

**Docket No. UE-200115 - Vol. III**

**In the Matter of the Application of Puget Sound Energy**

**September 8, 2020**



**206.287.9066 | 800.846.6989**

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

[www.buellrealtime.com](http://www.buellrealtime.com)

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)





1 REMOTE APPEARANCES

2 FOR PSE:

3 JASON KUZMA  
4 DAVID S. STEELE  
5 PERKINS COIE LLP  
6 10885 NE 4th Street, Suite 700  
7 Bellevue, Washington 98004-5579  
8 jkuzma@perkinscoie.com  
9 dsteele@perkinscoie.com

7 FOR COMMISSION STAFF:

8 JOSEPH M. DALLAS  
9 ASSISTANT ATTORNEY GENERAL  
10 OFFICE OF THE ATTORNEY GENERAL  
11 UTILITIES AND TRANSPORTATION DIVISION  
12 P.O. Box 40128  
13 Olympia, Washington 98504  
14 Joe.M.Dallas@gmail.com.

12 FOR PUBLIC COUNSEL:

13 LISA W. GAFKEN  
14 ASSISTANT ATTORNEY GENERAL  
15 WASHINGTON STATE ATTORNEY GENERAL'S OFFICE  
16 PUBLIC COUNSEL UNIT  
17 800 5th Avenue, Suite 2000  
18 Seattle, Washington 98104  
19 lisa.gafken@atg.wa.gov

18 FOR AWEC:

19 BRENT L. COLEMAN  
20 DAVISON VAN CLEVE, PC  
21 1750 SW Harbor Way, Suite 450  
22 Portland, Oregon 97201

1 REMOTE APPEARANCES  
2 (Continued)

3 FOR SIERRA CLUB:

4 JESSICA YARNALL LOARIE  
5 SIERRA CLUB ENVIRONMENTAL LAW PROGRAM  
6 2101 Webster Street, Suite 1300  
7 Oakland, California 94612  
8 jessica.yarnall@sierraclub.org

9 FOR NRDC:

10 KATHERINE WHITE TUDOR  
11 CHUCK McGRAW  
12 WHITE TUDOR LLC  
13 2417 Capitol Way South  
14 Olympia, Washington 98501  
15 kate@whitetudor.com

16 FOR NVEC AND RNW:

17 IRION SANGER  
18 SANGER LAW P.C.  
19 1041 SE 58th Place  
20 Portland, Oregon 97215  
21 irion@sanger-law.com

22 FOR AVISTA:

23 MICHAEL G. ANDREA  
24 AVISTA CORPORATION  
25 1411 E. Mission Avenue, MSC-27  
Spokane, Washington 99220  
michael.andrea@avistacorp.com

FOR PGE:

DOUGLAS C. TINGEY  
PORTLAND GENERAL ELECTRIC COMPANY  
121 SW Salmon Street, 1WTC1301  
Portland, Oregon 97204  
doug.tingey@pgn.com

1 REMOTE APPEARANCES  
2 (Continued)

3 FOR MICROSOFT:

4 TYLER C. PEPPLER  
5 CORINNE MILINOVICH  
6 DAVISON VAN CLEVE, P.C.  
7 1750 SW Harbor Way, Suite 450  
8 Portland, Oregon 97201  
9 tcp@dvclaw.com

10 FOR NORTHERN CHEYENNE TRIBE:

11 BRIAN CHESTNUT  
12 ZIONTZ CHESTNUT  
13 2101 4th Avenue, Suite 1230  
14 Seattle, Washington 98121  
15 206.448.1230

16 ALSO PRESENT:

17 Jeff Jordan  
18 Wendy Gerlitz  
19  
20  
21  
22  
23  
24  
25

1 LACEY, WASHINGTON

2 SEPTEMBER 8, 2020

3 11:39 a.m.

4 -o0o-

5 JUDGE O'CONNELL: Let's go ahead and proceed  
6 and let's be on the record.

7 Mr. Smith, if you can start the recording.

8 Good morning. Time is approximately 11:40  
9 a.m. My name is Andrew O'Connell. I'm an  
10 Administrative Law Judge with Washington Utilities and  
11 Transportation Commission, and I'm presiding in this  
12 matter along with the Commissioners.

13 We're here today for a second prehearing  
14 conference in Docket UE-200115. We held a prehearing  
15 conference in this matter on March 13, 2020, but the  
16 Commission determined that a second was necessary to  
17 determine a new procedural schedule. We will also  
18 address two late-filed petitions to intervene. Let's  
19 move forward and take short appearances from the  
20 parties. I will call on each party or petitioner  
21 separately.

22 Let's begin with PSE.

23 MR. KUZMA: Good morning, Your Honor. This  
24 is Jason Kuzma for Perkins Coie on behalf of Puget Sound  
25 Energy. With me on the call is David Steele.

1 JUDGE O'CONNELL: Thank you.

2 And for Staff?

3 MR. DALLAS: Yes, Your Honor. This is Joe  
4 Dallas, Assistant Attorney General on behalf of  
5 Commission Staff.

6 JUDGE O'CONNELL: Thank you.

7 And for public counsel?

8 MS. GAFKEN: This is Lisa Gafken, Assistant  
9 Attorney General appearing on behalf of Public Counsel.

10 Your Honor, I also -- just a note about a  
11 video, I am not seeing an option for me to join by  
12 video. I've logged on to Teams online, but I'm also on  
13 the phone.

14 JUDGE O'CONNELL: Okay. Thank you.

15 I'm unsure why that is the case, but we  
16 will --

17 MS. GAFKEN: It may be because I'm joining  
18 through my browser instead of through the app; that's  
19 the only explanation that I can come up with.

20 JUDGE O'CONNELL: Okay. I don't have any  
21 technical advice that I can give to help with that. So  
22 please just stay on the phone and stay with us.

23 MS. GAFKEN: Will do.

24 JUDGE O'CONNELL: For the Alliance of  
25 Western Energy Consumers.

1 Mr. Coleman, are you there?

2 MR. COLEMAN: I am, but muted. I apologize.  
3 Your Honor, Brent Coleman from the law firm of Davison  
4 Van Cleve on behalf of the Alliance of Western Energy  
5 Consumers.

6 JUDGE O'CONNELL: Thank you.  
7 And for Microsoft?

8 MR. PEPPLER: Good morning. Tyler Pepple  
9 here on behalf of Microsoft Corporation, and with me is  
10 Corinne Milinovich.

11 JUDGE O'CONNELL: Thank you.  
12 For Sierra Club?

13 MS. YARNALL LOARIE: Good morning, Your  
14 Honor. This is Jessica Yarnall Loarie representing  
15 Sierra Club. My colleague Doug Hall is also on the  
16 line.

17 JUDGE O'CONNELL: Thank you.  
18 For Northwest Energy Coalition and Renewable  
19 Northwest?

20 MR. SANGER: Irion Sanger, legal counsel for  
21 Northwest Energy Coalition and Renewable Northwest.  
22 Necessary, we also have Wendy Gerlitz from Renewable  
23 Northwest on the line.

24 JUDGE O'CONNELL: Okay. Thank you.

25 For Natural Resources Defense Council?



1 MS. WHITE TUDOR: This is Kate White Tudor  
2 representing the Natural Resources Defense Council. And  
3 I have my colleague, Chuck McGraw, on the line.

4 JUDGE O'CONNELL: Thank you.

5 For Avista?

6 MR. ANDREA: This is Michael Andrea,  
7 in-house counsel for Avista.

8 JUDGE O'CONNELL: Okay. I have excused  
9 PacifiCorp from the prehearing conference after they  
10 contacted me and explained a conflict that they had with  
11 this week.

12 For Portland General Electric, then.

13 MR. TINGEY: Doug Tingey for Portland  
14 General Electric.

15 JUDGE O'CONNELL: Thank you, Mr. Tingey.

16 For the Northern Cheyenne Tribe?

17 MR. CHESTNUT: Brian Chestnut, Ziontz  
18 Chestnut Law Firm on behalf of Northern Cheyenne Tribe.

19 JUDGE O'CONNELL: Thank you.

20 And Jeff Jordan? Mr. Jordan, if you are on  
21 the line -- if you are on the phone line and we can't  
22 hear you, you have to unmute yourself by pressing star  
23 six. Okay.

24 It is about -- it's almost 11:45 in the  
25 morning on September 8th, 2020. Mr. Jordan has -- we

1 waited before starting the hearing to see if Mr. Jordan  
2 would connect for this prehearing conference.

3 We are now on the record and taking short  
4 appearances from the parties and the petitioners  
5 intervening. I have not heard from Jeff Jordan. We're  
6 going to proceed with the prehearing conference, and if  
7 Mr. Jordan is unable to attend, then we will make a  
8 decision regarding his petition to intervene.

9 So as I mentioned before, we have two  
10 primary issues to address at this prehearing conference.  
11 First, I'd like to address the late-filed petitions to  
12 intervene and then we will discuss a new procedural  
13 schedule.

14 The two late-filed petitions to intervene in  
15 this proceeding are from the Northern Cheyenne Tribe and  
16 Jeff Jordan. I've read PSE's written responses opposing  
17 both late-filed petitioners to intervene and public  
18 counsel's written response stating it had no objection  
19 to the intervention of the Northern Cheyenne Tribe.  
20 I've also reviewed the reply from the Northern Cheyenne  
21 Tribe that was filed this morning. I have not received  
22 any other objections to the petitions to intervene.

23 So let me ask first, before we proceed, does  
24 any other party want to voice an objection to either of  
25 the late-filed petitions to intervene?

1 MR. SANGER: Your Honor, this is Irion  
2 Sanger. We did have a comment we wanted to make that  
3 wasn't in support or in opposition to Mr. Jordan's  
4 intervention request.

5 JUDGE O'CONNELL: Okay. We're -- I'm going  
6 to have a chance to hear all the comments from -- I'm  
7 going to open up for comments from the parties when we  
8 address each petition to intervene. But I was just  
9 curious to know at the outset if there would be an  
10 objection. And it appears like -- it sounds to me like  
11 you have a comment, but not necessarily an objection; is  
12 that correct?

13 MR. SANGER: That is correct. If  
14 Mr. Jordan's intervention is going to be denied, we  
15 wanted to make some statements to ensure that it's  
16 denied in a way or granted in a way that doesn't harm  
17 Renewable Northwest or Northwest Energy Coalition. I  
18 misspoke earlier. Wendy Gerlitz is on the phone, and  
19 she's with the Northwest Energy Coalition, not Renewable  
20 Northwest.

21 JUDGE O'CONNELL: Okay. Thank you for that  
22 clarification.

23 Okay. I'm going to turn first to the  
24 petition of the Northern Cheyenne Tribe and then to the  
25 petition filed by Jeff Jordan. The Commission evaluates

1 your petitions to intervene on the standard of whether  
2 you have a substantial interest in the proceeding or  
3 whether your participation would be in the public  
4 interest.

5           Additionally for late-filed petitions, the  
6 Commission also considers whether there is good cause  
7 for the delay in your filing of a petition to intervene.  
8 I'm currently unconvinced and undecided as to whether  
9 you should be granted intervention. I want to hear  
10 first from the Northern Cheyenne Tribe, and as a  
11 heads-up to Sierra Club, I'm going to ask Sierra Club a  
12 related question about the transition planning issue it  
13 identified in its original petition to intervene back in  
14 March.

15           Okay. Mr. Chestnut, I have read the  
16 petition and the reply that you filed this morning with  
17 the Commission. While your reply addressed some of my  
18 questions, I still want to give you an opportunity to  
19 speak to my questions. Will you please identify what  
20 issues the Northern Cheyenne Tribe would address if  
21 granted intervention, and also explain how the Tribe's  
22 participation as a party will benefit the Commission's  
23 decision in this matter.

24           MR. CHESTNUT: The Northern Cheyenne Tribe  
25 is the only Tribe involved in this proceeding. And it

1 has a very substantial interest in the proposed sale.  
2 It's the closest -- in some ways, it has more of an  
3 interest than any party in this case, or any intervener,  
4 certainly, that's involved in a more personal way. And  
5 it provides a unique perspective as a tribe when  
6 considering the public interest at stake here.

7           You know, there's a variety of issues that  
8 will relate to the Tribe's interest and the public  
9 interest. The decommissioning and cleanup costs affect  
10 Washington rate payers, and the Northern Cheyenne Tribe  
11 as a neighbor there has a lot to say about that. They  
12 might be the most affected party by the decommissioning  
13 and clean up issues that may arise here. And those  
14 kinds of issues should be addressed early for the  
15 benefit of Washington consumer and residents so that  
16 they don't have to deal with those issues down the road.

17           The -- the Tribe has an interest in  
18 providing renewable energy to meet the Washington State  
19 goals of being clean. And it has a unique perspective  
20 as a potential provider of that energy and is very  
21 interested in the transmission lines which currently  
22 exist between Montana and Washington State, and the  
23 issues that relate to that.

24           Another example of an interest is that the  
25 Tribe, like the organizational intervenors who have been

1 granted intervention, have affected members in this  
2 state, Washington State, and are interested in  
3 protecting their interests as issues about rates and --  
4 and related issues will come up.

5           And then the last issue I'll mention is the  
6 social justice component of this, which I think is in  
7 the public interest of Washington State. Although we're  
8 not acknowledging that public interest is limited to  
9 Washington State. I think there's no qualifier on that  
10 term in the statutes or regulations. But at any rate,  
11 there is a justice component of the energy consumed in  
12 Washington, you know, whether that production takes  
13 place in Montana or Washington. In this case, the  
14 energy produced in Montana has a big impact on the  
15 Northern Cheyenne Tribe through the jobs it provides to  
16 the very needy people on the reservation.

17           So those are just some of the interests that  
18 the Tribe has. The Tribe would probably -- the Tribe's  
19 plan, as it did in the Montana Public Service Commission  
20 case, provided testimony from a Tribal leader. We  
21 didn't do any discovery, I do not believe, and we  
22 wouldn't in this case. But we would provide you the  
23 perspective of a Tribal leader who can touch on these  
24 topics and give you that perspective so that you are  
25 fully informed of the interests that both relate to the

1 Tribe and the Washington state public interest.

2 Does that answer your question, Your Honor?

3 JUDGE O'CONNELL: Yes, it does. And I  
4 noticed in the petition that you -- you mentioned that  
5 the Tribe states it would essentially waive discovery  
6 because it only wanted to advocate its interests. Is  
7 that -- I think I heard that you said that was true, and  
8 so I just want to make sure that is right.

9 MR. CHESTNUT: That is correct.

10 JUDGE O'CONNELL: Okay. The petition also  
11 states that the Tribe feels unable to address its  
12 concerns through the proceeding in Montana. Why do you  
13 believe this proceeding in Washington would be an  
14 appropriate place to address those concerns?

15 MR. CHESTNUT: Well, I think that both are  
16 appropriate places. We don't know -- we -- we presented  
17 our concerns to the Montana process, and -- in an  
18 earlier proceeding. There is a current proceeding in  
19 Montana related to this acquisition that we're not clear  
20 on whether we're going to be able to present. But we  
21 think we should be entitled to present to both because  
22 we have a stake in both the decision here and the  
23 decision in Montana, and there's no legal reason we  
24 shouldn't be able to do that. I think that's part of  
25 the question you asked. I'm answering part of your

1 question. I'm trying to remember the other element of  
2 it.

3 JUDGE O'CONNELL: Well, just whether you  
4 think that this proceeding in Washington is an  
5 appropriate place to address your concerns.

6 MR. CHESTNUT: We -- we think it's just as  
7 appropriate as the Montana proceeding. The issues are  
8 very similar, and we believe that we have a right to  
9 present our perspective. And we think it's also  
10 beneficial for the Commission to hear from the Tribal  
11 perspective as part of its decision making.

12 JUDGE O'CONNELL: Okay. The last question I  
13 have for you is based on the timing of your petition.  
14 It's been nearly six months since our first prehearing  
15 conference in this matter, and the Commission has been  
16 very understanding with delays and other difficulties  
17 caused by the COVID 19 pandemic. But six months seems  
18 like a very long time even under these difficult  
19 circumstances. What is the best reason to grant your  
20 intervention despite such a long delay?

21 MR. CHESTNUT: Well, I think we've stated  
22 the logistical concerns -- or logistical challenges that  
23 we had, and we think that establishes good cause. And,  
24 you know, the good cause standard doesn't mean that it  
25 has to be impossible. It was just very, very



1 practically -- in practical terms, very difficult for us  
2 to be timely here. But the best reason, perhaps, for  
3 granting the Tribe's request in light of the delay, is  
4 that no party will be prejudiced. That we will -- our  
5 involvement will be minimal compared to some of the  
6 other parties and the schedule's just being developed  
7 right now.

8 JUDGE O'CONNELL: Okay. Thank you.

9 MR. CHESTNUT: Thank you.

10 JUDGE O'CONNELL: From the Sierra Club,  
11 Ms. Yarnall Loarie. I noticed in your original petition  
12 to intervene you stated your intention to explore  
13 impacts on Colstrip transition planning. Did this  
14 include community transition planning, or did Sierra  
15 Club only mean the transition of the power plant and  
16 it's associated transmission assets?

17 MS. YARNALL LOARIE: You know, I had to go  
18 back and look at our original petition just as you  
19 flagged it. I mean, I think it could encompass any of  
20 those concerns. I don't know. I mean, that would be a  
21 potential outcome if there were to be a settlement in  
22 this case that I think we get deeper into those issues.

23 JUDGE O'CONNELL: Yes. I noticed that you  
24 didn't limit yourself in the issues you would address.  
25 I was just curious about that one that you had

1 mentioned, what it was that you encompassed. So thank  
2 you for clearing that up.

3 Okay. Now, I want to hear from PSE.

4 Mr. Steele, I believe you are the one I  
5 should address for the petition to intervene. I've read  
6 PSE's written objection to the Northern Cheyenne Tribe's  
7 intervention, so you don't need to repeat yourself. But  
8 is there anything additional you would like to say or  
9 anything you've heard today from Mr. Chestnut that you'd  
10 like to respond to?

11 MR. STEELE: Thank you, Your Honor. Excuse  
12 me. Thank you, Your Honor.

13 You know, I think -- I think there are a few  
14 important points worth emphasizing, and one of them is  
15 the -- the Tribe mentions substantial interest. And --  
16 and I think Mr. Chestnut repeated again here. I don't  
17 think the substantial interest standard has been met  
18 here. The substantial interest standard requires a  
19 demonstration of some kind of statutory interest that  
20 the Commission has the authority to protect in this  
21 proceeding. And so far, the Tribe has not identified  
22 any rule or law or statute in Washington that would  
23 provide the Commission with statutory authority over the  
24 Tribe's interests. And so for that reason, there is no  
25 substantial interest that the Tribe has provided at this

1 point.

2           The other thing I wanted to address is -- is  
3 the Tribe seems to be pushing back on the public  
4 interest standard and whether or not it -- it -- it goes  
5 beyond the interest of Washington. And what I'll say  
6 about that is the Commission is a Washington agency,  
7 which is a branch of the Washington legislature whose  
8 power is exclusively set forth in Washington statutes.  
9 I'm not aware of any RCW that gives the UTC  
10 jurisdictional authority over out-of-state tribal  
11 interests. And so public interest necessarily would be  
12 a Washington question. The duty of the Commission is to  
13 protect primarily Washington rate payers from -- from  
14 PSE and to make sure that the rates charged by PSE are  
15 fair, just, reasonable, and sufficient.

16           And so I disagree with Mr. Chestnut that  
17 that public interest extends beyond the State of  
18 Washington, particularly with the types of issues the  
19 Tribe is raising, such as Tribal employment issues, such  
20 as community transition issues. Not only do I question  
21 whether they are within the Commission of the  
22 jurisdiction of the Commission, I question whether they  
23 are beyond the scope of this proceeding.

24           And so a lot of the issues that Mr. Chestnut  
25 raises, such as even environmental impacts,

1 decommissioning, not only are they vague and it's  
2 unclear how they relate to whether or not the proposed  
3 transactions at issue in this proceeding are consistent  
4 with the public interest, but -- but, for example, the  
5 closure of Unit 4 I don't believe is an issue at this  
6 proceeding. It is not, you know, decommissioning and  
7 environmental issues I don't believe are within scope of  
8 this proceeding. Unit 4 is still operating, and so  
9 hypothetical scenarios around the closure of Unit 4 I  
10 think there is a real question as to whether that's  
11 within the scope of this proceeding.

12           Regardless, the proposed transactions  
13 provide that PSE is retaining all existing liabilities  
14 associated with Unit 4 and that decommissioning would be  
15 performed in accordance with Montana law and Federal  
16 law. And so I think the issues the Tribe is raising  
17 really push beyond the bounds of this proceeding, which  
18 in the prehearing conference order, this Commission said  
19 was limited.

20           The proper forum for a lot of these issues  
21 is the Montana Public Service Commission. I believe for  
22 almost all, if not all, the issues raised by the Tribe  
23 in this case.

24           Our opposition addressed the Tribe's  
25 interest in selling power to Washington, and I think

1 that there are -- I think the prehearing conference  
2 order was abundantly clear that this is not a forum to  
3 advance commercial interests. This proceeding is not  
4 about broad community transition issues, and it appears  
5 that was the issue raised in the Montana proceedings.  
6 Doesn't seem like the Tribe should be able to present  
7 the same kind of information here if it's not allowed to  
8 there.

9           You know, the other point I'll make is if --  
10 if the Tribe is concerned about tribal members in  
11 Washington, the public counsel and Commission Staff have  
12 a statutory interest to protect the interests of PSE  
13 rate payers and other Washington residents. And so to  
14 the extent there is a concern, those interests are  
15 already being represented here. If the Tribe is  
16 concerned about renewable issues, you know, there are  
17 parties in this case that are already -- were already  
18 granted intervention to provide expertise on those  
19 issues. There are many developers and entities that are  
20 hoping or desire to sell renewable power in Washington,  
21 but that does not give them a basis to intervene in this  
22 case.

23           And finally on the good cause issue, the  
24 Tribe admits that one of the reasons for intervening is  
25 because of the restrictions it believes that it will be

1 placed upon it in the Montana proceedings. It seems to  
2 me, at least, highly questionable the Tribe would wait  
3 nearly six months and not until after it had been denied  
4 the ability to present community transition information  
5 for that proceeding, if -- if the Montana Public Service  
6 Commission restrictions were not the primary basis for  
7 intervening. In other words, if those proceedings are  
8 just as important in these ones, why wait almost six  
9 months to intervene?

10 My final comment is if the Tribe is allowed  
11 to participate, PSE would request that it's  
12 participation should be narrowly restricted and focused  
13 on only whether the proposed transactions are consistent  
14 with the public interest in Washington. Thank you, Your  
15 Honor.

16 JUDGE O'CONNELL: Thank you. That was quite  
17 a bit.

18 So, Mr. Chestnut, in light of the things  
19 that Mr. Steele raised, you need not repeat yourself.  
20 I'm aware of what you've written in your petition and  
21 your reply, but I am going to ask if you have something  
22 else you would like to say for my consideration and the  
23 Commissioner's consideration of your petition to  
24 intervene.

25 MR. CHESTNUT: Well, I think if we are

1 focused on what the last point was, that we be limited  
2 to the public interest, that seems redundant with this  
3 whole proceeding, so I'm not sure how that would limit  
4 our presentation.

5 But in terms of the public interest that's  
6 at stake here, we've provided about five reasons. I  
7 think that the Tribe is not represented by other parties  
8 here. Their interests are very different. They are a  
9 Tribal government which is uniquely situated next to  
10 Colstrip, and so they are not represented by the State  
11 or other interests at play here. That's for sure.

12 The -- I won't really repeat things, so all  
13 I can say is, is that we're dealing with here a proposed  
14 sale from one party to another, and that could change  
15 the dynamic of the number of the interests that we've  
16 listed, including cleanup, for example. You know, the  
17 closure date may change as a result of the sale and that  
18 could relate to the cleanup right there. So that's just  
19 one example. But I'll conclude there, Your Honor.  
20 Thank you.

21 JUDGE O'CONNELL: Okay. Thank you. So --  
22 I'm going to -- I'm going to take a breath here when I  
23 ask this next question. I'm going to invite the other  
24 parties to be heard on the late-filed petition of the  
25 Northern Cheyenne Tribe. And to prevent everyone

1 chiming in at once, I just want you to know I'm going to  
2 take a pause. So. Is there any other party that would  
3 like to be heard on the late-filed petition of the  
4 Northern Cheyenne Tribe?

5 MR. SANGER: Yes, Your Honor. This is Irion  
6 Sanger for Renewable Northwest and Northwest Energy  
7 Coalition.

8 JUDGE O'CONNELL: Go ahead, Mr. Sanger.

9 MR. SANGER: Thanks. We support the Tribe's  
10 intervention in this case. We support it on the grounds  
11 that the Tribe's representing individuals and has an  
12 overall interest which is under-represented, and we  
13 think that that representation would be beneficial for  
14 all involved. As they stated, they are going to focus  
15 on the public interest which is the focus of this  
16 proceeding, and we think that the Commission would be  
17 well-served by hearing what they have to say.

18 In addition, in response to PSE's statements  
19 about Colstrip 4, we think that Colstrip 4 is part of  
20 the overall aspect of the issues being addressed in this  
21 proceeding. It's part of the -- the impacts on Colstrip  
22 4 are part of the overall transaction. We know they are  
23 not specifically addressed, but I don't think you can  
24 consider part of the Colstrip facility without  
25 considering it all. So if you decide to deny the



1 intervention, we would urge you not to resolve any  
2 particular issues regarding whether or not Colstrip 4 is  
3 included in the case because that hasn't adequately been  
4 brought up to the Commission for the Commission to make  
5 a decision, including Colstrip 4, at this time.

6 JUDGE O'CONNELL: Okay. Public counsel  
7 filed a written response not objecting to the  
8 intervention of the Northern Cheyenne Tribe.  
9 Ms. Gafken, do you have -- do you want an opportunity to  
10 speak?

11 MS. GAFKEN: Yes, Judge O'Connell. Thank  
12 you.

13 And I'll keep it brief. I won't repeat what  
14 I said in the earlier written submission. But it occurs  
15 to me that the public interest does not necessarily stop  
16 at Washington's borders.

17 Certainly, the Commission is primarily  
18 interested in what happens in Washington and the impacts  
19 of various utility filings for Washington residents and  
20 rate payers.

21 But it also occurs to me that if there is a  
22 negative impact based on a transaction, such as this  
23 one, on a group of people outside of Washington, then  
24 the Commission should know about that. You can't look  
25 at something in a bubble.

1           And so I don't think that the Tribe has a  
2 perspective that is not represented by other parties.  
3 And they do have a perspective that simply can't be  
4 offered. I know, you know, in thinking about this case,  
5 impacts on the Tribe has been something that we've  
6 considered. You know, how -- how is the Tribe  
7 interacting with the pollution and whatnot that comes  
8 from Colstrip. So it doesn't seem to me to be beyond  
9 the pale to allow their intervention.

10           So public counsel does not object to the  
11 Tribe's petition. They stated that they are not going  
12 to expand the scope. And, you know, frankly, I don't  
13 think any of us will be prejudiced because of the  
14 procedural posture of the case.

15           The Commission has broad discretion with  
16 respect to allowing intervention. Of course, there is  
17 the two prongs' consideration of substantial interests  
18 and public interests, and I won't weigh in on either one  
19 of those. But I'll end it by saying public counsel does  
20 not object to the Northern Cheyenne Tribe's petition for  
21 intervention.

22           JUDGE O'CONNELL: Okay. Thank you.

23           Is there any other party who would like to  
24 be heard on the Northern Cheyenne Tribe's petition?

25           MS. YARNALL LOARIE: Your Honor, if Sierra

1 Club may speak?

2 Sierra Club also supports the petition of  
3 the Northern Cheyenne to intervene. I couldn't tell if  
4 your earlier question pertained to, I guess, the  
5 Northern Cheyenne's interest vis-a-vis the Club's, but I  
6 agree with public counsel and with NVEC to state that  
7 the Northern Cheyenne have a unique interest. Sierra  
8 Club certainly cannot represent those interests and nor  
9 can any other party here.

10 Another issue I think flagged was that there  
11 could be a potential for additional cleanup risk that  
12 would have a direct impact on the Tribe if there was  
13 some sort of settlement proceeding that involves some  
14 sort of timeline closure. That's another issue there  
15 would be a direct interest in. And again, as public  
16 counsel stated with the timeline currently at play,  
17 we're discussing -- it keeps -- it keeps moving, and so  
18 certainly it doesn't seem like there's a prejudice to  
19 any party. So for all these reasons and more, Sierra  
20 Club certainly supports the Northern Cheyenne's petition  
21 to intervene. Thank you.

22 JUDGE O'CONNELL: Thank you.

23 Is there any other party that would like to  
24 be heard?

25 MS. WHITE TUDOR: Yes, Your Honor. This is

1 Kate White Tudor for the Natural Resources Defense  
2 Council, and we certainly join our colleagues in not  
3 having any objection to the Tribe's participation in  
4 this proceeding. We believe they have -- their interest  
5 is one that we've considered in past proceedings around  
6 Colstrip. We've considered transition funding, and I  
7 wanted to see if my colleague, Chuck McGraw, who's  
8 followed the Montana proceeding could shed some light on  
9 the issues that they are dealing with there right now.

10 Chuck, are you on the line?

11 MR. MCGRAW: I am. Let me turn my camera on  
12 if I can do that. Can you hear me?

13 JUDGE O'CONNELL: Yes. Go ahead,  
14 Mr. McGraw.

15 MR. MCGRAW: Okay. Thank you.

16 The only thing I would say in listening to  
17 this conversation and reading the pleadings on the issue  
18 is to clarify something. And that is that the issue of  
19 transition planning, transition funding in the Montana  
20 proceeding is a live issue.

21 In other words, it is being litigated right  
22 now, the extent to which the parties can raise  
23 transition planning and funding issues. It's a little  
24 confusing because a data request -- actually a data  
25 request submitted by NRDC was objected by Northwestern

1 Energy. The data request was on Northwestern Energy's  
2 plans related to the community going forward  
3 postretirement. That data request was objected to and  
4 it was sustained. That objection was sustained by the  
5 Commission on the grounds that transition funding was  
6 not entirely clear what the grounds were, quite frankly.  
7 But that objection was sustained.

8 At any rate, Northwestern Energy has  
9 subsequently filed a motion in limine to exclude any and  
10 all testimony related to the issue of transition  
11 planning and transition funding. That motion, as I  
12 said, is being litigated, opposed by four or five  
13 parties, including the City of Colstrip.

14 As of this morning, at least, the Commission  
15 had not made a ruling on that motion, so it is live.  
16 That's the only -- my only clarification and hopefully  
17 helpful in the context of this conversation.

18 JUDGE O'CONNELL: Mr. McGraw, let me ask,  
19 how is it that Montana's Commission resolution of that  
20 issue, how does that affect our decision to decide  
21 whether the Northern Cheyenne Tribe should be allowed  
22 into this proceeding?

23 MR. MCGRAW: That is for you to say, Your  
24 Honor. I was simply reacting to statements that I heard  
25 being made in this conversation, that the issue of

1 transition planning and funding had been taken off the  
2 table in Montana; hence, since it was off the table in  
3 Montana, the Tribes shouldn't have the opportunity to  
4 raise it in Washington.

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

7 It sounds like you are trying to add clarity  
8 on a point that was discussed by both the Northern  
9 Cheyenne Tribe and PSE.

10 MR. MCGRAW: That's correct.

11 JUDGE O'CONNELL: Ms. White Tudor, is there  
12 anything else you would like to say?

13 MS. WHITE TUDOR: No. Thank you, Your  
14 Honor.

15 JUDGE O'CONNELL: Okay. Is there any other  
16 party who wants to be heard?

17 Okay. Hearing nothing. Let's -- let me  
18 turn now to Jeff Jordan's late-filed petition to  
19 intervene.

20 Mr. Jordan, are you on the line?

21 Jeff Jordan, if you are on the telephone for  
22 this prehearing conference, you must press star six to  
23 unmute yourself.

24 Okay. I'm going to move forward and the  
25 Commission will make a decision based upon Mr. Jordan's

1 petition to intervene and considering PSE's object --  
2 written objection to Mr. Jordan's intervention.

3 Is there any other party who would like to  
4 be heard on Mr. Jordan's intervention?

5 MR. SANGER: Yes, Your Honor. This is Irion  
6 Sanger for Northwest Energy Coalition and Renewable  
7 Northwest.

8 THE COURT: Yes. Go ahead, Mr. Sanger.

9 MR. SANGER: Thank you.

10 Northwest Energy Coalition and Renewable  
11 Northwest are not taking a position at all whether it  
12 should be granted or Mr. Jordan's intervention should  
13 not be granted. We just wanted to make it clear that if  
14 you deny his intervention, that you do so on a narrow  
15 grounds. Some of the items that he raised in his  
16 petition to intervene were issues that the Commission  
17 said were involved in the proceeding. The prehearing  
18 conference order, when taking about Renewable Northwest,  
19 identified that Renewable Northwest has expertise and  
20 advocates for renewable energy issues in the Pacific  
21 Northwest. And it was granted because the Commission  
22 believed its expertise in renewable energy was going to  
23 aid in its decision-making and be in the public  
24 interest. Renewable Northwest raised a number of issues  
25 related to the public interest, including whether or not

1 PSE's performance related to CITA and decarbonization  
2 would be impacted, whether the proposed sale would  
3 impact the availability of transmission capacity in the  
4 region, And whether the proposed sale could impact for  
5 Puget Sound Energy's resource portfolio. Renewable  
6 Northwest and Northwest Energy Coalition intend to  
7 address these issues. And we just wanted to remind the  
8 Commission and you that those issues are within the  
9 scope and that if you are going to issue an order on  
10 Mr. Jordan's intervention that you don't inadvertently  
11 reduce the scope of the proceeding that is already in  
12 existence. Thank you.

13 JUDGE O'CONNELL: Thank you.

14 Is there any other party who has not already  
15 submitted comments or had a chance to speak who would  
16 like to comment upon Mr. Jordan's petition?

17 Okay. Hearing nothing, I'm going to take  
18 the decision for both petitions to intervene under  
19 advisement, and I'm going to discuss further with the  
20 Commissioners whether the late-filed petitions should be  
21 granted. For now, let's continue and discuss a  
22 procedural schedule.

23 The -- so switching gears now to the  
24 procedural schedule. The Commission intends to set a  
25 hearing in this matter for November 23rd, 2020, at 9:30



1 a.m. Additionally, the Commission expects rebuttal and  
2 cross answering to be filed no later than October 22nd.

3 First, to staff, Mr. Dallas, have the  
4 parties conferred regarding any proposal for the  
5 remaining dates for procedural schedule?

6 MR. DALLAS: Yes, Your Honor. Staff has met  
7 with all the nonutility parties and PSE in separate  
8 meetings. However, there is currently not an agreement  
9 on the procedural schedule. And it is my opinion that  
10 there will likely not be an agreement on the schedule,  
11 and this is primarily due to the unknown results of the  
12 upcoming arbitration that will be occurring, I believe,  
13 September 17th.

14 THE COURT: Okay. I have reviewed the  
15 supplemental application and its testimony, and I'm  
16 familiar with the pending arbitration that's going to be  
17 resolved sometime mid-October. The Commission is not  
18 going to set a procedural schedule now, making an  
19 assumption about the outcome of that arbitration. So --

20 MR. DALLAS: Your Honor, if I could  
21 elaborate a little bit more on where the disagreement  
22 is, maybe that could help inform the Commission on why  
23 an agreement couldn't be made.

24 JUDGE O'CONNELL: Okay. Please.

25 MR. DALLAS: So as of now, we are presented

1 with one transaction and this transaction includes the  
2 unit sale, the purchase power agreement, and the sale of  
3 transmission. Staff at this time is currently reviewing  
4 the supplemental testimony filed by PSE. However, Staff  
5 cannot provide a recommendation to the Commission  
6 because we currently don't have the terms of the  
7 transmission sale. And this transmission sale is a  
8 component of the larger transaction that Staff must  
9 provide testimony on whether it's in the public  
10 interest.

11 As you're aware, the terms of this  
12 transmission sale are subject to an arbitration. We do  
13 not know when we will receive the results of the  
14 arbitration. However, we know that the results must be  
15 given within a month of the arbitration. So  
16 approximately October 17th. After receiving the results  
17 of this arbitration, Staff believes that PSE must then  
18 update its application. And then the parties would like  
19 sufficient time to analyze the -- the results to issue  
20 data requests and to write testimony on the results of  
21 the arbitration. This type of testimony, we believe,  
22 would be helpful to the Commission in rendering its  
23 decision. And the results of this arbitration from  
24 talking to the parties will likely shape what type of  
25 recommendation they will provide the Commission. And if

1 this transaction is in the public interest, given the  
2 importance of this transmission and the future it will  
3 have on its ability to bring in renewable resources.

4 Staff has met with all the nonutility  
5 parties and they all have expressed some concern about  
6 providing the Commission testimony prior to the  
7 arbitration results. However, it's not -- it's not that  
8 simple. Staff has met with PSE. And within the scope  
9 of the arbitration is whether the transmission component  
10 can be bifurcated from the larger transaction. If the  
11 arbitrator believes that the transmission component can  
12 be bifurcated, and we are able to get that -- the  
13 decision sooner rather than later, this can affect what  
14 the procedural schedule could look like. This would  
15 allow PSE to update its application and remove the  
16 transmission component from the docket, and this would  
17 affect Staff's position on what the procedural schedule  
18 could look like.

19 However, at this point, it is premature, and  
20 we are presented with a single transaction.  
21 Accordingly, a Staff as an institution cannot take the  
22 position that it would -- it would like to provide the  
23 Commission a recommendation without knowing all the --  
24 the terms of the transaction. And that's kind of  
25 where -- where the disagreement is, Your Honor. And

1 I've talked to the parties, and they have given me kind  
2 of a rough outline of what would work if we're given the  
3 results of the arbitration in October. But I'll go  
4 ahead and conclude my remarks there, and I can elaborate  
5 more if the Commission would like.

6 JUDGE O'CONNELL: Let's hold off on any more  
7 comments.

8 Let me ask -- I have a question for PSE.  
9 Mr. Kuzma or Mr. Steele, the agreement regarding the  
10 Colstrip transmission is -- what I'm hearing from Staff  
11 is that the agreement to -- or the agreement with  
12 Northwestern Energy is not included in the supplemental  
13 application; is that correct?

14 MR. KUZMA: Your Honor, to address the  
15 issues raised, I think there's a fundamental  
16 disagreement. There are two transactions at play here.  
17 One is a purchase and sale agreement for the sale of  
18 Puget's -- all of Puget's interests in Colstrip Unit 4  
19 and a separate agreement for the sale of certain  
20 interests in the Colstrip transmission system. They are  
21 separate agreements. They were filed separately in  
22 the presentation. The supplemental application towards  
23 the revisions to the purchase and sale agreement for  
24 Colstrip Unit 4 that were necessary with Northwestern  
25 and then the new purchase and sale agreement with Talen

1 Montana. There is no one transaction. There are two  
2 transactions in this proceeding. And the arbitration  
3 will affect one of them, but the outcome of that  
4 arbitration is rather immaterial to this proceeding.

5 The arbitration is about whether or not  
6 Talen Montana can participate in the Colstrip  
7 transmission purchase and sale agreement on the same  
8 terms as Northwestern. So the price to be received, all  
9 the terms and conditions of the agreement, they will be  
10 substantially identical. If -- if Talen Montana were to  
11 win the arbitration, the outcome to Puget, its customers  
12 is identical and largely immaterial at that point. If  
13 we -- if Talen were to prevail in the arbitration, Puget  
14 would file a purchase and sale agreement that looks  
15 rather identical to the one that's provided in Exhibit  
16 RJR 7 but it would include Talen, and we'd have to  
17 revise RJR 7 to reflect the reduction in the capacity of  
18 Northwestern. That's it. That's all that would occur  
19 as a result of this arbitration. And it seems that it's  
20 jeopardizing both transactions by waiting on the  
21 arbitration, because both require that they be completed  
22 by the end of this year or there is a termination right  
23 within both of those agreements if they are not  
24 completed by the end of this year.

25 So we are prepared to go forward with your

1 schedule. I have a schedule that works within the  
2 bounds that you required that has all testimony being  
3 [audio disruption] proffered by October 22nd with a  
4 hearing on November 23rd. And we support the  
5 Commission's proposal and would like to move forward  
6 with that schedule.

7 JUDGE O'CONNELL: Okay. I want to confirm  
8 what I heard. Exhibit RJR-7, that exhibit has the sales  
9 agreement for the Colstrip transmission asset; is that  
10 correct?

11 MR. KUZMA: Correct.

12 JUDGE O'CONNELL: Okay. And what you're  
13 telling me is that as it regards PSE and the interest of  
14 its rate payers, you think that regardless of whether or  
15 not Talen can assert its right to purchase part of that  
16 on the same terms, the effect of PSE is really the same.

17 And so any evaluation regarding the sale  
18 from at least PSE's point of view wouldn't change; is  
19 that correct.

20 MR. KUZMA: That's correct. Under the  
21 existing transmission purchase and sale agreement, which  
22 is RJR-7 as you mentioned, there is a sale of two  
23 tranches, 95 megawatts and 90 megawatts of transmission  
24 capacity. Right now that would all go to Northwestern  
25 for net book value.

1           If Talen were to prevail on the arbitration,  
2 we would split those numbers in half. It would be 47  
3 and a half and 45 megawatts to Northwestern and 47 and a  
4 half and 45 megawatts to Talen Montana is the most  
5 likely outcome of that proceeding. And that's the  
6 difference -- the net book value would still be the  
7 existing purchase price, and Talen Montana has to live  
8 with the terms and conditions of the existing purchase  
9 and sale agreement.

10           JUDGE O'CONNELL: So from what I'm hearing  
11 from you, the only issues that could possibly arise  
12 would be whether there's any issue with Talen being a  
13 co-purchaser; is that correct?

14           MR. KUZMA: My understanding is that there  
15 are parties to this proceeding that have fundamental  
16 issues with respect to Northwestern's transmission  
17 rates. They may have those positions but those are  
18 issues brought before the federal energy regulatory  
19 commission and they are not something for the Washington  
20 Utilities and Transportation Commission. Even after the  
21 sale, Puget will have over 550 megawatts capacity on the  
22 Colstrip transmission system, and so this reduction of  
23 185 megawatts is -- is immaterial to Puget's needs going  
24 forward under CITA or any other operating status.  
25 That's why Puget entered into the sale for them.

1           JUDGE O'CONNELL: Let me explain what the  
2 Commission is considering. The Commission is  
3 considering setting a new procedural schedule now for  
4 what we have in front of us, which is the sales  
5 agreement for Colstrip Unit 4 and the Colstrip  
6 transmission assets as described in RJR-7 and the other  
7 testimony supplied by PSE.

8           If that were to change as an outcome of the  
9 arbitration, the -- the Commission would also have to  
10 consider whether some sort of supplement would need to  
11 be filed. But I'm not convinced that that issue needs  
12 to derail the setting of a new procedural schedule at  
13 this point. I do want to hear from the rest of the  
14 parties as to their concerns if there are any different  
15 concerns as to setting a procedural schedule now.

16           So I've heard from Mr. Dallas, but I'm going  
17 to go down the list of parties.

18           Ms. Gafken, from public counsel, what  
19 position are you taking on a schedule?

20           MS. GAFKEN: Thank you, Judge O'Connell.

21           I think I agree in part and disagree in  
22 part. I agree that the outcome of the arbitration does  
23 not need to derail efforts to set a procedural schedule.  
24 I have a lot of concerns about the parameters of the  
25 procedural schedule that I understand the Commission to



1 be considering with the hearing in November, and let me  
2 elaborate a little bit on that.

3 In July, we -- we worked really hard to  
4 devise a schedule that would meet everyone's needs. And  
5 in particular -- we all understood that Puget would like  
6 to and is contractually bound to closing the  
7 proceeding -- or the transaction by the end of the year.  
8 At that point in time, assuming that things came in on a  
9 certain time schedule, we could work with that. And we  
10 came up with a schedule that ultimately wasn't adopted  
11 and I think that that was a reasonable call. But at  
12 this point, you know, the first supplemental testimony  
13 came in a month after we all anticipated and, you know,  
14 we've all put our flags out. I understand that wasn't  
15 totally in Puget's control. So I'm not assigning any  
16 sort of blame there. But you know the facts are that  
17 first supplemental testimony came in a month after we  
18 anticipated, which, quiet frankly, throws everything  
19 off. We also have the arbitration that is going through  
20 its process.

21 And we've -- public counsel really does not  
22 believe that we can separate the sale of Unit 3 and the  
23 transmission and PPA issues. Puget is now saying they  
24 are completely separate transactions, but they are  
25 symbiotic. They are offered together, they are in front

1 of the Commission together, and they impact each other.  
2 And so bifurcating those issues really does not work.  
3 And I'll re-elaborate a little bit on that as well.

4           You know, in doing our analysis, we are  
5 considering the entire package of transactions. And  
6 without knowing the details of one, it is really hard,  
7 if not impossible, to provide the Commission with a  
8 salient recommendation on whether it should approve any  
9 part of the transactions.

10           You know, it occurs to me that we really  
11 need to allow the regulatory process to work here in  
12 Washington. We know that there's a process happening in  
13 Montana. We also know that the Montana process has been  
14 delayed and they are anticipating holding a hearing in  
15 December.

16           Montana, from the beginning, has separated  
17 out the transmission issues and the generation issues  
18 for whatever reason. They are only considering  
19 generation. Both issues are in front of this Commission  
20 and appropriately so.

21           I'll also note that it's Puget's -- well,  
22 let me back up and give a little more context for this  
23 next comment.

24           Mr. Dallas raised the issue of transmission  
25 being -- the question of whether transmission could be

1 separated from the sale of the unit before the  
2 arbitrator. I would note that under RCW -- I'm sorry.  
3 Not RCW, under WAC 480-07-380(3), Puget would only be  
4 able to withdraw that portion of their petition with the  
5 Commission's permission. So it would not be an  
6 automatic update to their filing. They would have to  
7 seek leave from the Commission to do so.

8           It -- we really don't see a reason to rush  
9 the proceeding here. I have a great deal of concern  
10 about whether once the arbitration is completed and a  
11 second supplemental filing is made, and I do believe  
12 that a second supplemental filing would be needed, that  
13 we will see changes. Puget had expressed that the first  
14 supplemental filing would not include lots of changes,  
15 and that unfortunately isn't true. There are changes to  
16 the underlying economic analysis and some of those  
17 changes are not explained. And so we need to do, and  
18 are doing, discovery on that. I -- I really have little  
19 confidence that a second round of supplemental testimony  
20 will not -- will not have similar issues.

21           I also want to note that this has been  
22 extremely inefficient just from a practical standpoint.  
23 It is really inefficient to keep analyzing a moving  
24 target. We're finding that we have to redo a lot of  
25 analysis, and unfortunately, we're redoing analysis

1 based on assumptions that look like they are faulty  
2 assumptions. And so that is incredibly inefficient and  
3 so I would encourage the Commission to consider setting  
4 a procedural schedule that would allow parties to more  
5 efficiently address the filing and address the  
6 transactions that are being proposed, including the  
7 outcome of the arbitration.

8 I'll stop there. I do have some thoughts on  
9 what that schedule could look like, but I'll stop and  
10 wait for the next part of the conversation.

11 JUDGE O'CONNELL: Well, let me ask,  
12 Ms. Gafken, about the -- about that. My follow-up  
13 question is --

14 MS. GAFKEN: Sure.

15 JUDGE O'CONNELL: -- it sounds like you are  
16 asking for responsive testimony, a date for that to be  
17 set in consideration of a certain amount of time after  
18 we could expect a ruling from the arbitration; is that  
19 what you are recommending?

20 MS. GAFKEN: Right. Yeah. So -- let me  
21 just go through the outline of what I think a reasonable  
22 procedural schedule might look like. So we know the  
23 arbitration will occur on September 17th. And as  
24 Mr. Dallas pointed out, we don't know exactly when the  
25 order would come out, but we know that it has to be

1 entered within a month, so October 17th would be when  
2 that order would come out. I would ask the Commission  
3 to require a supplemental filing from PSE by  
4 October 31st, and that would allow parties to conduct  
5 discovery, review the filing, and prepare their  
6 testimony by mid-December.

7 That would then be followed by reply and  
8 cross-answering in mid-January with a hearing in  
9 mid-February. I really do feel like that's the minimum  
10 amount of time. I don't feel like I can ask for more  
11 time than that. But I do have a lot of concerns about  
12 how the proceeding is going in terms of the  
13 efficiencies.

14 But I do think that the -- the December,  
15 January, February timeline would provide parties an  
16 adequate amount of time to do the discovery that we need  
17 to do, analyze the filings and all of the transactions  
18 as they actually will be proposed. We don't have that  
19 in front of us right now. And then provide the  
20 Commission with salient positions.

21 JUDGE O'CONNELL: Okay. Let me move on to  
22 next party, Mr. Coleman for the Alliance of Western  
23 Energy Consumers, what's your position on the setting of  
24 the schedule?

25 MR. COLEMAN: Thank you, Your Honor.

1           AWEK shares many of the concerns that have  
2     been articulated by Staff and public counsel thus far,  
3     so I'll do my best to be brief and not completely  
4     restate. But I think our position is we would agree  
5     that, you know, the Venn diagram of the now players and  
6     transactions that are involved here does have a  
7     significant amount of overlap with -- with their  
8     consequences. And so the uncertainty regarding the  
9     transmission element does have push and pull with the  
10    scope and the influence of the remaining proposed  
11    transactions.

12           And we feel like it would be most  
13    appropriate to allow all of the -- all the gears to come  
14    to a settled position with respect to who's going to be  
15    acquiring what so that there is sort of a solid  
16    presentation that the Commission is actually  
17    considering. So we would share the concern and the  
18    desire to allow some of these -- the moving -- the  
19    continuing moving parts to finally settle.

20           We don't believe that it really is kind of  
21    plug and play with parties. You know, the concept that  
22    now -- there was an original one purchaser of a hundred  
23    percent, and now we just simply split the hundred  
24    percent into 50s with two different players. It's more  
25    complicated than that from our perspective and some of

1 our analyses.

2 And so we would share the concern and the  
3 desire to allow the actual transaction in the concept of  
4 what's being considered to -- by the Commission to  
5 solidify before, you know, the parties start providing  
6 answer testimony.

7 I don't have a proposal similar to what  
8 public counsel presented, but from a conceptual  
9 standpoint, we would prefer to allow the -- the other  
10 processes that are influencing what the actual  
11 transaction, what the actual request is going to be to  
12 come to a conclusion before the parties here in  
13 Washington continue to present information to the  
14 Commission.

15 JUDGE O'CONNELL: Okay. Thank you,  
16 Mr. Coleman.

17 Mr. Pepple, for Microsoft.

18 MR. PEPPLER: Thank you, Your Honor.

19 Microsoft's interest in this proceeding is a  
20 bit narrower than several of the other parties. So we  
21 would likely be comfortable with whatever schedule  
22 the -- Your Honor, decides to set. And -- but we  
23 certainly don't want to foreclose the ability of other  
24 parties to conduct a review on issues that are important  
25 to them. So we're -- we're not taking a position one

1 way or the other.

2 JUDGE O'CONNELL: Okay. Thank you.

3 And for Sierra Club. Ms. Yarnall Loarie.

4 MS. YARNALL LOARIE: Thank you, Your Honor.

5 We would concur with public counsel and  
6 Staff's concerns that the timeline set forth so far  
7 seems pretty fast and doesn't account for the results of  
8 the arbitration, which do seem like a key proponent to  
9 this transaction.

10 First, I will state we do have a conflict.  
11 Our expert will be out of the town the week of  
12 Thanksgiving. Will be on the road starting that  
13 Tuesday. So if we anticipate the hearing going for more  
14 than one day, that's one conflict that we would have.

15 But I guess speaking to the other concerns  
16 that, you know, I think that public counsel and AWEC and  
17 Staff talked about, I mean, this has been a bit of an  
18 inefficient process. We're burning through  
19 expert budgets every time we have an update in testimony  
20 and it seems like a more efficient process to have all  
21 of the pieces of the transaction in front of us and in  
22 front of the Commission to make a recommendation.

23 I will also note, and I think this is a  
24 concern that perhaps NRDC can speak to, that the Montana  
25 proceeding is set for hearing I believe the week of



1 December 14th, so they are not anticipating any decision  
2 probably until February to April of 2021 by the time  
3 everything happens. So it seems like if we're rushing  
4 to get this done before the end of the year, you know,  
5 the other regulator is not going to be done with their  
6 analysis before then. So it seems like, you know, that  
7 doesn't seem to be a valid concern anymore if there  
8 is -- you know, if everyone's delayed, it seems like  
9 something the parties will have to deal with amongst  
10 themselves to the transaction.

11 I will also make another note that we are  
12 still in the middle of a pandemic, and so, you know, the  
13 delay in Puget's filing of testimony did pose some  
14 hardships to us. I mean, it came in, to be honest, the  
15 first day that we had virtual school. A lot of us are  
16 working from home. Staff's got an abbreviated schedule  
17 in the office, so we are doing what we can with the  
18 resources that we have, but, you know, it's certainly a  
19 challenge to try to get all of this done in quick order  
20 kind of given those other COVID-related concerns.

21 So in support of what, you know, I think  
22 Staff, AWEC, and public counsel said, we would support  
23 elongating the timeline to have a hearing sometime in  
24 early 2021. Thank you.

25 JUDGE O'CONNELL: Thank you.

1                   For Northwest Energy Coalition and Renewable  
2 Northwest, Mr. Sanger.

3                   MR. SANGER: Yes. Thank you.

4                   The previous parties stated most of the  
5 things that I wanted to state. I'll try to just  
6 summarize and hit some unique items that were not  
7 mentioned. I think the starting point for the  
8 Commission's analysis here is that there is no need to  
9 issue a ruling or order by the beginning of next year.  
10 There's not going to be an order from the Montana  
11 Commission, so why should the Washington Commission rush  
12 to issue an order before the Montana Commission in a  
13 completely unnecessary manner?

14                   So we think the Commission should look at  
15 what time it needs and what time the parties need. And  
16 the schedule laid out by Ms. Gafken will allow the  
17 parties to address the issues in this case, assuming  
18 Puget Sound Energy makes a filing regarding the  
19 transmission issues.

20                   So we would urge you to look at it with that  
21 scope in mind, that there's no need to rush here. And  
22 the -- the only additional issue that I'd like to  
23 address is Puget Sound Energy's Mr. Kuzma's statement  
24 about this is just plug and play on the transmission  
25 side. We strongly disagree with that.

1           As the Commission recently discussed in the  
2 Avista proposed merger that did not occur, who owns an  
3 asset can be highly relevant. Here there's transmission  
4 capacity and it's disputed. Mr. Kuzma said it's a small  
5 amount of capacity. That's an issue that's in dispute  
6 from Renewable Northwest. Who owns that transmission  
7 capacity in terms of the BRT rate that they charge can  
8 be significantly different between, for example, Puget,  
9 Northwestern, and Talen.

10           So while those rates may be beyond the  
11 Commission's jurisdiction, the impact of those rates is  
12 not. So we think there are significant issues  
13 associated with the transmission which is inextricably  
14 linked, Puget made it linked, and we need to address  
15 them both at the same time in this particular  
16 proceeding.

17           So we would urge you to adopt the schedule  
18 as outlined by Ms. Gafken and public counsel which would  
19 allow all the parties an opportunity to be heard and the  
20 Commission sufficient time to deliberate. Thank you.

21           JUDGE O'CONNELL: Thank you.

22           Okay. For Natural Resources Defense  
23 Council, Ms. White Tudor.

24           MS. WHITE TUDOR: Yes. Thank you, Your  
25 Honor.

1 I think we're just going to say me too. I  
2 think that folks have covered the ground, but that  
3 having adequate time to make sure that the discovery  
4 proceeds and others have spoken to the fact that the  
5 Montana proceeding doesn't look likely to resolve  
6 completely by the end of the year that we're in the same  
7 position as our colleagues. Thanks.

8 JUDGE O'CONNELL: Okay. Thank you.

9 From Avista, Mr. Andrea, anything to add?

10 MR. ANDREA: Thank you, Your Honor.

11 No, we're taking no position with regard to  
12 the schedule and we'll work within whatever schedule  
13 ultimately is set. Thank you.

14 JUDGE O'CONNELL: Thank you.

15 For Portland General Electric, Mr. Tingey.

16 MR. TINGEY: Portland General is in the same  
17 position as Avista. We're not taking a position and  
18 we'll abide by the schedule set.

19 JUDGE O'CONNELL: Okay. Thank you.

20 Staff, let me return to you.

21 Mr. Dallas, public counsel made a proposal  
22 for a rough outline of the procedural schedule it would  
23 recommend. Is that also consistent with what Staff had  
24 in mind? Mr. Dallas? Mr. Dallas, are you there?

25 MS. WHITE TUDOR: I'll just say my Teams'

1 link has broken down, and I'm still on the phone. So I  
2 don't know if others might have had connection  
3 difficulties right now.

4 JUDGE O'CONNELL: Okay. Thank you.

5 Can you please identify yourself?

6 MS. WHITE TUDOR: Sorry. This is Kate White  
7 Tudor with the Natural Resources Defense Council.

8 JUDGE O'CONNELL: Okay. Thank you.

9 MR. MCGRAW: This is Chuck McGraw. I'm  
10 still on by the browser through the Windows app.

11 JUDGE O'CONNELL: Okay. Thank you.

12 I'm going to wait a moment to see if Mr.  
13 Dallas is able to reconnect. While -- let me take a  
14 pause on this issue while I'm waiting for them. I  
15 received notification that Jeff Jordan is on the call  
16 and when I ask, Mr. Jordan, are you there.

17 MR. JORDAN: Yes, I am.

18 JUDGE O'CONNELL: Okay. I was expecting you  
19 quite a bit earlier.

20 MR. JORDAN: I somehow didn't get  
21 notification of the meeting. I don't know -- I don't  
22 think it came in an e-mail. Sorry.

23 JUDGE O'CONNELL: Okay. It was noticed in  
24 the docket, and it -- it may have been an issue where we  
25 received your petition to intervene on Friday. And so

1 there may have been some difficulty having you already  
2 on the master service list in order to get the  
3 notification. But this pre-hearing conference was set a  
4 couple weeks ago.

5 So I do have some questions for you  
6 regarding your petition to intervene. I've reviewed  
7 PSE's written objection that they filed on Friday. I --  
8 I wanted to ask you, are you a customer of PSE and what  
9 is your interests in PSE's sale of its interest in  
10 Colstrip and is it tied to you being a customer?

11 MR. JORDAN: No, it is not. I was a  
12 customer of theirs until two or three months ago, and  
13 now I'm through Seattle City Light. So I have no  
14 interest, financial or otherwise, other than the public  
15 interest.

16 JUDGE O'CONNELL: Okay.

17 MR. JORDAN: As I think I said in my  
18 petition.

19 JUDGE O'CONNELL: And how will your  
20 participation or having you in the case as a party  
21 benefit the Commission in deciding on this proceeding  
22 and what issues do you plan to address?

23 MR. JORDAN: Well, I plan to address the  
24 necessity for Montana wind to fit within the demand  
25 pattern and the northwest power pool and the way that

1 that will affect all the rate payers in the state of  
2 Washington and the possibility -- the only real  
3 possibility at the moment of getting something done in  
4 the five years to get enough Montana wind into the state  
5 of Washington is to convert the Colstrip transmission  
6 system to HVDC system.

7 JUDGE O'CONNELL: Okay. And I asked the  
8 other petitioner for intervention, it's been nearly six  
9 months since we had our first prehearing conference.  
10 Why -- why were you unable to petition to intervene  
11 sooner in this matter?

12 MR. JORDAN: Well, I was totally unaware of  
13 this matter. And I'm -- I became aware of it as I  
14 realized what was happening in the other dockets --

15 UNIDENTIFIED FEMALE: Emmet.

16 MR. JORDAN: -- that deal with the  
17 procurement of extra -- more power by PSE, particularly.

18 And looking at the offers they got and  
19 running through my own head the possibility of those  
20 offers being accepted and being of very little use in  
21 the winter time. Winter months peak where the coal has  
22 been essential for base load power, and the coal is  
23 disappearing.

24 And so at that point it seemed that there  
25 was a problem here in that this would be -- that this

1 power line would be essential to fixing that problem.

2 So that's essentially why I'm here.

3 JUDGE O'CONNELL: Okay. Mr. Steele, are you  
4 still on the line from PSE?

5 MR. STEELE: I am. Thank you, Your Honor.

6 JUDGE O'CONNELL: Let me ask, I've -- like I  
7 said, I've read your written objection to Mr. Jordan's  
8 intervention. Having heard his explanation of the  
9 issues he wants to address and his interests, do you  
10 have anything in addition that you'd like to say  
11 regarding his petition?

12 MR. STEELE: No. No, Your Honor. I think  
13 our opposition speaks for itself. The only -- in  
14 docket -- the one reference I pass along is in  
15 Docket U180680. It is a helpful case from a year or two  
16 ago where an individual at that time -- at that time,  
17 the individual was actually a PSE customer who was  
18 similar to Mr. Jordan, had interest in the proceeding  
19 and alleged to have background.

20 And as the Commission said in that case,  
21 public counsel can adequately represent Mr. Jordan's  
22 interests. That was the holding in that case, and I  
23 think it applies here, similar type of situation. And  
24 so if he has any concerns, public counsel or Staff  
25 should be able to represent his concerns.



1 JUDGE O'CONNELL: Thank you.

2 I want to return now to the schedule. I've  
3 been asking Mr. Dallas a question. Mr. Dallas, have you  
4 been able to reconnect?

5 MR. DALLAS: Yes, I apologize, Your Honor.  
6 Like I said, I'm on vacation and I have a -- not the  
7 best connection, but I'm on the line now. I apologize  
8 for any interruption.

9 JUDGE O'CONNELL: No, that's fine. We had  
10 other business to take care of, and others have also had  
11 connection issues. So we'll try to be a little bit  
12 understanding here.

13 Mr. -- Mr. Dallas, tell me, did you hear the  
14 proposal by Ms. Gafken in that the rough outline of a  
15 schedule and is that along the same lines as what Staff  
16 is recommending?

17 MR. DALLAS: Yes. The Staff has looked at  
18 the schedule proposed by public counsel, and we do think  
19 that would allow sufficient time to -- for the parties  
20 to analyze the results of the arbitration. We -- we are  
21 sympathetic to PSE, and we know their motivations in  
22 trying to have a faster procedural schedule, but as the  
23 parties noted, the Montana Commission will -- will more  
24 than likely not have a decision by the end of the year.  
25 So because of that, we do believe there is more

1 flexibility to allow a longer procedural schedule.

2           And just Staff as an institution, just as a  
3 matter of principle, we don't like providing the  
4 Commission a recommendation before we have all the terms  
5 finalized. Because, you know, those terms that aren't  
6 finalized could shape our recommendation to the  
7 Commission. So we -- we are sympathetic to the company,  
8 but we do believe that the schedule proposed by public  
9 counsel would allow for sufficient time to submit high  
10 quality testimony to the Commission.

11           JUDGE O'CONNELL: Okay. Thank you.

12           We'll turn last to PSE to hear one more time  
13 from you, Mr. Kuzma. Do you have any final thoughts  
14 that you'd like me and the commissioners to consider  
15 when we are deciding what to do about the procedural  
16 schedule?

17           MR. KUZMA: Yes, Your Honor. The key  
18 question in this proceeding is a transfer of utility  
19 property. And the question is whether Puget's sale or  
20 transfer of that property is in the public interest.  
21 The Commission should have no concern over who's the  
22 ultimate purchaser of that property. The concern to the  
23 Commission should be whether Puget received adequate  
24 compensation for that asset, whether that asset remains  
25 to be needed by the utility as a utility property or

1 not.

2 Mr. Sanger brought up the issue of the  
3 Avista Hydro One proceeding. That is an entirely  
4 different situation in which it's a jurisdictional asset  
5 in the entity itself, the utility, and who is the  
6 ultimate owner of the utility. That obviously is a  
7 question for the Commission to consider in that  
8 proceeding.

9 This is one in which, when the transaction  
10 is over, the Commission will no longer have jurisdiction  
11 over those assets. They would be subject to Montana's  
12 jurisdiction under the Montana Public Service  
13 Commission's regulation of Northwestern Energy and the  
14 Federal Energy Regulatory Commission with respect to  
15 Talen and third-party sales by Northwestern. So  
16 ultimately the question here is, is it in the public  
17 interest to Puget and its customer to sell this  
18 property? The answer is an equivocal, yes, it is in the  
19 interest. Puget is receiving fair compensation for it.  
20 It is receiving net book value for the transmission  
21 assets. It is able to dispose of an asset that will no  
22 longer be used and useful after 2025.

23 JUDGE O'CONNELL: Mr. Kuzma, I have to stop  
24 you right there. It sounds quite a bit like you are  
25 arguing the merits of the case and that's not the point

1 for this prehearing conference.

2 MR. KUZMA: No. Well, the point is, is that  
3 we have two transactions that ultimately who buys the  
4 assets is an immaterial question onto this Commission.  
5 The Commission doesn't have jurisdiction over either of  
6 the parties to which it's selling, so the question  
7 should be whether Puget is meeting its needs and meeting  
8 its standards and that's what this proceeding is about.  
9 Jeopardizing the entire transaction based upon the fact  
10 that you may or may not like the purchasers is not  
11 some -- or their rates, is not something that we should  
12 do in this proceeding.

13 Ms. Gafken raised the question of whether  
14 the schedule would have been allowable in July. Yes,  
15 there was a delay. Yes, it was inefficient. We're not  
16 questioning that. We did file it a month later, and the  
17 Commission's hearing that they proposed is a month later  
18 then that would have been there. So ultimately we've  
19 moved everything back a month, which was acceptable at  
20 one time, but now for reasons unknown to Puget is  
21 unacceptable. Puget is willing to move forward with the  
22 hearing on the 23rd and have all testimony filed by the  
23 21st.

24 JUDGE O'CONNELL: Okay. Thank you,  
25 Mr. Kuzma. We're getting close to wrapping up here.

1 From what I've heard, the reasons that public counsel,  
2 Staff, and a number of the other parties want to have a  
3 longer procedural schedule is to incorporate the  
4 potential for any change that may come from the  
5 arbitration between PSE, Northwest Energy, and Talen.  
6 I'm going to discuss with the Commissioners whether that  
7 is of sufficient concern that we're going to accept a  
8 longer procedural schedule.

9           Currently, it was and is the Commission's  
10 intention to have a hearing on November 23rd, but having  
11 heard the parties' explanations, I am going to discuss  
12 with the Commissioners and I'm going to issue an order  
13 within a week from today that's going to resolve the  
14 petitions to intervene and include provisions for a new  
15 procedural schedule.

16           Okay. Before we adjourn, is there -- is  
17 there anything else we need to address today?

18           MS. GAFKEN: Your Honor, this is Lisa  
19 Gafken. I have one more thing that I wanted to raise,  
20 and it may be a nonissue depending on what the  
21 Commission decides. But it may also be an issue  
22 depending on what the Commission decides. I'd like to  
23 talk a little bit about the public comment hearing.  
24 Unfortunately, I don't have the exact date in front of  
25 me.

1           But I know that it was scheduled for early  
2   October. I want to say six or seven, but I don't  
3   remember. I would suggest that the public comment  
4   hearing be scheduled at a point where testimony has  
5   already been filed. So response testimony has been  
6   filed. It's helpful to have a public hearing -- public  
7   comment hearing after that point in the procedural  
8   schedule. I understand, of course, that sometimes that  
9   doesn't happen, but I would make that suggestion here  
10  for consideration.

11           JUDGE O'CONNELL: Okay. Thank you.

12           I will pass that along, and we'll take a  
13  look at that.

14           Is there anything else from any other party  
15  that we should discuss today?

16           MR. DALLAS: Yes, Your Honor, this is Joe  
17  Dallas from Commission Staff. From my conversations  
18  with Staff, we have done substantial discovery before  
19  the supplemental filing. And it's my understanding that  
20  in the supplemental filing there is a need cost benefit  
21  analysis with a new benefit. And Staff would like the  
22  prior data request updated to reflect the new cost  
23  benefit analysis.

24           And I'm not sure if this is something that  
25  the Commission is going to want to fit into the

1 procedural schedule, because a lot of Staff testimony is  
2 reliant on these data requests that may or may not be  
3 updated.

4 MR. KUZMA: Your Honor, this Jason Kuzma. I  
5 have two points to make.

6 JUDGE O'CONNELL: Go ahead, Mr. Kuzma.

7 MR. KUZMA: So the first is I hear  
8 Ms. Gafken's questions about the hearing, public  
9 hearing. The -- one issue we have there is that notices  
10 have already been sent to customers based upon the  
11 existing date, so I just wanted to put that out there.

12 Two, the data request, if -- I believe it's  
13 Staff Data Request No. 21 that needs to be updated,  
14 Mr. Dallas can correct me if I'm wrong on that. But  
15 that one we actually do have a supplement that we are  
16 going to be sending out today.

17 JUDGE O'CONNELL: Thank you for that.

18 I was going -- I would have expected that,  
19 and I was going to ask about it. So thank you.

20 Okay. Okay. Is there anything else from  
21 any party before we adjourn today? Okay. Hearing  
22 nothing, we will adjourn for today, and I will issue an  
23 order within a week. Thank you.

24 (Hearing concluded at 1:01 p.m.)

25 -o0o-

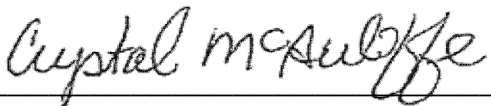
C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITSAP )

I, CRYSTAL R. McAULIFFE, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the videoconference hearing on SEPTEMBER 8, 2020, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of September, 2020.

  
CRYSTAL R. McAULIFFE, RPR, CCR #2121

