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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	Docket UE-130137
)	Docket UG-130138
v.)	(Consolidated)
)	
PUGET SOUND ENERGY, INC.)	
)	
Respondent.)	
)	

PREHEARING CONFERENCE, VOLUME V
Pages 427 - 534
ADMINISTRATIVE LAW JUDGE DENNIS MOSS

1:31 P.M.

SEPTEMBER 30, 2014

Washington Utilities and Transportation Commission
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1 OLYMPIA, WASHINGTON; SEPTEMBER 30, 2014

2 1:31 P.M.

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5 JUDGE MOSS: Let's go on the record.

6 Good afternoon, everyone. My name is DENNIS

7 J. MOSS, I am an administrative law judge with the

8 Washington Utilities and Transportation Commission.

9 We are convened this afternoon in a prehearing

10 conference In the Matter of the Petition of Puget

11 Sound Energy and NW Energy Coalition For an Order

12 Authorizing PSE to Implement Electric and Natural Gas

13 Decoupling Mechanisms and to Record Accounting Entries

14 Associated with the Mechanisms, Dockets UE-121697 and

15 UG-130137, and those proceedings are consolidated.

16 This is a matter that has been heard and is

17 being heard jointly with Washington Utilities and

18 Transportation Commission against Puget Sound Energy,

19 Dockets UE-130137 and UG-130138, and those two

20 proceedings are consolidated. We tend to refer to the

21 first proceeding as the decoupling proceeding and the

22 second as the expedited rate filing or ERF proceeding.

23 I will begin by taking appearances, with those

24 present in the room, and we will start with the

25 Company.

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1 MS. STROM CARSON: Good afternoon, Your
2 Honor and Commissioners. I am Sheree Strom Carson
3 with Perkins Coie representing Puget Sound Energy.

4 JUDGE MOSS: Thank you.

5 MR. WEBER: Good afternoon, Your Honor.
6 Josh Weber with Davison Van Cleve on behalf
7 of Industrial Customers of Northwest Utilities.

8 JUDGE MOSS: Thank you.

9 MR. FFITCH: Good afternoon, Your Honor
10 and Commissioners. Simon ffitch, Senior Assistant
11 Attorney General, with the Office of Public Counsel.

12 JUDGE MOSS: You have been around long
13 enough they stuck "senior" in front of your name, huh?
14 It happens to all of us, Mr. ffitch.

15 MR. FFITCH: Don't read anything into
16 that.

17 JUDGE MOSS: Go ahead.

18 MS. CAMERON RULKOWSKI: Good afternoon.
19 Jennifer Cameron-Rulkowski, Assistant Attorney
20 General, appearing on behalf of Staff.

21 JUDGE MOSS: Thank you.

22 And I notice that a number of people have
23 signed -- or have called in to the teleconference
24 bridge line. Are there any of those people who wish
25 to enter an appearance here today?

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1 MS. GOODIN: This is Amanda Goodin,
2 Earthjustice, on behalf of the Northwest Energy
3 Coalition.

4 JUDGE MOSS: All right.

5 MR. XENOPOULOS: Your Honor, this is
6 Damon Xenopoulos, Nucor Steel Seattle.

7 JUDGE MOSS: Mr. Xenopoulos, welcome.

8 MR. XENOPOULOS: Thank you.

9 MR. BOEHM: This is Kurt Boehm with the
10 Kroger Company.

11 JUDGE MOSS: Mr. Boehm, welcome.

12 Anyone else? Anyone present for Northwest
13 Industrial Gas Users?

14 MR. BROOKS: Your Honor, this is --

15 JUDGE MOSS: Oh.

16 MR. BROOKS: We try to keep a low
17 profile.

18 JUDGE MOSS: I'm sorry. Your profile
19 was so low --

20 MR. BROOKS: It was too low today.

21 Tommy Brooks, Cable Huston, for the Northwest
22 Industrial Gas Users.

23 JUDGE MOSS: Mr. Brooks, thank you. I'm
24 sorry I overlooked you in the room.

25 All right. I guess the only one that -- we

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1 didn't hear from the Federal Executive Agency. I
2 believe they remain a party in this proceeding, I
3 believe. I wasn't really expecting them to appear,
4 frankly.

5 Those who are present in the room have been
6 active in the more recent stages, and of course Kroger
7 Company and Nucor Steel have taken an interest in
8 those proceedings from the beginning. I am glad that
9 all of you are here to participate today.

10 We are in a somewhat unusual posture, I would
11 say, relative to the normal conduct of business, at
12 least in my experience with the Commission. I have a
13 few introductory remarks that I will make first, and
14 then we will launch into some discussion and make some
15 decisions, or at least get some sense of direction
16 with respect to where we go from here.

17 By way of background, the Commission entered
18 Order 07, it's Final Order in these proceedings, on
19 June 25th, 2013. Order 07 implemented, in the words
20 of the order, I believe, several innovative ratemaking
21 mechanisms to address the Commission's policy goal to
22 break the pattern of almost continuous rate cases by
23 PSE and others. These mechanisms included an update
24 to PSE's rates established in the Company's 2011/2012
25 general rate case following a so-called Expedited Rate

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1 Filing, or ERF, process that was intentionally very
2 limited in scope and that resulted in a relatively
3 modest 1.6 percent increase in electric rates and a
4 slight, 0.1 decrease in natural gas rates.

5 In addition, the Commission approved a joint
6 petition by PSE and the Northwest Energy Coalition
7 seeking authority to implement full decoupling of
8 electric and natural gas rates. And the Commission
9 approved a rate plan that allowed for annual increases
10 at a stated level in PSE's rates while requiring that
11 the Company -- that the Company not file a general
12 rate case before April 1st, 2015, a date which I might
13 note is rapidly approaching, at the earliest. And
14 under the rate plan, PSE must file no later than
15 April 1st, 2016, a date somewhat more distant.

16 The Commission required PSE, in addition, to
17 increase its low-income billing assistance program
18 funding by \$1 million per year during the term of the
19 rate plan. And finally, the Commission ordered that
20 PSE would be subject to certain reporting requirements
21 as discussed in the body of the Order. One session of
22 which we had not too terribly long ago here at the
23 Commission. I was fortunate to be able to attend
24 that. The idea behind these reporting requirements
25 was to keep the Commission informed in advance of an

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1 anticipated detailed review in PSE's next general rate
2 case, of whether and to what extent decoupling and the
3 rate plan have served the interest of the Company and
4 its customers, the public interest more broadly.

5 Public Counsel and ICNU filed petitions for
6 judicial review in the Superior Court in Thurston
7 County on July 24th, 2013, and just about exactly a
8 year later, on July 25th, 2014, the Court affirmed in
9 part and reversed in part the Commission's Order 07.
10 The Court expressly affirmed the Commission's decision
11 not to hold a general rate case and to adjust rates
12 instead following the ERF process and use of the
13 attrition adjustment, sometimes called the K-factor.

14 However, the Court failed to recognize that a
15 central feature of the ERF concept was that there
16 would be no adjustment to the most recently determined
17 rate of return on equity for the Company. And the
18 Court said, in effect, that while we need not hold a
19 general rate case to adjust rates, with all the
20 special requirements included in Subpart B of the
21 Commission's procedural rules, we cannot adjust rates
22 in the context of considering a multiyear rate plan
23 without undertaking a full-blown analysis of return on
24 equity with the Company bearing the burden to prove
25 that its previously approved 9.8 percent ROE remained

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1 within the zone of reasonable returns, as the
2 Commission said in Order 07.

3 The Court remanded the proceeding to the
4 Commission for, quote, further adjudication...to
5 establish fair, just, reasonable and sufficient rates
6 to be charged under the rate plan, and to order any
7 other appropriate relief.

8 In the wake of that order, we have received
9 several pleadings. We have ICNU's motion to amend
10 Order 07, we have ICNU's petition for an accounting
11 order, and we have a Public Counsel motion to initiate
12 discovery in this remand proceeding. We will take
13 those up in due course today.

14 In response to the Court's order, and ICNU's
15 motion and petition, the Commission requested that the
16 parties submit or file procedural proposals and
17 scheduled this prehearing conference to discuss what
18 issues need to be resolved in light of the Court's
19 order and to discuss and determine how we should go
20 about resolving them.

21 I am going to briefly summarize my
22 understanding of the parties' respective positions on
23 these questions, and we will have some questions and
24 discussions throughout that process, and then we will
25 open the floor up for further discussion and perhaps

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1 resolve some things.

2 My understanding of PSE's position is that the
3 Commission should receive and consider evidence
4 concerning the appropriate rate of return on equity
5 for the time period July 1, 2013, through the end of
6 the rate plan, based on information available in early
7 2013 when the Commission originally considered the
8 plan.

9 PSE argues that the Commission is not required
10 to consider, or to reconsider determination not to
11 prospectively adjust return on equity based on
12 decoupling. And PSE argues further, this can be
13 accomplished in PSE's next GRC, based on the results
14 achieved in the rate plan as contemplated by Order 07.
15 And we will take that question up in just a bit.

16 PSE proposes a more or less standard process
17 approach, with direct testimony from the Company,
18 response, rebuttal testimony, a hearing, briefing
19 limited to determination of the ROE, and argues
20 that -- PSE argues the issue of refunds is not right
21 because the outcome may be to leave the ROE at 9.8, to
22 lower it or to raise it. And so this suggests to me a
23 phased proceeding, or a proposal for a phased
24 proceeding. If the Commission changes the ROE from
25 9.8, there would be some need for further process.

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1 So I have one preliminary question for PSE,
2 and that is, what does PSE contemplate in terms of
3 evidence for periods beyond the rate year? I am
4 referring back to the language in your recommendation,
5 that we should determine the return on equity for the
6 period July 1, 2013, through the end of the rate plan
7 period, which would be, at the earliest, sometime next
8 year.

9 MS. STROM CARSON: Your Honor, we
10 believe that the evidence should be information that
11 was available in early 2013. The ROE that is set --
12 or, you know, from PSE's perspective, we believe the
13 evidence will support the 9.8 ROE, but that would be
14 an ROE that is in effect throughout the length of the
15 rate plan. So I guess we are not talking about
16 additional evidence that would be out there in the
17 future, over the course of the rate plan, but ROE that
18 would be set for the course of the rate plan.

19 JUDGE MOSS: All right.

20 COMMISSIONER GOLTZ: Judge Moss, can I
21 ask a follow-up on that?

22 JUDGE MOSS: Sure, please do.

23 COMMISSIONER GOLTZ: So if there's --
24 you are saying that we pretend that we are back in
25 early 2013, and the cost of capital witnesses would

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1 put on evidence based on information that was
2 available to them at that time period. And if -- and
3 some of that information may be forecasts available to
4 them at that time, and if it turns out that a year
5 later, or a year and a half later almost, those
6 forecasts were wrong, we would ignore those?

7 MS. STROM CARSON: That's correct. We
8 are looking -- we are focusing on what information was
9 available during the original proceeding.

10 JUDGE MOSS: Do you think that's legally
11 required, or is this what you think should happen?

12 MS. STROM CARSON: Well, it's not clear
13 what is legal required. We think that makes sense. I
14 mean another possibility is to look at what was
15 available at that point in time and do kind of a check
16 with what is currently available, but we think perhaps
17 the cleanest way to do this is to look at what was
18 available at the time the original proceeding took
19 place.

20 JUDGE MOSS: I guess one of the thoughts
21 that I have had, and have had some brief internal
22 discussion about, is the thought, well, while things
23 have been somewhat stable, if we were in a different
24 time, when the economy was wildly fluctuating and
25 interest rates are jumping up and down and things are

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1 changing rapidly, to take that retrospective look and
2 then look forward, and look at what's been happening
3 recently, should we just put on blinders about the
4 fact that ROE should now be 14 percent or 4 percent?

5 I think of it somewhat -- this issue somewhat
6 in the context of when we do prudence reviews. There
7 we are pretty clear. We say we look at the decision
8 that the Company made at the time that it made it, and
9 what information was available, and what a
10 reasonable board of directors, so on and so forth.
11 And we are careful not to say, well, yeah, but
12 we're -- and now it's six years later and things
13 didn't really work out the way they contemplated they
14 would. We don't do that.

15 MS. STROM CARSON: Right.

16 JUDGE MOSS: But that's not this case.
17 This is a situation where the Commission set a rate of
18 return on equity on the basis of a full record in a
19 general rate case, and then decided not to change that
20 in the context of the ERF. But what if the evidence
21 now showed that, gee, we were wildly wrong, for this
22 time frame, or maybe looking forward to 2015? Any
23 thoughts on that?

24 MS. STROM CARSON: Well, I think there
25 is some similarity to a prudence-type review, where

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1 you are looking at the information that was available
2 at the time. I mean the Court sent it back and said
3 that you should do a ROE analysis at the time. And so
4 I think it is kind of second guessing, I guess, to see
5 what -- what is currently -- what the situation is.

6 That said, you know, it isn't real clear what
7 legally you can do. I suppose back in 2013, the
8 Commission could have done some sort of phased ROE. I
9 think from a legal perspective it is not clear, but I
10 certainly think that, given the remand, it is
11 appropriate to look at what was known, what
12 information was available, back when the original
13 proceeding took place and operate on the basis of
14 that. So that's what PSE's proposal is at this time.

15 JUDGE MOSS: And I should say, as we are
16 having this colloquy, that others of course can be
17 taking notes and you can all have an opportunity to
18 address any of the questions that I ask to anyone
19 else. Please feel free to do that.

20 Which brings me to my question of whether a
21 phased ROE is something you think might still be a
22 possible outcome?

23 MS. STROM CARSON: That's not our
24 preferred outcome.

25 JUDGE MOSS: Oh, I understand that.

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1 MS. STROM CARSON: That's not what we
2 consider to be most consistent, I guess, with the
3 Court's order on remand. I think that the Commission
4 was digression in terms of how it -- how it operated
5 back in 2013, and how it operates now. But from PSE's
6 perspective, we think it makes sense to be looking at
7 what information was available during the original
8 proceeding.

9 JUDGE MOSS: Okay, thank you.

10 All right. Now we will move on to --

11 COMMISSIONER JONES: (Indicating.)

12 JUDGE MOSS: Yes.

13 COMMISSIONER JONES: Just a couple of
14 clarifying questions.

15 So when you -- this is Commissioner Jones, for
16 those of you on the bridge line. When you say
17 "original proceeding," are you referring to Order
18 111048 in May of 2012, that set the 9.8 percent ROE,
19 where you put on a full cost of capital case with
20 Mr. Olson, or are you thinking of the 2013 case?

21 MS. STROM CARSON: I'm referring to the
22 2013 case.

23 COMMISSIONER JONES: So do you think the
24 2012 case should have any relevance in this proceeding
25 because that's the last time that you put on a full

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1 cost of capital case, right?

2 MS. STROM CARSON: That's correct.

3 Well, the Court seemed to say that something more
4 beyond that was needed in the context of a multiyear
5 rate plan. And so from that perspective, from the
6 Court's perspective, and the fact that this is a
7 remand, we think that the relevant issue is what would
8 return on equity analysis have shown back in 2013.

9 COMMISSIONER JONES: Okay.

10 MS. STROM CARSON: Does that answer your
11 question?

12 COMMISSIONER JONES: Yes. I guess if we
13 start talking about phased ROE, you can phase it going
14 back or phase it going forward. You know, it's
15 interesting. As you know, I dissented in this case,
16 in the combined proceeding, and one of the reasons was
17 the burden. I did not think that the Company did --
18 provided a full cost of capital case. But I do
19 recognize that you put on a full case in 2012, and I
20 appreciate that fact.

21 In the 2013 case we only have Mr. Hill for
22 Public Counsel and Mr. Gorman for ICNU. We will
23 address those issues in a minute. But those are
24 the -- those are the three witnesses, I think, that we
25 have over the last, what, two, three years, in terms

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1 of a full cost of capital case.

2 MS. STROM CARSON: Correct. And my
3 understanding of the judge's order was that the judge
4 was not saying, accept those -- accept Mr. Gorman's or
5 Mr. Hill's analysis, but the Court wanted the
6 Commission to undertake the process that it usually
7 takes, and that is looking at a wide range of return
8 on equity analyses.

9 COMMISSIONER JONES: Right, and that's
10 fair. And I think the judge used words like
11 "sophisticated model" or "complex presentation,"
12 correct?

13 MS. STROM CARSON: Correct.

14 COMMISSIONER JONES: Something like
15 that. Which was not provided by you, I think, in that
16 most recent case.

17 MS. STROM CARSON: Correct.

18 And just for the record, you know, I think
19 there was a difference in opinion, based on language
20 in the 2012 order, as to whether or not a full cost of
21 capital study was done in the context of an expedited
22 rate filing, and so that is why PSE did not provide
23 that.

24 JUDGE MOSS: I won't comment.

25 Let's turn to Staff. Staff says that the

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1 errors Judge Murphy identifies are procedural. To
2 correct the errors on remand, the Commission must
3 determine PSE's return on equity based on sufficient
4 evidence and putting PSE to its burden of proof with
5 respect to the return on equity. That's a fair
6 statement of what Judge Murphy said, I believe.

7 Staff effectively agrees with PSE, that return
8 on equity should be based on the data available in
9 2013. Staff is a bit more prescriptive, I think, in
10 suggesting that this would be at the time the parties
11 file their respective testimonies. That is to say,
12 PSE filed its testimony in February of 2013, and would
13 file an equity -- a return on equity case here, on
14 remand, using data available up to February 2013.

15 Staff proposes the remand proceedings be
16 conducted only in the ERF dockets. I should back up
17 half a step and say I presume Staff means, then, that
18 whenever the response testimony was filed, in what,
19 March or April, that would be the time frame for Staff
20 and others.

21 MS. CAMERON RULKOWSKI: That's correct,
22 Your Honor.

23 JUDGE MOSS: But then of course PSE had
24 the rebuttal opportunity, so we would have to take
25 that into account.

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1 Basically, you are saying that the data should
2 be limited to the time frame during which information
3 and evidence was developed in the prior phase.

4 MS. CAMERON RULKOWSKI: Approximately,
5 Your Honor. If we want to pick a date, to have it
6 make sense and be pragmatic, Staff would support that.

7 JUDGE MOSS: Okay, all right.

8 Staff proposes the remand proceedings be
9 conducted only in the ERF dockets, that's the UE-130,
10 137 and UG-130 and 138, agreeing with PSE, that Judge
11 Murphy's decision does not implicate the question of
12 whether return on equity should be reduced to reflect
13 the arguable effects of decoupling.

14 Staff also included in its filing a specific
15 process proposal that we can look at in a few minutes,
16 when we get to the more detailed stage of things here.
17 But in general, Staff suggests a standard approach to
18 adjudicatory proceedings, direct, response, rebuttal,
19 and so forth and so on, and a phased proceeding.
20 Staff proposes that as well.

21 Public Counsel recommends -- as I understand
22 it, recommends the time period for analysis should be
23 the three-month period leading up to the effective
24 date of the rate plan rates. That's July 1, 2013. So
25 the period would be April 1, 2013, to June 30th, 2013.

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1 It's a little more prescriptive again. And the idea
2 is that this period encompasses the time period of the
3 hearing and deliberations and the entry of final
4 Order 07. It would be, in that sense, contemporaneous
5 with the decisions made.

6 Public Counsel says, however, that an
7 alternative time period would be that used by ICNU
8 witness Gorman, who presented an ROE determination as
9 of April 19, 2013, which is within the time frame,
10 broader time frame even, based on data from the prior
11 13-week period, so January 18, 2013, through April 19,
12 2013. Again, in the same ballpark.

13 Public Counsel makes specific mention of the
14 existing record and whether it should be incorporated
15 on remand, and says Public Counsel is taking no
16 position on that. We will perhaps hear something more
17 from ICNU on that. I don't know.

18 Most significantly here, for the purposes of
19 our discussions this afternoon, Public Counsel
20 disagrees, perhaps I might say strongly disagrees, on
21 the issue of decoupling, saying, quote, It would be
22 legal error for the Commission to preclude analysis
23 and testimony by cost of capital experts of
24 decoupling's impact on ROE as a component of the
25 multiyear rate plan, closed quote.

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1 In terms of process, while not inconsistent
2 with what others recommend, Public Counsel suggests a
3 witness panel, with questions from the bench, and
4 follow-up if needed from counsel. So that would be an
5 alternative hearing approach, whereas it would still
6 contemplate filing, pre-filing testimony, so on and so
7 forth. So we will take that up, too, in a few
8 minutes.

9 And then finally, ICNU first advocates, as I
10 understand it, that in accordance with its pending
11 motion and petition, the Commission should simply
12 modify Order 07 by adopting Witness Gorman's proposed
13 ROE from the earlier phase.

14 I will observe, as did Staff in its proposal,
15 that this seems contrary to Judge
16 Murphy's determination that the record below
17 improperly shifts the burden of proof to parties other
18 than PSE, and that the record below is, in the
19 Commission's own words, I believe she said -- although
20 having written some of those words I'm not sure I
21 entirely agree, but that the record is inadequate to
22 the task of determining ROE.

23 So what I would like to ask ICNU is whether
24 the organization is now suggesting that in the context
25 of the ERF, decoupling and the multiyear rate plan, we

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1 can allow a party other than PSE to carry the burden
2 of proof on the issue of ROE?

3 MR. WEBER: I think, Judge Moss, that we
4 would disagree with the characterization of what it
5 means to carry the burden of proof that we see in the
6 filings here. Carrying the burden of proof we don't
7 think means that you do it over until you get to the
8 number you are looking for. For example, I just -- I
9 pulled up a few cases. We have orders, I can bring in
10 a very high stack, where a utility doesn't meet its
11 burden of proof on an issue, and what that happens the
12 Commission puts it to its burden of proof by not
13 giving it what it asked for.

14 For instance, PacifiCorp just happens to be
15 one of more recent examples, Docket UE-100749. They
16 came in and asked for a particular capital structure.
17 The Commission said that they didn't meet their burden
18 of proof as to what they were requesting. So the
19 Commission didn't shift the burden of proof, the
20 Commission made its decision based on the record. It
21 happened to be Mr. Gorman's testimony. But the burden
22 wasn't shifted to Mr. Gorman, the burden remained with
23 the company, it just didn't get that component of the
24 rate increase when it hadn't met its burden of proof.

25 So our position is that what Judge Murphy's

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1 order really requests, and this is probably a
2 different question that you will have for me, is to
3 base the decision, base the rates on what's in the
4 record. That doesn't necessarily mean shifting the
5 burden of proof, it means holding the company to that
6 burden that Judge Murphy notes was not met.

7 JUDGE MOSS: Well, doesn't that ignore
8 the point that I believe Ms. Carson touched on, that
9 in the context of the ERF, I can say as someone who
10 was involved in that, that we never contemplated
11 having PSE file a cost of capital case, and they
12 didn't do so, not unexpectedly to me or anyone else, I
13 think. So in that sense it seems to me that Judge
14 Murphy's concern was at least twofold, and one prong
15 of it is that PSE did not have an opportunity to put
16 on a case. And so in that sense, they had no chance
17 to carry their burden of proof. And so that would --
18 leaving the only evidence in the case being that put
19 in by ICNU and Public Counsel. And I think Mr. Gorman
20 is the only one who did a full-blown cost of capital
21 analyses, with his five models, or whatever it was, if
22 memory serves.

23 So to suggest now that we would go back and
24 just rely on that record doesn't seem consistent with
25 Judge Murphy's order to me. Maybe it does to you.

0452

1 MR. WEBER: Well, I guess the reason why
2 it looked consistent to us is that PSE knew full well
3 that the legislature requires that any increase in
4 rates must be supported by substantial evidence. In
5 this case we have an increase, the Company chose not
6 to put on testimony on the question of cost of
7 capital, but was aware that this was an issue. We
8 discussed it in the prehearing conference, if memory
9 serves. I think we were talking about it all the way
10 back at the beginning, whether or not it was required.
11 We had a discussion at the hearing about whether this
12 could be done in approximately a week and questions
13 about why it wasn't done.

14 We think that PSE made the decision not to put
15 on cost of capital evidence, but once it became an
16 issue, once cost of capital evidence was coming in,
17 there certainly was opportunity for the Commission,
18 for PSE to say, look, this is an issue, we've got this
19 in the record, if you want to be heard on it, here's
20 your opportunity. So as we see it, it was a choice by
21 PSE not to do that.

22 I don't think that anything in the 2012 order
23 forbade them to bring cost of capital evidence in if
24 it became an issue. As we see, the order said this
25 was in fact an issue in the case.

0453

1 COMMISSIONER DANNER: So that means
2 when -- if a judge says that we don't need testimony
3 on that, it's basically the parties are at their own
4 risk if they follow the judge's instruction; is
5 that --

6 MR. WEBER: I'm sorry, can you -- I'm
7 sorry.

8 COMMISSIONER DANNER: You know, in an
9 ERF proceeding, we weren't contemplating looking at
10 cost of capital. And so I think that was reflected in
11 the communications to the parties. And so what you
12 are saying is the parties can take that at their own
13 risk, that they should go ahead. So if there is an
14 issue that we don't think is germane to the
15 proceeding, you need to file testimony on that issue
16 anyway or possibly bear the consequences at a later
17 date.

18 MR. WEBER: Thank you for clarifying.

19 I think that what we would point out is, the
20 law requires that when an issue has been raised like
21 this, if there is a rate increase, the Company has to
22 bear that burden of proof. That's what we got with
23 the order on remand.

24 Should the Company be able to rely? I think
25 that there was a lot of argument that this was

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1 necessary earlier in the case. We got the remand
2 order that says if there was an increase, then all the
3 components have to be supported by the Company.

4 JUDGE MOSS: Were you here this morning
5 for the PCORC proceeding?

6 MR. WEBER: I'm afraid I was not, Your
7 Honor.

8 JUDGE MOSS: I see. Do you understand
9 what that proceeding is about?

10 MR. WEBER: I have been following it,
11 not as closely as I followed this order.

12 JUDGE MOSS: It's a rate change, isn't
13 it?

14 MR. WEBER: Is it.

15 JUDGE MOSS: Do we ever consider cost of
16 capital in that case?

17 MR. WEBER: No, in a PCORC we have a --
18 if I remember the regulations properly, we have a long
19 established precedent on how that's going to happen,
20 what we're going to do. We are not -- we are
21 considering a small component of what's going on.
22 There was no rulemaking and there were no specific
23 rules about how to do an ERF. There was some
24 discussion of what it could be.

25 The other issue I would point out, in a PCORC,

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1 I would imagine that if evidence outside the scope
2 that's established, I believe, in rulemaking was
3 brought in, it wouldn't be let into the record because
4 it's not an issue. In fact, in the last PCORC, I
5 think ICNU raised some issues and the Commission said
6 those aren't part of this discussion, we'll go ahead
7 and have -- and I believe it's going on right now -- a
8 separate hearing where we will have a collaborative
9 first, of course, and then we're going to discuss that
10 in the July 1st filing, if I remember correctly.

11 In this case ROE was part of the record. It
12 was also an issue in this case, as the Commission's
13 order pointed out. That would be the distinction I
14 would draw between this and a PCORC.

15 MS. STROM CARSON: Your Honor, if I
16 might just point out, I think, as we are all aware,
17 that the -- it's not really accurate to say that the
18 Court said with any rate change that there needed to
19 be a full-blown cost of capital or return on equity
20 analysis. The Court limited it to -- reversed it
21 because -- with respect to the return on equity
22 component of the cost of capital in the context of a
23 multiyear rate plan, so it's very narrow. And this is
24 a pretty unusual -- unique mechanisms that we were
25 looking at, an unusual situation. And so certainly

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1 PSE operated based on instruction from the 2012
2 general rate case order, on the ERF. But in terms of
3 knowing that, that a court would say, in the context
4 of a multiyear rate plan, you would have to have a
5 full-blown cost of capital study, that was not known.
6 And so we would disagree with the characterization
7 that any rate change is required to have a return on
8 equity analysis.

9 JUDGE MOSS: I think Judge Murphy was
10 very careful in establishing a context for her ruling.
11 She did specifically tie it to the multiyear rate
12 plan.

13 As I read her order, what she said was in that
14 context you can't change rates without a full-blown
15 cost -- consideration of cost of capital, as in a
16 general rate case. Perhaps there is room to agree or
17 disagree with what Judge Murphy said, I believe that
18 is in fact what she said.

19 MR. WEBER: If I may, Judge Moss. We
20 don't read the order as saying that she is requiring
21 any sort of specifics as to what the consideration
22 should be. I think that she is very -- and do I
23 agree, she is very clear about what she is remanding.
24 I think she is very clear that she is not in a
25 position to decide what is an appropriate level of

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1 evidence or what the Commission should require.

2 We don't read it as Judge Murphy saying the
3 Commission needs to bring in a full-blown cost of
4 capital case. We read it as her saying the rates
5 can't be based simply on a reaction of adverse
6 evidence and looking at items that are outside the
7 record.

8 COMMISSIONER GOLTZ: Judge Moss, I have
9 a question for Mr. Weber.

10 So is it your proposal -- are you arguing that
11 the Commission may not, as a matter of law, under
12 Judge Murphy's ruling, consider new evidence on cost
13 of capital from the Company and from other parties, or
14 are you saying you don't need to and you could just
15 rely on Mr. Gorman? In other words, are you making a
16 legal argument, or are you saying here is the choice
17 that we would propose?

18 MR. WEBER: It is definitely more the
19 latter. We believe that --

20 COMMISSIONER GOLTZ: All the latter or
21 more the latter? If it's not all the latter, what's
22 left of --

23 MR. WEBER: You are putting me at my
24 burden of proof on that one.

25 COMMISSIONER GOLTZ: Yeah, right.

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1 MR. WEBER: There is nothing here that
2 precludes the Commission from taking more evidence.
3 The point that we are trying to make is that there are
4 two components. She says you can't say that there is
5 not enough evidence in the record and then increase
6 rates at the same time. That means you can do one of
7 two things. You can decide there is enough evidence
8 and set the rates, or you can reopen the record. We
9 think that reopening the record will be fraught with
10 danger.

11 COMMISSIONER GOLTZ: And one of your
12 proposals is you just say, oh, start over, go back to
13 Square 1 and do a full-blown rate case. You aren't
14 arguing that's required in the alternative. All you
15 are saying is you would -- think it's a better
16 argument to do one of your options, but that if we
17 decided to open up the record as -- and take cost of
18 capital evidence from all parties, figuring out timing
19 and all of that, you are not saying that's unlawful.

20 MR. WEBER: No. There are secondary and
21 tertiary issues that could end up making that
22 unlawful, or could end that up with -- with -- we
23 could end up with some difficulties doing so and --

24 COMMISSIONER GOLTZ: And I trust you
25 will give us a heads-up on those as we go through the

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1 rest of the afternoon?

2 MR. WEBER: Lots.

3 COMMISSIONER DANNER: What would some of
4 those tertiary issues be?

5 MR. WEBER: So I guess we would start --
6 secondary or tertiary? I'm not sure if I got ahead of
7 myself. I will try and start with the simpler ones.

8 On one hand there is some evidentiary issues,
9 and I think those are explained, at least at my
10 understanding of them, in the affidavit of Michael
11 Gorman, which is attached to one of our pleadings.
12 Mr. Gorman demonstrates that he would not be able to
13 do the same quality research on cost of capital
14 without being in the time and place.

15 And so we basically would be looking at a
16 proceeding where we are asking expert witnesses to
17 submit testimony that would tell us what they would
18 have testified to if they had testified back then,
19 when they could have testified. And that's going to
20 be -- that already is giving us some pause because we
21 are asking how is that sufficient evidence to base
22 rates on because --

23 COMMISSIONER GOLTZ: So you disagree
24 with Public Counsel on that, then?

25 MR. WEBER: We think that this course is

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1 fraught with --

2 COMMISSIONER GOLTZ: What Public Counsel
3 suggested was just that. A slightly different time
4 frame from what the Company is suggesting. They are
5 suggesting we go back to April or so, or the second
6 quarter of 2013, and base the evidence on that. You
7 are saying Mr. Gorman couldn't do that, or have
8 trouble doing that.

9 MR. WEBER: Right. I don't want to
10 speak for Public Counsel, but my understanding is we
11 don't have -- we are not in lockstep on that question.

12 COMMISSIONER DANNER: Actually, it seems
13 that Mr. Gorman would have it easy because he has
14 already done the analysis that he would have done at
15 that time, so he doesn't have to go source the books
16 to see what he would have said at that time.

17 MR. WEBER: It might be easy for us.

18 Mr. Gorman -- if we chose Mr. Gorman's time
19 frame, then certainly I think that might be a little
20 easier, though we would have to look back and decide
21 whether or not we need to submit more evidence based
22 on what goes on here. But the first problem is, we
23 are trying to reconstruct, we are retroactively
24 looking back, and we don't think that that is going to
25 be the same quality of evidence that the Commission

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1 normally relies on.

2 I will note we have -- it might have been a
3 footnote, but we definitely said that if this happens,
4 we plan to participate fully, but we don't think it is
5 the right course, and we are in opposition with that
6 particular choice. That's the evidence reissue.

7 I think that that gets a bit magnified --

8 COMMISSIONER JONES: Mr. Weber, I am
9 sorry to do this.

10 MR. WEBER: Of course.

11 COMMISSIONER JONES: I don't have
12 Mr. Gorman's pleading with me now. Just refresh my
13 memory briefly. What was the test year? What was the
14 quality of evidence? I know he came out at a 9.30
15 ROE, right, on DCF analysis?

16 MR. WEBER: That's correct.

17 COMMISSIONER JONES: But what was the
18 time period that he looked at in the 2013 proceeding?

19 MR. WEBER: That was just stated. Let's
20 see, it was the three months previous to the 18th.
21 And I had that wrong, so I was writing that down,
22 because I had written down --

23 JUDGE MOSS: I have it here.

24 COMMISSIONER JONES: What is it?

25 JUDGE MOSS: As of April 19th, 2013,

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1 based on the data from the prior 13 weeks,
2 January 18th through April 19th, 2013.

3 MR. WEBER: Somehow it is the 26th. I
4 apologize.

5 COMMISSIONER JONES: So you are
6 asserting that that is sufficient. That that -- that
7 evidence is sufficient for setting an ROE in this
8 case.

9 MR. WEBER: We are asserting that that
10 is sufficient to start the Commission's usual
11 analysis.

12 COMMISSIONER JONES: Okay.

13 MR. WEBER: We think that 20 -- we think
14 that 9.3 was appropriate at the time. I believe that
15 we referred to an order. It's, let me see, No.
16 UW-980072. The Commission used a single DCF analysis,
17 as opposed to three DCF and two additional studies,
18 and made clear that that was a beginning point. That
19 was enough of a, as Judge Murphy called it, complex
20 study to start the ball rolling. Of course, there are
21 other things the Commission considers, as did
22 Mr. Gorman. I don't believe 9.3 was exactly
23 his midpoint.

24 COMMISSIONER JONES: So you would think
25 it would be reasonable -- I would kind of like to hear

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1 from Ms. Carson and Mr. ffitch on this -- that the
2 Company -- and maybe Mr. Hill. I don't know if you
3 are in sync with Public Counsel on this. But they
4 would go back, if we were to open this up for a
5 full-blown -- "full-blown," I hate to use that word --
6 comprehensive, using three analyses, right, risk
7 premium, CAPM, DCF. You would -- you would think it
8 would be reasonable for the Company witness and
9 Mr. Hill, as Public Counsel witness, to limit their
10 analysis to this period, January through April of
11 2013?

12 MR. WEBER: As a threshold issue, I
13 can't support opening up that entire can of worms. If
14 we're just talking about should that be the dates
15 used?

16 COMMISSIONER JONES: Yes, just the
17 dates.

18 MR. WEBER: Just the dates, I'm not
19 objecting to that.

20 COMMISSIONER JONES: Okay.

21 MR. WEBER: But I have to be clear for
22 the record, the idea of doing it, we don't agree with.

23 COMMISSIONER JONES: Mr. ffitch, you
24 were out of the room when Commissioner Goltz had some
25 question on this, and me as well. So what is your

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1 position on this, on the evidence and the time period?

2 MR. FFITCH: With respect to the time
3 period?

4 COMMISSIONER JONES: Yes.

5 MR. FFITCH: As Judge Moss stated, we
6 have initially recommended the three-month period
7 leading up to the first day of the rate effective
8 period. As an alternative, the time period that
9 Mr. Gorman used below. That is in the context of our
10 primary recommendation, which is that all parties
11 would put on cost of capital testimony. That is, you
12 know, presented elsewhere in our proposal. And
13 certainly ICNU then would have an option to either
14 simply rely on the existing Gorman testimony or
15 presumably, based on the Commission ruling, have an
16 opportunity to put on other testimony, if the
17 Commission is going to open it up to all parties.

18 I did want to, since you called on me, I
19 appreciate it, just comment on the time period issue,
20 that something hasn't really been brought up yet and
21 something that was in our proposal is, we think it is
22 really important for the Commission to have
23 consistency so that all of the witnesses are using the
24 same time period. Maybe that's been implicative in
25 this discussion. So whichever time period is picked,

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1 we think every witness ought to be addressing it, so
2 the Commission has apples to apples to look at.

3 We also, with due respect, think that the
4 proposal of having each party use a different time
5 period based on when they filed back in the original
6 case is unworkable because of that issue. You would
7 end up with sort of some, you know, inconsistent or
8 mismatched recommendations.

9 Again, we think that -- but in a sense, as has
10 been pointed out, everybody is in the same time frame.
11 And we agree with what Puget Sound Energy was saying
12 about how we have to get in the way-back machine and
13 go back and present evidence to the Commission so that
14 it can set cost of capital as it would have done with
15 a more complete record back in early 2013.

16 Based on the information that we have, or the
17 analysis that we have, actually, if we used more
18 recent cost of capital information, we think it
19 probably would be lower. We also don't think that is
20 a particularly fair approach, to maybe take advantage
21 of today's situation and import it back into the past.
22 If the Commission wanted to do a two-step situation
23 because of its concern about this, we could present
24 the 2013 testimony and the parties could be directed
25 also to present a current analysis in their expert

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1 testimony, if that would be helpful to the Commission.

2 JUDGE MOSS: Have you discussed with
3 your consultant, or whoever you plan to use to provide
4 evidence, the relative difficulties of going back and
5 doing this for an earlier period? Mr. Weber has
6 expressed that Mr. Gorman has told him he has some
7 concerns about that.

8 MR. FFITCH: Yes, we have.

9 JUDGE MOSS: And?

10 MR. FFITCH: And --

11 JUDGE MOSS: If you don't mind sharing.

12 MR. FFITCH: -- we agree. Our expert
13 has advised us that yes, it is difficult to go back.
14 It is harder to go back than it is to do it at the
15 time, primarily because certain standard source of
16 reference materials are not easily available to
17 everyone. Some Value Line information, some Zach's
18 information, things of that nature are not as readily
19 available.

20 We think that can be worked around. One of
21 the solutions is that -- they are not publicly
22 available anymore, but it is our understanding that if
23 a company or an entity has a subscription to those
24 services, that it is possible to get the historical
25 information. So that would be something we would have

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1 to address in the course of the proceeding. Perhaps,
2 for example, if Puget has a subscription and could
3 obtain information, that sort of reference information
4 that is commonly used by the cost of capital experts,
5 that could be made available to parties as the case
6 progresses. I'm just thinking out loud here.

7 JUDGE MOSS: I want to put the same
8 question to Staff, and the Company as well, whether
9 you have had consultation with either your in-house
10 expert or your intended consultant, as to whether this
11 would be a task that can be meaningfully performed or
12 whether we are just going to end up with some sort of
13 less than fully helpful record.

14 MS. CAMERON RULKOWSKI: Staff has had
15 those conversations, perhaps not in great depth. My
16 understanding is that given the description of what we
17 think we need to do, which is to go back to the time
18 of the filing, is that that is all doable.

19 JUDGE MOSS: And the Company has
20 similarly had discussions with its consultants or
21 in-house people?

22 MS. STROM CARSON: Yes, we have, and
23 they agree it is doable. We do have some information
24 that consultants have available that covers that time
25 period, or parts of that time period, and we are happy

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1 to share them if other parties do not have them
2 available. We think we can work through those issues.

3 JUDGE MOSS: That's very helpful.

4 MS. STROM CARSON: You know, just in
5 terms of the time frame, PSE has kept it kind of open.
6 Staff and Public Counsel both have more specific ideas
7 about what the exact time frame is for the cost of
8 capital or return on equity analyses. In the course
9 of a normal case, parties don't necessarily completely
10 sync up when their studies are done. I think as long
11 as they are within this period of probably between
12 February and May, that, you know, we should be good.
13 I think PSE is willing to work for whatever works for
14 the Commission and other parties. I don't think we
15 necessarily have to have a hard and fast sync of the
16 time periods. We are happy to do whatever works and
17 we are happy to share what information we have.

18 COMMISSIONER GOLTZ: Judge Moss.

19 JUDGE MOSS: Yes.

20 COMMISSIONER GOLTZ: I have a question
21 for Mr. Weber. I'm having trouble understanding what
22 he is suggesting. I thought, from my recollection of
23 reading the briefs and observing the superior court
24 argument, I thought that ICNU asked for this, send it
25 back, redo cost of capital. And now you are saying

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1 send it back but we can't do that. So I am confused
2 by -- now, maybe you didn't ask for this, maybe you
3 asked for something different. I don't remember you
4 saying send it back for a general rate case, or send
5 it back and just do whatever Mr. Gorman says. I
6 thought it was send it back for a do-over.

7 Because I'm sensing what's going to happen
8 here is, if we decide to pick a period in early 2013,
9 everybody else is going to file something. You'll
10 file Mr. Gorman's, and Mr. Gorman will also say
11 something that says, but I'm the only one that can be
12 listened to here because all the other ones are bad
13 analysis, because the Value Line data is not there
14 anymore, and therefore, the argument would be, so
15 therefore, my original testimony is the only one that
16 is pure. Is that what's going to happen?

17 MR. WEBER: I hesitate to speak for
18 Mr. Gorman and what his testimony will say, but that
19 certainly is a possibility that I have imagined as a
20 less than ideal outcome. That's -- you know, and so
21 that's why we are saying this process isn't the best
22 way.

23 COMMISSIONER GOLTZ: But didn't you ask
24 for this process in the superior court case?

25 MR. WEBER: I would have to go back and

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1 read my pleading to make sure that I am not
2 overstepping or understepping what my colleague who
3 wrote that said. We said that there was evidence on
4 the record, PSE didn't carry its burden, it needed to
5 be remanded. And I believe that we agreed strongly
6 with the separate statement that also was filed that
7 said that there was sufficient evidence on the record,
8 it just was not used. If that's approximately getting
9 it right.

10 MS. CAMERON RULKOWSKI: Your Honor,
11 might I jump in with a comment?

12 JUDGE MOSS: You may.

13 MS. CAMERON RULKOWSKI: Charles Koch,
14 Jr., in his treatise on Administrative Law & Practice,
15 Second Edition, discusses the scope of a remand
16 order, and in that discussion, as a general principle,
17 I believe he cites the D.C. Circuit, and this is what
18 that Court said. In fashioning our remand order, our
19 goal must be to place the party in the situation he
20 would have been in had the agency not acted
21 improperly, but we should not improve his position.

22 And so from applying that principle means that
23 we would go back to the situation each party was in
24 when they filed. This is an interesting quote as
25 well. Because our question here that is important for

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1 this discussion is, what was the improper action? And
2 in my reading of Judge Murphy's ruling, what she found
3 to be improper is that the Commission did not rely on
4 the same type of evidence that it usually did to set
5 rates, and specifically in the context of a multiyear
6 rate plan. And she said instead of requiring more
7 evidence, the majority of the Commission purported to
8 keep the status quo of 2011 rates. When I read her
9 ruling, it seems that that's what she really wants to
10 have fixed, is to have the evidence there from the
11 Company that the Commission normally would rely on in
12 setting return on equity.

13 JUDGE MOSS: I don't think, though, the
14 idea, you want -- Staff's suggestion seems to be to
15 tie the parties' hands to point of saying, well, if
16 you filed your testimony in February, then you can't
17 look at evidence from March. Well, that seems to me
18 to be a little overly prescriptive.

19 In the context of a hearing, we have the
20 direct testimony, we have the response testimony, we
21 have the rebuttal testimony, which is in response to
22 the response testimony. The entire time period is
23 open for evidentiary development, right up to the day
24 of the hearing. And we have even through the hearing,
25 because we have the process of cross-examination and

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1 examination from the bench, in which the Commissioners
2 frequently have lots of questions about the cost of
3 capital issues.

4 And so in that sense it strikes me -- this is
5 just me thinking here. It strikes me that any
6 evidence that we receive in this remand, that is at
7 least contemporaneous with the time that is suggested
8 by Public Counsel, contemporaneous with the time of
9 hearing, would be acceptable and would meet the
10 criteria that you suggested there from the
11 administrative law treatise. So do you disagree with
12 that?

13 MS. CAMERON RULKOWSKI: No. And I think
14 that this statement can be interpreted in general
15 terms. Now, if we do have markets that are rapidly
16 changing such that at three months -- three-month
17 boost either party -- benefits a particular party, but
18 I don't know that we have that. I mean we are only
19 talking about a few months' difference in terms of the
20 period that we are looking at.

21 I think the only other thing I would mention
22 is that Staff anticipates that analyses that we
23 present on return on equity would extend out beyond a
24 one-year rate period and extend through the life of
25 the rate plan. I think that that's what we anticipate

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1 would happen anyway.

2 JUDGE MOSS: Well, certainly this is an
3 unusual proceeding, as I said at the very outset
4 today. I questioned PSE a bit about this idea of
5 setting a rate of return that we can confidently say
6 is enduring for the term of a multiyear rate plan. In
7 that sense, the judge may have put us to an impossible
8 task. I would be very surprised, frankly, and I may
9 be surprised, I don't know, I can't put words in
10 witnesses' mouths either. But I don't think I have
11 ever seen a cost of capital witness testify to more
12 than a rate year period in terms of an analysis.

13 While we expect it to be enduring, and while
14 frankly, it is entirely consistent with 150 years of
15 regulatory ratemaking in this country, to set a rate
16 of return and leave it in place, not just for one
17 year, but for two years, five years, I believe
18 PacifiCorp stayed out for 14 years, it happens, folks,
19 all the time. And if some people don't understand
20 that, well, then, they don't, and we can't go back and
21 undo that. That's the fact of the matter.

22 I think the best we can hope for here, in
23 taking Judge Murphy's direction, is to have the
24 parties present a body of evidence that is more or
25 less contemporaneous in time, or is taken based on

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1 data more or less contemporaneous in time with the
2 hearing period of this matter.

3 I am inclined toward Public Counsel's
4 suggestion. I haven't discussed this with the
5 Commissioners, they may take me out of the room and
6 beat me here momentarily. That makes the most sense
7 to me sitting here and just thinking. Frankly, we are
8 thinking through this out loud.

9 That way we would have -- all of you would be
10 on the same page, in terms of the data sets.
11 Mr. Gorman's prior testimony could stand. He could
12 come in and say, hey, that's the best analysis in the
13 room because I did it at the time. You know, we have
14 a great deal of respect for Mr. Gorman. I'm sure that
15 would be perfectly fine. Others feel confident they
16 can present a decent body of evidence for that time
17 frame, and I am confident they can too. That seems to
18 make a lot of sense to me.

19 Do we want to have further discussion?

20 COMMISSIONER JONES: This is
21 Commissioner Jones. I think you are right, Judge
22 Moss. Just a couple of points, though.

23 Yeah, Mr. Gorman's testimony was
24 comprehensive, it used that time period January
25 through April. He used the three methods that we, as

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1 a Commission, always ask for, right, DCF, CAPM, risk
2 premium. So in that sense it could be used as a
3 benchmark. He also looked at the decoupling
4 adjustment, as well as the financial market
5 conditions. I think both need to be looked at.

6 It's important to note that cost of capital
7 proceedings are always forward-looking, they are not
8 backward-looking. When you do a DCF, discounted cash
9 flow, a risk premium, you look at Value Line.
10 Obviously one of the big things for DCF is the G, the
11 growth factor. We are always faced with -- you know,
12 it goes beyond the rate year, it goes forward. We are
13 looking at things like GDP growth rates over 20 years,
14 10 years. So to me that should not be a hang-up or an
15 impediment to doing a cost of capital proceeding.
16 Because when we -- when you actually do the analysis,
17 you are looking forward and there is really no bound
18 of a rate year. You know, it's not one year, it's not
19 two years, it is looking forward.

20 Now, that makes it difficult. And I haven't
21 read Mr. Gorman's pleading yet. It does make it
22 somewhat difficult for the other witnesses because
23 they have to put themselves in the position of using
24 January to April 2013 as the base and go forward. So
25 they have to do things, look at Federal Reserve

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1 policies, which frankly haven't -- in my view, haven't
2 changed at all. You have to look at all sorts of
3 factors. But that's what they are going to have to
4 do.

5 But this happens in other cases, too. We have
6 had cases in cost of capital where we ask the witness,
7 or -- or there's something that says to the effect
8 that in the absence of X of this methodology, what
9 would the cost of capital have been. So we use that
10 proxy sort of analysis in other proceedings. I don't
11 see that as an impediment.

12 COMMISSIONER DANNER: I think that --
13 the parties are capable, I think, of going back in
14 time and putting together a case with contemporaneous
15 information. I don't want to suggest that they have
16 to meet, you know, whatever benchmarks. I think they
17 will put on the case that they are going to put on and
18 then we will review that.

19 I wanted to follow up again with Mr. Weber
20 because I think we cut him off earlier. He had
21 mentioned some secondary and tertiary. We mentioned
22 evidentiary. I think you had some others. I just
23 want to make sure you have an opportunity to express
24 those.

25 MR. WEBER: I appreciate that, Chairman.

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1 In fact, it kind of -- the tertiary issues I'm getting
2 to now bleed into these --

3 COMMISSIONER DANNER: So there's only
4 one secondary issue?

5 MR. WEBER: Just one.

6 COMMISSIONER DANNER: All right.

7 MR. WEBER: I kind of made that
8 framework up just now.

9 The evidentiary issues, and those bleed into
10 another concern, which really was touched on I think
11 immediately, when we started this hearing. We are
12 looking back retrospectively, and that's going to
13 create problems from a legal point of view, as we see
14 it. If we are looking back, I would say there is
15 almost 100 percent, as close as there can be to
16 100 percent certainty that markets didn't perform the
17 way those analysts said they were going to perform, or
18 projected that they were going to perform. If we look
19 back, then the fact is the Commission could end up
20 setting rates using values, especially for growth
21 rates, that are known to be wrong. We absolutely know
22 that we are setting rates based on something that was
23 false or that was inaccurate. I shouldn't say
24 "false." That's not --

25 COMMISSIONER DANNER: But don't we do

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1 that? I mean we always put ourselves in the time
2 machine when we do prudence reviews. We say, okay,
3 you made improvements in a coal plant right before EPA
4 came out with some rules that we didn't know were
5 going to come out, and that might have changed the
6 economics of it. That's not a -- I don't know if
7 that's a real example or not, but that's --

8 MR. WEBER: Of course.

9 COMMISSIONER DANNER: -- for
10 illustrative purposes. But we do that. Things change
11 and yet we will go back and say, well, we have got to
12 ignore that information because that is information
13 that was after the fact that we've got to cut it off
14 and say we are only going to consider before-the-fact
15 information.

16 Are you suggesting in those instances we are
17 unable to draw that line between what happened at the
18 time or what information was available at the time and
19 what information isn't? Is our decision always
20 colored by those events?

21 MR. WEBER: I think that, frankly, while
22 there appears to be some syllogism there, I think that
23 it's a different issue because a prudence review is
24 looking at what a specific group did based on their
25 knowledge at the time, did they make the best judgment

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1 they can, as opposed to saying we are going to set
2 rates using X as our growth factor, even though we
3 know that factor is empirically wrong. So while there
4 is -- I see the comparison you are drawing. I don't
5 think it is all the way there.

6 COMMISSIONER DANNER: But it's the
7 Commissioners who have to basically be able to draw
8 the line and say I'm not going to consider this and
9 it's not going to color our decision. We are going to
10 use contemporaneous information. Even though, you
11 know, as Commissioner Goltz's question was earlier,
12 yes, that might be wrong, but we are going to be
13 expected to do what we knew at the time or what we
14 would have -- could have known at the time.

15 MR. WEBER: And that I think speaks the
16 difficulty of trying to do an ROE analysis
17 retrospectively rather than forward-looking.

18 COMMISSIONER GOLTZ: But isn't there a
19 difference between a prudence review and a cost of
20 capital analysis? The prudence review, as you say, is
21 looking backwards, and you are basically trying to
22 figure out what the board of directors would have
23 known at the time. Obviously, you can't hold them to
24 something else. But with a cost of capital analysis,
25 you are using the best crystal balls you have to

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1 actually figure out what is going to happen in the
2 future.

3 I mean we aren't holding them to what they
4 knew at the time. We would use the best crystal ball.
5 If Mr. Gorman really had a crystal ball, and it was
6 really reliable, and he could figure out exactly what
7 the growth rates were going to be over several years,
8 and that was reliable, and we had, you know, a
9 scientist come in and say, yes, that this works, we
10 would go for it. We are really trying to predict the
11 future.

12 And now in this case we have the very odd
13 luxury of being able to actually use the real data,
14 instead of the hypothetical data. Or at least have
15 it, as Ms. Carson suggested, as a check, to avoid the
16 problem that Mr. Weber said, of what happens if we are
17 just way off. I don't think we are going to be way
18 off. I don't think things have changed that much. I
19 think it's fine to have that, looking at it as some
20 sort of a check in the future.

21 COMMISSIONER DANNER: I mean isn't that
22 true with a prudence review, too? I mean we have the
23 benefit of seeing what has happened in the meantime
24 and --

25 COMMISSIONER GOLTZ: The difference is

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1 you are holding the decision-makers in a prudence
2 review to an impossible standard. You are saying do
3 the best you can and make the best judgment you can.
4 Here we are not holding Mr. Gorman or Mr. Hill or
5 anybody to the standard of judging whether they can
6 actually predict it. We are trying to figure out what
7 actually the cost of capital is going to be for the
8 purpose of setting rates.

9 It would be like if we had a -- had a -- in a
10 different context, in a rate case, we have an
11 adjustment, because we have a known and measurable
12 change going into the rate year. We all agree that's
13 fine. Then we get remanded and we are back to
14 Square 1. It turns out what we thought was known and
15 measurable wasn't known and measurable. It never
16 happened. The expense never happened. We wouldn't
17 allow the Company to recover expenses for that in a
18 remand because we have better information. I think we
19 use the best information we have.

20 COMMISSIONER DANNER: So basically we
21 should -- are you thinking we use the best information
22 we have now to determine an ROE from two years ago?

23 COMMISSIONER GOLTZ: I think from a
24 process perspective -- Mr. Moss is probably going,
25 What are they doing? -- we ought to talk about this.

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1 We've got to go and deliberate on it.

2 I think it's -- I mean we can hear reactions
3 to this. I think, you know, we ought to -- the
4 parties seem to say, with the exception of ICNU, go in
5 and sort of redo -- have a redo of what it was like in
6 early 2013. But I think it's fine, as Ms. Carson
7 suggested in response to a question from Judge Moss,
8 to have kind of a real world check on that and --
9 because I think that would be confirming. I think
10 that would be useful to know, and if it is way off,
11 then we go from there. But I think that would be
12 useful, and I think it would be consistent with what
13 we are trying to do, which is to set rates
14 prospectively on the best available information. And
15 if we have the real world information, we ought to use
16 that instead of the predictions of what the real world
17 information would be. At least refer to it. At least
18 not prohibit it.

19 JUDGE MOSS: I'm not sure that is what
20 you recommended, Ms. Carson. In fact, I'm rather sure
21 that it is not.

22 Go ahead, speak right up. We can be candid
23 here.

24 MS. STROM CARSON: I would like to check
25 with my client to make sure that we are on the same

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1 page.

2 JUDGE MOSS: Okay, all right. That's
3 fine. As I understand what Commissioner Goltz is
4 suggesting, he's suggesting we can go back and do this
5 time machine, whatever people have been saying. Go
6 back and pretend it's 2013 and do that, but then do a
7 check, as it were, based on the real world data and
8 experience since that time, and hope against all
9 reason that things match up. Perhaps they would.
10 It's a possibility to be sure.

11 I think it's important to perhaps think --
12 cast our thinking a bit broader. And I suppose I am
13 enjoying myself too much here in this intellectual
14 exchange. Let's remember what we are about doing
15 here. We are doing cost of capital in a rate case.

16 You know, we talk actual capital structures
17 and hypothetical capital structures. It's all
18 hypothetical, folks. The actual rate of return of a
19 company like PSE changes from day to day to day to
20 day. The capital structure changes from day to day to
21 day. All we are doing in our exercise is setting
22 rates. We are saying, okay, at this moment in time,
23 based on all the best data that's available to us, and
24 all the analysis that is conducted more by wizards
25 than by scientists, I might say -- crystal balls are

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1 things of wizardry, not science. That's what we do.
2 We try to -- we take the data, we analyze it the best
3 we can. It's art. It's not science, folks. There is
4 nothing scientific about a discounted cash flow
5 analysis just because it looks like math. It's one
6 person's opinion versus another person's opinion, and
7 those opinions are quite diverse. We have had spreads
8 of 300, 400 basis points, by well-respected experts in
9 the same rate case, analyzing similar data for the
10 same time period. That's the reality of what cost of
11 capital is all about.

12 Yes, we have to go through -- apparently, in
13 Judge Murphy's idea and ruling, we have to go through
14 the exercise. We have to get all of that expert
15 evidence. We have to weigh all of it, just as we
16 always do in a general rate case, in the context of a
17 multiyear rate plan. That's what she said we have to
18 do. I think we need to do that.

19 With all due respect, Commissioner Goltz, I
20 think we need to do that on the basis of the data that
21 was available at the time.

22 COMMISSIONER GOLTZ: We will deliberate
23 on that.

24 JUDGE MOSS: We will.

25 COMMISSIONER DANNER: I'm just

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1 interested to see, if we don't do a time bubble, if we
2 are actually going to true it up, I want to know, are
3 we getting into retroactive ratemaking, if we get to
4 that situation?

5 JUDGE MOSS: I'm going to throw out
6 one -- while we are throwing ideas around here and
7 thinking out loud, I wonder if an alternative here,
8 that might be acceptable to the parties -- and I would
9 require them to say so in writing, if this were the
10 case. Another option here -- although I don't recall
11 ever having done it in this Commission, in the context
12 of electric and natural gas. It has been done in the
13 context of telecommunications. How about if we hire
14 our own expert, "we," the Commission, and say go
15 forth, do this analysis, and tell us what the results
16 should be. What do people think about that?

17 We can do that under our statutes and rules.

18 MS. CAMERON RULKOWSKI: Just so I
19 understand, are you suggesting that the Commission
20 present only its own testimony and the other parties
21 do not then present return on equity analyses?

22 JUDGE MOSS: Well, I guess we could have
23 both if we wanted to.

24 MS. CAMERON RULKOWSKI: I wasn't
25 objecting. I was just trying understand your

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1 proposal.

2 JUDGE MOSS: I'm sorry, sometimes my
3 tone is mistaken. I wasn't being critical of your
4 comment. That's fine. Again, this is --

5 COMMISSIONER DANNER: I just want to
6 make sure that we are addressing the judge's concerns
7 about shifting the burden of proof.

8 JUDGE MOSS: To ourselves.

9 Well, ultimately we have to decide, and we
10 have to decide on the basis of the best information
11 available to us. And while we normally develop that
12 information through the crucible of the adversary
13 process, that's not to say we cannot also hire our own
14 expert, as was done for years in the
15 telecommunications industry, as we worked our way
16 through the, what's the right word, B regulation, I'll
17 use that for lack of a better word, of that industry.

18 We relied on -- I have forgotten his name now.
19 Some of you will remember him. In any event, we had
20 our own expert for years. We could do that here, if
21 we chose. We can talk about that, too.

22 Okay.

23 MS. STROM CARSON: So if I might --

24 COMMISSIONER DANNER: We have lots of
25 good ideas.

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1 MS. STROM CARSON: If I might just
2 clarify. PSE's preference and position is that we
3 should look at the information that was available
4 contemporaneous with the proceeding. I also think it
5 would be PSE's position to hire its own expert for
6 return on equity, but we are open to discussion.

7 JUDGE MOSS: Well, in a sense all I'm --
8 and we can do this in-house, as far as that goes. We
9 don't have to hire some outside consultant. What we
10 do, in fact all the time in these cases, we do have
11 people in-house who understand this stuff pretty well.
12 We all sit down together and talk about the evidence
13 in the case and reflect on what it shows, and
14 ultimately help the Commissioners arrive at a decision
15 about it. This is what we do now. Everybody knows
16 that. We do that on all the issues.

17 I am not suggesting something entirely radical
18 here. I was just thinking in terms of, well, maybe
19 this would raise the bar a little bit, if we had
20 somebody who is a recognized expert on this issue
21 working with us, instead of relying on our own many
22 years of experience.

23 COMMISSIONER JONES: Mr. ffitch -- if I
24 could, Judge -- when you suggested as an alternative
25 using the contemporaneous period of 2013, and then you

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1 said supplemented by X, were you referring to 2014
2 capital costs or what? Because I'm looking at your
3 brief now and you say use of 2014 capital costs would
4 not be appropriate. So what sort of -- what sort of
5 cross-check were you referring to there?

6 MR. FFITCH: I was suggesting, in my
7 comments today, that if the Commission wanted to
8 address this concern about the difficulties -- you
9 know, about how things are changing -- well, the
10 concern that you have just been expressing in many
11 different ways, you could ask the parties to put on a
12 current cost of capital case as well, so that for the
13 remainder of the rate plan, you would have an updated
14 cost of capital. That's what I was saying was an
15 alternative.

16 We still, as a primary recommendation, agree
17 with Puget Sound Energy, that for the period, that is
18 in the past, that we would go back and reconstruct the
19 cost of capital.

20 COMMISSIONER JONES: Okay.

21 MR. FFITCH: You know, understanding
22 that -- in fact, if that had happened, that the cost
23 of capital that would have been in place, in reality
24 since July 1st, 2013 up to the present, would have
25 likely been different, probably has been different

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1 than the cost of capital that we have now. So the
2 fact that there have been changes in the intervening
3 period is a given in any event, whether we try to
4 capture those retrospectively or whether we go back
5 and disregard the intervening changes. I think the
6 fact that we set a cost of capital, and you set it and
7 forget it in effect, is not particularly -- you know,
8 it's not -- it's not problematic. That is the
9 approach that is taken in regulation. As Judge Moss
10 pointed out, sometimes they are in place for years,
11 and there is an understanding that there are actual
12 changes happening there.

13 COMMISSIONER JONES: Right. And just
14 refresh my memory on Mr. Hill's testimony in the last
15 case. Did he provide PSE-specific cost of capital
16 analysis, or, as I recall, he used some other
17 testimony in another proceeding as kind of his basis,
18 and then he came up with his recommendations on both
19 the amended decoupling petition and the ERF petition?

20 MR. FFITCH: Mr. Hill was not able to do
21 a full cost of capital analysis in this case. He did
22 use a number of other pieces of evidence, if you will,
23 to do an analysis of that. He included some of -- he
24 referred to some testimony he had done in other cases
25 that was contemporaneous. He also -- he did some

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1 analysis of the bond markets. That was independent
2 analysis. He also did a decoupling analysis. There
3 was no complete traditional cost of capital analysis.

4 COMMISSIONER JONES: Thank you.

5 JUDGE MOSS: Well, I suppose we should
6 move on to the subject of decoupling. Let me back up
7 a step. The Commission's Order 07 discussed the total
8 cost of capital issue in two contexts, it's two
9 separate discussions. There was a discussion in the
10 context of the ERF proceeding in which Order 07 tried
11 to make clear that in the context of the ERF
12 proceeding, it was never contemplated that cost of
13 capital would be addressed and adjusted. Indeed, if
14 we go back to Mr. Elgin's original proposal for an
15 ERF, it was very, very clear that to consider cost of
16 capital was one thing that would completely undo the
17 whole concept. As discussions of the subject
18 continued over months and months and months, that was
19 one consistent theme in the context of the developing
20 an ERF process.

21 I drafted a rule for ERFs. It is never going
22 to see the light of day, I think, but it also was
23 very -- well, tried to be clear anyway. That's just
24 not an issue in that context. Now, granted we did
25 hear the evidence. We took Mr. Gorman 's evidence, we

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1 took Mr. Hill's evidence, you know, perhaps out of an
2 abundance of caution and trying to be completely fair
3 to everybody. We didn't, on our own motion, exclude
4 that evidence, and nobody objected to it. I don't
5 recall anybody objecting to it anyway.

6 So there it is. You know, here we are. Judge
7 Murphy said, well, gee whiz, you can do an alternative
8 form of ratemaking, Commission, but you can't do an
9 ERF in this context if it doesn't include a full-blown
10 cost of capital analysis. Again, we can debate
11 endlessly as to whether in some absolute sense she is
12 right, wrong, or perhaps in the middle. That's where
13 we are today. So that's one piece.

14 The other piece, then, is the decoupling.
15 There the arguments for adjusting rate of return were
16 different. Had nothing to do with market conditions
17 at all, but had everything to do with the concept that
18 there is some sort of reduced risk for the Company
19 when decoupling is in place, and that this ties
20 directly to the return on equity and should result in
21 a reduction, according to some of the witnesses in the
22 case. According to other witnesses in the case,
23 Mr. Cavanagh in particular, there is no empirical
24 evidence from any jurisdiction in the United States of
25 America, or I suspect he would say in the world, that

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1 shows that to be the case.

2 So we did have evidence on that aspect of it,
3 too. It was quite different from the ERF piece of it.
4 So the question that I am getting to here is the
5 question on which the parties disagree, as to whether
6 we are considering the impact of decoupling on rate of
7 return in the context of this case. We have heard
8 Commissioner Jones say he wants to do that. I know
9 that, Mr. ffitch, you have made perfectly clear Public
10 Counsel's position on that. But then PSE and Staff
11 have both said, no, we shouldn't be doing that because
12 Judge Murphy's opinion doesn't go to that point. We
13 need to hear from the parties on that and resolve it.
14 Not necessarily in real time. I suspect none of this
15 is going to get resolved on the bench today, but we
16 need to hear what the parties' positions are on that.

17 Mr. ffitch, maybe I should let you have the
18 floor, since you sort of took the lead in your process
19 proposal on this.

20 MR. FFITCH: Thank you, Your Honor.

21 JUDGE MOSS: And don't use the word
22 "fraught."

23 MR. FFITCH: Fraud?

24 JUDGE MOSS: Fraught.

25 MR. FFITCH: Fraught.

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1 JUDGE MOSS: Fraught with legal peril or
2 something like that. Just kidding.

3 COMMISSIONER DANNER: You can say
4 anything you want.

5 JUDGE MOSS: Just kidding.

6 COMMISSIONER JONES: Overruled.

7 MR. FFITCH: I think I can be brief.
8 I'll try to be brief, Your Honor. I think that our
9 position is that in order to determine the cost of
10 capital, it is essential -- and cost of capital cannot
11 be determined properly without fully evaluating the
12 financial and business operational risk of the
13 utility.

14 In this case, the Company has adopted, with
15 the Commission's approval, a comprehensive new rate
16 framework with the express purpose of changing its
17 risk profile. And so that is squarely within the list
18 of considerations that any cost of capital analysis
19 would need to include. And so for that reason, we
20 think it would be improper for the Commission to
21 exclude or direct that cost of capital witnesses not
22 address that issue.

23 JUDGE MOSS: Okay.

24 MR. FFITCH: There's many additional
25 levels to the argument.

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1 JUDGE MOSS: Sure.

2 MR. FFITCH: I don't want to go back
3 into the briefing and Commission's order and so on. I
4 think it has been pretty widely and thoroughly
5 discussed. We just don't believe that you can fairly
6 set cost of capital and fairly set rates without
7 taking into account every factor that affects the
8 Company's financial risk.

9 JUDGE MOSS: In a sense, though, then
10 any difference in risk would be taken into account in
11 the modeling that the experts do. I mean that's one
12 of the things they look at, is risk, right,
13 explicitly?

14 MR. FFITCH: Yes, but because the
15 decoupling mechanism, and frankly the entire rate plan
16 itself is sort of new, this company is not operating
17 at this point under completely traditional ratemaking
18 framework, it is a new factor to be considered. The
19 framework is the same. Every cost of capital expert
20 looks at financial and operational risk as part of the
21 analysis. In this case, under those traditional
22 headings, you would look at this new component of
23 Puget Sound Energy's financial and operating
24 situation.

25 JUDGE MOSS: So presumably the experts

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1 who are going out and looking for companies to include
2 in proxy groups will look hard for other companies
3 that have decoupling.

4 MR. FFITCH: That could be one approach.
5 Cost of capital experts around the country have also
6 attempted to do, and have done, technical analyses of
7 the impact, direct impact on cost of capital and ROE
8 of decoupling.

9 JUDGE MOSS: Since our case or before?

10 MR. FFITCH: Before, during and after.
11 In other words, I think that just simply comparing or
12 finding other companies that have decoupling and using
13 their cost of capital as a comparator, that's only
14 part of the analysis.

15 JUDGE MOSS: Well, sure.

16 MR. FFITCH: Yes, I mean that would be
17 part of it, but --

18 JUDGE MOSS: I mean when you do a --
19 when you develop a proxy group, you try to find
20 companies with comparable risk, right?

21 MR. FFITCH: Right.

22 JUDGE MOSS: I mean that's part of the
23 process. That's all I mean.

24 Okay. Ms. Carson.

25 MS. STROM CARSON: PSE agrees that there

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1 were two different contexts in which return on equity
2 was addressed in the decoupling and in the ERF
3 proceeding. And in terms of how decoupling, what
4 effect that has on the return on equity, there was
5 evidence before the Commission that there is no
6 evidence that decoupling reduces risk such that the
7 cost of capital should be reduced. The Commission
8 looked at that evidence, addressed that evidence.
9 That was in Mr. Cavanagh, who is a co-petitioner with
10 PSE on decoupling, and said we think this makes sense
11 based on the evidence that we see.

12 We are not saying that decoupling doesn't have
13 an effect, but it makes sense to look at it
14 prospectively -- or not prospectively, but to see what
15 actually happened during that period, rather than
16 guess, particularly with all the evidence in the
17 Morgan study and the Brattle study that was done,
18 showing that decoupling does not reduce risk. The
19 Commission said let's wait and see, let's evaluate it
20 over the -- at the end of the rate plan period.

21 And so we think that issue has been addressed.
22 The Commission does not need to address it on remand.
23 The language from the Court all drew from the ERF
24 section of the Commission's order, in terms of current
25 market studies for the course of the rate plans. We

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1 think that the Commission does not need to reopen this
2 issue now, of the effect of decoupling on return on
3 equity.

4 JUDGE MOSS: Aside from the embedded
5 risk that would be reflected through the expert
6 analyses using comparable companies.

7 MS. STROM CARSON: I think that's
8 correct. I mean decoupling, as well as other sorts of
9 mechanisms. Companies have all different types of
10 mechanisms. Some have decoupling, some have others
11 that make them more risky or less risky. All of
12 that has to be considered. I don't think that you
13 single out decoupling necessarily.

14 JUDGE MOSS: All I am trying to suggest,
15 that there is some inherent consideration of this as a
16 factor in the work that the analysts do.

17 MS. STROM CARSON: I agree.

18 JUDGE MOSS: How visible that is, how
19 transparent that is, is another question, but it is
20 there.

21 Commissioner Jones.

22 COMMISSIONER JONES: Just a point of
23 clarification. When you say "decoupling," are you
24 referring to the amended decoupling petition, which of
25 course includes a K-factor?

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1 When you say "decoupling," what do you mean,
2 the final amended decoupling petition?

3 MS. STROM CARSON: Correct, yes.

4 COMMISSIONER JONES: Or generic studies
5 about decouplers in other states around the country?

6 MS. STROM CARSON: So I guess I need to
7 understand what your question is exactly.

8 COMMISSIONER JONES: You keep referring
9 to decoupling, so what do you mean by that?

10 MS. STROM CARSON: In terms of whether
11 or not it reduces risk such that cost of capital
12 should be reduced?

13 COMMISSIONER JONES: Right, right.

14 MS. STROM CARSON: I believe the
15 evidence that Mr. Cavanagh provided in the last
16 proceeding indicated that even with a K-factor type of
17 adjustment to decoupling, there was no evidence that
18 decoupling reduced risk such that cost of capital --

19 COMMISSIONER JONES: You are answering
20 my question. It's the final amended decoupling
21 petition that NWAC and you agreed to and submitted to
22 the Commission with the, quote, K-factor?

23 MS. STROM CARSON: Correct.

24 COMMISSIONER JONES: That's what you are
25 talking about. Okay.

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1 JUDGE MOSS: Okay. Anybody else want to
2 be heard on this?

3 Go ahead.

4 MR. WEBER: I just wanted to say that
5 ICNU's position on this is the same as on the primary
6 issue, that this is -- part of the overall rate of
7 return of 9.8, it was not supported on the record, and
8 we suggest sticking with the record as it is. If the
9 Commission wanted to open up a new proceeding
10 forward-looking, then we would assume this would be
11 part of the conversation.

12 JUDGE MOSS: Okay.

13 Staff.

14 MR. FFITCH: Your Honor, may I just
15 respond, unless Ms. Cameron-Rulkowski -- I wasn't sure
16 you were going to --

17 JUDGE MOSS: She is yielding the floor
18 at the moment, Mr. ffitch. Go ahead.

19 MR. FFITCH: I just wanted to comment
20 that the -- the rate plan that we are talking about
21 includes three components, as I think everyone is
22 aware: The ERF, the decoupling component, and the
23 K-factor component. They are really related with each
24 other, intentionally so. The effort here to sort of
25 deconstruct things and pretend that they are unrelated

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1 to the final outcome in the case, or to the rates
2 customers are paying, or to the cost of capital, I
3 think is really kind of a misconstruction of what
4 happened in this case.

5 I guess I would just recall for the Commission
6 and the parties, that the Commission specifically said
7 that this was an issue in this case, and also, I think
8 as PSE has acknowledged, declined to really make a
9 decision on it because the record was not, in the
10 Commission's mind, you know, adequate, didn't have
11 sufficient evidence to really address the full range
12 of cost of capital issues.

13 And so I think that is precisely why, along
14 with the other cost of capital issues that will be
15 addressed here, the Commission needs to allow the
16 parties to look both at declining financial risk in
17 the markets and the impact of decoupling in the rate
18 plan as a risk reduction factor.

19 MS. CAMERON RULKOWSKI: Staff disagrees
20 with Public Counsel. If this were a brand-new
21 proceeding, where we were going to set cost of capital
22 from the start, then yes, I would agree, we would look
23 at everything, but that's not where we are. We are in
24 the parallel universe of a remand proceeding. Judge
25 Murphy's ruling did not find error in the Commission's

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1 decision based on the effect of decoupling on the cost
2 of capital. In fact, she didn't discuss it. Where
3 she found error specifically was the Commission's
4 decision, or lack of decision on setting return on
5 equity in the context of market conditions and setting
6 the ERF rates.

7 COMMISSIONER GOLTZ: Judge Moss, I have
8 a question.

9 JUDGE MOSS: Sure.

10 COMMISSIONER GOLTZ: So let's assume
11 that the Commission adopts roughly the Public Counsel
12 proposal that we limit this to a three-month -- the
13 analysis for cost of capital for a three-month period
14 ending June 30th, 2013. And then next week sometime
15 there's a study by the brightest people in the -- on
16 the earth that for -- two -- on -- or two studies.
17 One says, basically, that the effect of decoupling is
18 to reduce risk. So there's an expert study by the
19 Brattle Group or some other group. An expert study,
20 and it's based on analysis from July 1, 2013, through
21 June 30th, 2014. In or out of the record? Admissible
22 or not?

23 MR. FFITCH: Well, if it's by the
24 Brattle Group and it says that ROE goes down, then --

25 COMMISSIONER GOLTZ: And the same

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1 question for Ms. Carson, if it's just the opposite
2 conclusion, and it says no, there's no impact on -- on
3 risk.

4 MR. FFITCH: I'm sorry to be facetious.
5 I understand the question. We have thought about
6 that.

7 COMMISSIONER GOLTZ: Are you going to
8 limit -- if we have Mr. Hill, are you going to
9 basically say we want you to analyze and make an
10 analysis of the impact of decoupling on risk, but we
11 need you to not think of anything that has happened
12 after June 30th, 2013?

13 MR. FFITCH: I think that where -- you
14 know, it is a difficult question. I think that where
15 we come down on that is that there is really two
16 different things happening. One is the technical
17 determination of cost of capital based on the types of
18 financial information the experts use as of 2013.
19 That we are saying, you are limited to that time frame
20 of analysis and that data from that point.

21 The other component is theoretical analysis.
22 That's a little different. I think where we come down
23 is if there -- if there is theoretical analysis in the
24 nature of a paper or something else about the impact
25 one way or the other, I think we would probably end up

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1 saying it's okay, that that could be considered,
2 because it's not sort of on the data side of things.
3 It's a policy or a theory kind of an analysis.

4 Now, the Commission could decide no, we are
5 going to have a bright line, we are really just going
6 to seal off the time machine and not think about
7 anything subsequent. I think we would come down on
8 saying, you know, subsequent policy or theoretical
9 discussions that folks have might be useful, but we
10 have to use the old numbers, basically.

11 JUDGE MOSS: Judge Murphy would approve
12 that, wouldn't she?

13 MR. FFITCH: I'm sorry, Your Honor?

14 JUDGE MOSS: Judge Murphy would approve
15 us just looking at historic data, right? She might
16 indeed disapprove us looking at the subsequent data,
17 since we never do that when setting cost of capital in
18 any context.

19 MR. FFITCH: I will say that this gives
20 me the fourth opportunity to cite a case.

21 JUDGE MOSS: Law.

22 MR. FFITCH: I have missed three
23 previous opportunities.

24 This is really a case from Washington that
25 announces the same principle that Mr. Rulkowski just

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1 quoted from the treatise, and that's the St. Joseph's
2 Hospital case, 125 Washington Second 733.

3 COMMISSIONER GOLTZ: Say that again.

4 MR. FFITCH: 125 Washington Second 733.
5 That's a 1995 case.

6 That just announces that principle that you
7 are -- on a remand you are going back and putting
8 parties back in the situation that they were in, in
9 the tribunal back in the situation it was in. And
10 that principle would -- you know, and I think somebody
11 else here has mentioned the -- you know, corollary to
12 that is you don't want to advantage or disadvantage a
13 party in the remand by departing from that principle.

14 That would, it seems to me, lean against, you
15 know, maybe allowing some of this new information
16 opportunistically, because it might benefit or hurt
17 another party. So that -- you know, if you had to
18 argue that point legally, maybe that principle would
19 be used to keep out the new studies.

20 I will say for Public Counsel that we -- we
21 would have to say that that could be considered for
22 better or for worse.

23 JUDGE MOSS: As I read Judge Murphy's
24 order, I have it here, what she is saying is, you,
25 Commission, need to take up this issue in the same way

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1 you traditionally take it up. She doesn't say in the
2 context of a general rate case, but we can read that
3 in because that's when we do take it up. And so this
4 would -- and don't consider these other -- other types
5 of evidence, because she is very critical of the fact
6 that the Commission made its determination without the
7 evidence it deemed necessary and customarily relied
8 on, and instead it relied on evidence from a previous
9 PSE adjudication, which is about as close as you could
10 get, I think, yet she still rejects that, a settlement
11 agreement by Avista, and generic information that was
12 not specific to PSE.

13 She is very critical of the fact that the
14 Commission purported to rely on things, evidence that
15 it doesn't traditionally rely on. That would be a
16 concern that I would have if we do anything other than
17 limit ourselves to the contemporaneous time frame that
18 she is asking us to go back and examine.

19 Did we get it right? In a sense, isn't that
20 what she is saying? Go back and examine, using all
21 the traditional approaches that would have been
22 available to you at the time, whether you got it right
23 or not, and if you didn't, then come forward with a
24 new rate of return. She didn't say lower, she just
25 said different. She didn't direct us to go one way or

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1 the other. Maybe we could come up with the same, we
2 could go lower, we could go higher. That's the idea.
3 That is what we are determining, is whether we got it
4 right.

5 And she wasn't happy with the evidence on
6 which we relied. We thought we got it right. I mean
7 clearly, the Commission would not issue an order that
8 it thought was in some way wrong, but she disagreed.
9 So it seems to me that that is what she is saying here
10 in these couple paragraphs in Section 2.

11 MR. FFITCH: Well, with respect, Your
12 Honor, I think we would not agree that it is a
13 question of whether the Commission got it right, which
14 again, I think has a feel of shifting the burden of
15 proof to the appellants in this case, or away from
16 PSE. I think the way we look at it is that the
17 Commission starts again. That is language that is in
18 the St. Joseph's case. The Commission begins again,
19 gets a complete record on the issue and makes a
20 decision ab initio on a proper record, without any
21 preconceived notion that -- it's just a question of
22 justifying the previous decision.

23 JUDGE MOSS: And that's not what I meant
24 to imply. What I meant to imply was that we might
25 very well reach the determination at the end of the

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1 day that 9.8 was in the zone of reasonableness.
2 Indeed, that is the conclusion we reached in Order 07,
3 that it remained, although at the upper end. That's
4 what we said in the order, that it remained within the
5 zone of reasonableness. And based on everything else
6 in the record, we didn't think there was a basis to
7 change it. That's all we said. We didn't really set
8 a rate of return in the prior case, we just left the
9 old one. But she's right, we left the old rate of
10 return in place. That's what we did. I mean we did
11 adjust the debt based on known and measured data.

12 COMMISSIONER GOLTZ: Judge Moss, I
13 wanted to hear what Ms. Carson said in response to my
14 hypothetical, if the study of October or November
15 2014, based on data from July 2013, to July 2014,
16 basically said there is no impact on ROE.

17 MS. STROM CARSON: I guess I find myself
18 in the unusual situation of agreeing with Mr. ffitch
19 once again on this. I agree that there is a
20 difference in a remand, where you are to look at a
21 specific period of time to determine a cost of capital
22 study and looking at studies and theories as to
23 whether decoupling reduces risk such that cost of
24 capital should be reduced. To me they are not
25 necessarily the same question. The Commission could

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1 allow such studies, if it takes up that issue again,
2 which I think it has already decided that it can wait
3 until the end of the rate plan and then see what the
4 effect of decoupling was on return on equity.

5 Did that make sense?

6 COMMISSIONER GOLTZ: Basically, it is
7 kind of having it both ways, though. You can say
8 well, we -- we're -- you can only -- cost of capital
9 witnesses, you can only look at information available
10 to you at the time of the hearing, unless it's
11 something else. Except for -- exception being sort of
12 a treatise or a study with no data. I mean is -- or
13 based on data prior to this. I mean it just seems
14 that you are getting all bollixed up here and there's
15 a path out. I don't know if my colleague would agree
16 with me on that.

17 MR. FFITCH: I think, Your Honor, maybe
18 I can help Ms. Carson respond to that. I think one
19 question is what is the specific cost of capital
20 adjustment that needs to be made to reflect risk, and
21 that is to be based on the data that's available as of
22 2013, the whole analysis of what is Puget Sound
23 Energy's specific cost of capital. The studies that
24 we are talking about are just sort of directional or
25 theoretical, like do you consider whether to look at

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1 that, is it a real thing or is it not a real thing.
2 But the actual factual determination of the result in
3 the case is the piece that's based on the previous
4 factual evidence.

5 I thought -- when I was thinking about saying
6 that, I thought it was very clear. I'm not sure it
7 was.

8 JUDGE MOSS: I just have one more
9 question for Staff in this case in this connection.
10 You say that you believe -- I think, Ms. Carson, you
11 said the same thing, though -- that Judge Murphy's
12 order speaks only to the context of cost of capital in
13 the ERF context and not in the decoupling context. I
14 know there are references to AR 989 and so forth.

15 As I read what Judge Murphy said here, one,
16 she cites Commissioner Jones, a separate statement, in
17 a couple of instances. I think, actually, I'm
18 wondering if this is not a misstatement. Commissioner
19 Jones issued a dissenting opinion, asserting that the
20 evidence was insufficient to warrant an adjustment to
21 the return on equity and that PSE had not met its
22 burden of proof.

23 COMMISSIONER JONES: Do you want me to
24 say something?

25 JUDGE MOSS: Is that what you really

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1 meant to say, do you think?

2 MS. CAMERON RULKOWSKI: I believe you
3 are correct, that it is a misstatement.

4 JUDGE MOSS: I think she meant to say
5 that Commissioner Jones asserted the evidence was
6 sufficient to warrant an adjustment --

7 COMMISSIONER JONES: Correct.

8 JUDGE MOSS: -- to return on equity; is
9 that right? I guess we have the --

10 COMMISSIONER JONES: Yes.

11 JUDGE MOSS: We have the horse here. We
12 can get it directly.

13 COMMISSIONER JONES: Could I say
14 something here? I'm looking at my dissent. I haven't
15 looked at it for awhile.

16 The first header was, The Company has not met
17 its burden of proof.

18 JUDGE MOSS: Okay.

19 COMMISSIONER JONES: So that's what I
20 said.

21 The second header, Current market conditions
22 warrant an adjust on POE -- PSE's ROE. Third header,
23 The implementation of decoupling reduces the Company's
24 risk and should be accompanied by a reduction in the
25 Company's return on equity.

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1 JUDGE MOSS: So we just probably have a
2 typo here.

3 COMMISSIONER JONES: I don't think she
4 got it right, Judge Moss.

5 JUDGE MOSS: I think that's the case.

6 In the next paragraph, Ms. Rulkowski, Judge
7 Murphy says, The Commission set rates in this order
8 and by its own admission it did so without the
9 evidence it deemed necessary and customarily relied
10 on.

11 I would give you that that's a reference to
12 the general rate case/ERF-type context.

13 Instead, the evidence it relied on was from a
14 previous PSE adjudication -- that being a reference to
15 the prior rate case -- a settlement agreement by
16 Avista.

17 And there we didn't rely on that. We just
18 referred to it and said, Well, we recently approved
19 the settlement and found that 9.8 remained in the zone
20 of reasonableness for returns on equity in the state
21 of Washington.

22 And then, Generic information that was not
23 specific to PSE.

24 What do you think she is referring to in that
25 last phrase? I have an idea about that. I think it

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1 may be different from yours. Can you think of what
2 evidence, or do you have an idea of what evidence she
3 is referring to there?

4 MS. CAMERON RULKOWSKI: I'm sorry to say
5 this, but I think that that reflects the judges's
6 incomplete understanding of the process of the
7 analysis that goes into setting return on equity.

8 JUDGE MOSS: You preface that with all
9 due respect to Judge Murphy.

10 MS. CAMERON RULKOWSKI: Exactly.

11 As part of the return on equity analysis, the
12 experts look at proxy groups. And especially for a
13 company like PSE, that is not publicly traded, they
14 would not be looking specifically at information about
15 PSE. And I believe that the judge did not have a
16 complete understanding of that process, and that
17 company-specific information is not an integral part
18 of the analysis in a case like this, with PSE.

19 JUDGE MOSS: So you think she is
20 referring to some aspects of Mr. Gorman's testimony
21 here? He is the only one who did that sort of
22 analysis, relying on proxy groups and so forth.

23 What I think she is referring to here is
24 Mr. Cavanagh's testimony, in which he said, I've
25 looked at this in every jurisdiction in the country.

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1 I've spoken about this all over the country, all over
2 the world. I have participated in every rate case in
3 the United States in which this has been an issue,
4 blah, blah, blah. And based on all of that
5 experience, I testify to you today that there should
6 be no adjustment because there has been no proven
7 relationship between risk reduction, rate of return in
8 the context of decoupling.

9 That is what I assume that she is referring to
10 here. You can't be sure.

11 MS. CAMERON RULKOWSKI: I speculate
12 because I don't know, but based on the discussion at
13 oral argument, I -- I don't have a clear recollection
14 of the discussion of Mr. Cavanagh's testimony, and I
15 certainly would welcome the other participants'
16 recollections here. But I do know that at oral
17 argument, the judge did ask both Staff counsel and
18 both counsel for -- and also counsel for PSE, whether
19 the Commission considered company-specific
20 information. That's what I am thinking of --

21 JUDGE MOSS: Okay.

22 MS. CAMERON RULKOWSKI: -- when I
23 speculate.

24 JUDGE MOSS: All right.

25 MS. STROM CARSON: Judge Moss, if I

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1 might. I agree with that, also based on the oral
2 argument and questions. When we pointed out some
3 variances, wide variances in Mr. Gorman's results, she
4 asked is that company-specific, and then there was an
5 explanation of what proxies are. And then again it
6 was, But any company-specific information. I have
7 always interpreted that to be, with all due respect, a
8 bit of a misunderstanding about the role of proxies in
9 determining cost of capital.

10 COMMISSIONER GOLTZ: Was there a
11 transcript made of that oral argument, and if so does
12 any party have it?

13 Maybe the answer to the latter question is no,
14 no one has the transcript.

15 MS. CAMERON RULKOWSKI: Staff does not
16 have a copy of any transcript.

17 MS. STROM CARSON: We do not.

18 MR. FFITCH: I can check, Your Honor.
19 I'm not sure that if we have one or not.

20 JUDGE MOSS: Mr. Weber, you have
21 something to share with us.

22 MR. WEBER: Unfortunately, it's not a
23 transcript, Your Honor.

24 JUDGE MOSS: I'm sure we can get one.

25 MR. WEBER: I believe we probably could.

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1 To come to Judge Murphy's defense, whether or
2 not that is what she intended here, I think that she
3 clearly covers it in the next paragraph, and makes
4 your reading entirely consistent. There she refers to
5 Commissioner Jones' statement and the issue of burden
6 of proof. In the third paragraph that Commissioner
7 Jones pointed to, he discusses the burden of proof as
8 an issue with decoupling specifically. So he mentions
9 it doesn't carry its burden of proof on the larger
10 issue, and also in decoupling. Her reference is to
11 Commissioner Jones' discussion of burden of proof. I
12 think that's a large tent, the umbrella covers the
13 issue.

14 JUDGE MOSS: Thank you.

15 MR. FFITCH: And if I can just add, I --
16 Your Honor, I think that the fact that the Court may
17 not have talked about this particular issue in the --
18 in its own questions on the oral argument, isn't
19 determinative of this question. It was fully briefed
20 and argued. We certainly talk about decoupling in the
21 oral argument, as you wouldn't be surprised to hear.
22 It was thoroughly briefed by all the parties. I think
23 you would have to have an assumption that the Court
24 had that in mind.

25 I do tend to think that Judge Moss is correct,

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1 in terms of the reference to the Cavanagh testimony,
2 because that was fairly extensively discussed in the
3 Commission's order.

4 JUDGE MOSS: I would emphasize that is
5 my speculation.

6 MR. FFITCH: Yes, I understand. I just
7 wanted to add that comment. Thank you.

8 MS. STROM CARSON: Your Honor, I would
9 just like to add, in terms of -- we have Commissioner
10 Jones here, so I guess he can say what he meant. When
11 the Court is referencing Commissioner Jones and the
12 burden of proof, that is in a completely different
13 section than the decoupling. The Company has not met
14 its burden of proof and he basically talks about
15 market conditions.

16 JUDGE MOSS: I don't mean to cut you
17 off, Mr. Weber. If you have something really
18 important to say, certainly you will have an
19 opportunity to do so.

20 I think we are getting to the point in the
21 afternoon where we need to move quickly to some other
22 points that we need to resolve, or at least discuss,
23 and have a lot of fodder on the table for a decision
24 by this group. And then give me an opportunity to
25 spend some time with them in the conference room, to

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1 get some guidance as to a prehearing order that will
2 outline what we are going to do and how we are going
3 to do it, based on the very good discussion we have
4 had today, which I think has all been very interesting
5 and enlightening.

6 Unless there is something really -- okay. I
7 think what we need to do, we will -- I will enter an
8 order -- or I will prepare an order for entry in
9 this -- in the wake of this prehearing conference, and
10 it will probably take me a day or two, outlining what
11 we are going to do and how we are going to do it.

12 Now, the third question is when are we going
13 to do it.

14 MS. CAMERON RULKOWSKI: Judge Moss,
15 before we get there, there is one issue. I have been
16 carefully referring to return on equity. I notice
17 that there have been other terms also that have been
18 used, cost of capital, rate of return. My
19 interpretation is that what we have at issue is return
20 on equity and not the other parts of a cost of capital
21 analysis. That is something I would like to have
22 clarified.

23 JUDGE MOSS: All right. Others may have
24 an opinion on this. I suspect they do.

25 Mr. ffitich.

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1 MR. FFITCH: Your Honor, we disagree
2 with that. We think that the process that the
3 Commission goes through in setting rates traditionally
4 involves the establishment of the cost of capital, and
5 that by doing that, it gives the Commission a little
6 bit more flexibility in resolving this case, rather
7 than being really narrowly focused just purely on the
8 ROE. The kinds of traditional evidence that the Court
9 referred to as not being relied on here, everyone is
10 aware that, I think, that the expert witnesses prepare
11 a full cost of capital analysis, looking at all the
12 different components, and end up with weighted average
13 cost of capital. We would urge the Commission to
14 simply allow the parties to present a traditional cost
15 of capital analysis.

16 COMMISSIONER DANNER: So, if I may. I'm
17 looking at the order and what she said is that the
18 Commission's determination is reversed because the
19 Commission's finding of facts with respect to the
20 return on equity component of Puget Sound's cost of
21 capital in the context of a multiyear rate plan are
22 unsupported by substantial evidence.

23 I want to be very careful that we are only
24 going to be reviewing the portion of the case that was
25 remanded, and that we are not just going to be doing

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1 reconsideration after the fact on portions of our
2 order that in fact have not been remanded and are in
3 effect and have legal force and effect.

4 MS. STROM CARSON: Your Honor, if I may.
5 I would agree with that. The Court's order is quite
6 clear on that. Debt costs were addressed. There was
7 evidence on known and measurable changes with respect
8 to debt, so that was addressed, capital structure was
9 addressed. There were varying opinions about capital
10 structure and the Commission ruled on that and took
11 evidence on that from the parties. I think we should
12 stick with what was remanded by the Court, and that's
13 the return on equity component.

14 JUDGE MOSS: All right. Okay. So we
15 have that on the table.

16 Now, timing. Everyone seems to suggest we
17 should have three rounds of testimony. I suppose
18 that's probably a good idea. We will set a time frame
19 for that. I'm not sure what it will be, or whether we
20 will say, well, we want this and this. We will make
21 those decisions.

22 How much time does the Company believe it
23 requires to put on a direct case that it believes
24 satisfies -- now, obviously I know the scoping that
25 will be discussed and the prehearing order will affect

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1 your answers to a degree. But assuming that we will
2 try our best to confine this to what the Court told us
3 we had to do, what is the Company thinking will be
4 required to prepare a direct case?

5 MS. STROM CARSON: We think at least
6 three weeks is necessary. We think it can probably be
7 done in three weeks, three to four weeks.

8 JUDGE MOSS: And then what about
9 response from the other parties? If we have direct
10 testimony in about three weeks, how much time will the
11 parties believe they need?

12 MR. FFITCH: We would request six weeks
13 to respond to the Company filing.

14 JUDGE MOSS: Staff.

15 MS. CAMERON RULKOWSKI: Assuming that we
16 are addressing return on equity only from the
17 perspective of market conditions, and not with other
18 issues, three to four weeks.

19 JUDGE MOSS: What if we are also
20 considering decoupling?

21 MS. CAMERON RULKOWSKI: Honestly, we
22 haven't discussed that time frame. Six weeks, as
23 Public Counsel suggested, seems a little bit long
24 but -- I think we don't have a position on that.

25 JUDGE MOSS: Okay. All right.

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1 Anybody else?

2 Mr. Weber.

3 MR. WEBER: I wouldn't object to
4 Mr. Ffitch's numbers, especially given that we don't
5 know exactly how much work our expert will have to do.

6 MS. STROM CARSON: Your Honor, I guess
7 it probably makes a difference whether or not there is
8 a separate decoupling issue. We may need a little
9 more time. I guess four to five weeks.

10 JUDGE MOSS: Okay.

11 COMMISSIONER DANNER: So you are going
12 to need to have a line down the middle of your chart,
13 so we've got on the one side --

14 JUDGE MOSS: That's right, but I'm going
15 to know the answer to these questions. All right.
16 Okay.

17 And then how about rebuttal? Again, we can
18 make two assumptions here, and you can give me a
19 guesstimate as to how much time you might need after
20 the response case has come in for the rebuttal filing.

21 MS. STROM CARSON: Three weeks.

22 JUDGE MOSS: Either way?

23 MS. STROM CARSON: Three to four weeks.

24 JUDGE MOSS: Okay. Well, all right, you
25 have given me some ranges. I understand that the

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1 longer range is if the issues are broader and the
2 smaller range is if the issues are narrower. We can
3 work with that. We can set some dates for other
4 stages, such as briefing.

5 Now, Staff proposed a fairly short limit on
6 brief. Ten pages, as I recall. That's for Phase 1.
7 And then an additional ten pages, if we need a
8 Phase 2. Is that consistent with other people's
9 thinking about the requirements for briefing?

10 I know, Mr. Ffitch, you are going to want 60
11 pages, aren't you?

12 MR. FFITCH: Not necessarily, Your
13 Honor. I think ten pages is far too short. There are
14 some complex issues here. We may have multiple
15 issues. In addition to traditional cost of capital or
16 ROE, we have the decoupling issue and so on.

17 JUDGE MOSS: Maybe 25 pages?

18 MR. FFITCH: I think we would be happy
19 with 40 pages, Your Honor, and we would shoot to be
20 shorter.

21 COMMISSIONER GOLTZ: In a general rate
22 case what's the normal page limit?

23 MR. FFITCH: 60.

24 COMMISSIONER GOLTZ: So you need
25 two-thirds of that for just this issue?

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1 MR. FFITCH: Possibly. I don't see
2 any -- this is important, in our view, and precedent
3 setting, particularly with regard to the decoupling
4 issue. We would like an opportunity to fully brief
5 the question. I don't see any reason to have unduly
6 short limitations.

7 JUDGE MOSS: What does the Company
8 think?

9 MS. STROM CARSON: 25.

10 JUDGE MOSS: It's always good to go with
11 the judge, right? I really have very little influence
12 around here.

13 All right. We will set something within the
14 range that's been discussed.

15 Are the Commissioners going to want reply
16 briefs, do you think, in this case or, no? We can
17 discuss that.

18 COMMISSIONER DANNER: Let's discuss it.

19 JUDGE MOSS: We'll discuss it. Okay.

20 I do think that phased proceedings are
21 appropriate. We do need to first determine where we
22 are on this ROE question, and then we will know what
23 more we may need to do. I don't want parties spending
24 a lot of time, effort and money trying to figure out
25 something that might turn out to be fairly

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1 hypothetical. We will do that phased proceeding
2 approach, and we will set a schedule for all of that
3 as necessary down the road.

4 As far as discovery is concerned, Mr. Ffitch,
5 we have your motion. I think it is appropriate for
6 you to have an opportunity for discovery, but I do
7 want to suggest, and I think in this issue
8 particularly, this is not something about which I
9 would think there would be a great deal of discovery
10 required. Each of the experts, in my experience with
11 cost of capital experts, which goes back a long way,
12 they have their own data sources, they have their own
13 subscriptions and so forth, and they rely on all of
14 that, much more than they rely on information gained
15 from the Company or other parties.

16 Now, I recognize there may be a need for some,
17 and there may be company-specific information that you
18 need and certainly should ask for it. I just don't
19 think we need really broad discovery in this case.

20 The order will -- the prehearing conference
21 order will define the issues as clearly as can be, and
22 discovery will be limited in accordance with that.

23 COMMISSIONER GOLTZ: Judge Moss, I have
24 a question. So in the 2012 rate case, the last full
25 rate case, what was the discovery requirement? What

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1 discovery did Public Counsel do on ROE?

2 MR. FFITCH: In the 2012 rate case?

3 COMMISSIONER GOLTZ: Yes.

4 MR. FFITCH: I would have to go back and
5 look, Your Honor. From memory, I believe that the
6 cost of capital consultants for all parties do
7 discovery in virtually every case on certain issues.
8 We would be expecting to limit our discovery with
9 scope of the issues, and if we get out of bounds, I
10 know that Puget will raise that issue.

11 JUDGE MOSS: There's some fairly typical
12 stuff. You ask for 10-Ks, you ask for Moody's reports
13 or Standard & Poor's reports or those sorts of things,
14 I believe. I don't get the discovery, but I know that
15 that's the kind of things we used to ask for when I
16 did this. Again, that's fine. That's all within the
17 scope of what's fair. I just don't want it to get
18 overbroad. I don't want to bog things down with
19 discovery and a lot of arguments about discovery.
20 This is a caution up front, to be arrow sharp on that
21 point.

22 You know, just like the procedural schedule is
23 subject to change, if some party comes forward and
24 says, hey, Judge, things aren't working out, we need
25 to change it, here's why, here's what's happening, we

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1 can change it. If something happens in discovery and
2 things get out of hand, you can always come to me for
3 resolution of those types of issues.

4 Nothing we do today, nothing we do in the
5 prehearing conference order is cast in stone. We
6 always want to do what's in the interest of a good
7 outcome and just results for all concerned. Keep that
8 in mind. Be mindful that we make an effort to ensure
9 fairness.

10 MS. STROM CARSON: Your Honor, as I
11 recall, most of the discovery that we receive on cost
12 of capital relates to our experts' testimony that has
13 been filed.

14 JUDGE MOSS: Right.

15 MS. STROM CARSON: Of course that won't
16 have been filed for three to four weeks.

17 JUDGE MOSS: Sure.

18 MS. STROM CARSON: We certainly would
19 not expect to get discovery relating to what PSE's
20 position is before we file testimony.

21 JUDGE MOSS: Right. But you could get
22 some earlier discovery, asking for something like a
23 10-K or a report that you got from Moody's or
24 something like that. I think that would be fair game.

25 MS. STROM CARSON: Of course.

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1 JUDGE MOSS: I don't want to say we're
2 not going to start discovery until you file your case.
3 It should be narrow in the interim. When they do file
4 their case, then you will know more of what you need.

5 MS. STROM CARSON: And I think it --

6 JUDGE MOSS: Right, right.

7 MS. STROM CARSON: -- shouldn't be going
8 to what is PSE's position going to be --

9 JUDGE MOSS: Right, it should not.

10 MS. STROM CARSON: -- when it files its
11 case.

12 JUDGE MOSS: It should not. No, that's
13 for your direct case. Then everybody will know your
14 position or positions, as the case may be.

15 Yes, that's true, Mr. Brooks, I didn't ask you
16 about the schedule. You are sitting over there
17 quietly throughout all off this.

18 MR. BROOKS: We are here, we are
19 monitoring. We plan on participating in the briefing
20 stage. The schedule leading up to the briefing is
21 irrelevant to us, and we will defer to the other
22 parties.

23 JUDGE MOSS: Okay.

24 MR. BROOKS: But we will continue to be
25 at the table.

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1 JUDGE MOSS: Ms. Goodin, the same? Are
2 you there?

3 Sorry. I had to mute the callers earlier. I
4 apologize, but we were having some interference in the
5 hearing room, so I muted the callers.

6 Ms. Goodin, are you still there?

7 Apparently not. Well, I hope I didn't hurt
8 anyone's feelings.

9 MR. FFITCH: Your Honor, just one other
10 footnote on discovery. We had suggested a shortened
11 turnaround time for discovery in our written proposal
12 that we sent in. I haven't had a chance to talk to
13 other counsel about that or heard from them on that.
14 We would, in the interest of moving things along in
15 this case, suggest perhaps either a seven-day,
16 seven-business-day or five-business-day turnaround
17 time throughout the case.

18 JUDGE MOSS: I think after PSE files its
19 direct case it may be appropriate to revisit that
20 issue. For now let's leave it at the standard ten-day
21 response time. Again, I don't see there being much
22 need for discovery at this stage. I see perhaps a
23 greater need once the direct case is on the table. At
24 that point in time, depending on the schedule we set,
25 it may become important to do what you suggest, and we

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1 will certainly do so. For now at least let's -- let's
2 keep things to the procedural burden as established by
3 the rules as the default.

4 Is that all right? Is that agreeable?

5 MS. STROM CARSON: Yes.

6 JUDGE MOSS: And of course the Company
7 can -- you know, you and the Company can work things
8 out to the extent possible.

9 And speaking of working things out,
10 Mr. ffitch, I believe it was you who suggested that we
11 set a time for a settlement conference. That is an
12 issue I do not want to leave the room without raising.
13 Is there a prospect that some settlement discussions
14 might be fruitful in the context of this unusual
15 proceeding, or not?

16 Ms. Carson, don't be shy.

17 MS. STROM CARSON: I hate to be
18 pessimistic. This has just been going on for quite a
19 while and parties have pretty strong views about their
20 positions. I am a person who is always happy to
21 engage in settlement discussions. I guess I am a
22 little bit pessimistic about whether or not it will be
23 fruitful. If other parties think it is, I think PSE
24 is willing to do it.

25 JUDGE MOSS: Mr. Weber.

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1 MS. STROM CARSON: Or perhaps not.

2 MR. WEBER: We are amenable to
3 discussions. I don't want to venture what the
4 likelihood of success would be.

5 JUDGE MOSS: I know you are at something
6 of a disadvantage, as Ms. Davis has been handling this
7 case. She also -- I don't believe you were present
8 for the decoupling review that we went through a month
9 or two ago, whenever it was.

10 MR. WEBER: No, I wasn't able to.

11 JUDGE MOSS: She actually raised the
12 question at that meeting as to whether there was some
13 possibility for ongoing discussions in this context.
14 You may recall, Ms. Carson, she did that. I think
15 it's a legitimate issue to take up. I am going to
16 just leave it for the moment. I am going to leave it
17 to you all. You let me know if there is anything we
18 can do to help you in way of mediation. We are sort
19 of short staffed in my division at this time. I don't
20 know if there is anyone -- well, I think Judge Kopta
21 is qualified in mediation. I'm not sure about others.
22 I can't do it, obviously. Although, that might move
23 things along quickly.

24 All right. Is there anything else we need to
25 talk about today that will inform us as we reach

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1 decisions?

2 Mr. Boehm, are you on the line? I think they
3 all got off when I muted the call. I don't know why.

4 MS. STROM CARSON: Your Honor --

5 MR. XENOPOULOS: Your Honor, this is
6 Damon Xenopoulos. I'm still here.

7 JUDGE MOSS: Mr. Xenopoulos is still
8 with us.

9 I think some people left us when we muted the
10 call because of the interference in the hearing room.

11 Okay. Go ahead.

12 MS. STROM CARSON: Your Honor, it is
13 PSE's preference to have a reply brief, even if it is
14 very short, seven pages. We think it is very helpful
15 to respond to issues that are raised.

16 JUDGE MOSS: Okay. I have made a note.

17 MS. CAMERON RULKOWSKI: Staff has one
18 comment, and that is simply that each cost of capital
19 expert seems to do his or her analyses a little bit
20 different. I would simply ask that the analyses not
21 be too structured.

22 JUDGE MOSS: Well, I think we leave it
23 to the witnesses to determine how best to present
24 their analysis. I don't think we have ever been
25 prescriptive about that.

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1 Are you concerned that some people don't like
2 to use CAPM and other people don't like to use risk
3 premium?

4 MS. CAMERON RULKOWSKI: Well, that was
5 one of the concerns. You haven't said anything about
6 that, about saying exactly which types of analyses you
7 want. You haven't said that --

8 JUDGE MOSS: What the Commission has
9 traditionally said in its orders is that we look at
10 all of it. We don't require anything specific. We
11 are not going to say you must do this, you must do
12 that. We have not done that in the past. I don't see
13 us doing that now or in the future.

14 When we get CAPM analysis, when we get risk
15 premium analysis, and we get DCF multistage analysis,
16 single stage analysis, whatever it may be, evidence
17 about the markets in general, all of that, we look at
18 everything. We have found it useful to consider that
19 full body of evidence in the appropriate context,
20 which is typically a general rate case. That's not
21 where we are here, but I think we will still -- that's
22 what the judge said we are going to do, is to look at
23 that evidence.

24 MS. CAMERON RULKOWSKI: Thank you, Your
25 Honor.

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1 JUDGE MOSS: Okay. All right. Anything
2 else?

3 Well, thank you all. I am sorry that we
4 aren't leaving the room here with a bit more clarity
5 brought to the process. I think the order will
6 certainly clarify things and bring some focus to it.
7 I would hope to have that out within a day or two.
8 And then of course you all will be free to let me know
9 if there are issues or things you think should be
10 clarified or what have you, and we will take such
11 further action as necessary, up to and including
12 having another get-together.

13 Okay. All right. Thank you all very much.
14 We will be off the record.

15 (Prehearing conference adjourned 3:45 p.m.)

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter in and for the State of Washington,

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