

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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2 -----
3 In the Matter of the Petition of)
4 PUGET SOUND ENERGY, INC.) No. UE-130583

5 For an Accounting Order Authorizing) (Consolidated)
6 Accounting Treatment Related to) Pages 64-97
7 Payments for Major Maintenance)
8 Activities)

9 -----
10 WASHINGTON UTILITIES AND)
11 TRANSPORTATION COMMISSION,) No. UE-130617
12 Complainant,) (Consolidated)
13 vs.) Pages 64-97
14 PUGET SOUND ENERGY, INC.,)
15 Respondent.)

16 -----
17 In the Matter of the Petition of)
18 PUGET SOUND ENERGY, INC.) No. UE-131099
19) (Consolidated)
20 For an Accounting Order Authorizing) Pages 64-97
21 the Sale of Water Rights and)
22 Associated Assets for the Electron)
23 Hydroelectric Project in Accordance)
24 with WAC 480-143 and RCW 80.12)

25 -----
26 In the Matter of the Petition of)
27 PUGET SOUND ENERGY, INC.) No. UE-131230
28) (Consolidated)
29 For an Accounting Order Authorizing) Pages 64-97
30 the Sale of Interests in the)
31 Development Assets Required for the)
32 Construction and Operation of)
33 Phase II of the Lower Snake River)
34 Wind Facility)

35 -----
36 Pre-hearing Conference - Volume III
37 Pages 64 - 97

38 Administrative Law Judge Marguerite E. Friedlander

39 -----
40 1:30 p.m. - 2:10 p.m., July 29, 2014
41 Washington Utilities and Transportation Commission
42 1300 S. Evergreen Park Drive SW, Room 206
43 Olympia, Washington 98504-7250
44 Mary M. Paradise, CSR 2469

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A P P E A R A N C E S

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E X H I B I T I N D E X

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NUMBER: PAGE

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(None Marked.)

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1 OLYMPIA, WASHINGTON, JULY 29, 2014

2 1:30 p.m.

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

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7 JUDGE FRIEDLANDER: Okay. Let's get
8 started. I am Marguerite Friedlander,
9 administrative law judge with the Commission, and
10 we're here today for a pre-hearing conference in
11 the consolidated dockets of docket UE-130617.
12 They're all consolidated under the 2013 PSE PCORC
13 court, which has been stylized the Washington
14 Utilities and Transportation Commission versus
15 Puget Sound Energy.

16 The first order of business today is to
17 take appearances. Since we've already met
18 previously and I have your contact information,
19 let's just have attorneys identify themselves and
20 state who they're representing, beginning with
21 Puget Sound Energy.

22 MR. KUZMA: Good afternoon. Jason Kusma
23 with Perkins Coie, representing Puget Sound Energy.

24 JUDGE FRIEDLANDER: Thank you.
25 Representing the staff?

0068

1 MS. BROWN: Sally Brown, senior assistant
2 attorney general.

3 JUDGE FRIEDLANDER: Thank you.
4 Representing public counsel?

5 MR. FFITCH: Simon Ffitch for public
6 counsel, your Honor.

7 JUDGE FRIEDLANDER: Thank you. Is there
8 anyone today representing ICNU? Okay. And
9 representing the Puyallup Tribe?

10 MS. BRAUTIGAM: Lisa Brautigam, Puyallup
11 Tribe of Indians.

12 JUDGE FRIEDLANDER: Could you spell the
13 last name?

14 MS. BRAUTIGAM: Sure. It's B-r-a-u-t, as
15 in Tom, i-g-a-m, as in Mary.

16 JUDGE FRIEDLANDER: Thank you. It sounded
17 like we may have had somebody else come on the
18 conference bridge. Is there anyone else who wishes
19 to put in an appearance today? All right. Hearing
20 nothing, we'll get right into --

21 MR. DiJULIO: And also, Steve DiJulio with
22 Foster Pepper.

23 JUDGE FRIEDLANDER: Okay. And could you
24 please spell you last name?

25 MR. DiJULIO: Yes. Capital D-i, capital

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1 J-u-l-i-o.

2 JUDGE FRIEDLANDER: Okay. Thank you. So
3 let's get into the meat of the matter today. Last
4 Friday, the Commission granted the intervention
5 request of the Puyallup Tribe, with the caveat that
6 this pre-hearing conference today may narrow or
7 limit the scope of that intervention.

8 We've received several briefs on the exact
9 extent to which the Tribe may or may not
10 participate in this case from PSE and staff. I'd
11 like to hear from the Tribe, first of all, if you
12 can reiterate your involvement in this docket and
13 the nature of your petition.

14 MR. DiJULIO: Thank you, Judge.
15 Consistent with the application from the Tribe --

16 JUDGE FRIEDLANDER: The red light should
17 be on.

18 MR. DiJULIO: Consistent with the
19 application from the Tribe and its supplemental
20 filings with the Commission, the interest of the
21 Tribe in this matter is no different than the
22 Commission's review of the application and the
23 public interest in assuring that an acquiring
24 entity of the Electron Dam facilities has the
25 financial capacity and the capability to operate

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1 the project in the public interest.

2 This background is not -- should not
3 expand at all on the issues here, in terms of what
4 the Tribe is looking at in terms of its attention
5 to this is assuring that the public interest is
6 served and that the financial information that has
7 been submitted addresses the issues that the Tribe
8 has regarding this entity, of which we know very
9 little about because of the redacted data.

10 Following the hearing, tribal counsel,
11 both Mr. Stiltner and Ms. Brautigam, as well as
12 Mr. Eckert from Foster Pepper and I, will be filing
13 our confidentiality statements so that we can make
14 our applications to get access to the financial
15 data and get that, as well as getting the experts
16 lined up to review that, and to prepare pre-filed
17 testimony regarding that material.

18 So we're not seeking to do anything other
19 than to be sure that the application and the UTC's
20 Commission is in the public interest and consistent
21 with the responsibilities with respect to the
22 operation of Electron Dam.

23 Secondly -- and this is the operations
24 piece -- we don't know about this entity other than
25 what has been submitted in the response to the

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1 bench requests regarding the capability of this.
2 Our preliminary indication from the information
3 filed is that the operating entity that is proposed
4 to the transferring entity -- entity to be
5 transferred to has no experience with a hydro
6 project with fisheries issues attached to it.

7 And as is part of the record from the
8 initial filing in this case, the ability to operate
9 this facility and to perform consistent with its
10 obligations under the REA or otherwise is a
11 substantial issue, because in the attachment to the
12 initial application in 2013, the specific reference
13 is to the HCP ITP uncertainty and cost is
14 transferred to the buyer. HCP is the Habitat
15 Conservation Plan and program that is part of the
16 record as well in this case. So again, that is not
17 a new issue, but just to assure that the operating
18 entity is qualified to -- to perform under that.

19 And then lastly, again, in the public
20 interest and the financial stability of this entity
21 is to assure that in the event that the project, as
22 transferred, is not successful or they're unable to
23 perform, that the entity will be able to have the
24 financial resources to pay for decommissioning,
25 which again, as part of the record already in this

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1 case, has been identified by PSE in its -- at least
2 in its alternatives analysis, is \$28.9 million.

3 That estimate, of course, is somewhat
4 dated today. But again, retirement costs
5 associated with that are substantial as well. We
6 need to be sure that an entity other than Puget
7 Sound Energy will have the capacity to do that. So
8 those are the issues, the three issues, that we are
9 -- the Tribe is expecting to focus on in its review
10 of this matter.

11 JUDGE FRIEDLANDER: Thank you. First of
12 all, I just want to clarify. That number, I
13 thought, was filed under confidential seal. It's
14 not?

15 MR. DiJULIO: It is not.

16 MR. KUZMA: I don't think, no.

17 JUDGE FRIEDLANDER: Okay. Because I have
18 it in my confidential materials. So apparently, it
19 has been made public.

20 MR. DiJULIO: We printed it right off of
21 the application. It's appendix 8 to the
22 application filed last June. June of 2013.

23 JUDGE FRIEDLANDER: Okay. Thank you.
24 Just to clarify, then, the Tribe is not seeking to
25 enforce the REA in this proceeding, is that

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1 correct?

2 MR. DiJULIO: At this time, with Puget
3 Sound Energy's continued commitment to the REA,
4 that is not an issue at this point. But again, we
5 haven't seen all of the documents that relate to
6 that issue. We've seen the -- obviously, the
7 amended application that was filed two weeks ago,
8 or last -- that triggered the application, but our
9 main concern is on the -- again, the compliance in
10 the public interest with the project operation, and
11 from a financial standpoint, if PSE has continuing
12 liability with respect to this, how does that
13 impact the staff and the Commission's consideration
14 of the public interest?

15 Because it appears to me that they're --
16 PSE may have continuing liability with respect to
17 this issue. So -- but again, we're just getting
18 into this at this point.

19 JUDGE FRIEDLANDER: Right.

20 MR. DiJULIO: To advise the Commission
21 further, the judge, on this issue, we have -- not
22 knowing where we were, we've been consulting and
23 have lined up consulting experts who we will
24 preliminarily engaged, subject to the Tribe's
25 approval tomorrow, Gary Saleba at EES, is

0074

1 recognized by the Commission, has testified on
2 other proceedings, they do hydro projects as part
3 of their business, and they're lined up -- I talked
4 to Mr. Saleba today, and he believes that with the
5 data that is already present in the file that we
6 haven't seen, obviously, the confidential data,
7 that by the time we can make the requests for that
8 material, have that reviewed within 30 days and --
9 or get it within 30 days, review it and submit any
10 pre-filed testimony within 30 days after that.

11 So in terms of access to the materials and
12 reporting on the Tribe's concerns regarding the
13 public interest for the transfer of asset, we think
14 we can have that material back to you within 60
15 days.

16 JUDGE FRIEDLANDER: Okay. But I guess
17 what I'm really trying to get at here is PSE has
18 raised the concern that you're expanding the scope
19 of this docket by referencing the Endangered
20 Species Act and referencing an REA, the resource
21 enhancement agreement that is a contract between
22 you and PSE -- the Tribe, I should say, and PSE,
23 which we have not approved or -- or disallowed.

24 So our -- is the Tribe acknowledging,
25 then, that there won't be raised any issues of the

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1 Endangered Species Act, which we, again, don't have
2 authority over, or the REA?

3 MR. DiJULIO: The Tribe does not intend to
4 raise any issues regarding the Endangered Species
5 Act as an act or violations of the act, but rather,
6 only the public interest associated with the new --
7 the proposed new owner's ability to perform under
8 documented requirements with respect to, for
9 example, the HCP.

10 So that's not an Endangered Species Act
11 issue. That's an existing obligation of the entity
12 that's operating the dam to be responsible for
13 that. And we -- the Tribe has a particular
14 interest in that because of its interest in tribal
15 fisheries issues. It's not a -- so that's not an
16 issue before the Commission.

17 And again, confirming that PSE is --
18 remains responsible under the REA, then that is not
19 an issue before the Commission, but it may impact
20 the rate analysis in light of the recent filings.
21 Because as I understand the current state of the
22 record, the position of PSE and the staff is that
23 there's no rate impacts associated with this
24 application, but now, with the revised application
25 and PSE's acknowledgment of ongoing responsibility

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1 under the REA, how does that impact the rate
2 representations, which is, of course, back to the
3 public interest issue.

4 So again, those are the issues that -- so
5 we're not really interested in the REA, other than
6 how it may impact the rate issue, as well as the
7 ability of the proposed transferee to perform the
8 project's operations, again, in the public
9 interest.

10 JUDGE FRIEDLANDER: Thank you. Mr. Kuzma,
11 do you have a response to that?

12 MR. KUZMA: I have a couple, your Honor.
13 As you indicated earlier, the Commission doesn't
14 have jurisdiction over the ESA issues and the REA.
15 That's a separate contractual matter.

16 One issue that I would like to raise today
17 at the pre-hearing conference is just the
18 jurisdiction over the Tribe itself. Puget does not
19 know whether, by simply intervening, the Tribe has
20 waived its rights to sovereign immunity in this
21 proceeding.

22 In the REA, they have waived their rights
23 to sovereign immunity with respect to any
24 arbitration and mediation proceeding for a dispute
25 resolution thereunder, but there remains the

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1 question, in my mind, that the issue of sovereign
2 immunity still is outstanding with respect to this
3 Commission.

4 I checked the materials filed with the --
5 by the Tribe, and I did not see any indication of
6 any clear and convincing position with respect to
7 that, as would be required under law.

8 JUDGE FRIEDLANDER: Thank you. Before I
9 let staff go ahead and weigh in on that, I am
10 curious as to what the Tribe has to say about
11 Mr. Kuzma's question, as far as immunity. By
12 submitting yourself as an intervener, is the Tribe
13 implicitly waiving its sovereign immunity?

14 MR. DiJULIO: Well, two responses to that.
15 Yes, we've subjected ourselves to the Commission's
16 jurisdiction by intervention. That's the easy
17 answer to that question.

18 Secondly, the Tribe is a government entity
19 recognized by the state of Washington, and has
20 every right to appear in proceedings and to avail
21 itself of the remedies provided by state statute.

22 JUDGE FRIEDLANDER: Right. And I don't
23 think anyone is questioning the fact that any
24 governmental entity can present itself to the
25 Commission. I think what we're just wondering is,

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1 the Tribe is in a unique position, different than,
2 say, another governmental entity, in that it does
3 have that sovereign immunity. And so we're just
4 looking for that -- that reassurance that the
5 Tribe's view is the same as the Commission's.

6 MR. DiJULIO: The Tribe's view is the same
7 as the Commission's. Otherwise, we wouldn't be
8 here.

9 JUDGE FRIEDLANDER: Right. Okay. Thank
10 you.

11 MR. KUZMA: And then continuing with
12 Puget's response is, essentially, we've -- we've
13 heard several arguments raised with respect to the
14 public interest, and Puget acknowledges that this
15 case involves whether the sale is in the public
16 interest.

17 Although, what we've been hearing from the
18 Tribe today is a unique public interest standard.
19 They're questioning the public interest of the
20 purchaser and whether the purchaser can live up to
21 the public interest standard. And to me, that
22 seems like it's extending the jurisdiction beyond
23 -- of the Commission beyond that which it normally
24 would have.

25 The purchaser would be an independent

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1 public -- an independent power producer and would
2 be selling power to Puget pursuant to a PPA, and
3 that is something -- that is not something that the
4 Commission normally concerns itself with in -- in
5 examining the public interest of a purchase.

6 And then with respect to the -- my final
7 point would be with respect to the public interest
8 itself, Mr. DiJulio was somewhat off when he said
9 that the company and the staff had not -- had
10 presented evidence that there would be no rate
11 impact. Indeed, there would be substantial rate
12 impact from this purchase -- from the sale, and it
13 would be in the interest of the ratepayers.

14 Puget estimated, alone, if they were able
15 to complete the transaction last year, it would
16 have been a \$2 million reduction in rates. If it
17 is able to file its ongoing PCORC, it would likely
18 be another \$2 million in rate reduction in the
19 short term. Over the long term, the amount could
20 be more substantial. And that's been demonstrated
21 in the testimony and in the application itself and
22 in the response of the Commission staff.

23 JUDGE FRIEDLANDER: Okay. Thank you. Did
24 you have anything further to add?

25 MR. KUZMA: Well, the -- the question of

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1 timing is one that's interesting. This is a
2 process that's been going on for two months -- I
3 mean, two years. Electron Hydro had been in
4 negotiations with the Tribe beginning in January of
5 2013, and we've gotten to this point without much
6 response.

7 And to continue is going to be very
8 difficult, I believe, for Electron Hydro. I don't
9 have them here today, but they have been very
10 patient. The capital has been very patient there,
11 but at some point, this -- this deal could be in
12 jeopardy if this is a prolonged proceeding.

13 JUDGE FRIEDLANDER: So 60 days would be
14 make or break?

15 MR. KUZMA: It might be. I don't know
16 that answer. Right now, we only have a commitment
17 through the end of this month, which ends on
18 Thursday. I know that there were talks about maybe
19 extending it another month. I don't know -- 60
20 days, all we've heard is when they would submit
21 their testimony.

22 I don't know how long the proceeding would
23 be thereafter, and I don't know how -- I honestly
24 do not know how long the capital would be waiting
25 to see how this proceeding goes. Like I said, it's

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1 -- they have been waiting two years.

2 JUDGE FRIEDLANDER: Right. Right. And I
3 believe we issued -- or entered an order last
4 October.

5 MR. KUZMA: Correct.

6 JUDGE FRIEDLANDER: And there have been
7 several extensions since then.

8 MR. KUZMA: There have been, yes.

9 JUDGE FRIEDLANDER: And they have been
10 more than just one month at a time. They have been
11 several months at a time.

12 MR. KUZMA: Some of them have, yes.

13 JUDGE FRIEDLANDER: Let's hear from staff.

14 MS. BROWN: This is Sally Brown with the
15 Attorney General's Office. I confess to being new
16 to these dockets. In checking my notes, I
17 identified three issues that I thought initially
18 that the Tribe had raised; one being the ESA.
19 That's no longer an issue, evidently, but -- and
20 it's my understanding that the Habitat Conservation
21 Plan is also a federal requirement that stems from
22 that. So there may be an issue there.

23 And alleged breach of the -- excuse me --
24 REA, but today, anyway, there has been no unlawful
25 assignment. In fact, to the contrary. There's a

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1 commitment, as I understand it, from PSE that the
2 REA will remain in full force and effect for the
3 balance of its term.

4 And then the third issue I had identified
5 was rates and rate impacts, and my reaction to that
6 is that this is not a rate case. So this is not
7 the docket for determining rate impacts of the
8 current sale. It's my understanding that that
9 issue is not in the company's admitted petition,
10 and I would just point out that there is nothing
11 that would bar the Commission from including
12 language in its order to the effect that this order
13 approving the sale, and perhaps accounting and rate
14 making treatment, would not affect the Commission's
15 jurisdiction over rates.

16 On the -- I've learned here today that the
17 Tribe's primary interest appears to be buyer
18 fitness, and I confess, also, that buyer fitness is
19 a focus of the proceeding is novel to me.
20 Typically, the Commission's regulatory jurisdiction
21 and focus is over the regulated utility and not
22 necessarily the purchaser.

23 I just had one other thought. In terms of
24 urgency, I suppose, I think I can probably argue
25 that both ways. I mean, if the deadline is not

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1 met, perhaps there would be adverse business
2 consequences to such a decision. However, the
3 company bears a large portion of the burden for the
4 delay and the presentation of the filing itself.

5 So I think that summarizes staff's
6 remarks. Let me just confer with my client
7 briefly.

8 JUDGE FRIEDLANDER: Certainly.

9 MS. BROWN: Thank you. That's all I have
10 at the moment. Thank you, your Honor.

11 JUDGE FRIEDLANDER: Okay. Thank you. If
12 the Commission were to come out with an order
13 approving the transaction, as filed in the amended
14 application, where Electron and PSE have, in
15 effect, a subcontract relationship, then -- that's
16 all right -- then Electron were to become
17 financially unstable or could no longer live up to
18 the agreement that it had made in the facility
19 operating -- it's the FOU.

20 MR. KUZMA: FOA.

21 JUDGE FRIEDLANDER: FOA?

22 MR. KUZMA: Yes, the facility operations
23 agreement.

24 JUDGE FRIEDLANDER: Okay. The facility
25 operations agreement, so that they wouldn't be --

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1 so that Electron wouldn't be able to pay the annual
2 costs for upkeep to the Tribe, nor would they be
3 able to pay reclamation cost, wouldn't, then, the
4 -- the onus fall to the ratepayers, at least
5 arguably?

6 MS. BROWN: I'm sorry. I -- I apologize
7 profusely. In truth, I missed the first half of
8 your question, and I'm not familiar enough with the
9 facts of the case to opine at the moment.

10 JUDGE FRIEDLANDER: Okay. That's fine.
11 Essentially, what I'm getting at is, would the
12 Commission -- the Commission wouldn't necessarily
13 be bound by its decision here approving the
14 transaction in a subsequent rate case, such as the
15 2014 PCORC or the like.

16 MS. BROWN: Oh, you're talking about
17 prudence? Absolutely not.

18 JUDGE FRIEDLANDER: Right. Right. Right.
19 But I guess the argument could still be made by PSE
20 that you've approved the transaction. It's a
21 little bit hard now to unwind it and say,
22 Electron -- you should have known that Electron
23 wasn't -- wasn't fit to serve.

24 MS. BROWN: That's arguable, I would
25 agree.

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1 JUDGE FRIEDLANDER: Okay. So Mr. Ffitch,
2 did you have anything to add?

3 MR. FFITCH: Your Honor, I'm sorry I was
4 on mute. I do not, at this time. Thank you, your
5 Honor.

6 JUDGE FRIEDLANDER: Okay. Thank you.
7 Does anyone else wish to add anything further?

8 MR. DiJULIO: Again, Steve DiJulio on
9 behalf of the Puyallup Tribe. I think you're
10 looking at 480-143-180 and the factors relating to
11 disposal of property. It's a very interesting
12 application of the four factors, in terms of the
13 consideration, because here, PSE will continue, as
14 we -- as the Tribe understands it, from the
15 information we have so far, continue to buy power
16 from the project, so the project isn't object
17 obsolete under subsection 3.

18 It's not being substituted necessarily,
19 and that's one of the issues with -- or replaced by
20 as an equal or greater value or usefulness, because
21 there could be ongoing liability with respect to
22 the project under the REA.

23 So in terms of the public interest issue
24 and the application of the factors in the UTC regs,
25 you know, we -- the Tribe wants to be sure that the

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1 data that is before the Commission and the decision
2 that is made is consistent with the current
3 application, which as the judge knows, wasn't filed
4 with respect to the REA issues until June 25th of
5 this year. So it's a different issue than it was
6 up until June 25th of this year.

7 JUDGE FRIEDLANDER: Mr. Kuzma?

8 MR. KUZMA: I'd like to respond. The
9 factors that he mentioned relate to a project that
10 is no longer used and useful or necessary, and is a
11 different standard. We're not even -- the
12 Commission has approved the sale under the public
13 interest standard in the past, and that's the
14 standard that we're going under at this time.

15 We've asked, in the alternative, that they
16 would also rule on the other one. But there are
17 two standards, and this one definitely meets the
18 public interest, as it has in the past. I do take
19 some issue with some of the statements regarding
20 the company's lack of alacrity in seeking this.

21 There were two -- there were several
22 conditions precedent in the agreement, and that's
23 why the Commission approved it conditionally last
24 October; one of which was the Commission's
25 approval, one of which was CORC approval, both of

0087

1 which have been granted. A third one was getting a
2 tribal agreement with -- between Electron Hydro and
3 the Tribe.

4 That continued -- that process continued
5 up until April of this year. Electron Hydro was
6 effectively shut out by the Tribe, didn't get very
7 -- any communications from them for a five month
8 period, and then finally, turned to Puget and said,
9 we need to -- we need to go about this in a
10 different way. And that's how we ended up where we
11 are today.

12 So Puget worked through the issues with
13 Electron Hydro and came up with this subcontract
14 solution to try to dispose of the property, and
15 then we filed it immediately -- I believe it was on
16 June 2nd that the contract -- the amendment was
17 filed -- was signed, and we filed it -- we filed it
18 June 25th, but the contract was amended, I believe,
19 on June 2nd. It took some time to file it, but
20 there was -- we moved with all deliberate speed,
21 given the fact that the Tribe has been holding out
22 for 18 months on the -- on the process.

23 JUDGE FRIEDLANDER: Okay. Thank you. I
24 think I've -- I've heard enough to make a decision
25 here. It's clear to me -- or I guess I should

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1 start by saying, I don't know how you examine this
2 transaction as being in the public interest or not
3 being in the public interest without looking at the
4 purchaser.

5 This would be a totally different fact
6 pattern if Electron had been able to negotiate a
7 contract to replace the REA. And they didn't, so
8 now, should Electron fail in its obligations under
9 the FOA, there's a potential ratepayers could be on
10 the hook for this, and so that -- and the costs
11 are, if not substantial to a utility the size of
12 PSE, they're certainly substantial to the every day
13 person.

14 So I am going to go ahead and allow the
15 intervention, as far as the impacts on rates -- I
16 shouldn't say the impact on rates. Strike that.
17 As far as the viability of Electron. And when I
18 say that, that is very narrow, this is extremely
19 narrow, and I want the Tribe to -- to understand
20 that we are not talking about the REA, in and of
21 itself, or any alleged violations thereof. We're
22 not talking about the Endangered Species Act or any
23 violations thereof.

24 The Habitat Conservation Plan, I have not
25 heard enough about to be able to even make a

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1 determination on that, but I will say this. As
2 stated before, the viability of this company and
3 whether or not the ratepayers would ultimately be
4 on the hook anyway, and pretty much back to where
5 they are right now, as far as responsibilities go,
6 is at issue in this case. So I will limit the
7 scope of your participation in that way.

8 That said, I think 60 days is a bit much.
9 If you can propose something along the lines of 30,
10 I think that would be a little bit more reasonable.
11 I -- I don't know what Electron -- the capital --
12 the -- the capital availability is, and I think if
13 anyone would know that, it would be PSE. If you
14 guys could get back with me and let me know, you
15 know, are we at a standstill? Is 30 days going to
16 be too much?

17 We will -- I don't intend for this to take
18 forever, and I really don't even intend for it to
19 take longer than two months, to be quite honest.
20 The issues are very narrow.

21 MR. DiJULIO: The only clarification I
22 would request -- and I appreciate the concern and
23 the time that the Commission has given to this
24 already -- we don't know when we'll get the
25 documents.

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1 JUDGE FRIEDLANDER: Certainly.

2 MR. DiJULIO: So 30 days after the receipt
3 of the documents is more than acceptable. As I
4 said, we're filing the confidential data -- the
5 confidential commitments with the Commission today
6 from the attorneys, and we'll get the expert
7 signatures on the confidential commitments perhaps
8 as early as tomorrow.

9 So as soon as we get the data that can
10 give us the ability to address the viability of
11 Electron to perform, then -- and not put the
12 ratepayers at risk, then we can turn that around in
13 30 days.

14 JUDGE FRIEDLANDER: Mr. Kuzma?

15 MR. KUZMA: I've heard your position, your
16 Honor. The question that I would raise is we could
17 hand over those materials today, and there's
18 nothing in there that will go to attest to the
19 viability of Electron. Those are Puget's
20 materials. These are Puget's analysis of this
21 project.

22 I don't -- they can ask us data requests.
23 Electron is not a party to this proceeding, and
24 that's where this is -- the novelty is, as
25 Ms. Brown mentioned, is interesting. Because I

0091

1 don't know how we could ever satisfy the Tribe's
2 interest, because they're interested in the
3 viability of somebody who is not here and we can't
4 speak for.

5 Our -- we're -- we're not -- they're not
6 an affiliate of Puget's. They're, you know, arm's
7 length transactions that we've been dealing with.
8 That's why we don't know how much longer their
9 capital can last. We can ask these questions, but
10 it's not information we control, and I don't
11 understand how we can proceed to examine a party
12 that's not -- an entity that's not a party.

13 JUDGE FRIEDLANDER: So certainly, though,
14 PSE did due diligence on on this company.

15 MR. KUZMA: Yes, PSE has its information
16 that it conducted its due diligence, but to the
17 extent that the Tribe is unhappy with that, I mean,
18 this is not something we can go beyond.

19 JUDGE FRIEDLANDER: Well, let's not beg
20 for trouble. You have information.

21 MR. KUZMA: We have some information. But
22 I mean, this whole proceeding is sort of assuming
23 the worst, because we're assuming that they won't
24 be able so live up to a contract. Whereas,
25 instead, we could continue with the transaction and

0092

1 then determine at a later time whether ratepayers
2 should pay for any breach.

3 We're examining the creditworthiness of a
4 purchaser, which is a novel issue here. We've
5 never done that before in a proceeding involving a
6 transfer of property. I mean, you're going to be
7 limiting your purchasers to General Electric and
8 those that have substantial balance sheets that
9 nobody could question, and any special purpose
10 entity, which many of these transactions deal
11 through, are going to be similarly situated.

12 Puget buys their -- has bought many of
13 their former projects from special purpose entities
14 that are similarly situated. Is this going -- is
15 this decision going to then address that issue of
16 whether a developer operating under an SPE has the
17 creditworthiness provisions.

18 JUDGE FRIEDLANDER: Well, I would say
19 those agreements aren't before us today.

20 MR. KUZMA: No, they're not, but we're
21 setting a precedent examining something other than
22 the electrical company.

23 JUDGE FRIEDLANDER: I don't think we're
24 setting a precedent at all. The Commission's
25 decisions are taken and made on the fact-based

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1 pattern in each case. So we're not saying that
2 this is going to be precedent for another case.

3 We're saying that in examining the public
4 interest, we need to make sure that this company
5 that PSE is going to be dealing with has the
6 wherewithal to continue to operate.

7 I remember, in a bench request that was --
8 in a response to a bench request that was filed
9 recently, PSE mentioned that they did due diligence
10 in researching Electron. I would think that would
11 be -- that would be what's of interest to the
12 Tribe, and I would think it's certainly of interest
13 to the Commission.

14 If -- if there are incidents or if there
15 are questions raised after that, that's for the
16 Tribe to make and that's the burden that they bear,
17 but it is certainly PSE's burden to prove that this
18 transaction is in the public interest.

19 MR. KUZMA: No, absolutely, your Honor.
20 We do have some information. We don't have all the
21 information that the Tribe will seek.

22 JUDGE FRIEDLANDER: I would say that that
23 would, again, be on the Tribe to say that you have
24 not provided the information they need. And at
25 that time, the Commission will make another

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1 determination. God willing, it will not come to
2 that. But if it does, that is a separate question.

3 MR. KUZMA: Okay. Thank you.

4 JUDGE FRIEDLANDER: And once PSE provides
5 that information -- if you can get that to them
6 today, I'm prepared to say their response is due in
7 30 days. And then you and staff and ICNU and
8 public counsel will have 15 days after that.

9 And assuming everything runs according to
10 course, we could have a decision in two months. Is
11 -- does anyone have a question or a qualm with
12 that?

13 MR. DiJULIO: Not from the Tribe.

14 MR. KUZMA: No, your Honor.

15 JUDGE FRIEDLANDER: All right. Thank you.

16 MS. BROWN: Sounds like fun.

17 JUDGE FRIEDLANDER: Always. Are you
18 prepared to provide the information to them today,
19 assuming that the Tribe gives you the
20 confidentiality agreement?

21 MR. KUZMA: We can provide all the
22 materials that are on file with the Commission
23 today, yes.

24 JUDGE FRIEDLANDER: That's probably not --
25 I believe we just discussed that. What about the

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1 PSE due diligence?

2 MR. KUZMA: The information that would be
3 provided, I would have to check whether or not that
4 was provided pursuant to a non-disclosure
5 agreement, and we would have to check with Electron
6 Hydro whether we can provide that.

7 JUDGE FRIEDLANDER: Whether it was
8 provided under a non-disclosure.

9 MR. KUZMA: Correct. I just don't know
10 that information off the top of my head.

11 JUDGE FRIEDLANDER: Right. Right. Right.
12 All right. Assuming that that's the case, let's go
13 30 days for a response from the Tribe to the
14 amended application. 30 days would be -- that
15 would be the 28th of August. So a response from
16 you, the Tribe, will be due August 28th, and any
17 replies to the response will be due within two
18 weeks, which would be the 11th of September.

19 And I'm looking at an order before the end
20 of September. I have no problems with that. So if
21 there are concerns, if this whole thing falls
22 apart, I expect to hear from PSE. And if something
23 happens on the Tribe's end, I expect to hear from
24 you as well, if you're not getting what you need.
25 But keeping my fingers crossed, that won't be the

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1 case.

2 So is there anything further before we
3 adjourn?

4 MR. DiJULIO: Just from the Tribe's
5 perspective --

6 JUDGE FRIEDLANDER: Yes.

7 MR. DiJULIO: -- we stand ready to respond
8 promptly to any need for further status conference.

9 JUDGE FRIEDLANDER: All right. And
10 again --

11 MR. DiJULIO: I'm not going anywhere.

12 JUDGE FRIEDLANDER: Again, though, I would
13 caution that I'm hoping that doesn't become the
14 case. So let's all play nice and get along and try
15 to make this as quick and painless as possible.

16 And if there's nothing further, then we are
17 adjourned. Thank you.

18 MS. BROWN: Thank you.

19 MR. KUZMA: Thank you, your Honor.

20 (The proceedings then concluded at
21 2:10 p.m.)

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C E R T I F I C A T E

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4 STATE OF WASHINGTON

5 COUNTY OF KING

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I, Mary M. Paradise, a Certified Shorthand
Reporter in and for the State of Washington, do
hereby certify that the foregoing transcript of the
proceedings before the Washington Utilities and
Transportation Commission on July 29, 2014, is true
and accurate to the best of my knowledge, skill and
ability.

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IN WITNESS WHEREOF, I have hereunto set my
hand this 6th day of August, 2014.

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MARY M. PARADISE, CSR

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