

Docket No. UE-200115 - Vol. II

In the Matter of the Application of Puget Sound Energy

July 6, 2020



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of) DOCKET UE-200115

)
PUGET SOUND ENERGY,)

)
For an Order Authorizing Sale of All)
of Puget Sound Energy's Interests in)
Colstrip Unit 4 and Certain of Puget)
Sound Energy's Interest in Colstrip)
Transmission System)

REMOTE VIDEO STATUS CONFERENCE
ADMINISTRATIVE LAW JUDGE ANDREW J. O'CONNELL
VOLUME II
Pages 68-107

July 6, 2020
2:04 p.m.

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Page 72

1 REPORTED REMOTELY FROM KITSAP COUNTY, WASHINGTON
 2 JULY 6, 2020, 2:04 P.M.
 3 -oOo-
 4 JUDGE O'CONNELL: Good afternoon. I am
 5 Andrew J. O'Connell, an Administrative Law Judge from
 6 the Utilities and Transportation Commission. Today is
 7 Monday, July 6, 2020, and the time is approximately
 8 2:00 p.m. We're here for Docket UE-200115, which is
 9 Puget Sound Energy's sale of certain coal strip assets.
 10 We're here for a status conference regarding
 11 PSE's May 28th Notice of Intent to supplement its
 12 application. That filing has not yet been received and
 13 the deadline for testimony responding to PSE's initial
 14 filing is coming up on July 17th, 2020.
 15 At the status conference, I want to discuss
 16 timing for filing of that supplemental application and
 17 possible changes to the procedural schedule in order to
 18 accommodate responses to the supplemental application.
 19 Before we get to that, let's go ahead and
 20 take short appearances from each of the parties and
 21 their representatives. Let's start with Puget Sound
 22 Energy.
 23 MR. STEELE: Thank you, Your Honor.
 24 This is David Steele with Perkins Coie. And
 25 with me, also, is my colleague, Jason Kuzma, also with

Page 73

1 Perkins Coie on the line for PSE today.
 2 JUDGE O'CONNELL: Thank you.
 3 And for the Commission Staff?
 4 MR. DALLAS: This is Joe Dallas on behalf of
 5 Commission Staff.
 6 JUDGE O'CONNELL: And for Public Counsel?
 7 MS. GAFKEN: Good afternoon. This is Lisa
 8 Gafken, Assistant Attorney General, on behalf of Public
 9 Counsel.
 10 JUDGE O'CONNELL: And for the Alliance of
 11 Western Energy Consumers.
 12 MR. COLEMAN: Good afternoon. Brent Coleman
 13 of Davison Van Cleve on behalf of AWEC.
 14 JUDGE O'CONNELL: Thank you. And for --
 15 MR. COLEMAN: I believe that my colleague,
 16 Corinne Milinovich, is also on the line.
 17 JUDGE O'CONNELL: Okay. Thank you.
 18 And that's also for AWEC. Okay.
 19 MR. COLEMAN: That's correct.
 20 JUDGE O'CONNELL: For the Sierra Club,
 21 please?
 22 MS. YARNALL LOARIE: This is Jessica Yarnall
 23 Loarie representing the Sierra Club.
 24 JUDGE O'CONNELL: And for Natural Resources
 25 Defense Council?

Page 74

1 MS. TUDOR: This is Kate White Tudor
 2 representing the Natural Resources Defense Council, and
 3 I am accompanied by my colleague, Amanda Leven.
 4 JUDGE O'CONNELL: And for the Northwest
 5 Energy Coalition and Renewable Northwest. Mr. Sanger?
 6 MR. SANGER: Sorry. This is Irion Sanger on
 7 behalf of the Northwest Energy Coalition and Renewable
 8 Northwest.
 9 JUDGE O'CONNELL: Okay. Thank you.
 10 MR. SANGER: And -- I was going to say Jeff
 11 Fox and Wendy Gerlitz may be on the phone as well.
 12 JUDGE O'CONNELL: Thank you.
 13 MS. GERLITZ: This is Wendy Gerlitz. I am
 14 on the phone. I was keeping myself on mute.
 15 JUDGE O'CONNELL: Thank you.
 16 For Avista?
 17 MR. ANDREA: This is Mike Andrea, in-house
 18 counsel for Avista. And with me on the phone is Pat
 19 Ehrbar and Jason Thackston for Avista.
 20 JUDGE O'CONNELL: Thank you.
 21 For PacifiCorp?
 22 MR. KUMAR: Thank you, Your Honor.
 23 This is Ajay Kumar for PacifiCorp.
 24 JUDGE O'CONNELL: Thank you.
 25 For Portland General Electric?

Page 75

1 MR. TINGEY: Thank you, Your Honor.
 2 Doug Tingey for Portland General Electric.
 3 JUDGE O'CONNELL: Thank you.
 4 And for Microsoft?
 5 MR. PEPPE: Good afternoon. This is Tyler
 6 Pepple for Microsoft Corporation.
 7 JUDGE O'CONNELL: Okay. I have some
 8 questions for PSE and the other parties. But before I
 9 get to those, have the parties discussed any agreed
 10 changes that could be made to the procedural schedule?
 11 Mr. Dallas?
 12 MR. DALLAS: We -- we have discussed
 13 possible changes, but I am not aware of any agreed-to
 14 change by all the parties.
 15 JUDGE O'CONNELL: Okay. And Staff is the
 16 party that contacted the Commission to set up the status
 17 conference.
 18 Can you please summarize for me the -- the
 19 reasons for requesting that we get together to talk
 20 about the procedural schedule? Mr. Dallas?
 21 MR. DALLAS: Yes, Your Honor. So as
 22 discussed in my e-mail last week, Talen Montana has
 23 become a purchaser in this transaction. Staff has
 24 discussed this topic with every non-investor owned
 25 utility party in this docket. And through these

Page 76

1 discussions, every party has voiced a concern over the
 2 lack of a supplemental filing pertaining to Talen's
 3 involvement. Generally, parties have stated they cannot
 4 provide a complete recommendation to the Commission on
 5 this transaction without a supplemental filing and
 6 additional time for discovery.

7 PSE has made some assurances that the
 8 fundamentals of this transaction are still valid, and
 9 they have committed to filing supplemental testimony on
 10 this topic; however, several parties are unwilling to
 11 form a recommendation based on these assurances and
 12 without a supplemental filing explaining how this
 13 transaction has changed.

14 Staff shares some of the concerns expressed
 15 by the parties, and this is because staff has learned
 16 that some important aspects of this case are uncertain,
 17 and these uncertainties are not reflected in any current
 18 testimony.

19 And we can discuss some of these
 20 uncertainties in more detail if the Commission would
 21 find it helpful. But, generally, because of these
 22 uncertainties, Staff at this time would not be able to
 23 provide the Commission with the complete recommendation
 24 on the responsive testimony date. And this is simply
 25 because the record doesn't reflect the current realities

Page 77

1 of the transaction.

2 And Staff believes that the Commission needs
 3 complete and comprehensive testimony to render a
 4 decision in this docket. And due to the current
 5 uncertainties in the docket, staff does not believe it
 6 can provide this testimony to the commission.

7 So -- so we decided to -- to hold the status
 8 conference to see what's the best way forward to
 9 accommodate a supplemental filing to allow parties to
 10 conduct discovery of the supplemental filing and to
 11 ensure the commission has the best information to render
 12 a decision in accordance with the applicable legal
 13 standards. There -- there is general agreement among
 14 the non-company parties that a change needs to be made,
 15 but we don't have a specific proposal for the
 16 Commission.

17 But it's my -- my understanding that -- that
 18 this meeting could almost serve as a second pre-hearing
 19 conference to just kind of revisit the schedule and to
 20 see if any changes need to be made due to unforeseen
 21 changes that had occurred after our first pre-hearing
 22 conference.

23 But -- but that -- that's my -- my kind of
 24 opening remarks. And Staff is more than willing to
 25 answer any specific questions the Commission has.

Page 78

1 JUDGE O'CONNELL: Thank you.

2 I do have some specific questions that I'd
 3 like to have input from all of the parties, each party,
 4 if they have an opinion that they want to share.

5 But first, I have a couple questions,
 6 Mr. Steele, for PSE. I need to understand, and the
 7 commissioners want to understand more about this
 8 supplemental filing and why it has taken so long since
 9 you filed your notice on May 28th. Why it's taken so
 10 long since then.

11 And then I also want to know when you expect
 12 to have it filed and -- well, let me leave it there.

13 Go ahead, Mr. Steele.

14 MR. STEELE: Thank you, Your Honor.

15 The -- the current status is Talen Northwest
 16 and Northwestern are currently working out the details
 17 if Talen exercises its right of first refusal as part of
 18 this transaction.

19 PSE is pushing both of them to resolve the
 20 details of that right of first refusal between them and
 21 remains hopeful that this will be resolved in the very
 22 near future.

23 We understand, and in speaking with them,
 24 have reason to believe that -- that that agreement
 25 between them on Talen's right of first refusal will be

Page 79

1 completed in the next week or so, at which point PSE
 2 will file its supplemental filing which will include a
 3 supplemental application, provides testimony, and all
 4 other necessary supporting documentation to document
 5 the -- the agreement between them and between PSE. And
 6 so PSE is simply waiting for them.

7 As to why it's taking so along; the parties,
 8 as we understand it, are still working on the details
 9 between themselves.

10 As we understand it, this does not have
 11 anything to do with the sort of framework of the
 12 proposed transaction that PSE's filed with the
 13 Commission months ago. This is simply between them.
 14 And the reason for their delay, frankly, Your Honor, is
 15 between them.

16 PSE, I think, understands some of it, but
 17 it's -- it's sort of between them to work out those
 18 details. But again, we're hopeful that they are nearing
 19 an end and that should be resolved in the near future.

20 As I said, the -- the framework, though, of
 21 the transaction PSE has filed will not be changing.
 22 The only -- the only sort of substantive change is
 23 instead of there being one buyer, there's now two for
 24 Coal Strip Unit 4. And instead of there being one PPA,
 25 there will now be two.

1 All other aspects as we understand it and
2 we're highly confident will not be changing. So the
3 proposed transactions as filed will not be changing.
4 And we're confident this will be reflected in our
5 supplemental filing, which we're hopeful should be very
6 soon.

7 JUDGE O'CONNELL: Thank you.

8 So these details that Talen and Northwestern
9 are working out, what I -- what I think I'm hearing is
10 that PSE isn't really in the middle of those
11 discussions. And I'm -- I'm wondering if PSE is feeling
12 like it is a little bit out of your control how fast
13 those discussions have gone; is that correct?

14 MR. STEELE: That's correct, Your Honor.

15 We -- PSE has had regular discussions with -- with each
16 of them. And have done -- PSE is doing what it can to
17 sort of prod those along. The parties, I think,
18 understand the timing of this proceeding, and PSE has
19 certainly conveyed that to them. And -- and we have
20 reason to believe, based on our most recent
21 communications with them, that they are nearing the
22 conclusion of working out that right of first refusal
23 between them and -- and sort of how the two parties are
24 going to resolve that. And so once we receive that,
25 then PSE will file its materials right away.

1 And I agree, Your Honor, it would be
2 difficult to commit to a date not knowing when they will
3 resolve it exactly and -- if that deadline, you know --
4 if PSE could have any control of that deadline.

5 JUDGE O'CONNELL: Okay. I think I
6 understand.

7 So the -- the procedural position that we're
8 placed in is -- if we feel like -- the Commission is
9 going to afford the responding parties the opportunity
10 to respond to the supplemental application and that's
11 going to present some scheduling difficulties as far as
12 our current time line and our current schedule.

13 At our prehearing conference, PSE had
14 emphasized its desire to have a resolution to this
15 matter before the end of 2020. But I'm curious now that
16 Talen has exercised its right of first refusal, it seems
17 like that has probably lengthened the time line for the
18 entire closing of the transaction.

19 What is the current status on PSE's
20 expectation for how long this transaction is going to
21 take to -- to close and be done with on the business
22 side? Mr. Steele?

23 MR. STEELE: PSE still believes that the
24 best course is for the parties to operate under the
25 current procedural schedule that was initially ordered

1 And so we have -- at this point, frankly,
2 have those materials largely ready. We're sort of
3 waiting on the final details from them and then we will
4 file.

5 JUDGE O'CONNELL: When I -- when I first
6 considered the situation we find ourselves in
7 procedurally, myself and, you know, we at the Commission
8 thought perhaps a deadline for filing the supplemental
9 application might be necessary.

10 But now I want to voice concern and slight
11 frustration that it sounds like setting a deadline for
12 that supplemental application might be -- it might not
13 be worth it, because the details you need might not be
14 complete by whatever deadline we set.

15 But my question is how confident are you
16 that within the next two weeks those details are going
17 to be set and PSE would be able to file its supplemental
18 application?

19 MR. STEELE: PSE, to be candid, does not
20 know when that date will be that we'll have the final
21 green light from Talen and Northwestern. We're hopeful,
22 and as I stated, based on our last communications with
23 them, we are highly confident that it should be resolved
24 in the next week or two. But we do not know of the
25 exact date.

1 in this docket. And -- and, frankly, the reason for
2 that, Your Honor, is the -- the terms of the agreement
3 with Northwestern require the parties to close the
4 proceeding in 2020.

5 And so PSE contractually can't agree to any
6 procedural changes to the schedule that could extend it
7 beyond December 31st of 2020 without jeopardizing the
8 transaction as -- as currently filed.

9 And so I think PSE understands the concerns
10 from the parties and appreciates their concerns;
11 however, PSE cannot agree to extend the schedule or
12 change the schedule in a way that would push it beyond
13 2020 and -- and would jeopardize being able to close the
14 deal in 2020.

15 UNIDENTIFIED SPEAKER: Is this call still
16 connected?

17 JUDGE O'CONNELL: I'm sorry. This is Andrew
18 O'Connell. I think I was on mute.

19 Can everyone hear me now?

20 UNIDENTIFIED SPEAKER: Yes.

21 JUDGE O'CONNELL: Thank you.

22 So I and the Commissioners, we have to
23 decide whether keeping the current deadline for
24 responsive testimony and affording another chance for
25 responses to the supplemental application is appropriate

1 or whether we should move the response testimony until
2 after the supplemental application is filed.

3 I've heard from PSE that it prefers for the
4 current schedule to be maintained. However, I think at
5 least some minor modification is warranted. And I want
6 to hear from all of the other parties on that decision
7 and your thoughts on the filing of response testimony
8 currently set for July 17th and the impacts to other
9 procedural deadlines.

10 So I'd like to start with --

11 MR. STEELE: Your Honor, this is David
12 Steele again on behalf of PSE.

13 The one caveat I wanted to add to my last
14 comment was in reviewing the procedural schedule, the
15 one place that we believe there may be some flexibility
16 is the -- is the period of time sort of between now and
17 the discovery deadline, which is September 25th, 2020.

18 We think it's possible that -- that one
19 option to consider would be to push the response
20 testimony currently due for July 17th back a few weeks,
21 and correspondingly push the rebuttal testimony back a
22 few weeks as well into September.

23 And we -- we feel that would give the
24 parties more time to prepare response testimony. It
25 would give PSE, hopefully, the time to file the

1 I was able to talk to staff briefly about
2 this. I think from Staff's perspective, it makes sense
3 to have responsive testimony after the filing of
4 supplemental testimony. And I can go into specificity
5 why. But a lot of our testimony will be based on
6 assumptions that aren't in the record. And further, if
7 we file testimony and then there's supplemental
8 testimony, then we'll have to do, I'm assuming, another
9 round of testimony. And if it is structured that way,
10 it limits Staff's capacity to respond to how other
11 parties analyze the supplemental filing.

12 So I -- I think it makes sense to -- to
13 schedule the responsive testimony after the supplemental
14 filing. And I think we're willing to look at creative
15 solutions, like expedited discovery to -- to really try
16 to not have a huge impact on the procedural schedule.

17 But I think just serial filings and filing
18 testimony based on assurances given by PSE, and to put
19 it in perspective, I don't know how much detail you
20 want. But we don't have a final sales agreement with
21 Talen on it. The transmission component is subject to a
22 current arbitration that could be going on for -- for a
23 prolonged period, and that's one-third of the deal.

24 There's currently a new vote share agreement
25 that's being negotiated between the three parties, and

1 supplemental application and materials. The only sort
2 of net result is it would be less discovery on the back
3 end.

4 But based on the current schedule, the data
5 request time period is shortened to five days. So it's
6 a -- it's a pretty quick turnaround time; and so that
7 may be one option is to shift things a bit, and -- and
8 that may provide more time for that response testimony.

9 JUDGE O'CONNELL: Okay. Thank you,
10 Mr. Steele.

11 And that is an option that the Commission is
12 considering and will consider. Of course, when the
13 Commission -- when we do not have an agreed proposal,
14 whatever solution we devise that suits the needs of the
15 Commission might not be perfect for all the other
16 parties. This is where I encourage the parties to
17 consider compromise on all of your parts in order to
18 achieve a schedule that suits your needs, even if it
19 isn't perfect.

20 So let me start with asking for, again,
21 Staff's perspective on options for affording a response
22 to whatever supplemental application, including the
23 suggestion that Mr. Steele just made.

24 Mr. Dallas, go ahead.

25 MR. DALLAS: Thank you, Your Honor.

1 that vote share agreement goes to one of the major
2 benefits in the transaction. And -- and we really don't
3 know -- as PSE said, these are still being negotiated.
4 So what we file may not be helpful at all to the
5 Commission. And -- and that's Staff's concerns. And I
6 think those concerns are also echoed by some of the
7 other parties.

8 So that -- that would be Staff's preference.
9 And we -- we would be willing to make some concessions
10 to -- to try to fit -- to try to fit this within this
11 calendar year, the final decision.

12 JUDGE O'CONNELL: Okay. Thank you.
13 Public Counsel, please?

14 MS. GAFKEN: Good afternoon. Thank you.

15 This is Lisa Gafken with Public Counsel. A
16 lot of what I had to say has already been said, but
17 there are a couple of things that I want to highlight.

18 You know, of course we don't have the
19 transaction in front of us. Whenever we have a
20 situation just in a -- from a general sense, where it
21 looks like the filing date might be moved, I still push
22 forward with developing testimony until we have a
23 Commission order that says that that testimony deadline
24 has been moved. Because I never want to be put in that
25 position where the deadline doesn't move, and we haven't

1 finished what we need to get finished.
 2 In this case, you know, I tried to take that
 3 same path where we're pushing to get it done, but
 4 frankly, we just can't.
 5 As Mr. Dallas indicated, a lot of what we
 6 would be filing would be incomplete and we wouldn't have
 7 a recommendation on the transaction. A lot of the
 8 moving pieces that he mentioned just -- just now are, I
 9 think, that we're concerned about the voting rights, the
 10 transmission issues, those things. So at best, their
 11 testimony would be incomplete. It would be a lot of
 12 high-level observations and perhaps based on assumptions
 13 that don't pan out.
 14 We've heard a little bit about PSE
 15 assurances that the fundamentals of the transaction
 16 remain the same. And one approach -- what I take to
 17 this sort of thing -- is, okay, trust but verify. And
 18 we don't have anything to verify with, and that's
 19 concerning.
 20 I want to talk a little bit about what a
 21 perfect world would look like from Public Counsel's
 22 perspective in terms of how we move forward. We're also
 23 open to some creative suggestions, but I think there's
 24 some fundamental pieces that need to be incorporated in
 25 whatever the solution is.

1 periods that are necessary in order to -- to get this
 2 case to the finish line simply because there is a little
 3 bit of a hiccup that shouldn't hinder Washington's
 4 ability to evaluate the transaction. And I'll stop
 5 there. Thank you.
 6 JUDGE O'CONNELL: Okay. Thank you.
 7 Next I'd like to hear from AWEC.
 8 MR. COLEMAN: Yes, Your Honor. Good
 9 afternoon. Thank you.
 10 Brent Coleman for AWEC. And I would echo
 11 many of the concerns that have been expressed by
 12 Mr. Dallas and Ms. Gafken.
 13 I think from AWEC's perspective with -- with
 14 due respect to the company, you know, that the
 15 characterization that it's just a second person coming
 16 into the transaction and fundamentally everything is the
 17 same, you know, I think there are elements with respect
 18 to the details and the future that are -- that may not
 19 be the same simply because you have two parties involved
 20 instead of one.
 21 And from the standpoint of -- of filing
 22 testimony, as has been mentioned, on something that
 23 isn't the fact pattern in front of us any longer, you
 24 know, is a concern from a resource expense standpoint, a
 25 resource investment standpoint. And to turn around and

1 You know, once we get the supplemental
 2 filing, we need to be able to look at it and then do a
 3 couple rounds of discovery. We would like to have at
 4 least two rounds of discovery built in, and hopefully
 5 that response time will be shortened.
 6 I -- I have in mind, kind of, 45 days after
 7 PSE files, the supplemental testimony is the appropriate
 8 time period for when response testimony would be filed.
 9 That's assuming a 10-day response period, so that can be
 10 shortened a bit. But I think two rounds of discovery is
 11 really important and then the ability to get the
 12 discovery and then incorporate it into the testimony.
 13 So there does need to be a little bit of
 14 time. And I don't think, you know, two weeks is
 15 probably enough.
 16 Let's see. What else?
 17 We also agree that the timing really is out
 18 of PSE's control. They are waiting on parties who are
 19 not part of this -- this proceeding to finish up
 20 documents that are details -- as they put it between
 21 them, that they are details that matter in this case
 22 because they affect the voting rights and whatnot.
 23 So that piece is difficult and -- and makes
 24 it such that maybe we can't set specific dates at this
 25 point. But I think we do need to be mindful of the time

1 file testimony on what turns out to be the -- you know,
 2 the real factual framework is a bit of a challenge.
 3 So I think our -- our preference would be
 4 similar to what has been stated before with respect to
 5 filing testimony after the supplemental filing has been
 6 presented and the actual factual landscape is before us.
 7 I'm not sure that I have the specifics in mind as
 8 Ms. Gafken did.
 9 But that would be our preference is to -- to
 10 not have a round of testimony that is based on
 11 assumptions and suppositions, but is actually something
 12 that we can then dive into the real facts and provide
 13 substantive and beneficial information to the Commission
 14 to make -- to make their decision on -- on the
 15 true decision -- or, excuse me, on the true facts and
 16 the true transaction that's actually being presented.
 17 JUDGE O'CONNELL: Okay. Thank you.
 18 And for the Sierra Club.
 19 MR. COLEMAN: I'm sorry. If I can add, we
 20 certainly would be willing to -- I apologize. But we
 21 certainly would be willing to do whatever is necessary
 22 from a reasonable standpoint to effectuate making sure
 23 the timing gets done as necessary with respect to, you
 24 know, turning the discovery responses around or whatever
 25 we can do to help, but we just need to have this pulled

1 back. And I apologize for interrupting.

2 JUDGE O'CONNELL: No, that's fine. The
3 limitations of having a virtual status conference is --
4 I can't read faces to know whether someone is done
5 talking. So apologies for those limitations. And I
6 will try to pause, because I understand that people
7 might be thinking about what they are saying.

8 So let me, at this point, turn to the Sierra
9 Club. Ms. Yarnall Loarie, are you there?

10 MS. YARNALL LOARIE: Yes, I am. Sierra Club
11 shares a lot of the concerns that have already been
12 articulated by Mr. Dallas, Ms. Gafken, and AWEC. This
13 is not the same transaction. We need the ability to
14 analyze updated testimony, time for, you know,
15 discovery, looking at the vote sharing agreements, how
16 that impacts potentially, you know, other units at coal
17 strip that Talen isn't a regulated entity. We're not
18 sure how this impacts new -- there is a new PPA, it
19 sounds like, at issue, and of course the transmission
20 concern.

21 We certainly support a delay in the schedule
22 to allow, you know, updated filing of these issues to
23 analyze those filings. And, you know, I want to point
24 out -- I think Ms. Gafken said this -- the UTC should
25 have the ability to analyze this transaction to the best

1 Northwest Energy Coalition and Renewable
2 Northwest support most of the comments that have been
3 submitted so far.

4 We don't believe that we can fully
5 understand or accurately describe PSE's application at
6 this time, which means that it's not possible for
7 Renewable Northwest or Northwest Energy Coalition to
8 take a position on it without having the actual
9 application before us.

10 When PSE files a supplemental application,
11 we would like PSE to fully explain how the addition of
12 Talen changes or does not change the parties' voting
13 rights when you have another voting party and whether it
14 will impact the continued operation of both Coal Strip 3
15 and 4.

16 Similarly, we hope that PSE will explain how
17 the transmission aspects of the accusation may or may
18 not change, including the impact on PSE and the Pacific
19 Northwest's ability to access low-cost Montana wind.

20 We're -- we're hopeful that PSE will file
21 this soon, and we also are willing to work with the
22 limited constraints of the schedule. Our preference,
23 our strong preference would be that a date be set for
24 the supplemental application, and then a date for
25 testimony flowing from that. And if PSE does not make

1 of its abilities. And, you know, I think this is a
2 different transaction. So maybe the parties have the
3 ability to negotiate a date that allows the UTC to
4 perhaps have that additional time.

5 And, of course, we are all working under
6 conditions right now with COVID that are not usual.
7 There are child care issues, there's school issues,
8 there's resource constraints, and I just wanted to flag
9 those as well.

10 JUDGE O'CONNELL: Okay. Thank you.
11 And for NRDC.

12 MS. WHITE TUDOR: Thanks, Your Honor.

13 Yes, we share the concerns and the thoughts
14 of our colleagues about having a better opportunity to
15 develop testimony when we actually know what the deal
16 contains. Likewise, happy to work with an expedited
17 schedule for discovery.

18 We think that shortening the discovery
19 response times makes sense and hope to allow for a
20 thorough exchange of information, perhaps at a higher
21 speed than usual so we can keep this on track.

22 JUDGE O'CONNELL: Okay. Thank you.

23 Mr. Sanger, for Northwest Energy Coalition
24 and Renewable Northwest.

25 MR. SANGER: Yes. Thank you.

1 or is unable to make that date, that we schedule another
2 prehearing conference, scheduling conference to address
3 scheduling issues.

4 We think it would not be productive for the
5 workload of the parties or the Commission to have
6 testimony filed at this point when we don't even know
7 what we'd be testifying regarding.

8 JUDGE O'CONNELL: Okay. Thank you.

9 And from Avista, Mr. Andrea.

10 MR. ANDREA: Yes, Your Honor. This is Mike
11 Andrea for Avista. Avista doesn't have a position on
12 the schedule. We will work with whatever schedule works
13 for the Commission, Commission staff, and the other
14 parties.

15 JUDGE O'CONNELL: Okay. Thank you.

16 From PacifiCorp. Mr. Kumar?

17 MR. KUMAR: Thank you, your Honor.

18 PacifiCorp takes pretty much the same
19 position as Avista. We have no position on this issue.

20 JUDGE O'CONNELL: Thank you.

21 From Portland General Electric.

22 MR. TINGEY: This is Doug Tingey, and we
23 have the same position as Avista and PacifiCorp. We'll
24 work with whatever the Commission decides.

25 JUDGE O'CONNELL: Okay. Thank you, again.

1 And last. From Microsoft.
 2 MR. PEPPE: Thank you, Your Honor.
 3 Microsoft's position is largely aligned with
 4 the other non-utility parties. We don't think it would
 5 be productive to file testimony at this time given that
 6 we don't have a full picture of the transaction. I
 7 won't continue and repeat the other party's statements,
 8 but we're generally along with them.
 9 JUDGE O'CONNELL: Okay. Thank you.
 10 I think I've got a pretty good picture of
 11 how all the parties are thinking about this situation.
 12 Mr. Steele, I'd like to hear from PSE one
 13 more time.
 14 MR. STEELE: In what regard, Your Honor, can
 15 I --
 16 JUDGE O'CONNELL: Is there --
 17 MR. STEELE: Is there a question I can
 18 address?
 19 JUDGE O'CONNELL: I wanted to give you a
 20 chance to respond to some of the thoughts that the other
 21 parties provided. And I think that will help me and the
 22 Commissioners consider what we need to do.
 23 MR. STEELE: Sure. Yeah. PSE fully
 24 understands the parties' concerns and appreciates the
 25 difficulty with filing response testimony without --

1 those frameworks and understands the parties' concerns.
 2 JUDGE O'CONNELL: Okay. Thank you.
 3 So is there anyone else who would like to
 4 weigh in?
 5 MR. DALLAS: Your Honor, this is Joe Dallas.
 6 I also want to make one more note that Staff wants the
 7 Commission to be aware of due to a recent directive from
 8 the Governor. Staff can only work 32 hours a week
 9 through the month of July, and -- and it's -- it's
 10 unsure if that's going to be continued into August, but
 11 Staff wanted the Commission to be aware of the
 12 limitation they can work.
 13 JUDGE O'CONNELL: Thank you.
 14 Yes, we'll keep that in mind.
 15 I am of a mind to encourage the parties to
 16 communicate and reach or attempt to reach some agreement
 17 on some dates going forward. I realize that with me on
 18 the line and the format that we're taking in this
 19 discussion doesn't lend itself very well to reaching a
 20 consensus on any of those changes.
 21 I am willing to, after we adjourn this
 22 discussion conference or the status conference, to allow
 23 the parties to stay on the line to discuss if that would
 24 be beneficial for you. And if it would be beneficial,
 25 then I would afford a short amount of time, a day or so,

1 without feeling like they have the transaction in front
 2 of them.
 3 We understand that -- that things have
 4 changed. PSE does not believe that -- that the
 5 substantive framework of the transaction is changing,
 6 and -- and PSE is highly confident that will be
 7 reflected in the filing. But PSE understands that --
 8 that parties want to see the documents.
 9 I think from PSE's perspective, the -- the
 10 best outcome is to, as I mentioned, slide the response
 11 testimony deadline back. I think you could probably
 12 move -- move the response testimony and rebuttal and
 13 even the discovery deadline back, you know, perhaps up
 14 to -- up to October.
 15 The dates that PSE could not agree to are --
 16 are those October dates just because it -- it already is
 17 very tight in trying to get a Commission order in
 18 closing in by calendar year.
 19 And so PSE understand the parties' concerns
 20 and appreciates them and very much would like to work
 21 with the parties to put together a -- a schedule that --
 22 that would allow the parties to respond in the way that
 23 they would like to and -- and complete this proceeding
 24 in 2020.
 25 So PSE is certainly willing to work with

1 for the parties to perhaps come to some sort of
 2 agreement and designate a representative to let me know.
 3 Is there -- in wanting to afford you that
 4 opportunity, I'd like to hear from the parties if
 5 it's -- if that would not be helpful. If it's something
 6 that the Commission just needs to decide, please go
 7 ahead and voice that and tell me or, otherwise, I'd like
 8 to give you the opportunity to talk and perhaps reach
 9 agreement.
 10 Mr. Dallas? Mr. Steele?
 11 MS. GAFKEN: This is Lisa Gafken.
 12 JUDGE O'CONNELL: Sorry, Ms. Gafken. Go
 13 ahead.
 14 MS. GAFKEN: Yeah. Others may have a
 15 different viewpoint and maybe things have changed.
 16 We've actually spent a bit of time, the parties; we've
 17 talked about this. I think there's a little bit of a
 18 rock in a hard place with just the timing, and we may
 19 need the Commission just to decide.
 20 I would defer to Puget on that a little bit,
 21 because I think, frankly, they are the ones that are in
 22 the rock and the hard place with this. I do think that
 23 in some regards we may just need a Commission decision.
 24 We've tried. We have talked about what we could or
 25 couldn't do with the schedule.

Page 100

1 JUDGE O'CONNELL: Mr. Steele or Mr. Dallas,
 2 any input?
 3 MR. DALLAS: Yeah. I'm communicating -- go
 4 ahead, Mr. Steele.
 5 MR. STEELE: No. Go ahead, Joe.
 6 MR. DALLAS: I'm communicating to Staff now,
 7 and I think Lisa has some points. I think we're
 8 certainly not opposed. You know, we -- we're always
 9 willing to talk to the parties and we have done so. But
 10 we may be at somewhat of an impasse, and this may be
 11 something the Commission needs to decide.
 12 But with that said, we -- we certainly are
 13 willing to meet if the other parties think it would be
 14 productive, but I -- I think Staff would just echo what
 15 Public Counsel said.
 16 MR. STEELE: Your Honor, this is David
 17 Steele from Perkins Coie for PSE.
 18 I don't know if the parties have talked
 19 specific dates yet; and so PSE is certainly willing to
 20 do that sort of in alignment with -- with the
 21 constraints that I've already articulated that PSE can't
 22 agree to any adjustments of those October dates. It
 23 would have to be sort of between now and October, if we
 24 could -- if we could push or adjust those filing
 25 deadlines. And that's -- that's the framework PSE can

Page 101

1 operate.
 2 And if -- you know, if -- if other parties
 3 disagree with that, then we may be at the point where
 4 Ms. Gafken and Mr. Dallas feels that we are. I'm not
 5 sure about that from all the parties' perspective. But
 6 PSE is certainly willing to engage with the parties if
 7 other parties agree that will be helpful.
 8 JUDGE O'CONNELL: Well, this is what I'm
 9 inclined to do right now. The -- we're going to make a
 10 decision quickly on what we're going to do because of
 11 the upcoming testimony deadline. And I want to be
 12 respectful of the parties' resources so that they know
 13 if they need to finish responsive testimony or whether
 14 it's going to be delayed.
 15 However, I am going to afford, you know,
 16 24 hours for the parties to discuss either on this
 17 conference line after we adjourn or through e-mail. And
 18 by the end of the day -- by the close of business
 19 tomorrow, I'd like to designate a representative to --
 20 from the parties just to inform me whether there has or
 21 has not been an agreement of any of the dates from the
 22 parties. And then the Commission will either consider
 23 that or will make a decision within the next couple
 24 days.
 25 Mr. Dallas, can I -- I'd like to ask if you

Page 102

1 could, please, e-mail me tomorrow to let -- just to -- a
 2 very short par -- sentence informing me whether the
 3 parties have reached any agreement; is that acceptable?
 4 MR. DALLAS: Yes, Your Honor.
 5 JUDGE O'CONNELL: Okay. Thank you.
 6 So I am -- I'm prepared to bring this status
 7 conference to a conclusion.
 8 Is there anyone else who needs to say
 9 something before we adjourn?
 10 MR. SANGER: Just to confirm, Judge
 11 O'Connell, are you leaving it open for the rest of us to
 12 stay on to discuss?
 13 JUDGE O'CONNELL: Yes. I'm going to leave
 14 the conference bridge line available. The conference
 15 bridge line should not turn off when I disconnect. But
 16 I am not going to stay on the line so that the parties
 17 can have a free flow of discussion.
 18 UNIDENTIFIED SPEAKER: Your Honor, I have
 19 just one -- related to that I have one sort of
 20 administrative question, and I apologize if this isn't
 21 in your scope.
 22 But there are certain times where in the
 23 last three-plus months where I've been on calls like
 24 this, and there seems to be like a time window of the
 25 conference call and suddenly it will say -- like a

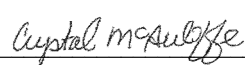
Page 103

1 computerized voice will come on and say, "Your call has
 2 ended. Please hang up." And then everything is
 3 disconnected.
 4 Is that -- do you know if that's something
 5 that we're facing here?
 6 Is there, like, a time window for this -- in
 7 addition to your departure, is there a time window, or
 8 do we have -- is it going to shut down at three o'clock
 9 or 3:30 automatically, just for purposes of expectations
 10 and scheduling. Does that make sense?
 11 JUDGE O'CONNELL: Yes, I understand your
 12 question.
 13 I -- thank you, Mr. Smith. Mr. Smith has
 14 included in our conversation box the information that
 15 there should not be a "time-out" and that he will
 16 stay -- he will keep the line active. So Mr. Smith is a
 17 representative from our records center. If the parties
 18 would indicate to him when you are done with the
 19 conference line, he will turn it off.
 20 I do want to convey the information to the
 21 parties that this status conference was scheduled for,
 22 at most, lasting until 3:30. It's currently ten til
 23 3:00.
 24 I do not think that there will be a
 25 time-out, but if there was any sort of time-out that was

1 automatically generated, it would happen at 3:30. But
 2 we do not expect that to happen.
 3 UNIDENTIFIED SPEAKER: Okay.
 4 JUDGE O'CONNELL: Anything else from any of
 5 the parties?
 6 MS. WHITE TUDOR: Actually, yes. I did
 7 review the previous scheduling order -- this is Kate
 8 White Tudor with the NRDC -- which noted that 30 days
 9 after that March order we were to start filing paper
 10 copies for all information in this case. And I guess I
 11 would suggest that given that the shutdown continues in
 12 many parts of our State that perhaps it would make sense
 13 for us to continue filing on an electronic basis.
 14 Is that something that's suitable for
 15 discussion in this forum, or should I discuss that with
 16 others?
 17 JUDGE O'CONNELL: Thank you for bringing
 18 that to my attention.
 19 I -- I will -- in any decision the
 20 Commission makes, as to the procedural schedule, I will
 21 clarify that whether we will continue to allow electric
 22 only or whether we would require paper. So thank you
 23 for bringing that to my attention. I will make sure to
 24 include that in any decision we make.
 25 MR. DALLAS: Your Honor, this is Joe Dallas.

1 MR. DALLAS: Thank you.
 2 JUDGE O'CONNELL: Okay. This is last call
 3 for any -- anything that has not yet been said. Okay.
 4 Thank you.
 5 Thank all of you for taking the time today
 6 to be available. Thank you for providing the
 7 perspectives from each of your parties. We will be
 8 adjourned and off the record.
 9 And if the parties would like to, they can
 10 have this conference line to use for their discussion
 11 purposes. And I will be off of that call. Okay. Thank
 12 you all.
 13 We are adjourned.
 14
 15 (The hearing concluded at 2:59 p.m.)
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 25

1 And I wanted to bring up something, and I wanted to see
 2 if maybe the Commission could give me -- give some
 3 feedback.
 4 My thoughts are it's inherently difficult to
 5 set a new procedural schedule because we don't know when
 6 PSE will have its updated application. And during our
 7 meeting, there was a thought of setting a tentative date
 8 for supplemental testimony and basing the schedule off
 9 that.
 10 And I wanted to know if the Commission could
 11 give us any feedback on that. Is this something the
 12 Commission has done in the past? Is this something they
 13 would be open to? Any -- any commentary on that would
 14 be helpful in our -- in our -- in our discussions coming
 15 up.
 16 JUDGE O'CONNELL: The Commission will be
 17 open to setting a deadline for the filing of the
 18 supplemental application. From what I've heard from
 19 PSE, though, that date would be speculative. And while
 20 we can expect to -- to have somebody from PSE by a
 21 certain date, if we set a deadline that the Commission
 22 would expect that any agreed deadline, if PSE is unable
 23 to meet it, that PSE inform the Commission and propose
 24 that we have another status conference to discuss how
 25 the deadlines might have to be modified.

1 CERTIFICATE
 2
 3 STATE OF WASHINGTON)
 4) ss.
 5 COUNTY OF KITSAP)
 6
 7 I, CRYSTAL R. McAULIFFE, a Certified Court
 8 Reporter in and for the State of Washington, do hereby
 9 certify that the foregoing transcript of the status
 10 hearing, having been duly sworn on JULY 6, 2020, is true
 11 and accurate to the best of my knowledge, skill and
 12 ability.
 13 IN WITNESS WHEREOF, I have hereunto set my hand
 14 and seal this 15th day of July, 2020.
 15
 16 
 17 CRYSTAL R. McAULIFFE, RPR, SCR #2121
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<p style="text-align: center;">A</p> <p>abilities 93:1</p> <p>ability 89:11 90:4 92:13,25 93:3 94:19 107:11</p> <p>able 76:22 81:17 83:13 86:1 89:2</p> <p>acceptable 102:3</p> <p>access 94:19</p> <p>accommodate 72:18 77:9</p> <p>accompanied 74:3</p> <p>accurate 107:10</p> <p>accurately 94:5</p> <p>accusation 94:17</p> <p>achieve 85:18</p> <p>active 103:16</p> <p>actual 91:6 94:8</p> <p>add 84:13 91:19</p> <p>addition 94:11 103:7</p> <p>additional 76:6 93:4</p> <p>address 95:2 96:18</p> <p>adjourn 98:21 101:17 102:9</p> <p>adjourned 106:8 106:13</p> <p>adjust 100:24</p> <p>adjustments 100:22</p> <p>administrative 68:11 72:5 102:20</p> <p>affect 89:22</p> <p>afford 82:9 98:25 99:3 101:15</p> <p>affording 83:24 85:21</p> <p>afternoon 72:4 73:7,12 75:5 87:14 90:9</p> <p>ago 79:13</p> <p>agree 82:1 83:5,11 89:17 97:15 100:22 101:7</p>	<p>agreed 75:9 85:13 105:22</p> <p>agreed-to 75:13</p> <p>agreement 77:13 78:24 79:5 83:2 86:20,24 87:1 98:16 99:2,9 101:21 102:3</p> <p>agreements 92:15</p> <p>ahead 72:19 78:13 85:24 99:7,13 100:4,5</p> <p>Ajay 70:21 74:23</p> <p>ajay.kumar@pa... 70:23</p> <p>aligned 96:3</p> <p>alignment 100:20</p> <p>Alliance 73:10</p> <p>allow 77:9 92:22 93:19 97:22 98:22 104:21</p> <p>allows 93:3</p> <p>Amanda 70:8 74:3</p> <p>amount 98:25</p> <p>analyze 86:11 92:14,23,25</p> <p>Andrea 70:16 74:17,17 95:9,10 95:11</p> <p>Andrew 68:11 72:5 83:17</p> <p>answer 77:25</p> <p>apologies 92:5</p> <p>apologize 91:20 92:1 102:20</p> <p>appearances 69:1 70:1 71:1 72:20</p> <p>applicable 77:12</p> <p>application 68:4 72:12,16,18 79:3 81:9,12,18 82:10 83:25 84:2 85:1 85:22 94:5,9,10 94:24 105:6,18</p> <p>appreciates 83:10</p>	<p>96:24 97:20</p> <p>approach 88:16</p> <p>appropriate 83:25 89:7</p> <p>approximately 72:7</p> <p>arbitration 86:22</p> <p>articulated 92:12 100:21</p> <p>asking 85:20</p> <p>aspects 76:16 80:1 94:17</p> <p>assets 72:9</p> <p>Assistant 69:9,14 73:8</p> <p>assuming 86:8 89:9</p> <p>assumptions 86:6 88:12 91:11</p> <p>assurances 76:7,11 86:18 88:15</p> <p>attempt 98:16</p> <p>attention 104:18,23</p> <p>Attorney 69:9,9,14 69:15 73:8</p> <p>August 98:10</p> <p>Authorizing 68:6</p> <p>automatically 103:9 104:1</p> <p>available 102:14 106:6</p> <p>Avenue 69:16 70:18</p> <p>Avista 70:15,17 74:16,18,19 95:9 95:11,11,19,23</p> <p>aware 75:13 98:7 98:11</p> <p>AWEC 69:18 73:13 73:18 90:7,10 92:12</p> <p>AWEC's 90:13</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 84:20,21 85:2 92:1 97:11,13</p> <p>based 76:11 80:20 81:22 85:4 86:5</p>	<p>86:18 88:12 91:10</p> <p>basing 105:8</p> <p>basis 104:13</p> <p>behalf 73:4,8,13 74:7 84:12</p> <p>believe 73:15 77:5 78:24 80:20 84:15 94:4 97:4</p> <p>believes 77:2 82:23</p> <p>Bellevue 69:5</p> <p>beneficial 91:13 98:24,24</p> <p>benefits 87:2</p> <p>best 77:8,11 82:24 88:10 92:25 97:10 107:10</p> <p>better 93:14</p> <p>beyond 83:7,12</p> <p>bit 80:12 85:7 88:14,20 89:10,13 90:3 91:2 99:16 99:17,20</p> <p>blc@dvclaw.com 69:21</p> <p>box 69:10 103:14</p> <p>Brent 69:19 73:12 90:10</p> <p>bridge 102:14,15</p> <p>briefly 86:1</p> <p>bring 102:6 105:1</p> <p>bringing 104:17,23</p> <p>built 89:4</p> <p>business 82:21 101:18</p> <p>buyer 79:23</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 71:3,7 107:1,1</p> <p>calendar 87:11 97:18</p> <p>California 70:5</p> <p>call 83:15 102:25 103:1 106:2,11</p> <p>calls 102:23</p> <p>candid 81:19</p> <p>capacity 86:10</p>	<p>Capitol 70:9</p> <p>care 93:7</p> <p>case 76:16 88:2 89:21 90:2 104:10</p> <p>caveat 84:13</p> <p>CCR 68:24 107:17</p> <p>center 103:17</p> <p>certain 68:7 72:9 102:22 105:21</p> <p>certainly 80:19 91:20,21 92:21 97:25 100:8,12,19 101:6</p> <p>Certified 107:6</p> <p>certify 107:8</p> <p>challenge 91:2</p> <p>chance 83:24 96:20</p> <p>change 75:14 77:14 79:22 83:12 94:12 94:18</p> <p>changed 76:13 97:4 99:15</p> <p>changes 72:17 75:10,13 77:20,21 83:6 94:12 98:20</p> <p>changing 79:21 80:2,3 97:5</p> <p>characterization 90:15</p> <p>child 93:7</p> <p>clarify 104:21</p> <p>Cleve 69:20 71:8 73:13</p> <p>close 82:21 83:3,13 101:18</p> <p>closing 82:18 97:18</p> <p>Club 70:3,4 73:20 73:23 91:18 92:9 92:10</p> <p>coal 72:9 79:24 92:16 94:14</p> <p>Coalition 74:5,7 93:23 94:1,7</p> <p>Coie 69:4 72:24 73:1 100:17</p>
--	--	--	---	---

<p>Coleman 69:19 73:12,12,15,19 90:8,10 91:19 colleague 72:25 73:15 74:3 colleagues 93:14 Colstrip 68:7,7 come 99:1 103:1 coming 72:14 90:15 105:14 comment 84:14 commentary 105:13 comments 94:2 commission 68:2 69:7 72:6 73:3,5 75:16 76:4,20,23 77:2,6,11,16,25 79:13 81:7 82:8 85:11,13,15 87:5 87:23 91:13 95:5 95:13,13,24 97:17 98:7,11 99:6,19 99:23 100:11 101:22 104:20 105:2,10,12,16,21 105:23 commissioners 78:7 83:22 96:22 commit 82:2 committed 76:9 communicate 98:16 communicating 100:3,6 communications 80:21 81:22 company 71:4 90:14 complete 76:4,23 77:3 81:14 97:23 completed 79:1 component 86:21 comprehensive 77:3</p>	<p>compromise 85:17 computerized 103:1 concern 76:1 81:10 90:24 92:20 concerned 88:9 concerning 88:19 concerns 76:14 83:9,10 87:5,6 90:11 92:11 93:13 96:24 97:19 98:1 concessions 87:9 concluded 106:15 conclusion 80:22 102:7 conditions 93:6 conduct 77:10 conference 68:10 72:10,15 75:17 77:8,19,22 82:13 92:3 95:2,2 98:22 98:22 101:17 102:7,14,14,25 103:19,21 105:24 106:10 confident 80:2,4 81:15,23 97:6 confirm 102:10 connected 83:16 Connell 83:18 consensus 98:20 consider 84:19 85:12,17 96:22 101:22 considered 81:6 considering 85:12 constraints 93:8 94:22 100:21 Consumers 73:11 contacted 75:16 contains 93:16 continue 96:7 104:13,21 continued 70:1 71:1 94:14 98:10</p>	<p>continues 104:11 contractually 83:5 control 80:12 82:4 89:18 conversation 103:14 convey 103:20 conveyed 80:19 copies 104:10 Corinne 69:19 73:16 Corporation 70:17 75:6 correct 73:19 80:13 80:14 correspondingly 84:21 Council 73:25 74:2 counsel 69:13,15 73:6,9 74:18 87:13,15 100:15 Counsel's 88:21 COUNTY 72:1 107:4 couple 78:5 87:17 89:3 101:23 course 82:24 85:12 87:18 92:19 93:5 Court 107:6 COVID 93:6 creative 86:14 88:23 CRYSTAL 68:24 107:6,17 curious 82:15 current 76:17,25 77:4 78:15 82:12 82:12,19,25 83:23 84:4 85:4 86:22 currently 78:16 83:8 84:8,20 86:24 103:22</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 70:17 Dallas 69:8 73:4,4</p>	<p>75:11,12,20,21 85:24,25 88:5 90:12 92:12 98:5 98:5 99:10 100:1 100:3,6 101:4,25 102:4 104:25,25 106:1 data 85:4 date 76:24 81:20,25 82:2 87:21 93:3 94:23,24 95:1 105:7,19,21 dates 89:24 97:15 97:16 98:17 100:19,22 101:21 David 69:3 72:24 84:11 100:16 Davison 69:20 71:8 73:13 day 98:25 101:18 107:13 days 85:5 89:6 101:24 104:8 deadline 72:13 81:8 81:11,14 82:3,4 83:23 84:17 87:23 87:25 97:11,13 101:11 105:17,21 105:22 deadlines 84:9 100:25 105:25 deal 83:14 86:23 93:15 December 83:7 decide 83:23 99:6 99:19 100:11 decided 77:7 decides 95:24 decision 77:4,12 84:6 87:11 91:14 91:15 99:23 101:10,23 104:19 104:24 Defense 73:25 74:2 defer 99:20</p>	<p>delay 79:14 92:21 delayed 101:14 departure 103:7 describe 94:5 designate 99:2 101:19 desire 82:14 detail 76:20 86:19 details 78:16,20 79:8,18 80:8 81:3 81:13,16 89:20,21 90:18 develop 93:15 developing 87:22 devise 85:14 different 93:2 99:15 difficult 82:2 89:23 105:4 difficulties 82:11 difficulty 96:25 directive 98:7 disagree 101:3 disconnect 102:15 disconnected 103:3 discovery 76:6 77:10 84:17 85:2 86:15 89:3,4,10 89:12 91:24 92:15 93:17,18 97:13 discuss 72:15 76:19 98:23 101:16 102:12 104:15 105:24 discussed 75:9,12 75:22,24 discussion 98:19,22 102:17 104:15 106:10 discussions 76:1 80:11,13,15 105:14 dive 91:12 DIVISION 69:10 docket 68:4 72:8</p>
--	--	---	---	--

<p>75:25 77:4,5 83:1 document 79:4 documentation 79:4 documents 89:20 97:8 doing 80:16 Doug 75:2 95:22 doug.tingey@pg... 71:5 DOUGLAS 71:3 dstele@perkins... 69:6 due 77:4,20 84:20 90:14 98:7 duly 107:9</p> <hr/> <p style="text-align: center;">E</p> <p>E 70:18 107:1,1 e-mail 75:22 101:17 102:1 echo 90:10 100:14 echoed 87:6 effectuate 91:22 Ehrbar 70:17 74:19 either 101:16,22 electric 71:4 74:25 75:2 95:21 104:21 electronic 104:13 elements 90:17 emphasized 82:14 encourage 85:16 98:15 ended 103:2 Energy 68:5 72:22 73:11 74:5,7 93:23 94:1,7 Energy's 68:6,7 72:9 engage 101:6 ensure 77:11 entire 82:18 entity 92:17 ENVIRONMEN... 70:4 evaluate 90:4</p>	<p>exact 81:25 exactly 82:3 exchange 93:20 excuse 91:15 exercised 82:16 exercises 78:17 expect 78:11 104:2 105:20,22 expectation 82:20 expectations 103:9 expedited 86:15 93:16 expense 90:24 explain 94:11,16 explaining 76:12 expressed 76:14 90:11 extend 83:6,11</p> <hr/> <p style="text-align: center;">F</p> <p>F 107:1 faces 92:4 facing 103:5 fact 90:23 facts 91:12,15 factual 91:2,6 far 82:11 94:3 fast 80:12 feedback 105:3,11 feel 82:8 84:23 feeling 80:11 97:1 feels 101:4 file 79:2 80:25 81:4 81:17 84:25 86:7 87:4 91:1 94:20 96:5 filed 78:9,12 79:12 79:21 80:3 83:8 84:2 89:8 95:6 files 89:7 94:10 filing 72:12,14,16 76:2,5,9,12 77:9 77:10 78:8 79:2 80:5 81:8 84:7 86:3,11,14,17 87:21 88:6 89:2</p>	<p>90:21 91:5,5 92:22 96:25 97:7 100:24 104:9,13 105:17 filings 86:17 92:23 final 81:3,20 86:20 87:11 find 76:21 81:6 fine 92:2 finish 89:19 90:2 101:13 finished 88:1,1 first 77:21 78:5,17 78:20,25 80:22 81:5 82:16 fit 87:10,10 five 85:5 flag 93:8 flexibility 84:15 flow 102:17 flowing 94:25 foregoing 107:8 form 76:11 format 98:18 forum 104:15 forward 77:8 87:22 88:22 98:17 Fox 74:11 framework 79:11 79:20 91:2 97:5 100:25 frameworks 98:1 frankly 79:14 81:1 83:1 88:4 99:21 free 102:17 front 87:19 90:23 97:1 frustration 81:11 full 96:6 fully 94:4,11 96:23 fundamental 88:24 fundamentally 90:16 fundamentals 76:8 88:15</p>	<p>further 86:6 future 78:22 79:19 90:18</p> <hr/> <p style="text-align: center;">G</p> <p>G 70:16 Gafken 69:14 73:7 73:8 87:14,15 90:12 91:8 92:12 92:24 99:11,11,12 99:14 101:4 general 69:9,9,14 71:4 73:8 74:25 75:2 77:13 87:20 95:21 GENERAL'S 69:15 generally 76:3,21 96:8 generated 104:1 Gerlitz 74:11,13,13 give 84:23,25 96:19 99:8 105:2,2,11 given 86:18 96:5 104:11 go 72:19 78:13 85:24 86:4 99:6 99:12 100:3,5 goes 87:1 going 74:10 80:24 81:16 82:9,11,20 86:22 98:10,17 101:9,10,14,15 102:13,16 103:8 good 72:4 73:7,12 75:5 87:14 90:8 96:10 Governor 98:8 green 81:21 guess 104:10</p> <hr/> <p style="text-align: center;">H</p> <p>hand 107:12 hang 103:2 happen 104:1,2 happy 93:16</p>	<p>Harbor 69:20 71:8 hard 99:18,22 hear 83:19 84:6 90:7 96:12 99:4 heard 84:3 88:14 105:18 hearing 80:9 106:15 107:9 help 91:25 96:21 helpful 76:21 87:4 99:5 101:7 105:14 hereunto 107:12 hiccup 90:3 high-level 88:12 higher 93:20 highlight 87:17 highly 80:2 81:23 97:6 hinder 90:3 hold 77:7 Honor 72:23 74:22 75:1,21 78:14 79:14 80:14 82:1 83:2 84:11 85:25 90:8 93:12 95:10 95:17 96:2,14 98:5 100:16 102:4 102:18 104:25 hope 93:19 94:16 hopeful 78:21 79:18 80:5 81:21 94:20 hopefully 84:25 89:4 hours 98:8 101:16 huge 86:16</p> <hr/> <p style="text-align: center;">I</p> <p>II 68:12 impact 86:16 94:14 94:18 impacts 84:8 92:16 92:18 impasse 100:10 important 76:16 89:11</p>
--	---	---	---	---

<p>in-house 74:17 inclined 101:9 include 79:2 104:24 included 103:14 including 85:22 94:18 incomplete 88:6,11 incorporate 89:12 incorporated 88:24 indicate 103:18 indicated 88:5 inform 101:20 105:23 information 77:11 91:13 93:20 103:14,20 104:10 informing 102:2 inherently 105:4 initial 72:13 initially 82:25 input 78:3 100:2 Intent 72:11 Interest 68:7 Interests 68:6 interrupting 92:1 investment 90:25 involved 90:19 involvement 76:3 Irion 70:12 74:6 irion@sanger-la... 70:14 issue 92:19 95:19 issues 88:10 92:22 93:7,7 95:3</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 68:11 72:5 Jason 69:3 70:16 72:25 74:19 Jeff 74:10 jeopardize 83:13 jeopardizing 83:7 Jessica 70:4 73:22 jessica.yarnall@s... 70:6 jkuzma@perkins...</p>	<p>69:5 Joe 69:8 73:4 98:5 100:5 104:25 joe.dallas@utc.w... 69:11 Judge 68:11 72:4,5 73:2,6,10,14,17 73:20,24 74:4,9 74:12,15,20,24 75:3,7,15 78:1 80:7 81:5 82:5 83:17,21 85:9 87:12 90:6 91:17 92:2 93:10,22 95:8,15,20,25 96:9,16,19 98:2 98:13 99:12 100:1 101:8 102:5,10,13 103:11 104:4,17 105:16 106:2 July 68:15 72:2,7 72:14 84:8,20 98:9 107:9,13</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Kate 74:1 104:7 kate@whitetudo... 70:10 KATHERINE 70:8 keep 93:21 98:14 103:16 keeping 74:14 83:23 kind 77:19,23 89:6 KITSAP 72:1 107:4 know 78:11 81:7,20 81:24 82:3 86:19 87:3,18 88:2 89:1 89:14 90:14,17,24 91:1,24 92:4,14 92:16,22,23 93:1 93:15 95:6 97:13 99:2 100:8,18 101:2,12,15 103:4 105:5,10</p>	<p>knowing 82:2 knowledge 107:10 Kumar 70:21 74:22 74:23 95:16,17 Kuzma 69:3 72:25</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>L 69:19 lack 76:2 landscape 91:6 largely 81:2 96:3 lasting 103:22 Law 68:11 70:4,12 72:5 learned 76:15 leave 78:12 102:13 leaving 102:11 legal 77:12 lend 98:19 lengthened 82:17 let's 72:19,21 89:16 Leven 70:8 74:3 light 81:21 Likewise 93:16 limitation 98:12 limitations 92:3,5 limited 94:22 limits 86:10 line 73:1,16 82:12 82:17 90:2 98:18 98:23 101:17 102:14,15,16 103:16,19 106:10 Lisa 69:14 73:7 87:15 99:11 100:7 lisa.gafken@atg.... 69:17 little 80:12 88:14 88:20 89:13 90:2 99:17,20 LLP 69:4 Loarie 70:4 73:22 73:23 92:9,10 long 78:8,10 82:20 longer 90:23 look 86:14 88:21</p>	<p>89:2 looking 92:15 looks 87:21 lot 86:5 87:16 88:5 88:7,11 92:11 low-cost 94:19</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 69:8 maintained 84:4 major 87:1 making 91:22 March 104:9 materials 80:25 81:2 85:1 matter 68:4 82:15 89:21 McAULIFFE 68:24 107:6,17 means 94:6 meet 100:13 105:23 meeting 77:18 105:7 mentioned 88:8 90:22 97:10 MICHAEL 70:16 michael.andra@... 70:19 Microsoft 71:6 75:4,6 96:1 Microsoft's 96:3 middle 80:10 Mike 74:17 95:10 Milnovich 69:19 73:16 mind 89:6 91:7 98:14,15 mindful 89:25 minor 84:5 Mission 70:18 modification 84:5 modified 105:25 Monday 72:7 Montana 75:22 94:19 month 98:9</p>	<p>months 79:13 102:23 move 84:1 87:25 88:22 97:12,12 moved 87:21,24 moving 88:8 MSC-27 70:18 Multnomah 70:22 mute 74:14 83:18</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>Natural 73:24 74:2 NE 69:4 70:22 near 78:22 79:19 nearing 79:18 80:21 necessary 79:4 81:9 90:1 91:21,23 need 77:20 78:6 81:13 88:1,24 89:2,13,25 91:25 92:13 96:22 99:19 99:23 101:13 needs 77:2,14 85:14,18 99:6 100:11 102:8 negotiate 93:3 negotiated 86:25 87:3 net 85:2 never 87:24 new 86:24 92:18,18 105:5 non-company 77:14 non-investor 75:24 non-utility 96:4 Northwest 74:4,5,7 74:8 78:15 93:23 93:24 94:1,2,7,7 Northwest's 94:19 Northwestern 78:16 80:8 81:21 83:3 note 98:6 noted 104:8</p>
---	---	--	--	--

<p>notice 72:11 78:9 NRDC 70:7 93:11 104:8 NWEC 70:11</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O' 83:18 o'clock 103:8 O'Connell 68:11 72:4,5 73:2,6,10 73:14,17,20,24 74:4,9,12,15,20 74:24 75:3,7,15 78:1 80:7 81:5 82:5 83:17,21 85:9 87:12 90:6 91:17 92:2 93:10 93:22 95:8,15,20 95:25 96:9,16,19 98:2,13 99:12 100:1 101:8 102:5 102:11,13 103:11 104:4,17 105:16 106:2 o0o- 72:3 106:17 Oakland 70:5 observations 88:12 occurred 77:21 October 97:14,16 100:22,23 OFFICE 69:9,15 okay 73:17,18 74:9 75:7,15 82:5 85:9 87:12 88:17 90:6 91:17 93:10,22 95:8,15,25 96:9 98:2 102:5 104:3 106:2,3,11 Olympia 69:11 70:9 once 80:24 89:1 one-third 86:23 ones 99:21 open 88:23 102:11 105:13,17 opening 77:24</p>	<p>operate 82:24 101:1 operation 94:14 opinion 78:4 opportunity 82:9 93:14 99:4,8 opposed 100:8 option 84:19 85:7 85:11 options 85:21 order 68:6 72:17 85:17 87:23 90:1 97:17 104:7,9 ordered 82:25 Oregon 69:21 70:13,23 71:5,9 outcome 97:10 owned 75:24</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P.C 70:12 71:8 p.m 68:16 72:2,8 106:15 P.O 69:10 Pacific 94:18 PacifiCorp 70:20 70:22 74:21,23 95:16,18,23 Pages 68:13 pan 88:13 paper 104:9,22 par 102:2 part 78:17 89:19 parties 72:20 75:8 75:9,14 76:3,10 76:15 77:9,14 78:3 79:7 80:17 80:23 82:9,24 83:3,10 84:6,24 85:16,16 86:11,25 87:7 89:18 90:19 93:2 95:5,14 96:4 96:11,21 97:8,21 97:22 98:15,23 99:1,4,16 100:9 100:13,18 101:2,6</p>	<p>101:7,16,20,22 102:3,16 103:17 103:21 104:5 106:7,9 parties' 94:12 96:24 97:19 98:1 101:5,12 parts 85:17 104:12 party 75:16,25 76:1 78:3 94:13 party's 96:7 Pat 74:18 path 88:3 PATRICK 70:17 pattern 90:23 pause 92:6 PC 69:20 people 92:6 Pepple 71:7 75:5,6 96:2 perfect 85:15,19 88:21 period 84:16 85:5 86:23 89:8,9 periods 90:1 Perkins 69:4 72:24 73:1 100:17 person 90:15 perspective 85:21 86:2,19 88:22 90:13 97:9 101:5 perspectives 106:7 pertaining 76:2 PGE 71:2 phone 74:11,14,18 picture 96:6,10 piece 89:23 pieces 88:8,24 place 70:13 84:15 99:18,22 placed 82:8 please 73:21 75:18 87:13 99:6 102:1 103:2 point 79:1 81:1</p>	<p>89:25 92:8,23 95:6 101:3 points 100:7 Portland 69:21 70:13,23 71:4,5,9 74:25 75:2 95:21 position 82:7 87:25 94:8 95:11,19,19 95:23 96:3 possible 72:17 75:13 84:18 94:6 potentially 92:16 PPA 79:24 92:18 pre-hearing 77:18 77:21 preference 87:8 91:3,9 94:22,23 prefers 84:3 prehearing 82:13 95:2 prepare 84:24 prepared 102:6 present 82:11 presented 91:6,16 pretty 85:6 95:18 96:10 previous 104:7 probably 82:17 89:15 97:11 procedural 72:17 75:10,20 82:7,25 83:6 84:9,14 86:16 104:20 105:5 procedurally 81:7 proceeding 80:18 83:4 89:19 97:23 prod 80:17 productive 95:4 96:5 100:14 PROGRAM 70:4 prolonged 86:23 proposal 77:15 85:13 propose 105:23</p>	<p>proposed 79:12 80:3 provide 76:4,23 77:6 85:8 91:12 provided 96:21 provides 79:3 providing 106:6 PSE 69:2 73:1 75:8 76:7 78:6,19 79:1 79:5,6,16,21 80:10,11,15,16,18 80:25 81:17,19 82:4,13,23 83:5,9 83:11 84:3,12,25 86:18 87:3 88:14 89:7 94:10,11,16 94:18,20,25 96:12 96:23 97:4,6,7,15 97:19,25 100:17 100:19,21,25 101:6 105:6,19,20 105:22,23 PSE's 72:11,13 79:12 82:19 89:18 94:5 97:9 Public 69:13,15 73:6,8 87:13,15 88:21 100:15 Puget 68:5,6,7 72:9 72:21 99:20 pulled 91:25 purchaser 75:23 purposes 103:9 106:11 push 83:12 84:19 84:21 87:21 100:24 pushing 78:19 88:3 put 86:18 87:24 89:20 97:21</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 81:15 96:17 102:20 103:12 questions 75:8</p>
--	---	---	--	--

<p>77:25 78:2,5 quick 85:6 quickly 101:10</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 68:24 107:1,6,17 reach 98:16,16 99:8 reached 102:3 reaching 98:19 read 92:4 ready 81:2 real 91:2,12 realities 76:25 realize 98:17 really 80:10 86:15 87:2 89:11,17 reason 78:24 79:14 80:20 83:1 reasonable 91:22 reasons 75:19 rebuttal 84:21 97:12 receive 80:24 received 72:12 recommendation 76:4,11,23 88:7 record 76:25 86:6 106:8 records 103:17 reflect 76:25 reflected 76:17 80:4 97:7 refusal 78:17,20,25 80:22 82:16 regard 96:14 regarding 72:10 95:7 regards 99:23 regular 80:15 regulated 92:17 related 102:19 remain 88:16 remains 78:21 remarks 77:24 REMOTE 68:10 69:1 70:1 71:1</p>	<p>REMOTELY 72:1 render 77:3,11 Renewable 74:5,7 93:24 94:1,7 repeat 96:7 REPORTED 68:24 72:1 Reporter 107:7 representative 99:2 101:19 103:17 representatives 72:21 representing 73:23 74:2 request 85:5 requesting 75:19 require 83:3 104:22 resolution 82:14 resolve 78:19 80:24 82:3 resolved 78:21 79:19 81:23 resource 90:24,25 93:8 resources 73:24 74:2 101:12 respect 90:14,17 91:4,23 respectful 101:12 respond 82:10 86:10 96:20 97:22 responding 72:13 82:9 response 84:1,7,19 84:24 85:8,21 89:5,8,9 93:19 96:25 97:10,12 responses 72:18 83:25 91:24 responsive 76:24 83:24 86:3,13 101:13 rest 102:11 result 85:2 review 104:7</p>	<p>reviewing 84:14 revisit 77:19 right 78:17,20,25 80:22,25 82:16 93:6 101:9 rights 88:9 89:22 94:13 RNW 70:11 rock 99:18,22 round 86:9 91:10 rounds 89:3,4,10 RPR 68:24 107:17</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 69:3 sale 68:6 72:9 sales 86:20 Salmon 71:4 Sanger 70:12,12 74:5,6,6,10 93:23 93:25 102:10 saying 92:7 says 87:23 schedule 72:17 75:10,20 77:19 82:12,25 83:6,11 83:12 84:4,14 85:4,18 86:13,16 92:21 93:17 94:22 95:1,12,12 97:21 99:25 104:20 105:5,8 scheduled 103:21 scheduling 82:11 95:2,3 103:10 104:7 school 93:7 scope 102:21 SE 70:13 seal 107:13 Seattle 69:16 second 77:18 90:15 see 77:8,20 89:16 97:8 105:1 sense 86:2,12 87:20 93:19 103:10</p>	<p>104:12 sentence 102:2 September 84:17 84:22 serial 86:17 serve 77:18 set 75:16 81:14,17 84:8 89:24 94:23 105:5,21 107:12 setting 81:11 105:7 105:17 share 78:4 86:24 87:1 93:13 shares 76:14 92:11 sharing 92:15 shift 85:7 short 72:20 98:25 102:2 shortened 85:5 89:5,10 shortening 93:18 shut 103:8 shutdown 104:11 side 82:22 Sierra 70:3,4 73:20 73:23 91:18 92:8 92:10 similar 91:4 Similarly 94:16 simply 76:24 79:6 79:13 90:2,19 situation 81:6 87:20 96:11 skill 107:10 slide 97:10 slight 81:10 Smith 103:13,13,16 solution 85:14 88:25 solutions 86:15 somebody 105:20 somewhat 100:10 soon 80:6 94:21 sorry 74:6 83:17 91:19 99:12</p>	<p>sort 79:11,17,22 80:17,23 81:2 84:16 85:1 88:17 99:1 100:20,23 102:19 103:25 Sound 68:5,6,7 72:9,21 sounds 81:11 92:19 South 70:9 SPEAKER 83:15 83:20 102:18 104:3 speaking 78:23 specific 77:15,25 78:2 89:24 100:19 specificity 86:4 specifics 91:7 speculative 105:19 speed 93:21 spent 99:16 Spokane 70:18 ss 107:3 staff 69:7 73:3,5 75:15,23 76:14,15 76:22 77:2,5,24 86:1 95:13 98:6,8 98:11 100:6,14 Staff's 85:21 86:2 86:10 87:5,8 standards 77:13 standpoint 90:21 90:24,25 91:22 start 72:21 84:10 85:20 104:9 State 69:15 104:12 107:3,7 stated 76:3 81:22 91:4 statements 96:7 status 68:10 72:10 72:15 75:16 77:7 78:15 82:19 92:3 98:22 102:6 103:21 105:24 107:8</p>
--	--	--	---	---

<p>stay 98:23 102:12 102:16 103:16 Steele 69:3 72:23 72:24 78:6,13,14 80:14 81:19 82:22 82:23 84:11,12 85:10,23 96:12,14 96:17,23 99:10 100:1,4,5,16,17 stop 90:4 Street 69:4 70:5,22 71:4 strip 72:9 79:24 92:17 94:14 strong 94:23 structured 86:9 subject 86:21 submitted 94:3 substantive 79:22 91:13 97:5 suddenly 102:25 suggest 104:11 suggestion 85:23 suggestions 88:23 suitable 104:14 Suite 69:4,16,20 70:5,22 71:8 suits 85:14,18 summarize 75:18 supplement 72:11 supplemental 72:16,18 76:2,5,9 76:12 77:9,10 78:8 79:2,3 80:5 81:8,12,17 82:10 83:25 84:2 85:1 85:22 86:4,7,11 86:13 89:1,7 91:5 94:10,24 105:8,18 support 92:21 94:2 supporting 79:4 suppositions 91:11 sure 91:7,22 92:18 96:23 101:5 104:23</p>	<p>SW 69:20 71:4,8 sworn 107:9 System 68:8</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 107:1,1 take 72:20 82:21 88:2,16 94:8 taken 78:8,9 takes 95:18 Talen 75:22 78:15 78:17 80:8 81:21 82:16 86:21 92:17 94:12 Talen's 76:2 78:25 talk 75:19 86:1 88:20 99:8 100:9 talked 99:17,24 100:18 talking 92:5 tcp@dvclaw.com 71:9 tell 99:7 ten 103:22 tentative 105:7 terms 83:2 88:22 testifying 95:7 testimony 72:13 76:9,18,24 77:3,6 79:3 83:24 84:1,7 84:20,21,24 85:8 86:3,4,5,7,8,9,13 86:18 87:22,23 88:11 89:7,8,12 90:22 91:1,5,10 92:14 93:15 94:25 95:6 96:5,25 97:11,12 101:11 101:13 105:8 Thackston 70:16 74:19 thank 72:23 73:2 73:14,17 74:9,12 74:15,20,22,24 75:1,3 78:1,14 80:7 83:21 85:9</p>	<p>85:25 87:12,14 90:5,6,9 91:17 93:10,22,25 95:8 95:15,17,20,25 96:2,9 98:2,13 102:5 103:13 104:17,22 106:1,4 106:5,6,11 Thanks 93:12 thing 88:17 things 85:7 87:17 88:10 97:3 99:15 think 79:16 80:9,17 82:5 83:9,18 84:4 84:18 86:2,12,14 86:17 87:6 88:9 88:23 89:10,14,25 90:13,17 91:3 92:24 93:1,18 95:4 96:4,10,21 97:9,11 99:17,21 99:22 100:7,7,13 100:14 103:24 thinking 92:7 96:11 thorough 93:20 thought 81:8 105:7 thoughts 84:7 93:13 96:20 105:4 three 86:25 103:8 three-plus 102:23 tight 97:17 time 72:7 76:6,22 82:12,17 84:16,24 84:25 85:5,6,8 89:5,8,14,25 92:14 93:4 94:6 96:5,13 98:25 99:16 102:24 103:6,7 106:5 time-out 103:15,25 103:25 times 93:19 102:22 timing 72:16 80:18 89:17 91:23 99:18 Tingey 71:3 75:1,2</p>	<p>95:22,22 today 72:6 73:1 106:5 tomorrow 101:19 102:1 topic 75:24 76:10 track 93:21 transaction 75:23 76:5,8,13 77:1 78:18 79:12,21 82:18,20 83:8 87:2,19 88:7,15 90:4,16 91:16 92:13,25 93:2 96:6 97:1,5 transactions 80:3 transcript 107:8 transmission 68:8 86:21 88:10 92:19 94:17 Transportation 68:2 69:10 72:6 tried 88:2 99:24 true 91:15,15,16 107:9 trust 88:17 try 86:15 87:10,10 92:6 trying 97:17 Tudor 70:8 74:1,1 93:12 104:6,8 turn 90:25 92:8 102:15 103:19 turnaround 85:6 turning 91:24 turns 91:1 two 79:23,25 80:23 81:16,24 89:4,10 89:14 90:19 Tyler 71:7 75:5</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>UE-200115 68:4 72:8 unable 95:1 105:22 uncertain 76:16</p>	<p>uncertainties 76:17 76:20,22 77:5 understand 78:6,7 78:23 79:8,10 80:1,18 82:6 92:6 94:5 97:3,19 103:11 understanding 77:17 understands 79:16 83:9 96:24 97:7 98:1 unforeseen 77:20 UNIDENTIFIED 83:15,20 102:18 104:3 Unit 68:7 69:15 79:24 units 92:16 unsure 98:10 unwilling 76:10 upcoming 101:11 updated 92:14,22 105:6 use 106:10 usual 93:6,21 UTC 92:24 93:3 Utilities 68:2 69:10 72:6 utility 75:25</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid 76:8 Van 69:20 71:8 73:13 verify 88:17,18 VIDEO 68:10 viewpoint 99:15 virtual 92:3 voice 81:10 99:7 103:1 voiced 76:1 VOLUME 68:12 vote 86:24 87:1 92:15 voting 88:9 89:22</p>
---	--	--	---	---

94:12,13	WHEREOF	17th 72:14 84:8,20	800 69:16
<hr/>	107:12	1WTC1301 71:4	825 70:22
W	White 70:8 74:1	<hr/>	<hr/>
W 69:14	93:12 104:6,8	2	9
waiting 79:6 81:3	willing 77:24 86:14	2:00 72:8	94612 70:5
89:18	87:9 91:20,21	2:04 68:16 72:2	97201 69:21 71:9
want 72:15 78:4,7	94:21 97:25 98:21	2:59 106:15	97204 71:5
78:11 81:10 84:5	100:9,13,19 101:6	2000 69:16 70:22	97215 70:13
86:20 87:17,24	wind 94:19	2020 68:15 72:2,7	97232 70:23
88:20 92:23 97:8	window 102:24	72:14 82:15 83:4	98004-5579 69:5
98:6 101:11	103:6,7	83:7,13,14 84:17	98104 69:16
103:20	WITNESS 107:12	97:24 107:9,13	98501 70:9
wanted 84:13 93:8	wondering 80:11	2101 70:5	98504 69:11
96:19 98:11 105:1	work 79:17 93:16	2121 68:24 107:17	99220 70:18
105:1,10	94:21 95:12,24	24 101:16	
wanting 99:3	97:20,25 98:8,12	2417 70:9	
wants 98:6	working 78:16 79:8	25th 84:17	
warranted 84:5	80:9,22 93:5	28th 72:11 78:9	
Washington 68:1	workload 95:5	<hr/>	
69:5,11,15,16	works 95:12	3	
70:9,18 72:1	world 88:21	3 94:14	
107:3,7	worth 81:13	3:00 103:23	
Washington's 90:3	wouldn't 88:6	3:30 103:9,22 104:1	
way 69:20 70:9	<hr/>	30 104:8	
71:8 77:8 83:12	X	31st 83:7	
86:9 97:22	<hr/>	32 98:8	
we'll 81:20 86:8	Y	<hr/>	
95:23 98:14	Yarnall 70:4 73:22	4	
we're 72:8,10 79:18	73:22 92:9,10	4 68:7 79:24 94:15	
80:2,4,5 81:2,21	Yeah 96:23 99:14	40128 69:10	
82:7 86:14 88:3,9	100:3	45 89:6	
88:22 92:17 94:20	year 87:11 97:18	450 69:20 71:8	
94:20 96:8 98:18	<hr/>	4th 69:4	
100:7,8 101:9,10	Z	<hr/>	
103:5	<hr/>	5	
we've 88:14 99:16	0	58th 70:13	
99:16,24	<hr/>	5th 69:16	
Webster 70:5	1	<hr/>	
week 75:22 79:1	10-day 89:9	6	
81:24 98:8	1041 70:13	6 68:15 72:2,7	
weeks 81:16 84:20	10885 69:4	107:9	
84:22 89:14	121 71:4	68-107 68:13	
weigh 98:4	1300 70:5	<hr/>	
Wendy 74:11,13	1411 70:18	7	
Western 73:11	15th 107:13	700 69:4	
whatnot 89:22	1750 69:20 71:8	<hr/>	
		8	