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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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In the Matter of the Petition) DOCKET NO. UE-011170
of) Volume II

4

) Pages 38 - 88

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PUGET SOUND ENERGY, INC.,)

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For an Order Authorizing)

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Deferral of Certain Electric)

Energy Supply Costs,)

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WASHINGTON UTILITIES AND) DOCKET NO. UE-011163
TRANSPORTATION COMMISSION,) Volume II

10

) Pages 38 - 88

Complainant,)

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v.)

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PUGET SOUND ENERGY, INC.,)

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Respondent.)

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A hearing in the above matter was held on

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September 18, 2001, at 9:00 a.m., at 1300 South

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Evergreen Park Drive Southwest, Room 108, Olympia,

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Washington, before Administrative Law Judge ROBERT

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WALLIS.

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The parties were present as follows:

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PUGET SOUND ENERGY, via bridge line, by
MARKHAM A. QUEHRN, Attorney at Law, Perkins Coie, LLP,
411 - 108th Avenue Northeast, Suite 1800, Bellevue,
Washington 98004.

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Joan E. Kinn, CCR, RPR
Court Reporter

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1 THE PUBLIC, via bridge line, by SIMON FFITCH,
Assistant Attorney General, 900 Fourth Avenue, Suite
2 2000, Seattle, Washington 98164.

3 THE COMMISSION, by SHANNON SMITH, Assistant
Attorney General, and by ROBERT CEDARBAUM, Senior
4 Counsel, 1400 South Evergreen Park Drive Southwest,
Olympia, Washington 98504-0128.

5 CITY OF BREMERTON, via bridge line, by ANGELA
6 L. OLSEN, Attorney at Law, McGavick Graves, P.S., 1102
Broadway, Suite 500, Tacoma, Washington 98402.

7 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
8 via bridge line, by BRADLEY VAN CLEVE, Attorney at Law,
Davison Van Cleve, P.C., 1000 Southwest Broadway, Suite
9 2460, Portland, Oregon 97205.

10 CITY OF TUKWILA, via bridge line, by CAROL S.
ARNOLD, Attorney at Law, Preston Gates and Ellis, LLP,
11 701 Fifth Avenue, Suite 5000, Seattle, Washington 98104.

12 MICROCHIP TECHNOLOGY, by HARVARD P. SPIGAL,
via bridge line, Attorney at Law, Preston Gates and
13 Ellis, LLP, 222 Southwest Columbia Street, Suite 1400,
Portland, Oregon 97201.

14 KING COUNTY, via bridge line, by DONALD
15 WOODWORTH, Deputy Prosecuting Attorneys, 516 Third
Avenue, Suite Number 550, Seattle, Washington 98104.

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P R O C E E D I N G S

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JUDGE WALLIS: This is a prehearing conference in the matter of Commission Dockets UE-011163 and 011170 being held in Olympia, Washington on September 18 of the year 2001. Most of the parties are appearing via teleconference. We do have one party represented in the conference room, and I'm going to ask Staff to enter an appearance, please.

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MS. SMITH: Shannon Smith and Bob Cedarbaum for Commission Staff.

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JUDGE WALLIS: Thank you.

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On behalf of the applicant.

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MR. QUEHRN: Mark Quehrn on behalf of Puget Sound Energy.

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JUDGE WALLIS: On behalf of Intervener ICNU.

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ICNU.

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JUDGE WALLIS: On behalf of Microchip Technology.

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MR. SPIGAL: Harvey Spigal.

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JUDGE WALLIS: On behalf of City of Tukwila.

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MR. SPIGAL: Harvard Spigal entering an appearance on behalf of Carol Arnold, who will join us.

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MS. ARNOLD: I did just join, this is Carol Arnold on behalf of Tukwila.

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1 JUDGE WALLIS: On behalf of King County.

2 MR. WOODWORTH: Appearing for King County,
3 Don Woodworth.

4 JUDGE WALLIS: And City of Bremerton.

5 MS. OLSEN: Angela Olsen on behalf of the
6 City of Bremerton.

7 JUDGE WALLIS: Public Counsel.

8 MR. FFITCH: Simon ffitch for Public Counsel.

9 JUDGE WALLIS: Are there any other
10 appearances to be made this morning?

11 Let the record show that there is no
12 response.

13 Proceeding down our list of identified
14 matters, well, let me first of all indicate that we do
15 have indication that a late petition for intervention
16 has been filed, and I have no indication that notice of
17 this prehearing conference was forwarded to the
18 petitioner. We will inquire into that matter and take
19 up any issues relating to the intervention itself in due
20 course.

21 The status and proper means to request
22 Commission approval for substitute pages in docket,
23 Mr. Quehrn, I understand that you filed one or more
24 substitute pages; is that correct?

25 MR. QUEHRN: That is correct, Your Honor.

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1 If parties may recall at the prehearing
2 conference, we had a discussion about King County's
3 intervention and the relationship of this 395 to Special
4 Contracts, and I actually committed on the record at the
5 prior prehearing conference or the initial prehearing
6 conference to file a substitute sheet to clarify the
7 confusion about Special Contracts. To be very candid, I
8 made that commitment without having considered the
9 language in the order that the Commission had issued I
10 think a couple of days previously indicating that we
11 could not substitute sheets without Commission approval.
12 So I went ahead and asked the company to file it with an
13 indication in the advice letter that this would be filed
14 with the caveat that it's something for the Commission
15 to take under advisement in due course.

16 JUDGE WALLIS: Mr. Woodworth, do you have any
17 comments on this filing?

18 MR. WOODWORTH: I'm sorry, Your Honor, I
19 haven't seen the filing.

20 JUDGE WALLIS: Mr. Quehrn, do you know if
21 this was distributed to parties?

22 MR. QUEHRN: I'm fairly certain it was, and I
23 had also discussed it I think with Mr. Kuffel. It is
24 certainly something that if for some reason King County
25 had inadvertently not received a copy, I'm happy to

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1 provide you with another copy.

2 JUDGE WALLIS: I'm going to begin a process
3 discussion now, irrespective of the content, and ask
4 Commission Staff to offer a view on the appropriate
5 process for addressing this question.

6 MS. SMITH: Your Honor, this is Shannon Smith
7 with Commission Staff, and Commission Staff also has not
8 seen the filing from PSE. We did not receive that. At
9 least, I haven't seen it. If it's somewhere in my
10 office, that may be, but I certainly don't recall seeing
11 it. And Mr. Cedarbaum also has indicated to me that he
12 doesn't recall seeing it. So it's kind of difficult for
13 us to comment even substance aside without having seen
14 the document.

15 JUDGE WALLIS: Very well. In light of the
16 fact that it appears that this was not served on, well,
17 I perhaps shouldn't say that, that a number of parties
18 have not received it, let's defer questions on that
19 issue to a later time and move on to the second matter,
20 which is concerns related to the scheduling of hearings
21 in this matter.

22 MR. FFITCH: Your Honor, this is Simon
23 ffitch, may I just interrupt with one other issue on the
24 tariff filing?

25 JUDGE WALLIS: Mr. ffitch.

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1 MR. FFITCH: I simply wanted to just for the
2 record raise the potential issue of notice or the
3 adequacy of notice under the applicable statutory and
4 WAC requirement.

5 JUDGE WALLIS: Mr. ffitich, my preference
6 would be right now to defer the whole question in as
7 much as parties are not willing to address it, and you
8 will have the opportunity to raise that matter when we
9 do take it up. Would that satisfy your interests?

10 MR. FFITCH: Yes, I simply wanted to put that
11 on the list of potential issues. Thank you, Your Honor.

12 JUDGE WALLIS: Thank you, Mr. ffitich.
13 Hearing scheduling. As in any scheduling
14 matter, we have some realities that we must consider,
15 scheduling barriers, and we did the best we could to try
16 to balance in setting the hearing schedule the need for
17 commissioner attendance, the need for addressing the
18 matter with appropriate speed, and the need for parties
19 to have time to prepare. And I'm going to ask now if
20 there are any concerns related to the schedule that has
21 been set out for this proceeding?

22 MR. FFITCH: Your Honor, this is Simon ffitich
23 for Public Counsel. Just before we get into specific
24 discussions, I want to make an objection for the record
25 to the scheduling of any proceedings, including

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1 hearings, with regard to Puget Sound Energy's filing for
2 interim relief. We don't believe it's appropriate given
3 the issues raised in the motion to dismiss. We believe
4 that the filing as it currently stands, which Puget has
5 declined to modify in any fashion, is clearly in
6 violation of the merger order, and we don't believe that
7 it's appropriate that further proceedings be scheduled
8 on the request. And I just want to interpose that for
9 the record at this time before we have any further
10 discussion.

11 JUDGE WALLIS: I believe, Mr. ffitich, your
12 objection to that in that regard is already on the
13 record, and we will observe that you have clearly stated
14 it at this time.

15 Any other matters?

16 Ms. Smith.

17 MS. SMITH: This is Shannon Smith for
18 Commission Staff. I have a couple of comments with
19 respect to scheduling, and they somewhat dovetail with
20 the other issues that are listed on the notice.

21 One is with respect to discovery. Given that
22 this looks like a very tight schedule, either we can
23 discuss it now or we can discuss it in the discovery
24 under the discovery topic, but the Commission Staff
25 would like an accelerated return on responses to data

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1 requests, five days rather than the ten days that are
2 provided in the rule.

3 And also somewhat echoing Public Counsel's
4 objection but just trying to keep this a discussion on
5 scheduling, Commission Staff is concerned about the
6 schedule. We don't believe that we can really
7 adequately respond to the issues raised in the request
8 for interim relief given the posture that the company
9 has taken in this case with respect to its view of this
10 case, and so we do have that concern as well.

11 And finally, we have another concern that
12 also might fall into the discovery topic, which is we
13 had sent a DR, a data request, to the company last
14 Friday with respect to its power cost study, and we
15 would like to know from the company whether it intends
16 to answer that data request or object to it.

17 JUDGE WALLIS: If we may, what I would like
18 to do is distinguish between the discovery matters and
19 scheduling matter and defer the two points relating to
20 discovery until we get to that and address now the
21 question of whether Staff has time adequately to respond
22 to the request for interim relief. Let me ask the basis
23 for the objection and what it is that you believe you
24 may not have time to accomplish.

25 MS. SMITH: Your Honor, our objection to the

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1 scheduling?

2 JUDGE WALLIS: Yes.

3 MS. SMITH: In Paragraph 22, Your Honor, of
4 the prehearing conference order, it says that Commission
5 Staff did not indicate how long it would require to
6 respond to the evidence that the company has prefiled.
7 And again, I do believe that Commission Staff discussed
8 and made the point at the prehearing conference on
9 September 4th that we have a very hard time responding
10 to the company's request for a deferral without the kind
11 of evidence that it takes to make that case. So here we
12 are with a schedule that's been established that does
13 not give Commission Staff in our opinion enough time to
14 address that issue, and we don't even have that evidence
15 to respond to. So I believe it was Commission Staff's
16 statement on the record on September 4th that we would
17 need three to four months to file our testimony in this
18 case after we received the evidence that would be
19 required for a deferral. And so I guess we believe that
20 Paragraph 22 isn't accurate, because that was our
21 position at the prehearing conference.

22 With respect to the evidence that the company
23 has already prefiled and our response to that, it is
24 again very difficult for Commission Staff to respond to
25 that, because the company is asking for something that

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1 we don't believe is appropriate and has presented
2 testimony that's not -- that doesn't prove the case
3 that's been made. So with respect to scheduling, we're
4 sort of in a quandary there. I suppose Commission Staff
5 could file whatever we can file without what we believe
6 we need to have, and we have asked for some of that
7 information from the company in the data request. And
8 assuming we get that, we're looking at three to four
9 months after we have had an opportunity to get that
10 evidence on the power supply DR that we have requested.

11 JUDGE WALLIS: Yes, we understand that it's
12 Staff's position that it is necessary to examine the
13 historical power supply data, and the company has
14 indicated that it has chosen not to present that. And
15 the question that's posed in the order is and the
16 question that I'm asking now is, how long will it take
17 you to respond, not to the evidence that the company has
18 not presented, but to the evidence that the company has
19 presented?

20 While Commission Staff is discussing that
21 matter, I wonder, Mr. Quehrn, if you could see that the
22 proposed substitute pages are served upon all parties to
23 the docket just to again make sure that parties have it,
24 and that way we will be able to tee it up in a future
25 setting.

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1 MR. QUEHRN: Yes, I will do that, and I will
2 send both electronic copies to all the parties today to
3 the extent that I have their E-mail addresses, and I
4 think I do, and then we will get another copy right out
5 to all parties.

6 JUDGE WALLIS: Thank you very much.

7 MR. FFITCH: Your Honor, while Staff is
8 considering your question, I would like to state Public
9 Counsel's support for the Staff's position. We would
10 join in their request for additional time to respond to
11 the company's filing once an appropriate set of
12 information has been provided by the company.

13 We also do not believe that the initial
14 filing by Puget Sound Energy really makes it possible
15 for any kind of reasonable review of their position to
16 be made or testimony to be prepared at this time, and we
17 would join in Staff's position that there needs to be
18 the presentation of a proper case for interim relief and
19 then a sufficient amount of time for that to be reviewed
20 by expert witnesses who can then prepare testimony.

21 An additional problem that we have --

22 JUDGE WALLIS: Mr. ffitich, I'm going to
23 interject right now and ask if you could wait to state
24 your views until we allow Staff to finish their
25 statement, and then we will allow all parties to

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1 comment.

2 MR. FFITCH: I would be happy to do that.

3 Thank you, Your Honor.

4 JUDGE WALLIS: Ms. Smith.

5 MS. SMITH: Perhaps I would defer this to

6 Robert Cedarbaum.

7 JUDGE WALLIS: Mr. Cedarbaum.

8 MR. CEDARBAUM: Not that this will be a
9 better answer than Ms. Smith would have come up with,
10 but I think the answer to your question is three or four
11 months after our discovery is received. The question
12 you ask is similar to asking, if the company files a
13 general rate case, how long will it take Staff or any
14 other party to respond to that. Well, it takes time,
15 the time involved is the time to ask for discovery,
16 receive the discovery back, and analyze that discovery.
17 It's not just the time to look at the direct case and
18 come to a conclusion and then respond to that. So the
19 answer to your question in this situation is three to
20 four months after we receive our discovery responses
21 back. That's when we can analyze the company's direct
22 case, because we have asked questions on their direct
23 case. I don't know that we can answer that question any
24 differently than that.

25 JUDGE WALLIS: Mr. Quehrn, does the company

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1 have a response to that?

2 MR. QUEHRN: Yes, Your Honor. I think as we
3 have also previously stated, I think we want to be
4 careful to distinguish between the company's entitlement
5 to interim relief and the standard applicable to interim
6 relief and the time frame for moving that issue forward
7 and then the remedy that the Commission chooses to
8 provide, if it does, after it has considered that
9 evidence per that standard.

10 It's also interesting to note that the PNB
11 case which provides the standard actually does also
12 speak to remedy, albeit in somewhat general terms. And
13 again, there is certainly nothing in that case that I'm
14 aware of or any of the other cases that say that the
15 remedy that the Commission chooses to fashion in their
16 discretion need be in a particular form or format. And
17 I would just submit that the concerns that I hear and I
18 appreciate the Staff and Public Counsel are making
19 ultimately run to the nature of the remedy that we have
20 asked for, not to our entitlement to relief. I think
21 those are issues that they can brief and they can argue
22 in this context, and if they can convince the Commission
23 that some other type of remedy is warranted, we can have
24 that discussion. But I don't think the fact that we
25 have asked for this particular type of remedy supports a

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1 four month delay or a three month delay or whatever
2 Staff is asking for in order to bring this matter to the
3 Commission. Again, I think that the scope of the remedy
4 the Commission chooses to provide is a matter within the
5 Commission's discretion and authority, and it's not to
6 be confused with the standard for being entitled to
7 relief in the first instance.

8 MR. CEDARBAUM: Your Honor, can I respond
9 just briefly?

10 JUDGE WALLIS: Mr. Cedarbaum, in your
11 response, it would help for me if you would clarify the
12 distinction between an argument that the company has not
13 presented sufficient evidence to support its request
14 from the necessity to pursue additional information
15 related to that request.

16 MR. CEDARBAUM: I'm not sure I understand the
17 question, but if I -- let me respond to Mr. Quehrn's
18 statement and see if I can fold in an answer to your
19 question at the same time.

20 The company's request for interim rate relief
21 and the remedy that they have asked for, the PCA, are
22 inseparable. They have presented a case in this form
23 that requires the parties to analyze the underlying
24 basis for the PCA in addition to the company's need for
25 financial relief, for interim rate relief. We can't do

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1 one without the other as Mr. Quehrn has suggested. We
2 have to be able to analyze the PCA and its underlying
3 assumptions and underlying data.

4 Now with respect to your question, which
5 perhaps if you could restate it, it would be -- it would
6 help me out.

7 JUDGE WALLIS: The information that you have
8 indicated you are pursuing was discussed at the prior
9 prehearing conference, and it is information that the
10 company, I believe, stated that it did not intend to
11 present as a part of its direct case. And my question
12 is, given that, what is the distinction between the
13 question of whether the company has presented sufficient
14 evidence to support the relief that it requests and the
15 question that's related to -- that supports discovery,
16 and that is information about the nature of the
17 company's request?

18 MR. CEDARBAUM: I guess I would say there is
19 no distinction. The company has presented a case which
20 relies upon this particular type of remedy. That type
21 of remedy has certain assumptions in it with respect to
22 historical power costs and with respect to future power
23 costs. That is the case that they have filed as opposed
24 to a straightforward interim rate filing within the
25 context of a general rate case. And so I would say

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1 there is no distinction between the remedy they have
2 sought and the type of information we're asking for and
3 the type of information they said at least on September
4 4 they will refuse to provide because they don't think
5 they have to provide it and the type of information we
6 have asked for in our data request last Friday, which we
7 would like to get into in the next few minutes as to
8 whether or not the Commission will have to issue an
9 order to compel the company to provide that information.

10 JUDGE WALLIS: Very well.

11 Now, Mr. ffitch, you need not repeat any
12 comments that you made earlier.

13 MR. FFITCH: Thank you, Your Honor. I guess
14 just, you know, a couple of observations here. The
15 great difficulty that's presented I think here for both
16 the parties and the Commission is that the company's
17 filing on its face is a violation of a number of
18 requirements for the type of relief that's being sought.
19 We have a violation of the merger order, number one.
20 Number two, we have a request for interim relief without
21 the filing of a general rate case. Number three, we
22 have a request for, as Mr. Cedarbaum points out, a PCA
23 as a form of interim relief, but the PCA requested is
24 completely inconsistent with the Commission's prior
25 orders on what a PCA should look like. And number four,

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1 the filing is essentially unsupported by the type of
2 evidence that the Commission would need to look at for a
3 PCA. And yet, and here I get to the problem that I
4 think you're struggling with here, we're asked to go
5 forward with a hearing schedule and to think about
6 trying to respond, and I would suggest that this is the
7 very reason why we object to going forward. We think
8 that the posture of the case right now is that those
9 issues need to be addressed.

10 And as you know, it's our view that this
11 filing needs to be dismissed, and the company needs to
12 bring it forward in a proper fashion, and it's simply
13 not possible to go forward with the current posture of
14 the case as structured by the company. So that's why
15 it's so difficult, I think, for, you know, for you to
16 get an answer to your question about what's a good way
17 to go forward here. We just basically don't have
18 anything to work with.

19 And so when we start to talk about the
20 specific dates and the schedule, you know, we're going
21 to ask for -- and I guess I will just ask right now for
22 a significant extension of those dates so that we can
23 have time to see the Commission's ruling on the motions
24 to dismiss, and then the company can have an opportunity
25 to refile or restructure its filing in the manner

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1 suggested by Mr. Cedarbaum if they wish to go forward,
2 and then we can address these matters in an orderly
3 fashion.

4 We think that the going forward with the case
5 in its current posture ultimately will violate the due
6 process rights of the other parties to the proceeding
7 and yield to a very poor record for any kind of
8 Commission decision, and it's ultimately an unproductive
9 expenditure of resources for all the parties.

10 In addition, I will note in terms of these
11 specific dates, given the situation in the Western
12 energy markets right now, it's very difficult to retain
13 expert consultants on this kind of time frame, so that
14 parties who are not using their own employees as
15 consultants are disadvantaged severely by this kind of
16 schedule, particularly given the plausibility of the initial
17 filing. You know, if we're being asked to sort of make
18 the company's case through discovery so that we have
19 something to respond to and then find an expert who can
20 essentially work with the discovery process and render
21 some kind of expert testimony in approximately four to
22 six weeks, that's an almost impossible task or I would
23 venture to say an impossible task. So the schedule
24 presents not only I think -- but it's a legal problem
25 related to the motion to dismiss, but it also just

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1 presents significant practical problems for interveners.

2 JUDGE WALLIS: Thank you, Mr. ffitich.

3 Mr. Van Cleve.

4 MR. VAN CLEVE: Your Honor, I'm in complete
5 agreement with Mr. ffitich. I think that it's clear that
6 the motions to dismiss make some strong arguments which
7 could completely resolve this case. And having just
8 gone through a case involving Avista's request for
9 interim rate relief, I can tell you that there is
10 considerable expense in retaining experts to participate
11 in that type of case. In this case, as Staff has
12 pointed out, it's even more complicated because it
13 involves a PCA. So we would certainly like to have a
14 ruling on the motion to dismiss prior to having to go
15 through the effort and the expense of retaining expert
16 witnesses, and I think that suggests that a schedule
17 could still be set, but not on the tight time frames
18 that's proposed in the prehearing conference order.

19 JUDGE WALLIS: What kind of schedule would
20 you propose?

21 MR. VAN CLEVE: Well, it depends in part on
22 how long it will take the Commission to rule on the
23 motion to dismiss. If they are going to rule in the
24 next 30 days, then I think there could be a schedule
25 that conceivably could be completed by the end of the

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1 year.

2 JUDGE WALLIS: I can, I believe, speak for
3 the Commission in saying that it intends to respond
4 promptly to the motions upon receiving all of the
5 argument on the motions.

6 Mr. Spigal.

7 MR. SPIGAL: I am in concurrence with
8 Mr. ffitch and Mr. Van Cleve.

9 JUDGE WALLIS: Ms. Arnold.

10 Ms. Olsen.

11 MS. OLSEN: I concur with Public Counsel and
12 Staff.

13 JUDGE WALLIS: Mr. Woodworth.

14 MR. WOODWORTH: Also concur with Public
15 Counsel and Commission Staff.

16 JUDGE WALLIS: Mr. Quehrn, back to you.

17 MR. QUEHRN: Thank you, Your Honor. I would
18 just note a couple of things. We have a schedule for
19 dispositive motions. The motions have been made. We're
20 working to respond to them, and they will be addressed
21 within the appropriate time frame, and the Commission
22 can then make whatever decision it chooses to make with
23 respect to those motions. Your order already provides
24 that if one of the moving parties were to prevail, that
25 the subsequent proceedings, of course, would then be

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1 suspended, and the discussion about scheduling would no
2 longer be appropriate. So I think we have already
3 addressed the appropriate mechanism in timing and
4 procedure to address the motions.

5 When it comes to the issues of evidence and
6 what Puget Sound Energy has submitted as its direct case
7 in response to its understanding of the standard for
8 interim rate relief, I would again submit that we are
9 prepared to move forward on the basis of that evidence
10 in response to that standard. And that evidence
11 primarily runs or significantly runs to the question of
12 the financial condition of the company and whether that
13 financial condition is such that interim relief is
14 warranted. That issue is in our pleadings, it's before
15 the Commission, and we believe that it is right, if you
16 will, to be determined in accordance with the schedule
17 that you have suggested in your order.

18 I would certainly expect in any interim case
19 even if we get past the question of the company's
20 financial condition as being such to warrant interim
21 relief, I would expect in any case that there would be
22 some discussion as to the appropriateness of the remedy.
23 That is not new, that is not different, that is not
24 unique. We have proposed a remedy that we think is most
25 closely fit to the financial problem that we are facing.

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1 If someone has a different point of view on the
2 appropriate remedy, we would encourage that discussion
3 to be made within the context of the schedule for
4 proceedings that you have laid out.

5 As we have pointed out in our pleadings, we
6 have financing needs that are facing us that are
7 imminent, and four months is not an appropriate time to
8 put this off. And I think, Your Honor, if I were to go
9 on, I would just be repeating things I have already said
10 in the prior discussion of this issue, so I will leave
11 it at that. Thank you.

12 JUDGE WALLIS: Could you, Mr. Quehrn, respond
13 to Mr. Cedarbaum's comment regarding the need for
14 discovery and the nature of discovery?

15 MR. QUEHRN: Well, I would be pleased to, and
16 let me tell you what we're working on. We had received
17 data requests 1 through 47, and I believe those
18 responses are due Friday, and we're prepared to give
19 those responses to Mr. Cedarbaum and Staff on Friday.

20 There is a subsequent data request that was
21 out of sequence, Data Request Number 50, that was sent
22 and then, and Bob, this may be something we need to talk
23 about, I was told by my client who had been talking to
24 Staff that they were intending to withdraw that request,
25 and further there is a meeting set up this Thursday to

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1 talk about that request, so I believe that that one is
2 also being worked on in accordance with direction that
3 my client has received from Staff.

4 So we intend to provide all of the responses
5 to 1 through 47 within the appropriate time frame. And
6 again, I'm not aware of a Data Request 48 or 49, I don't
7 think those have been issued. And 50 I believe is the
8 subject of a meeting that is scheduled with Staff and
9 Puget Sound Energy.

10 JUDGE WALLIS: Well, we are by that getting a
11 little bit into the issue of discovery. I would like to
12 bring closure to the discussion on hearing scheduling
13 but first want to ask if any party has anything
14 additional to add to the discussions that have taken
15 place, not a repetition, but an additional comment.

16 MR. FFITCH: Your Honor, this is Simon
17 ffitich, I'm not sure if this fits right in here. I was
18 going to inquire whether the Commission would be seeking
19 oral argument on the motions to dismiss.

20 JUDGE WALLIS: The Commission has not to my
21 knowledge requested the opportunity for oral argument,
22 but we do not rule that out as a possibility. We will
23 consider setting aside a time if time is available for
24 parties to make those arguments subject to cancellation
25 if they are necessary, but I'm not prepared to do that

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1 this morning.

2 MR. FFITCH: Thank you, Your Honor, we would
3 be happy to participate in oral argument on the motions.
4 We believe it would be helpful.

5 JUDGE WALLIS: Do any other parties have
6 comments?

7 Let the record show that there is no
8 response.

9 This will close our discussion relating to
10 hearing scheduling. We will take the comments under
11 advisement, and we will respond as necessary.

12 Let's move on to the discovery and discovery
13 schedules and ask having interrupted Staff if you want
14 to continue your statement.

15 MR. CEDARBAUM: If I could just -- I will
16 just respond to Mr. Quehrn's comments on the data
17 requests that were sent out last week and then turn it
18 back to Ms. Smith.

19 We did send out a data request on September
20 11th which was numbered Number 50. Quite frankly, I
21 don't know if that was misnumbered or not. I will check
22 into it, and if it was incorrect, we will correct that.
23 There have been some later subsequent discussions
24 between Mr. McIntosh of Commission Staff and people at
25 the company, I'm not exactly sure who, with respect to

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1 revising in an informal way the data request so the
2 company could respond to it in a way that was efficient
3 to them and Staff could get the information that they
4 wanted. I think those are the discussions that
5 Mr. Quehrn is referring to. The data request wasn't
6 withdrawn, there have just been some discussions on how
7 information could be provided. We thought we could just
8 do that informally but keep the data request itself
9 outstanding.

10 There was another data request, which again
11 I'm not sure of the number, and perhaps it was also
12 misnumbered, but in any event, it was issued on
13 September 14th, just last Friday. That's the data
14 request that Ms. Smith referred to where we asked
15 information that was tied directly to Mr. Karzmar's
16 exhibits with respect to historical and future power
17 supply costs. That is another data request that is
18 outstanding and which is really the data request that
19 was asking for information that I referenced earlier
20 about how we can analyze the PCA that's been requested.
21 Not to minimize the importance of the other data
22 requests, but that was -- that one was directed
23 specifically towards the concern that Staff has with
24 respect to the assumptions in data in the PCA.

25 So with that detailed discussion on some

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1 particular data requests, I will turn it back to
2 Ms. Smith.

3 JUDGE WALLIS: Mr. Quehrn.

4 MR. QUEHRN: Yes.

5 JUDGE WALLIS: It was actually you that I
6 interrupted. Did you wish to complete your statement?

7 MR. QUEHRN: Yes, Your Honor, and I think
8 this last data request that Mr. Cedarbaum is referring
9 to I'm afraid I have not seen, and I have Mr. George
10 Pohndorf I can confer with here in the room, nor has he,
11 the one that was sent Friday. And I would only submit
12 that it would be Puget Sound Energy's obligation under
13 the rules to respond to that data request one way or the
14 other within whatever time frame you ultimately
15 determine is appropriate to do so. I can't speculate at
16 this point as to what the nature or the extent of that
17 response would be, because I have not seen the document.

18 Again, we have Data Requests 1 through 47
19 that we will provide by Friday, which would be their due
20 date under the rule. And then these other pending data
21 requests, we can either address them individually as far
22 as the due date or have them due, if you will, in
23 connection with whatever discovery rule that you choose
24 or response time you choose to set in this order. I
25 believe on the basis of some correspondence that I have

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1 seen that Mr. Cedarbaum is going to ask for a five day
2 turn around.

3 Is that correct, Bob?

4 MR. CEDARBAUM: That was our plan.

5 MR. QUEHRN: And I think if we could make
6 that five business days, in other words, if I get one on
7 Monday, I can give it to you the following Monday, I can
8 live with that schedule. Obviously when we get 47 at
9 once, it's quite a burdon, but we have most of those in
10 some form of completion as we speak. And again, those
11 will be to you by the end of the week.

12 MR. CEDARBAUM: And our assumption all along
13 was business days since the current rule also involves
14 business days. But our -- the proposal to reduce the
15 responses to five business days would apply not just to
16 the 47 data requests that you referenced that you're
17 working on, but also all subsequent data requests,
18 including the power supply data requests that are
19 outstanding.

20 And I should just note for the record, just
21 our normal course of business and the one the company
22 has always been in agreement with is that we send our
23 data requests to Steve Secrist, who is the Director of
24 Rates and Regulations at Puget Sound Energy, so it just
25 may be that Mr. Secrist received them but Mr. Pohndorf

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1 hasn't. I don't know, but it was sent out.

2 JUDGE WALLIS: Mr. Quehrn, is the method of
3 distribution of data requests acceptable, or do we need
4 to ask that copies be sent to you?

5 MR. QUEHRN: I would appreciate copies being
6 sent to me. Again, I had received 1 through 47 and 50
7 in a timely manner. And, you know, if one went out
8 Friday, I just may not have seen it yet, but it would
9 be, you know, Bob, if you could copy me on it. I'm
10 actually looking at your data requests that went out on
11 September 6th, the certificate of service, that one was
12 sent to me, and I believe that the one, the Data Request
13 50 was also sent to me. So if you would continue to do
14 it as you did with 1 through 47 and 50, they should get
15 to me.

16 MR. CEDARBAUM: And my understanding is that
17 our normal practice is that all parties get copied with
18 the data requests, and that has occurred. Now I can
19 double check on this last one, but that's our standard
20 practice.

21 JUDGE WALLIS: Very well.

22 Does anyone else wish to comment on the
23 question of turn around time?

24 MR. QUEHRN: Your Honor, I do have one
25 comment, and it relates to the proposed schedule that we

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1 do not object to. We think the proposed schedule is
2 appropriate. I would note, however, that the way the
3 schedule stands right now, if we were to take my
4 proposal on turn around of data requests, there would be
5 no opportunity essentially to do any discovery on the
6 responsive evidence that would be due on October 25th,
7 and I would wonder if we could have some opportunity to
8 have the ability to do some discovery. And I'm really
9 hesitant to support a different turn around time for
10 Staff than I am for us, because I don't think that's
11 fair, and I'm also hesitant to suggest that we move that
12 October 31 date unless we could move it just a day or
13 two without impacting the rest of the schedule. That
14 would then allow us at least one opportunity for some
15 discovery on Staff's responsive evidence.

16 JUDGE WALLIS: Staff response.

17 MS. SMITH: Your Honor, we may be able to
18 impose a three day turn around after the 25th for
19 responses to data requests. I mean that might help keep
20 this schedule in place. We might be able to work toward
21 that goal.

22 JUDGE WALLIS: Would there be objection to
23 moving the deadline on the 31st to the 1st?

24 MR. FFITCH: Your Honor, which deadline are
25 you referring to, this is Simon ffitch, the company's

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1 rebuttal and the opening brief that the --

2 JUDGE WALLIS: The company rebuttal, cross
3 rebuttal, opening briefs on legal issues not addressed
4 in the motions are all part of the deadline on October
5 31.

6 MR. CEDARBAUM: Your Honor, could I ask a
7 clarifying question on the scheduling. The hearing
8 that's scheduled now is on it says begins November 6.
9 How much time had the Commissioners set aside for the
10 hearing?

11 JUDGE WALLIS: We blocked out three days.

12 MR. FFITCH: I guess with regard to the
13 specific question, we simply don't think this time line
14 with six days or seven days between the 25th and 31st is
15 reasonable in the first instance. The preparation of
16 briefs simultaneously with preparation of hearing we
17 don't think is reasonable, places a significant burdon
18 on parties, apparently simultaneously with preparing for
19 a prehearing conference to mark exhibits and deal with
20 evidentiary objections. So moving that one day we just
21 think goes so little towards resolving the fundamental
22 problem with those short time lines that I guess we
23 would suggest again that this schedule is inherently
24 unreasonable.

25 I will note also that the hearing is

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1 scheduled to start on election day, which I don't know
2 if the Commission had considered that as an issue for
3 accommodating other needs of the participants.

4 JUDGE WALLIS: Mr. ffitch, is there an
5 inherent right to the advance distribution of testimony
6 or to an opportunity to review it before the hearing
7 begins? I'm just wondering how we balance what at this
8 point I think we need to take as a good faith request
9 for emergency relief with a need for process.

10 MR. FFITCH: Well, I guess, Your Honor, the
11 allowance of one week in order to respond to company
12 rebuttal, to prepare -- to conduct any discovery on that
13 rebuttal and to prepare for hearing we think is -- falls
14 short of any reasonable opportunity to, you know,
15 participate fairly in this proceeding. I understand
16 that this is a request for interim relief, and in
17 general those are handled more expeditiously. We think
18 this goes too far. A one week turn around between
19 company rebuttal and the hearing is we think violation
20 of due process.

21 I will note, by the way, that if you look at
22 what the company has filed in this case, it's sparse.
23 And apparently the next thing that's going to happen is
24 that if this schedule holds, which we hope it does not,
25 we and other parties will be filing a response on

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1 October 25th. The company then will I suspect be filing
2 significant additional testimony one week before the
3 hearing. And unfortunately, we have seen in many other
4 cases a problem where we have -- we really see the real
5 case in rebuttal. And I would be concerned if that were
6 to occur here with only one week between the rebuttal
7 filing and the time of hearing and with really no
8 practical time to conduct discovery. So that's an
9 attempt to answer your question.

10 JUDGE WALLIS: Mr. ffitch, do you know what
11 the company is going to present on rebuttal?

12 MR. FFITCH: No, I don't, but I guess I'm
13 suggesting that there's not very much presented in their
14 direct at this point, and they have declined in response
15 to a number of objections about the initial filing to
16 file anything in addition. They want to go forward on
17 the basis of this extremely incomplete filing.

18 JUDGE WALLIS: Yes, you have mentioned that
19 several times.

20 MR. FFITCH: Right, well, I think it's pretty
21 important.

22 JUDGE WALLIS: If the company were to file
23 extensive rebuttal, is there a procedural mechanism that
24 is set up in the schedule that's been announced for
25 parties to address that and to address an assertion that

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1 they have not had an adequate time to respond or
2 prepare?

3 MR. FFITCH: It appears that that -- I'm not
4 sure if that's the case or not. I'm sure other parties
5 can answer this as well. Just looking at the schedule,
6 it appears that a prehearing conference has been set for
7 the same time as the company rebuttal comes in. And
8 with that prehearing conference at 10:00 a.m. on the
9 31st, it appears that would be the time for parties to
10 make objections of this nature. I would suggest that if
11 that is the same time when we receive the company's
12 rebuttal, there's really not adequate time to review
13 that rebuttal and determine how to respond to it and
14 whether we need more time, whether we see a process
15 problem, or whether there are objections.

16 JUDGE WALLIS: Would ten days be adequate?

17 MR. FFITCH: Ten days to, I'm sorry?

18 JUDGE WALLIS: You have asked for more time.
19 I'm asking you if ten days would be adequate.

20 MR. FFITCH: Well, I'm not sure what the ten
21 days applies to. I don't mean to be obtuse, but you
22 mean a prehearing conference would be held ten days
23 after the filing of the company's rebuttal?

24 JUDGE WALLIS: The parties would have ten
25 days to review and respond to company and cross

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1 rebuttal. We can accommodate that by advancing the time
2 for the presentation of the parties' evidence to the
3 15th.

4 MR. FFITCH: Well, we would object to that as
5 well, Your Honor. We think that does not enhance the
6 reasonableness of this schedule.

7 JUDGE WALLIS: Very well.

8 In terms of the deadline for responses to
9 data requests, it's my understanding that the company
10 has agreed to a five business day turn around time.

11 Is that correct, Mr. Quehrn?

12 MR. QUEHRN: That's correct.

13 JUDGE WALLIS: Very well. I will be taking
14 the parties' comments on the remaining aspects of
15 scheduling under advisement and will respond to them.

16 Are there any concluding comments?

17 MR. CEDARBAUM: Your Honor, if I could, just
18 so the record is clear, it probably is already, but for
19 Commission Staff, we are in agreement with Mr. ffitich's
20 comments about the schedule. And I don't want to -- I
21 won't repeat them all, but I think the record should
22 reflect that agreement with his comments.

23 JUDGE WALLIS: Thank you.

24 And I will state that I have no intention of
25 advancing the responsive evidence ten days, although in

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1 order to accommodate parties' wishes for an opportunity
2 to make comments, there may be the adjustment of a day
3 or two or several days in the schedule.

4 MR. CEDARBAUM: Could I ask before we go off
5 the record?

6 JUDGE WALLIS: Mr. Cedarbaum.

7 MR. CEDARBAUM: I do have one clarifying
8 question, that if the schedule holds or if it is
9 revised, but there is a provision for prehearing on
10 opening briefs on legal issues. I take that to mean
11 that that is not intended to be kind of a prehearing
12 brief on the merits, that that is strictly limited to
13 any legal issues that aren't addressed in the motions
14 that are currently filed.

15 JUDGE WALLIS: That's correct.

16 MR. CEDARBAUM: Thank you.

17 JUDGE WALLIS: At the conclusion of the prior
18 prehearing conference, there was an indication that
19 Public Counsel and the company would be engaging, and
20 the Commission Staff, would be engaging in some
21 discussions about public notice and about schedules for
22 public hearing or hearings.

23 Let me ask Mr. ffitch first if there have
24 been such discussions.

25 MR. FFITCH: Your Honor, thank you. Well, we

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1 have had an exchange primarily of E-mail. I have had a
2 couple of conversations with Commission Public Affairs
3 Staff. I think the upshot is that both my office and
4 the Public Affairs Staff have indicated to the company
5 that they -- a revised form of notice which they had
6 circulated appeared to be acceptable in terms of its
7 basic content except for a couple of corrections of
8 phone numbers and so on.

9 I guess I had expressed a couple of
10 reservations. The others -- in addition, I expressed to
11 the company a couple of reservations about the timing of
12 the notice, the fact that we at this point have no
13 public hearing scheduled, and ideally it's preferable
14 that the notice that goes out to customers can tell them
15 when public hearings can take place. And given billing
16 cycles and the uncertainty of the schedule in this case,
17 I have sort of reserved comment on the timing of the
18 notice.

19 The contents, however, I believe we're
20 comfortable with, and I believe the Commission's Public
21 Affairs Staff had also expressed agreement with the
22 revision.

23 JUDGE WALLIS: For the Commission Staff.

24 MR. CEDARBAUM: I tried to communicate with
25 Penny Hansen, who is the person that usually works on

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1 those matters, and I was just not able to find her. So
2 I can't confirm what Mr. ffitch just said, but I can
3 certainly trust that what he said was accurate.

4 MR. FFITCH: Your Honor, I believe Chris
5 Vernon now has been working on this matter for Public
6 Affairs Staff, and I believe she is on leave for some
7 period of time right at the moment, so that's I think
8 the reason why it's a little bit difficult for Staff to
9 respond. But she -- I believe Chris Vernon is the
10 person that had reviewed this for Staff.

11 MR. QUEHRN: Simon, perhaps you could forward
12 and I will forward, this is Mark Quehrn speaking, a copy
13 of her E-mail of September 11th, 3:46 p.m., where she
14 indicates that the notice that we circulated fulfills
15 the requirements of 480-08-125. It's our understanding
16 that based upon that E-mail Commission Staff was
17 satisfied. And Mr. ffitch's further observations were
18 actually forwarded to me as a further discussion of that
19 E-mail.

20 Just to bring folks up to date, based upon
21 the, Simon, the phone number changes that you had
22 requested, that notice went to the printer I was told on
23 Friday and will be sent out today. The issue with
24 respect to notification of a hearing that hasn't been
25 scheduled yet, we followed what the rule says, and that

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1 is that you indicate in the notice that interested
2 citizens can contact the Commission for such further
3 notices. So I believe we have now a notice that
4 complies with the rule. Mr. ffitch's concerns about
5 notices of subsequent hearings to be scheduled can be
6 addressed when those things are scheduled and should be.

7 JUDGE WALLIS: Does any other party wish to
8 comment?

9 MR. FFITCH: I guess I just have sort of a
10 factual question, if I may, Your Honor. Perhaps
11 Mr. Quehrn can answer this. Just to get a full picture
12 of the notice that's been provided, if you could just,
13 Mr. Quehrn, if Mr. Quehrn could just explain whether
14 this is the -- whether this notice that would be going
15 out today is going to all customers or whether there is
16 several rounds because of the way the billing cycles
17 work and so on. Because there was, we believe, there
18 was an earlier notice in the newsletter form which did
19 raise the objection, and I would just want to make sure
20 I guess that this new corrected notice is going to all
21 customers and what the schedule, the time frame for that
22 would be. We can either discuss that here or maybe some
23 sort of a letter or a written description of the process
24 could be made a part of the record in the case just to
25 sort of get this put to bed.

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1 MR. QUEHRN: You know, Simon, I wish I could
2 answer that question. Mr. Pohndorf just stepped out of
3 the room here for a minute. My direction to the client
4 was, of course, to provide a notice in accordance with
5 what the rule requires. I can -- I don't want to keep
6 deferring things that we can resolve in this conference,
7 but I can as soon as we're off this call follow up with
8 the individuals at the company who are involved in
9 providing -- in actually sending the notice and give you
10 a full description of what it is that we're going to do.
11 My direction was to comply with what the rule requires.

12 MR. FFITCH: Well, Your Honor, if the company
13 is willing, I think it might be helpful to just have a
14 letter or other written statement for the record about
15 how the notice was accomplished and, you know, billing
16 mailing dates, et cetera, and a copy of the notice
17 attached to it that actually went out just so that --
18 because this is, after all, a requirement in the
19 Commission's order in this case, and that would I think
20 for purposes of the record just provide the information
21 necessary accessible to all parties to show that the
22 order had been complied with.

23 JUDGE WALLIS: Mr. Quehrn, are you willing to
24 prepare, file, and serve that information?

25 MR. QUEHRN: I am prepared to do so.

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1 It raises a question, however, I would like
2 to ask. If we, how to ask this question, we still have
3 in the motions to dismiss, I believe, Simon, your
4 motion, and also the memorandum that was filed by
5 Ms. Arnold seeking dismissal on the basis of not having
6 provided adequate notice. I would like to ask for you
7 and Ms. Arnold to consider that if we provide this
8 letter that I think is a good idea explaining how we
9 have given a copy of the notice and what we have done,
10 if there are any further concerns about the notice that
11 those be brought before the Commission after that letter
12 has been provided. Otherwise, I'm in somewhat of an
13 awkward position, it seems to me, in terms of responding
14 to a motion on something that I think we have otherwise
15 agreed is sufficient at this point.

16 JUDGE WALLIS: Could we ask the parties to
17 advise Mr. Quehrn within two days after he provides his
18 information, two business days, as to whether that
19 satisfies your concerns stated in the motion or motions.

20 Mr. ffitch, Ms. Arnold?

21 MR. FFITCH: Yes, Your Honor.

22 JUDGE WALLIS: Is Ms. Arnold still with us?

23 Mr. Spigal on her behalf.

24 MS. ARNOLD: No, hello, I'm sorry, I had the
25 mute on. Yes, we will be glad to respond within two

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1 days of the receipt of Mr. Quehrn's letter and a copy of
2 the notice that's being sent out.

3 JUDGE WALLIS: Very good. And if you could
4 file that with the Commission and serve it on all
5 parties, we would appreciate that.

6 MR. FFITCH: Yes.

7 MS. ARNOLD: We will.

8 JUDGE WALLIS: Thank you.

9 What about the scheduling of public hearings,
10 has any discussion been undertaken as to that by
11 electronic mail or otherwise?

12 MR. CEDARBAUM: Not from Staff's point of
13 view.

14 MR. FFITCH: Not from Public Counsel, Your
15 Honor. We would as a general matter, of course, request
16 such hearings be scheduled in this proceeding, however,
17 I think that's subject to our general objection to the
18 scheduling of the further hearing proceedings in this
19 matter at this time, but so again we don't feel that
20 it's necessary or appropriate to hold those hearings,
21 public hearings, or any other scheduled events prior to
22 the motion to dismiss being resolved.

23 But having said that, if there's going to be
24 a schedule here, we would request that there be an
25 opportunity for Puget Sound customers to speak on this

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1 question. I think it's -- and that those be held around
2 the time in close proximity of the evidentiary hearings.
3 Given the tight schedule here, it probably makes sense
4 to have those after the evidentiary hearings, although
5 again, there's some flexibility here. But typically
6 it's been, I think, effective to have them around the
7 time of the evidentiary hearing.

8 I think one thing that's helpful in this
9 proceeding is that we have participation from several
10 cities and other parties here who might have some input
11 on when and where these kinds of hearings should be
12 held. You know, Puget Sound's service territory is
13 fairly extensive, and typically the Commission in Puget
14 cases has held more than one public hearing.

15 So I don't have a specific recommendation at
16 this time other than to say that typically it's made
17 sense perhaps to have one in the Seattle metropolitan
18 area perhaps and then one in a more rural part of the
19 service territory, perhaps more southern part of the
20 service territory, and then there's the eastern area of
21 Kitsap peninsula area or Pierce County area as well that
22 could be considered, but those are my preliminary
23 thoughts. We have not had a chance to talk to Public
24 Affairs Staff, Your Honor, about this.

25 JUDGE WALLIS: What would be an appropriate

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1 mechanism and an appropriate time frame for resolving
2 those questions, given the assumption that the hearings
3 remain scheduled as they are?

4 MR. FFITCH: Well, Your Honor, I think
5 perhaps one approach would be for the, first of all,
6 perhaps in this hearing, other interveners might venture
7 some thoughts on time and place of public hearings.
8 Then perhaps the Commission's Public Affairs Staff could
9 consult with the Bench and the commissioners about a
10 suggested schedule for those hearings and advise the
11 parties informally, as we have had in other cases some
12 informal discussion about when and where those might be
13 held taking some input, commission taking some input,
14 and then perhaps that would resolve it. I think that
15 it's helpful if the -- really the scheduling is quite
16 dependent on Commission resources and commissioner
17 availability. It's helpful if the initial proposals or
18 recommendation come from that quarter to help get the
19 ball rolling.

20 JUDGE WALLIS: Very well. Do any of the
21 interveners wish to comment on the location and timing
22 of sessions for members of the public?

23 MS. ARNOLD: Yes, this is Carol Arnold. I
24 would encourage the Commission to set one of the public
25 hearings in the Puget territory near Seattle. The

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1 cities of Tukwila, Renton, and the other cities in the
2 Kent Valley are all Puget customers, and that would be
3 an appropriate area. And I agree that it would be most
4 appropriate for the Commission to suggest dates at its
5 convenience due to the use of its resources.

6 JUDGE WALLIS: Do other parties have
7 thoughts?

8 MR. QUEHRN: Your Honor, this is Mark Quehrn.
9 I would, and maybe this was implicit in what Mr. ffitc
10 and others have said, is that I think my client would
11 like to participate in informal discussions to see how
12 we can help accomplish this objective of getting
13 appropriate determinations made for public hearings.

14 JUDGE WALLIS: Very well. I'm going to ask
15 Commission Staff either personally or by delegation to
16 the Public Affairs Staff to set up a time in the near
17 future when parties have an opportunity to engage in
18 that kind of discussion.

19 Staff is willing to accept that
20 responsibility?

21 MS. SMITH: Yes, we are, Your Honor, thank
22 you.

23 JUDGE WALLIS: Thank you very much.

24 All right, is there anything further that the
25 parties wish to discuss this morning?

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1 It appears that there is not. I want to
2 thank all of you for attending and for your comments.
3 We understand that the matters that you are concerned
4 about are serious matters, and we will do our best to
5 respond to them in an appropriate way that's consistent
6 with the law and with the Commission's policies on full
7 participation and opportunity to participate.

8 So if there's nothing further, then this
9 matter is concluded.

10 MR. FFITCH: Your Honor, I just have a
11 question. Since I'm not in the room, I'm assuming that
12 this is being recorded by a court reporter.

13 JUDGE WALLIS: Yes, it is.

14 MR. FFITCH: Thank you, Your Honor.

15 MR. CEDARBAUM: Your Honor, I guess I do have
16 one area that I -- and I guess I will probably end up
17 just asking a question, but there was discussion earlier
18 about the power supply data requests that we have
19 outstanding. We have a five day turn around now on
20 those data requests, I believe, but an indication from
21 the company on September 4th that they didn't see the
22 need to provide that information, or at least some of
23 it, and so I suspect that they may not provide that
24 information and might object to the data request. That
25 objection, if it comes, may not be received by Staff

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1 until after a prehearing conference order goes out on
2 scheduling matters, if one is to go out in the near
3 future.

4 I guess I'm -- my question is how -- is there
5 some way of either, A, getting a response from the
6 company as to whether or not they are going to object
7 sooner than the five days, or B, how do we handle that
8 issue, because it will affect scheduling matters if the
9 objection comes in after a prehearing conference order
10 goes out that may not change the schedule that we have
11 now.

12 JUDGE WALLIS: Mr. Quehrn, your thoughts.

13 MR. QUEHRN: Well, I'm a little reticent to
14 respond to a data request that I haven't seen, but I
15 guess I can tell you this. If you have asked for a
16 document that we have and it's otherwise relevant and
17 within the scope but we have a document that we have,
18 then you're entitled to get it. I just -- I think the
19 thing that perhaps you and I ought to do is take a look
20 at this data request and have some discussion of it
21 rather than anticipating at this point what our response
22 may or may not be, because I just haven't seen it.

23 MR. CEDARBAUM: I guess my question is that
24 if the company is going to object on the basis of
25 relevance, it seems to me like that's something that

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1 could be known before five days expire and that if that
2 type of a response could be provided, you know, on one
3 day's turn around or maybe at most two days' turn
4 around, then perhaps we're in a position of advising the
5 Commission for a motion to compel before scheduling is
6 either locked in where it is now or not so that that
7 could be considered by the Commission in its scheduling
8 decisions.

9 JUDGE WALLIS: Mr. Quehrn and Mr. Cedarbaum,
10 what I would suggest at this point is that the two of
11 you engage in discussions off line and see if once
12 everyone is aware of what the request was whether you
13 can achieve agreement on what will be provided, or if
14 the company is not willing to provide at all, if that
15 could be teed up as quickly as possible and not wait for
16 the five day deadline. Would that be acceptable to both
17 of you?

18 MR. CEDARBAUM: As a first try, sure.

19 JUDGE WALLIS: Mr. Quehrn.

20 MR. QUEHRN: It would, Your Honor. And I
21 guess I would only say to Bob, I think if I understand
22 your request correctly, you may be asking for something
23 we don't have, and obviously I can't give it to you if I
24 don't have it. We will probably work hard to try to
25 provide you responses, however, that are germane to what

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1 you have asked for, but I don't know that if you have
2 asked for something specific that we don't have, that's
3 not a relevance issue, we just can't give you what we
4 don't have.

5 MR. CEDARBAUM: Well, if the response is --
6 well, I guess I have two responses to that. One is we
7 oftentimes ask for data requests for documents that the
8 company may not have in existence, but they have to
9 produce it through analysis, and that's fair game. So I
10 would hope that, you know, if we have asked for a data
11 request and the company doesn't have the analysis now
12 but can do that analysis, it should do the analysis.

13 JUDGE WALLIS: I think at this juncture, the
14 parties' positions are clear on the record in advance of
15 having a direct knowledge of the request or the
16 response, and I will leave it to the two of you to
17 engage in further discussions and to make the results of
18 those discussions clear as necessary to the Commission.
19 Will that be satisfactory?

20 MR. QUEHRN: Yes.

21 MR. CEDARBAUM: Yes.

22 MR. FFITCH: Your Honor.

23 JUDGE WALLIS: Mr. ffitich.

24 MR. FFITCH: I apologize for my delayed
25 reaction here. I guess I would just like to ask for a

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1 bit more clarification on the nature of the prehearing
2 brief kind of following up on Mr. Cedarbaum's question.
3 I guess I'm still confused about what is requested
4 there. I understand your statement that this would not
5 be a comprehensive brief on the merits of the case akin
6 to what we normally file in post hearing brief. So if
7 that's not what's intended here, then I guess I'm asking
8 for a little more guidance on what the Commission is
9 asking the parties to file there or what's anticipated
10 by that opportunity.

11 JUDGE WALLIS: Perhaps I should merely
12 address that in the prehearing conference order. Would
13 that, in as much as that's some time away and
14 potentially contingent, would that satisfy your
15 interests?

16 MR. FFITCH: Yes, thank you.

17 JUDGE WALLIS: Very well.

18 MR. FFITCH: I guess I -- and I will just say
19 that we would request post hearing, an opportunity for
20 post hearing briefs in the manner that the Commission
21 has ordinarily proceeded. We think that that is perhaps
22 the most -- is certainly the most efficacious approach
23 since we all have then an opportunity to talk about what
24 the record -- what's actually in the record, and we have
25 some time to, you know, prepare a thorough brief. Both

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1 of those things are really not achievable with a
2 prehearing brief, and I think in most cases you end up
3 still needing a post hearing brief.

4 So we would really request that the
5 prehearing brief be limited to perhaps sort of an
6 optional opportunity to raise, you know, procedural
7 issues or specific issues that need to be addressed
8 prior to the hearing. So I will just add that as
9 perhaps our preference for how the briefs be structured
10 and include a request for establishment of a post
11 hearing brief date if there's going to be a schedule of
12 this type.

13 JUDGE WALLIS: Thank you, Mr. ffitch.

14 Is there anything further?

15 Very well, this conference is concluded.

16 (Hearing adjourned at 10:30 a.m.)

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