

Docket No. U-170970 - Vol. I

**In the Matter of: Hydro One Limited and Avista
Corporation**

October 20, 2017



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint) DOCKET NO. U-170970
Application of)
)
HYDRO ONE LIMITED (acting)
through its indirect subsidiary,))
Olympus Equity LLC))
)
and)
)
AVISTA CORPORATION,)
)
for an Order Authorizing)
Proposed Transaction)
)
)

PREHEARING CONFERENCE, VOLUME I

Pages 1-57

ADMINISTRATIVE LAW JUDGE DENNIS J. MOSS

9:30 a.m.

October 20, 2017

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, Washington 98504

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

Buell Realtime Reporting, LLC
1325 Fourth Avenue, Suite 1840
Seattle, Washington 98101
(206) 287-9066 | Seattle
(360) 534-9066 | Olympia
(800) 846-6989 | National
www.buellrealtime.com

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

DENNIS J. MOSS
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, Washington 98504

FOR PUBLIC COUNSEL:

LISA GAFKEN
Assistant Attorney General
Attorney General's Office
Public Counsel Unit
800 - 5th Avenue, Suite 2000
Seattle, Washington 98104
(206) 464-6595
lisa.gafken@atg.wa.gov

FOR COMMISSION STAFF:

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Attorney General's Office
PO Box 40128
1400 S. Evergreen Park Drive SW
Olympia, Washington 98504
(360) 664-1186
jcameron@utc.wa.gov

FOR AVISTA:

DAVID J. MEYER
Vice President and Chief Counsel
Avista Corp.
PO Box 3727
1411 E. Mission Avenue, MSC 27
Spokane, Washington 99220
(206) 623-7580
david.meyer@avistacorp.com

A P P E A R A N C E S (Cont.)

FOR HYDRO ONE:

ELIZABETH THOMAS
KARI VANDER STOEP
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104
(206) 370-7631
liz.thomas@klgates.com
kari.vanderstoep@klgates.com

FOR ICNU:

JESSE E. COWELL
Davison Van Cleve PC
333 SW Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242
jec@dvclaw.com

FOR THE ENERGY PROJECT:

SIMON FFITCH
Attorney at Law
321 High School Road NE
Suite D3, No. 383
Bainbridge Island, Washington 98110
(206) 669-8197
simon@ffitchlaw.com

FOR THE SIERRA CLUB:
(Via bridge line)

TRAVIS RITCHIE
Staff Attorney
Sierra Club Environmental Law
Program
2101 Webster Street, Suite 1300
Oakland, California 94612
(415) 977-5727
travis.ritchie@sierraclub.org

Page 4

1 A P P E A R A N C E S (Cont.)

2
3 FOR NW ENERGY COALITION,
4 RENEWABLE NORTHWEST, &
5 NATURAL RESOURCES DEFENSE
6 COUNCIL:

7 JEFFREY D. GOLTZ
8 Cascadia Law Group
9 606 Columbia Street NW, Suite 212
10 Olympia, Washington 98501
11 (360) 528-3026
12 jgoltz@cascadialaw.com

13
14 FOR NORTHWEST INDUSTRIAL
15 GAS USERS:
16 (Via bridge line)

17 CHAD STOKES
18 Cable Huston LLP
19 1001 SW Fifth Avenue, Suite 2000
20 Portland, Oregon 97204
21 (503) 224-3092
22 cstokes@cablehuston.com

23
24 FOR WASHINGTON AND NORTHERN
25 IDAHO DISTRICT COUNCIL OF
LABORERS:

DANIELLE FRANCO-MALONE
Schwerin Campbell Barnard Iglitzin
& Lavitt LLP
18 West Mercer Street, Suite 400
Seattle, Washington 98119
(206) 257-6011
franco@workerlaw.com

1 OLYMPIA, WASHINGTON; OCTOBER 20, 2017

2 9:30 A.M.

3 --o0o--

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

6 JUDGE MOSS: Good morning, everybody. My
7 name is Dennis Moss. I'm an administrative law judge
8 with the Washington Utilities and Transportation
9 Commission. We are convened today in the first
10 prehearing conference in the matter styled, In the
11 Matter of the Joint Application of Hydro One Limited
12 (acting through its indirect subsidiary, Olympus Equity
13 LLC) and Avista Corporation for an Order Authorizing
14 Proposed Transaction.

15 And I'm going to pause here to say that this
16 order, this docket, was given the wrong designation. It
17 was given an UE designation. It should have been given
18 a U designation because it affects the whole company in
19 the same manner, and we don't want to have to give it a
20 separate docket number for the gas side of the business.
21 So from this moment forward, please refer to it as
22 Docket U-170790, and I'll appreciate that.

23 All right. Before we take appearances, I
24 read the application and pretty much everything else
25 that's been filed so far. I was struck by the statement

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1 of jurisdiction in the application. In fact, I was so
2 struck by it that I copied it and pasted it into my
3 agenda notes here, and I'm going to read it.

4 This is paragraphs four and five of the
5 joint application. (As read) Avista is a public service
6 company subject to the Commission's jurisdiction under
7 RCW 80.04.010 and other statutory authority. Commission
8 authorization is necessary under RCW 80.12.020 for
9 Avista to sell, lease, assign or otherwise dispose of,
10 or merge, or consolidate, any of its franchises,
11 properties or facilities with any other public service
12 company. Under RCW 80.12.040, Commission authorization
13 is necessary before another public service company can,
14 directly or indirectly, purchase, acquire, or become the
15 owner of any of the franchises, properties, facilities,
16 capital stocks or bonds of Avista. RCW 80.01.040
17 establishes the Commission's general powers and duties
18 and, among other things, empowers the Commission to
19 regulate in the public interest, quote, the rates,
20 services, facilities, and practices of all -- closed
21 quote, of all persons engaging within Washington in the
22 business of supplying any utility service or commodity
23 to the public for compensation and, quote, related
24 activities.

25 "On the basis of this statutory authority,

1 the Commission has concluded it has jurisdiction over
2 transactions 'whenever the control of a plainly
3 jurisdictional public utility changes through a
4 corporate transaction for the transfer of the whole or a
5 controlling interest in the company.' "

6 And there's a citation there in the
7 application to the case styled, In the Matter of the
8 Application of PacifiCorp and Scottish Power plc, Docket
9 No. -- the reference is to Docket UE-981672, which is a
10 frequent mistake. It's actually 981627. I don't know
11 why that transposition occurs regularly, but it does.
12 Again, UE-981627. Scottish Power was not a combined
13 company, so it was appropriate to have a UE docket
14 designation there, by the way.

15 So the reason I read that is because I had
16 some involvement in the Scottish Power case many years
17 ago, and I recalled that we had a threshold dispute over
18 jurisdiction. This is one of the seminal cases in the
19 Commission's jurisprudence in transfer of property
20 cases, and we did have -- we took briefs, and early in
21 the case, a few months into the case, we entered an
22 order. The order I cited there, second supplemental
23 order, was in March 1999, and then the final order was
24 another seven months later before we got to that. But
25 that early order did discuss in some detail the basis --

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1 bases, for the Commission's assertion of jurisdiction.
2 And we did that about two more times before everybody
3 said okay, we give up and quit fighting the question of
4 jurisdiction.

5 So here we are today, and I appreciate the
6 Company's acknowledging our jurisdiction and the
7 jurisprudence of this agency. So thank you for that,
8 and with that, we will take appearances, and we'll start
9 with the Company.

10 Mr. Meyer.

11 MR. MEYER: Yes, thank you, Your Honor. I
12 wasn't sure where you were going with that, but what I
13 was waiting to hear is that you have no jurisdiction and
14 just have a nice day, but it didn't go in that
15 direction.

16 JUDGE MOSS: No, not at all.

17 MR. MEYER: All right. For the record, my
18 name is David Meyer, and all of my particulars are in
19 the information that's been provided to the court
20 reporter. I'm representing Avista.

21 MS. VANDER STOEP: Good morning, Your Honor.
22 My name is Kari Vander Stoep at K&L Gates, and I
23 represent Hydro One.

24 JUDGE MOSS: All right, Ms. Vander Stoep. I
25 was expecting Ms. Thomas, so remind me of your

1 association here. Are you part of the Company?

2 MS. VANDER STOEP: No, I'm a partner at K&L
3 Gates, and I work with Liz Thomas.

4 JUDGE MOSS: Oh, I see. I actually do have
5 you down here under Ms. Thomas. Of course, I'm familiar
6 with Ms. Thomas, so I just sort of stopped there. If
7 you'll kindly accept my apologies.

8 Go ahead, Ms. Thomas.

9 MS. THOMAS: Thank you, Judge Moss. I'm
10 Elizabeth Thomas also at K&L Gates also representing
11 Hydro One.

12 JUDGE MOSS: All right. Thank you.

13 MR. GOLTZ: Good morning, Your Honor. My
14 name is Jeffrey Goltz. I'm with Cascadia Law Group here
15 in Olympia, and we represent Northwest Energy Coalition,
16 Renewable Northwest, Natural Resources Defense Council.
17 I apologize, in our petition, we have a typo in my email
18 address. I corrected that with the court reporter, and
19 I corrected that with the records center last night.

20 JUDGE MOSS: All right. I have 606 Columbia
21 Street Northwest.

22 MR. GOLTZ: Correct.

23 JUDGE MOSS: Suite 112?

24 MR. GOLTZ: Yes.

25 JUDGE MOSS: 98501?

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1 MR. GOLTZ: Yes.

2 JUDGE MOSS: So I have it correct.

3 MR. GOLTZ: No, my email address is wrong.

4 JUDGE MOSS: Oh, the email address.

5 MR. GOLTZ: It's jgoltz@cascadialaw.com, and
6 I had cascadia.law.com.

7 JUDGE MOSS: Ah, I did have that wrong.

8 Thank you for that correction.

9 All right. Let's go ahead, Mr. ffitch.

10 MR. FFITCH: All right. Good morning, Your
11 Honor. Simon ffitch, attorney for The Energy Project.

12 JUDGE MOSS: All right. Thank you.

13 Ms. Gafken.

14 MS. GAFKEN: Good morning. Lisa Gafken,
15 Assistant Attorney General appearing on behalf of Public
16 Counsel.

17 JUDGE MOSS: Thank you.

18 Ms. Cameron-Rulkowski.

19 MS. CAMERON-RULKOWSKI: Good morning, Your
20 Honor. Jennifer Cameron-Rulkowski, Assistant Attorney
21 General appearing on behalf of Commission Staff.

22 JUDGE MOSS: Will there be other Staff
23 counsel involved in this case?

24 MS. CAMERON-RULKOWSKI: Not at this time,
25 Your Honor.

1 JUDGE MOSS: Okay. I've got all of you
2 listed here not knowing who it would be.

3 All right. And I believe we have some
4 representatives perhaps -- oh, we have some more in the
5 room. I always forget this. You know that, don't you?
6 Yes. All right. Go ahead.

7 MR. COWELL: Your Honor, Jesse Cowell
8 appearing on behalf of the Industrial Customers of
9 Northwest Utilities, and Patrick J. Oshie will also be
10 appearing on behalf of ICNU.

11 JUDGE MOSS: Thank you very much.

12 MS. FRANCO-MALONE: And, Your Honor,
13 Danielle Franco-Malone with Schwerin Campbell Barnard
14 Iglitzin & Lavitt representing the Laborers District
15 Council of the Pacific Northwest.

16 JUDGE MOSS: Okay. Thank you very much, and
17 I apologize again for overlooking the left side of the
18 room. I just do that.

19 All right. Anybody on the telephone who
20 wishes to enter an appearance?

21 MR. RITCHIE: Yes, Your Honor. Good
22 morning. Travis Ritchie on behalf of the Sierra Club.

23 JUDGE MOSS: Good morning, Mr. Ritchie.
24 Anybody else?

25 MR. STOKES: Yes, Your Honor. This is Chad

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1 Stokes for the Northwest Industrial Gas Users.

2 JUDGE MOSS: Thank you, Mr. Stokes.

3 Mr. Brooks will be appearing with you in this case?

4 MR. STOKES: Yes, Your Honor.

5 JUDGE MOSS: Thank you.

6 Anybody else? All right. That would
7 complete our appearances. Okay. All right. Now we
8 have to take up the petitions to intervene. I'll turn
9 to you first, Mr. Meyer, and ask if the Company has
10 objections to any of the petitions.

11 MR. MEYER: We do not.

12 JUDGE MOSS: All right. Are there any other
13 objections from parties to any of the petitions?

14 MS. CAMERON-RULKOWSKI: Yes, Your Honor.
15 Staff does object to the interventions of Sierra Club,
16 to some extent to NWEC, and also to the Washington and
17 Northern Idaho District Council of Laborers.

18 JUDGE MOSS: All right. We will take those
19 up individually. Are there other objections we're going
20 to need to take up?

21 MS. THOMAS: No.

22 JUDGE MOSS: Pretty much covered the bases
23 there.

24 MS. GAFKEN: No objections from Public
25 Counsel.

1 JUDGE MOSS: Okay. Mr. ffitch has no
2 objections from The Energy Project.

3 Mr. Cowell?

4 MR. COWELL: No, Your Honor.

5 JUDGE MOSS: Well, then, let's -- let's
6 start with the objection to the Sierra Club, and we'll
7 hear from the Sierra Club, Mr. Ritchie, as to you -- of
8 course, you did file a petition, but since you are the
9 apply applicant through your petition, I'll give you the
10 opportunity to speak first and then I'll hear from
11 Ms. Cameron-Rulkowski about Staff's objection. Go ahead
12 please, Mr. Ritchie.

13 MR. RITCHIE: Thank you, Your Honor. Travis
14 Ritchie for Sierra Club. As we stated in our petition
15 to intervene, we are still reviewing the extent of the
16 application and for all of the issues that we intend to
17 raise are still under review. However, at a minimum, as
18 Your Honor knows and as the other parties know, the
19 Sierra Club has been engaged for many years on issues
20 related to the Colstrip coal plant.

21 One of our primary concerns with that,
22 something that we've raised repeatedly with this
23 Commission, is this extent of the obligations and
24 liabilities to the various co-owners of Colstrip. One
25 of the things that we are -- have been working on

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1 recently, both with the Commission, and what we're
2 getting more information on is quantifying the extent of
3 the liabilities and trying to understand what they are.

4 So this merger in particular I think is
5 particularly important and relative to those interests
6 on the extent of whether Hydro One coming in as a
7 foreign company will have both the means and the intent
8 to satisfy all of the liabilities and obligations with
9 Avista and the co-owner of Colstrip has accrued over the
10 years. And so that is something that is of interest to
11 Sierra Club and also to Sierra Club's members, because
12 they will be responsible for many of those payments for
13 the liabilities to unwind Colstrip whenever that time
14 comes.

15 And so we think we do have a direct interest
16 in the proceeding both as an organization and then also
17 representing the economics and environmental interest of
18 our members, of our customers of Avista.

19 JUDGE MOSS: All right. Thank you.

20 Ms. Cameron-Rulkowski, what is the basis for
21 Staff's objection?

22 MS. CAMERON-RULKOWSKI: Well, I would like
23 to go over the intervention standard first. In the
24 Verizon Frontier transaction in Docket UT-090842 in
25 Order 5, the Commission addressed the intervention

1 standard, and it's based on the Commission's rule
2 WAC 480-07-355 and on the Administrative Procedure Act
3 at RCW 34.05.443. And pursuant to the Commission's
4 decision in Order 5, in order to grant a petition for
5 intervention, the Commission must find that the
6 petitioner either has a substantial interest in the
7 subject matter of the proceeding or that its
8 participation is in the public interest.

9 In addition, the Commission considers
10 whether the intervention sought is in the interest of
11 justice and will not impair the orderly and prompt
12 conduct of the proceeding. To analyze whether a
13 petitioner has a substantial interest, the Commission
14 applies a zone of interest test to see if the petitioner
15 has shown that there is a nexus between the purpose of
16 the organization and an interest protected by a
17 Washington statute within the Commission's jurisdiction.
18 When the Commission evaluates whether participation is
19 in the public interest, the Commission may consider
20 whether intervention would enhance its understanding and
21 analysis of the matter at hand.

22 Sierra Club asserts in its written petition
23 that it has many members who are residential customers
24 of Avista, but that's not the main basis of its
25 petition. The interests that Sierra Club identifies in

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1 its petition are a responsible transition away from
2 reliance on the Colstrip coal plant in Montana and a
3 cleaner and more sustainable energy portfolio. And we
4 just heard from Mr. Ritchie on the phone that he's
5 especially -- Sierra Club is especially concerned with
6 the ownership interests and liabilities among multiple
7 owners of the Colstrip plant.

8 Also Sierra Club is concerned that the
9 proposed merger would impact Avista's ongoing rights and
10 obligations related to the Colstrip plant and Avista's
11 commitments to moving toward cleaner energy sources that
12 Sierra Club members -- that pay for.

13 The interests in transitioning away from
14 Colstrip and in developing a cleaner energy portfolio
15 and these ownership interests and liabilities among the
16 multiple owners of Colstrip units are not substantial
17 interests within the meaning of the intervention role,
18 because these issues are not within the scope of this
19 proceeding or even with regard to multiple owners of the
20 Colstrip units within the Commission's power.

21 Colstrip Units 3 and 4 have, I believe, five
22 owners, and Avista is in the minority with respect to
23 percentage of ownership as I understand it. This is not
24 the appropriate proceeding to address Avista's power
25 supply or the useful lives of Colstrip Units 3 and 4. A

1 general rate case or perhaps an integrated resource plan
2 proceeding would be more appropriate proceedings for the
3 issues that Sierra Club wishes to raise.

4 And I will note that Avista currently has a
5 general rate case pending before the Commission, but
6 Sierra Club did not seek intervention in that
7 proceeding. Furthermore, Sierra Club's participation
8 would not be in the public interest. Sierra Club states
9 that it has substantial experience on energies -- excuse
10 me, on issues related to clean energy in Washington.
11 It's not clear, however, that substantial experience in
12 clean energy will assist the Commission in its analysis
13 of this merger.

14 And I should say at this point that we fully
15 expect that some of these issues regarding the Colstrip
16 Units 3 and 4 will be raised and will need to be
17 addressed. This is simply not the proceeding for it.
18 In addition, a focus on the operation of Colstrip Units
19 3 and 4 would unreasonably broaden the issues in this
20 proceeding.

21 In the MidAmerican Energy acquisition of
22 PacifiCorp in Docket UE-051090, the administrative law
23 judge denied intervention to Snohomish County Public
24 Utility District No. 1 or SnoPUD. SnoPUD's interest in
25 the proceeding concerned transmission and access to

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1 wholesale power markets. The administrative law judge
2 stated in his prehearing conference order that SnoPUD's
3 interest concern matters within the jurisdiction of
4 FERC, that's F-E-R-C, and that his intervention would
5 broaden issues and unnecessarily complicate the
6 Commission's consideration of the proposed transaction.

7 Similarly, in the instant proceeding,
8 pursuing any sort of commitments or resolutions related
9 to Colstrip or otherwise addressing Avista's power
10 supply would broaden issues in the case and could raise
11 issues that are beyond the Commission's power to
12 address.

13 In the event, however, that the Commission
14 does decide to grant Sierra Club's petition, Staff
15 proposes that Sierra Club's participation be limited to
16 its general interest in a cleaner and sustainable energy
17 portfolio and it be required to coordinate any discovery
18 and presentation with any other intervenors addressing
19 this issue. The APA at RCW 34.05.443 specifically
20 allows limiting an intervenor's participation and
21 requiring intervenors to combine their participation in
22 a proceeding.

23 In the Verizon Frontier transaction, which I
24 had cited first when I was discussing the standard for
25 intervention, the Commission limited the participation

1 of the International Brotherhood of Electrical Workers
2 and prohibited it from raising quote/unquote labor
3 relations matters, which the Commission deemed beyond
4 the scope of its jurisdiction. Similarly, in the
5 instant proceeding, Sierra Club should not be permitted
6 to raise matters that cannot be affected in this
7 proceeding such as determining liabilities and selling
8 interests in Colstrip.

9 JUDGE MOSS: Well, Ms. Cameron-Rulkowski,
10 that was the most thoroughgoing objection to an
11 intervention that I have ever heard in 20 years of
12 practice here, and I think you did a nice job. And I
13 appreciate all the references to authority and so forth.
14 I wonder if any other party wishes to say something in
15 the wake of that.

16 And I'll give -- Mr. Ritchie, I'll give you
17 another chance in a minute.

18 Go ahead, Ms. Thomas.

19 MS. THOMAS: Thank you, Your Honor. Thank
20 you, Your Honor. The -- Hydro One would simply add that
21 in the event that Sierra Club is granted intervention,
22 Hydro One would nevertheless be quite interested in
23 determinations about which issues properly are and are
24 not within the scope of the proceeding. I think that
25 Staff has raised a very good point in that.

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1 JUDGE MOSS: Okay. And I'll say in response
2 to that that we don't really know yet what the issues in
3 this proceeding are going to be, and I think the Sierra
4 Club has acknowledged that that question is still being
5 analyzed. And I certainly couldn't sit here and list
6 what they are, although I've done a few of these over
7 the years and I have some sense of what some of them may
8 be. There's certainly going to be issues particular to
9 this case.

10 So, Mr. Goltz, did you have something to
11 say?

12 MR. GOLTZ: Well, I can address it now if
13 the objection to --

14 JUDGE MOSS: I assume --

15 MR. GOLTZ: If she has the same objection
16 for my clients, then I'm happy to go now.

17 JUDGE MOSS: Is that right?

18 MR. GOLTZ: If there's something additional
19 or something less, then I guess I'd like to hear that.

20 MS. CAMERON-RULKOWSKI: It's very short what
21 I have to discuss with respect to NVEC. I can discuss
22 that now if you'd like, Your Honor.

23 JUDGE MOSS: Let's go ahead. It does seem
24 somewhat overlapping.

25 MS. CAMERON-RULKOWSKI: All right. The

1 Northwest Energy Coalition, that's NWECC, Renewable
2 Northwest, RNW, and the Natural Resources Defense
3 Council, NRDC, have stated the following interests in
4 their petition to intervene. One, Avista's
5 implementation of clean energy; two, Avista's ownership
6 interest in the coal-fired power plant in Colstrip,
7 Montana; three, issues related to energy efficiency
8 assistance and other affordability issues for low and
9 moderate income customers.

10 For the same reasons that Sierra Club's
11 petition should be denied, the Coalition group should
12 not be allowed to raise clean energy issues or Colstrip
13 ownership issues in this proceeding. The Commission
14 should limit the Coalition group's participation to
15 energy efficiency, assistance, and other affordability
16 issues and require the group to coordinate its discovery
17 and presentation with other parties such as Public
18 Counsel and The Energy Project to avoid duplication of
19 the record.

20 JUDGE MOSS: Thank you.

21 Mr. Goltz now.

22 MR. GOLTZ: Thank you, Your Honor. So first
23 of all, the three parties that I represent here have all
24 participated many, many times in various Commission
25 proceedings whether they be rate cases, whether they be

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1 proceedings that are not adjudications before the open
2 meetings of the Commission on energy efficiency matters,
3 on renewable energy matters, and their participation has
4 been, I believe, generally welcomed by the Commission.
5 I believe they've always been valued and never have
6 they, to my knowledge, engaged in any tactics which
7 would seek to delay the Commission in its efforts.

8 These parties are all parties in the PSE
9 rate case where a number of these matters have also been
10 or are being discussed. There was no objection to their
11 intervention in that case as I recall. Now, let's --
12 but why -- beyond that, why should this Commission allow
13 the participation of these three environmental and
14 energy -- clean energy and energy efficiency advocacy
15 groups.

16 This Commission is going to be applying a
17 new statutory -- a relatively new statutory test. I
18 mean, new as far as Commission matters go. It's about
19 eight years now, but it's now a net benefits test, and
20 before that, it was a no harm standard. So at issue in
21 this proceeding is going to be what is the difference,
22 what does that mean? And there will be some sort of
23 elaboration. There already has been in the prefiled
24 testimony by the applicants as to what the net benefits
25 would be of this proposed transaction, and that's the

1 exact sort of information that you'll be -- the
2 Commission will be receiving from all the parties, what
3 are the harms, what are the benefits, will the net
4 benefits test be fulfilled.

5 So what does that mean? Let's go back to
6 2009 when that statute was enacted by the legislature
7 shortly after the Puget Sound Energy Macquarie
8 transaction was approved under a no harm standard. It
9 was Senate Bill 5055, and it was proposed by the prime
10 sponsor of the Senator Lisa Brown in Spokane. And I did
11 a little checking on that and spent some time listening
12 to the TVW tapes, recordings, videotapes of the
13 proceeding before the senate committee on environment,
14 water, and energy where Senator Brown was presenting
15 this net benefits test proposal to the legislature, and
16 she said she had three reasons for doing this.

17 One is other states have that standard, this
18 would be consistent. And then she said whenever there's
19 a change in ownership, there's a certain level of risk
20 that the best analysis cannot properly eliminate
21 completely. So the intention was to add this net
22 benefits test to impose a certain higher standard of
23 proof on the applicants because of that inherent risk
24 that's involved in any acquisition transaction.

25 But the third reason she gave is the most

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1 relevant one to the objection by Commission Staff.

2 In 2009, in early 2009 of January when this was taking

3 place, we just had a brand-new federal administration.

4 Clean energy was on the front page. Clean energy was

5 thought to be a major issue facing Congress and the

6 Washington State legislature, and Senator Brown said

7 that by having this net benefits standard, there would

8 be an opportunity for having these new clean energy

9 national state policies injected into these sorts of

10 merger proceedings. She said right now they are

11 involved in rate cases. By having a net benefits

12 standard would allow them to go forward and have

13 these -- first the negotiations. Everyone recognized

14 that generally these standard, these cases are

15 negotiated settlements that would allow the parties to

16 the proceeding to advocate for clean energy policies and

17 energy efficiency policies.

18 Now, that point is the exact sort of

19 advocacy that the Sierra Club wants to make that my

20 clients want to make, and that's the exact sort of

21 advocacy that I believe Senate Bill 5055 net benefits

22 standards should welcome, not reject. So for those

23 reasons, I urge that the Commission grant the petitions

24 to intervene.

25 Now, having said that, just some suggested

1 limitations. I think when you start to dice -- slice
2 and dice what is and what is not a possible area of --
3 of advocacy for an intervenor, it becomes very difficult
4 to draw that line. So for example, let's say that --
5 assume that you allow these -- my three clients and
6 Sierra Club into the case, and there's an advocacy for
7 clean energy, provisions in the -- among the net
8 benefits among the conditions of perhaps an approval.
9 Well, one of the arguments against that might be oh my
10 gosh, rates are going to go up. So now could we respond
11 to that, can we talk about rates? Well, I think that
12 would be relevant to what we're doing.

13 My point is it's very difficult to say we're
14 going to cabin this intervenor or that intervenor to a
15 very finite set of issues without allowing them to at
16 least respond, which would in effect would broaden the
17 issues to the entire case. So for those reasons, I
18 request the Commission grant our petitions to intervene.

19 JUDGE MOSS: All right. Thank you very
20 much.

21 Anybody else want to be heard before I turn
22 back to Mr. Ritchie?

23 All right. Mr. Ritchie, do you want a final
24 word on this or do you believe we have had enough
25 conversation about it? I certainly have heard a lot of

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1 good information from the -- both from the objection and
2 from the responses to it so far.

3 MR. RITCHIE: I would appreciate an
4 opportunity to respond, Your Honor.

5 JUDGE MOSS: All right. And please try to
6 speak up a little bit or move closer to the phone. It's
7 a little hard to hear you, Mr. Ritchie.

8 MR. RITCHIE: Thank you, Your Honor. I will
9 do that. Is this a little bit better?

10 JUDGE MOSS: A little bit better, thank you.

11 MR. RITCHIE: Thank you, Your Honor. Well,
12 first I would note that it seems that Sierra Club seems
13 to draw objections to intervention before you from time
14 to time. I remember addressing something similar in
15 Puget Sound Energy's rate case, and the reason I raise
16 that here is I think part of the objection was based off
17 of a perception or an assumption of what Sierra Club is
18 going to argue.

19 As I stated in our intervention, I'm not
20 quite sure the extent of what we're going to argue. But
21 our intervention did not address anything related to
22 revenue requirement, it didn't address anything related
23 to a retirement date for the Colstrip unit. What we did
24 address in paragraph 6 of our intervention was that we
25 are very interested in exploring the obligations and

1 reliabilities related to Avista's ownership interest in
2 the Colstrip plant and to ensure that Hydro One will be
3 adequately positioned to address those obligations.

4 Now, that is an issue that is very tied to
5 the corporate structure, the funding, and the intentions
6 of a parent company coming in to purchase a polluting
7 facility that has a very long tail of liability. I
8 don't think anybody in this room, including Avista,
9 would dispute the fact that there are going to be
10 cleanup and remediation obligations at Colstrip.

11 Sierra Club's contention has been in many
12 proceedings that the extent of those liabilities may not
13 be fully understood at this time. And so therefore at a
14 minimum, part of our interest is to ensure that a new
15 corporate owner coming in understands what those
16 liabilities are and is in a fully financial position and
17 has the intent to fully address those liabilities. If
18 they do not, ratepayers could be in the position of
19 holding the bag in the future, and that is something
20 that would have a substantial effect on the economic
21 interest of Sierra Club's members who are customers of
22 Avista if at some point in the future they're required
23 to be the provider of last resort, so to speak, if the
24 corporate entity is not sufficiently set up in order to
25 take care of these obligations.

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1 Now, I'm not suggesting that that's what's
2 going to happen with Hydro One. You know, that's an
3 extreme example, but it's something that bears scrutiny
4 and is worth looking into. Sierra Club unfortunately
5 has a lot of experience both in the utility sector and
6 particularly outside in the mining sector and other
7 polluting industry sectors where changes in corporate
8 ownership near the end of a facility's life are used to
9 avoid obligations, both environmental and economic.
10 Again, I'm not suggesting that this is anything that
11 Hydro One is intending to do, but those are the worst
12 case scenarios that Sierra Club has seen in the utility
13 sector and elsewhere. And so those are the issues that
14 are primarily what first caught our attention with the
15 merger.

16 Now, I agree with Mr. Goltz about there are
17 other issues that may come up with this as we start to
18 really dig into the merger and really look at what are
19 the obligations, what are the net benefits, what are the
20 conditions and commitments that are being made by the
21 various companies here, and we'd like to be able to
22 freely address those. But I do think at a minimum that
23 Sierra Club has shown sufficient -- with requirements of
24 intervention that we do have a specific interest in this
25 matter and should have a right to represent our members'

1 interest in the proceeding.

2 JUDGE MOSS: All right. Thank you,
3 Mr. Ritchie.

4 Does anyone believe that I need to hear
5 anything else on this?

6 MS. FRANCO-MALONE: Your Honor, may I
7 clarify whether you'd like to hear a response to the
8 Laborers' petition to intervene separately --

9 JUDGE MOSS: We'll take that up separately,
10 thank you.

11 MR. RITCHIE: Your Honor, I'm sorry. I
12 would like to add one more point. I will agree with
13 Ms. Cameron-Rulkowski that Sierra Club absolutely will
14 agree to coordinate both our discovery and our
15 production with the other intervenors in the proceeding.
16 That is something we always strive to do, and I have no
17 problem making that commitment in this proceeding.

18 JUDGE MOSS: All right. Thank you.

19 Ms. Cameron-Rulkowski, you seem to have
20 something further you wish to say.

21 MS. CAMERON-RULKOWSKI: I do, Your Honor.
22 Staff does remain concerned that the proceeding could be
23 burdened by discovery into what exactly the liabilities
24 are and plans are for the Colstrip Units 3 and 4. And I
25 would simply reiterate that this is not the proceeding

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1 for these issues.

2 JUDGE MOSS: All right. Responding first to
3 that point, I think if Avista finds itself burdened by
4 discovery in some way, they will let me know, and I will
5 police that activity as I would in any case. I don't
6 think there would be much coming in Staff's direction
7 along those lines.

8 And I mentioned a moment ago that I will
9 take up the Union's petition separately. And one of the
10 reasons is that we do take a somewhat different view of
11 public interest to organizations when we're considering
12 petitions to intervene because, among other things,
13 whether their interest is substantial or
14 great -- highly substantial or what have you, we have
15 found over the years that the participation of
16 organizations such as NWECC, Renewable Northwest, Natural
17 Resources Defense Council, and Sierra Club, too, have
18 been in the public interest because they bring a
19 perspective to bear on issues that are important to and
20 increasingly become essential to our jurisdiction, and
21 environmental issues have become part of our work. It's
22 part of what we have to consider under the various
23 statutes and policies that the State has enunciated in
24 more recent periods of time.

25 I am persuaded on balance that the Sierra

1 Club's petition should be granted, as should the
2 petition of NWECA, Renewable Northwest, and Natural
3 Resources Defense Council, and so that's my ruling on
4 that. All right.

5 MS. CAMERON-RULKOWSKI: Very good, Your
6 Honor.

7 JUDGE MOSS: All right. And I do appreciate
8 all the fine argument. Everybody was well prepared for
9 this, more so than I was. All right. Thank you again.

10 Let's now hear your objection -- did -- you
11 do have an objection to the Northern Idaho District
12 Council of Laborers intervention, I believe?

13 MS. CAMERON-RULKOWSKI: That's correct, Your
14 Honor.

15 JUDGE MOSS: Go ahead and state your
16 objection.

17 MS. CAMERON-RULKOWSKI: Thank you, Your
18 Honor. The District Council is a construction industry
19 Union as I understand it from the petition. The
20 District Council's stated interests are rates of pay,
21 benefit packages, and employment conditions for
22 construction workers employed by third parties on Avista
23 projects.

24 These interests are not substantial
25 interests within the meaning of the intervention rule

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1 because pay, benefits, and construction employment
2 conditions are not matters that the Commission
3 regulates, and the Commission's decision will not
4 control these matters. Nor is the District Council's
5 participation in the public interest. The petitioner
6 states that it can provide information including wage
7 rates, training requirements, construction standards,
8 local employment impacts, and work force development
9 investments.

10 Unlike the IBEW Union however, which was
11 granted intervention in the Verizon Frontier transaction
12 to address issues related to the safety and reliability
13 of service to the consumer, the issues that the District
14 Council proposes to address have no nexus with the
15 public interest within the purview of the Commission.

16 When the District Council petition to
17 intervene in the PSE transfer to Puget Holdings, this
18 was the Macquarie case in Docket U-072375, the
19 administrative law judge denied the petition. In the
20 administrative law judge's prehearing conference order,
21 he found that the Council's asserted interests that its
22 members are PSE ratepayers did not establish a
23 substantial interest and concluded that the District
24 Council has established no nexus between itself as an
25 organization and any potential issue in this proceeding.

1 The Commission should deny the District
2 Council's petition in the instant proceeding as well,
3 because the Commission cannot address the District
4 Council's interests, and there's no basis to conclude
5 that the information it can provide such as wage rates
6 or local employment impacts in the construction industry
7 is material to the proposed transaction.

8 JUDGE MOSS: Thank you.

9 Ms. Franco-Malone, would you like to
10 respond?

11 MS. FRANCO-MALONE: Yes, Your Honor. Thank
12 you. I represent the Washington and Northern Idaho
13 District Council of Laborers who in turn represents over
14 100 members who are the ones actually on the frontline
15 doing the work for various Avista contractors including
16 NPL, North Star Enterprises, Spokane Traffic Control,
17 Max Kuney, Garco, and Lydig.

18 The merger in question is going to have
19 impacts on several issues that the Laborers have
20 contracts with these various contractors that covers
21 including wages, benefits, employment conditions, but
22 also training, construction standards. All of these
23 things do have a direct nexus on the safety and
24 reliability of the system. Under a similar standard,
25 intervention was recently granted to the Baltimore

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1 Washington Construction Laborers District Council in the
2 District of Columbia involving a merger between AltaGas
3 and WGL Holdings.

4 I don't think that it's a close question
5 whether the Laborers has a substantial interest in this
6 proceeding, and also that it's in the public interest,
7 given the impact on all of these various things that the
8 merger will have that directly impact the safety and
9 reliability of the system.

10 I'll also note that under 480-07-355, the
11 other factors considered, there's no reason to think
12 that the Laborers intervention will impair the orderly
13 conduct of the proceeding. As with the other
14 intervenors we are, of course, happy to coordinate
15 discovery and take other steps to ensure that our
16 intervention does not unreasonably burden or broaden the
17 issues in this proceeding.

18 But again, believe that it's -- it's not a
19 close call that the Laborers does have a substantial
20 interest in the outcome of this proceeding, given the
21 direct impact that the merger will have on our members
22 who are the ones doing the work on the Avista system.

23 JUDGE MOSS: Thank you.

24 Does anyone else wish to be heard on this?

25 MR. COWELL: Your Honor?

1 JUDGE MOSS: Yes, sir.

2 MR. COWELL: I'd just like to add in my
3 initial review of the filing, there's some issues that
4 ICNU may be interested in exploring, like commitments to
5 do it, economic development in the region, and things
6 I'm not exactly sure where the parameters of that would
7 fit. But I'm interested in exploring it, and the
8 arguments that I've heard today from a ratepayer
9 perspective have been quite frankly enlightening, some
10 things I had not considered.

11 And I would imagine that similarly, as we
12 explore these issues, may get some new perspectives,
13 which I think is always a value of having a robust
14 sampling of intervenors in a case, especially one like
15 this with so many areas to work out and a new standard
16 of the net benefits to consider and the application of
17 quite a few issues.

18 JUDGE MOSS: Thank you.

19 Anybody else? Ms. Cameron-Rulkowski?

20 MS. CAMERON-RULKOWSKI: I suppose I would
21 want to leave the Commission with the thought that
22 whatever parties file in testimony and ask the
23 Commission to do in their testimony, it has to be
24 something that the Commission legally has the authority
25 to do. And it's a concern that the District Council may

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1 be asking the Commission to do things that the
2 Commission simply cannot -- cannot order. And so I --
3 with these -- with this particular intervention, it does
4 seem to go beyond the scope of what we're primarily
5 considering here, which is the net benefits standard,
6 which is net benefits to ratepayers, and it seems that
7 the connection that District Council is trying to draw
8 is simply too attenuated. Thank you, Your Honor.

9 JUDGE MOSS: All right. Any final words
10 from the Union?

11 MS. FRANCO-MALONE: Just that the standard,
12 the training that the workers who are performing the
13 work are receiving, the construction standard that the
14 Union and the various contractors have agreed to are all
15 things that directly impact the safety and reliability
16 of the system, and I would contend that those are not
17 attenuated interests and directly go to whether there
18 will be a net benefit as a result of the merger.

19 JUDGE MOSS: All right. Thank you.

20 MR. MEYER: May I be heard?

21 JUDGE MOSS: Oh, I'm sorry. Mr. Meyer, I
22 thought you were not interested in this particular
23 motion.

24 MR. MEYER: I am.

25 JUDGE MOSS: Well, please speak.

1 MR. MEYER: Okay.

2 JUDGE MOSS: Sorry.

3 MR. MEYER: No, no, it's all good. I don't
4 object, but I think there needs to be a clear
5 understanding that if, with respect to any of these
6 interventions, the testimony wanders into areas whether
7 it's for in regard to your point that it's relief that
8 can't be granted or whether it's so far afield of these
9 proceedings that parties of course have the option, and
10 I reserve that option to move to strike. And so we can
11 address those kind of issues at the time we see how
12 they're put to the Commission.

13 JUDGE MOSS: And while we do have the power
14 to police these matters as they go forward in the manner
15 that Mr. Meyer just suggested and we have other powers
16 as well, I nevertheless find in considering this motion,
17 and I read your motion carefully before I came in here
18 today, and I haven't heard anything that has persuaded
19 me other than to the view that the interest you have
20 stated on behalf of your client are quite attenuated
21 from anything we're going to be considering in this
22 case. And they're matters that are not within our
23 jurisdiction, they're largely matters of contract, and
24 this Commission does not have -- this is not the right
25 venue, if you will, for any contract-type disputes to be

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1 considered between contracting construction workers or
2 companies and the utility.

3 To the extent we're talking about Union
4 contracts here, I suppose the National Labor Relations
5 Board is another venue where you might have some
6 opportunities to pursue your client's interest, but I
7 don't think this is a proceeding where they can be
8 pursued, and so I'm going to deny your intervention.
9 Thank you very much.

10 And I do appreciate the very thoroughgoing
11 arguments that I've heard on all sides of these issues
12 today. It's unusual to have to spend nearly an hour on
13 petitions to intervene. In fact, this is probably the
14 longest prehearing conference I've ever done, but I do
15 appreciate it very much, and you have my rulings, and I
16 will include some discussion in my order, all right?

17 Now, with that taken care of, we need to
18 talk about procedural schedule. So I know the parties
19 were engaged in that conversation when I walked into the
20 room this morning, which I appreciate that effort. I
21 wonder if it started soon enough for you all to have
22 resolved the procedural schedules.

23 MR. MEYER: I think, Jennifer, you have the
24 list.

25 MS. CAMERON-RULKOWSKI: I believe we have an

1 agreed procedural schedule, Your Honor.

2 JUDGE MOSS: Is it written down or will I
3 need to write it down as we go?

4 MS. CAMERON-RULKOWSKI: I can pass you up a
5 copy that's a bit marked up, and you let me know if that
6 will suffice.

7 JUDGE MOSS: All right. So the schedule
8 that I've been handed notes the filing of application on
9 the 14th and then identifies the date of the settlement
10 conference the week of December 11th.

11 MS. CAMERON-RULKOWSKI: I'm sorry, Your
12 Honor, that should be -- I should have done a strike
13 through there. There's a notation there that says
14 February 6th.

15 JUDGE MOSS: February -- the day of February
16 6th?

17 MS. CAMERON-RULKOWSKI: Correct.

18 JUDGE MOSS: All right. February 6th. Yes,
19 I did think that was a bit far out. Well, actually not.
20 That's December of this year. So anyway, February 6th
21 of 2018. All right. And then you -- this does call for
22 public comment hearing in Spokane, but that will be a
23 date to be determined, assuming there's no strong
24 objection to having such a hearing.

25 MS. GAFKEN: Your Honor, so I have been in

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1 contact with Mr. Andrews on Staff, and I understand that
2 there are some discussions about how to do the public
3 comment hearings and, you know, not only in Spokane, but
4 in other locations. And so you will see on the schedule
5 here that there's public comment hearings in two
6 different places. Of course it's subject to
7 Commissioner availability, and it's possible that we
8 could do it all in one trip, but I understand that
9 there's upwards of four locations that are being looked
10 at for public comment hearing. So with those comments
11 in mind and logistics to be figured out, one thought is
12 that if that can't be done all in one trip, that it may
13 need to be split out before and after that first round
14 of response testimony.

15 JUDGE MOSS: All right. Subject to the
16 continuing dialogue suggested by Ms. Gafken's comments,
17 I would anticipate that the Commissioners will want to
18 have at least one public comment hearing in this matter
19 if not more. So I would expect you to be continuing to
20 communicate with me on that subject matter and to keep
21 all parties in the loop at the same time you're talking
22 to me about it by email or what have you, and we will
23 work out the details, all right?

24 You have a March 15th date for Staff, Public
25 Counsel, intervenor testimony, correct?

1 MS. CAMERON-RULKOWSKI: That's correct.

2 JUDGE MOSS: I'm just verifying these here.
3 Let's see, Avista's rebuttal testimony and any
4 cross-answering testimony on April 25th?

5 MR. MEYER: I'm sorry, what date?

6 JUDGE MOSS: I have April 25th, 2018, on
7 this list here.

8 MR. MEYER: Yes.

9 JUDGE MOSS: Is that right?

10 MR. MEYER: It is. That's what I
11 understand.

12 MS. CAMERON-RULKOWSKI: And, Mr. Meyer, my
13 apologies, I just gave the judge your copy.

14 MR. MEYER: Oh, well, you couldn't possibly
15 read my handwriting. Not even possible, so thank you.

16 JUDGE MOSS: All right. Now, you have
17 identified a discovery deadline of May 2nd, 2018, a date
18 for cross-examination, exhibits, witness list, and time
19 estimates for cross-examination on May 16, evidentiary
20 hearing you've identified May 22nd and 23rd.

21 MS. CAMERON-RULKOWSKI: With regard to that,
22 Your Honor, I did contact Ms. Doyle, and she indicated
23 that those dates were available as of the time we spoke.

24 JUDGE MOSS: Okay. Well, it will be a busy
25 month, but we have the CNG evidentiary hearing the week

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1 before that, but we will go ahead and mark those dates
2 down subject to the Commissioners' preferences, of
3 course. We always have to accommodate their calendars
4 to the extent we can, and I will inquire specifically
5 about those dates, but I'll try to get those dates to
6 work.

7 MR. MEYER: Your Honor, if we're just trying
8 to -- of course all parties are trying to lock down
9 witnesses and everything, so if these proposed dates
10 will not work when you check, I would like to have
11 further discussions about other dates that would work
12 for the Commission and all of us rather than just
13 throwing out --

14 JUDGE MOSS: I think that makes a lot of
15 sense. We'll have some coordinated effort to get to a
16 date that works for everyone including the
17 Commissioners.

18 MR. MEYER: Thank you.

19 JUDGE MOSS: All right. Thank you.

20 All right. You've got a date down here for
21 initial briefs, June 28th.

22 MS. CAMERON-RULKOWSKI: And, Your Honor,
23 those would be simultaneous. That would be simultaneous
24 briefing.

25 JUDGE MOSS: Okay. No reply briefs?

1 MS. CAMERON-RULKOWSKI: That's correct.

2 MR. MEYER: That's correct.

3 JUDGE MOSS: All right. And you're asking
4 for a decision by August 14th, 2018.

5 MS. CAMERON-RULKOWSKI: Your Honor, that
6 would be the statutory deadline.

7 JUDGE MOSS: Oh, it's 11 months. I counted
8 ten months. I guess it's the old rate case thing, you
9 know? Because I had July 14th, but that was my mistake.
10 I didn't count the full 11 months because of the
11 different nature of this proceeding. We normally lose
12 that first 30 days on the rate cases. So by
13 August 14th, 2018, and I will simply note in that
14 regard, although I do not anticipate it to be a problem,
15 that the statute -- or is it a rule, I guess --

16 MR. MEYER: Statute.

17 JUDGE MOSS: It does provide for up to a
18 four-month extension for cause and so that we would have
19 that flexibility if I got hit by a bus or something, we
20 might need some extra time.

21 MS. CAMERON-RULKOWSKI: Heaven forbid.

22 JUDGE MOSS: I'm not sure everybody shares
23 your respect, Ms. Cameron-Rulkowski, but there you have
24 it.

25 MS. CAMERON-RULKOWSKI: And don't be

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1 thinking about retiring.

2 JUDGE MOSS: Oh, I think about it every day.

3 All right. Let me see now, get back to my
4 agenda here and see if there's anything that I'm
5 forgetting to do.

6 MS. CAMERON-RULKOWSKI: Your Honor, I did
7 have a couple of other matters when we're done with the
8 procedural schedule and when you're ready.

9 JUDGE MOSS: I am to the other business
10 section.

11 MR. GOLTZ: Your Honor, just a confirmation
12 on the procedural schedule. You skipped right over
13 the -- one of the dates that was hard to arrange was the
14 date for the second settlement conference, and I believe
15 it's to be determined. I just want to confirm that's
16 what you have there.

17 JUDGE MOSS: Oh, okay.

18 MR. GOLTZ: We need to work on that, but
19 we'll agree to that.

20 JUDGE MOSS: Oh, settlement conference,
21 yeah, that was further up the list. I was already past
22 that.

23 MR. GOLTZ: Okay.

24 JUDGE MOSS: Yes, I think the -- of course
25 the parties should, you know, coordinate among

1 themselves.

2 MR. GOLTZ: Okay.

3 JUDGE MOSS: To find mutually convenient
4 times for these. We like to schedule at least one into
5 the prehearing order as sort of a marker that we lay
6 down to say yeah, you guys should sit down and talk
7 about this, and I'm sure you will.

8 MR. MEYER: We will, and I would like to
9 button that up, though, the second conference as soon as
10 we can. We tossed around some dates among ourselves,
11 and I think that Mr. Goltz had some scheduling issues
12 on --

13 But you'll get back to us.

14 MR. GOLTZ: Oh, yeah.

15 MR. MEYER: Through email we can nail that
16 down.

17 MS. CAMERON-RULKOWSKI: And the intent was
18 to keep that between the parties and on the parties'
19 calendars and not have the second settlement conference
20 on the procedural schedule.

21 JUDGE MOSS: All right. Well, then, I can
22 go ahead with the prehearing order without worrying
23 about getting that date.

24 Okay. Are there other matters the parties
25 wish to raise to my attention?

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1 MR. COWELL: Your Honor, I just wanted to
2 confirm with the two footnotes there, at least on the
3 schedule I was looking at, which I think pretty standard
4 with procedures of this length with the discovery time
5 being shortened to seven days and five days
6 respectively.

7 JUDGE MOSS: Yes, I put those footnotes in
8 because this has become sort of routine practice, and if
9 the parties have some other ideas or don't want to do
10 that, then just let me know now and we'll figure that
11 out.

12 MR. COWELL: I was just confirming.

13 JUDGE MOSS: Okay. I think it's good to
14 shorten these response periods as we get closer and so
15 that's why --

16 MR. MEYER: My experience with the
17 practitioners around the table is that even with those
18 limitations, some grace is given if we're off by a few
19 days.

20 JUDGE MOSS: Yes, yes. Grace is an
21 important commodity that I hope to see extended all
22 around through the conduct of this case because -- well,
23 I won't say more. All right. Anything else?

24 MS. CAMERON-RULKOWSKI: So Your Honor, one
25 thing I hope that the parties will agree to, and you as

1 well, is to incorporate the what's been called the me
2 too data request in the prehearing conference order, and
3 that would simply say -- that would require all of the
4 parties to serve all discovery responses on all of the
5 other parties as a matter of course.

6 JUDGE MOSS: From my perspective, that makes
7 sense because you're all going to ask for it anyway,
8 right? And I notice that Avista has set up a discovery
9 site, Internet site I guess you'd call it.

10 MS. CAMERON-RULKOWSKI: Your Honor, that's
11 another issue that I have.

12 JUDGE MOSS: I guess we better hear it,
13 then.

14 Mr. Meyer, go ahead.

15 MR. MEYER: And I know what that issue is,
16 but as far as serving all parties, we'll do that. There
17 will be a fair amount of highly sensitive information in
18 this proceeding, and that will be limited by the terms
19 of the protective order that's already issued with
20 highly sensitive provisions built into that.

21 JUDGE MOSS: Yes, well, thank you for
22 bringing that to our attention today, and as we did put
23 out our standard protective order with highly
24 confidential provisions and that will require those who
25 are interested in looking at that material to sign the

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1 appropriate papers.

2 MR. MEYER: And just I know no breach -- no
3 breach of that would be intentional, I'm confident of
4 that, but this information is so sensitive that even an
5 inadvertent breach would work substantial harm. So
6 please, everyone, follow the procedures.

7 JUDGE MOSS: All right.

8 MR. MEYER: Also, while we're talking about
9 discovery, it helps if the parties will not bunch up all
10 of their discovery in one batch, because even with the
11 ten business day period it's hard to do. So dribble it
12 out in manageable chunks, and that will help all of us
13 in the process, please.

14 JUDGE MOSS: All right. I think that's a
15 very good idea, too, and I hope everyone will conduct
16 themselves with the spirit of coordination and
17 cooperation as we go through this process. Of course,
18 again, we have powers to police the discovery process if
19 it gets out of hand, which it sometimes does. As
20 respecting the confidential information and the highly
21 confidential information, I think it's fair to say that
22 we have had very good experience with that over the
23 years in terms of the parties' careful treatment of
24 these types of documents, and of course, this type of
25 case brings forward easily a higher volume of that sort

1 of thing because this is an ongoing transaction. And so
2 by its nature, it's -- there's potential for harm that
3 might not exist in other circumstances.

4 So I think your warnings are well advised,
5 Mr. Meyer, and I'm sure that everyone else is equally
6 sensitive to the importance of this.

7 MR. MEYER: Thank you.

8 JUDGE MOSS: Anything else? Yes, you had
9 something else.

10 MS. CAMERON-RULKOWSKI: The last issue is --
11 concerns the electronic data center that is described in
12 the joint application. I've had communications with
13 counsel for the joint applicants, and we have an
14 understanding about use of the electronic data center,
15 and we agree that document -- they understand, we all
16 understand that documents in the electronic data center
17 that Commission employees or AGO employees access have
18 the potential to become public records subject to
19 disclosure under the Public Records Act. That's in the
20 definition RCW 42.56.010, Subsection 3. The joint
21 applicants will not object to provision of a document in
22 discovery on the basis that the document is available in
23 the electronic data center.

24 Nothing in the electronic data center is
25 part of the record. If the joint applicant or any other

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1 party wishes to rely on any document in the electronic
2 data center, it must place that document into the record
3 via testimony or other proper vehicle. The joint
4 applicants have represented that there are no
5 confidential materials currently in the electronic data
6 center, is that still the case?

7 All right. And the joint applicants remain
8 responsible, however, for ensuring that any material
9 maintained in the electronic data center is redacted to
10 protect the confidentiality of any information that
11 either company claims is confidential. And we wanted to
12 set that understanding on the record here today.

13 JUDGE MOSS: All right. And that perhaps
14 clarifies something that was in the back of my mind,
15 Mr. Meyer, that you won't, then, be putting confidential
16 information in a readable form on this data site. I
17 think there is some risk associated with that.

18 MR. MEYER: Yes.

19 JUDGE MOSS: In this day of Russian hacking
20 and so forth, who knows who may be peering into your
21 data center.

22 MR. MEYER: That's correct, right.

23 JUDGE MOSS: I think that's a good
24 precaution to take, and that's -- that type of
25 information can be shared between parties, party to

1 party so to speak, and that will help protect it, all
2 right?

3 MR. MEYER: This probably should be done off
4 the record, but as in prior mergers, there was this
5 electronic data room set up, and it was meant really as
6 a convenience for the parties to get to know some of the
7 source data, some of the foundational stuff and -- and
8 if that can still be used for its intended purpose by
9 the parties of running down some questions they might
10 have without first propounding it in discovery, that
11 might short-circuit some of the discovery that's
12 eventually asked. And that really was the purpose of
13 this, so people, before they propound discovery, would
14 have a chance to read some of these source documents. I
15 get it, though, that you're free to ask us about any of
16 that, and we will respond with the documentation, not
17 just refer you to the document -- electronic document
18 room. So that's -- and I hope this was helpful or
19 haven't you gotten into the case that much probably yet
20 to know, okay.

21 JUDGE MOSS: My prior experience with this
22 dates back to the year 2000 when I was doing a case for
23 the Bonneville Power Administration, and they had
24 80-some parties in that case, and they used this
25 approach, and it was very effective there, and parties

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1 would first check there to see if they could find the
2 information they needed, and this did limit the
3 discovery. The case was much more manageable, from my
4 perspective, as a result, and I'm sure from the
5 perspective of the participants as well.

6 So I do encourage you all to take advantage
7 of this data center, and I think you will find it will
8 obviate the need for at least some of your data request
9 and keep things more manageable. I -- I am always
10 struck, given my background, by the expansiveness of
11 discovery in our jurisdiction. I've heard instances of
12 there being 500 data requests and things like that. And
13 when I practiced before the FERC, we were very limited
14 in the number of data requests we could make. I think
15 it was 30, and boy, you could come up with a lot of
16 subparts, though.

17 MR. MEYER: Yeah.

18 MR. GOLTZ: So, Your Honor, so I understand,
19 is the -- are the conditions that were mentioned,
20 those -- will those find their way into the prehearing
21 order or is that just something to work out among
22 ourselves?

23 JUDGE MOSS: I hesitate to say I will put
24 them into the prehearing conference order because I like
25 to get that out pretty quickly and I would need --

1 frankly, I would need the transcript in order to be able
2 to do that unless Ms. Cameron-Rulkowski, who seems to be
3 very well prepared today, might have that in her notes
4 and I could then draw on that in terms of laying out
5 this agreement or understanding.

6 MS. CAMERON-RULKOWSKI: I guess -- so I had
7 originally intended it to be in the transcript, so I'd
8 want to check with the joint applicants if they had any
9 objection to it being in the order. I'm happy to email
10 out what I just presented to -- to you, Judge Moss, and
11 copying the parties.

12 JUDGE MOSS: Or I could just make some
13 generic statement that the parties will conduct their
14 discovery in accordance with the discussion had at the
15 prehearing conference on this date, how about that? And
16 then you all can refer to the transcript and who knows,
17 we may have some lively argument in the future over
18 this. I'll look forward to that. Surprisingly enough,
19 after all these years, I still find this all very
20 entertaining and interesting. So anything else?

21 MS. CAMERON-RULKOWSKI: Nothing from Staff,
22 Your Honor.

23 MR. MEYER: So I'm just thinking
24 process-wise as we -- excuse me, as we respond to DRs.
25 In a general case, we will have designated -- in

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1 addition to the attorneys, there may be a few designated
2 people to receive service, but not everyone. And I know
3 that in our joint application we named names for service
4 and all that stuff, so I think we're good there. But is
5 there another more expanded service list so all of you
6 make sure your people are on it?

7 JUDGE MOSS: And this has become another
8 practice that's commonly followed at the Commission is
9 I, as part of my closing remarks, was to ask you all to
10 please provide me within the next couple of days the
11 contact information for those who you wish to be kept in
12 the loop on a more or less ongoing basis broader than
13 the formal service list in the proceedings. So there
14 may be a paralegal, for example, who should be receiving
15 all the discovery responses or something like that. And
16 if that person is identified, I will get that into the
17 party list that I attach to the prehearing conference
18 order, which is not -- again, not a formal list, is not
19 the master service list as the records center calls it,
20 but is something that's useful to the parties.

21 And so that's what I'd like to have. This
22 is Friday, if I could have that by, say, Wednesday next
23 week. Is that too soon? Are parties okay with that?
24 And the sooner you all get it to me, the quicker I can
25 get the order out. The, I think, three-day turnaround

1 on the order is something that leaves me feeling
2 reasonably comfortable.

3 MR. MEYER: Thank you.

4 JUDGE MOSS: All right. Anything else? I
5 do have a few more final remarks.

6 All right. Very quickly. As we've been
7 discussing, the Commission will enter a prehearing
8 conference order. You all have provided dates to meet
9 with the requirement that has come more or less standard
10 that we have witness lists and exhibit lists shortly
11 before the evidentiary hearing and that we'll exchange
12 cross-examination exhibits prior to the hearing and do
13 whatever we need to do to maximize efficiency at the
14 hearing.

15 We have a settlement date, a date for
16 settlement conference in the prehearing conference
17 order. And I'll just reiterate that the Commission
18 encourages stipulations, both as to fact and as to
19 issues that can be resolved via the settlement process
20 or other means of alternative dispute resolution. We
21 don't really have the capacity to offer you mediation
22 services within the Commission right now. We're a
23 little shorthanded in my section, and so that's not
24 really a viable option. But do please keep us advised
25 of any progress you make toward settlements -- well, I

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1 won't say anything more about that right now.

2 So anything else, then? I believe that
3 completes our business for today. I thank you all very
4 much. I think you all did a fine job in your advocacy
5 today on the various points that we discussed, and we
6 will -- I will look forward to working with you through
7 the course of the proceeding.

8 MS. CAMERON-RULKOWSKI: Thank you, Your
9 Honor.

10 MR. MEYER: Thank you.

11 MS. THOMAS: Thank you, Judge Moss.

12 (Adjourned at 10:41 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.



Tayler Garlinghouse
Tayler Garlinghouse, CCR 3358

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