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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 In the Matter of the )DOCKET UE-200115

Application of )

5 )

PUGET SOUND ENERGY )

6 )

For an Order Authorizing )

7 the Sale of All of Puget )

Sound Energy's Interests )

8 in Colstrip Unit 4 and )

Certain of Puget Sound )

9 Energy's Interests in the )

Colstrip Transmission )

10 System )

11 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

12 PREHEARING CONFERENCE, VOLUME I

13 Pages 1-67

14 ADMINISTRATIVE LAW JUDGE ANDREW J. O'CONNELL

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16 March 13, 2020

17 9:30 a.m.

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Washington Utilities and Transportation Commission

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1 LACEY, WASHINGTON; MARCH 13, 2020

2 9:30 A.M.

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

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6 JUDGE O'CONNELL: Let's be on the record.

7 Good morning. The time is approximately 9:30 a.m.

8 My name is Andrew O'Connell. I'm an

9 administrative law judge with the Washington Utilities

10 and Transportation Commission, and I will be presiding

11 in this matter along with the Commissioners.

12 We're here today for a prehearing conference

13 in Docket UE-200115, which is the sale of PSE's interest

14 in Colstrip plant Units 3 and 4.

15 Let's move forward with appearances starting

16 with PSE.

17 MR. STEELE: Good morning. This is David

18 Steele with Perkins Coie on behalf of PSE.

19 MR. KUZMA: I'm Jason Kuzma as well.

20 JUDGE O'CONNELL: Thank you.

21 And Staff?

22 MR. DALLAS: Joe Dallas, Assistant Attorney

23 General.

24 JUDGE O'CONNELL: Public Counsel?

25 MS. GAFKEN: Lisa Gafken, Assistant Attorney

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1 General, appearing on behalf of Public Counsel.

2 JUDGE O'CONNELL: Thank you.

3 For the Alliance of Western Energy

4 Consumers?

5 MR. COLEMAN: Brent Coleman of the law firm

6 of Davison Van Cleve on behalf of the Alliance of

7 Western Energy Consumers.

8 JUDGE O'CONNELL: Thank you.

9 And Sierra Club?

10 MS. YARNALL LOARIE: This is Jessica Yarnall

11 Loarie on behalf of Sierra Club.

12 JUDGE O'CONNELL: And Northwest Energy

13 Coalition?

14 MS. BARLOW: Marie Barlow with Sanger Law,

15 appearing for Northwest Energy Coalition.

16 JUDGE O'CONNELL: And, Ms. Barlow, are you

17 also appearing for Renewable Northwest?

18 MS. BARLOW: Yes, Renewable Northwest as

19 well.

20 JUDGE O'CONNELL: Okay. Thank you.

21 Natural Resources Defense Council?

22 MS. WHITE TUDOR: Kate White Tudor,

23 appearing on behalf of the Natural Resources Defense

24 Council.

25 JUDGE O'CONNELL: For Avista?

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1 MR. ANDREA: This is Michael Andrea,

2 in-house counsel for Avista.

3 JUDGE O'CONNELL: PacifiCorp?

4 MR. KUMAR: Yes, Your Honor. This is Ajay

5 Kumar, appearing on behalf of PacifiCorp.

6 JUDGE O'CONNELL: And Portland General

7 Electric?

8 MS. MABINTON: Loretta Mabinton with

9 Portland General Electric.

10 JUDGE O'CONNELL: Okay. Thank you.

11 So I have a couple preliminary questions.

12 First for PSE, my question is about Northwestern. Is

13 Northwestern going to have counsel of their own

14 participate in this proceeding or participating at all?

15 MR. KUZMA: I -- I don't believe that

16 they're going to participate in the proceeding, Your

17 Honor. They may be phoning in just to hear. I don't

18 know if anybody's online for Northwestern. They can

19 respond directly.

20 JUDGE O'CONNELL: Okay. My curiosity came

21 from the fact that, you know, they're purchasing, and I

22 just wanted to know if we should expect that PSE will be

23 in contact with them throughout this proceeding.

24 MR. KUZMA: Yes, Your Honor. I am in

25 contact with Northwestern frequently on this. I did let

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1 them know we were having the prehearing conference today

2 and provided them with the call-in information. I don't

3 know if anybody's online, though.

4 JUDGE O'CONNELL: Okay. Thank you.

5 Next, there's a case before the Montana

6 Commission and I'm curious as to whether any of the

7 interested parties here have also intervened in that

8 Montana case. So first, I'm just going to go down the

9 list of intervenors.

10 Sierra Club, did you also petition to

11 intervene in the Montana case?

12 MS. YARNALL LOARIE: No, we have not.

13 JUDGE O'CONNELL: Okay. Northwest Energy

14 Coalition?

15 MS. BARLOW: Yes, both Northwest Energy

16 Coalition and Renewable Northwest have intervened there.

17 JUDGE O'CONNELL: And was your intervention

18 granted?

19 MS. BARLOW: Yes.

20 JUDGE O'CONNELL: Okay. Natural Resources

21 Defense Council?

22 MS. WHITE TUDOR: Yes, we have intervened in

23 Montana, and I believe that's been granted too.

24 JUDGE O'CONNELL: Okay. Thank you.

25 And, Avista, have you intervened?

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1 MR. ANDREA: No, we have not.

2 JUDGE O'CONNELL: Okay. PacifiCorp?

3 MR. KUMAR: We have not intervened in the

4 Montana case, Your Honor.

5 JUDGE O'CONNELL: Thank you.

6 Portland General Electric?

7 MS. MABINTON: No, we have not.

8 JUDGE O'CONNELL: Okay. And, PSE, I'm

9 curious if you have intervened.

10 MR. KUZMA: No, we have not, Your Honor.

11 JUDGE O'CONNELL: Okay. Next question for

12 Northwest Energy Coalition and Renewable Northwest, I

13 see that obviously, Ms. Barlow, you have the same

14 attorneys for these two entities, to what extent are

15 Northwest Energy Coalition and Renewable Northwest

16 aligned in this matter?

17 MS. BARLOW: I believe they are pretty much

18 fully aligned on their positions. One or the other may

19 take some position in this matter, but they committed to

20 work together to sort of not -- not oppose some of --

21 you know, some of the other positions that they -- that

22 one may take over the other. But they both in this case

23 and in Montana have retained one attorney for both of

24 them, and they are going -- anticipating on submitting

25 sort of the testimony and everything jointly.

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1 JUDGE O'CONNELL: Okay. Thank you. That

2 was my next question, so thank you.

3 Okay. And for Natural Resources Defense

4 Council and Sierra Club as well as Northwest Energy

5 Coalition and Renewable Northwest, how much of your

6 interests are aligned all four of you? And I will --

7 I'll start first with Ms. Barlow because I heard from

8 her most recently.

9 Ms. Barlow, can you go ahead?

10 MS. BARLOW: I'm sorry, could you -- could

11 you repeat the other groups?

12 JUDGE O'CONNELL: Sure. Natural Resources

13 Defense Council and Sierra Club, Northwest Energy

14 Coalition and Renewable Northwest. The question is, how

15 much of the interests of these groups are aligned?

16 MS. BARLOW: At this point, I don't know how

17 much alignment there is. We -- we haven't had any

18 conversations with those other groups about what

19 positions they're intending to take in this matter.

20 JUDGE O'CONNELL: Okay. So there hasn't

21 been any coordination at this point?

22 MS. BARLOW: Yeah, I think we've -- we've

23 discussed kind of, you know, maybe sharing some

24 information or, you know, discussing matters, but I

25 don't -- I don't think there's been a ton of discussion.

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1 JUDGE O'CONNELL: Okay. Thank you.

2 Ms. Yarnall Loarie?

3 MS. YARNALL LOARIE: That's correct. I

4 think it's early on in this case, so I'm not sure if our

5 positions are aligned just yet or not. You know, I

6 think time will tell. We've had some initial

7 discussions as Ms. Barlow stated, but not -- not much.

8 JUDGE O'CONNELL: Okay. Thank you.

9 And, Ms. Mabinton?

10 MS. MABINTON: PGE?

11 JUDGE O'CONNELL: Oh, I'm sorry. I -- I

12 apologize. I looked at the wrong list. Apologize.

13 Ms. White Tudor?

14 MS. WHITE TUDOR: Yes, similarly we are

15 working on organizing outreach to some of the others in

16 the environmental community, but at this point, we don't

17 have a specific position in this case. We know we need

18 to explore some more of the facts and more of the

19 discovery as it comes out to establish that position.

20 And at this point, we are looking forward to those

21 conversations and finding alignment where it appears.

22 JUDGE O'CONNELL: Okay. Thank you.

23 So at this point, typically at prehearing

24 conferences, we proceed to petitions to intervene. I'm

25 going to rearrange the items that we usually address

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1 here in a prehearing conference. I expect to have quite

2 a bit of discussion about the petitions to intervene, so

3 I'm going to cover some other preliminary topics before

4 we get to that.

5 First thing, regarding the procedural

6 schedule, we're going to discuss this more later, but I

7 wanted to provide the parties with information about the

8 availability of the Commission and what we need to see

9 in a prehearing -- sorry, in a procedural schedule. The

10 Commission has availability for October 14th as the

11 hearing date, and we have determined that that allows us

12 enough time to consider this matter and in consideration

13 of our availability this summer and this fall.

14 MR. KUZMA: Your Honor, one question on

15 that. If there was a hearing on October 14th, do you

16 have an idea of when maybe a final order might be

17 issued?

18 JUDGE O'CONNELL: Off the top of my head,

19 no. But I know that we've had discussions about how

20 much time we would need after the hearing date in order

21 to issue a decision, and I expect to take a recess, and

22 I can provide some more clarity on that after.

23 MR. KUZMA: Sure. The -- the reason I -- I

24 ask is that pursuant to the terms of the purchase and

25 sale agreement, the deal needs to be done by the end of

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1 this year. And so also there is the issue of, you know,

2 when does the order become final. There's -- there's a

3 30-day period after the hearing -- after the issuance of

4 the order.

5 JUDGE O'CONNELL: Okay.

6 MR. KUZMA: So that's why I'm raising it, is

7 that that's getting us probably perilously close to the

8 end of the year.

9 JUDGE O'CONNELL: Okay. So what I hear you

10 say is that an order would need to be issued prior to

11 November 30th for to -- for the 30 days to pass after

12 that before the end of the year? Is there some lag time

13 that needs to happen after the issuance of the order?

14 MR. KUZMA: Yeah, I would say that it would

15 need to be probably more like November 13th is the very

16 latest we could have an order and still be able to close

17 the deal, because the 30 days plus the period that it

18 would need to take to close the deal with Northwestern.

19 JUDGE O'CONNELL: Okay. Let me --

20 MR. KUZMA: Yeah, I believe that -- you

21 know, we have communicated this with Commission Staff.

22 They had put together a proposed schedule that -- that

23 would have at -- at the very extreme allowed us to do

24 that under those -- those circumstances as the worst

25 case scenario.

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1 JUDGE O'CONNELL: I understand. So the

2 Commission's concern is our -- our availability. I

3 will -- when we take our recess, I will confirm dates of

4 our availability and see if there is any wiggle room for

5 that. I'm unaware of any flexibility at this point, but

6 I understand the -- the details that you're bringing up

7 and I'm -- will check and see if we can make any

8 additional availability.

9 So I was going to say that the timing for

10 the rebuttal and cross-answering in this case, if there

11 was a hearing date of October 14th, would be that we

12 wanted rebuttal and cross-answering filed no later than

13 September 2nd. That's approximately five weeks before

14 the hearing. If that hearing date is moved to some

15 other time, we would expect the -- the time between the

16 filing of final testimony, rebuttal and cross-answering,

17 there would be five weeks from that time, at least five

18 weeks from that time, until the hearing date. And like

19 I said, I expect that we will take a recess later on to

20 allow discussion of a procedural schedule. During that

21 recess, I will confirm the flexibility, or lack thereof,

22 of the hearing date.

23 So protective order. The Company requested

24 a protective order with highly confidential provisions,

25 and that protective order has already been issued in

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1 this case. I know we have some interested persons

2 before us today that may not be familiar with our filing

3 and service rules. I want to remind everyone that

4 filing and service are done electronically now according

5 to the Commission rule, but in this case, the Commission

6 is going to also require the filing of an original and

7 three paper copies for internal distributions. If the

8 filings include any information designated as

9 confidential or highly confidential, please file the

10 original and three copies of the fully unredacted

11 version. No paper copy is necessary for the partly

12 redacted or fully redacted versions. Those can just be

13 filed electronically.

14 Also, the Commission's rules provide for

15 electronic service of documents. The Commission will

16 serve the parties electronically and the parties will

17 serve each other electronically.

18 If any party has not yet designated a lead

19 representative for service, please do so immediately via

20 an email to me. And also if you would like to add

21 anyone else from your support staff, names and email

22 addresses of those representatives or support staff

23 should be sent to me as well. My email is

24 andrew.j.oconnell@utc.wa.gov.

25 MR. KUMAR: Your Honor, this is Ajay Kumar

0016

1 on behalf of PacifiCorp. I just have a quick question

2 about the paper filing requirement, and I just would

3 like to request that maybe the paper filing requirements

4 be waived for the next 30 days. We may have some -- if

5 a lot of the folks in our office are working from home,

6 it may make it more operationally difficult for us to

7 file paper copies.

8 JUDGE O'CONNELL: And, Mr. -- it's a --

9 that's a reasonable request. Mr. Kumar, what are you

10 expecting to file within the next 30 days?

11 MR. KUMAR: I don't think we are expecting

12 to file much in the next 30 days, I just wanted to raise

13 the issue.

14 JUDGE O'CONNELL: Let me think on that for a

15 little bit. I think that's a very reasonable request

16 given the circumstances, and let me think on it, and I

17 will return to the -- the parties with more information

18 on it. My initial reaction is it's very reasonable.

19 Last thing before we get to the petitions to

20 intervene, during proceedings at the Commission, parties

21 often request that any data requests and responses are

22 shared with every other party with the typical me too

23 data requests. I intend to include this as a

24 requirement in the prehearing conference order. Now, is

25 there any objection from anyone to me including that

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1 requirement in the order?

2 MS. GAFKEN: No objection from Public

3 Counsel, and we would support that being in the

4 prehearing conference order.

5 JUDGE O'CONNELL: Thank you.

6 So I'm not hearing any objection. Hearing

7 that there are no objections, I will include that in the

8 prehearing conference order.

9 Okay. Now that brings us to the petitions

10 to intervene. I have received several written petitions

11 for intervention and some written oppositions. Are

12 there any petitions to intervene other than the ones

13 that have been filed in writing with the Commission?

14 Okay. Hearing none, let's proceed.

15 I have petitions to intervene from the

16 Alliance of Western Energy Consumers, Sierra Club,

17 Northwest Energy Coalition, Renewable Northwest, Natural

18 Resources Defense Council, Avista, PacifiCorp, and

19 Portland General Electric.

20 I've received from -- sorry, the Commission

21 has received from PSE written objections to the

22 interventions of Renewable Northwest and Portland

23 General Electric. I have also received a reply to PSE's

24 written objection from Renewable Northwest.

25 So let me ask of PSE, are there any other

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1 objections to petitions to intervene in this case?

2 MR. STEELE: No, Your Honor.

3 JUDGE O'CONNELL: Are there any other

4 objections from anyone else as to petitions to

5 intervene? And I'm looking at Staff and then I will

6 hear from Public Counsel.

7 MR. DALLAS: No, Your Honor.

8 JUDGE O'CONNELL: Okay. And Public Counsel?

9 MS. GAFKEN: Staff has no objections to any

10 of the petitions to intervene.

11 JUDGE O'CONNELL: Okay. So I'm going to

12 turn now to the intervenors, and I want to -- I have

13 some questions of certain intervenors that I need to

14 understand better the substantial interests that you're

15 asserting and the value to the public interest that your

16 intervention would provide. And I want to have these --

17 this discussion with these intervenors and also hear

18 from PSE.

19 After that discussion from each of the --

20 from the intervenors, I'm also going to come to Staff

21 and Public Counsel at the end to hear your input at the

22 end of hearing from each of the intervenors and from

23 PSE.

24 So for Avista, PacifiCorp, Portland General

25 Electric, and Renewable Northwest, I -- I want to advise

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1 at the outset that I'm currently doubtful of the

2 substantial interests shown in your petition to

3 intervene or the value to the public interest that your

4 intervention might provide, and I'm going to offer you

5 the opportunity to provide more information to explain

6 your substantial interest and the value to the public

7 interest of your intervention.

8 The Commission evaluates petitions to

9 intervene on the standard of whether you have a

10 substantial interest in the proceeding or whether your

11 participation would be in the public interest.

12 So I'd first like to hear from Renewable

13 Northwest. After having read PSE's objection that they

14 filed in writing and your reply, the Commission doesn't

15 advance other commercial interests, and we would be

16 concerned about including you as a party to the extent

17 you're representing commercial interests competitive

18 with PSE. My question for Renewable Northwest,

19 Ms. Barlow, is who are you representing and what is your

20 interest in this matter?

21 MS. BARLOW: So I -- thank you, Judge. I --

22 I won't reiterate everything from our written reply, but

23 I think Renewable Northwest has primarily been engaged

24 in the Northwest to -- to -- for the expansion of

25 renewables. They envision a Northwest powered by clean,

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1 affordable, reliable, and renewable energy, and they've

2 primarily not been advocating for private commercial

3 interest, but for the advancement of renewables, whether

4 those are owned by a utility or an independent third

5 party, they've -- they've generally kept that position

6 consistent.

7 And they've had a long history

8 of -- of working on these issues in the Northwest,

9 including on the recent CETA legislation passed in

10 Washington, and these -- these climate and environmental

11 goals that are essential to their mission as well as the

12 direction that the state is moving right now. And so

13 they -- they intervened to help the Commission

14 understand whether this -- the proposed transaction is a

15 necessary step towards meeting those renewable goals.

16 In addition, and we -- we noted that in our

17 reply to PSE, the -- the nonprofit -- they -- they are

18 a -- they are made up of a majority -- the board must be

19 a majority of nonprofit conservation, environmental, or

20 other public interest groups, not commercial interests.

21 So they -- they are a 501(c)(3) public interest

22 nonprofit organization, not -- not a trade association

23 or organized under a different -- PACT rules. So

24 they -- they have a substantial interest in this to --

25 to advance their mission of renewables in the Northwest.

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1 In addition, it would be in the public

2 interest because they have unique experience working on

3 the Colstrip transmission system and -- and Montana

4 Renewable Development Action Plan that has been going on

5 at Bonneville, but they can help assist the Commission

6 to understand whether the -- the proposed transmission

7 sale also is -- is a necessary step. And, you know,

8 Puget has said that that won't have any effect on

9 transmission availability in the region, but that --

10 it -- we can't just accept that. It's why Renewable

11 Northwest wants to be able to intervene so that they can

12 investigate those issues and provide input on that

13 point.

14 JUDGE O'CONNELL: Okay. So I -- I have a

15 couple of follow-up questions. First of all, I'm -- I'm

16 not sure that this is the right forum for promoting the

17 interests of the entities represented by Renewable

18 Northwest; however, your point about the experience and

19 expertise of the group is noted. I am curious,

20 Renewable Northwest is a nonprofit and -- and an

21 advocacy group, but how should we interpret Renewable

22 Northwest also representing entities that are in a

23 competitive renewable energy industry?

24 MS. BARLOW: Well, and I think that goes to

25 the -- the case that we cited in our reply comments,

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1 which had to do with the Northwest & Intermountain Power

2 Producers Coalition, which is a trade association that

3 represents solely those who are commercial interests.

4 And there, the -- the Commission allowed that

5 intervention despite the fact that they would

6 possibly -- you know, that their actions may possibly

7 stand to benefit that, but that that goes to the weight

8 of the evidence and not to whether or not the -- the

9 organization has value to add to the process.

10 JUDGE O'CONNELL: Okay. Are there -- are

11 there any limits on the issues Renewable Northwest

12 intends to address or is there an extent to which you

13 intend to participate?

14 MS. BARLOW: I think Renewable Northwest

15 does not intend to expand the scope of what has been

16 already presented. I know -- you know, I have not -- I

17 don't know the -- the extent of everything that will be

18 looked into. We haven't even fully reviewed the

19 application. And so I don't know that I can say what we

20 will do, but I can say that we won't expand the scope of

21 what has already been presented.

22 JUDGE O'CONNELL: Okay. Thank you.

23 For -- for Staff and Public Counsel, please

24 continue to take notes. I'm going to return to you at

25 the end of this discussion to hear from you from -- for

0023

1 each of the petitions to intervene.

2 But right now, as it applies to Renewable

3 Northwest, PSE, I'd like to hear from you in your

4 response to Renewable Northwest.

5 MR. STEELE: Thank you, Your Honor. So this

6 is -- the substantial interest test, it's -- it's really

7 a statutory test. It asks the question as to whether or

8 not the intervenor has a statutory right to be a part of

9 the case. And it's almost a standing question, what is

10 their statutory or legal basis for being in the case?

11 Having an organizational interest, having organizational

12 interests by its members, those are not -- those do not

13 meet the requirements of a substantial interest in this

14 case.

15 The Commission's purpose and the purpose of

16 this proceeding here is to determine whether or not the

17 proposed transactions are consistent with the public

18 interest for -- for residents in Washington, for -- for

19 PSE's customers in Washington. Having organizational

20 interests about environmental issues or carbonization

21 issues or those types of things are -- are noteworthy,

22 but there are many nonprofit organizations in the region

23 that -- that -- that have those types of interests.

24 Those don't grant a party a statutory substantial basis

25 for being a part of this proceeding. And so I -- so

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1 we -- we don't believe that they've met the test for

2 showing a substantial interest in this proceeding.

3 As far as the public interest goes --

4 JUDGE O'CONNELL: Well, can I stop you right

5 there --

6 MR. STEELE: Yeah.

7 JUDGE O'CONNELL: -- to follow up on what

8 you're saying. There are a lot of PSE customers in

9 Western Washington and in Washington's realm that are

10 affected by recent statutory and legislative changes

11 that encourages the development of more renewables. How

12 are they not being represented by -- I mean, isn't

13 Renewable Northwest representing the interests of at

14 least some of these customers that are interested in

15 pursuing renewable energy?

16 MR. STEELE: Yeah, I -- I think their

17 petition in reply, it's still hard to know who its --

18 who its members are and -- and what their interests.

19 Their -- their reply talks about a range of interests,

20 whether they're economic, commercial. They do talk

21 about Washington ratepayers, but -- but ratepayers are

22 represented by Public Counsel and Staff. And so they

23 mention Washington nonprofits, but they don't explain

24 like what exactly are those nonprofits doing. What is

25 their interest here? They're not specific about that.

0025

1 And so there's -- there's a lot of

2 nonprofits in the state or in the region that might have

3 interests in this that -- that are not participating in

4 this case. Having an interest does not give you a

5 substantial interest by law, and -- and I think that's

6 an important distinction, and -- and I'm not sure

7 Renewable Northwest has shown that here. They've shown

8 that their members have an interest, but -- but to the

9 extent they have Washington nonprofits whose members are

10 PSE customers, you know, that's pretty far down the

11 chain when -- when you've got Public Counsel in the case

12 and you've got Staff who are here to represent the

13 interests of PSE ratepayers.

14 JUDGE O'CONNELL: Okay. Thank you. I -- I

15 interrupted you. Please, you wanted to say something

16 else about public interests.

17 MR. STEELE: Well, I -- I think it's

18 important to -- to talk about that because I think -- I

19 think in -- in reviewing the reply, I think there is

20 concern about scope here and about what their intentions

21 are. And -- and they do talk about commercial interests

22 and expanding the marketplace, and they list a host of

23 different nonprofits with -- with a varying -- you know,

24 a broad range of interests. And so I think there is

25 concern about how -- what -- what types of issues do

0026

1 they want to explore in this case. I think there's

2 concerns about duplication with some of the other

3 parties in this case. They've already talked about

4 sharing resources, sharing briefing, I mean, is -- are

5 they really needed? Are they necessary to advance the

6 purposes of this proceeding?

7 And so I think -- I think there is real

8 legitimate questions about whether they're needed or

9 whether we're -- we're -- we're going to have

10 duplicative testimony or briefing that -- that could

11 frankly burden the proceeding.

12 We'll -- we'll also note that -- that --

13 that if -- if intervention is granted, if the -- if the

14 Commission does find there is some kind of interest in

15 their -- in their being a part of the case, I think that

16 there should be relatively tight parameters to their

17 role in this case. Certainly any kind of commercial

18 marketing interest should not be a part of this case to

19 the extent they're trying to promote that. I think to

20 the extent they're trying to promote discussions on

21 issues that are beyond the Commission's jurisdiction,

22 like for transmission questions, those are -- those

23 should not be a part of this case as well.

24 And so I think if intervention is granted, I

25 think it should be relatively narrow, and they should be

0027

1 careful to avoid duplication and burdening this

2 proceeding with -- with issues that frankly should not

3 be a part of this case.

4 JUDGE O'CONNELL: Thank you.

5 Ms. Barlow, let me hear from you one more

6 time.

7 MS. BARLOW: Sure. On -- on the substantial

8 interest piece, I think the -- the recently passed

9 legislation in Washington making it a goal to get a

10 hundred percent clean energy makes it an interest in --

11 in the -- in the public interest for -- for there to be,

12 you know, considerations of whether this proposed

13 transaction is actually necessary to -- to meet those

14 goals. You know, Renewable Northwest hasn't developed a

15 position on whether it is or isn't at this point, but

16 the -- the claim that PSE has made that it is, I think

17 Renewable Northwest can -- you know, they have -- they

18 have a role to play in the Northwest to advocate for --

19 for the interests of the people in -- in Washington

20 who -- who want to meet these renewable energy goals.

21 JUDGE O'CONNELL: So --

22 MS. BARLOW: And --

23 JUDGE O'CONNELL: Ms. Barlow, I'm going to

24 let you continue in a moment. I -- I understand the

25 point that you're making. I think that the question I

0028

1 have is, why is Renewable Northwest's intervention

2 necessary in order to have those interests represented

3 for renewable energy and compliance with statutory

4 legislative direction? We do have Public Counsel and

5 Staff already in this case, so what I want to hear is

6 more about what Renewable Northwest as a party would be

7 bringing to the case to help the decision.

8 MS. BARLOW: Right, and I think that's where

9 I was going next with my comment. The -- Renewable

10 Northwest has had, you know, a long -- a long history in

11 the -- in the Northwest working on these issues, and

12 especially with the transmission piece, and they have a

13 lot of expertise and have worked a lot on those points.

14 And I think, you know, while Renewable Northwest and

15 Northwest Energy Coalition have kind of agreed to work

16 together in this case, Renewable Northwest really brings

17 that -- that expertise.

18 And we're -- we're not going to try to ask

19 the Commission to do -- to do something that's beyond

20 its jurisdiction, but we do think that they have lot of

21 expertise to offer in -- on the transmission piece just

22 to determine whether that's, you know, the appropriate

23 route to go in -- in this case.

24 JUDGE O'CONNELL: Okay. Thank you.

25 Next I'd like to turn to Portland General

0029

1 Electric. Ms. Mabinton, I want to understand better

2 what PGE's interest in PSE's sale in this -- these

3 transactions that are the subject of this proceeding,

4 what is Portland General Electric's interest in this

5 case?

6 MS. MABINTON: Your Honor, our position

7 should -- Portland General is a coowner in the Colstrip

8 Unit 4 plant. We're owners with owner interest in

9 undivided ownership, so we are joined at the hip of the

10 space. But in this application, PSE essentially said

11 that they're asking the Commission's approval to try to

12 sell the transferred asset. The transferred assets

13 include the Colstrip plants and the material contract.

14 PSE has put the material contract before the

15 Commission. PGE is a counterparty to the material

16 contract, and as a party to the contract that PSE has

17 put in front of the Commission, we have a substantial

18 interest in the subject matter of this proceeding.

19 JUDGE O'CONNELL: What jurisdiction does the

20 Commission have over PGE?

21 MS. MABINTON: Your -- Your Honor, the

22 Commission has jurisdiction over us because we will

23 remain in your proceeding.

24 JUDGE O'CONNELL: Okay. How will your

25 participation as a party benefit the disposition of this

0030

1 proceeding?

2 MS. MABINTON: Our participation in this

3 proceeding is because of our interest in the subject

4 matter of the proceeding, and with owner interest in

5 Colstrip 4 since the plant was constructed, and we have

6 been PSE's partners in that plant for -- for that plant

7 as well. And we have not had the benefit of seeing

8 everything that PSE is proposing in connection with this

9 transaction, and that will inform the -- the role that

10 we play. And as I said in our position, we have no

11 interest in broadening the issues. We are a

12 representative to PSE as well. We -- we sell assets and

13 we understand that we're the bookends for a sale of

14 utility assets, and we intend to respect that.

15 JUDGE O'CONNELL: Okay. I need to ask you a

16 couple more follow-up questions because PSE isn't asking

17 to include Portland General Electric's share of Unit 4

18 in this transaction. This only concerns PSE's share on

19 Units 3 and 4. I'm -- I'm -- I'm still failing to

20 understand fully how PSE's proposed transactions impact

21 PGE and its customers and -- and whether the Washington

22 Utilities and Transportation Commission should be

23 looking out for the interests of Portland General

24 Electric and its customers. It seems like something

25 that the Oregon Commission should be doing.

0031

1 MS. MABINTON: Your Honor, we agree that

2 the -- the Oregon Commission will be looking out for

3 PGE's customers and PGE. So we -- we have interest in

4 this proceeding as a -- a counterparty to PSE and a

5 contract that PSE has listed as one of the assets that

6 they are selling and is seeking their approval to sell.

7 PSE's -- PSE's is not setting -- PGE has no interest in

8 PSE's 35 percent interest in the plant, but our interest

9 in the plant is undivided. And more importantly, the

10 material contract that PSE has put in front of the

11 Commission for approval, are contracts that we are all

12 signatories to.

13 JUDGE O'CONNELL: So are you saying that PSE

14 needs the approval of the other co-owners so sell its

15 interest?

16 MS. MABINTON: Well, we -- we -- we

17 haven't -- we don't fully understand what PSE is

18 proposing to do in connection with this transaction, and

19 that is why our participation in this proceeding is --

20 is necessary so that we -- the agreement that the

21 Commission is asked to approve the assignment on, the

22 Commission wants to be sure that it actually is not

23 going to do anything to the utilities. If it approves

24 the assignment, that it will actually be effective.

25 JUDGE O'CONNELL: Okay. Thank you.

0032

1 Let me turn to PSE now. Mr. Steele, go

2 ahead.

3 MR. STEELE: Thank you, Your Honor. Your

4 Honor, from -- from PSE's perspective, this is a

5 relatively simple intervention. Portland General is an

6 out-of-state entity not regulated by the Commission with

7 customers from a different state. They do not have a

8 substantial interest in this proceeding. To the extent

9 they have concerns about the contract at issue as part

10 of the sale, those are -- are private contracts, and if

11 they -- if Portland General believes they've been

12 aggrieved somehow, there's -- there's different forums

13 for contractual disputes. But those contracts, the

14 Commission does not have jurisdiction over those

15 contracts.

16 And so to the extent Portland General has

17 concerns or feels like they're being aggrieved, there

18 might be a different forum for that. But -- but that

19 does not provide them a substantial interest in this

20 case. They're not -- they're, again, an out-of-state

21 utility with out-of-state customers, and that -- that

22 does not fall under the jurisdiction of this Commission.

23 JUDGE O'CONNELL: Well, they -- PGE, they

24 are co-owners of Colstrip, at least Unit 4 with you. Is

25 there anything that -- I mean, why -- let me see if I

0033

1 can explain the question. Hearing what PGE is saying,

2 their interest is that they are a co-owner and it's an

3 undivided interest in the plant and that they should be

4 able to see the transaction and weigh in on it. What --

5 what is your response to that?

6 MR. STEELE: Can I have a moment, Your

7 Honor?

8 JUDGE O'CONNELL: Yes.

9 And while we have a break, I know that there

10 is a prehearing conference that's currently scheduled

11 for 10:30 a.m. Right now, it is 10:15 a.m. The

12 parties -- or the -- the interested parties in that next

13 prehearing conference, a lot of them are shared with

14 this proceeding, and I -- I just wanted to make those

15 parties that are at least here now aware that this

16 prehearing conference will delay the start of that

17 prehearing conference most likely.

18 MR. STEELE: Apologies, Your Honor. Just

19 trying get the mic back on.

20 JUDGE O'CONNELL: Sure. All right,

21 Mr. Steele, go ahead.

22 MR. STEELE: I'll reiterate. Those are

23 still all private contractual matters as far as between

24 the parties themselves. Those -- those -- their --

25 their contractual interests and their concerns over the

0034

1 ownership shares, those are private contractual matters

2 that the parties worked out between themselves, and that

3 includes selling -- selling each other's interests, how

4 those interests would be resolved, issues like right of

5 first refusal, those are all private contractual issues

6 that are not before the Commission in this case.

7 To the extent Portland General would like

8 information about the proceeding or about PSE's sale, I

9 mean, that information is -- is largely available

10 publicly as part of the filing. And so, again, this is

11 not the forum for Portland General to be trying to

12 protect the interest of itself or its customers who are

13 out of state.

14 And from a public interest standpoint,

15 they've provided no information as to how their

16 participation will benefit the public interest, how it

17 will benefit PSE customers, or even the state of

18 Washington. There's -- they said nothing in their

19 petition about -- about how that will -- their

20 participation will advance public interest in any way.

21 JUDGE O'CONNELL: Okay. Thank you.

22 Ms. Mabinton, I'd like to return to you to

23 offer you the opportunity to respond to PSE.

24 MS. MABINTON: Thank you, Your Honor. I

25 will start with the last comment about public interest.

0035

1 The way we understand Washington law, a political

2 position is an alternative test the sooner we have

3 official interest our participation will be in the

4 public interest. And what we have shown here is that we

5 have a substantial interest in -- in the subject matter

6 of this proceeding.

7 Washington public policy also favors the

8 inclusion of individual owner positions in

9 administrative [inaudible] affected their interest. PSE

10 has listed a contract to which we have a party at some

11 of -- actually multiple contracts to which we are a

12 party as the asset that they are selling. And for PSE

13 to then say that a counterparty to a contract does not

14 have a substantial interest in that contract is baffling

15 to us.

16 JUDGE O'CONNELL: Okay. Ms. Mabinton,

17 that's not exactly what I'm hearing from PSE. What I'm

18 hearing from them is that that's a contractual matter

19 that the -- PGE is involved with PSE in, but they are

20 going to -- but that doesn't -- there is another forum

21 where any dispute between parties who are signatories to

22 that contract would have a different forum other than

23 this one.

24 MS MABINTON: And we -- and we agree that --

25 that -- that the Commission -- the Commission is not

0036

1 adhered to adjudicate a dispute between the co-owners

2 and we're not raising -- we -- we don't have any dispute

3 with PSE on that contract. And if we did, the contract

4 provides a mechanism to do that. Our interest in this

5 proceeding is that PSE has defined as the transferred

6 assets the material contract to which we are the co --

7 we are the co-parties to the contract.

8 JUDGE O'CONNELL: Okay.

9 MR. STEELE: Your Honor, if I may?

10 JUDGE O'CONNELL: Briefly, Mr. Steele.

11 MR. STEELE: Any Commission decision in this

12 case is not going to affect PGE's interest in the

13 agreements that they're concerned about. Those are

14 private contracts that -- that this proceeding won't be

15 impacting. Their -- their interest in Colstrip Unit 4

16 with the transmission system are not going to be

17 impacted by this proceeding. And to the extent they

18 feel that they are, those are contractual issues where

19 there's a different forum for.

20 JUDGE O'CONNELL: Okay. Ms. Mabinton?

21 MR. KUMAR: Your Honor?

22 JUDGE O'CONNELL: I'm sorry, please identify

23 yourself.

24 MR. KUMAR: Yeah, this is Ajay Kumar on

25 behalf of PacifiCorp. At some point, PacifiCorp would

0037

1 like -- would also like to be heard on the issue of

2 PGE's intervention. We have some thoughts that may be

3 helpful to the Commission.

4 JUDGE O'CONNELL: Okay. One moment.

5 PGE, Ms. Mabinton, do you have any final

6 reply to PSE and Mr. Steele?

7 MS. MABINTON: Well, Mr. Steele's contention

8 is that if the proceeded, [inaudible] proceeded impact

9 PGE's interest, then PGE can go -- state a contractual

10 position to that. So talking about the perspective

11 issues that may arise, and we have said that we are not

12 seeking to resolve any contractual disputes in this

13 forum. We are only seeking a position in this

14 proceeding because we have a substantial interest in it.

15 We -- we are also seeking a position that we

16 do not intend to expand the scope of this proceeding,

17 and we believe that, because of our interests in the

18 Colstrip contract and Colstrip, that the Commission

19 should grant PGE's petition to intervene in this

20 proceeding.

21 JUDGE O'CONNELL: Okay. Thank you.

22 I want to turn to PacifiCorp now. I have

23 some questions, and I'm also going to afford you the

24 opportunity to speak on PGE's intervention as well

25 briefly. So, PacifiCorp, your petition to intervene

0038

1 says basically you're a co-owner of Colstrip and that

2 gives you a substantial interest, and that is pretty

3 much the extent of your petition to intervene. Why is

4 the fact that you're -- you happen to be a co-owner of

5 Colstrip give you a substantial interest in this case?

6 MR. KUMAR: Well, Your Honor, maybe I can

7 elaborate on sort of what was included in our petition

8 to intervene. I think PacifiCorp has a substantial

9 interest in this case because specifically this -- this

10 transaction has the -- the potential to significantly

11 affect the costs that are borne by PacifiCorp and

12 PacifiCorp's customers, which includes customers in

13 Washington.

14 As a result, I think that PacifiCorp has a

15 substantial interest in this case and a substantial

16 interest in the outcome of these proceedings at the

17 Commission, as do our Washington customers. So I think

18 when the Commission under four eight -- Administrative

19 Code 480-143-170 has to determine whether or not this

20 transaction is in the public interest, it should have

21 the unique perspective that is offered by PacifiCorp as

22 a co-owner and as a utility that has to prudently manage

23 Colstrip and advocate on behalf of its customers.

24 JUDGE O'CONNELL: So you're saying that by

25 fact of PacifiCorp having Washington ratepayers, that

0039

1 the transaction may affect the cost borne by PacifiCorp

2 and its customers, that means that your intervention

3 is -- you know, you have a substantial interest and it

4 would be in the public interest to include you; did I

5 understand you correctly?

6 MR. KUMAR: Yes, and I think it goes maybe

7 slightly beyond that, Your Honor. I think by allowing

8 PacifiCorp and the other co-owners, including PGE, to

9 participate in this proceeding, they probably bring a

10 unique perspective and sort of additional information

11 and additional issues on how this proposed transaction

12 could affect the operation of Colstrip, which is well

13 within the Commission's jurisdiction.

14 And so we do -- would like -- we would like

15 to be able to present that perspective to the Washington

16 Commission and allow you to consider as you determine

17 whether this transaction is in the public interest.

18 JUDGE O'CONNELL: Well, I -- I would agree

19 with you that the operations of Colstrip are within the

20 jurisdiction of the Commission by the fact that a number

21 of Washington regulated utilities are co-owners of

22 Colstrip. I'm -- I'm -- I'm not sure that I'm convinced

23 that that is the topic of this proceeding, the

24 operations of Colstrip. I think that the subject of

25 this proceeding are the -- the transactions between PSE

0040

1 and Northwestern to -- to settle PSE's interest. I'm

2 not sure that this has anything to do with the

3 operations of Colstrip.

4 MR. KUMAR: Well, Your Honor, if -- if I --

5 JUDGE O'CONNELL: Go head.

6 MR. KUMAR: Apologize, Your Honor. If I

7 may, I -- I might be able to provide maybe a little bit

8 more detail. I think that, you know, to the extent that

9 I think there are certain co-owners that may have some

10 very specific interests and very specific questions

11 regarding how this transaction will affect ongoing

12 capital additions at -- at Colstrip and how this

13 transaction will affect sort of the -- the voting rights

14 around those ongoing capital additions.

15 I think those specific issues, while they

16 are in the sort of realm of the operation of Colstrip,

17 they're also deeply related to this transaction and how

18 this transaction is affected by sort of the voting

19 rights and vote sharing agreement that is part of this

20 transaction.

21 As a result, I do think that the co- -- some

22 of the co-owners of Colstrip have unique perspectives to

23 bring to bear improve Washington Commission upon this

24 issue. And to the extent that this transaction could

25 raise costs on Washington customers for all the

0041

1 utilities, I think that is an issue that's squarely in

2 front of the Commission on this transaction.

3 JUDGE O'CONNELL: Okay. Thank you. I

4 understand. Did you -- I -- I heard you mention PGE and

5 its intervention, did -- is that all that you intended

6 to say and comment upon PGE's intervention?

7 MR. KUMAR: Your Honor, I think that for

8 many of the reasons that I articulated before, PGE is

9 also a co-owner in Colstrip, and PacifiCorp supports

10 their intervention because they do bring, again, that

11 perspective on how -- on how this transaction could

12 affect those issues at Colstrip. And so I think that is

13 an important perspective for the Commission to hear.

14 JUDGE O'CONNELL: Okay. Thank you.

15 I will turn to PSE. Mr. Steele, there was

16 no objection to allowing PacifiCorp in as a party, but

17 there was an objection to PGE. I'm curious, what makes

18 PacifiCorp different from PSE's perspective?

19 MR. STEELE: Thank you, Your Honor. Yeah,

20 from -- from PSE's perspective, we -- we agree that --

21 that they are a regulated utility here in the state,

22 they have Washington customers, and that we appreciate

23 that they could have an interest and -- and precedent

24 set in this case that could affect them. And so for

25 those reasons, PSE determined that -- that it could

0042

1 understand why they'd want to be a part of the case.

2 JUDGE O'CONNELL: Okay. But PacifiCorp

3 doesn't represent any of your ratepayers, and a lot of

4 the argument that I read in your opposition to Renewable

5 Northwest and PGE being in the case was -- revolved

6 around them not representing customers of PSE so...

7 MR. STEELE: Right. We -- I -- P -- PSE

8 agrees with those points and is concerned about those

9 issues, but from PSE's perspective in this proceeding

10 determine that -- that as a Washington utility with

11 Washington customers, that that would be much more

12 directly impacted potentially by Commission decision.

13 Felt like for those reasons, it decided not to oppose

14 their intervention.

15 But the Company is concerned with those

16 issues and -- and -- and certainly agree that to the

17 extent there are contractual questions, you know,

18 about -- about the ownership and operation agreement,

19 that that -- again, those are contractual issues that

20 should also not be a part of the case.

21 JUDGE O'CONNELL: Okay. And I'm jumping

22 ahead a little bit. I'm -- we're going to address

23 Avista in a moment. I'm going to give Mr. Andrea a

24 chance to speak, but are -- is PSE -- your thoughts on

25 the intervention of Avista, is this going to be the same

0043

1 as your comments for PacifiCorp?

2 MR. STEELE: Yes, Your Honor.

3 JUDGE O'CONNELL: Okay. Mr. Kumar,

4 PacifiCorp, is there anything you'd like to add or in

5 response or in addition to what Mr. Steele has said?

6 MR. KUMAR: Nothing -- excuse me. No, Your

7 Honor. I think I've addressed my point.

8 JUDGE O'CONNELL: Okay. Thank you.

9 Then I'd like to turn to Avista.

10 Mr. Andrea, your petition to intervene has a lot of the

11 same wording or similar wording as PacifiCorp's, that

12 you're co-owner of Colstrip and that gives you a

13 substantial interest. And why by the fact of you just

14 being a co-owner does that give you a substantial

15 interest in this case?

16 MR. ANDREA: Yes, Your Honor. This is

17 Michael Andrea for Avista. I -- I appreciate Puget's

18 candor about our interest. I would agree with that and

19 I would also agree with the comments made by Mr. Kumar

20 from PacifiCorp. And just to build on that a little

21 bit, obviously we are a co-owner of both the generation

22 and the transmission that is at issue in this

23 transaction. We're parties to both the ownership and

24 operation agreement before Colstrip Units 3 and 4 as

25 well as the transmission.

0044

1 I recognize that there is a lot of

2 contractual issues involved, but there's also a

3 significant amount of ambiguity in our view, in Avista's

4 view, in the documents that have so far been filed by

5 Puget about how the -- the plant is going to be operated

6 and the control over the operation of the plant going

7 forward. We think that those issues will have a

8 substantial impact on Avista's customers, and we have a

9 substantial interest in the outcome of those issues as

10 they've clarified through this process.

11 Clearly Avista has Washington customers and

12 has a substantial interest in ensuring that the

13 transaction does not negatively impact our ratepayers,

14 and for purposes of this proceeding, our ratepayers in

15 Washington in particular.

16 It's worth noting, you know, to that point

17 that Northwestern Energy and its public disclosures thus

18 far has indicated that this transaction could

19 substantially increase its influence over the operations

20 of the project going forward. Again, that's a

21 significant concern. So we need to be involved so that

22 we can make sure that the record is fully developed,

23 bring the unique perspective of a co-owner and another

24 Washington utility, as Mr. Kumar noted, to the

25 proceeding.

0045

1 So obviously, it's our position and we

2 appreciate Puget's comments in this regard. We have a

3 substantial interest and it is in the public interest

4 for Avista to be granted intervenor status and be a

5 party to this proceeding.

6 JUDGE O'CONNELL: Okay. Thank you.

7 I've already heard from PSE. Briefly, is

8 there anything you'd like to add as far as Avista's

9 intervention? Because, again, this is one of the

10 petitions to intervene that you did not oppose, and I

11 know we already addressed the -- your comments would be

12 the same as with PacifiCorp, but I want to give you an

13 opportunity if there's anything else.

14 MR. STEELE: Thank you, Your Honor. You

15 know, the -- the only thing I'd add is -- is PSE does

16 object and -- and -- and -- and does not agree with any

17 interventions that would get into sort of the

18 operational agreements of Colstrip and, you know,

19 operational questions of Colstrip. We believe those are

20 beyond the scope of this proceeding.

21 And so I -- I think that would concern us if

22 that's the intention of Avista and PacifiCorp if it's

23 getting into those types of operational-type issues. We

24 think those are beyond the scope of this -- of this

25 proceeding.

0046

1 JUDGE O'CONNELL: Do you mean the operations

2 at the plant or the -- the ownership control and what

3 would be decision-making of the plant?

4 MR. STEELE: Frankly I think it -- I think

5 it's both, because both are still contractual issues

6 between the parties. How those responsibilities and

7 relationships are worked out we -- we would submit are

8 still contractual issues between the parties that are

9 subject to contract. And -- and so, again, I -- we are

10 concerned and we've -- and we -- and we've -- and we

11 certainly remain concerned about to the extent the

12 private contracts between the parties are trying to

13 become an issue in this case as we believe that it's --

14 that it's not the purpose of this case and that it's not

15 in the jurisdiction of the Commission to address those

16 types of concerns.

17 JUDGE O'CONNELL: Well, you -- you brought

18 up a couple of times here at this hearing that the --

19 the -- the interest, the public interest is that of

20 PSE's customers, but also of, you know, Washington in

21 this greater sense that the public interest for

22 Washington ratepayers, which is, you know, why it

23 includes Avista and PacifiCorp. Don't those -- the --

24 the change that could happen in the ownership share in

25 the control of Colstrip and decision-making, doesn't

0047

1 that involve the public interest of Washington

2 ratepayers in this larger sense?

3 MR. STEELE: Well, I think the -- I think

4 the concern is, is if the parties are trying to dispute

5 the terms of -- of those agreements in this proceeding,

6 I think that's not -- that's not the purpose of this

7 case. It's -- it's, again, is -- is -- is the sale

8 consistent with the public interest. But if -- if -- if

9 the parties are trying to dispute the terms of private

10 contracts and feel like they've been aggrieved somehow

11 as a result of those contracts, we -- we believe that's

12 beyond the scope of this case.

13 JUDGE O'CONNELL: Okay. So I -- I feel like

14 I need to --

15 MR. KUMAR: Your -- Your Honor?

16 JUDGE O'CONNELL: Hold on one moment.

17 I feel like I need to turn back to

18 PacifiCorp and Avista for a moment considering the --

19 the issues that were just raised by PSE. Right now

20 we're on Avista. I'm going to turn to Avista first and

21 then I want to hear from PacifiCorp again.

22 Mr. Andrea, why don't you go ahead.

23 MR. ANDREA: Yeah, thank you, Your Honor.

24 So in response to your question about what operation

25 impacts we think are at issue, it really is about over

0048

1 decision-making, not the actual operations of the unit.

2 And we are not looking to dispute or make at issue that

3 we've been aggrieved by our current agreements. We are

4 concerned about how this transaction may modify our

5 influence and control over the decision-making going

6 forward at Units 3 and 4.

7 So for example, the purchase and sale

8 agreement make some obligations with regard to how Puget

9 will make decisions between now and the time that the

10 units -- or the transaction closes, and then going

11 forward, there was vote sharing agreement that dictates

12 how votes will go forward as between and amongst Puget

13 and Northwestern. And we have a very clear interest in

14 understanding how all of those mechanisms are going to

15 work going forward and the impact that that may have on

16 our customers in Washington.

17 JUDGE O'CONNELL: Okay. Thank you.

18 Mr. Kumar for PacifiCorp, I -- I thought I

19 heard you wanting to speak; am I correct?

20 MR. KUMAR: Yes, Your Honor, and I

21 appreciate the opportunity to be heard on this issue. I

22 think I can be very specific about our interests. You

23 know, I would echo the comments of Mr. Andrea. We're

24 not here as a contractual party that has aggrieved, we

25 are here to raise very specific issues about how this

0049

1 transaction affects the public interest of Washington.

2 And I can be very specific about that. You know, as

3 part of this transaction, there includes a vote sharing

4 agreement. I believe Mr. Roberts of Puget Sound Energy

5 has even provided testimony on how this vote sharing

6 agreement will work.

7 We have very serious concerns about, you

8 know, the decision-making that results from that vote

9 sharing agreement that could affect the public interest

10 of Washington, and those are the specific concerns that

11 we would like the opportunity to raise in front of the

12 Commission.

13 JUDGE O'CONNELL: Okay. I understand.

14 Okay. Next I'd like to turn to Staff and

15 Public Counsel. We've heard from intervenors and PSE as

16 to four petitions to intervene for Renewable Northwest,

17 for Portland -- sorry, for PGE, for Avista, and for

18 PacifiCorp. I want to hear from Staff first. If we

19 could hear what Staff's thoughts are on the petitions to

20 intervene. Go ahead.

21 MR. DALLAS: Thank you, Your Honor. Staff

22 doesn't oppose any petition to intervene. In general,

23 Staff believes that the Commission would benefit from

24 the testimony of each one of these intervenors, and I'll

25 start with Renewable Northwest.

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1 It is Staff's understanding that Renewable

2 Northwest's primary interest in this docket relates to

3 the sale of the portion of Colstrip transmission and its

4 impact on renewable development in Eastern Montana.

5 Staff shares this concern and believes that it's in the

6 public interest to have Renewable Northwest's

7 perspective and expertise, and this expertise could help

8 the Commission in rendering its order.

9 Switching to PG&E, Staff believes that PG&E

10 has an interest because the sale would give Northwestern

11 a majority share in Colstrip Unit 4. In particular,

12 PSE's sale would give Northwestern a 55 percent interest

13 in Unit 4. Staff is also aware of vote share agreements

14 that are part of this sale. Therefore, PG&E would be

15 similarly situated with Avista and Pacific Power whose

16 ratepayers could be impacted by Northwestern being a

17 majority owner. Staff believes that the public interest

18 includes all Washington ratepayers and not just PSE

19 ratepayers.

20 In particular, votes at Colstrip on cost

21 would have to be approved by the Commission. And

22 Pacific Power talked about capital addition, so a

23 capital addition approved under this new voting regime

24 could impact Pacific Power who's seeking recovery of

25 those costs and also Pacific Power's ratepayers. This

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1 brings interesting perspective given CETA where one

2 owner may want to invest in Colstrip, whereas the others

3 do not.

4 In general, Staff supports intervention of

5 all the Colstrip owners and believes it's in the public

6 interest and each owner has a substantial interest.

7 Thank you.

8 JUDGE O'CONNELL: Okay. Okay. Thank you.

9 Ms. Gafken for Public Counsel?

10 MS. GAFKEN: Yes, thank you. I'm not going

11 to repeat everything that's been said already except to

12 note that Public Counsel also does not have any

13 opposition to any of the petitions for intervention, but

14 with respect to the specific ones that we're discussing

15 right now, I'll start with Renewable Northwest.

16 I -- I think the question of whether they

17 have a substantial interest may be a little squishier,

18 but they don't necessarily need a substantial interest

19 in the proceeding in order to be allowed as an

20 intervenor. If their intervention is in the public

21 interest, then this is kind of a two-prong test

22 intervention whether a party has a substantial interest

23 or whether their petition -- participation would be in

24 the public interest.

25 And while I'm not certain that they have a

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1 substantial interest directly, I do think that their

2 participation could be -- or is in the public interest.

3 They do have expertise that other parties don't

4 necessarily have, and the Commission would benefit

5 from -- from hearing from their testimony.

6 With respect to the co-owners and

7 particularly PGE, there's been a lot of discussion about

8 whether this Commission has jurisdiction over PGE and

9 their operations, and I -- I'm not sure that that's the

10 correct focus. Public Counsel does believe that PGE and

11 the other co-owners have a substantial interest in this

12 case because the sale that Puget is proposing has a

13 direct effect on them, and that is one basis for having

14 a substantial interest.

15 As far as the impact on the co-owners and

16 the ownership of Colstrip and -- and how that might look

17 after the sale, they bring a very specific and unique

18 perspective to that discussion that the other parties

19 won't have. I, for example, represent residential and

20 small business customers, but I don't have a lot of

21 insight into how the ownership structure will -- how the

22 change in the ownership structure will impact operations

23 and management of Colstrip, but these co-owners do.

24 And, you know, I -- I can theorize about

25 what the voting rights proposal will do and -- and those

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1 sorts of things that they -- they will have a much

2 closer and more robust understanding of the impact of

3 those things, and I think it is important for the

4 Commission to hear those perspectives because those

5 things feed into whether this transaction in is the

6 public interest. And, you know, while all of the

7 traditional parties will bring their cases and will --

8 will work the case to the best of our ability, that's a

9 perspective that none of us can really bring.

10 I want to take a quick look at my notes to

11 make sure that I'm getting everything in that I wanted

12 to say.

13 Oh, I guess one other point. In terms of

14 other forums where the co-owners could bring up issues,

15 this is really the forum in which parties can address

16 whether the sale should go forward or not. So that's --

17 that's another reason why I think that the co-owners

18 should be a part of this proceeding.

19 The sale doesn't operate in a vacuum. You

20 know, we're not looking at the sale in theory without

21 considering the other impacts or -- or what -- what

22 impacts the sale might have, and part of that impact is

23 how Colstrip will be operated in the future, what

24 potential costs might there be to ratepayers as a result

25 of this transaction.

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1 All of those things are relevant in this

2 proceeding, and so for the -- for that -- for these

3 reasons, Public Counsel would not object to any of the

4 intervenors being a party.

5 JUDGE O'CONNELL: Okay. Thank you,

6 Ms. Gafken.

7 At this point, I'm going to -- after hearing

8 the reasons for and against intervention at this

9 hearing, I'm going to take the petitions to intervene of

10 certain petitioners under advisement and issue a

11 decision in the prehearing conference order. I'm going

12 to take the petitions to intervene of Renewable

13 Northwest, Avista, PacifiCorp, and Portland General

14 Electric under advisement, and I will issue a decision

15 in the prehearing conference order.

16 As to the other intervenors, there are no

17 objections to their intervention, and so the remaining

18 intervenors, their petitions will be granted. That's

19 AWEC, Northwest Energy Coalition, Sierra Club, and

20 Natural Resources Defense Council.

21 I want to move on to a couple of other

22 topics. I want to come back to Mr. Kumar's request that

23 the requirement of paper filing be postponed at least

24 for the foreseeable amount of time. Mr. Kumar suggested

25 one month. I want to hear from some of the other

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1 interested parties their thoughts on what is an

2 appropriate amount of time and if it is appropriate that

3 the requirement for filing paper copies be postponed or

4 suspended for the time being.

5 Let me hear from Staff.

6 MR. DALLAS: Staff believes that Pacific

7 Power's request is reasonable and would have no

8 objection to that.

9 JUDGE O'CONNELL: Okay. Public Counsel,

10 Ms. Gafken, do you have an opinion?

11 MS. GAFKEN: I also agree that Mr. Kumar's

12 request is reasonable. In terms of time frame, I think

13 that's a fluid question and the Coronavirus issue is

14 evolving. And so I guess I would -- if the Commission

15 is inclined to grant the request, I -- I would urge the

16 Commission to be open to flexibility with it. I think

17 in the prehearing conference order, you probably need to

18 put in a time frame, but if -- if situations change such

19 that a time frame longer than 30 days would be useful,

20 then -- then I -- I hope that there would be some

21 flexibility for that.

22 I'm not sure that any of us really can

23 telegraph or predict what's going to happen in the next

24 couple of months, but I do think that the underlying

25 request of suspending paper copies would be extremely

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1 useful. I think most of our Staff are teleworking at

2 this point and producing paper copies does pose a

3 logistics issue. So we do support the request.

4 JUDGE O'CONNELL: Thank you.

5 PSE?

6 MR. KUZMA: PSE understands and appreciates

7 the -- the need for the -- the request and would agree

8 with PacifiCorp, Staff, and Public Counsel that that

9 would be advisable. And as far as the time period, we'd

10 leave that to the Commission's discretion, you know,

11 with the understanding that for the reasons raised by

12 Public Counsel, it's a little uncertain at this time.

13 JUDGE O'CONNELL: Thank you.

14 Okay. I -- at this point, I'm inclined to

15 grant that request and set a time period in the

16 prehearing conference starting at 60 days from the time

17 that the prehearing conference order is issued. Is

18 there anyone else in the room or on the bridge line that

19 would be opposed to that modification?

20 Okay. Hearing none, I'm going to include

21 that in the prehearing conference order, and I -- I

22 agree with Public Counsel, that given the circumstances,

23 we need to be -- we need to show some flexibility in the

24 timeline. So I'm going to set a date in the prehearing

25 conference order, but that date will be revisited as

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1 necessary.

2 Okay. I want to return to the procedural

3 schedule and the dates for hearing and for filing of the

4 testimony, the filing of the rebuttal, and

5 cross-answering testimony. There is some flexibility

6 for the hearing date. In addition to October 14th,

7 September 29th or September 30 would work for the

8 Commission. We do have that availability. That would

9 require the rebuttal and cross-answering be due sometime

10 around August 26th.

11 And hearing from PSE and PSE's concerns, I

12 think that if the parties could turn around briefs in

13 three weeks after the hearing, so by about October 20th

14 or so, the Commission could likely get out an order

15 by -- you know, before the beginning of December. I

16 understand that puts us pretty close to the timeline

17 that PSE has indicated. They're -- you know, the -- the

18 considerations we have to make for the Commission's

19 resources and availability may require the timeline to

20 get pretty tight.

21 So at -- at this point, I'd like to ask if

22 the parties have had discussions about procedural

23 schedule, and in addition, I'm inclined to go off the

24 record, allow the parties to confer.

25 Mr. Dallas?

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1 MR. DALLAS: The parties have discussed the

2 procedural schedule, but in light of these new dates, I

3 think we would need some time to confer to propose a

4 schedule to the Commission.

5 JUDGE O'CONNELL: Okay. So currently, it is

6 ten minutes to 11:00 in the morning. I'm going to step

7 off the bench and give the parties the room and the

8 bridge line to discuss. I don't want this to -- the

9 recess to drag out very long. I'd like to set a time

10 when I will come back and we'll proceed one way or

11 another hearing what complications there are. So is 20

12 minutes, do you think that would be a sufficient amount

13 of time to have discussion amongst the parties,

14 Mr. Dallas and Mr. Steele?

15 MR. DALLAS: That sounds reasonable.

16 MR. STEELE: Yes, Your Honor.

17 JUDGE O'CONNELL: Okay. So I will return --

18 we'll be off the record and I will return at ten after

19 11:00. If the discussions are over earlier, Staff, if

20 you could just call me or come get me.

21 MR. COLEMAN: Your Honor? I'm sorry. This

22 is Brent Coleman for AWEC, and I apologize, I was trying

23 to get my calendar back up when you -- when you

24 identified those two new possible dates at the end of...

25 JUDGE O'CONNELL: September.

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1 MR. COLEMAN: September. Can you tell me --

2 or can you repeat the -- the then potential rebuttal

3 testimony date? Are you still looking at a five-week

4 window?

5 JUDGE O'CONNELL: Yes.

6 MR. COLEMAN: Okay.

7 JUDGE O'CONNELL: It's about -- so the

8 rebuttal date I looked at was August 26th if there's a

9 hearing on the September 29th or September 30th. So

10 that's just over four weeks. That is about as tight as

11 we can go as far as the time between rebuttal testimony

12 and hearing. Okay.

13 MR. COLEMAN: Thank you. That just helps me

14 be more informed as I -- as you -- as we start this

15 conversation without you. Thank you. I apologize for

16 missing it.

17 JUDGE O'CONNELL: That's fine. Let's be off

18 the record.

19 (A break was taken from

20 10:52 a.m. to 11:14 a.m.)

21 JUDGE O'CONNELL: Let's be back on the

22 record. Okay. We just came back from recess allowing

23 the parties some time to discuss the procedural schedule

24 with the parameters the Commission explained.

25 Mr. Dallas, have the parties been able to

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1 discuss and possibly reach an agreement on a procedural

2 schedule?

3 MR. DALLAS: It is my understanding that we

4 do.

5 JUDGE O'CONNELL: Okay. Why don't you -- I

6 don't have a copy of it, but why don't you go ahead and

7 briefly give me the dates and significant -- well, the

8 details of what each date has.

9 MR. DALLAS: Sure. And I'll make sure to

10 read this slowly for the record. So just starting at

11 the very top, the applicant's initial filing was

12 February 19th, 2020, and we have scheduled a first

13 settlement conference for July 1st, 2020. And then we

14 have Staff, Public Counsel, and intervenors' testimony

15 and exhibits due July 17th, 2020. And then we have a

16 second settlement conference scheduled for

17 August 13th, 2020. Then we have the applicant's

18 rebuttal testimony and exhibits, Staff, Public Counsel,

19 and intervenors' cross-answering testimony and exhibits

20 on August 26th, 2020.

21 Next we have the last day for discovery

22 being September 11th, 2020. Next we have

23 cross-examination, exhibits, witness list, and time

24 estimates due on September 23rd, 2020. Next we have the

25 evidentiary hearing on September 30th, 2020, and we have

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1 the post-hearing briefs due October 21st, 2020. And the

2 statutory deadline for the Commission to issue an order

3 would be January 19th, 2021.

4 I would also like to discuss having a public

5 comment hearing as well, which we have not provided a

6 date for. And we also discussed discovery timelines,

7 and we believe that there should be ten days initial

8 response followed by seven days after response testimony

9 is filed and five days after rebuttal.

10 JUDGE O'CONNELL: Okay. Thank you.

11 So I'd like to at this point ask if there

12 are any parties in the room or on the bridge line that

13 would like to explain or provide any objection to the

14 dates and the DR response times that Staff has just

15 indicated?

16 MR. COLEMAN: This is Brent Coleman for

17 AWEC. And I apologize, this is partly due to my sort of

18 newness to the -- to the jurisdiction, but can you --

19 can it be clarified with respect to the DR turnaround

20 time? Days -- or the calendar days or business days?

21 Thank you.

22 MS GAFKEN: Business days. This is Lisa

23 Gafken. The idea was -- I'd proposed the shortened time

24 was being just sort of structure and -- and

25 adjudications and the -- the DR turnaround time would be

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1 based on business days.

2 MR. COLEMAN: Thanks for the clarification.

3 MR. DALLAS: And that's Staff's

4 understanding as well.

5 JUDGE O'CONNELL: Okay. I think these dates

6 are all reasonable, and I know from our discussion

7 earlier that the Commission will be available for a

8 hearing on that date. So if there are no objections,

9 this procedural schedule will be adopted and included in

10 the prehearing conference order.

11 MS. GAFKEN: Judge, this is Lisa Gafken.

12 May I make one additional comment?

13 JUDGE O'CONNELL: Yes, go ahead.

14 MS. GAFKEN: Just with -- with respect to

15 the public comment hearing, I think it was discussed in

16 a singular, and Public Counsel would recommend that

17 there be more than one. I'm not making a specific

18 recommendation as to how many, but more than one because

19 there is a substantial interest generally in Colstrip,

20 and Puget has a pretty wide ranging service territory.

21 So I do believe that more than one public comment

22 hearing would be appropriate, but I would leave that --

23 the total number up to, of course, the Commission's

24 discretion.

25 JUDGE O'CONNELL: Okay. So what I'm hearing

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1 is that there -- from Public Counsel there's a

2 preference that we at least attempt to have more than

3 one, but to leave that up to the Commission's discretion

4 as far as availability; is that correct?

5 MS. GAFKEN: Right.

6 JUDGE O'CONNELL: Okay.

7 MS. GAFKEN: Yes, and I -- I -- I suppose if

8 the Commission wanted to do more than two, I would not

9 object to that, but I'm not asking for that either.

10 JUDGE O'CONNELL: Okay. Understood.

11 Okay. Well, I think we have -- we've

12 covered everything that I have intended to cover at this

13 prehearing conference. Is there anything else from the

14 parties that we should discuss?

15 MR. KUZMA: Your Honor, this is Jason Kuzma

16 on behalf of Puget Sound Energy. I just do want to

17 mention that for purposes of data requests and service

18 that Puget will be sending out a distribution list

19 that's PSEDRS@perkinscoie.com that we'd request

20 everybody send, you know, service of pleadings and also

21 data requests and data request responses.

22 JUDGE O'CONNELL: And is that in your --

23 MR. KUZMA: If it's not, I will send you an

24 email with that listed.

25 JUDGE O'CONNELL: Okay. Thank you. I'd

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1 like to include that in the prehearing conference order.

2 At the end of the prehearing conference

3 order as an appendix, I will include all of the

4 attorneys who have made a notice of appearance for any

5 parties that are granted intervention as well as contact

6 information for anyone designated by the parties granted

7 intervention who -- you know, the support staff who

8 should also be receiving any communications between

9 parties.

10 Okay. Is there anything else that we should

11 discuss before we adjourn for the day? Okay.

12 MS. GAFKEN: Your Honor, this is Lisa

13 Gafken. I -- I just wanted to raise one -- one issue

14 that was alluded to earlier towards the beginning of

15 the -- of the prehearing conference in one of your

16 questions. And the question that you had raised was

17 with respect to Northwest -- Northwestern Energy's

18 participation in the docket.

19 They're not a party to this case, and I

20 could foresee, you know, discovery issues, right, if --

21 if we're asking -- "we," the collective group of

22 parties, are asking questions of Puget Sound Energy that

23 really require answers from Northwestern. I -- I could

24 see there being issues there, and I'm -- I'm not trying

25 to place any judgment on that, but I just wanted to

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1 raise that -- the flag just in case something does come

2 up during the proceeding as kind of a preservation issue

3 if you will.

4 JUDGE O'CONNELL: Okay. I understand.

5 PSE, Mr. Kuzma, Mr. Steele, do you have

6 thoughts on how we might resolve if anything comes up?

7 MR. KUZMA: Your Honor, I mean, Puget's

8 going to respond to the data requests to the best of its

9 ability. Northwestern is not a party to the proceeding.

10 The Commission doesn't have jurisdiction over them. I

11 can't speak on behalf of Northwestern and what

12 activities they would take. Quite frankly, you know, I

13 don't think we know everything Northwestern knows or --

14 or what the plans are either. So we -- we can't -- we

15 can't make any commitments on behalf of Northwestern

16 Energy. We can try to see if they can provide some

17 information, but that's the best we can do.

18 JUDGE O'CONNELL: Well, that -- I'll just

19 say that I assume that by -- by the fact that they've

20 entered into this transaction with PSE, that they have

21 an interest in wanting to see it move forward. So I

22 hope that they at least pay close attention to the

23 proceeding, and if something arises where they're

24 needed, I hope that they're willing to help resolve

25 questions.

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1 MR. KUZMA: Understood and we would agree.

2 JUDGE O'CONNELL: Okay. And -- okay.

3 Ms. Gafken, is there anything else that Public Counsel

4 thinks that we should address before we adjourn?

5 MS. GAFKEN: I have nothing else. Thank

6 you.

7 JUDGE O'CONNELL: Okay. Is there anyone

8 else who has something that we should address before we

9 adjourn?

10 Okay. Hearing nothing, thank you all for

11 your participation today. Thank you to those who are in

12 the room, but also thank you to those who are on the

13 bridge line. Before we adjourn, if you could give me

14 one moment.

15 So as I mentioned before, there is another

16 prehearing conference after this one. That prehearing

17 conference, a number of the parties here are also going

18 to be in attendance at that prehearing conference. That

19 next prehearing conference will begin at approximately

20 11:35 a.m. So with that, we will be off the record.

21 Thank you.

22 (Adjourned at 11:25 a.m.)

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1 C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

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6 I, Tayler Garlinghouse, a Certified Shorthand

7 Reporter in and for the State of Washington, do hereby

8 certify that the foregoing transcript is true and

9 accurate to the best of my knowledge, skill and ability.

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13 Tayler Garlinghouse, CCR 3358

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