
6 hear different briefs.

7 JUDGE MOSS: If we followed the Commission
8 proposed schedule and conducted hearings in the
9 February 25 through March 1 time frame, it appears
10 under your proposal, Mr. Meyer, that you are looking at
11 about a 12-day period between the hearing and the
12 briefs. If we did briefs instead of oral argument, I
13 assume you would want to move out into the mid March
14 time frame to do briefs under our schedule.

15 MR. MEYER: Yes. And speaking for myself, I
16 would shave a few days off the briefing allotted time
17 as well.

18 CHAIRWOMAN SHOWALTER: Is it possible to
19 require a posthearing brief one week after the
20 conclusion of the hearing, because that would move --
21 with your time table where the hearing actually
22 coincides with staff's time table for a hearing, it
23 would require a posthearing brief March 15th, which
24 would give us two weeks rather than the one week.

25 MR. MEYER: I would be happy to meet that

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1 deadline. Expedited transcripts being what they are, I
2 would be happy to meet that.

3 JUDGE MOSS: Let's hear from others before we
4 get too far afield here. We've mentioned several
5 issues.

6 MR. TROTTER: Your Honor, first all, I think
7 the oral argument is fine. Later on, expedited
8 transcript and trying to put a brief together in a
9 week, I think we would be much better off responding
10 live to your pointed questions about what the issues
11 are and how they ought to be resolved.

12 As I indicated prior, and I think I
13 distributed my schedule at the last prehearing in the
14 prudence case, Your Honor, and I reiterated it to you
15 today, a March 8th distribution for the staff case and
16 other noncompany parties, that's the request, but if
17 April 1 is the deadline, then we prefer our schedule.
18 It gives staff a few extra days and gives the company a
19 few extra days less on rebuttal. The hearing time is
20 virtually the same as Mr. Meyer handed out and gives
21 the Commission more time after oral argument to issue
22 its order, but I need to say that our schedule is
23 conditioned on the April 1 mandate or perceived
24 mandate.

25 CHAIRWOMAN SHOWALTER: Mr. Trotter, your

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1 comments regarding the posthearing briefs, we want to
2 have either pre or post, one or the other. Did your
3 comments take into account that if you don't do
4 posthearing briefs you will be doing prehearing briefs?

5 MR. TROTTER: Yes.

6 JUDGE MOSS: Anybody else want to be heard on
7 these points?

8 MR. FFITCH: Your Honor, we do have a couple
9 of thoughts. First of all, just for the record, as we
10 argued in the first prehearing on the prudence case, we
11 believe the prudence case should be scheduled on a
12 longer schedule, and we believe that's consistent with
13 the expectations and indeed the company representations
14 that led up to the interim relief order in this case.

15 The interim relief surcharge was put in place
16 for 15 months, in our view, specifically in recognition
17 of the fact that that would allow a more careful and
18 deliberate review of prudence. The company is now
19 proposing a much quicker review of prudence. We
20 believe that's a change of position and really differs
21 from the premise of the surcharge status that we have
22 now. So minimally, we would support staff's position
23 that a longer schedule would be appropriate for
24 prudence. We don't believe that the April 1st deadline
25 for an order on prudence is a real deadline. We know

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1 the company would prefer that. We don't believe that's
2 a critical deadline.

3 If the Commission does determine that it
4 needs to work with an April 1st deadline, we are
5 comfortable with the staff's proposed schedule that was
6 offered today with staff intervenor direct due on
7 February 15th and the hearing the week of March 4th
8 through 8th. There is substantial overlap between that
9 and the schedule that Mr. Meyer just passed out, but
10 the staff proposal does allow at least a bit more time
11 for us to prepare our direct testimony, and that's
12 preferable.

13 We also prefer posthearing briefs over oral
14 argument. We don't believe that, particularly given
15 the expedited schedules we are working with, that sort
16 of cost benefit calculation for prehearing briefs is
17 met. We don't believe they are of sufficient value to
18 warrant the time that would go into them. Posthearing
19 briefs are much more useful, and we would be willing to
20 try to meet a one-week deadline, as difficult as that
21 is, for a posthearing brief if there are expedited
22 transcripts available. I don't know if Mr. Cromwell is
23 still listening in. I'm not hearing a scream from him.
24 All I can say is that I'm not asking him to go
25 somewhere I wouldn't go, but we would be prepared to

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1 meet a shorter posthearing briefing schedule in the
2 Puget matters.

3 Additional thoughts, we would ask that a
4 public comment hearing be set for the interim phase of
5 the case in Spokane. I would note, actually, that one
6 of the schedules the Commission passed out does provide
7 for such a hearing on March 4th, so it may have been
8 just an oversight that it didn't make it into the other
9 schedule, the schedule that doesn't include Puget
10 matters or the Olympic matters. I don't think that has
11 a public hearing on it.

12 I think another observation is that the
13 evidentiary hearing on the Avista-only schedule that's
14 been passed out, on either one of them, the
15 Commission's proposed schedules here for a hearing in
16 the week of February 25th could conflict with hearing
17 dates that were suggested yesterday in the Puget
18 discussions in which there was an effort to perhaps
19 slip the Puget interim hearings back a week or so,
20 which would place them in that week. If the Commission
21 adopts staff or the company's alternative schedules
22 with hearings in the first week of March 4th or 5th,
23 that would solve that problem.

24 JUDGE MOSS: We won't set a schedule today.
25 As we discussed at yesterday's prehearing conference,

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1 we have a number of matters under consideration for
2 schedules, and we will take everybody's comments. We
3 are taking careful notes and rework things as we can to
4 satisfy all the concerns. Obviously, we will not
5 schedule simultaneous hearings so you don't need to be
6 concerned about that. Anything else, Mr. ffitch?

7 MR. FFITCH: I don't see anything here in my
8 notes. I will try to pipe up if I come across any, but
9 those are the main points.

10 JUDGE MOSS: Mr. Van Cleve?

11 MR. VAN CLEVE: Your Honor, I'm in complete
12 support of the comments that Mr. ffitch made, and we
13 would prefer the staff-proposed schedule over the
14 company's with respect to the due date for staff and
15 intervenor testimony. It's only a few days, but if you
16 look at the calendar, it's almost a full business week,
17 and I think those few extra days would be critical.

18 We would also support posthearing briefs
19 rather than prehearing briefs or oral argument and
20 would commit to turn those around in a week, and I
21 would just note in the schedule that was proposed by
22 the Bench that there is only a week between the
23 company's rebuttal case and the due date for prehearing
24 briefs, and in my experience, the company's rebuttal
25 case can be quite voluminous. In fact, it can be the

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1 bulk of their case, would probably require discovery,
2 and I think it would be hard to have a meaningful brief
3 out in a week following that.

4 MR. MEYER: May I have further comment before
5 we are finished?

6 JUDGE MOSS: Sure.

7 MR. MEYER: Again, unless the Commission
8 wants more argument on the issue that was discussed at
9 length in our last prehearing conference on the need
10 for an order by the latest April 1, and I got into that
11 on the record last time. I won't belabor that point
12 now. Assuming a schedule that leads up to an April 1
13 order on a consolidated basis, and I guess I have the
14 following comments and response.

15 I'm concerned, and part of the reason that I
16 did pass this schedule around was that it not only
17 provides -- it does tend to shorten up on the tail
18 end -- and I apologize for that, and maybe we can make
19 other accommodations -- of the decision, but it does
20 provide a little more time for staff and intervenors to
21 get their direct case in, but just as importantly from
22 the company's perspective, there is more time in
23 between the staff filing and our rebuttal in the
24 schedule that I distributed.

25 You will see in their proposed schedule of --

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1 "their" being staff's -- staff intervenor direct in the
2 combined prudence and interim cases would be filed on
3 February 15th. One week later, we would have to have
4 our rebuttal in in both dockets. That's just too
5 tight. I understand they need to be tight, but that's
6 just too tight. I think with the schedule that I
7 distributed, there is enough breathing room in between
8 those two dates of February 11th and 25th so the issues
9 can be adequately responded to. Again, the hearing
10 dates as we've discussed, briefs we can accelerate, if
11 need be, and so all things considered, if we are
12 looking at what staff proposes as opposed to what we
13 are proposing, I think ours is the better schedule.

14 MR. FFITCH: If I could be heard briefly on
15 that issue, Your Honor.

16 JUDGE MOSS: Yes, you may.

17 MR. FFITCH: One of the experts we would
18 intend to use in this phase of the case is unavailable
19 the week of February 4th through the 8th; in other
20 words, the final week before the February 11th date
21 that Mr. Meyer is proposing here. It's not
22 particularly great even with a February 15th filing
23 date for us to have that witness gone, but we can work
24 with that. He will be back before a week before the
25 due date. If the due date is the 11th, he's basically

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1 lost a week of time to prepare his testimony, so that's
2 another reason why we would support the staff proposal
3 of February 15th. I understand the company's need to
4 have time to work on their rebuttal, but we just have a
5 witness availability issue I wanted to do communicate.

6 JUDGE MOSS: Is this a witness who will be
7 testifying or an expert who will be supporting your
8 efforts otherwise?

9 MR. FFITCH: We would expect him to be filing
10 written testimony.

11 CHAIRWOMAN SHOWALTER: I have a question.
12 This may come down to a choice between giving you a
13 little more time to file your direct but less time to
14 prepare for hearing after rebuttal, or an earlier
15 direct date but a little more time after rebuttal to
16 prepare your hearing. In other words, which interval
17 is more important to you; to get a little more time at
18 the beginning if it means not so much time after the
19 end of the rebuttal and hearing?

20 For example, if you only have a week -- one
21 of the things that occurs to me in looking at all the
22 dates here is that if you had, as you request, and
23 including staff here, until the 15th to file your
24 direct, but the company had until 25th as opposed to
25 the 22nd to file it's rebuttal, that only gives you a

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1 week to prepare for the hearing if the hearing date is
2 as you are both actually requesting. We just have a
3 limited number of days to shove things around.

4 MR. TROTTER: If your question is which do we
5 prefer, I would say for staff that we need the most
6 time to get a case filed. The company's deadline is
7 the end of May, which gives them two full months after
8 April 1, and if that gives them a little less time for
9 rebuttal, frankly, I say, so be it.

10 CHAIRWOMAN SHOWALTER: The question I was
11 posing to you is it gives the company a little less
12 time than they had asked for getting in rebuttal, but
13 it would give you one week between the filing of the
14 company's rebuttal and the hearing.

15 MR. TROTTER: Right. I think that's doable,
16 but I think also, as Mr. Van Cleve pointed out,
17 sometimes the rebuttal case looks nothing like the main
18 case. Maybe the Commission and the parties need to be
19 disciplined that rebuttal is truly point by point,
20 short, concise, direct rebuttal instead of lots of new
21 issues, but if the company can commit to a pointed
22 rebuttal case, I think it's doable.

23 JUDGE MOSS: It goes without saying, but
24 since Mr. Trotter raises it, that's the purpose of
25 rebuttal is to respond to the case put in by the staff

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1 and intervenors, so I think everybody understands that.
2 I see nods of acknowledgment from the company, so I
3 just will make that comment.

4 MR. MEYER: I think the suggestion was to,
5 say, change the rebuttal date from the 22nd to the
6 25th. If my calendar is correct, that would be
7 changing it from a Friday to a Monday, so that helps,
8 but it's essentially five business days plus a weekend,
9 and not knowing what we are going to be rebutting, it's
10 always hard to commit we will turn that around.

11 CHAIRWOMAN SHOWALTER: Both of you have the
12 question, you don't know what you are going to rebut,
13 and they don't know what they are going to get in
14 rebuttal, and there are only so many days if you want
15 to keep that April 1st. You have to work backwards.

16 JUDGE MOSS: There are always uncertainties
17 as we go forward. I do want to make one remark.
18 Mr. Trotter made reference to a date, the end of May.
19 I think that that would be to reference something that
20 would be discussed at the prudence case, but the
21 commissioners were not sitting, so I just want to
22 clarify the reference that Mr. Trotter made to the end
23 of May was a reference to a discussion had in the other
24 prehearing conference concerning the companies
25 renegotiation of various credit instruments, and

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1 Mr. Meyer, you also alluded to that, and I want to ask
2 the Bench if the Bench would like to hear anything
3 further about the company's timing issues and why they
4 are urging the early order date and so forth. If not,
5 we can move on, but I want to have that opportunity.

6 CHAIRWOMAN SHOWALTER: I don't want to take
7 up a lot of time. We could read what you have to say.
8 It might be helpful to give us a five-minute version.

9 MR. MEYER: I would be happy to do that. The
10 reason for an expedited schedule, and I'll summarize
11 here, and this is set forth in some detail in the
12 prefile testimony of Eliason and Peterson in the
13 interim case and also the prudence case, we have the
14 need to resecure, if you will, our short-term credit
15 lines, which expire at the end of May, and that
16 process, as our CFO and our other financial officer
17 explained, begins really in earnest in the March time
18 frame, and so we have accounts receivable financing
19 with a short-term credit line.

20 In order for us to make sufficient headway in
21 those negotiations -- and it is an ongoing process; in
22 fact, I'm told we are already starting some of those
23 discussions -- there needs to be some certainty, some
24 resolution around certain key issues, the same key
25 issues that we're all aware of that the investment

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1 community talks repeatedly about, they need to know
2 where we are headed with respect to prudence recovery,
3 interim rate relief, and also the temporary deferral
4 mechanism.

5 It won't suffice just to say, well, by mid
6 May or toward the end of May, that should be good
7 enough for an order date because it's not, because if
8 the order is adverse to the company, then the company
9 is left in a position of trying to scramble to replace
10 banks that might otherwise be part of such credit line,
11 and it doesn't allow sufficient time to go to Plan B.
12 So you need to get sooner resolution rather than later
13 resolution to better position the company, and that's
14 just in terms of positioning ourselves with respect to
15 the short-term credit renewal and the accounts
16 receivable financing.

17 There are the other pressures, of course,
18 that you are well aware of in terms of financial
19 community concerns, the need for prompt resolution on
20 these issues for those reasons, in addition to just the
21 near-term concerns over the credit lines. So that's
22 the very short version of it.

23 MR. TROTTER: Brief response, Your Honor?

24 JUDGE MOSS: Brief.

25 MR. TROTTER: I wish they would have told us

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1 when they were testifying last summer when Mr. Eliason
2 said, Let's take our time with the prudence review, and
3 let's take the full stand of the rate case, and we
4 relied on that, and I believe the Commission relied on
5 that when they deferred the rate case filing date.

6 So the company knew they had to refinance at
7 the end of May when they floated these notes a year
8 ago, and now it's a crisis today, so we feel, as the
9 Commission issue states in its order, extraordinary
10 times require extraordinary measures, and eight weeks
11 after an order for them to get financing seems plenty
12 more than enough, and we think our proposed schedule
13 would satisfy those concerns.

14 CHAIRWOMAN SHOWALTER: Would you address
15 yourself a little bit more to how things stand today?
16 I understand your comments on the company's position in
17 earlier months, but it's also the case that the company
18 was asking for significantly greater rate increase than
19 we gave, so that worked into their assumption, I
20 assume, about when they needed what, but as things
21 stand today with the increase they did get, the bonds
22 ratings they do have, etcetera, is it your opinion that
23 they are not adverse effects from a later ruling on our
24 part?

25 MR. TROTTER: I don't believe that it

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1 requires a full eight weeks for the company to
2 refinance their credit lines. Also, they knew what you
3 ordered when you issued your order, and if they felt
4 this was going to cause a time crunch, they should have
5 filed their cases earlier. There was no impediment
6 from the Commission to file it earlier. The Commission
7 filed an outside deadline which they more or less met.

8 I guess our concern would be you are correct.
9 You granted them less than what they requested. If
10 that was causing them a problem, then it was fully
11 within their control to file earlier, but if you are
12 asking me about today, yes, we have a problem, but I
13 remain unconvinced that eight full weeks is necessary
14 for their end at the cost of less time for us to
15 adequately prepare our case.

16 MR. FFITCH: May I be heard briefly?

17 JUDGE MOSS: Yes.

18 MR. FFITCH: We wholeheartedly agree with
19 Mr. Trotter's comments for staff. I want to state in
20 the strongest terms public counsel's objection to the
21 approach that appears to be suggested here by the
22 company with regard to the treatment of the prudence
23 issues for the reasons that Mr. Trotter mentioned,
24 among others.

25 I would like to make one particular point

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1 here, and that is that if we take a step back and look
2 at the history of the Avista deferred accounting
3 matter, staff, public counsel, and other intervenors
4 have been told from the very beginning of the proposals
5 for deferred accounting by Avista that the significant
6 issues that we have raised from the very beginning
7 about the deferred account would be addressed in an
8 appropriate time. We are now finding as this matter is
9 developing that apparently we are going to have to
10 address those issues now involving 200 million dollars
11 in the timespan of 60 to 90 days.

12 This issue has been developing for two years.
13 The parties have been waiting for 18 months to two
14 years to essentially have our day court on these very,
15 very significant issues that in many ways completely
16 overshadow the issues in the interim and geNeral case.
17 It's extremely unfortunate in our view that we are now
18 squeezed into a 90-day schedule or perhaps a little
19 longer than that to consider those issues. We think
20 it's a disservice to the Commission. We think it's a
21 disservice to the parties and to the company's
22 customers.

23 Even the March 31st deadline and the
24 company's time squeeze we are talking about here, we
25 don't have any evidence about that. We have assertions

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1 by the company and its counsel about their situation,
2 their timing, their needs, their abilities, and we just
3 have to rely on those, but I would suggest that we
4 don't have any sort of independent verification that we
5 really are under that time line, and as Mr. Trotter has
6 pointed out, the company made quite different
7 representation to this Commission very recently with
8 regard to the prudence issue.

9 CHAIRWOMAN SHOWALTER: Haven't, in effect, we
10 bifurcated the deferred account? If you look at last
11 August -- I really don't remember the dates, but the
12 company's proposal or status quo at that time was a
13 deferred account. The company's request was to carry
14 it forward into the future months, and those future
15 months going past their emergency relief date would
16 have gone past this interim date, but that didn't exist
17 at that time, but it went into what would be a general
18 rate case timing period, but then in the emergency
19 docket, we cut off that deferred account, and aren't we
20 now engaged in looking at the prudence of some matters
21 in that account? Meanwhile, we have authorized a new
22 deferred account or another start date, which are those
23 events that will continue through the general rate
24 case.

25 I think what I'm getting at is, we haven't

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1 squeezed into this 90 days the full review of what
2 originally was proposed to be in that long spanned
3 account? We now have a bifurcated time period. Isn't
4 this the case that what we are looking at is the
5 prudence of certain expenditures to a certain date, and
6 we have authorized a deferred account for other
7 expenses after the date, i.e., January 1, 2002, and we
8 aren't going to be looking at those in this short time
9 period. Correct me if I'm wrong.

10 MR. FFITCH: I believe I understand your
11 point, and it is correct that this prudence case is not
12 -- I haven't really thought a whole lot about that,
13 about whether this prudence case would also affect
14 recovery of deferred amounts pursuant to this new
15 approved deferred account mechanism.

16 My comments were directed to the deferred
17 account which was established 18 months, two years
18 ago -- I don't have the dates in mind -- that has
19 accumulated approximately 200 million dollars of
20 deferred costs, which is the subject of the company's
21 prudence petition filing, and those are the issues that
22 have been continually deferred, and in response to
23 opposition that's been raised by a number of parties,
24 the response has always been we will get a chance to
25 litigate those issues, and now when it comes time to

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1 finally meet those issues, we find there is basically
2 not adequate time in the schedule, and that's a very
3 serious concern to us. It's an unfortunate
4 development.

5 CHAIRWOMAN SHOWALTER: It wasn't your
6 proposal, but I think it was staff's in the earlier
7 proceeding that they wanted to cut the deferred account
8 as of last June but have a prudency proceeding, I
9 think, before the end of this year. In other words, I
10 think everyone has been talking about different spans
11 but also different time lines for determining prudency
12 that some were correlated to a shorter or longer span.

13 MR. TROTTER: I think the proposal was to cut
14 it off either effective July 1 of last summer or
15 September 30th, and to have the company file its
16 prudence case in September and have it resolved by the
17 time they closed their books, which I think is in
18 February, which is more time than we are getting in the
19 current proposal, but that is what we were proposing.

20 MR. MEYER: Two very brief rejoinder points.

21 JUDGE MOSS: Sure.

22 MR. MEYER: What has happened since the
23 surcharge order issues? We have been downgraded by
24 three different agencies. In the course of those
25 downgrades, the recurring theme is the need for

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1 resolution and prompt resolution on issues of prudence
2 and interim rate relief.

3 So no, at the time we were before you in the
4 surcharge case, we had reason to believe that what we
5 were proposing then would be acceptable pretty much as
6 proposed. We thought that's what we needed. That's
7 why we proposed it. We aren't awarded everything we
8 needed. There has been a reaction for better, for
9 worse, and that's why we are here before you on an
10 expedited basis.

11 The extraordinary circumstances that you
12 talked about are upon us requiring in these times
13 extraordinary schedule making, but I remind you that we
14 filed a prudence case November 13th. We are asking for
15 an April 1 resolution. That's four-and-a-half months.
16 That should be doable. That's all I have.

17 MR. VAN CLEVE: Can I make one comment?

18 JUDGE MOSS: Yes, Mr. Van Cleve.

19 MR. VAN CLEVE: I think the discussion we had
20 at the public meeting yesterday was sort of the
21 beginning of the process, and what we are talking about
22 here is what the end of the process looks like. We
23 raised a lot of issues that we had with deferred
24 accounting in general and specifically with deferred
25 accounting related to power costs, and I think the

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1 message that we got back is all those issues can be
2 addressed later in a prudence proceeding, and that's
3 what we are talking about now, looking at the prudence
4 of the company's conduct over an 18-month period, which
5 ends at the end of this year, and I think part of the
6 concern with the shortened schedule is that you have to
7 look at what the company did on an hour-by-hour basis
8 over an 18-month period. It's a huge volume of data,
9 but you have to look at things like I mentioned
10 yesterday about whether costs are moved into certain
11 periods and things like that.

12 It's quite a great undertaking, and I think
13 the shorter the schedule, the less the quality of the
14 analysis you are going to see in the testimony will be,
15 and we do think this is an enormous issue. I agree
16 with all of the comments that staff and public counsel
17 made. There is a large amount of money at issue that
18 will have a big impact on customers in Spokane.

19 JUDGE MOSS: I think our record is clear, but
20 just to be certain it is abundantly clear, as I
21 understand the situation, the prudence proceeding that
22 we are talking about conducting on an expedited
23 schedule is one that will concern costs incurred
24 through December 31, 2001.

25 MR. MEYER: End of September.

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1 JUDGE MOSS: Even shorter. So we would then
2 be looking at the post-September costs and costs in the
3 new deferred account, if you will, in the context of
4 the general rate case. Am I correct in that
5 presumption?

6 MR. MEYER: Yes.

7 JUDGE MOSS: So that's the split. So for
8 example, one point of significance, I believe, in a
9 document that public counsel filed in connection with
10 yesterday's proceedings was the Coyote Springs expense.
11 That would be something the prudence issue would be
12 considered in the context of the general proceeding.
13 I'm seeing nods of acknowledgment from the company. So
14 does that clarify things a little bit? It does for me,
15 anyway.

16 MR. VAN CLEVE: I guess I have a question
17 following up on what the chairwoman asked, and are
18 there, in effect, three deferred accounts, one through
19 September, one through the end of the year, and one
20 that was authorized yesterday?

21 JUDGE MOSS: It sounds to me that the
22 prudence of the costs is trifurcated in that fashion,
23 but as Mr. Meyer just indicated, the prudence filing as
24 to which an expedited schedule has been urged would
25 concern costs incurred through the end of September.

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1 MR. MEYER: Yes.

2 JUDGE MOSS: Then the costs incurred after
3 September 2001 and into 2002, while those are the costs
4 post-September through December 31 remain in the prior
5 deferred account, if you will, because the Commission
6 in the surcharge order authorized that to continue
7 until the end of this year, and then there is a
8 separate deferred account, if you will, for the January
9 1 forward costs. So there are some separate accounts
10 involved, but does that answer your question with
11 respect to what costs we are talking about in what
12 case?

13 MR. VAN CLEVE: I think so. It's a little
14 confusing, because I think the methodology on the
15 account that was authorized yesterday was different
16 than the one in place before, so it might have --

17 JUDGE MOSS: There might have to be some
18 nuances in the testimony to reflect that, but that
19 would be in the general case for the proposed September
20 time frame. Any other questions on that?

21 MR. FFITCH: I appreciate your clarification.
22 I think it's accurate. I would just respond briefly
23 that it doesn't really address the concerns that I
24 raised as the anticipation was that the prudence issues
25 would be resolved in the context of the full general

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1 rate case on roughly that kind of time frame and not an
2 expedited up-front procedure for that past deferral
3 account.

4 JUDGE MOSS: I was just trying to clarify the
5 time frames. I wasn't trying to satisfy your concerns.
6 We recognize those as concerns we need to take into
7 account as we consider the scheduling.

8 Is there anything else on scheduling that we
9 need to discuss? Mr. Trotter?

10 MR. TROTTER: Do you want to move to the
11 general rate case?

12 JUDGE MOSS: Let's me pause momentarily.

13 COMMISSIONER HEMSTAD: So what is the burden
14 of your concern? That the approved order date of April
15 1 should be pushed back to April 7 or April 15th? Is
16 that now what concerns you presented?

17 MR. TROTTER: In terms of the interim
18 schedule, I think that can be handled with an April 1
19 order date in mind. We had proposed a schedule which
20 I've outlined which would have briefs to you -- have
21 the hearings March 25th through 27th, and on the
22 prudence case, you could have briefs a week later and
23 then get an order out, and perhaps in mid April -- and
24 still give the company six weeks, then have the interim
25 order on April 1. They will have a prudence order a

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1 few weeks later and still have six weeks to deal with
2 their lenders.

3 COMMISSIONER HEMSTAD: Back to the company.
4 In view of all the pressures here, why wouldn't six
5 weeks be enough?

6 MR. MEYER: Six weeks in terms of the April
7 15th vis-a-vis end of May, two points I would like to
8 make. What Mr. Trotter has suggested is really a
9 separation, not a consolidation, of the two, and that
10 creates its own issues in terms of your schedule as
11 well as everyone else's. Would another week or two --
12 it complicates things. It's not impossible, and when I
13 say it's acceptable, it's acceptable in the sense that
14 when we filed this case, we had hoped for a mid March
15 order date.

16 At the urging of the Bench in the last
17 proceedings after consultation, I think, on April 1,
18 and now it looks like we are going to slip it yet again
19 just further compresses our time frame within which we
20 have to do business. We've got the prefiled testimony.
21 It's just not the comments of counsel. It's what
22 Mr. Eliason and Mr. Peterson say in their prefile
23 testimony, and they are stressing the urgency, but I
24 won't tell that you April 1 is an absolute deadline,
25 but a week or two beyond that, if that's what it takes,

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1 and we hope it doesn't, but if that's what it takes, so
2 be it.

3 JUDGE MOSS: Mr. Trotter, did you have
4 another comment?

5 MR. TROTTER: No, but I'm prepared to speak
6 about the general.

7 JUDGE MOSS: Yes, we do need to have some
8 discussion about the general. Hopefully, we can do
9 that a little more quickly and wrap up this morning,
10 but let's go ahead and have that.

11 MR. FFITCH: I'm wondering if we could have a
12 break for the personal convenience of the parties.

13 JUDGE MOSS: Let's break until 11 o'clock by
14 the wall clock.

15 (Recess.)

16 JUDGE MOSS: We were about to discuss the
17 parties' concerns, if any, respecting the general
18 schedule, and I believe, Mr. Trotter, we had given you
19 the floor.

20 MR. TROTTER: Thank you, Your Honor. A
21 couple observations about the schedule on the sheet
22 that was handed out, it does call for briefs to be
23 filed approximately four months before the suspension
24 period is over, so I think there is plenty of room in
25 the schedule for adjustment. Having said that, I

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1 understand this schedule needs to be synchronized with
2 the Commission's Puget docket.

3 The key date for us, really, and things flow
4 from that, is the filing of the staff intervenor direct
5 case. It's currently May 10th. The problem that's
6 presented is that the currently compressed schedule on
7 the prudence case power supply issues is the same staff
8 that will be dealing with the rate case, which are
9 substantial, and it's very difficult to do both dockets
10 simultaneously, so we need as much time after the
11 prudence case is over to prepare our direct case in the
12 rate case. So our proposed schedule adds a month,
13 slightly less, to the distribution date.

14 Now, we are not particularly wedded to any
15 other dates in that schedule that we proposed in that
16 handout. I will note that the hearing that we would
17 call for would be in late July, early August, and that
18 does not coincide very well with what staff proposed in
19 the Puget case yesterday, which I think would have you
20 sitting in hearing the following Monday, but perhaps
21 their cross could be set back, and maybe cross in this
22 case could be moved up to accommodate.

23 The big picture here is that the suspension
24 period for Puget ends October 27th, and this ends
25 November 15th, and the schedule calls for Avista to be

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1 resolved, at least submitted to you before the Puget
2 case, so that puts pressure, but I guess if I had to
3 advocate a single point here, it's the distribution
4 date we need additional time, and so we've proposed
5 that, and how the dates flow from there aren't as
6 important, but that's the real critical one.

7 JUDGE MOSS: Thank you, Mr. Trotter.

8 CHAIRWOMAN SHOWALTER: The way you have it
9 set up, there would be two weeks between the filing of
10 Avista's rebuttal and the beginning of hearings, and
11 what if that were one week? How critical is that
12 period between the filing of rebuttal and hearing? And
13 I actually have the same question to Avista.

14 MR. TROTTER: In this phase, it's more
15 important because there are so many, many more issues,
16 so I think we need that additional time to do discovery
17 of the rebuttal case. I didn't give you the same
18 answer with respect to the other phases, and that's the
19 reason. It's just so many more issues and probably
20 additional need for the discovery.

21 CHAIRWOMAN SHOWALTER: The hearing dates
22 you've proposed are problematic, but it might be
23 possible to move your set of two weeks back by one
24 week. If that were the case, would you feel
25 comfortable putting your filing date and the company's

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1 filing date back one week?

2 MR. TROTTER: Perhaps, but perhaps there
3 could be a compromise of half a week off so we could
4 distribute direct half a week earlier and they
5 distribute rebuttal a week earlier, and that way, you
6 could pick up the time there, but certainly have some
7 flexibility there.

8 JUDGE MOSS: You are saying you want two
9 weeks after their rebuttal case to prepare for hearing?

10 MR. TROTTER: Yes, if possible.

11 JUDGE MOSS: Mr. ffitch, do you have some
12 comments for us?

13 MR. FFITCH: Yes, Your Honor. We should ask
14 the BCS computers to figure out our schedule here. We
15 don't have a general problem with the extension of the
16 schedule that staff has proposed. Although, the
17 Commission proposed schedule that we have received this
18 morning also looks acceptable in terms of general
19 dates, and the public comment hearing we note is fine.
20 That would be after the testimony is filed and before
21 the briefs are filed so that there could be discussion
22 of the hearing, and any additional materials, written
23 submissions could be placed in the record and then
24 mentioned in the briefs.

25 I guess the only other observation is while

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1 we are generally comfortable with this set of dates,
2 I'll note that it doesn't include a first-round hearing
3 for cross-examination of the company's direct, which is
4 a departure from the general approach that we've had in
5 major rate cases. Maybe that that's necessary here
6 given the press of multiple dockets. We think that's a
7 disadvantage but may be unavoidable here. Those are
8 all my comments.

9 JUDGE MOSS: Mr. Van Cleve?

10 MR. VAN CLEVE: I think we will work to
11 accommodate whatever schedule the Commission comes up
12 with. I would just note we do plan to have the same
13 lawyer and witness on both the Puget and Avista cases,
14 so to the extent those can be synchronized, we would
15 appreciate it.

16 COMMISSIONER HEMSTAD: I take it that lawyer
17 is you?

18 MR. VAN CLEVE: Yes, it is.

19 JUDGE MOSS: And you reported to me your
20 schedule is already complicated. Mr. Ffitch, you gave
21 me some witness blackout dates while we were off the
22 record. Does this implicate the general case?

23 MR. FFITCH: No, Your Honor.

24 JUDGE MOSS: That was March 21st and 22nd and
25 April 8 through 10.

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1 MR. FFITCH: Particularly for the prudence
2 docket.

3 JUDGE MOSS: If anybody else has witness
4 availability issues, I imagine they've raised them by
5 now, except you, Mr. Meyer, but I was remembering that
6 as I got to you so I wanted to make sure I got everyone
7 else.

8 MR. FFITCH: Since you went back to me, just
9 one additional comment just to echo Mr. Van Cleve's
10 concern about the doubling up of dates with the Avista
11 general and Puget general. While we have different
12 counsel, there is obviously one set of support staff,
13 and there is some overlap in some of the consultants
14 helping us on some of the cases, so it makes it real
15 tough if there is really identical very close dates. I
16 know the commissioners can't sit on both at the same
17 time.

18 CHAIRWOMAN SHOWALTER: It forces the two
19 proceedings not to overlap.

20 JUDGE MOSS: I think it's fair to say we all
21 face these same time constraints. Mr. Meyer, in terms
22 of the general schedule?

23 MR. MEYER: The only blackout date I'm aware
24 of is July 12th through the 19th. In terms of
25 comments --

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1 JUDGE MOSS: Let's elaborate on that. The
2 blackouts of July 12 through 19th, and when you say
3 "blackout," do you have a witness unavailable or
4 everyone is unavailable?

5 MR. MEYER: I will be unavailable. If you
6 can schedule around that, it would be appreciated. If
7 you can't, I'll be here.

8 JUDGE MOSS: Thank you.

9 MR. TROTTER: While we are on blackout dates,
10 staff witness Buckley is unavailable April 12th through
11 the 19th. I don't think that's a problem, but I want
12 you to know.

13 JUDGE MOSS: Thank you. Back to you,
14 Mr. Meyer.

15 MR. MEYER: Your proposed Commission schedule
16 this morning works for us. I don't know if you want
17 further comment with regard to alternative discussions
18 or not. We don't have an alternative suggestion as we
19 did with the interim piece.

20 JUDGE MOSS: Only to the extent something
21 poses a problem for you, we certainly need to know
22 that.

23 MR. MEYER: What you have proposed works.

24 JUDGE MOSS: I meant with respect to other
25 proposals.

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1 MR. MEYER: I think there was a suggestion
2 that staff had proposed in the general case shortening
3 somewhat the interval between staff and our rebuttal.
4 They've given us essentially a full month there with
5 what they originally proposed. That's enough time. If
6 they want to shorten that a bit, that's acceptable.

7 CHAIRWOMAN SHOWALTER: Shorten the time
8 between their direct and your rebuttal.

9 MR. MEYER: Yes. They had proposed June 7th
10 with our rebuttal, and then July 8th, that interval is
11 nearly a month. If you are trying to buy some
12 additional time in the schedule, you could squeeze
13 those together a little bit.

14 JUDGE MOSS: By a week?

15 MR. MEYER: Yes.

16 MR. TROTTER: Your Honor, I have a couple
17 more blackout dates. We didn't reflect these because
18 they weren't conflicting with any schedule, but we
19 realize the Commission may do otherwise. Mr. Buckley
20 is unavailable the week of February 18th through 22nd.
21 I've another witness unavailable on the 22nd, and
22 Mr. Paarvinen is unavailable the week of March 18
23 through 22nd.

24 CHAIRWOMAN SHOWALTER: Of these blackout
25 dates, are any of these vacation times versus

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1 nonvacation times?

2 MR. TROTTER: I believe Mr. Buckley's is a
3 prior scheduled out-of-state vacation time, yes.

4 CHAIRWOMAN SHOWALTER: Both of them?

5 MR. TROTTER: I believe so. It's my
6 understanding these have been set for a long time, and
7 as I said, they didn't conflict with any dates
8 heretofore mentioned.

9 JUDGE MOSS: Do we have anything else on
10 scheduling before we move on and conclude our
11 conference today?

12 MR. FFITCH: Your Honor, I've only given you
13 the blackout dates around hearings for prudence. I've
14 been working from a whole list of blackout dates for a
15 group of consultants, both for this case and the Puget
16 cases, and I'm wondering if it makes some sense to
17 provide you with that information. We don't have to
18 take everyone's time with it now.

19 JUDGE MOSS: Do you have that written down?
20 Could you just hand that up?

21 MR. FFITCH: It would need to be deciphered a
22 bit.

23 JUDGE MOSS: Then go ahead and lay it out for
24 us.

25 MR. FFITCH: Right now?

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1 JUDGE MOSS: Yes.

2 MR. FFITCH: I'll just address Avista, Your
3 Honor. January 21st through 25th, February 4th through
4 8th, and February 1st also. I'm sorry. We could make
5 that February 1st through 8th.

6 CHAIRWOMAN SHOWALTER: I'm sorry. I missed
7 what these dates are.

8 MR. FFITCH: These are dates when our
9 consultant team for Avista dockets are not available.
10 It's most significant, I think, around when our
11 testimony would be due, and particularly just being
12 available for cross-examination hearings.

13 CHAIRWOMAN SHOWALTER: So these are dates
14 that your consultants could not be present in that
15 hearing?

16 MR. FFITCH: Correct. The other
17 consideration, as I mentioned earlier, is if there was
18 a consultant gone for a week, and the last day of that
19 week is the day that person's testimony is due, we are
20 asking that be taken into account too as a softer
21 issue. Then I have already given March 1st through
22 15th is a gray-out date. I would say it's not -- why
23 don't I withdraw that one.

24 Then March 21st and 22nd, as I mentioned
25 those to you earlier, and April 8th through 10th. I

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1 don't know if this is in the gray category. I've been
2 hoping to protect the July 29th through August 2nd for
3 myself. I'm beginning to lose hope on that as these
4 scheduling hearings advance.

5 JUDGE MOSS: Is that it?

6 MR. FFITCH: Yes, that's it. Should we
7 provide similar dates in the Puget matter, Your Honor?
8 I know that's not before us right now, but we could get
9 that to you today by e-mail or fax.

10 CHAIRWOMAN SHOWALTER: If you know now -- I
11 realize this is a different case, but our plan was as
12 soon as this is over to stare at our calendar for an
13 hour.

14 MR. FFITCH: As soon as we are done, I could
15 simply come up and advise the Bench at that time rather
16 than take up other people's time.

17 JUDGE MOSS: We will do that off the record.
18 Again, I want to reiterate a comment Chairwoman
19 Showalter made yesterday, which is that in proceedings
20 of this type magnitude involving the number of people
21 they do involve, it's literally impossible to
22 accommodate everyone's conflicts; particularly when
23 they involve things like vacations and so forth. We
24 have to have some flexibility.

25 So the Commission will have to conduct itself

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1 in this proceeding and in the related other proceedings
2 that we are trying to schedule more akin to what courts
3 often do, which is set the schedule and everybody has
4 to live with it. We are trying to gather as full a set
5 of information as we can from the parties as well as
6 considering the Commission's own calendar and
7 accommodate to the extent possible, but to the extent
8 someone is inconvenienced, then they will have to be
9 inconvenienced.

10 MR. FFITCH: Thank you, Your Honor.

11 JUDGE MOSS: Anything else on scheduling
12 then? All right. Then we have a couple of brief
13 points to make and then we can conclude for the day. I
14 just will remind everyone quickly that the Commission's
15 rules concerning settlement and alternative dispute
16 resolution, those processes are available to you.

17 The Commission has with some success offered
18 mediation services to parties in other proceedings, and
19 we would endeavor to do that here if you request it of
20 us. All you need to do is let me know, and I will be
21 glad to see what I can arrange to promote that process
22 for you. I have a few closing remarks. They are
23 largely ministerial, but let me ask first if there is
24 any other business.

25 MR. FFITCH: Your Honor, one matter, and

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1 that's the matter of the legal notice required to
2 customers under WAC 480-80-125. We have not had an
3 opportunity to discuss this informally with the
4 company, but I'm assuming they will be planning to
5 issue the individualized customer notice. Now that
6 these matters have been suspended, it appears we will
7 have hearing dates, including a date for a public
8 hearing, so that could be included in the notice.

9 We would ask that the company issue a notice
10 both for the interim case and a separate one for the
11 general case and that there be consultation with the
12 Commission public affairs office on the text and an
13 opportunity for public counsel to have input as well on
14 the text of the notice as has been the practice in many
15 previous cases.

16 JUDGE MOSS: Mr. Meyer, I assume the company
17 will work in the usual fashion with the public affairs
18 staff and public counsel in the notice matters?

19 MR. MEYER: I would be happy to.

20 CHAIRWOMAN SHOWALTER: Back on the
21 scheduling, all of the proposals have attempted to have
22 two solid weeks of hearings. How problematic is it to
23 have one week of hearings, off a week, and then another
24 week of hearings? Is that difficult for people? It's
25 obviously going to be difficult for those that might be

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1 at the end of the first week or the beginning of the
2 second week.

3 MR. MEYER: Not for us.

4 MR. FFITCH: The only concern I would have is
5 what's happening in the middle. Not intrinsically, but
6 it might be difficult if there is another hearing in
7 that gap or something else that requires a complete
8 switch of gears, and in week one, you are in this
9 hearing so you are not preparing for what's happening
10 in the gap. That would be my only concern, but it
11 might be a false efficiency that way, but other than
12 that, I'm not sure I have any problem with it.

13 MR. TROTTER: That's acceptable to staff.

14 JUDGE MOSS: Unless, of course, we split it
15 around your vacation, Mr. ffitich.

16 CHAIRWOMAN SHOWALTER: That may be one of the
17 things that occurs, not necessarily solely for
18 someone's vacation, but there are a lot of other issues
19 going on.

20 MR. FFITCH: I see some advantages. It gives
21 you more time to prepare for the second phase of that
22 hearing.

23 JUDGE MOSS: In the prudence matter at our
24 last prehearing, we adopted an electronic filing
25 process, and I think we should continue that through

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1 the interim phase, however that's constituted on the
2 basis of the Commission's consideration of all that
3 we've heard today in setting the schedule and so forth.
4 So everyone here was also present then so I won't go
5 off over the details of that again. We are working to
6 make it work internally, and by fits and starts, we
7 will get there.

8 To the extent we have paper filings required,
9 either because the document is in a format that
10 requires it or it is the party's preference to file
11 paper rather than electronic, we will need the original
12 and 19 for purposes of the rate proceeding, so you may
13 as well just file that for everything. I should
14 reiterate on that point, if you make a filing
15 electronically and there are certain attachments that
16 need to be furnished in hard copy format because of
17 their nature, you will need to provide the full 19
18 copies as opposed to just the four that we talked
19 about, and I don't want to go into the details. If
20 there are any questions, you can call me.

21 Everyone is familiar with the conventions for
22 filing through the Commission secretary at our street
23 and P.O. box addresses. I will again stress that
24 significant filings of substance should be provided
25 electronically. Even if you choose to file paper copy

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1 as your official filing, we need an electronic version
2 of it for purposes of our Web Site and so forth.
3 We will enter a prehearing conference order
4 after due deliberation and consideration of the host of
5 factors that are before us in terms of scheduling and
6 other matters. We will no doubt have additional
7 prehearing conferences, and certainly there will be one
8 shortly before the hearings to deal with the
9 preparation, numbering of exhibits and that sort of
10 thing, and I will issue further direction to the
11 parties concerning those matters as we get closer to
12 hearing dates. That's all I have. Is there anything
13 else from the parties? Is there anything further from
14 the Bench? Then we will be off the record.

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(Prehearing conference concluded at 11:30 a.m.)

