0117

1 BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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3 In the Matter of the Joint )

Application of )

4 )

PUGET SOUND ENERGY, ALBERTA )

5 INVESTMENT MANAGEMENT ) Docket No. U-180680

CORPORATION, BRITISH )

6 COLUMBIA INVESTMENT )

MANAGEMENT CORPORATION, )

7 OMERS ADMINISTRATION )

CORPORATION, and PGGM )

8 VERMOGENSBEHEER B.V. )

)

9 For an Order Authorizing )

Proposed Sales of Indirect )

10 Interests in Puget Sound )

Energy )

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

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13 Pages 117 - 313

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RAYNE PEARSON

15 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

16 1:02 P.M.

FEBRUARY 15, 2019

17

Washington Utilities and Transportation Commission

18 1300 South Evergreen Park Drive Southwest

Olympia, Washington 98504-7250

19

20 REPORTED BY: SHERRILYN SMITH, CCR# 2097

21 Buell Realtime Reporting, LLC

1325 Fourth Avenue

22 Suite 1840

Seattle, Washington 98101

23 206.287.9066 | Seattle

360.534.9066 | Olympia

24 800.846.6989 | National

25 www.buellrealtime.com

0118

1 A P P E A R A N C E S

2 ADMINISTRATIVE LAW JUDGE:

3 ANDREW O'CONNELL

RAYNE PEARSON

4 Washington Utilities and

Transportation Commission

5 1300 South Evergreen Park Drive SW

Olympia, Washington 98504

6 360.664.1160

7

COMMISSIONERS:

8

CHAIRMAN DAVID DANNER

9 COMMISSIONER ANN RENDAHL

COMMISSIONER JAY BALASBAS

10

11 FOR COMMISSION STAFF:

12 JENNIFER CAMERON-RULKOWSKI

Office of the Attorney General

13 1400 South Evergreen Park Drive SW

PO Box 40128

14 Olympia, Washington 98504

360.664.1186

15 jcameron@utc.wa.gov

16

FOR PUBLIC COUNSEL:

17

LISA GAFKEN

18 Office of the Attorney General

800 - Fifth Avenue

19 Suite 2000

Seattle, Washington 98104

20 206.464.6595

lisa.gafken@atg.wa.gov

21

22

23

24

25

0119

1 A P P E A R A N C E S (Continued)

2 FOR PUGET SOUND ENERGY:

3 SHEREE STROM CARSON

DAVID S. STEELE

4 Perkins Coie LLP

10885 Northeast Fourth Street

5 Suite 700

Bellevue, Washington 98004

6 425.635.1422

scarson@perkinscoie.com

7 dsteele@perkinscoie.com

8

FOR THE ENERGY PROJECT:

9

SIMON FFITCH

10 Attorney at Law

321 High School Road Northeast

11 Suite D3, Box 383

Bainbridge Island, Washington 98110

12 206.669.8197

simon@ffitchlaw.com

13

14 FOR AWEC:

15 TYLER PEPPLE

Davison Van Cleve PC

16 1750 Southwest Harbor Way

Suite 450

17 Portland, Oregon 97201

503.241.7242

18 tcp@dvclaw.com

19

FOR WNIDCL:

20

DANIELLE FRANCO-MALONE

21 Law Offices of Schwerin Campbell

Barnard Iglitzin & Lavitt LLP

22 18 West Mercer Street

Suite 400

23 Seattle, Washington 98119

206.257.6011

24 franco@workerlaw.com

25

0120

1 A P P E A R A N C E S (Continued)

2

FOR IBEW LOCAL 77 & UA LOCAL 32:

3

BRADLEY L. MEDLIN

4 Robblee Detwiler PLLP

2101 Fourth Avenue

5 Suite 1000

Seattle, Washington 98121

6 206.467.6700

bmedlin@unionattorneysnw.com

7

8 FOR NWEC:

9 WENDY GERLITZ

Northwest Energy Coalition

10 811 - First Avenue

Suite 305

11 Seattle, Washington 98104

503.449.0009

12 wendy@nwenergy.org

13

FOR PGGM:

14

CRAIG GANNETT

15 Davis Wright Tremaine LLP

1201 Third Avenue

16 Suite 2200

Seattle, Washington 98101

17 206.757.8048

craiggannett@dwt.com

18

19 FOR BCI:

SCOTT MACCORMACK

20 Davis Wright Tremaine LLP

1201 Third Avenue

21 Suite 2200

Seattle, Washington 98101

22 206.757.8263

scottmaccormack@dwt.com

23

24

25

0121

1 A P P E A R A N C E S (Continued)

2

FOR OMERS:

3

LISA F. RACKER

4 McDowell Rackner Gibson PC

419 Southwest 11th Avenue

5 Suite 400

Portland, Oregon 97205

6 503.595.3922

lisa@mrg-law.com

7

8 FOR AIMCo:

9 STAN BERMAN

Sidley Austin LLP

10 701 Fifth Avenue

Suite 4200

11 Seattle, Washington 98104

206.321.3221

12 sberman@sidley.com

13

14

15

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17

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5

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13 Safety Culture in the

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1 OLYMPIA, WASHINGTON; FEBRUARY 15, 2019

2 1:02 P.M.

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

6

7 JUDGE O'CONNELL: Let's be on the

8 record. Good afternoon. Today is Friday,

9 February 15th, at 1:00 p.m., and we are here today for

10 a hearing in Docket U-180680, which is captioned In

11 the Matter of the Joint Application of Puget Sound

12 Energy, Alberta Investment Management Corporation,

13 British Columbia Investment Management Corporation,

14 OMERS Administration Corporation, and PGGM

15 Vermogensbeheer B.V. for an order authorizing proposed

16 sales of indirect interests in Puget Sound Energy.

17 My name is Andrew O'Connell, I'm an

18 administrative law judge with the Commission, joining

19 me is Judge Rayne Pearson, and we will be co-presiding

20 today with the Commissioners in this matter.

21 Let's begin by taking short form appearances

22 from the parties, beginning with the joint applicants,

23 and then we will go around the room.

24 Ms Carson?

25 MS. CARSON: Good afternoon, Your

0141

1 Honors. I am Sheree Strom Carson with Perkins Coie

2 representing PSE, one of the joint applicants.

3 MR. STEELE: David Steele with Perkins

4 Coie, also on behalf of the joint applicants.

5 MS. CARSON: Jason Kuzma is also here

6 with -- representing PSE, on behalf of the joint -- as

7 one of the joint applicants.

8 And then would you like each of the other

9 attorneys to make an appearance as well?

10 JUDGE O'CONNELL: Yes. Short, please.

11 MR. BERMAN: Good afternoon. I'm Stan

12 Berman representing Alberta Investment Management

13 Corporation.

14 MS. RACKNER: Good afternoon. I'm Lisa

15 Rackner representing OMERS.

16 MR. GANNETT: Good afternoon. I'm Craig

17 Gannett with Davis Wright Tremaine representing PGGM,

18 one of the joint applicants.

19 MR. MACCORMACK: And I'm Scott

20 MacCormack, also with Davis Wright Tremaine,

21 representing British Columbia Investment Management

22 Corporation.

23 JUDGE O'CONNELL: Okay. Thank you.

24 Let's start on the left here and we will go

25 around the room this way.

0142

1 MS. FRANCO-MALONE: Danielle

2 Franco-Malone representing the Washington and Northern

3 Idaho District of -- District Council of Laborers.

4 MR. PEPPLE: Good afternoon. Tyler

5 Pepple representing the Alliance of Western Energy

6 Consumers.

7 MR. FFITCH: Good afternoon. Simon

8 ffitch on behalf of The Energy Project.

9 MR. MEDLIN: Bradley Medlin of Robblee

10 Detwiler on behalf of IBEW 77 and UA Local 32.

11 MS. GAFKEN: Good afternoon. Lisa

12 Gafken, Assistant Attorney General, appearing on

13 behalf of Public Counsel.

14 MS. CAMERON-RULKOWSKI: Good afternoon.

15 Jennifer Cameron-Rulkowski, Assistant Attorney

16 General, appearing on behalf of Commission Staff.

17 JUDGE O'CONNELL: Thank you.

18 So for the parties in the pleadings and other

19 filed documents with the Commission, I've seen

20 abbreviations used for some of you, and for sake of

21 ease, I'm wondering if I can use those during this

22 hearing, if you have any objection to

23 Ms. Franco-Malone using WNIDCL?

24 MS. FRANCO-MALONE: That's fine. Or the

25 Laborers is also fine, if that's easier to say.

0143

1 JUDGE O'CONNELL: Okay.

2 And Mr. Medlin, if I refer to it as IBEW,

3 would that be sufficient?

4 MR. MEDLIN: We like being IBEW, yes.

5 JUDGE O'CONNELL: Okay.

6 Is there anyone on the bridge line who is

7 representing a party in this proceeding?

8 Hearing nothing, as I recall --

9 MR. VERWOEST: Martijn Verwoest is on

10 the line, PGGM.

11 JUDGE O'CONNELL: Can you please repeat

12 that?

13 MS. CARSON: That is the witness for --

14 MR. VERWOEST: My name is Martijn

15 Verwoest of PGGM.

16 MS. CARSON: Martijn Verwoest, the

17 witness for PGGM is on the line.

18 JUDGE O'CONNELL: We will have the

19 witnesses identify themselves when we call them up for

20 their testimony.

21 MR. FFITCH: Your Honor?

22 JUDGE O'CONNELL: Mr. ffitch.

23 MR. FFITCH: I just wanted to draw the

24 Bench's attention to -- Ms. Gerlitz is here on behalf

25 of The Energy Project -- or, excuse me, on behalf of

0144

1 The Energy Coalition. She is in the room. They are

2 not represented by counsel.

3 JUDGE O'CONNELL: Thank you.

4 Ms. Gerlitz, can you please identify yourself?

5 MS. GERLITZ: Yeah. Hi. Wendy Gerlitz,

6 Northwest Energy Coalition.

7 JUDGE O'CONNELL: Thank you.

8 Okay. Before we are joined by the

9 Commissioners, we will address any housekeeping and

10 preliminary matters, including the motion to strike

11 and other objections to the admissibility of evidence.

12 For the record, I will ask the parties if they

13 are willing to stipulate to the admission of the

14 prefiled exhibits and testimony, up to and including

15 the settlement testimony.

16 Other than for the cross-exhibits and

17 testimony that is subject of the motion to strike, is

18 there a stipulation by the parties as to

19 admissibility?

20 Ms. Carson?

21 MS. CARSON: Could you repeat? You said

22 "other than."

23 JUDGE O'CONNELL: Other than the

24 cross-examination exhibits and the testimony exhibits

25 that are subject of the motion to strike, is there a

0145

1 stipulation by the parties?

2 MS. CARSON: Yes.

3 MS. FRANCO-MALONE: The Laborers will

4 stipulate to the admissibility of all the other

5 exhibits.

6 JUDGE O'CONNELL: Okay. Thank you.

7 Mr. Medlin?

8 MR. MEDLIN: Yes, the IBEW will

9 stipulate to the others. That's fine.

10 JUDGE O'CONNELL: Is there any other

11 party that does not stipulate to the exhibits?

12 Hearing nothing, the exhibits that I have --

13 MR. STEELE: Your Honor.

14 JUDGE O'CONNELL: Please.

15 MR. STEELE: A few hours ago, around

16 10:30, IBEW filed a document entitled Proposed

17 Commitments, and we're not -- it appears to be

18 supplemental testimony. We do not stipulate to this

19 as well. And so I don't know if the Commission has

20 seen this document yet.

21 JUDGE O'CONNELL: I have seen that, but

22 that was not included in what I was expecting the

23 parties to have talked about and stipulated to. We

24 will address that when we address admissibility of

25 cross-examination exhibits.

0146

1 MR. STEELE: Thank you.

2 JUDGE O'CONNELL: So with that, the

3 exhibits and testimony that have just been identified

4 will be admitted to the record.

5 So before we address the motion to strike, I

6 would also like to know whether the joint applicants

7 intend to object to any of the cross-exhibits offered

8 by the parties opposing the settlement.

9 And I am asking for -- just informational. Is

10 there going to be an objection to any of the

11 cross-exhibits?

12 MS. CARSON: Your Honor, I think it

13 depends on how they are used for cross-examination.

14 Many of them are data request responses that the joint

15 applicants completed. If they are used within an

16 appropriate scope, we would not have an objection to

17 them, but we don't know how they are going to be used.

18 JUDGE O'CONNELL: Many of the

19 cross-exhibits are, as I have seen, duplicates of

20 exhibits offered in other testimony, so I think that

21 when we resolve the issues as to a motion to strike,

22 the ruling on that motion may apply to some of those

23 cross-examination exhibits as well.

24 MS. CAMERON-RULKOWSKI: Your Honor?

25 JUDGE O'CONNELL: Yes,

0147

1 Ms. Cameron-Rulkowski.

2 MS. CAMERON-RULKOWSKI: Thank you.

3 Staff has a similar issue. Two of the

4 exhibits to the direct testimony of Mr. Arnold, DTA-3

5 and DTA-4, were also proffered as cross-exhibits

6 directed as Ms. Cheesman. I understand that we have

7 not stipulated to the entry of those exhibits because

8 they are subject to the motion to strike, but we --

9 but for purposes of cross-examination, we would

10 probably oppose entry of those exhibits.

11 JUDGE O'CONNELL: Thank you for that

12 clarification. I understand.

13 Let's turn to the motion to strike. I would

14 like to first hear from the joint applicants, as it is

15 their motion.

16 Ms. Carson -- or Mr. Steele. I apologize.

17 MR. STEELE: Thank you, Your Honor.

18 Now, would you like to address -- are there

19 certain testimony you would like to address first? Is

20 there an order you would like to proceed with, Your

21 Honor? How would -- what's the easiest way for you

22 to -- since there are, I believe, four pieces of

23 testimony here?

24 JUDGE O'CONNELL: Correct. I am aware

25 that the motion to strike applies to all of the four

0148

1 testimonies and associated exhibits proffered by both

2 the parties, including WNIDCL and IBEW. I would leave

3 it up to you how you would like to present your motion

4 as to those four separate testimonies. You may do

5 them all together or you may break them down.

6 MR. STEELE: Thank you.

7 The joint applicants did not -- in filing

8 these motions, it wasn't a decision made lightly, but

9 upon review of the testimony filed on Friday, and

10 considering the narrow focus of this case, the narrow

11 issues before the proceeding, upon reviewing the

12 testimony filed by -- by both parties, WNIDCL and

13 IBEW, it became apparent that their testimony exceeded

14 the bounds of this case, and the two primary issues

15 are: Neither of their testimonies are tied to the

16 proposed transactions, they don't tell us what harm is

17 caused by the transactions they are concerned about;

18 and the other issue is, most of the issues that they

19 raise are employment issues, collective bargaining

20 issues.

21 The place I would like to start, Your Honor,

22 is in Order 3, the Commission set the applicable legal

23 standards and parameters that govern this proceeding.

24 And the sole issue before the Commission today is

25 whether the proposed transactions are in the public

0149

1 interest. The legal standard for assessing that is

2 the no harm standard.

3 In Order 2, the Commission stated parties are

4 cautioned to stay focused on the no harm standard and

5 its requirement for a showing that customers and the

6 public will be no worse off if the transaction is

7 approved and goes forward. In other words, the

8 question is will the public suffer harm caused by the

9 transactions? Will there be a change to the status

10 quo that could harm customers caused by the

11 transactions? Importantly, the transaction must be

12 the triggering event of the harm. In other words,

13 it's effectively a but-for test, but for the

14 transactions would the harms that they have raised

15 occur? And because of that preexisting concerns,

16 preexisting safety issues, preexisting reliability

17 issues that aren't caused by the transaction at issue

18 before the Commission today are not the type of harms

19 that concern the Commission in this proceeding.

20 And so the intervention standard that the

21 Commission set for the intervenors, the Commission

22 said their role, their limited role, is to provide

23 information on whether the transactions will be

24 detrimental to the safety and reliability of service

25 to customers where they are actually involved in the

0150

1 provision of such service. Safety and reliability

2 concerns that precede the transaction or it was not

3 the cause of those issues, are outside the scope of

4 the case. Only harms caused by the transactions are

5 relevant here before the Commission.

6 Finally, the other restriction that the

7 Commission stated in Order 3 was employment issues,

8 and that's a quote from Order 3, are outside the case

9 and beyond the jurisdiction of the Commission.

10 In Order 3 the Commission stated, the

11 Commission has no authority over collective bargaining

12 issues or terms and conditions of employment.

13 Employment issues such as workplace changes, labor

14 contracts, wages, hours, staffing, training are

15 outside the Commission's purview. Neither party in

16 their testimonies identified actual harms caused by

17 the transaction.

18 And so let me start with -- specifically I'll

19 start with IBEW and Mr. Arnold's testimony.

20 JUDGE O'CONNELL: Mr. Steele?

21 MR. STEELE: Go ahead. Yes.

22 JUDGE O'CONNELL: Let me stop you for a

23 moment. You have been very brief in your summary to

24 this point. I would like to point out to you and the

25 other parties that expect to present orally, that we

0151

1 have reviewed the motion to strike, as well as all the

2 written responses. We weren't exactly expecting

3 written responses, we were expecting the oral

4 presentation here, but nevertheless, we will accept

5 those written responses, and we have reviewed them and

6 are aware of the arguments that the parties have

7 raised.

8 MR. STEELE: Thank you.

9 JUDGE O'CONNELL: With that, let me turn

10 it back over to you.

11 MR. STEELE: Well, with -- you know, the

12 fault of that -- so we -- we did review the opposition

13 filed by IBEW, and -- and, you know, in -- in

14 reviewing that and Mr. Arnold's testimony, their

15 opposition demonstrates that -- that -- I can't

16 identify any harm that they have cited caused by the

17 transaction that addresses the safety and reliability

18 issues that Mr. Arnold identifies in his testimony.

19 And he has a host of issues that he raises, but

20 there's not one of them that I have seen where he says

21 the transactions are causing this harm, are causing

22 this issue. And he raises things like computer

23 training is insufficient or automobile accidents. You

24 know, these -- these all might be real safety or

25 reliability issues, but not one of them that he

0152

1 identifies is caused by the transaction. And in

2 Mr. Medlin's opposition filed, they did not address

3 that issue. What harm from this proceeding is

4 triggering these issues?

5 And so that's the primary concern. I still

6 have not heard an answer on that, and their opposition

7 did not address that.

8 Furthermore, in going through Mr. Arnold's

9 testimony, almost everything he addresses are

10 employment issues: Staffing, hours, training

11 programs, apprenticeship programs. Nearly every

12 single one is an employment issue.

13 Now, Mr. Medlin has made the argument that

14 these issues are fine because they are not captured in

15 the actual collective bargaining agreement, that's the

16 current agreement at this time. The problem with

17 that, though, is the Commission's order was broader

18 than that. The Commission said employment issues,

19 staffing, hours, overtime, training, those are

20 employment issues outside the jurisdiction of the

21 case -- outside the jurisdiction of the Commission,

22 excuse me, and beyond the scope of this proceeding.

23 And so I still have not -- in reading their

24 opposition, in going through Mr. Arnold's testimony, I

25 have not seen one harm that they identify caused by

0153

1 the transaction. He raises all these other issues,

2 most of them are preexisting, that I have seen, issues

3 that may or may not be legitimate, but none of them

4 were caused by the transaction.

5 The last one with Mr. Arnold that I wanted to

6 raise is we -- we do have questions about his

7 qualifications. It's been a long time since he worked

8 for PSE, 20 years, and he provides no testimony about

9 his experience since that time. It's unclear whether

10 he has other utility experience. His testimony is

11 completely silent on that issue. And -- and he

12 addresses a host of issues about the company, most

13 very shallowly, and I think there are real questions

14 whether he has the information and the experience to

15 really provide a credible opinion on those issues, and

16 so I think that is a real issue.

17 I wanted to briefly address the procedural

18 concern that IBEW raised in their opposition with the

19 timing of our motion. We understand that the motion

20 was filed on Monday. We filed it in one business day,

21 and the rule, I believe it's WAC 480-07-3754, states

22 typically there is five days for a response, or the

23 Commission can order shortened time or oral motion or

24 response. There's ways it can be dealt with, so there

25 is no procedural issue with the rule there that I have

0154

1 seen.

2 I wanted to turn to the WNIDCL testimony. Our

3 concerns are the same with theirs. I can't identify a

4 harm that they have shown caused by the transactions.

5 The only -- the only argument that they make, that I

6 have seen, that ties to the case is the argument that

7 the loss of Macquarie, and specifically the loss of

8 the Macquarie responsible contractor policy will harm

9 customers. Because with Macquarie not being an owner

10 anymore, it will somehow lead to the hiring of

11 contractors that they disagree with or think are not

12 appropriate, and so I wanted to address this argument

13 because I think it is important.

14 The problem with this argument is there is no

15 evidence in Ms. Hutson's testimony, that I have seen,

16 that Macquarie's responsible contractor policy ever

17 had an impact on PSE whatsoever. And what I mean is

18 that policy is not reflected in the 2008 commitments,

19 it was never agreed to by the parties, the Commission

20 never required it. Furthermore, by the terms of the

21 policy itself, it's only applicable if Macquarie has

22 50 percent ownership in the company and a controlling

23 interest, which it's never had. By the terms of the

24 Macquarie policy itself, it never governed PSE. In

25 other words, it was never the status quo.

0155

1 Frankly, the status quo has been PSE's

2 responsibility contractor guidelines which have been

3 in place for over a decade. There is simply no

4 evidence in her testimony that PSE ever relied on

5 those guidelines; it's -- it's speculation. And so

6 how could PSE's customers be harmed by the loss of a

7 policy that never governed PSE, that PSE was never

8 required to follow or comply with?

9 The only harm, as well, that Ms. Hutson

10 identifies tied to this policy is actually

11 interesting. It's in her testimony on Page 16. Let

12 me just pull it up here because it's worth -- it's

13 worth looking at.

14 So she asks -- she asks an important question.

15 Page 16, Line 10. How might PSE ratepayers be harmed

16 as a result of the proposed sale? Her answer is in

17 one year, 2020, the essential contract PSE has with

18 Quanta Gas and InfaSource ends. The local labor pool

19 comprised of WNIDCL members who are skilled,

20 experienced, and trained could be replaced.

21 The harm she cites is a labor issue, it's a

22 concern over a loss of workers. It's a concern that

23 the agreement, the collective bargaining agreement

24 could expire and her workers cannot be retained.

25 Different contractors could be hired. It's a labor

0156

1 issue that she cites here at the end of her section on

2 the Macquarie issue. And aside from that, I'm not

3 aware of any harm that she identifies caused by the

4 transaction.

5 Turning to the other witnesses, Mr. Jones and

6 Mr. Frieberg. In WNIDCL's opposition filed this week,

7 it was -- it was framed that their testimony was a

8 presentation, and that they are a three-part

9 presentation that sort of worked together. I think

10 this is false. There is no testimony explaining how

11 they fit together.

12 Mr. Jones's testimony is never mentioned, that

13 I have seen, by Mr. Frieberg or Ms. Hutson.

14 Ms. Hutson's testimony is never mentioned by Mr. Jones

15 or Mr. Frieberg. Mr. Frieberg's testimony is never

16 mentioned by Mr. Jones and is only briefly mentioned

17 by Ms. Hutson. And so I -- there is no explanation as

18 to how they fit together.

19 JUDGE O'CONNELL: Mr. Steele?

20 MR. STEELE: Sure.

21 JUDGE O'CONNELL: I think we are getting

22 a little too detailed. I understand the arguments

23 that have already been made in the written responses.

24 If you could start to wrap up.

25 MR. STEELE: In looking at the Mr. Jones

0157

1 and Mr. Frieberg testimony, we have not seen anything

2 in either of their testimonies that tie to the

3 proposed transactions, not -- not one -- one issue

4 that we have seen where they can cite to the

5 transaction at issue.

6 The last point I want to make, Your Honor, is,

7 you know, in looking at Ms. Hutson's commitments, you

8 know, we've gone through them in detail, and from what

9 we can tell, all of them are focused on employment

10 issues and none of them are tied to a harm caused by

11 the transactions. They address training, they address

12 staffing, they address workforce. And, I think, you

13 know, one of the biggest issues that we have seen here

14 is that none of them have a no harm analysis done.

15 They are proposing additional training programs and

16 organizations to join and -- et cetera, et cetera, but

17 there is no testimony as to whether or not they meet

18 the no harm standard, because typically, when you are

19 adding programs, adding requirements, that could add

20 costs and that could actually hurt customers, and

21 there's no analysis on that issue.

22 And so from what we can tell, her commitments

23 raise collective bargaining issues, none of them

24 address a harm caused by the transaction, and for

25 those reasons, it's our position that all the

0158

1 testimony filed by the intervenors, the unions in this

2 case, should be stricken.

3 JUDGE O'CONNELL: Thank you, Mr. Steele.

4 I would like to turn next to Mr. Medlin, and

5 then we will have Ms. Franco-Malone. And if,

6 Ms. Gafken, you would like to present orally, we will

7 allow you as well.

8 I want to reiterate, we have reviewed the

9 motion to strike, we have reviewed the written

10 responses that we have received. We have spent a

11 great amount of time reading and looking at the

12 testimony that's the subject of the motion, so to the

13 extent that you can be brief in your responses, I

14 would encourage you to do so.

15 MR. MEDLIN: Sure.

16 JUDGE O'CONNELL: Mr. Medlin?

17 MR. MEDLIN: Thank you.

18 Just very quickly on the timing issue, I do

19 think they have sort of misread the rule. It does say

20 that you get five days. We didn't get five days, so I

21 think somehow that we get shorted on the time, that

22 that's okay, I don't think that that is correct. And

23 we have certainly complied with the procedural rules

24 and we think PSE should do so as well.

25 On the argument about the harms, PSE said

0159

1 several things about that. It has claimed that if

2 it's a preexisting harm it doesn't count. I guess

3 that's -- that's sort of like telling someone who has

4 cancer, well, you already had cancer so we can't treat

5 it.

6 The harms that we have identified are ones

7 that are going to continue and likely possibly can

8 accelerate. The claim that we didn't sufficiently

9 identify them, I don't know how they couldn't [sic] be

10 more clear. We listed issues related to staffing, to

11 an overreliance on overtime, issues with vehicle

12 accidents. There's problems with the damage assessor

13 in responding to storm events. We identified some

14 issues with circuits and infrastructure. We had

15 issues about subcontracting. I mean, there's numerous

16 things that we identified that fall under the broad

17 umbrellas that are safety and reliability.

18 Safety is a huge topic. There are many things

19 that affect safety. There's the safety of customers,

20 but there's also the safety of the actual employees

21 performing the work. Same with reliability.

22 Customers want reliable utility service, but you can't

23 run a utility without employees and people, and if you

24 are working those people too hard and you keep

25 diminishing the staff that you have, you have fewer

0160

1 people to do the work, so of course you are going to

2 drive more overtime, and of course you are going to

3 have more vehicle accidents, and you're going to have

4 issues, and I think those are harms.

5 There was something said that we have this

6 sort of informational role. Well, we've been granted

7 intervention, as a party in this case, so I would say

8 that we have given information. Our testimony is

9 information, the documents we put forth are

10 information. I'm a little surprised that PSE is

11 objecting to the exhibits, considering that about

12 95 percent of them are their own documents. They gave

13 them to us, we didn't create them, but then they don't

14 want them to be a part of the record, perhaps because

15 the harms that are identified in them.

16 As to the issue of -- I know they didn't

17 address this and it didn't come up, but I want to

18 address it. We've talked sort of about the testimony

19 itself, but I also want to address, they basically

20 said they want to restrict our ability to ask

21 questions. WAC Rule 480-07-740 that talks about the

22 rights of parties opposed to settlement, it says that

23 those parties -- that's myself, the IBEW, and the

24 Laborers, we have the right to cross-examine

25 witnesses, we have the right to present evidence, we

0161

1 have the right to present argument and opposition, and

2 they are essentially trying to deny us that, just like

3 they tried to ignore the five-day motion rule.

4 There's one set of rules for PSE; a different set of

5 rules for everyone else.

6 I also want to address the argument that

7 somehow we have obstructed this proceeding. Again, I

8 will just remind everyone, the IBEW opposed the

9 accelerated case schedule, we opposed the hearing date

10 getting moving forward, and all of those things were

11 granted. I don't know how it is that we have

12 obstructed. And I have asked this question and it has

13 not been answered. How is filing testimony and

14 presenting evidence obstruction? That is what the

15 right of an intervenor is to do.

16 Some issues have also been raised that -- that

17 the things that we are trying to talk about are

18 collective bargaining. We included the collective

19 bargaining agreement for a very clear reason: Because

20 we wanted to give you the actual documents so you can

21 see for yourself. You will notice that there are no

22 restrictions on the amount of overtime someone can

23 work, there's nothing in that agreement about

24 staffing, there's nothing in there about storm

25 responses and damage assessors, there is nothing about

0162

1 qualified electrical workers, there's nothing in there

2 about driving, because they are things that are

3 totally subject to PSE's control, and they are not

4 covered by collective bargaining, and so they are

5 potential harms of the transaction, and that's

6 something that the Commission requested that we

7 provide information on, which is all we are trying to

8 do.

9 So at the end of the day, the Commissioners

10 are going to decide whether they want to take our

11 information and do anything with it, but I think

12 denying us the opportunity to at least put the

13 information forward is extremely unfair.

14 I also want to address the claim that

15 Mr. Arnold is unqualified. Mr. Arnold, through his

16 testimony -- and we're happy to supplement that, if

17 that's what you two would like, to further expound

18 upon his qualifications, but he has over 25 years

19 experience working at PSE. So a lot of the experts

20 that are used in these types of cases, they don't even

21 have experience with the utility at issue. He

22 actually worked there in a management role for 25

23 years, handling circuits, managing employees, managing

24 a budget. There is no one more qualified to speak

25 about potential harms of safety and reliability.

0163

1 And I know they also have said in the motion

2 that, well, because Mr. Arnold doesn't have large

3 utility transaction experience, he is somehow now

4 unqualified. Well, he is not testifying as to

5 ring-fencing or financing or the agreement governing

6 the structure of Puget Holdings and how it operates.

7 He is not testifying to any of that; that's beyond the

8 safety and reliability. We didn't present any

9 testimony on that because we are not addressing those

10 issues. And he is perfectly qualified to talk about

11 the issues for liability and safety.

12 In fact, the Commission's own standards

13 basically say that there are only two bases to exclude

14 an expert's testimony. If they don't have testimony

15 that is relevant to the inquiry, I don't think that

16 applies here because he raised numerous safety issues,

17 numerous reliability issues in his testimony, so I

18 think that's out.

19 The other one is whether they lack

20 qualifications as to the factual matters. Well, he is

21 providing his opinion and testimony as to overtime and

22 staffing and contracting and storm responses and

23 events, and those things really haven't changed. And

24 as someone who managed employees, who had a budget,

25 and worked at PSE for 25 years, I think he is more

0164

1 than sufficiently qualified.

2 And I would just request that -- you know, I

3 think there are two issues here. There is the issue

4 of whether or not you are going to consider all of our

5 exhibits and our testimony, and I just will say the

6 Commission asked for us -- for our opinion. They said

7 that we have a unique opinion. The Commission has

8 acknowledged that labor and employees haven't been

9 allowed to participate before, and this is our

10 opportunity to do that. All we want to do is give you

11 the information. Let us give you the information.

12 It's up to you to decide what to do with it.

13 And as to the issue of cross-examination, I

14 think it is very unfair to us if we are wanting to

15 present information, if we can't question the people

16 who are trying to do this transaction to prove that it

17 actually doesn't cause any harms, because I think

18 there are harms. It's falling on the backs of

19 employees.

20 Thank you.

21 JUDGE O'CONNELL: Thank you, Mr. Medlin.

22 Ms. Franco-Malone?

23 MS. FRANCO-MALONE: Good afternoon.

24 Thank you, Your Honors. I will try not to repeat the

25 information that we already discussed in our motion

0165

1 too much.

2 The joint applicants' motion amounts to a

3 relevancy objection, but our witnesses in this

4 proceeding have provided directly relevant

5 information, focusing on the ways that this particular

6 transaction could harm PSE ratepayers, and in

7 particular we have discussed the ways in which the

8 departure of Macquarie could impact PSE's contracting

9 practices in the absence of additional commitments.

10 I would like to address, just right off the

11 bat, the suggestion that the entirety of our

12 presentation is somehow collective bargaining-related

13 or related to employment matters, and that's just not

14 the case. The joint applicants seem to suggest that

15 because the Laborers are a union, that everything we

16 might have to say in this proceeding is tainted and

17 somehow is ipso facto a collective bargaining issue,

18 and that's not the case.

19 I want to make really clear that the Laborers

20 do not have a collective bargaining relationship with

21 PSE. We do not seek to establish a collective

22 bargaining relationship with PSE. What we do want is

23 to make sure that when PSE contracts out to

24 third-party companies, that it's using safe practices

25 and not relying on contractors that churn through

0166

1 employees, that use temp agencies like Labor Ready,

2 and that tell workers, hey, here's a hard hat, there's

3 the job site, get to it.

4 That's not in anybody's interest. It's not

5 ours, it's not PSE ratepayers. The fact that the

6 Laborers happen to be a union does not somehow mean

7 that we are not also capable of addressing safety and

8 reliability issues.

9 The Washington and Northern Idaho District

10 Council of Laborers is the collective voice of workers

11 that are usually dispersed and are otherwise unable to

12 convey their knowledge and observations about PSE's

13 practices. This is even all the more so because we

14 represent PSE's contracted workforce who are yet one

15 more layer removed from these proceedings. We offer

16 an unique perspective and firsthand information about

17 the ways that PSE's contracting practices create

18 safety and reliability risks.

19 The Laborers have members who have done work

20 for the good and the bad when it comes to contractors.

21 We have seen what it's like and are in a position to

22 offer firsthand information about the ways that it

23 really does matter whether or not a contractor has a

24 culture of safety when they are performing work on the

25 PSE system.

0167

1 So our testimony is not collective

2 bargaining-related. What it is related to is safety

3 and reliability, and there can be no doubt that the

4 UTC does have authority and jurisdiction to consider

5 matters such as PSE's supply chain practices and

6 contracting practices, where contractors make up the

7 vast majority, 84 percent, of the amount that PSE

8 spends on construction-related activities and that

9 also perform core functions for the utility.

10 Our testimony about the safety practices of

11 PSE's contractors could not be more related to safety

12 and reliability. And indeed, the Commission itself

13 has noted as such in a case from ten years ago

14 involving safety issues that arose in the context of a

15 PSE contractor. The Commission itself emphasized,

16 quote, the responsibility of regulated utilities to

17 ensure adequate safeguards are in place to protect the

18 public even when relying on contractor employees to

19 achieve portions of their mission. So looking at a

20 utility's contracting practices is something that the

21 Commission itself has recognized is of the utmost

22 importance when considering safety and reliability

23 issues.

24 We trust that if -- having reviewed the

25 testimony that we have offered in this matter, you

0168

1 will agree that we do offer extensive evidence

2 regarding the safety of PSE's contractors, and in

3 particular, the risk of deterioration in those

4 contractor safety practices is something that is

5 clearly a relevant risk in this case.

6 What are those risks? When we are talking

7 about gas distribution work that PSE contracts out,

8 that our members perform, the dangers are extreme. We

9 are -- not having a properly trained workforce can

10 really result in catastrophic accidents. I think

11 there is no question that the safety of the

12 contractors is of the -- directly relevant to the

13 Commission.

14 Flagging work that our members likewise

15 perform for PSE contractors is also extremely

16 dangerous work. Having a workforce with adequate

17 training is crucial to avoiding workplace accidents.

18 When unqualified workers, like those that are often

19 sent to perform flagging by temporary labor agencies,

20 perform this work, it's much more likely that

21 accidents will occur. Indeed, Washington's Department

22 of Labor & Industries' own statistics bear this out

23 and show that labor supply companies that do flagging

24 for PSE contractors have some of the worst safety

25 scores in the industry.

0169

1 I just want to emphasize that the testimony

2 that we provided is of something that is at the core

3 of the UTC's mission, from our perspective.

4 I would also like to address the argument that

5 our testimony fails to address the particulars of the

6 transaction at issue. We very strongly disagree with

7 that, and we have worked very hard in our testimony to

8 identify the specific ways that harm could come to PSE

9 ratepayers as a result of this transaction.

10 We have addressed the ways that the departure

11 of the Macquarie is likely to exacerbate an already

12 bad situation when it comes to PSE's contracting

13 practices. Macquarie was the single largest investor,

14 it held 43.99 percent in Puget Holdings, and Macquarie

15 made no secret of the fact that it did intend to exert

16 influence over PSE's business operations.

17 As a witness that sat before you ten years

18 ago, when the original transaction to go private was

19 before the Commission, Macquarie's witness said,

20 quote, We, Macquarie, believe investors are entitled

21 to a degree of influence through us over the

22 investments we make on their behalf. It would be very

23 unlikely for us to take small positions in businesses

24 where we have no ability to influence the outcome of

25 that business.

0170

1 Macquarie was the only owner within the Puget

2 Holdings consortium that had such a responsible

3 contracting policy in place. Now, this policy existed

4 precisely for the purpose of influencing the

5 contracting practices of companies like PSE that

6 Macquarie invested in. Macquarie didn't hire its own

7 contractors, it didn't have this policy in place for

8 its own benefit, it existed specifically to try to

9 ensure that utilities like PSE that it invested in had

10 safe contracting practices in place. Their departure

11 from the table as the single biggest owner who had

12 self-described themselves as being interested in

13 trying to influence the utility's operations is

14 undoubtedly something that creates risks for this

15 particular transaction.

16 Now, we note that PSE notes the fact that it

17 has its own responsible contractor policy in place. I

18 would like to just briefly address that. As the

19 Laborers' expert, Erin Hutson, testified to in her

20 testimony, Puget's own responsible supplier contractor

21 guidelines policy is, quote, unquestionably weaker

22 than Macquarie's policy. It provides less rigorous

23 guidelines to ensure that PSE is selecting contractors

24 with the safest practices.

25 PSE's so-called policy is really nothing more

0171

1 than a list of nonbinding factors that it may or may

2 not consider when deciding what contractors to select.

3 So the fact that PSE has its own policy is really no

4 substitute for the departure of Macquarie with its

5 more rigorous policy in place.

6 I would also like to address the point that

7 was made just a moment ago that the Macquarie policy

8 was not directly applicable to PSE because Macquarie

9 did not have a majority share in the company. That's

10 also a -- that point is misplaced. The Macquarie

11 policy, by its own terms, provided that when it owned

12 a nonmajority share, like the 43.99 percent it owned

13 in Puget Holdings, Macquarie's policy provided that

14 operating company managers shall be encouraged to

15 comply with the policy by doing things like

16 encouraging the use of and advocating for responsible

17 contractors. So there can be no doubt about the fact

18 that Macquarie was an advocate for responsible

19 contracting practices that it adopted for the specific

20 purpose of influencing companies like PSE, even though

21 it had only a 43.99 percent share.

22 I briefly would like to respond to the

23 objections that were made to Mr. Jones and

24 Mr. Frieberg 's testimony. It sounds as though what

25 we are hearing today is that the specific objection is

0172

1 that their testimony did not cross-reference each

2 other. I think that is an argument that does not

3 actually take issue with the relevancy of their

4 testimony.

5 Each of them addressed issues that are

6 directly at issue in this transaction. Mr. Jones

7 discussed issues regarding the safety of contracting

8 practices, what it means to use temporary labor

9 agencies on a job for safety risks, Mr. Frieberg

10 talked about what it means to have contractors that do

11 not have rigorous training practices in place and how

12 that creates safety risks. So each of them provided

13 sort of a deeper level of foundation that then

14 pertains to Ms. Hutson's testimony about how those

15 risks are set to get worse if this transaction is

16 approved.

17 So in short, all of our testimony is directly

18 relevant to whether there are risks and dangers if

19 this transaction is approved without further

20 commitments, and that risk is the potential for PSE's

21 contracting practices to deteriorate even further and

22 become even less safe.

23 I would like to just wrap up by noting that we

24 were invited as interveners in this proceeding to

25 provide evidence and testimony regarding safety and

0173

1 reliability issues based on our members' observations

2 performing work in the field, and that's what we have

3 done. And we have then connected that information to

4 how this particular proposed transaction creates risks

5 of harm.

6 We are not overburdening the proceeding. We

7 are not even suggesting that the proposed sale be

8 rejected. Instead, we have identified risks that we

9 think exist in the proposed transaction, and we have

10 identified concrete ways that we think that those

11 risks can be mitigated or abated. We believe that

12 those additional commitments are necessary in order

13 for the no harm standard to be met.

14 Thank you.

15 JUDGE O'CONNELL: Ms. Gafken, you also

16 filed a response opposing the motion to strike. Would

17 you like to make an oral presentation?

18 MS. GAFKEN: I will just speak briefly.

19 I really don't have a lot to offer outside of what I

20 have already written. And one of the reasons that I

21 sent in the written responses, to try to avoid taking

22 up too much time here. I know we have a short amount

23 of time to get through everything.

24 JUDGE O'CONNELL: Is your microphone on?

25 I apologize for interrupting.

0174

1 MS. GAFKEN: No worries.

2 It's a little -- it's on, but it's a little

3 tight. Oh, here it goes. Okay. It wasn't coming to

4 me.

5 Public Counsel is approaching these motions

6 more from a procedural posture. I am not going to get

7 into the quality of the evidence or anything like

8 that. The Commission's rules do differentiate between

9 multiparty settlements and full or partial

10 settlements, and from a procedural standpoint, parties

11 who oppose it, and as everyone in the room knows,

12 Public Counsel is often in that position.

13 A party that opposes a multiparty settlement

14 does have certain rights under the Commission's rules.

15 From our perspective -- you know, I do want to be very

16 clear that Public Counsel does support the settlement

17 that is being presented here, but from a procedural

18 standpoint, we also believe that the evidence is

19 admissible under WAC 480-07-740(3)(c).

20 I will leave my comments there.

21 JUDGE O'CONNELL: Okay. Thank you.

22 Mr. Steele, I am going to allow you a very

23 brief response if you have one.

24 MR. STEELE: Thank you.

25 Your Honor, this proceeding is an open forum.

0175

1 The purpose again of this case is whether the proposed

2 transactions could cause harm to the public. We have

3 now had opposition testimony filed by both parties, we

4 have now had oral argument response by both parties.

5 IBEW, I still have -- have not heard one issue

6 with the proposed transaction that will cause harm.

7 They have no doubt raised a lot of information, both

8 sides have, but -- but for IBEW I still have not seen

9 any issue with the transaction that is causing the

10 harms they have identified.

11 And the only issue that WNIDCL seems to be

12 going back to is this Macquarie contractor policy that

13 never governed PSE. There is no evidence on the

14 record that Macquarie directed PSE to abide by it,

15 comply with it. There is nothing on the record

16 showing that PSE ever followed it. PSE has a

17 contractor guideline that it adheres to.

18 We wanted to address the document filed by

19 IBEW this morning, unless you wanted to do that

20 separately.

21 JUDGE O'CONNELL: We are going to

22 address that separately --

23 MR. STEELE: Okay.

24 JUDGE O'CONNELL: -- when we get to

25 specific exhibits, and then we will address that

0176

1 filing.

2 MR. STEELE: Then I will just conclude

3 by saying, Your Honor, we -- the interveners were

4 invited to join and were allowed to join under a

5 restricted, limited basis. The testimony they filed

6 exceeds those limitations by the terms of Order 3,

7 both because there is no tie to the transaction and

8 because they talk about employment issues repeatedly

9 throughout all their testimony.

10 Thank you.

11 JUDGE O'CONNELL: We have discussed this

12 motion, both motions, with the Commissioners and paid

13 special attention to the testimony and exhibits filed

14 by WNIDCL and IBEW.

15 Before I convey the Commission's decision,

16 Mr. Medlin, you raised an argument that the joint

17 applicants had violated Commission rule by filing

18 their motion to strike. I am going to rule against

19 you and your argument, and that is because in the

20 rule, it is permitted that the presiding officers, in

21 this case me and Judge Pearson, may provide for oral

22 responses. We did so in this case. I understand that

23 it wasn't five business days from the time that you

24 were notified of the motion to strike, but the time

25 between then and now should have been more than enough

0177

1 for you to prepare an oral response. We accept the

2 written response that you made, but we do not believe

3 that the time and energy put in to responding in

4 writing has prejudiced you in this instance. And for

5 that matter, that same reasoning would apply to WNIDCL

6 and your written response to the motion to strike.

7 So we partially agree with the joint

8 applicants, but not fully. At the outset of this

9 proceeding, and even as early as the November 5th open

10 meeting where the Commissioners decided to commence an

11 adjudicative process in this case, we emphasized the

12 labor issues were outside the scope of this proceeding

13 and would not be considered. This includes many of

14 the issues raised by WNIDCL and IBEW in the testimony

15 opposing the settlement agreement, including the

16 issues of staffing, training, hiring and termination,

17 wages, overtime, what specific qualifications and

18 associations PSE must require, and apprenticeship

19 programs. These labor issues have been raised in this

20 proceeding under the guise of their relation to safety

21 and reliability. Using the keywords "safety" and

22 "reliability" does not mean that the issues raised are

23 relevant for consideration in the matter at hand.

24 We granted intervention to WNIDCL and IBEW

25 with the caveat that these parties would be limited to

0178

1 safety and reliability issues to the extent that those

2 issues would illustrate whether customers would

3 experience no harm from the proposed transaction. If

4 there is no demonstrated connection to the proposed

5 transaction, then it is not relevant for this

6 proceeding.

7 We do not disclaim jurisdiction over safety

8 and reliability. We emphasize that safety and

9 reliability are important, and we will continue to

10 enforce the Commission's safety and reliability

11 standards. But as broad as the issues of safety and

12 reliability are, certain issues may not be relevant in

13 every case before the Commission. We have such a

14 situation here.

15 In reviewing of the testimony offered, it airs

16 current grievances and critiques of current operations

17 at PSE and of current owners. If we were to accept

18 that such arguments are relevant for our consideration

19 in a proceeding such as this, we would invite

20 arguments based upon any current practice that an

21 opposing party takes issue with, instead of focusing

22 the proceeding on the issue of whether the proposed

23 ownership transfer would result in harm to customers.

24 Such arguments presented by WNIDCL and IBEW

25 are not relevant for consideration in this proceeding,

0179

1 because both parties have failed to tether their

2 disputes of current operations to the proposed

3 transactions and explain how the proposed change in an

4 upstream minority ownership interest in Puget Holdings

5 will negatively affect these issues.

6 Even if we were to accept the merits of WNIDCL

7 and IBEW's arguments, they would still not be relevant

8 for consideration in this proceeding because, as

9 decided by the Commission in Order 01, the no harm

10 standard applies to the consideration of this transfer

11 of a minority upstream ownership interest and many of

12 WNIDCL and IBEW's arguments do not limit themselves to

13 an evaluation of no harm.

14 Now, this is contrasted, however, by the

15 presentation of other issues in the testimonies

16 wherein the parties raised concerns not embedded in

17 current grievances of labor issues. The best example

18 comes from Ms. Erin Hutson's testimony. The point

19 Ms. Hutson makes briefly is that Macquarie, the entity

20 selling its ownership interest, has a responsible

21 contractor policy that she claims has served to guide

22 and supplement PSE's claimed less robust policy

23 regarding contractors. She remarks that none of the

24 other existing owners or any of the proposed new

25 owners have such a policy, and while PSE has its own,

0180

1 she posits that the absence of an owner with a

2 commitment to such a policy as part of the proposed

3 transaction results in harm to customers.

4 Without judging the merits of her argument, we

5 believe that it falls under the umbrella of our

6 consideration of whether there is no harm to customers

7 from the proposed transaction and is tethered to the

8 proposed transaction. It is also within the scope of

9 the WNIDCL's role in this proceeding.

10 Cannot say the same for many of the labor

11 issues and current grievances raised by WNIDCL and

12 IBEW. Many of the issues as presented lack a nexus to

13 the proposed transactions and, as predicted by

14 Commission Staff when it argued against allowing

15 WNIDCL and IBEW to intervene, are more related to

16 current operations than whether the proposed change in

17 a minority upstream ownership interest will result in

18 no harm to customers.

19 So with that, we determined that it was

20 appropriate to grant in part and deny in part the

21 joint applicants' motion to strike. We also reiterate

22 the limiting instructions we gave at the outset of

23 this proceeding, when we explained that labor issues

24 and the collective bargaining agreement are outside

25 the scope of this proceeding, and we expect any

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1 questioning posed today to avoid the subject matters

2 that we strike from testimony.

3 By Commission rule, all relevant evidence is

4 admissible. Questioning today that is relevant to the

5 matter at hand will be allowed; if it is not relevant

6 to the matter at hand, it will not be.

7 So consistent with the reasoning that I have

8 already explained, the testimonies offered by Glen

9 Frieberg and Walter Jones are stricken in their

10 entirety. I will not admit the other exhibits offered

11 in support of their testimonies to the record.

12 Further, parts of the testimony offered by

13 Ms. Hutson on behalf of WNIDCL and Mr. Arnold on

14 behalf of IBEW are also stricken. I intend to

15 identify the specific pages and lines of testimony

16 that will be stricken. I am going to start with

17 Ms. Hutson's testimony, Exhibit EH-1Tr, and then after

18 the testimony, I will proceed to rule on the exhibits

19 associated with the testimony.

20 In Ms. Hutson's testimony, starting on Page 3,

21 we going to strike from Page 3, Line 7 through Page 5,

22 Line 18. We will also strike, starting on Page 6,

23 Line 3 through Page 11, Line 23. Next, on Page 17,

24 strike from Page 17, Line 22 through Page 18, Line 7.

25 On the same page, Page 18, Line 9, starting with the

0182

1 words "and specifically," through Line 17 on Page 18.

2 Next, on Page 19, we'll strike from Line 1

3 through Page 24, Line 22. On Page 25 we will strike,

4 starting on Line 5, with the numeral No. 1, through

5 Line 6, ending with the word "and," which immediately

6 precedes the No. 2. Again on Page 25, we will strike

7 from Line 9 through Page 28, Line 12.

8 Now I want to address what exhibits offered in

9 support of Ms. Hutson's testimony are admitted or

10 excluded from the record. Exhibit EH-2 through

11 Exhibit EH-4 are excluded. Exhibit EH-5 is admitted.

12 Exhibits EH-6 through Exhibit EH-11 are excluded.

13 Exhibit EH-12 through EH-17 are admitted. The

14 remaining exhibits, Exhibits EH-18 through EH-26 is

15 excluded -- are excluded.

16 Next I'm going to turn to Mr. Arnold's

17 testimony. Turning to Page 5, we will strike starting

18 on Page 5, Line 6, beginning with the words "lacking

19 commitments," through Line 8, ending with the words

20 "assessor training." And then on the same page

21 striking on Line 9, starting with the words "no

22 commitment," through Line 20. On Page 6, we strike

23 beginning at Line 9 through Line 21. On Page 7, we

24 strike beginning on Line 16 through Page 9, Line 19.

25 Turning to Page 10, we strike from Line 18 through

0183

1 Page 17, Line 6. Next, on Page 20, we strike from

2 Line 10 through Page 22, Line 16. Still on Page 22,

3 we strike from Line 23, beginning with the words "I

4 understand," through Page 23, Line 4.

5 Next I am going to address the other exhibits

6 offered in support of Mr. Arnold's testimony and

7 whether they are admitted or excluded from the record.

8 Exhibits DTA-9, DTA021 and DTA-23 are admitted. The

9 remaining exhibits offered by Mr. Arnold are excluded.

10 Now I would like to address the cross-exhibits

11 proposed by IBEW and WNIDCL. Let's start with those

12 intended for Mr. Piliaris. I see that proposed

13 Cross-Exhibits JP-3X through JP-8X are duplicates of

14 exhibits that I have already ruled on their

15 admissibility. To that end, the same ruling that I

16 just made applies. That means that Exhibits -- I'm

17 not going to admit any of these exhibits on their own

18 because they are duplicates and I'm not changing the

19 ruling that I have already made.

20 Now we come to Exhibits JP-9X, 10X, and 11X.

21 I would ask the joint applicants if there are

22 objections to including JP-9X, 10X, and 11X?

23 MS. CARSON: Your Honor, we do object to

24 9X. Although it addresses service quality report

25 card, it is not tethered in any way to the

0184

1 transaction.

2 JUDGE O'CONNELL: Ms. Carson, is your

3 microphone turned on?

4 I apologize. It was difficult to hear.

5 MS. CARSON: For JP-9X we do object.

6 That's past service quality report cards. It is not

7 tethered to the transaction in any way. 10X goes to,

8 I believe it's executive management key performance

9 and whether or not it's tied to contractors' work.

10 Again, would not be tied to the proposed transaction,

11 it will be outside the scope of what you allowed in.

12 And JP-11X goes to training, which I understood to be

13 outside the scope. So we object to all three.

14 JUDGE O'CONNELL: I have reviewed all

15 three of these exhibits. I am going to admit -9X and

16 -10X. Before I decide on -11X, I would like to hear

17 if there is any response from Ms. Franco-Malone as to

18 the admissibility of JP-11X.

19 MS. FRANCO-MALONE: Yes, Your Honor.

20 Thank you.

21 JP-11X is a data request that the Laborers put

22 towards the joint applicants regarding the amounts

23 spent on training for contractor employees, including

24 a breakdown for how those funds were spent. PSE

25 answered on behalf of the joint applicants, and that

0185

1 information is relevant for reasons that I will get

2 into more in my cross-examination.

3 But just to not keep you in suspense, one of

4 the things that we would like to explore in

5 cross-examination is the scope of the meaning of

6 Commitment 3 under which PSE promises to ensure

7 staffing and presence in a way that maintains safety

8 and reliability. We have questions about what that

9 commitment means and whether it applies to contractors

10 that PSE uses to perform work on the system.

11 JP-11X is directly relevant to a line of

12 inquiry I intend to explore on cross-examination

13 regarding whether PSE considers the training that its

14 contractors supply to their workforces to be covered

15 by the scope of the Commitment No. 3 to maintain

16 staffing and presence.

17 JUDGE O'CONNELL: I'm going to reserve

18 ruling on the admissibility of this exhibit until I

19 see how it is going to be used on cross-examination.

20 I am going to reiterate that training matters are

21 labor issues outside the scope of this proceeding.

22 However, I do think I heard that you were intending to

23 tie it to one of the proposed commitments, and given

24 the questions -- the topic of the questions you say

25 you are going to ask, I will wait and see how those

0186

1 questions are phrased, so that will determine the

2 admissibility when we get to it.

3 MS. FRANCO-MALONE: Thank you.

4 JUDGE O'CONNELL: Next I would like to

5 turn to cross-exhibits intended for Ms. Cheesman from

6 Commission Regulatory Staff. Both of these exhibits

7 appear to be duplicates of exhibits offered by

8 Mr. Arnold, DTA-3 and DTA-4. I already ruled on the

9 admissibility of these two exhibits. They were

10 excluded and so these cross-exhibits are also

11 excluded.

12 Last, I see a cross-exhibit intended for

13 Mr. Steven Zucchet, Exhibit SZ-4X. I would like to

14 direct my question to the joint applicants and inquire

15 if there is an objection to admitting this

16 cross-exhibit?

17 MS. RACKNER: No. This is Lisa Rackner

18 for OMERS. While we believe that the exhibit is

19 limited in materiality, we don't object to its

20 admission.

21 JUDGE O'CONNELL: Thank you,

22 Ms. Rackner.

23 With that, I will admit SZ-4X into the record.

24 And to repeat for the record, and anyone who

25 is on the bridge line who was unable to hear

0187

1 Ms. Rackner, she indicated that there is not an

2 objection to the admissibility of this exhibit;

3 however, there was a question as to materiality of the

4 exhibit.

5 Okay. Next a couple of other preliminary

6 matters before we bring Commissioners in. I am

7 indicating that we are going to take official notice

8 of Commission orders addressing commitments and

9 conditions in Docket U-072375, Dockets UE-170033, and

10 UG-170034, and Docket UG-151663.

11 Now I want to turn to public comments. It is

12 my understanding that there have been more public

13 comments since November. Ms. Gafken, I believe it is

14 Commission practice for you and consumer protection

15 staff at the Commission to collaborate and coordinate

16 to compile these comments and submit them as a bench

17 exhibit. How long do you need to prepare that

18 exhibit?

19 MS. GAFKEN: What generally happens is

20 the time for public comment concludes at the time of

21 the hearing. I assume that would be the case here. I

22 would propose that we submit the additional public

23 comments by next Friday, February 22nd.

24 JUDGE O'CONNELL: Yes, the public

25 comment period will close at the end of the hearing

0188

1 today. I believe that's a reasonable and appropriate

2 time.

3 MS. GAFKEN: Just one point of

4 clarification. At the close of -- well, I guess the

5 close of the hearing today will probably be the close

6 of the business day. That was my question, was do we

7 mean the close of the business day.

8 JUDGE O'CONNELL: That's a good

9 clarification. It will extend to the close of

10 business today if we end before then. If this hearing

11 continues to or beyond the close of business, then the

12 comment period will extend until the end of this

13 hearing.

14 MS. GAFKEN: Thank you.

15 JUDGE O'CONNELL: So next I want to

16 address a matter of organization in the hearing room.

17 The panel of six witnesses that we are going to bring

18 up -- I believe, actually, one is on the bridge line;

19 is that correct?

20 MS. CARSON: (Nods head.)

21 JUDGE O'CONNELL: The panel of five,

22 plus the one on the bridge line, we would like them to

23 sit across from the Commissioners, where I see

24 representatives from the joint applicants, AWEC, and

25 The Energy Project are sitting. I would ask that the

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1 attorneys for individuals who are being questioned or

2 attorneys that are making the cross-examination

3 questions please sit at the side tables. If you are

4 not defending a witness or asking questions of a

5 witness, I would ask that you please sit in the first

6 rows.

7 MS. GAFKEN: Judge O'Connell, one point

8 of clarification. I think there are two witnesses on

9 the bridge line, one of which is a Public Counsel

10 witness, J. Randall Woolridge. I don't believe

11 there's questions directed at him, unless questions

12 come from the bench, but he is also on the bridge

13 line.

14 JUDGE O'CONNELL: I will ask the

15 Commissioners whether they intend have questions for

16 Mr. Woolridge, and in the event that they do, ask if

17 you would come up.

18 MS. GAFKEN: Of course.

19 JUDGE O'CONNELL: Ms. Cameron-Rulkowski?

20 MS. CAMERON-RULKOWSKI: Your Honor, when

21 you say "a panel," are you referring to a panel of all

22 of the witnesses from the parties to the settlement?

23 JUDGE O'CONNELL: I was looking -- I was

24 looking at the order of witnesses submitted by the

25 parties, and I noted that there were five or six that

0190

1 there were questions intended for by opposing parties.

2 Those are the witnesses I would like to take first,

3 and then I will inquire of the Commissioners whether

4 they have questions for the remaining witnesses, and

5 we can bring them up if the Commissioners wish to ask

6 questions. But my understanding is, of those not

7 already indicated, there is time for

8 cross-examination, that the parties do not have any

9 questions for them. Am I -- has there been a change

10 in the witness list?

11 MS. CAMERON-RULKOWSKI: Not that I am

12 aware of, Your Honor, but thank you for that

13 clarification.

14 JUDGE O'CONNELL: Okay.

15 MS. CAMERON-RULKOWSKI: And I also had a

16 request, Your Honors. Before the Commissioners take

17 the bench, could we take a five-minute break?

18 JUDGE O'CONNELL: Yes, we are going to

19 take a short recess, after which Judge Pearson and I

20 will be joined by the Commissioners. We will first

21 hear opening statements, one from the settling parties

22 and one each from the parties opposing the settlement,

23 then we will begin with cross-examination of the

24 witnesses in support of the settlement, proceed with

25 cross-examination of witnesses opposing the

0191

1 settlement, and last we will hear brief closing

2 arguments from the parties in lieu of posthearing

3 briefs.

4 We suggest that, because we have stricken some

5 testimony and limited -- reiterated our limitation of

6 the scope of this proceeding, that parties opposing

7 the settlement take the time to review their

8 cross-examination to make sure that their questions

9 fall within that scope.

10 We will be off the record and in recess for

11 approximately five minutes. We will return to the

12 bench at approximately 2:30 p.m. Thank you.

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

14 I don't believe we addressed the filing by

15 IBEW this morning.

16 JUDGE O'CONNELL: Thank you, Mr. Steele.

17 Let's address that now before we take our recess. As

18 I already said we would be off the record, let's be

19 back on the record.

20 MR. STEELE: Thank you, Your Honor.

21 Just very briefly, this appears to be

22 supplemental testimony filed by IBEW at 10:30 this

23 morning. Not only does that violate the procedural

24 rules here in this case with the filing of testimony,

25 it's very late filing, but in reviewing it, it appears

0192

1 to be revisions to commitments that the settling

2 parties have proposed in this case.

3 In going through it, they nearly all address

4 employment issues, the word "staffing" is throughout

5 the edits here. There is also new commitments

6 proposed, all of which appear to address employment

7 issues. There doesn't appear to be a tie to the

8 transaction or harm to the transaction. We would ask

9 that the Commission strike this document from the

10 record.

11 JUDGE O'CONNELL: Mr. Medlin?

12 MR. MEDLIN: These are --

13 JUDGE O'CONNELL: Mr. Medlin, one

14 moment.

15 To those who are on the bridge line, we can

16 hear sound coming from our telephone. If you will,

17 please mute it. Thank you very much.

18 Mr. Medlin, I turn to you.

19 MR. MEDLIN: Can you hear me all right?

20 JUDGE O'CONNELL: Yes.

21 MR. MEDLIN: Okay. I'm just making

22 sure.

23 These are the IBEW's proposed revisions to the

24 commitments that we wanted to submit to the

25 Commissioners for consideration, in light of the

0193

1 evidence that we presented through Mr. Arnold, and

2 also through our cross-examination that we were going

3 to explore today, and they were meant to be in aid of

4 that. And as far as substantive testimony, they were

5 not submitted as part of the substantive testimony

6 from Mr. Arnold.

7 JUDGE O'CONNELL: In my review of the --

8 my understanding was that it reiterated a number of

9 the proposed commitments and changes to commitments

10 that were already contained in Mr. Arnold's testimony;

11 is that correct?

12 MR. MEDLIN: Yes. They were commitments

13 that were addressed in his testimony that was filed,

14 yes.

15 JUDGE O'CONNELL: I am going to admit

16 that document, but only for the limited purpose of

17 seeing what proposed commitments are being provided.

18 However, consistent with the limitation we have placed

19 today excluding employment issues and labor issues

20 from the scope of this proceeding, we will consider

21 that when we view this document, and we are not going

22 to consider labor issues and employment issues

23 commensurate with the ruling that I have already made

24 today.

25 MS. CARSON: Just a point of

0194

1 clarification. These are not revisions to commitments

2 that were in Mr. Arnold's testimony, these are new.

3 These are revisions to the commitments that the

4 settling parties have submitted, and now, just today,

5 IBEW is submitting proposed edits to those.

6 JUDGE O'CONNELL: I would like to

7 clarify again, then. Mr. Medlin, are these new

8 alterations to -- proposed alterations to the

9 commitments or are they in a new form, an easy

10 presentation of arguments that have already been made

11 in Mr. Arnold's testimony?

12 MR. MEDLIN: Yeah. So it was my

13 understanding, because the purpose of the hearing

14 today is in relation to the settlement, the multiparty

15 settlement agreement that has been put forward, which

16 we offered our analysis through Mr. Arnold of the

17 potential harms related to that and the issues that we

18 identified, it's meant to be an extrapolation of that,

19 for the changes that the IBEW would like to see to the

20 multiparty settlement agreement, if that answers your

21 question.

22 JUDGE O'CONNELL: How are you intending

23 to use this document today at the hearing?

24 MR. MEDLIN: It was meant just to be for

25 the Commission to have for what we were focusing on

0195

1 for cross-examination, for the Commission to

2 understand sort of the revisions that we were hoping

3 to achieve to the multiparty settlement agreement.

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

5 Mr. Arnold's testimony did not have any

6 proposed commitments in it. In going through these

7 revisions and the proposals, they -- without going

8 through exactly what was stricken today, it appears to

9 be that these address matters that were stricken. We

10 can go through and confirm that, but they address --

11 again, most of them address staffing, employment

12 issues. None of these were proposed or discussed by

13 Mr. Arnold in his testimony whatsoever.

14 MR. MEDLIN: So they were potential

15 harms that were identified in his testimony. I will

16 just say that the commitments submitted are not

17 substantive evidence, they are just revisions the

18 multiparty settlement agreement that IBEW would like

19 to see.

20 JUDGE O'CONNELL: I am going to admit it

21 as an illustrative exhibit as to the harms identified

22 by Mr. Arnold. However, to the extent that they

23 address labor issues that coincide with testimony that

24 we have struck, they will not be considered.

25 And as an exhibit number, we will mark it be

0196

1 Exhibit DTA-26.

2 Is there anything else before we take our

3 brief recess?

4 Ms. Franco-Malone?

5 MS. FRANCO-MALONE: Your Honor, is there

6 a written list of the portions of testimony and

7 exhibits that were stricken versus admitted that we

8 can reference during the break? If not, I will find

9 one.

10 JUDGE O'CONNELL: I do not have a

11 written list.

12 MS. FRANCO-MALONE: No worries.

13 JUDGE O'CONNELL: Would it be helpful if

14 we provided a written list of what is admitted into

15 the record?

16 MS. FRANCO-MALONE: It would be very

17 helpful for me.

18 JUDGE O'CONNELL: Judge Pearson has

19 informed me that she is able to create a list of what

20 is admitted into the record. We will come back with a

21 written copy for each of the parties.

22 MS. FRANCO-MALONE: Thank you, Your

23 Honors.

24 MR. MEDLIN: I did have a request for

25 clarification. I believe Ms. Carson proposed to offer

0197

1 a second witness related to some of the

2 cross-examination because Mr. Piliaris apparently

3 couldn't answer all the issues. I just wanted to see

4 if that was still the case.

5 JUDGE O'CONNELL: To the extent that you

6 still have questions that are within the scope of this

7 proceeding, as we have reiterated our limitation, you

8 may question Mr. Molander, I believe is his name. So

9 to the extent that the questions remain inside the

10 scope of the proceeding, my understanding was that the

11 joint applicants had proposed to allow Mr. Molander to

12 testify.

13 MS. CARSON: That's correct.

14 JUDGE O'CONNELL: We are going to take a

15 slightly longer recess than I initially envisioned so

16 that we can get the written copy to the parties. We

17 will take a ten-minute recess and we will come back at

18 approximately 2:40. Thank you.

19 (A break was taken from

20 2:31 p.m. to 2:50 p.m.)

21 (Commissioner Jay Balasbas,

22 Commissioner Rendahl, and Chairman

23 Danner joined the proceedings.)

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

25 record. The parties have agreed to the order of

0198

1 witnesses for presentation. We will start with the

2 panel of six, five of which are here in person.

3 Please stand here, as you are all doing, or if you are

4 on the telephone, please stand where you are, and

5 raise your right hands and I will swear you in.

6

7 LINCOLN WEBB, STEVEN ZUCCHET, AHMED MUBASHIR, MARTIJN

8 VERWOEST, MELISSA CHEESMAN, JON PILIARIS, JOEL

9 MOLANDER, having been first duly sworn on oath

10 testified as follows:

11

12 JUDGE O'CONNELL: Please be seated.

13 Do we have an additional witness on the phone

14 line, because I count six witnesses in front of us; I

15 was only expecting five?

16 MS. CARSON: We added Mr. Molander to

17 the panel.

18 JUDGE O'CONNELL: Okay. Thank you.

19 Before we begin, I would like to remind

20 everyone not to speak over each other. The court

21 reporter can only record one of you at a time.

22 If we could now have the witnesses introduce

23 themselves and state and spell their last name for the

24 record. Let's start from one side to the other.

25 MR. WEBB: Lincoln Webb, I'm the senior

0199

1 vice president at BCI, of the infrastructure program.

2 My last name is Webb, W-E-B-B.

3 MR. ZUCCHET: Steven Zucchet, managing

4 director with OMERS. Last name Zucchet,

5 Z-U-C-C-H-E-T.

6 MR. MUBASHIR: Ahmed Mubashir, I'm a

7 portfolio manager with AIMCo. My last name is

8 Mubashir, M-U-B-A-S-H-I-R.

9 MR. PILIARIS: Jon Piliaris, director of

10 regulatory affairs at Puget Sound Energy. My last

11 name is P, like Peter, I-L-I-A-R-I-S.

12 MR. MOLANDER: Joel Molander, director

13 of contracts and supply chain for Puget Sound Energy.

14 My last name is spelled M-O-L-A-N-D-E-R.

15 MS. CHEESMAN: Melissa Cheesman,

16 regulatory staff for the Utilities and Transportation

17 Commission. My last name is spelled C-H-E-E-S-M-A-N.

18 JUDGE O'CONNELL: Thank you.

19 Before we get to cross-examination questions,

20 we had afforded an opportunity for the settling

21 parties to make an opening statement, as well as each

22 of the parties opposing the settlements to make an

23 opening statement. Is there anyone indicated from the

24 settling parties who is going to make such a

25 statement?

0200

1 MS. CARSON: Your Honor, I will be

2 making the opening statement for the settling parties.

3 There is the one witness on the phone who may

4 want to be introduced -- you may want to introduce

5 first, that's Martijn Verwoest.

6 JUDGE O'CONNELL: Yes.

7 Mr. Verwoest, would you please introduce

8 yourself, spell your last name for the record.

9 MR. VERWOEST: Of course. My name is

10 Martijn Verwoest, I am a senior director in the

11 infrastructure investments team of PGGM, and my

12 surname is spelled V-E-R-W-O-E-S-T.

13 JUDGE O'CONNELL: Thank you.

14 Now I would like to turn back to Ms. Carson.

15 MS. CARSON: Thank you.

16 On behalf of the settling parties, I want to

17 thank you for the opportunity to appear and answer

18 your questions regarding the settlement stipulation.

19 We are pleased that a vast majority of the parties

20 have reached agreement on settlement terms. Parties

21 representing low-income customers, residential

22 customers, industrial and commercial customers, and

23 environmental renewable energy groups, as well as the

24 Commission Staff.

25 We also appreciate the Commissioners

0201

1 scheduling this hearing today and accommodating one of

2 the important terms of the settlement from the joint

3 applicants' perspective, that the parties support a

4 more expedited schedule for consideration of the

5 settlement.

6 I am going to briefly highlight six points:

7 The well-qualified buyers, the unique nature of the

8 case, the robust process that led to that settlement,

9 the commitments, concerns of opposing parties, and the

10 settlement in the public interest.

11 The settlement endorses approval of the

12 proposed transactions, which together constitute a

13 sale of approximately 44 percent of Puget Holdings,

14 the parent company of PSE. The interest being sold is

15 currently held by Macquarie Infrastructure Partners,

16 Inc., and Padua MG Holdings, a Macquarie entity.

17 As the Commission noted in Order 01, the

18 proposed transactions represent the transfer of a

19 noncontrolling interest to two existing well-qualified

20 members of Puget Holdings, AIMCo and BCIMC, and two

21 new well-qualified institutional investors, OMERS

22 Administration Corp., or OMERS, and PGGM. All four of

23 the buyers are indeed well qualified and well suited

24 to indirectly own PSE.

25 AIMCo and BCI have been existing owners of

0202

1 Puget Holdings since 2009. Under the current

2 ownership, of which they are a part, we have seen PSE

3 assist Washington State in its transition away from

4 coal-fired generation, through planned retirements of

5 Colstrip Units 1 and 2 and the Centralia coal plant.

6 We have seen PSE achieve first quartile national

7 electric utility ranking for the last five years, and

8 we have seen PSE become the largest producer of wind

9 energy in Washington and the third largest utility

10 owner of wind power in the nation, with the expansion

11 of the Wild Horse Wind Project and LSR.

12 AIMCo and BCI are well-funded, experienced

13 members of Puget Holdings, and we look forward to

14 seeing the continued good progress PSE will make as

15 AIMCo and BCI expand their indirect ownership interest

16 in PSE to 13.6 percent and 20.87 percent respectively.

17 As for the two new owners, OMERS

18 Infrastructure, which is purchasing a 23.94 percent

19 equity interest, has been investing in the energy and

20 utility sector in the US and around the globe. For

21 example, it indirectly owns a share of Oncor in Texas

22 and wind projects in several states. OMERS is

23 financially strong, as demonstrated by its AAA credit

24 rating and its significant funds under management.

25 PGGM is also a long-term investor with an

0203

1 investment horizon of 20 years or greater. It will be

2 purchasing approximately a 10 percent indirect

3 ownership interest in PSE. PGGM invests a diversified

4 portfolio of $250 billion assets under management. It

5 has made significant investments in energy and

6 infrastructure assets in the United States, North

7 America, South America, and Europe.

8 Briefly, I want to hit on the unique nature of

9 the case. This sale of a noncontrolling, minority

10 interest in PSE's parent company, Puget Holdings, is

11 very different from the mergers and sales of

12 100 percent of ownership interests that the Commission

13 has reviewed several times over the past 25 years.

14 As the Commission said earlier in this case,

15 the Commission has not evaluated a proposed transfer

16 of a noncontrolling interest in a privately held

17 corporation since RCW 80.12.020 was amended, if ever,

18 and the Commission determined in that order that the

19 public interest or no harm standard is appropriate in

20 this case. The Commission also found it appropriate

21 to hold a limited adjudicative proceeding with a

22 prompt procedural schedule and narrowly tailored

23 discovery.

24 That brings us to the third point. We did, in

25 fact, have a robust process leading to this

0204

1 settlement. The parties engaged in substantial

2 discovery. Commission Staff undertook discovery prior

3 to the Commission converting this to an adjudicative

4 proceeding, as well as afterwards. AWEC propounded 51

5 data requests, Public Counsel 32, and other parties

6 did as well.

7 All the parties participated in a full-day

8 settlement conference on December 18. No settlement

9 was reached, but the parties engaged in additional

10 discovery and discussions and settlement proposals

11 were exchanged.

12 Ultimately, on January 8, a multiparty

13 settlement in principle was reached and that

14 settlement is before the Commission today. The

15 settlement is built on the strong foundation of the

16 existing commitments and it is consistent with the

17 public interest. The new commitments that have been

18 added follow two key principles: They are consistent

19 with the no harm standard and they fall within the

20 scope of the Commission's jurisdiction.

21 The settlement builds on the 63 robust

22 commitments and 15 conditions that were approved by

23 the Commission ten years ago when Puget Holdings

24 indirectly acquired PSE. As the Commission stated ten

25 years ago, Taken together, these commitments and

0205

1 conditions we impose on the settlement are more

2 protective of customers and the public interest, more

3 far-reaching, and at least as enforceable as any prior

4 similar transaction in memory.

5 These conditions, then and now, as they are

6 expanded, are wide-ranging in their scope. They cover

7 governance and operations, regulatory commitments,

8 ring-fencing and financial commitments, community and

9 low income commitments, environmental commitments,

10 energy efficiency commitments, Colstrip commitments,

11 LNG commitments, and miscellaneous commitments.

12 The settlement contains 65 commitments, 12 are

13 new, and there are numerous of the preexisting

14 commitments that were modified to specifically address

15 this transaction. And to the extent commitments from

16 2008 are not being reaffirmed, it's because these

17 commitments were satisfied. There are no protections

18 relied upon in the 2008 merger order that are being

19 rolled back.

20 These updated commitments ensure that the

21 public will not be harmed by proposed transactions,

22 and they address concerns that were raised by parties

23 at the open meeting and afterward.

24 For example, to address concerns regarding

25 governance and voting agreements, new commitments are

0206

1 added that provide for notice to the Commission when

2 new, formal voting agreements are entered into at

3 Puget Holdings; to address concerns about Canadian

4 ownership, there are commitments that require notice

5 when certain Canadian pension law is revised; to

6 address transparency concerns, PSE will report the

7 debt held at PSE and Puget Energy, including material

8 terms of new issuances, for the next five years;

9 parties and the Commission will continue to have

10 access to books and records, including those of Puget

11 Holdings, that pertain to PSE; PSE will not seek to

12 abolish its service quality program; and PSE's

13 shareholders commit to continue annual contributions

14 to low-income weatherization program, plus an

15 additional infusion of 2 million over the next five

16 years.

17 There is one intervenor, FEA, that -- Federal

18 Executive Agencies, that did not join in the

19 settlement, but does not oppose the settlement, and

20 there are the three union groups that oppose the

21 settlement.

22 The Commission has previously recognized that

23 parties without a substantial interest in a case, that

24 are allowed limited intervention strictly on a public

25 interest basis, as was the case with the union

0207

1 intervenors, the settlement should be considered as if

2 it is otherwise unopposed. Today the Commission

3 should carefully limit these parties, as it has, who

4 lack a substantial interest in this otherwise

5 unopposed settlement.

6 The settlement is in the public interest and

7 should be approved. The settling parties have

8 provided testimony setting forth their support for the

9 settlement. For example, Public Counsel's witness,

10 J. Randall Woolridge, testifies in support of the

11 settlement and described the purchasers as large,

12 well-diversified investment funds and high-quality

13 investors in infrastructure assets. He further

14 testifies that the settlement provides multiple

15 commitments to protect PSE and its ratepayers.

16 AWEC's witness, Marc Hellman, carefully ticks

17 through a list of potential risks that he considered

18 for the proposed transaction, most of which were

19 raised at the open meeting, and concludes that the

20 additional commitments address these risks from the

21 commercial and industrial customers' perspective.

22 Wendy Gerlitz of the Northwest Energy

23 Coalition testifies that the settlement contains

24 adequate commitments addressing energy efficiency,

25 renewable resources, and low-income customers, and the

0208

1 new owners confirm support for the previously made

2 commitments regarding Colstrip.

3 The Energy Project witness Shawn Collins

4 testifies that the settlement includes a number of

5 important components that are in the public interest

6 from the perspective of low-income customers.

7 Commission Staff witness Melissa Cheesman

8 testifies all four purchasers are financially fit,

9 have the ability to access capital, and have

10 experience with managing and investing in the utility

11 industry. The commitments provide robust protections

12 that serve to protect ratepayers from harm and render

13 the proposed transactions consistent with the public

14 interest.

15 There is substantial evidence supporting

16 approval of the proposed transactions with the

17 commitments that are before you today. The settling

18 parties thank you for the opportunity to answer your

19 questions and respectfully request that the Commission

20 approve the proposed transactions and the settlement

21 stipulation.

22 Thank you.

23 JUDGE O'CONNELL: Thank you, Ms. Carson.

24 Let's turn next to Mr. Medlin on behalf of

25 IBEW and UA Local 32.

0209

1 MR. MEDLIN: Are both parties getting

2 the opportunity to present an opening statement or

3 just...

4 JUDGE O'CONNELL: Forgive me. Have you

5 designated one person to give an opening statement or

6 do you both intend to?

7 MR. MEDLIN: We have. Ms. Franco-Malone

8 is going to the nonsettling parties' opening

9 statement.

10 JUDGE O'CONNELL: Okay. I recall that

11 that was the instruction that I gave. Thank you for

12 reminding me, Mr. Medlin.

13 Ms. Franco-Malone, we will turn to you, then.

14 MS. FRANCO-MALONE: Thank you, Your

15 Honors and Commissioners.

16 We are here today to present evidence

17 concerning the impact of PSE's largest single

18 investor, Macquarie, departing the ownership

19 consortium that makes up Puget Holdings. We have

20 demonstrated and the testimony adduced at the hearing

21 today will further establish that, as it has been

22 presented to you, the proposed transaction will harm

23 PSE ratepayers.

24 The proposed commitments, while extensive,

25 utterly fail to address several issues. Without

0210

1 further commitments that address safety and

2 reliability issues related to the conditions under

3 which the men and women who perform work on the PSE

4 system, there is a real risk that PSE customers and

5 the public will be harmed.

6 We have presented you with evidence describing

7 the ways in which PSE has been relying upon

8 chronically short-staffed crews at levels that are

9 insufficient to ensure safety and reliable service to

10 customers, requiring employees to work unsafe and

11 unsustainable amounts of overtime; providing employees

12 inadequate training, and using unqualified employees

13 to assess storm damage and unsafe conditions; failing

14 to help build a pipeline with the next generation of

15 utility workers by utilizing apprentices; using some

16 of the worst of the worst contractors when it comes to

17 flagging that is generally necessary when work on the

18 system is performed; maintaining lax standards when it

19 comes to training that its contractors must provide

20 employees before sending them out to work on the PSE

21 system; frequently relying upon companies that use

22 temporary staffing agencies for labor, even though the

23 literature and evidence here in Washington State make

24 clear that this is almost always the least safe

25 option.

0211

1 In the absence of any commitments addressing

2 these vital safety issues as part of the 2008

3 transaction, our witnesses have addressed the ways in

4 which each of these problems I have mentioned has

5 grown worse under Puget Holdings during the past ten

6 years. Unfortunately, these problems stand to get

7 worse under the new consortium of owners. To name one

8 reason, the departing owner, Macquarie, was unusually

9 active in terms of taking an interest in PSE's

10 operations. It was the only one of the existing

11 owners to adopt a responsible contractor policy

12 applicable to its investment utilities.

13 If the Commission does not put parameters on

14 Puget Sound Energy's supply chain practices to ensure

15 that at the very least these trends do not get worse,

16 there is every reason to think that this trend of

17 putting profits before ratepayer safety will continue

18 to the detriment of PSE customers under the new

19 owners.

20 The Commission should not approve the

21 transaction without requiring certain additional

22 commitments from the joint applicants, as described in

23 more detail in our witnesses' testimony.

24 Thank you.

25 JUDGE O'CONNELL: Thank you,

0212

1 Ms. Franco-Malone.

2 I want to reiterate one more time that we

3 expect the cross-examination questions posed today to

4 be focused on the proposed transaction and whether

5 there is going to be no harm to customers. As to the

6 labor issues that we discussed previously and

7 grievances about current operations that are not

8 tethered to the proposed transaction, I expect that

9 those topics will not be part of cross-examination.

10 Let's turn now to cross-examination for our

11 first panel of witnesses that support the settlement.

12 Mr. Medlin, are you prepared to go forward?

13 MR. MEDLIN: Yes. Would you like us to

14 take them one at a time or alternate back and forth?

15 What would be your preference?

16 JUDGE O'CONNELL: My preference would be

17 that you ask all the questions that you have, and then

18 Ms. Franco-Malone will ask all the questions that she

19 has.

20 MR. MEDLIN: Okay.

21 JUDGE O'CONNELL: And then we will hear

22 brief redirect, if any, from the attorneys, and then

23 we will have questions from the bench.

24 MR. MEDLIN: All right. I will start

25 with Ms. Cheesman, then. I will hand her the

0213

1 documents that were submitted for cross-examination,

2 with the note that some of them were excluded, but

3 they are all included in the packet, and one to Staff

4 counsel attorney.

5 MS. CAMERON-RULKOWSKI: Thank you.

6

7 C R O S S - E X A M I N A T I O N

8 BY MR. MEDLIN:

9 Q I want you, if you can, Ms. Cheesman, to turn

10 to the document that is the settlement commitments.

11 Do you have that in front of you?

12 A I do.

13 Q Okay.

14 And if you could turn to what is Page 2.

15 A I'm there.

16 Q Okay.

17 And you see where it says New No. 3, right?

18 A I do.

19 Q Okay.

20 COMMISSIONER RENDAHL: Sorry. Which

21 document are we looking at?

22 MS. CHEESMAN: Apologies. We are

23 looking at joint applicants --

24 COMMISSIONER RENDAHL: This is a

25 cross-exhibit?

0214

1 MS. CHEESMAN: The joint applicants

2 response to Bench Request 1.

3 COMMISSIONER RENDAHL: Thank you.

4 MR. MEDLIN: I believe it's BE-1, is

5 what it is titled as, I believe.

6 JUDGE O'CONNELL: It is actually labeled

7 BE-2.

8 MR. MEDLIN: BE-2. Okay.

9 BY MR. MEDLIN:

10 Q So we are looking at BE-2 then, correct,

11 Ms. Cheesman?

12 A Yes.

13 Q And so you are on Page 2, and we are looking

14 at new No. 3, correct?

15 A That's correct.

16 Q And are you familiar with this language that's

17 here?

18 A I am just taking a moment to reread it.

19 Q Sure.

20 A Yes.

21 Q Now, does this commitment -- according to

22 Staff, does that mean that PSE is just maintaining

23 status quo?

24 A My -- sorry. So Commitment 3, as well as 2

25 and 4, were commitments the 2008 transaction that the

0215

1 Commission has already deemed to be sufficient in

2 addressing public service obligations related to

3 safety, reliability, and customer service.

4 Q Okay.

5 So as to those issues for safety, customer

6 service, and it says here staffing, that means it's

7 just going to maintain status quo?

8 A I think that's a fair assessment.

9 Q So it doesn't require any affirmative action

10 on the joint applicants' part, does it?

11 A It is a commitment that does require that the

12 company adhere to it. And there are commitments, 64,

13 which if the company fails to adhere to the

14 commitments, there is a required noticing of the

15 Commission about the failure and how they plan to

16 correct it.

17 Q But it's fair to say that the commitment

18 related to the issues you talk about, safety,

19 reliability, and staffing, it's just that the joint

20 applicants are going to maintain what they are already

21 doing, correct?

22 I'll strike that.

23 So it uses the word "maintain," right?

24 A It does use the word maintain.

25 Q And --

0216

1 A It does.

2 Q And does the word maintain to you mean you are

3 just going to keep doing what you are doing?

4 A In the context of this sentence, the word

5 maintain refers to maintaining safety and reliability

6 and cost effective operations in the communities and

7 where they operate. So yes, maybe status quo, but

8 also that they are operating sufficient to maintain

9 the provisions of safety and reliability.

10 Q Okay.

11 So you are saying currently, then, what they

12 are doing is sufficient?

13 A Actually, I have read and reviewed opposing

14 test -- testimony to the settlement, but I haven't

15 actually seen any evidence that says that the proposed

16 commitment will somehow dampen this or make it so

17 that -- or make the situation currently worse off.

18 Q Okay.

19 So again, just to -- because I don't think you

20 have quite answered this yet, to maintain is just to

21 keep doing what they're doing?

22 A Well, I'm saying that in reference to the

23 context of this sentence, is to maintain a system that

24 is safe and reliable.

25 Q Okay.

0217

1 And that would also include staffing, correct?

2 A That would include staffing.

3 Q Okay.

4 Now, this language in this commitment, it uses

5 the word reliable, correct?

6 A Correct.

7 Q And would you agree that a lot of things fall

8 within reliability?

9 A I would agree that it is a very broad

10 category.

11 Q Okay.

12 And would include that PSE is going to provide

13 reliable electricity to its customers?

14 A Yes.

15 Q Okay.

16 And that's because staff wants to ensure that

17 customers get their power, right?

18 A Well, yeah, staff wants to ensure that when

19 customers have the expectation of flipping the switch

20 that it happens and the lights turn on.

21 Q So that's reliability, right?

22 A That's a very simple approach to reliability,

23 yes.

24 Q Okay.

25 Now, does a utility like PSE need workers to

0218

1 be reliable?

2 A Can I get you to clarify what you mean by

3 workers being reliable?

4 Q Yeah. So does PSE need actual workers or

5 employees to be a reliable utility?

6 MS. CAMERON-RULKOWSKI: Objection. Your

7 Honors, this goes beyond the scope of Ms. Cheesman's

8 testimony. This is cross-examination and her

9 testimony does not include a discussion on these

10 topics.

11 MR. MEDLIN: I'll just --

12 JUDGE O'CONNELL: Mr. Medlin?

13 MR. MEDLIN: Yeah. To respond to that,

14 if you look on what is Page 12, Lines 8 through 13 of

15 Ms. Cheesman's testimony, she does talk about

16 maintaining staffing and presence in communities, and

17 on Lines 14 and 15 she also refers to the maintenance

18 of safety and reliability, and she provides a

19 discussion of that safety and reliability on the

20 following, 16 through 20 of her testimony.

21 MS. CAMERON-RULKOWSKI: Your Honors,

22 that is very cursory discussion and mostly

23 Ms. Cheesman is simply reiterating the language of the

24 commitments.

25 MR. MEDLIN: So one of the things the

0219

1 Commissioners have asked for us to do is identify

2 potential harms, and if it was given cursory service,

3 then I think I should be allowed to explore that on

4 cross-examination.

5 JUDGE O'CONNELL: I am going to allow

6 the questions about this as they are relevant to

7 Ms. Cheesman's testimony about maintaining staffing,

8 and as they apply to this proposed commitment;

9 however, if we start delving into issues about labor

10 disputes or labor issues contemporary with staffing, I

11 expect that we will hear again from

12 Ms. Cameron-Rulkowski.

13 MR. MEDLIN: We won't have a labor

14 dispute, I promise.

15 JUDGE O'CONNELL: Okay.

16 BY MR. MEDLIN:

17 Q So I will repeat the question because I don't

18 think you answered it.

19 Does PSE need workers or employees in order to

20 be reliable?

21 A PSE does need workers in order to operate

22 their system reliably.

23 Q So they are not an automated utility. They

24 can't function without human beings to perform the

25 work, right?

0220

1 A I'm not going to make a blanket statement like

2 that. There are advancements in automation and

3 technology that may have actually impacted worker

4 staffing levels.

5 Q But currently, right now, PSE, you would

6 agree, can't function without employees, right?

7 A Yes, I believe PSE needs employees.

8 Q Okay.

9 Now, if you operated with a minimal amount of

10 employees, would that affect reliability?

11 A Again --

12 MS. CAMERON-RULKOWSKI: Objection.

13 A -- it depends --

14 MS. CAMERON-RULKOWSKI: Objection. I am

15 going to renew my objection. Ms. Cheesman has not

16 testified about levels of employees or staffing levels

17 anywhere in her testimony.

18 MR. MEDLIN: And I will just say in

19 response, again, I am just asking questions about the

20 commitment, where it talks about to maintain, and it

21 mentions staffing and reliability and safety, and I am

22 focusing my inquiry on reliability currently. And she

23 has already agreed that PSE requires employees in

24 order to operate.

25 JUDGE O'CONNELL: So I think she has

0221

1 already answered your question on the topic, then.

2 I do expect you to keep your questions focused

3 on the commitments and Ms. Cheesman's testimony as to

4 whether the settlement will provide -- will have no

5 harm to customers.

6 MR. MEDLIN: Of course.

7 BY MR. MEDLIN:

8 Q So still looking -- still focusing on this

9 commitment, and we are talking about staffing, safety,

10 and reliability, correct?

11 A Yes.

12 Q Okay.

13 So if you had a situation where PSE

14 significantly understaffed its operation, would that

15 affect reliability?

16 A Depending on the prevailing technology in

17 automation, it could impact --

18 Q Okay.

19 A -- operations of reliability.

20 Q And would you say if PSE significantly

21 diminished its staffing that's mentioned here, that

22 could potentially be harmful to customers?

23 MS. CAMERON-RULKOWSKI: Objection. Your

24 Honor, I believe that this line of questioning is

25 calling for speculation, and we don't have a

0222

1 foundation laid either to ask these types of

2 questions.

3 JUDGE O'CONNELL: I agree as to the

4 speculation that's being asked of Ms. Cheesman, but I

5 will allow to the extent that she has personal

6 knowledge.

7 MR. MEDLIN: Thank you.

8 JUDGE O'CONNELL: You can ask the

9 question.

10 BY MR. MEDLIN:

11 Q Yeah, so I'll repeat the question.

12 So to the extent that you know, if PSE

13 significantly reduced its staff, would that affect

14 reliability of their service to customers?

15 A I don't actually have intimate knowledge about

16 PSE's operations and to what extent staffing levels

17 would need to be required to -- for reliability and

18 safety.

19 Q Okay.

20 And as part of providing testimony, did you

21 review discovery in this case?

22 A I have reviewed discovery in this case.

23 Q Okay.

24 And did that also include the discovery from

25 the IBEW, the Laborers, and UA 32?

0223

1 A Yes, it did.

2 Q Okay.

3 And did you review any of the materials in

4 there where they provided and requested information

5 from PSE about staffing and employee numbers?

6 MS. CAMERON-RULKOWSKI: Objection.

7 Relevance. The Bench has already decided that these

8 issues are outside the scope of the proceeding.

9 MR. MEDLIN: So I am not speaking to

10 the -- or attempting to admit them as an exhibit, I am

11 speaking about the discovery process and what was or

12 was not reviewed by Ms. Cheesman in the discovery

13 process.

14 JUDGE O'CONNELL: Mr. Medlin, I think

15 you should confine your questions to things that have

16 been presented and are in the record. Things that

17 have not been offered as exhibits in this case are not

18 before us.

19 MR. MEDLIN: So the objection is

20 sustained?

21 JUDGE O'CONNELL: Sustained.

22 MR. MEDLIN: All right.

23 BY MR. MEDLIN:

24 Q So still looking at the commitments. One of

25 the items that's also mentioned here is safe, correct?

0224

1 A Yes.

2 Are you still referring to proposed -- new

3 proposed -- or Commitment New No. 3?

4 Q Yes. Correct.

5 A It does include the word --

6 Q Okay.

7 A -- "safe."

8 Q And would you agree that safety is a pretty

9 broad topic as well?

10 A I would.

11 Q Okay.

12 And would you agree that safety includes

13 keeping customers safe?

14 A I would.

15 Q Okay.

16 And would you also agree that safety should

17 include keeping PSE employees safe?

18 A I would.

19 Q And that would include, obviously, preventing

20 an employee from getting electrocuted, right?

21 A Yes, but I want to clarify that a single

22 incident does not represent a pattern of incidents,

23 and that I have actually not seen any evidence to

24 suggest that there are patterns of unsafe behavior

25 conducted by PSE.

0225

1 Q So you would say, then, that unless multiple

2 people get electrocuted, then it's not a safety issue?

3 A No. What I'm saying is safety is not a zero

4 occurrence situation, that issues and accidents

5 happen. It is addressing them when there is a

6 pattern, where it becomes essential to make sure that

7 we are mitigating that risk.

8 Q Okay.

9 And would you say that safety includes

10 avoiding on-the-job injuries?

11 A Again, I would state that accidents happen and

12 that safety doesn't mean zero occurrence because

13 accidents happen. But yes, making sure that there are

14 safeguards in place in any workplace is very important

15 to employee safety.

16 MR. MEDLIN: So I'm just going to make

17 an objection, nonresponsive, because I have asked a

18 yes or no question.

19 BY MR. MEDLIN:

20 Q I don't think you have answered it. I just

21 asked you whether safety would include avoiding

22 on-the-job injuries, yes or no?

23 MS. CAMERON-RULKOWSKI: So I am going to

24 object. I don't see the foundation here.

25 Ms. Cheesman has not testified about the extent of the

0226

1 definition of safety.

2 MR. MEDLIN: So again I will refer back

3 to what is Page 12, Lines 8 through 12, and 14 through

4 17 of Ms. Cheesman's testimony, where she refers to

5 safety and a discussion of it, and we are talking

6 about what that means as it relates to what is

7 Proposed Commitment No. 3.

8 JUDGE O'CONNELL: Mr. Medlin, I would

9 like to hear from you a little bit of foundation of

10 where this questioning is going and how it is tied to

11 the proposed transaction and how it is going to result

12 in no harm to customers.

13 MR. MEDLIN: So safety is included as

14 one of the considerations that IBEW is allowed to

15 present evidence on. I am attempting to elicit

16 whether or not the safety of employees has included

17 that, or is included in the consideration of what is

18 Proposed New Commitment No. 3 in the multiparty

19 settlement agreement.

20 JUDGE O'CONNELL: What I haven't heard

21 from you, Mr. Medlin, is any questioning establishing

22 a foundation about whether there is any difference

23 between the prior commitments and the proposed

24 commitments, and you have yet to establish that. I am

25 going to permit you to back up and lay some

0227

1 foundation.

2 MR. MEDLIN: Okay.

3 BY MR. MEDLIN:

4 Q So the commitments between -- still looking at

5 the same document, correct?

6 A Uh-huh.

7 Q Okay.

8 A Yes.

9 Q And so the language for Commitment No. 3,

10 that's not changing, right?

11 A There are no edits, based on the settlement --

12 Q So --

13 A -- to this commitment.

14 Q -- no edits means no changes, then, correct?

15 A Yeah, no edits means no changes.

16 Q Okay.

17 And so referring again to the safety that's

18 mentioned in that commitment, would that include the

19 safety of anyone who is working for PSE?

20 MS. CAMERON-RULKOWSKI: Objection.

21 Asked and answered.

22 JUDGE O'CONNELL: Sustained.

23 Ms. Cheesman has already answered that question.

24 BY MR. MEDLIN:

25 Q So if an employee is unsafe at work, could

0228

1 that potentially be harmful?

2 MS. CAMERON-RULKOWSKI: Objection.

3 Asked and answered.

4 JUDGE O'CONNELL: No, I do not believe

5 that question has been asked; however, Mr. Medlin,

6 could you please rephrase for clarity?

7 MR. MEDLIN: Sure. Sure.

8 BY MR. MEDLIN:

9 Q So we are still talking about safety on this

10 document, right?

11 A Yes.

12 Q Okay.

13 A We are still talking about Commitment 3.

14 Q Correct. And we are still talking about

15 employees of PSE, correct?

16 A That is what the line of questioning is going

17 towards, yes.

18 Q Okay.

19 And so I'm saying if the safety of employees

20 is not considered by PSE, could that potentially be

21 harmful?

22 A Yes.

23 Q Okay.

24 A But I would want to follow up to say that even

25 if that is a concern currently, it doesn't actually

0229

1 speak to proposed transaction, and I have not seen any

2 evidence in the proposed transaction that would impact

3 negatively safety and reliability.

4 Q Did Staff consider any of the issues raised by

5 the labor groups in its no harm analysis?

6 A Yes, I did review those.

7 Q But did you -- so you -- I'll strike that.

8 So you reviewed the discovery that was put

9 forward, you are saying?

10 A Yes.

11 Q So I am asking about the issues that were

12 raised by the labor groups. Did Staff consider those

13 in making its no harm analysis?

14 A To what are you -- I mean, specifically what

15 are you referring to --

16 Q Yeah.

17 A -- because there was a lot of information

18 filed in this case?

19 Q So I'm talking about safety, third-party

20 contracting, vehicle issues. Did Staff consider

21 those --

22 MS. CAMERON-RULKOWSKI: Objection.

23 Q -- in its no harm analysis?

24 MS. CAMERON-RULKOWSKI: This is --

25 MR. MEDLIN: Well, I just -- can I

0230

1 finish the question before you state your objection?

2 BY MR. MEDLIN:

3 Q So I asked about the safety issues, the

4 vehicle accident issues, and contracting as issues

5 that were identified.

6 MS. CAMERON-RULKOWSKI: Now I will

7 object, and I am objecting on the basis that it is

8 outside the scope of Ms. Cheesman's direct testimony.

9 There is a relevance objection there too, to some of

10 those issues that were just listed.

11 JUDGE O'CONNELL: So two things. First

12 of all, Mr. Medlin, Ms. Cameron-Rulkowski, please

13 refrain from speaking over each other and interrupting

14 each other. I expect you both to be respectful in

15 this hearing room and to each other and part of that

16 is not interrupting each other, and your objection is

17 properly posed at the end of the question.

18 Mr. Medlin, I agree in part with

19 Ms. Cameron-Rulkowski. You are starting to delve into

20 areas that we have already said are excluded and not

21 part of the scope of this proceeding.

22 MR. MEDLIN: So can I clarify? Because

23 my question related to safety, driving incidents, and

24 third-party contracting. Are those not included in

25 the remaining topics that we are allowed to explore?

0231

1 JUDGE O'CONNELL: One moment.

2 MS. CAMERON-RULKOWSKI: And my

3 apologies, Mr. Medlin.

4 MR. MEDLIN: Thank you.

5 (Pause in the proceedings.)

6 JUDGE O'CONNELL: I note that,

7 Mr. Medlin, much of Mr. Arnold's testimony as it

8 regards vehicle safety has been struck as outside the

9 scope of this proceeding; however, I will allow

10 questioning as long as you tie it to harm to customers

11 from the proposed transaction. I don't think you have

12 done that.

13 MR. MEDLIN: And may I also clarify?

14 The vehicle accident, which was DTA No. 9, is still

15 admitted, correct?

16 JUDGE O'CONNELL: You are correct.

17 MR. MEDLIN: Thank you.

18 JUDGE O'CONNELL: Please continue.

19 BY MR. MEDLIN:

20 Q So I will repeat the question because I know

21 time has passed.

22 So we were talking about issues raised by the

23 labor groups, correct?

24 A Yes.

25 Q Okay.

0232

1 And so my question to you was: Did Staff

2 consider the issues raised by the labor groups as they

3 related to vehicle accident issues, safety, and

4 third-party contracting?

5 A So, yeah, I reviewed this information, but

6 again I have to stress that it's more -- these are

7 current events and not directly tied to the proposed

8 transaction. And so what gave my -- what got the

9 attention of my analysis is identifying risks related

10 to the proposed transaction, and if there was risk,

11 are there sufficient commitments to protect against

12 those risks, and the settlement commitments do that.

13 Q So my question wasn't whether you reviewed

14 them, my question was whether you considered those

15 items.

16 A Yes, my review is part of that consideration.

17 Q All right.

18 MR. MEDLIN: Thank you.

19 That's all the questions I have for

20 Ms. Cheesman.

21 JUDGE O'CONNELL: Ms. Cameron-Rulkowski,

22 do you want to do redirect of Ms. Cheesman?

23 MS. CAMERON-RULKOWSKI: I have no

24 redirect. Thank you.

25 JUDGE O'CONNELL: We are going to take

0233

1 questions from the bench of the panel after we have

2 concluded with the cross-examination.

3 Mr. Medlin, which member of the panel do you

4 have questions for next?

5 MR. MEDLIN: I'll just go down the line.

6 I believe Mr. Molander is next, on the right, correct?

7 MR. MOLANDER: Correct. Thank you.

8 MR. MEDLIN: And I will just note that

9 Mr. Molander, I believe, is filling in for a portion

10 of Mr. Piliaris's testimony, correct?

11 MR. MOLANDER: That's correct.

12 MR. MEDLIN: So I will provide the

13 exhibits I had for cross-examination for Mr. Piliaris

14 with the understanding that I am giving him the whole

15 packet, with the exception of the exhibits that were

16 excluded.

17 MS. CARSON: And I have all the IBEW

18 exhibits excluded; is that -- cross-exam exhibits; is

19 that right?

20 MR. MEDLIN: No. So it also includes

21 what is DTA No. 9. And the packet I handed also

22 includes the joint testimony of the joint applicants,

23 and also the proposed commitments.

24 MS. CARSON: Okay.

25 MR. MEDLIN: So he has those in front of

0234

1 him.

2 MS. CARSON: Thanks.

3

4 C R O S S - E X A M I N A T I O N

5 BY MR. MEDLIN:

6 Q So, Mr. Molander, if you could turn to what is

7 Exhibit BE-2, which is the proposed commitments.

8 Do you have that in front of you?

9 A I do, I believe. Yes.

10 Q All right.

11 If you turn to what is Page 2.

12 A Uh-huh.

13 Q Okay.

14 And we are looking at Commitment No. 3.

15 A Okay.

16 Q And this is the commitment that talks about

17 maintaining staffing, and it talks about safety and

18 reliability, correct?

19 A Correct.

20 Q And there is no change in this commitment from

21 what was agreed upon in 2007, which is in the

22 right-hand column, correct?

23 A Correct.

24 Q And so does that mean that PSE will be

25 maintaining the status quo as it relates to those

0235

1 issues?

2 A As I understand it, yes.

3 Q So there is not going to be any change, then,

4 on staffing, safety, and reliability?

5 A Staffing is in accordance with the work that

6 we have before us, both from a capital program

7 perspective and from a reliability perspective. It

8 changes, it ebbs and flows. So I would expect that we

9 would staff accordingly to meet the commitments of the

10 company, both from a Commission perspective, but also

11 from our SQI perspective.

12 Q But would it be fair to say that the

13 commitment itself is for PSE to simply maintain the

14 status quo?

15 A I guess so, yes.

16 Q And you would agree that it uses the word

17 "maintain," correct?

18 A Yes, I would.

19 Q And would you agree that the word maintain is

20 opposite of the word change?

21 A The company has to have the ability to change

22 its staffing levels to meet the needs of its

23 customers. I think this would speak to -- I'll move a

24 little closer here.

25 The company has to have the ability to staff

0236

1 accordingly to meet needs of the customers, to meet

2 the growth within our service territory, to respond to

3 storms, changes in circumstances. I think what this

4 would speak to is the need to maintain the adequate

5 staffing necessary to support the needs of the

6 customers.

7 Q So then you agree that adequate staffing is

8 something that is important, then?

9 A I would agree, yes.

10 Q Okay.

11 Have you completely reviewed this document

12 that is Exhibit BE-2, the proposed commitments?

13 A No, I have not.

14 Q Have you -- so let me strike that.

15 So you have not looked at the entirety of the

16 document?

17 A No, I have not.

18 Q Okay.

19 Do you know, based on either -- from the

20 portions that you did review, whether the labor unions

21 are included in any of the commitments?

22 A Well, we are -- we are committing to honor the

23 agreements that we have with the IBEW and the UA.

24 Q Okay.

25 So beyond the labor contracts, is there

0237

1 anything in there that you are aware of that relates

2 to the labor unions?

3 A Not specifically, to my recollection, but in

4 committing to honor the terms and agreements of our

5 labor contracts, that means that we have the ability

6 to -- or we are committing to bargain in good faith,

7 as we have since the original merger back in 2009.

8 Q Okay.

9 So PSE also has a number of vehicles, don't

10 you?

11 A Yes, we do.

12 Q Okay.

13 And I assume you are familiar with those,

14 correct?

15 A I am.

16 Q And you are, I'm certain, familiar that a

17 number of employees have to drive a vehicle as part of

18 their job, right?

19 A That is right.

20 Q Okay.

21 And you would agree that the use of those

22 vehicles is necessary in order to carry out customer

23 service, correct?

24 A Yes, I would. We have a lot of vehicles. We

25 drive in excess of 12 million miles a year in support

0238

1 of our customers.

2 Q Yeah. And so there is a significant amount of

3 driving time that employees do, correct?

4 A That is correct.

5 Q And you would also agree that traffic in the

6 Puget Sound area has increased over time as well,

7 correct?

8 A I think we can all agree to that.

9 Q So people are going to spend a lot of time in

10 their car, right?

11 A Indeed they do.

12 Q And some of these vehicles include large

13 trucks that have a boom on them, correct?

14 A That is correct.

15 Q So you have sort of larger pieces of equipment

16 that are driven; you would agree?

17 A Yes.

18 Q Okay.

19 Now, is making sure that no vehicle accidents

20 happen important to PSE?

21 A It's very important. In fact, over the years

22 we have had extensive vehicle safety training, whether

23 it's in the context of our monthly safety meetings, by

24 way of video presentation, by way of in-class

25 education, as well as, most recently, by way of

0239

1 field -- in-the-field training and education within

2 electric and gas operations organizations. It's very

3 important.

4 Q Okay.

5 Let's take a look at, it should in your packet

6 there, what is DTA Exhibit 9. And if you turn to what

7 is the third page of that exhibit, which is titled

8 Motor Vehicle Incidents.

9 A Okay.

10 Q It should be a chart.

11 A I've got it, yep.

12 Q One more page.

13 A Yep.

14 Q There you go.

15 A I've got it.

16 Q All right.

17 Have you seen this document before?

18 A I have.

19 Q Okay.

20 Are you familiar with the data that's in this

21 document?

22 A I am.

23 Q And this relates to PSE vehicle accidents,

24 correct?

25 A Yes, it does.

0240

1 Q Now, you didn't track these vehicle accidents

2 before 2013, did you?

3 A That I don't know.

4 Q But you will see here that there is no data on

5 vehicle accidents before the year 2013, correct?

6 A That's correct, yes.

7 Q I'll just state --

8 MS. CARSON: I am going to object to

9 this line of questioning. It's not clear to me that

10 it is tethered to the proposed transaction.

11 JUDGE O'CONNELL: Mr. Medlin?

12 MR. MEDLIN: Again, so you have asked us

13 to identify potential harms as they relate to safety

14 and reliability. DTA No. 9, which is vehicle

15 accidents, has been allowed to be introduced as

16 evidence, and I would like to explore with the

17 witness, who is speaking on behalf of PSE, issues

18 related to vehicle accidents as potential harms of the

19 transaction.

20 JUDGE O'CONNELL: I am going to overrule

21 the objection, but, Mr. Medlin, I would request that

22 you get to the part of your questioning where this

23 connects to the proposed transaction.

24 MR. MEDLIN: Okay.

25 BY MR. MEDLIN:

0241

1 Q So we are still looking at that chart there,

2 correct?

3 A Correct.

4 Q And the top line is total vehicle accidents,

5 correct?

6 A Yes.

7 Q And would you agree that that has held pretty

8 steady from 2013 to 2018?

9 A No, I would actually say it has gone from 107

10 in '13 to 93 in '18.

11 Q But for at least four of the total years, you

12 have had in an excess of 100, correct?

13 A That is correct.

14 Q Okay.

15 And there is no commitment in the proposed

16 settlement agreement addressing vehicle accidents,

17 correct?

18 A That is my understanding, but I -- I want to

19 speak to this a little more, because in 2017 --

20 MR. MEDLIN: I'll object to --

21 A -- to 2018 --

22 MR. MEDLIN: -- nonresponsive because,

23 again, the efficiency. I only get a limited time with

24 the witness and I would like to have a yes or no

25 question. Ms. Carson will be provided an opportunity

0242

1 for redirect.

2 JUDGE O'CONNELL: Mr. Medlin, the

3 witness can answer your question and explain the

4 response if it calls for it.

5 To the extent that witnesses are asked a yes

6 or no question, we expect that you answer yes or no,

7 but you may provide some explanation for your answer.

8 So with that, Mr. Medlin, if you want to reask

9 your question, you may.

10 BY MR. MEDLIN:

11 Q So my question was: There's no commitment in

12 the proposed settlement agreement related to vehicle

13 accidents, correct?

14 A That is correct. However, as I have

15 previously mentioned, with respect to one of the your

16 prior questions, the company has invested

17 significantly in driver training, both in-class and

18 in-field, and that's in the 2017, 2018 time frame. In

19 addition to that, the company has, by way of its

20 standard specification for all new vehicles, added

21 proximity sensors and back up cameras to its vehicles.

22 I think what you are seeing there is the effect of

23 some of the measures that the company is taking to

24 improve its performance in connection with motor

25 vehicle incidents.

0243

1 Q And are you familiar with the vehicle

2 incidents that happened in the last quarter of 2018?

3 A I am not intimately familiar with all

4 incidents --

5 Q Okay.

6 A -- no.

7 Q Were you at least aware of, personally, that

8 there were two utility truck rollovers in the last

9 quarter of 2018?

10 A I did hear about those, yes.

11 Q That's the larger trucks with the boom,

12 correct?

13 A That is correct.

14 Q And a rollover, would that potentially be

15 harmful to employees?

16 A Potentially, yes.

17 Q Would it also be potentially harmful --

18 MS. CARSON: Objection.

19 Q -- to customers?

20 MS. CARSON: Again, this has nothing to

21 do with harms that are resulting from the proposed

22 transaction.

23 JUDGE O'CONNELL: Mr. Medlin, I am going

24 to sustain that objection. I have asked you to get to

25 the part where this is connected to the proposed

0244

1 transaction. I allowed you a few questions to get

2 there. I expect that now you will have gotten to that

3 point.

4 MR. MEDLIN: Fair enough.

5 BY MR. MEDLIN:

6 Q The settlement agreement that PSE has entered

7 into, does it propose to make any changes based on the

8 transaction to how vehicle accidents are handled?

9 A Not to my knowledge, no.

10 MR. MEDLIN: Thank you. That's all the

11 questions I have for Mr. Molander.

12 JUDGE O'CONNELL: Ms. Carson, any

13 redirect?

14 MS. CARSON: No. Thank you.

15 JUDGE O'CONNELL: Mr. Medlin, I assume

16 that, going down the line, you would like to hear from

17 Mr. Piliaris?

18 MR. MEDLIN: That is correct.

19 JUDGE O'CONNELL: Okay.

20 MR. MEDLIN: And I would just ask that

21 you pass the exhibits down, so we don't have to go

22 through that again, to Mr. Piliaris.

23

24

25

0245

1 C R O S S - E X A M I N A T I O N

2 BY MR. MEDLIN:

3 Q Mr. Piliaris, if you turn to what is

4 Exhibit BE-2, the multiparty settlement agreement.

5 A I'm there.

6 Q Okay.

7 Have you reviewed this document before?

8 A I have.

9 Q Are you familiar with it?

10 A I am.

11 Q Okay.

12 Would you say that you are familiar with the

13 terms contained in it?

14 A Generally, yes.

15 Q Okay.

16 And if you look at what is Page 2 of

17 Exhibit BE-2, there is a New Commitment 3, correct?

18 A Sorry, can you restate that?

19 Q Yeah. So I'm looking at what is Page 2 of the

20 document, what is labeled as New No. 3.

21 A Okay.

22 Q Okay.

23 A Which is the same as the old Commitment 14?

24 Q Right. Correct.

25 A Okay.

0246

1 Q So it hasn't changed?

2 A Yes. Correct.

3 Q Okay.

4 And that commitment, as we have discussed,

5 relates to staffing, safety, and reliability, correct?

6 A Correct.

7 Q Okay.

8 And since there is no change, would you agree

9 that this commitment is for PSE to maintain the status

10 quo?

11 A To the extent that the status quo is to

12 maintain safe, reliable, and cost efficient

13 operations, the answer would be yes.

14 Q So no changes, then?

15 A Correct.

16 MR. MEDLIN: Thank you. That's all the

17 questions I have for Mr. Piliaris.

18 JUDGE O'CONNELL: Ms. Carson?

19 MS. CARSON: Yes, I do have redirect.

20

21 R E D I R E C T E X A M I N A T I O N

22 BY MS. CARSON:

23 Q So maintain the status quo, does that mean

24 that there is a set level of staffing or safety that

25 is present now and will not change over the course of

0247

1 the -- after the proposed transaction?

2 A No. As Mr. Molander had stated previously, we

3 continually adapt our operations to meet the needs of

4 our customers in all forms, from a safety perspective,

5 from a reliability perspective, and to ensure that we

6 are performing cost effectively.

7 MS. CARSON: Thank you. Nothing

8 further.

9 JUDGE O'CONNELL: Mr. Medlin, any

10 recross from the redirect?

11 MR. MEDLIN: No, I don't.

12 JUDGE O'CONNELL: Are you ready to take

13 the next witness?

14 MR. MEDLIN: Yes. And I believe --

15 because I am having a hard time seeing here, I believe

16 it's Mr. Ahmed Mubashir.

17 Did I say that correctly?

18 MR. MUBASHIR: Yes, that's right.

19 MR. MEDLIN: Okay. All right.

20

21 C R O S S - E X A M I N A T I O N

22 BY MR. MEDLIN:

23 Q And Mr. Mubashir, you represent who exactly?

24 A Alberta Investment Management Corporation.

25 Q Okay.

0248

1 And so you are one of the purchasers of PSE,

2 correct?

3 A Yes, additional -- additional interest in

4 Puget Holdings, correct.

5 Q I am kind of having a hard time hearing you.

6 A Okay. Is that better?

7 Q Yes, that's much better. Thank you.

8 Now, do you agree that PSE has to have

9 employees in order to operate currently?

10 A Yes.

11 Q And so PSE can't currently operate without

12 actual employees, right?

13 A Yes.

14 Q Okay.

15 And are you -- do you agree that PSE is going

16 to keep things as status quo regarding employees?

17 A I believe that PSE will maintain an employment

18 level which will mirror and suit the requirements of

19 the company at operational level. Frankly, I'm not in

20 operations, so I can't exactly opine on that.

21 Q But it would be fair to say that you are not

22 proposing to make any changes regarding employees?

23 A I think that's a company decision. Staffing

24 has to link up with operations.

25 Q Okay.

0249

1 MR. MEDLIN: So I would ask Mr. Piliaris

2 to pass the exhibit packet down -- excuse me.

3 Actually, I will hand you it a new one. And if you

4 would also pass it to Ms. Carson.

5 Thanks.

6 MS. CARSON: Actually, it's Mr. Berman.

7 MR. BERMAN: Mr. Berman.

8 MR. MEDLIN: Oh, I'm sorry. You're the

9 right person.

10 BY MS. CARSON:

11 Q And it might actually be in Mr. Piliaris's

12 packet. There should be the joint testimony.

13 Bear with me for a moment here as I find it.

14 (Pause in the proceedings.)

15 Q It's the document that's JA-1JT.

16 A Yes.

17 Q So you have that in front of you?

18 A Yes.

19 Q If you turn to what is Page 6.

20 A I'm here.

21 Q And I guess I should first say, this is part

22 of the testimony that has your name on it, correct?

23 A That is correct.

24 Q And did you review it before it was submitted?

25 A Yes.

0250

1 Q Okay.

2 So looking there at Page 6, Line 5, it says

3 there that PSE's business operations will not be

4 changed, correct?

5 A Yes.

6 Q Okay.

7 And also looking at Page 6, if you look at

8 Lines 7 through 8, in your testimony you say, quote,

9 Employees will see no change, correct?

10 A Yes, that is correct.

11 Q Okay.

12 So, then, is it your testimony that as a

13 purchaser, you are going to maintain the status quo as

14 it regards to employees at PSE?

15 A As a general statement, correct, but as I

16 said, that if there's anything much more particular

17 with respect -- discretion with the company, I mean,

18 that's -- that's a decision for them, the number of

19 employees they hire or not.

20 MR. MEDLIN: Thank you. That's all the

21 questions I have for Mr. Mubashir.

22 JUDGE O'CONNELL: Mr. Berman, do you

23 have any redirect?

24 MR. BERMAN: No redirect, Your Honor.

25 JUDGE O'CONNELL: Thank you.

0251

1 MR. MEDLIN: And I will just ask that

2 you pass the exhibits on down to the next person,

3 which I believe is Mr. Steven Zucchet.

4 MR. ZUCCHET: Yes.

5

6 C R O S S - E X A M I N A T I O N

7 BY MR. MEDLIN:

8 Q Can you see me here?

9 A Yes.

10 Q Okay. Great.

11 Now, Mr. Zucchet, who do you represent?

12 A OMERS.

13 Q Okay.

14 And OMERS is a potential purchaser of PSE,

15 correct?

16 A That is correct.

17 Q Okay.

18 Now, would you agree that PSE can't operate

19 currently without employees?

20 A PSE needs employees to operate, that's

21 correct.

22 Q Okay.

23 And are you proposing, as a purchaser, to

24 maintain the status quo as it relates to employees at

25 PSE?

0252

1 A I would say to you, yes, as a minimum, but we

2 would always look for improvements.

3 Q But you are not proposing to make any changes

4 as they relate to employees, correct?

5 A No. No, we are not.

6 MR. MEDLIN: Thank you. That's all the

7 questions I have for him.

8 JUDGE O'CONNELL: Any redirect?

9 MS. RACKNER: None. Thank you.

10 JUDGE O'CONNELL: Let's proceed to the

11 next witness that you have questions for, Mr. Medlin.

12 MR. MEDLIN: Yes.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. MEDLIN:

16 Q Last but not least, Mr. Webb, correct?

17 A Yes.

18 Q Okay.

19 MR. MEDLIN: If you wouldn't mind

20 passing the documents down there.

21 BY MR. MEDLIN:

22 Q Mr. Webb, who do you represent?

23 A BCI.

24 Q And BCI is a potential purchaser of PSE,

25 correct?

0253

1 A We are an existing investor and a potential

2 purchaser of additional interest.

3 Q Yes. So you are buying more shares of PSE,

4 correct?

5 A Correct.

6 Q Okay.

7 JUDGE O'CONNELL: Let me interrupt just

8 for a moment. Mr. Webb, can you pull a microphone

9 close to you.

10 MR. WEBB: (Complies.)

11 JUDGE O'CONNELL: Thank you very much.

12 Mr. Medlin?

13 MR. MEDLIN: Thank you.

14 BY MR. MEDLIN:

15 Q Now, Mr. Webb, do you agree that PSE can't

16 currently operate without employees?

17 A Agreed.

18 Q Okay.

19 JUDGE O'CONNELL: Sorry. Mr. Webb, is

20 your microphone on? If you push the button at the

21 bottom of the base, it should light up a red light.

22 MR. WEBB: Is that better?

23 JUDGE O'CONNELL: Yes, it is.

24 MR. MEDLIN: Okay. I will repeat the

25 question so we can make sure that the Commissioners

0254

1 and the ALJs hear.

2 BY MR. MEDLIN:

3 Q So you would agree that PSE cannot currently

4 operate without employees, correct?

5 A Agreed.

6 Q Okay.

7 And are you proposing, as a potential

8 purchaser -- I should say an additional purchaser of

9 PSE, to maintain the status quo as it relates to

10 employees?

11 A We are agreeing to maintain the status quo

12 with employees as it relates provision of service,

13 quality, customer outcomes, and safety.

14 Q But you are not proposing to make any changes

15 as part of the proposed transaction?

16 A Not that I'm aware of.

17 Q And that would include employees, correct?

18 A Correct, not that I'm aware of.

19 Q Okay.

20 MR. MEDLIN: Thank you. That's all the

21 questions I have for Mr. Webb.

22 JUDGE O'CONNELL: Is there any redirect?

23 MR. MACCORMACK: No redirect.

24 JUDGE O'CONNELL: Thank you.

25 Now, Mr. Medlin, Mr. Verwoest is on the bridge

0255

1 line.

2 MR. MEDLIN: Yes.

3 JUDGE O'CONNELL: He is a witness on

4 behalf of PGGM. I believe you had questions for him

5 as well?

6 MR. MEDLIN: I did, yeah.

7 JUDGE O'CONNELL: Okay.

8 Mr. Verwoest, are you on the line?

9 MR. VERWOEST: Yes, I am.

10 JUDGE O'CONNELL: Mr. Medlin, please go

11 ahead.

12 MR. MEDLIN: Thank you.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. MEDLIN:

16 Q Mr. Verwoest, you represent who precisely?

17 A I represent PGGM Vermogensbeheer.

18 Q Okay.

19 Now, Mr. Verwoest, do you agree that PSE

20 currently requires employees in order to operate?

21 A Yes.

22 Q Okay.

23 And would you agree that, as part of the

24 proposed transaction, you are agreeing to maintain

25 status quo as it relates to employees?

0256

1 A Yes.

2 Q Okay.

3 MR. MEDLIN: Thank you.

4 JUDGE O'CONNELL: Is there any redirect?

5 MR. GANNETT: No, Your Honor.

6 JUDGE O'CONNELL: Thank you.

7 Mr. Medlin, we have covered all of these

8 witnesses on your behalf, correct?

9 MR. MEDLIN: We have.

10 JUDGE O'CONNELL: Ms. Franco-Malone,

11 let's turn it over to you for your cross-examination

12 of these witnesses.

13 MS. FRANCO-MALONE: Thank you, Your

14 Honor.

15 I would like to begin by asking some questions

16 of Mr. Piliaris.

17

18 C R O S S - E X A M I N A T I O N

19 BY MS. FRANCO-MALONE:

20 Q Mr. Piliaris, do you have a copy of the

21 settlement commitments in front of you?

22 A I do.

23 Q Great.

24 I would like to turn your attention to the

25 second page of that document, and direct your

0257

1 attention to the New Settlement Commitment No. 3.

2 Do you see that?

3 A I do.

4 Q And we have covered, this is the reaffirmation

5 of an existing commitment?

6 A That's correct.

7 Q And this commitment refers to obligations both

8 on the part of PSE and Puget Holdings, right?

9 A That's what it states.

10 Q What role does Puget Holdings play with

11 respect to maintaining this commitment?

12 A As I generally understand it, Puget Holdings

13 provides general policy guidance for the company at a

14 very, very high level, but the -- PSE is the -- is

15 essentially responsible for the implementation of its

16 own policies, as well as the execution of those

17 policies.

18 Q And this commitment refers to maintaining safe

19 and reliable service, does it not?

20 A Correct.

21 Q And there is a difference between safety and

22 reliability, correct?

23 A Generally speaking, that's correct.

24 Q What is the difference?

25 A One has to do with the -- whether or not

0258

1 service is being provided and the other is in how it

2 is being provided; in other words, in a safe or unsafe

3 manner.

4 Q And are staffing levels of both in-house and

5 contractor employees that are currently maintained by

6 PSE sufficient to maintain safe and reliable service?

7 A I would say it -- it does.

8 Q And let's say that the Commission wanted to

9 verify compliance on the part of PSE and Puget

10 Holdings with respect to Commitment No. 3, how would

11 the Commission go about doing that?

12 MS. CARSON: I'll object. That seems

13 like a question better asked towards Commission Staff

14 rather than PSE.

15 MS. FRANCO-MALONE: Okay. I'll move on.

16 BY MS. FRANCO-MALONE:

17 Q Is there anything in Commitment No. 3 that

18 requires PSE or Puget to report to the UTC on its

19 efforts to maintain sufficient staff?

20 A I believe Ms. Cheesman actually brought that

21 up in the very last commitment, to the extent that the

22 company is failing to honor its commitments; in other

23 words, this new Commitment 3, it would be bound to

24 bring that forth --

25 Q Okay.

0259

1 A -- to the attention of the Commission.

2 Q But in the absence of Puget Holdings or PSE

3 determining that it had violated Commitment 3, is

4 there anything else that would require PSE or Puget

5 Holdings to report to the Commission on those efforts?

6 A Well, we certainly provide them through SQIs,

7 so those are -- and I think that is the intent of the

8 SQIs: One, to set a -- essentially a floor for the

9 provision of service, and also to provide that

10 transparency based on metrics that the Commission

11 believes are relevant to portray that.

12 Q Great. We will get to more about the SQIs in

13 a moment.

14 As we sit here today, do you have a ballpark

15 estimate of the number of contractor employees PSE

16 relies upon?

17 A I do not.

18 Q But PSE does staff its operations with a mix

19 of in-house and contract employees, correct?

20 A That's my understanding.

21 Q And in general terms, what are the areas of

22 PSE's utility operations that are staffed by

23 contractor personnel?

24 A That's generally outside of my sphere of

25 knowledge. I would defer to Mr. Molander as being

0260

1 more knowledgeable in that area.

2 Q Fair enough. Do you know whether there are

3 any areas of PSE's utility operations that are

4 primarily staffed by contractors?

5 A I am not aware.

6 Q You would agree, though, would you not, that

7 the percentage of the PSE workforce that is comprised

8 of contractors has increased over the past ten years,

9 would you not?

10 A I haven't actually evaluated that data.

11 Q So taking a look again at Commitment No. 3,

12 which you still have in front of you. Is it your

13 understanding that the commitment to maintain staff

14 sufficient for the provision of safe and reliable

15 service and cost effective operations -- is it your

16 understanding that that commitment includes staff that

17 are both in-house as well as contractors?

18 A I believe the definition of staffing within

19 this term encompasses all forms of staffing, both

20 in-house and outside.

21 Q So it's your understanding that Commitment

22 No. 3 commitments Puget Holdings and PSE to maintain

23 staffing in a manner that ensures the provision of

24 safe and reliable service?

25 A That's correct.

0261

1 Q I believe in front of you, you should have a

2 stack of documents labeled JP-9X through JP-11X. Do

3 you have those?

4 A I do.

5 Q And I would like to direct your attention to

6 JP-10X.

7 A I have it.

8 Q Great.

9 This is a data request to WNIDCL's Data

10 Request No. 28, a response to that request, is it not?

11 A It is.

12 Q And it describes nine SQIs that PSE is

13 responsible for reporting to the UTC, right?

14 A In summary form, yes.

15 Q Okay.

16 And annual executive incentive compensation is

17 tied to whether those SQIs are achieved or not,

18 correct?

19 A Essentially, all employees of the company,

20 their compensation is tied to these metrics.

21 Q Not just executives?

22 A Correct.

23 Q And in addition to those nine SQIs, this data

24 request response also identifies employee safety

25 measures, doesn't it?

0262

1 A It does.

2 Q Specifically, it identifies three particular

3 targets. Do you see those?

4 A At the bottom of the page. I do, yes.

5 Q And those are that all employees attend a

6 monthly safety meeting in a box presentation with a

7 target completion of no less than 95 percent?

8 A That's correct.

9 Q And that the company days away from work rate

10 not exceed .52 in 2017?

11 A That's correct.

12 Q And the third one is that all employees

13 maintain an online defensive driving training with a

14 completion of 95 percent or greater?

15 A That's correct.

16 Q And you would agree, wouldn't you, that

17 Commitment 3 requires PSE to maintain those targets,

18 wouldn't you?

19 A Not necessarily. I mean, these are -- these

20 are the targets as they -- as they are -- the company

21 deems relevant at this point. That's not to say that

22 they couldn't change or be -- evolve over time as new

23 metrics perhaps become maybe more relevant or more --

24 maybe more urgent.

25 Q Okay.

0263

1 Now, these three safety metrics that we just

2 identified, do those factor into employee incentive

3 pay as well?

4 A Yes, they do.

5 Q What about when it comes to contractor

6 performance, is incentive funding affected by whether

7 or not these three targets are met?

8 MS. CARSON: Objection. This line of

9 questioning has nothing to do with harms from the

10 proposed transaction. 2017 goals and incentive

11 program is what this data request exhibit is.

12 JUDGE O'CONNELL: Can you please turn on

13 your microphone, Ms. Carson?

14 MS. CARSON: I think it's on.

15 JUDGE O'CONNELL: Okay.

16 MS. CARSON: So I object because there

17 is no relationship to harms from the proposed

18 transaction.

19 JUDGE O'CONNELL: Ms. Franco-Malone?

20 MS. FRANCO-MALONE: Sure.

21 We have heard Mr. Piliaris's testimony that

22 Commitment No. 3 does extend to the safety and

23 reliability and staffing with respect to contractors.

24 I think that it's relevant to these proceedings to

25 explore what Mr. Piliaris believes that means and what

0264

1 it requires PSE to do with respect to its contractors.

2 Knowing whether or not these different safety

3 metrics apply to contractors or not is relevant in

4 that it helps us know what commitments PSE intends to

5 abide by going forward with respect to its contracted

6 workforce.

7 JUDGE O'CONNELL: For that purpose, I am

8 going to allow the question, to the extent that

9 Mr. Piliaris has knowledge and opinion.

10 Please repeat your question.

11 MS. FRANCO-MALONE: I'll try.

12 BY MS. FRANCO-MALONE:

13 Q Mr. Piliaris, with respect to those three

14 safety metrics that we just identified, does whether

15 or not a contractor's workforce -- whether or not a

16 contractor's workforce has met those three metrics,

17 does that impact employee incentive pay?

18 A I am not aware. I don't believe so, but I'm

19 not aware.

20 I guess -- I'll just leave it at that.

21 Q So as far as you know, if a contractor that

22 PSE uses had a rate of days away from work that was

23 higher than .52, that wouldn't necessarily ding PSE

24 employees' incentive pay?

25 A I'm not specifically aware.

0265

1 Q If the Commission were concerned about work

2 being done by PSE contractors and whether that was

3 being done safely, one data point that the Commission

4 might refer is to that contractor's injury rate,

5 right?

6 A I -- that's outside of my understanding.

7 Q Under Commitment No. 3, and with the exception

8 of Commitment No. 64 that you mentioned involving

9 self-reporting of violating the commitments -- under

10 Commitment 3, is PSE obligated to file with the UTC

11 injury rates for PSE contractors?

12 A I'm not aware.

13 Q What about contractor turnover rates, is that

14 something that would have any bearing on safety?

15 A I can't speak to that.

16 Many of these questions probably would be

17 better fielded by Mr. Molander.

18 Q Perfectly fair.

19 Let me ask you, however, a similar question to

20 one I asked a moment ago. Under Commitment No. --

21 under the settlement commitments and in the absence of

22 the Commitment No. 64 exception, is there any

23 obligation for PSE to provide the Commission with

24 information about contractor turnover rates?

25 A I'm not aware.

0266

1 Q In order to provide safe and reliable service,

2 PSE's in-house and its contractor employees must be

3 properly trained and have the requisite experience to

4 perform assigned work, correct?

5 A I can't necessarily speak to that. It would

6 seem reasonable, but it's outside of my area of

7 expertise.

8 Q Now, when Commitment No. 3 refers to

9 maintaining staffing to provide safe and reliable

10 service, it is referring to the provision of service

11 by workers who are properly trained and have the

12 requisite experience, correct?

13 A Again, my testimony did not speak to that.

14 Q How does PSE ensure that its in-house

15 workforce is properly trained for utility work?

16 A I am not a training expert for the company, so

17 I -- I do not have that knowledge. I know that there

18 is various trainings throughout that I personally

19 participate in, but I don't have expansive knowledge

20 of the training programs that would be provided

21 throughout the company.

22 JUDGE O'CONNELL: Ms. Franco-Malone,

23 before you go on, a lot of the questions I am hearing

24 most recently, I have failed to hear how they relate

25 to the proposed transaction. If you would please keep

0267

1 your questions tethered to any harm that could result

2 to customers from the proposed transaction.

3 MS. FRANCO-MALONE: I will. Thank you.

4 BY MS. FRANCO-MALONE:

5 Q Mr. Piliaris, Commitment No. 3, it refers to

6 maintaining presence; is that right?

7 A Presence in the communities in which we

8 operate, that's correct.

9 Q What does that mean?

10 A That we will have local employees to serve our

11 communities.

12 Q Now, we have talked a little bit about

13 Commitment No. 64. Under what circumstances would PSE

14 or Puget Holdings believe itself required to report to

15 the Commission that it had failed in whole or in part

16 to comply with Commitment No. 3?

17 MS. CARSON: Objection. Calls for

18 speculation. I think it's outside the knowledge of

19 this witness as well.

20 JUDGE O'CONNELL: Ms. Franco-Malone, can

21 you rephrase your question?

22 MS. FRANCO-MALONE: Let me come at it a

23 different way.

24 BY MS. FRANCO-MALONE:

25 Q Assume that PSE hired a contractor to do work

0268

1 on its system and that contractor failed to perform

2 work in a safe and reliable way.

3 Do you have that example in mind?

4 A Generally.

5 Q In that situation, would PSE consider itself

6 bound under the settlement to report that failure to

7 comply with Commitment No. 3?

8 MS. CARSON: Objection.

9 JUDGE O'CONNELL: Ms. Franco-Malone, I

10 am a little confused by your question myself. The

11 questioning about New Commitment No. 3 I believe has

12 already been stated by the witness multiple times that

13 it's about -- and many of the witnesses -- maintaining

14 staffing and presence, as well as sufficient to

15 maintain a provision of safe and reliable service. I

16 am not seeing the connection between any one

17 particular incident and how that is connected to this

18 overall idea of maintaining a provision of safe and

19 reliable service.

20 MS. FRANCO-MALONE: Sure. Let me try to

21 respond.

22 It sounds as though we are in agreement that

23 Commitment No. 3 applies not only to in-house staff,

24 but also to contractors. The Laborers have concerns

25 that as a result of the proposed transaction, PSE's

0269

1 contracting practices will deteriorate. The questions

2 that I am asking are trying to get at how will the

3 Commission know if that has happened and does PSE have

4 an obligation to provide information that would allow

5 the Commission to know whether the safety and

6 reliability of PSE's contracted workforce has in fact

7 deteriorated.

8 JUDGE O'CONNELL: So is your question

9 regarding what the company reports to the Commission

10 now and is there something being lost from the

11 proposed commitments? Is that correct?

12 MS. FRANCO-MALONE: Close. My question

13 is: As a result of the proposed transaction, if there

14 is a deterioration, will that information -- how will

15 that information be transmitted to the Commission?

16 JUDGE O'CONNELL: That question I do

17 think Mr. Piliaris can answer.

18 A I would -- I would respectfully suggest that

19 that probably would be better answered by

20 Mr. Molander.

21 BY MS. FRANCO-MALONE:

22 Q Are there any metrics that PSE intends to

23 apply to help answer that question of whether PSE's

24 standards have deteriorated with respect to its

25 contracted workforce?

0270

1 A I can't answer that.

2 MS. FRANCO-MALONE: I have nothing

3 further for you. Thank you.

4 JUDGE O'CONNELL: Ms. Carson, do you

5 have any redirect for Mr. Piliaris?

6 MS. CARSON: No, I do not. Thanks.

7 JUDGE O'CONNELL: Ms. Franco-Malone, do

8 you intend to ask Mr. Molander any of the questions

9 that Mr. Piliaris --

10 MS. FRANCO-MALONE: I'm going to try to

11 come back around and hit some that we skipped.

12 JUDGE O'CONNELL: Please go ahead.

13 MS. FRANCO-MALONE: Thank you.

14

15 C R O S S - E X A M I N A T I O N

16 BY MS. FRANCO-MALONE:

17 Q Mr. Molander, it's true that PSE staffs its

18 operations with a mix of in-house and contracted

19 employees, right?

20 A That's correct. It spans broader than that.

21 It includes our IT organization and others.

22 Q Do you have a ballpark sitting here today of

23 how many contractor employees work on the PSE system?

24 A You know, I haven't quantified it or

25 researched it recently, but in the history it's been

0271

1 about a one-to-one ratio. That's subject to

2 verification. It changes depending on the level of

3 work.

4 Q Fair enough.

5 That percentage of PSE's work that is composed

6 of the contracted workforce, that has increased over

7 the past ten years, hasn't it?

8 A Well, if you recall -- yes. If you recall

9 back to 1999, when we started the evaluation of

10 outsourcing the electric and gas distribution work, at

11 the time we were already outsourcing about half of the

12 work. As we have transitioned to the service provider

13 model and we have our electric and gas maintenance and

14 construction activities performed by Potelco on the

15 electric side and InfraSource on the gas side today,

16 the work ebbs and flows, as well as with other

17 contractors, based on the amount of work in the

18 portfolio. It goes up; it goes down. It depends.

19 Q So would you agree with the characterization

20 that, as of today, PSE uses more contractors than it

21 did ten years ago?

22 A I would agree, yes.

23 Q And you would agree, would you not, that

24 contractor employees are involved in activities that

25 are integral to the provision of safe and reliable

0272

1 service?

2 A Yes, I would. I would also add that our

3 contracts with our service providers, as well as their

4 contracts with their subcontractors, contain

5 provisions to ensure that they -- their employees

6 receive the requisite training, and we monitor safety,

7 we monitor performance to our standards, our

8 construction standards, regulatory compliance, whether

9 it be environmental or otherwise.

10 So there is -- there is commercial terms

11 that -- that ripple down through these contracts that

12 ensure that our contractors, primaries, and their

13 subcontractors are performing as expected.

14 Q Well, that's a good segue to some other

15 questions I would like to ask.

16 You heard questions a moment ago about the

17 service quality indicators and three safety metrics.

18 A Uh-huh.

19 Q You would agree, would you not, that

20 contractor performance with respect to those nine SQIs

21 and three safety metrics do not have any bearing on

22 incentive funding, correct?

23 A No, they don't, but they have contractor

24 performance. Safety performance has a direct bearing

25 on their incentive payment from Puget to the

0273

1 contractors. So we hold our contractors to various

2 standards, whether it's quality standards or business

3 standards or otherwise, and those are compensatory.

4 So they are -- they are incentivized, believe

5 you me, to perform to a high degree of standard,

6 whether it's quality, performance, safety. And again,

7 commercially they are obligated to have their

8 subcontractors perform to the same level of standard.

9 Q Are those standards the same standards that

10 are held to PSE's in-house workforce?

11 A Generally speaking. I mean, the work that we

12 perform, we have to perform to our own standards and

13 we have our own safety objectives and performance.

14 We are a first quartile utility when it comes

15 to safety. We haven't always been. In 2011 we

16 commenced evaluation of our safety program, and we

17 found that we were a third quartile performer. We set

18 forth over the next five years to raise our game and

19 get to the first quartile. We got there in two years

20 and we've been there ever since.

21 So we hold our contractors to a very high

22 level of standard as well.

23 Q So PSE has a target that the days away from

24 work rate will be no greater than .52; is that right?

25 A That was for -- I'm not sure what -- is that

0274

1 the 2017 data that you are looking at?

2 Q That is the 2017 data I am referring to.

3 A Yeah. And that changes each year.

4 Q Okay.

5 Would PSE -- is there any policy that would

6 prohibit PSE from using a contractor that had a DART

7 rating that was higher than that?

8 A I don't know that there is a policy, that I am

9 aware of, that would prohibit that. Generally

10 speaking, we expect our contractors to have excellent

11 safety records.

12 And if I might add, there are subcontractors

13 that have been presented in Ms. Hutson's testimony

14 and they are actual -- as bad performers based on

15 their use of Labor Ready. The use of Labor Ready is a

16 very, very small portion, like less than 1 percent of

17 service to our customers. What was excluded

18 conveniently from her testimony was the actual safety

19 rating factor associated with the contractors that

20 Potelco subcontracts to, and they have good

21 safety ratings.

22 Q Well --

23 A It's a mischaracterization, if you will,

24 misrepresentation of the actual performance --

25 JUDGE O'CONNELL: Let --

0275

1 A -- of our subcontractors.

2 JUDGE O'CONNELL: Let me stop you both

3 right here. As I recall, that topic is part of what

4 has been stricken from the record. To the effect that

5 you are rebutting an argument made by Ms. Hutson in

6 testimony that has been stricken, I am going to

7 disregard that testimony against that argument.

8 MR. MOLANDER: Thank you, Your Honor.

9 JUDGE O'CONNELL: Ms. Franco-Malone.

10 MS. FRANCO-MALONE: Thank you, Your

11 Honor.

12 BY MS. FRANCO-MALONE:

13 Q Does PSE have any targets regarding EMF

14 factors for its own in-house workforce?

15 A We do not use the EMF rate for in-house. It's

16 the days away, restricted and transfer metric that we

17 use for ourselves.

18 Q Let's talk about contractor turnover rates.

19 Would you agree that the rate of turnover that a given

20 contractor experiences has a bearing on safety?

21 A It may; it may not, depending on the work

22 being performed.

23 Q Under Commitment No. 3, is PSE obligated to

24 provide any data to the Commission regarding

25 contractor turnover rates?

0276

1 A Not to my knowledge, no.

2 Q And we were talking about EMF scores a moment

3 ago. It sounds like PSE does not use that as a metric

4 internally for its own in-house workforce?

5 A No, we do not.

6 Q Does PSE have any policy that it will not hire

7 contractors whose EMF is higher than industry norm?

8 A No, we don't, but we evaluate contractor

9 safety performance, among other things, by way of

10 prequalification checklists in the context of our

11 contracting activities.

12 Q So PSE's contracting policy would not prevent

13 PSE from retaining a contractor that had an EMF that

14 was significantly higher than industry norm?

15 A EMF is one factor, but it is not the only

16 factor. We look at the comprehensive safety record

17 for a company. We would not expect to hire a

18 contractor who would score poorly with respect to the

19 EMF, but that would be -- that would show up in

20 other -- other aspects of their safety performance.

21 Q I'm going to try a question with you that I

22 tried with Mr. Piliaris, and that is: Under what

23 circumstances would PSE consider itself as being

24 obligated to inform the Commission that it had failed

25 to comply with its Commitment No. 3 to maintain

0277

1 staffing and presence in a way to ensure safe and

2 reliable service?

3 A I think that would be self-evident in the

4 context of the SQIs. The performance of our

5 employees, performance of our contractors ultimately

6 manifest itself in the delivery of safe, reliable

7 service to our customers, and that's where it would

8 show up.

9 MS. FRANCO-MALONE: I have nothing

10 further. Thank you.

11 JUDGE O'CONNELL: Ms. Carson?

12 MS. CARSON: No redirect. Thanks.

13 JUDGE O'CONNELL: Ms. Franco-Malone,

14 which witness would you like to take next?

15 MS. FRANCO-MALONE: Let's start with

16 Mr. Webb and go down the line that way.

17 MR. WEBB: I may need a mic.

18 Thank you.

19

20 C R O S S - E X A M I N A T I O N

21 BY MS. FRANCO-MALONE:

22 Q Good afternoon, Mr. Webb.

23 Does BCI have any guidelines or policies that

24 would be applicable to PSE's utilization of contractor

25 personnel?

0278

1 A We have a responsible investor or investment

2 policy, but I don't think it would directly impact

3 contractors at a company.

4 Q So fair to say that BCI does not have any

5 policies in place regarding contractor procurement for

6 the utilities that it invests in?

7 A That's correct. We have water guidelines

8 around the environmental, social, and governance

9 aspects of the businesses we own.

10 Q Does BCI intend, as a member of the Puget

11 Holdings consortium, to influence the manner in which

12 PSE selects contractors?

13 A Not directly, but we expect our companies to

14 be good corporate citizens, have good labor relations,

15 and generally be long-term stewards of the assets they

16 own.

17 MS. FRANCO-MALONE: Thank you. I have

18 nothing further.

19 JUDGE O'CONNELL: Is there any redirect?

20 MR. MACCORMACK: No redirect.

21 JUDGE O'CONNELL: I believe next on the

22 list is --

23 I apologize.

24 MR. ZUCCHET: Zucchet.

25 JUDGE O'CONNELL: -- Mr. Zucchet.

0279

1 C R O S S - E X A M I N A T I O N

2 BY MS. FRANCO-MALONE:

3 Q Mr. Zucchet, does OMERS have any guidelines or

4 policies that would be applicable to PSE's utilization

5 of contractor personnel?

6 A We have guidelines for investment, so an

7 investment guideline. As we carry out due diligence

8 for the businesses that we are looking to make an

9 investment in, we would review the policies that are

10 currently in place and satisfy ourselves that they are

11 consistent with good practice and the code of conduct

12 that we have as an organization.

13 Q Have you reviewed the responsible contractor

14 policy that Macquarie had in place that's been

15 introduced as evidence in this proceeding?

16 A Yes, I have.

17 Q Fair to say that OMERS does not have a

18 responsible contractor policy akin to that?

19 A We do not have an equivalent document like

20 that. Yes, that's correct.

21 Q And I would like to turn your attention

22 to what -- you hopefully have it in front of you -- is

23 marked SZ-4X.

24 A Yes.

25 Q Okay.

0280

1 So OMERS invests in utilities other than PSE,

2 right?

3 A That's correct.

4 Q And one of those utilities is Oncor Electric

5 Delivery in Texas?

6 A That's correct.

7 Q And Oncor utilizes contractors to perform some

8 of its core utility work, just like PSE, right?

9 A That's correct.

10 Q And turning your attention to SZ-4X, which is

11 an article from February 11th, 2017, entitled One

12 Electrical Killed, One Hurt During East Texas repairs.

13 Are you familiar with the incident that this article

14 describes?

15 A I wasn't familiar with this particular

16 incident until I read this article.

17 Q Following this incident, has OMERS taken any

18 action to institute policies to ensure that the

19 utilities that it invests in are using contractors

20 with sufficient training?

21 A I would answer your question this way: The

22 policies that Oncor has currently in place we have

23 reviewed and are satisfied that they -- that they meet

24 the intent of what good practice would look like. And

25 so no, we have not asked them to change any of those

0281

1 policies as a result of this accident.

2 MS. FRANCO-MALONE: I have no further

3 questions. Thank you.

4 JUDGE O'CONNELL: Ms. Rackner?

5 MS. RACKNER: No redirect.

6 JUDGE O'CONNELL: Then Mr. Mubashir.

7

8 C R O S S - E X A M I N A T I O N

9 BY MS. FRANCO-MALONE:

10 Q Mr. Mubashir, does AIMCo have any guidelines

11 or policies that would be applicable to PSE's

12 utilization of contractor personnel?

13 A We have a responsible investing policy which

14 requires us to incorporate ESG issues when making

15 investments, but not a contract policy that you are

16 talking about.

17 Q And have you reviewed the Macquarie

18 responsible contractor policy that has been introduced

19 as evidence in this case?

20 A I have not reviewed that.

21 Q Okay.

22 So AIMCo has a responsible investor policy,

23 but not a policy that specifically addresses the

24 contracting practices for investments that it invests

25 in -- utilities that it invests in; is that right?

0282

1 A That is correct, to answer your question

2 exactly like that. You know, I would mention,

3 however, that AIMCo is a signatory to the United

4 Nations principles for Responsible Investment. You

5 know, under environmental, social, and governance,

6 there are a lot of aspects that are covered under

7 those -- those principles. You know, the social

8 aspect, you know, there are things like upholding

9 basic human rights, upholding the right of

10 association, and collective bargaining, having best

11 practices in occupational health and safety, have a

12 robust supply management system and practices in -- in

13 the companies that we are looking to invest in.

14 Q Okay.

15 So with that in mind, does AIMCo intend to

16 influence the manner in which PSE selects its

17 contractors?

18 A I would say -- as I said, you know, when we

19 are making investments, we have all these ESG factors

20 in mind. From our perspective, you know, making -- we

21 have been invested in Puget for almost ten years and

22 we are increasing our investment in Puget. One of the

23 reasons for that is -- one of the reasons, I would

24 say, is that, you know, we do believe that Puget is --

25 has done -- especially with respect to the responsible

0283

1 contractor policy, for example, we have reviewed that

2 policy that Puget has and we are satisfied with that.

3 Q So you have no intention to help ensure that

4 Puget has anything more rigorous than what is

5 currently in place with respect to its contracting

6 policies?

7 A I would say that, you know, we have a

8 commitment to promote and have acceptance of the

9 United Nations Principles for Responsible Investment

10 in the investment industry. I will leave you with

11 that.

12 MS. FRANCO-MALONE: Nothing further.

13 Thank you.

14 JUDGE O'CONNELL: Is there any redirect?

15 MR. BERMAN: No redirect, Your Honor.

16 JUDGE O'CONNELL: Mr. Verwoest is on the

17 line, Ms. Franco-Malone, if you would like to address

18 your questions, if you have any.

19 MS. FRANCO-MALONE: Thank you.

20

21 C R O S S - E X A M I N A T I O N

22 BY MS. FRANCO-MALONE:

23 Q Mr. Verwoest, does PGGM have any guidelines or

24 policies that would be applicable to PSE's utilization

25 of contractor personnel?

0284

1 A No. Similar to some of the other investors,

2 we have a responsible investment policy that deals

3 with a lot of ESG-related factors, including around

4 labor conditions, safety, but we do not have an

5 explicit contracting policy.

6 Q And does PGGM intend to influence the manner

7 in which PSE selects contractors?

8 A I think that's too early to tell. I mean,

9 based on our due diligence, so far we have not

10 identified any red flags, so we currently believe that

11 PSE's policies are adequate. However, after this

12 [inaudible] closes, it will go, you know, through an

13 onboarding period where we actually get to understand

14 the company even better, and in that process, we also

15 review the contracting policy.

16 MS. FRANCO-MALONE: Thank you. I have

17 nothing further.

18 JUDGE O'CONNELL: Is there any redirect?

19 MR. GANNETT: No redirect, Your Honor.

20 JUDGE O'CONNELL: That I think concludes

21 the cross-examination for these witnesses. Am I

22 correct?

23 Okay.

24 I would like to turn over the panel for

25 questions from the bench.

0285

1 CHAIRMAN DANNER: We have no questions.

2 JUDGE O'CONNELL: Okay.

3 Thank you all for the testimony that you have

4 offered in this case, and for being here today, and on

5 the telephone, making yourselves available.

6 These witnesses are excused.

7 MS. CARSON: Your Honor, I wanted to let

8 you know that we do not have any cross-examination for

9 the opposing parties.

10 JUDGE O'CONNELL: Thank you, Ms. Carson.

11 That was going to be one of my next questions. You

12 anticipated where I was going to be going.

13 Let's take one moment. Let me confer with the

14 Commissioners briefly.

15 (Pause in the proceedings.)

16 MS. GAFKEN: Do you want us to come

17 forward?

18 JUDGE O'CONNELL: Yes, please. The next

19 thing that we are going to take are closing arguments.

20 I will note that, in conferencing with the

21 Commissioners, we have no bench questions for the

22 witnesses who were not already included on the

23 cross-examination list, so those witnesses are

24 excused. And the witnesses that the joint applicants

25 originally had cross-examination for, my

0286

1 understanding, according to Ms. Carson, is that that

2 cross-examination is being waived. We do not have any

3 bench questions for those witnesses either, so those

4 witnesses are excused at this point.

5 So that brings us to the part of the

6 proceeding where we have provided opportunity for each

7 of the parties to provide closing argument. We have

8 allowed five minutes for each of the settling parties,

9 and then from the opposing parties, we will hear from

10 them, and they have ten minutes each.

11 Is there any preference among the settling

12 parties as to who would like to go first?

13 We will start with the settling part and then

14 have the opposing parties.

15 Let's start with joint applicants.

16 MS. CARSON: Thank you.

17 JUDGE O'CONNELL: And can you please

18 ensure your microphone is turned on.

19 MS. CARSON: Yes.

20 We want to thank you for the opportunity to

21 appear here and answer your questions. The Commission

22 is authorized to approve the proposed transactions

23 pursuant to RCW 80.12.020 and WAC 480-143-170.

24 The Commission previously correctly determined

25 that the public interest no harm standard applies

0287

1 because the proposed transactions involve a minority,

2 noncontrolling, indirect interest in PSE. That's from

3 Order 03.

4 The public interest standard does not require

5 a showing of net benefits to the public in order to

6 approve a transaction. In the 2008 Puget Holdings

7 acquisition order, the Commission said to be

8 consistent with the public interest, a transaction

9 need not confer net benefits on customers or the

10 public by making them better off than they would be

11 absent the transaction. It is sufficient if the

12 transaction causes no harm. The 65 commitments

13 included in the multiparty settlement ensure that

14 customers will not be harmed by the proposed

15 transactions.

16 All the parties representing PSE's customers

17 support or do not oppose settlement. The settlement

18 continues the significant protections from the

19 existing commitments, except in cases where the

20 commitments have expired. It adds a dozen new

21 commitments; it updates several of the earlier

22 commitments.

23 In contrast, the commitments proposed by

24 WNIDCL are outside the Commission's jurisdiction.

25 They do not address harms caused by the change in

0288

1 ownership. WNIDCL has produced no evidence that the

2 new owners or the increased interest of the two

3 existing owners would harm the customers. In fact,

4 the opposite is true. The commitments WNIDCL has

5 proposed would harm customers by increasing costs and

6 limiting PSE's flexibility on staffing.

7 WNIDCL Commitment No. 1 would require

8 contract -- I guess that -- I think that was stricken;

9 is that correct?

10 JUDGE O'CONNELL: That's correct.

11 MS. CARSON: So the commitment that was

12 left was? Were any of them? Were they all --

13 JUDGE O'CONNELL: It was No. 2.

14 MS. CARSON: No. 2. Okay.

15 WNIDCL's Commitment No. 2 would limit the

16 staffing PSE may use. It would basically prohibit

17 staffing agencies. This is outside the scope of the

18 Commission's jurisdiction, it would increase costs to

19 customers, and it is not tied to the proposed

20 transactions.

21 The crux of WNIDCL's argument is that the

22 departure of Macquarie would weaken PSE's responsible

23 contractor guidelines, but WNIDCL's own evidence

24 demonstrates that this isn't true. PSE has had its

25 own responsible contractor guidelines that have

0289

1 governed since April 2008, before Macquarie acquired

2 an interest in PSE. That's Exhibit EH-12 and 13.

3 That's PSE's responsible contractor policy.

4 Macquarie's responsible contractor policy

5 never governed PSE. Macquarie's policy is mandated

6 only for those assets in which Macquarie exercises a

7 controlling interest. That's Exhibit EH-14, Page 3.

8 I think it is also important to recognize what

9 a, quote, responsible contractor is in the Macquarie

10 policy. If you look at Exhibit EH-14, Page 2, it's a

11 contractor that provides, quote, employer-paid family

12 healthcare coverage, pension benefits, and training or

13 apprenticeship programs, closed quote.

14 Now, it may be aspirational to provide these

15 benefits to all workers, but it is outside the

16 Commission's jurisdiction to mandate that such

17 benefits be provided for all subcontractors of PSE,

18 and it would increase costs to customers if all

19 contractors are required to provide such benefits. It

20 would be inconsistent with the no harm standard.

21 With respect to IBEW, there does not appear to

22 be a specific requested commitment -- I must change

23 that because late today -- this morning we did get a

24 list of commitments, but I believe they have been

25 stricken; is that --

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1 JUDGE O'CONNELL: No. As I ruled

2 earlier, it's an illustrative exhibit. In particular,

3 as I recall the first paragraph in the exhibit, that

4 shows the -- it puts into the definitions of the

5 settlement agreement the -- some of -- the deficiency

6 that was noted by Mr. Arnold in his testimony, and

7 that was not stricken.

8 As to the parts of this, now Exhibit DTA-26,

9 that are related to parts that have been stricken from

10 Mr. Arnold's testimony, in particular those about

11 labor issues and employment issues, we will not be

12 considering it for those purposes.

13 MS. CARSON: Okay. Thank you.

14 The union parties do not have a substantial

15 interest in the case. The Commission determined that

16 when they petitioned to intervene.

17 All other parties with a substantial interest

18 support or do not oppose the settlement. As the

19 Commission noted in WUTC versus Advanced Telecom

20 Group, a non-unanimous settlement where the opposing

21 parties have no substantial interest in the outcome

22 should be viewed more like a full settlement of all

23 issues.

24 In summary, the settlement stipulation

25 provides broad protections to customers, the proposed

0291

1 transactions are in the public interest and will not

2 harm customers. Joint applicants respectfully request

3 the Commission approve the settlement stipulation and

4 the proposed transaction.

5 JUDGE O'CONNELL: Thank you.

6 Ms. Cameron-Rulkowski?

7 MS. CAMERON-RULKOWSKI: Thank you, Your

8 Honor.

9 Staff supports the settlement as an update to

10 and improvement on the commitments adopted in the

11 Macquarie acquisition.

12 Could there be additional commitments? Of

13 course, but that does not mean that additional

14 commitments are necessary, and in this case Staff

15 firmly believes that this body of commitments that the

16 parties have agreed to protect the public interest

17 from harm, and no harm is the standard the Commission

18 is using to consider this transaction.

19 The bulk of the commitments in this settlement

20 have been in place since 2008. There have not been

21 compliance problems or other problems with these

22 commitments. Staff performed a rigorous review of the

23 transaction early on. I point you to Ms. Cheesman's

24 open meeting memo with attachments of November 5,

25 revised November 7, and the comments of Commission

0292

1 Staff filed October 25, 2018.

2 Throughout the remainder of this proceeding,

3 Staff has continued to review all discovery and has

4 been an active participant. Staff continues to

5 believe that the proposed purchasers are well

6 qualified and that with the commitments in the

7 multiparty settlement, the proposed sales are in the

8 public interest and should be approved.

9 Thank you.

10 JUDGE O'CONNELL: Ms. Gafken?

11 MS. GAFKEN: Good afternoon.

12 I do have a series of citations that I will

13 pass out, perhaps at the end of the proceeding, per

14 Judge O'Connell's prehearing email to the parties. I

15 won't provide the whole citations as I go through

16 this.

17 The Commission is reviewing the sale of

18 Macquarie's interest in Puget Holdings under a no harm

19 standard. No harm requires that ratepayers at worst

20 be indifferent to the proposed transaction. That

21 comes from the Avista Hydro One order. No harm does

22 not require that customers or the public be better off

23 than they would be absent the transaction. It is

24 sufficient that the transaction causes no harm.

25 The determination of no harm is made on a

0293

1 case-by-case basis, and the Commission has identified

2 factors that it considers in finding no harm. That

3 comes from the original case, in the Macquarie case.

4 The threshold criteria in determining no harm

5 is whether the acquiring entity possesses the

6 financial and managerial fitness to run the utilities

7 operation safely and reliably. That comes from the

8 from the MDU Cascade case.

9 Again, the citations will be provided in full.

10 Public Counsel's primary focus in this matter

11 was transactional risk; in other words, what risks did

12 this particular transaction pose and were those risks

13 mitigated through commitments.

14 The settlement meets Public Counsel's interest

15 and the public interest by addressing the financial

16 risks and implementing certain protections for

17 customers. Public Counsel presents its support of the

18 settlement through the testimonies and exhibits of

19 Ms. Sarah Laycock and Mr. J. Randall Woolridge.

20 With Mr. Woolridge's expertise, we evaluated

21 several transactional risks usually associated with

22 the transactions like the one -- I'm sorry, we

23 evaluated several transactional risks usually

24 associated with transactions like the one before you.

25 Those risks include: One, ownership and corporate

0294

1 governance risk; two, financial risk; three, portfolio

2 risk; and four, capital investment risk. While we

3 found no significant portfolio risk, several

4 commitments address the other categories of risk, as

5 detailed in Mr. Woolridge's testimony.

6 Additionally, Public Counsel was keenly

7 interested in commitments that address low-income

8 customers, service quality, environmental and energy

9 efficiency issues, notice of noncompliance with the

10 commitments, and holding company debt. Some of these

11 commitments carry forward from prior case commitments;

12 however, some of the commitments in the settlement

13 agreement have been augmented or added in order to

14 meet the no harm standard. These commitments taken

15 together were important in our conclusion that the

16 transaction meets the no harm standard.

17 With respect to the additional commitments

18 that the labor union parties are proposing, Public

19 Counsel does support the settlement, as it adequately

20 addresses the issues that we were focused on, as

21 detailed in Ms. Laycock and Mr. Woolridge's

22 testimonies.

23 The unions raise other issues and bring a

24 different perspective to the table, and we recognize

25 that it is within the Commission's discretion to

0295

1 consider their evidence, but we are satisfied with the

2 settlement from our perspective.

3 With respect to the proposal by the union

4 groups -- or the union parties that a separate

5 proceeding to address certain issues may be

6 appropriate, Public Counsel has no objections to

7 having a separate proceeding on those issues. The

8 issues they raise may very well be appropriate for an

9 industrywide discussion, and, quite frankly, they

10 offer perspective that the usual parties that appear

11 in many cases across many different dockets before you

12 simply don't bring.

13 So the point there being, the Commission

14 hasn't really had a significant opportunity to

15 consider their perspective and perhaps a separate

16 proceeding may be appropriate. If the Commission does

17 open such a proceeding, Public Counsel would certainly

18 participate.

19 I will also note that there is an open docket

20 looking at reliability reporting, that may be an

21 opportunity there, in Docket U-190027.

22 But to conclude, Public Counsel does recommend

23 that the Commission adopt the settlement.

24 Thank you.

25 JUDGE O'CONNELL: Thank you, Ms. Gafken.

0296

1 Mr. Pepple?

2 MR. PEPPLE: Good afternoon. Tyler

3 Pepple here for the Alliance of Western Energy

4 Consumers.

5 AWEC requested that the Commission open this

6 investigation to allow interested stakeholders to

7 scrutinize and evaluate the proposed transaction. I

8 first want to take the opportunity to thank the

9 Commission for agreeing to open the requested

10 investigation. It has provided transparency into this

11 significant transaction and allowed parties to raise

12 and resolve concerns that they had with it.

13 As Dr. Hellman's testimony demonstrates, AWEC

14 undertook a thorough evaluation of the transaction and

15 the purchasers, identified concerns with this

16 evaluation, and negotiated additional commitments in

17 the stipulation that addressed those concerns.

18 The increased scrutiny AWEC subjected to this

19 transaction, the more robust record of the

20 consequence, and AWEC's support for the multiparty

21 stipulation argues in favor of approving the proposed

22 transaction subject to the commitments required in the

23 stipulation under the no harm standard.

24 Thank you very much.

25 JUDGE O'CONNELL: Thank you.

0297

1 And, Mr. ffitch?

2 MR. FFITCH: Good afternoon. Thank you,

3 Your Honor. Good afternoon, Commissioners. Simon

4 ffitch on behalf of The Energy Project. And The

5 Energy Project director, Shawn Collins, is in the

6 hearing room also this afternoon.

7 The Energy Project is a signatory to the

8 multiparty settlement agreement and is here today to

9 support the recommendation for approval of the

10 transaction within the framework of the settlement

11 agreement.

12 In The Energy Project's view, as initially

13 proposed, the transaction did not meet the public

14 interest test, and we joined with other parties, as

15 has been discussed, in requesting that an adjudication

16 be established for reviewing the transaction.

17 We agreed with the comments of the other

18 parties that you have already heard, that this was a

19 critical step in providing a framework, in Puget's

20 words, for a robust process for the parties to reach a

21 settlement -- that reached the settlement that is

22 before you today. By conducting detailed discovery

23 and analysis, the parties were able to sufficiently

24 inform themselves about the transaction and its

25 consequences and risks. This created a platform for

0298

1 effective negotiations to occur between informed

2 stakeholders. The Energy Project was an active and

3 full participant in discovery and in all of the

4 negotiations.

5 The joint applicants' response to Bench

6 Request No. 1 I think is a good illustration of the

7 benefits of the process adopted, showing various

8 important updates, modifications, and additions that

9 were made to the ten-year-old set of commitments from

10 the 2008 Macquarie transaction. Those changes

11 occurred through the joint efforts of multiple

12 stakeholders within -- within that adjudicative

13 format.

14 As a result of this process, the Energy

15 Project is comfortable telling the Commission that the

16 proposed transaction is in the public interest, as

17 explained in the testimony of director Shawn Collins.

18 Our particular focus in this case was on the

19 impact of the transaction on low-income customers. As

20 the testimony of Commission Staff witness Melissa

21 Cheesman apply notes, the Commission has identified

22 factors that weigh in favor of the public interest,

23 commitments by applicants on important public service

24 obligations, including customer service, safety,

25 reliability, and energy efficiency, resource adequacy,

0299

1 and support for low-income customers.

2 So in this agreement the joint applicant

3 commitments confirm support for the multiple

4 components of the HELP bill assistance program, they

5 reaffirm and strengthen the low-income weatherization

6 program, help advance equitable participation by

7 low-income customers in renewable energy programs, and

8 provide for continued consultation with agencies and

9 advisory groups on important topics, including

10 initiatives such as the Get To Zero program.

11 Finally, the settlement provides for a needs

12 assessment of low-income population served by Puget to

13 facilitate development of bill assistance and

14 westernization programs.

15 So as a package, this set of commitments

16 addresses and mitigates the Energy Project's concerns

17 with the potential risks and rate pressures which

18 could result from the proposed transaction. And in

19 conclusion, the Energy Project fully supports and

20 recommends approval of the proposed transaction as set

21 forth in the settlement agreement.

22 Thank you.

23 JUDGE O'CONNELL: Now, as to Northwest

24 Energy Coalition. Ms. Gerlitz, had you planned on

25 making an oral statement at this time? You don't have

0300

1 to, but I did want to inquire and give you the

2 opportunity.

3 MS. GERLITZ: I had not, unless the

4 Commissioners would like to hear anything

5 specifically. Thank you.

6 I stand on my testimony. Thank you.

7 JUDGE O'CONNELL: That will be fine.

8 Thank you.

9 So now let's turn to the parties opposing the

10 settlement. You will each have ten minutes for your

11 closing argument. We will start request Mr. Medlin.

12 MR. MEDLIN: Thank you.

13 From the IBEW's perspective, the status quo is

14 broken. Everyone today, from Mr. Molander to each of

15 the respective purchasers to Staff, has testified that

16 the transaction must be approved because it maintains

17 status quo, including relating to employees. Nothing

18 is changing. That is what they have all testified to,

19 and that is what they put in their testimony and

20 responded to today on cross-examination.

21 That is the problem, because status quo is

22 continuing to reduce employees at a 15 percent rate;

23 status quo is continuing to drive more overtime hours

24 for employees; status quo is accepting a high rate of

25 vehicle accidents which exceed almost 100 every year;

0301

1 status quo is continuing to use unqualified employees

2 to assess storm damage, putting them and the public in

3 harm; status quo is underutilizing apprenticeship and

4 failing to plan for succession, and the status quo

5 does need to change.

6 Commitment 3 refers to maintaining things as

7 they are regarding staffing, reliability, and safety,

8 and that includes employees. What the IBEW hoped to

9 do today through its evidence, and wanted to present,

10 is that the status quo is built on some really harsh

11 realities. The first is that over the course of eight

12 years, PSE has reduced its employee base by almost

13 15 percent and that thereby affects reliability.

14 PSE and the joint applicants all admitted

15 today that they have to have employees to operate.

16 They are not an automated utility, so that is fewer

17 customer field reps, that's fewer customer service

18 agents taking customers' calls, and fewer wiremen.

19 These are all roles that are meant to serve customers.

20 How can a utility genuinely be reliable when over the

21 course of eight years it has reduced nearly 15 percent

22 of its staff? Status quo is a continued downward

23 trend.

24 Secondly, because PSE has reduced so many

25 people, it forces remaining employees to do more, and

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1 that has pushed through high overtime hours. From

2 2009, shortly after the last transaction, to 2017

3 overtime increased by 21.9 percent. The top 50

4 service linemen, they averaged over 1,000 hours of

5 overtime in a year. To put that in a real numbers

6 perspective, that's 125 days a year, which would

7 include every single Saturday and Sunday in a full

8 year. Overburdening employees leads to mistakes, it

9 harms reliability, and it is a safety issue. Again,

10 status quo means continuing to push unstable overtime

11 hours.

12 Third, vehicle driving incidents remain high.

13 Since 2003, driving incidents have remained steady,

14 around 100 incidents per year. Now, it's not

15 surprising when you are pushing service linemen to do

16 over 1,000 hours of overtime a year, you're going to

17 have two utility truck rollovers in one month, which

18 is a potential harm to the public and to the

19 employees, and harm to the employees should matter,

20 and the Commission should consider that. Again,

21 maintaining the status quo is continuing to let that

22 happen.

23 PSE has increasingly used damage assessors and

24 wire guard team members to patrol for storm damage,

25 individuals who are not high voltage-qualified

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1 electrical workers, people who step out of their

2 vehicles with a hard hat and safety glasses, who

3 could -- potentially cost them their lives, and a

4 significant number of them are exempt employees who

5 work in the office and are being asked to go out into

6 the field in a potentially very dangerous situation.

7 Status quo means that continues.

8 If IBEW has shown anything today, it's that

9 PSE status quo is the harm. You have asked us to

10 identify the harm and we tried to do that through our

11 testimony and exhibits. We would ask that you please

12 consider our commitments that we put forward.

13 And we would also like to acknowledge and

14 appreciate your allowing us to intervene and noting

15 that we do have a unique perspective. I know lots of

16 people sort of look at us as the labor union, but at

17 the end of the day, a labor union is people. It's not

18 an organization in and of itself, it requires people

19 in order to function, and they are the people who work

20 at PSE and carry out its commitments, and they just

21 want to be heard, and they want the status quo to

22 change.

23 Thank you.

24 JUDGE O'CONNELL: Thank you, Mr. Medlin.

25 MS. CARSON: Your Honor, may I clarify

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1 if closing arguments are allowed to cover matters that

2 have been stricken?

3 JUDGE O'CONNELL: I understand your

4 question and concern. I am going to allow the

5 argument for the point that Mr. Medlin was making

6 about the status quo being the harm and his client

7 wanting to see the status quo change.

8 MS. CARSON: Thank you.

9 JUDGE O'CONNELL: Ms. Franco-Malone?

10 MS. FRANCO-MALONE: Thank you.

11 Thank you, first of all, for allowing us to

12 participate in these proceedings. We understand that

13 it is somewhat unusual and uncommon in the UTC to have

14 labor unions participate. We hope that the

15 information that we have supplied has been useful to

16 the Commission in considering the proposed

17 transaction.

18 We have focused on providing information about

19 the standards that PSE utilizes when it contracts out

20 work to third parties. There can be no doubt that

21 safety and reliability of service, even when that work

22 is being performed by a contractor, to be at the

23 utmost concern to the UTC. The Commission itself

24 recognized as much in Docket No. PG-060215, Order

25 No. 3, from April 9, 2008, when it held that it was

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1 emphasizing the responsibility of regulated utilities

2 to ensure adequate safeguards are in place to protect

3 the public, even when relying on contractor employees

4 to achieve portions of their mission.

5 So I would like to talk a little bit about the

6 specific risks that we have identified that could

7 result from this transaction in the absence of

8 additional commitments.

9 I would like to start by discussing the fact

10 that PSE is not the same company today that it was ten

11 years ago. Ten years ago, when this Commission

12 considered the sale of PSE, there were no commitments

13 that expressly applied to PSE's contracted workforce.

14 Now, whether or not such a commitment should have been

15 included, there can be no doubt that one needs to be

16 included this time around.

17 PSE's contracted workforce has grown steadily

18 over the past ten years, as shown in the data request

19 supplied by PSE, as discussed in Ms. Hutson's

20 testimony. The company has even published a white

21 paper emphasizing how central utilization of

22 third-party contractors is to its strategy.

23 Increasingly, contractors are performing core

24 utility functions. There is a real concern that under

25 this new stewardship, and as PSE continues to

0306

1 outsource more and more of its utility work, safety

2 standards will continue to deteriorate. The fact that

3 contracting out has become such a central part of

4 PES's operations and business model, requires the UTC

5 to impose meaningful commitments to ensure that safety

6 and reliability do not suffer as PSE continues to

7 pursue contracting out as a cost-cutting strategy.

8 I would also like to discuss the impact of

9 Macquarie's departure, which is something that we have

10 focused on as well. The other reason that commitments

11 relating to contracting out are so needed as part of

12 this transaction is because there is a risk that with

13 Macquarie's departure, an already bad situation is

14 about to become worse.

15 Macquarie was PSE's largest single shareholder

16 and it was the only shareholder with a responsible

17 contractor policy in place. PSE does have its own

18 responsible supplier and contractor guidelines, but as

19 our witness has testified to, that policy is

20 unquestionably weaker than Macquarie's policy. It

21 provides less rigorous guidelines when PSE is

22 contracting out. In fact, PSE's so-called responsible

23 contractor guidelines are nothing more than a list of

24 nonbinding factors that the company is free to take

25 into consideration when making contractor selection,

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1 but it has total discretion. Those factors are

2 nonbinding.

3 Losing Macquarie as an investor in the Puget

4 Holdings consortium means that there will no longer be

5 a voice at the table pushing for PSE to use

6 responsible contracting practices. I would like to

7 note that it is not true that Macquarie was not

8 involved in PSE's development of its own responsible

9 contractor policy. In fact, if you take a look at

10 Exhibit No. 12 to Ms. Hutson's testimony, you will see

11 that Puget -- that PSE itself notes that Macquarie was

12 involved in encouraging PSE to adopt its own

13 contractor policy, weak though it may be.

14 The Macquarie policy provided that even

15 utilities in which it had less than a majority share,

16 like PSE, where it owned 43.99 percent, that policy

17 still provided that it had applicability, it still

18 encouraged -- it required Macquarie to encourage

19 managers over which Macquarie had oversight -- to

20 encourage PSE managers to use responsible contractor

21 considerations when making contracting decisions. So

22 the fact that -- it's simply a misnomer to suggest

23 that because Macquarie had less than a 50 percent

24 ownership interest, that its policy did not influence

25 PSE's policies. It surely did.

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1 There can be no doubt that Macquarie was an

2 advocate for this policy and that this policy was

3 adopted for the specific purpose of trying to

4 influence the utilities that it invested in, like PSE.

5 Again, Macquarie doesn't contract out, it does not

6 hire its own contractors. This policy was not there

7 for its own benefit when hiring contractors, it

8 existed for the specific purpose of providing guidance

9 to PSE managers that it, as a board member, had

10 oversight over.

11 You heard today from each of the owners that

12 will remain in the Puget Holdings consortium, if the

13 transaction is approved, that none of them have a

14 policy comparable to that of Macquarie's, none of them

15 have experience administering a similar policy, none

16 of them intends to actively influence PSE's business

17 operations in the same way that Macquarie sat here and

18 ten years ago told you that it intended to do.

19 So we believe that it is abundantly clear that

20 Macquarie departing the ownership consortium presents

21 a real risk that PSE's contracting practices will

22 deteriorate.

23 So what does this mean for PSE's operations

24 and PSE ratepayers? We think there is really good

25 reason to think that PSE's contracting practices will

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1 deteriorate under the new ownership. I want to talk

2 just briefly about what that means.

3 When it comes to the gas distribution work

4 that the Laborers members are involved in performing,

5 we're talking about extreme dangers. Not having a

6 properly trained workforce, not having a contractor

7 with an adequate safety record can lead to

8 catastrophic incidents.

9 The other sector in which the Laborers are

10 frequently involved in providing services to PSE comes

11 to flagging, which is almost always required when work

12 on PSE's utility is involved. Flagging is extremely

13 dangerous work. Having a workforce with adequate

14 training is crucial to avoiding workplace accidents in

15 that context. When unqualified workers, like those

16 that are often sent out by contractors on the PSE

17 system -- when unqualified workers are used, it is

18 much more likely that accidents will occur, and this

19 is borne out by statistics from Washington's own

20 Department of Labor & Industries.

21 While the risks that the Laborers have

22 identified with this transaction are serious, the good

23 news is that they are -- there are easily

24 identifiable, concrete solutions to ensure that things

25 do not get worse under the new consortium of owners.

0310

1 Ms. Hutson identified several commitments in her

2 testimony that would ensure that the no harm standard

3 is met. Those are detailed at Page 17 and 18 of her

4 testimony, and each of them seeks to provide

5 assurances that PSE's contracting practices will not

6 deteriorate. I will focus on the second of those two

7 proposed commitments, which would require PSE and

8 Puget Holdings to adopt a new responsible contractor

9 policy with more meaningful and quantifiable metrics

10 than its current policy, which is little more than a

11 fluff piece with aspirational statements.

12 We believe that part of the new responsible

13 contractor policy that PSE should be required to adopt

14 should preclude the use of any contractor that relies

15 upon temporary staffing agencies to supply labor. As

16 is discussed extensively in Ms. Hutson's testimony,

17 contractors that rely upon staffing agencies have

18 incontrovertibly inferior safety records. We believe

19 that a commitment not to use contractors that rely

20 upon temporary agencies for safety-sensitive positions

21 is just plain common sense.

22 I would also like to briefly note that there

23 is no evidence that adopting a responsible contractor

24 policy like the one that we advocate would increase

25 costs. We actually believe the opposite is true.

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1 When you are relying upon contractors that have good

2 practices in place, you will have less employee

3 turnover, which overall leads to more efficient

4 operations, fewer accidents, fewer incidents -- fewer

5 incidences, lower insurance rates being paid. You pay

6 a higher cost when you are an unsafe contractor for

7 Workers' Comp coverage. So we certainly do not agree

8 that adopting a policy like the one that we advocate

9 for would mean that costs to PSE ratepayers would go

10 up. We do not believe that's the case.

11 We believe that each of the additional

12 commitments that are discussed in Ms. Hutson's

13 testimony relate directly to risks that are not

14 otherwise addressed as part of the settlement and that

15 they would go a long way to ensuring that ratepayers

16 are not harmed as a result of this transaction.

17 However, I will note in closing that if the

18 Commission believes that none of these additional

19 commitments are necessary in order to meet the no harm

20 standard, the Laborers would advocate for a new docket

21 to be initiated to examine PSE's contracting practices

22 and problems relating to an inadequately trained

23 contractor workforce.

24 Thank you very much.

25 JUDGE O'CONNELL: Thank you,

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1 Ms. Franco-Malone.

2 We will accept a list of the citations, if

3 any, that you made in your closing argument at the

4 conclusion of this hearing.

5 Is there anything else we should discuss

6 before we conclude this hearing?

7 Seeing nothing, thank you all for everything

8 today, for participating in this hearing. We will

9 adjourn and be off the record. Thank you.

10 MS. CARSON: Thank you.

11 (Proceedings concluded 5:10 p.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 KING

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6 I, Sherrilyn Smith, a Certified

7 Shorthand Reporter in and for the State of Washington,

8 do hereby certify that the foregoing transcript is

9 true and accurate to the best of my knowledge, skill

10 and ability.

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17 SHERRILYN SMITH, CCR# 2097

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