

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

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APPLICATION OF DOMINION NUCLEAR	)	
PROJECTS, INC. AND DOMINION ENERGY	)	Docket No.
KEWAUNEE, INC. FOR APPROVAL OF THE	)	
SALE OF DOMINION ENERGY KEWAUNEE,	)	9812-EI-100
INC.'S STOCK TO ENERGYSOLUTIONS, LLC	)	

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EXAMINER MICHAEL NEWMARK, PRESIDING

Tr. 1-34

PREHEARING CONFERENCE



Reported By:

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Halma Reporting Group  
(414) 271-4466

HEARING HELD:

November 3, 2021

VIA ZOOM VIDEOCONFERENCE

1:00 p.m.

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

2 ON BEHALF OF CITIZENS UTILITY BOARD

3 CARA COBURN FARIS and COREY SINGLETARY, 6401 Odana  
4 Road, Suite 24, Madison, Wisconsin 53719

5

6 ON BEHALF OF DOMINION ENERGY KEWAUNEE/DOMINION

7 NUCLEAR PROJECTS

8 MICHAEL BEST & FRIEDRICH LLP, JORDAN J. HEMAIDAN,  
9 1 South Pinckney Street, Suite 700, Madison, Wisconsin  
10 53703

11

12 ON BEHALF OF ENERGYSOLUTIONS, LLC

13 BOARDMAN & CLARK LLP, RICHARD HEINEMANN, 1 South  
14 Pinckney Street, Suite 410, Madison, Wisconsin 53703

15

16 ON BEHALF OF NORTHSTAR GROUP SERVICES

17 WHEELER VAN SICKLE & ANDERSON, S.C., JUSTIN W.  
18 CHASCO, 44 East Mifflin Street, Suite 1000, Madison,  
19 Wisconsin 53703

20 ON BEHALF OF WISCONSIN INDUSTRIAL ENERGY GROUP

21 HEINZEN LAW, S.C., STEVEN A. HEINZEN, 2 East  
22 Mifflin Street, Suite 402, Madison, Wisconsin 53703

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A P P E A R A N C E S

(continued)

ON BEHALF OF WISCONSIN POWER AND LIGHT COMPANY

ANDREW D. CARDON, 200 First Street, SE, Cedar  
Rapids, Iowa 52401

ON BEHALF OF THE WISCONSIN PUBLIC SERVICE CORPORATION

QUARLES & BRADY, LLP, BRADLEY D. JACKSON and KATE  
PHILLIPS, 33 East Main Street, Suite 900, Madison,  
Wisconsin 53703

ON BEHALF OF THE COMMISSION STAFF

ZACHARY PETERS, Legal Counsel

1           TRANSCRIPT OF PROCEEDINGS

2   1:00 p.m.

3           EXAMINER NEWMARK: So let's get on  
4 record.

5                   Welcome, everyone, to Docket  
6 9812-EI-100. This is the application of Dominion  
7 Nuclear Projects and Dominion Energy Kewaunee for  
8 approval of the sale of Dominion Energy Kewaunee,  
9 Incorporated's, stock to EnergySolutions.

10                   This is Mike Newmark,  
11 administrative law judge for the PSC. We have  
12 parties and Commission Staff connected through  
13 Zoom. I've also made the connection available to  
14 the public on the livestream and the audio of this  
15 prehearing. So we have appearances that will be  
16 on the record, so we'll forego introductions at  
17 this point.

18                   In the prehearing conference, our  
19 typical standard practice is identifying the  
20 parties, the issues, the schedule and any  
21 facilitating matters. So we did -- I did issue an  
22 order that dealt with identifying the parties, and  
23 it looks like we're all here. So I don't think we  
24 need to review that.

25                   Issues, we can now get into. So

1 I'm going to remove the notice, and I can show the  
2 draft prehearing conference memo. I thought this  
3 would be an efficient way of dealing with this  
4 prehearing conference. So I shared a draft of the  
5 prehearing conference memo. This will be -- the  
6 final document here will be what this hearing will  
7 generate going through the process here. Like you  
8 can see, parties, issues.

9           So our next step would be looking  
10 at the issues, and these proposed issues that you  
11 see were generated by Commission Staff. I think  
12 Zach Peters had some involvement -- some  
13 communication with the parties on this, but I'm  
14 not sure to what extent. That's what Staff ended  
15 up coming up with in terms of the issues, and so  
16 I'm just displaying that on the screen.

17           So just to make this run a little  
18 more efficiently than usual since we do have this  
19 all available here, the applicants -- and we'll  
20 consider the applicants Dominion and -- let's see.  
21 Applicants are really Dominion and the utilities,  
22 Pub Service and Power & Light.

23           So let's start Dominion. Any  
24 comments, questions about the issues?

25           MR. HEMAIDAN: Your Honor, Dominion is

1 fine with the issues list as presented here in the  
2 draft memo.

3 EXAMINER NEWMARK: Okay. Power & Light?

4 MR. CARDON: Wisconsin Power & Light is  
5 supportive of the issues identified here and the  
6 schedule.

7 The only note that I would have  
8 would be on the December 1st, 2021, deadline, it  
9 says applicant, but we are separately identified  
10 as a petitioner. So I think that should say  
11 applicant and petitioners.

12 EXAMINER NEWMARK: Okay. Well, we'll  
13 get to the schedule in just a minute, but thanks.

14 Public Service, any comments on the  
15 issues?

16 MR. JACKSON: Yes. We support the  
17 issues list as stated.

18 EXAMINER NEWMARK: So continuing on  
19 here -- yes. So you're correct, I did identify  
20 utilities as petitioners. So I'll try to be  
21 consistent here to the best of my ability.

22 So let's continue on. CUB, any  
23 comments on the issues?

24 MS. COBURN FARIS: Your Honor, we do  
25 have a small comment on Issue 1, and I think

1 Mr. Chasco will be speaking to this as well.

2 But as far as limiting the issue to  
3 the proffered condition of the final order, I  
4 think we'd be inclined to not create that  
5 limitation in order to -- you know, we just have  
6 an interest in this case proceeding in a way that  
7 allows for public consideration of the issues.

8 EXAMINER NEWMARK: You say Mr. Chasco  
9 will have more information on that?

10 MS. COBURN FARIS: Yes.

11 EXAMINER NEWMARK: Great. And Issue 2,  
12 any questions on there, comments?

13 MS. COBURN FARIS: No comments from CUB.

14 EXAMINER NEWMARK: All right. Let's  
15 move on to EnergySolutions.

16 MR. HEINEMANN: EnergySolutions is  
17 comfortable with the issues as stated.

18 EXAMINER NEWMARK: Okay. Northstar?

19 MR. CHASCO: Good afternoon, Your Honor.

20 As CUB counsel just mentioned, I  
21 think it's a pretty minor suggestion that we have,  
22 but we thought it was somewhat important just to  
23 be sure that the issues included not just the  
24 proffered conditions, but also the reasoning that  
25 underlies the Commission's acceptance of that.

1           So we would propose recognizing  
2 that it is a unique case, but propose that the  
3 issues simply referred to comply with the final  
4 order; and whatever that means, the parties would  
5 be free to, you know, argue later in the case.

6           EXAMINER NEWMARK: And WIEG, any  
7 comments on the issues?

8           MR. HEINZEN: Yes. Thank you.

9           Our position is consistent with  
10 what you just heard from Mr. Chasco a moment ago,  
11 that we should be looking at the final order and  
12 not specifically the proffered conditions.

13          EXAMINER NEWMARK: All right. So  
14 possibly there will be a response from the  
15 applicant or petitioners. Let's hear from the  
16 applicant.

17          MR. HEMAIDAN: Yes, Judge. We would  
18 strongly object to broadening Issue No. 1 beyond  
19 the proffered conditions for the very simple  
20 reason that the only requirements of that order  
21 are the proffered conditions when it comes to a  
22 transfer of the stock of the applicants to  
23 EnergySolutions. We cannot expand the scope of  
24 the Commission's jurisdiction here simply by  
25 adding a couple of apparently innocuous words to



1 this condition.

2           So what's very important to  
3 remember here is that the only jurisdiction the  
4 Commission has over the applicants is that which  
5 the applicants agreed to concede in the form of  
6 the proffered conditions, and the Commission  
7 recognized that.

8           If you look at the order  
9 provisions, the actual ordering provisions and  
10 conditions of the 2005 order, it's limited to the  
11 proffered conditions. In fact, I think that we  
12 could make an argument that Issue No. 1 ought to  
13 be even narrower and relate only to those  
14 particular proffered conditions that apply to the  
15 transfer, which would only really be number one on  
16 the financial -- you know, the financial adequacy  
17 of EnergySolutions here.

18           Issue 4, you know, did we issue a  
19 ROFR? There's no dispute about that. Issue 11,  
20 did EnergySolutions intervene and prepare to  
21 accept the proffered conditions? That's already  
22 done.

23           So really, it's just Issue No. 1.  
24 But we didn't want to parse that out, so we didn't  
25 think it was necessary to do that. We think it's

1 fairly obvious. So we think, you know, that the  
2 way the issue is stated is fine. If we're going  
3 to -- you know, we're not required to comply with  
4 the Commission's reasoning. That's not a  
5 proffered condition. That's not what Dominion  
6 agreed to do here.

7           And we have to remember, too,  
8 Judge, that the trade that was made here overall  
9 was Dominion took the risk away from the utilities  
10 and the ratepayers, more importantly, when it  
11 bought the Kewaunee Nuclear Power Station  
12 including the risk that the ratepayers would be on  
13 the hook for excessive decommissioning costs.

14           And in return for that, Dominion  
15 gave a very carefully worded and accepted list of  
16 proffered conditions that would apply in the event  
17 they sold their stock or sold the plant, and  
18 that's what we're here to do.

19           We're not here to, you know, have  
20 discovery and have testimony about whether or not  
21 what's being proposed here complies with a certain  
22 sentence in the order that constitutes the  
23 Commission's reasoning for what they ultimately  
24 did, which was to approve the proffered  
25 conditions. Otherwise, this proceeding gets out

1 of hand very quickly.

2 EXAMINER NEWMARK: Okay. Let's go off  
3 the record just for a second.

4 (Discussion off the record.)

5 EXAMINER NEWMARK: Back on the record.

6 So any other response from -- I  
7 suppose we can group EnergySolutions with --

8 MR. HEINEMANN: Yeah. This is Richard  
9 Heinemann on behalf of EnergySolutions.

10 We obviously concur with everything  
11 that Jordan just said. There's no reason to  
12 expand the -- this particular issue beyond  
13 what's stated there because what's stated there  
14 makes direct reference to the proffered  
15 conditions. That comprises the scope of the  
16 jurisdiction of the Commission in this proceeding,  
17 and it should allow all the relevant issues to be  
18 addressed.

19 EXAMINER NEWMARK: Anyone else want to  
20 respond to the intervenor's proposal?

21 MR. JACKSON: Yes, Your Honor. This is  
22 Brad Jackson for WPS.

23 I might be the only one on the call  
24 that's old enough to have been involved in the  
25 original sale with Kewaunee, and I can --

1 EXAMINER NEWMARK: You stand corrected.  
2 I was there too.

3 MR. JACKSON: Oh, you were? Okay.

4 MR. HEMAIDAN: I was there as well, but  
5 Brad's a lot older than me.

6 MR. JACKSON: Briefly, the history  
7 behind these proffered conditions, Dominion  
8 offered a set of proffered conditions initially in  
9 the case. The Commission denied approval of the  
10 sale based on those that had been offered. On  
11 rehearing and reconsideration, Dominion offered  
12 additional proffered conditions very carefully  
13 crafted and even, if I recall correctly, added one  
14 or two additional conditions in the briefing  
15 posthearing. And on the basis of those carefully  
16 crafted proffered conditions, the Commission  
17 granted approval of the sale.

18 If you read the proffered  
19 conditions strictly as we have in Issue 2 as it  
20 relates to the waiver of the ROFR rights by the  
21 utilities, we track the proffered condition  
22 language. The only issue in the proffered  
23 condition that -- conditions that relates to the  
24 transfer between Dominion and EnergySolutions is  
25 Proffered Condition No. 4; and that allows the

1 Commission to approve any subsequent sale of  
2 Kewaunee for the purpose of determining whether  
3 the new owner has sufficient financial resources  
4 to operate the plant. That's the sole issue  
5 identified by the Commission for review of a  
6 subsequent sale.

7 I think what Northstar and CUB and  
8 perhaps WIEG want to turn this into is a broader  
9 public interest determination, and that would be  
10 contrary to the Commission's 2005 order.

11 EXAMINER NEWMARK: Anyone else in  
12 response to the intervenor's proposal?

13 MR. CARDON: Judge Newmark, on behalf of  
14 Wisconsin Power & Light, we agree with the  
15 formulation that Mr. Jackson just enunciated. The  
16 proffered conditions are really what this  
17 proceeding is about reviewing, and so we support  
18 the way that the issues are currently formulated.

19 EXAMINER NEWMARK: Okay.

20 So I guess what I'm hearing is  
21 that -- I mean, proffered conditions, the way it's  
22 worded in this issue, is open-ended; and it looks  
23 like petitioners and the applicant and I suppose  
24 EnergySolutions as intervenor would argue that  
25 it's limited to one proffered condition.

1           Is that -- am I hearing that  
2 correctly?

3           MR. HEMAIDAN: I can take the mic on  
4 that one.

5           I think the proffered conditions  
6 are very clear in terms of what they require.  
7 There are only some of the proffered conditions  
8 that apply or relate to a transfer of the stock  
9 that's being considered here.

10           Now, I don't think we make a  
11 mechanical application of every proffered  
12 condition, context matters and what we're asking  
13 for here in this proceeding is Commission approval  
14 of the transfer of stock.

15           So if there are proffered  
16 conditions that apply to the transfer of stock and  
17 we meet those conditions, then the proposed sale  
18 complies with the proffered conditions.

19           So I don't think we have to  
20 necessarily today get into a huge argument about  
21 which of those apply. I would prefer, I suppose,  
22 if they say something less, but we didn't want to  
23 have a huge fight about that today.

24           We think that, as worded, our  
25 interest isn't compromised because we know only

1 certain of the proffered conditions apply; and  
2 again, if our proposed transaction complies with  
3 them, then we -- this question's answered yes. So  
4 that's the way we view it.

5 MR. HEINEMANN: Just to add to that,  
6 Judge. One of the proffered conditions is the  
7 agreement on the part of the transferee, in this  
8 case EnergySolutions, to abide by the proffered  
9 conditions. So that'll be stated on the record,  
10 and that's why we're comfortable with the way that  
11 the issue reads right now.

12 Anything beyond that would get us,  
13 as Jordan said earlier, into dicta, wording, other  
14 kinds of questions and judgment that go beyond the  
15 scope of this proceeding.

16 MR. HEMAIDAN: And as Mr. Jackson  
17 indicated, it would become a broader standard, a  
18 public interest standard. The standard by which  
19 this transaction is to be reviewed is contained in  
20 the proffered conditions.

21 EXAMINER NEWMARK: Okay. I just want to  
22 make sure that I was understanding the position of  
23 the applicants and petitioners and that it wasn't  
24 simply that Proffered Condition 4 applies because  
25 there are at least a few more that are related.

1 So I just want to make sure they acknowledge that  
2 there was -- it wasn't simply limited only to  
3 Condition 4.

4 And I'm looking at -- if we leave  
5 it -- I mean, we can leave it open-ended in terms  
6 of proffered conditions. I guess what I'm just  
7 anticipating is discovery and how parties will be  
8 handling that. If we leave proffered conditions  
9 open-ended, I guess I would be inclined not to  
10 be -- I would expect not to see denials of  
11 discovery based on, you know, well, you're  
12 referring to Condition 2 and not 4 or 6 and not 7.

13 I can let the intervenors who  
14 propose this speak again, but I did want to  
15 mention -- and I think where I stand on this at  
16 this moment is that the Commission does need to  
17 issue an order. It has to articulate a reason,  
18 and that might involve the investigation here  
19 being more than simply applying Proffered  
20 Condition 4, the letter of Proffered Condition 4.

21 So in terms of discovery, I think  
22 there may be a broader inquiry into that. So I  
23 wouldn't want to see denial based on a strict  
24 reading of Proffered Condition 4 being the only  
25 condition, the only trigger in terms of the issue



1 for Sub 1 here on the issues.

2 MR. HEMAIDAN: I'd like to offer a  
3 solution to that open-endedness because we  
4 certainly don't want it to be too open-ended, and  
5 we certainly don't want to have an artificially  
6 narrow formulation of the issue either.

7 I think that the solution would be,  
8 is to modify No. 1 to say, Does the proposed sale  
9 comply with those proffered conditions that apply  
10 to a sale, right? And like you said, arguably  
11 more than one does, but it's a limited universe.

12 So I think with that clarification,  
13 you know, we're not stuck with Condition 4, but  
14 we're stuck with, you know, asking whether or not  
15 the proposed transaction complies with the  
16 proffered conditions that apply to that  
17 transaction.

18 EXAMINER NEWMARK: Okay. So let's hear  
19 Northstar on that. Probably would be the lead.

20 MR. CHASCO: If you don't mind, Your  
21 Honor, I'll respond more generally to this  
22 statement from the applicants and all of the  
23 involved utilities. So we're not asking for a  
24 public interest standard. We recognize that the  
25 scope of the Commission's jurisdiction is set

1 forth in the order.

2           It's clear based on the opposition  
3 and our intervention that the applicants would  
4 like a very narrow view of it, and we disagree  
5 with the fact that the Commission would have no  
6 consideration to whether the \$750 million in a  
7 trust fund is going to be spent prudently, and I  
8 think Your Honor has spoken to that to some degree  
9 already.

10           But we're not asking for public  
11 interest standard. We're asking simply that the  
12 order that approved the transfer be the standard  
13 by which and not some very narrow specific piece  
14 of it. I'd note too, I don't have any particular  
15 reason that the asset sale agreement is going to  
16 be part of our case, but the order does not simply  
17 say that Dominion is subject to the proffered  
18 conditions. It says it's subject to the asset  
19 sale agreement and the PPAs, which I believe are  
20 now complete and perhaps the ASA is as well.

21           It also says at the end of the  
22 Commission's jurisdiction -- and I assume that  
23 language is in there for some reason, I know it's  
24 customary to put it in there. But we think the  
25 Commission should, at least not out of the gates,

1 restrict what that case is about.

2           We think there's a pretty strong  
3 interest in having at least some exploration as to  
4 why this deal is taking place and whether a pretty  
5 significant amount of money is going to be spent  
6 wisely on behalf of the state. But, again, we  
7 recognize and we're not asking for public  
8 interest. All we're asking for is to reference  
9 the final order and not be any more specific than  
10 that.

11           We probably will have some  
12 disagreements about what that order means and how  
13 that relates to discovery, and I think it's  
14 premature to address that today, although I do  
15 appreciate your comments that it's broader than  
16 just Order 4, and we certainly agree with that.

17           So I would still prefer to go in  
18 the opposite direction and not be more restricted  
19 at this point in the case.

20           MR. HEMAIDAN: Your Honor, if I could  
21 respond. I think there's a very good example in  
22 the order. Mr. Chasco cited, well, you know, this  
23 has to be about whether the decommissioning trust  
24 fund is going to be prudently spent. If you look  
25 at Page 22 of the Commission's order, they even

1 say, We're willing to relinquish our approval  
2 authority over use of funds and rely upon federal  
3 controls because there are overall benefits of the  
4 sale and other safeguards built into the proffered  
5 conditions.

6           The Commission recognized very  
7 clearly and even expressed some concerns about  
8 whether it could enforce the proffered conditions;  
9 but it knew very, very clearly that it was  
10 retaining only that jurisdiction over Dominion  
11 that could be found in the proffered conditions,  
12 and that otherwise, it would have no jurisdiction  
13 over Dominion, but for those proffered conditions.

14           This is not a regulated utility  
15 we're talking about here; and even though I think  
16 Mr. Chasco and all of us could come up with well,  
17 jeez, wouldn't it have been better for the  
18 Commission in 2005 to make a requirement of this  
19 and that and the other thing? That's not what  
20 happened here.

21           And we can't be -- you know, we'd  
22 have to sit and parse through a 40-page order or  
23 however long that is to see which bits of  
24 reasoning are considered to be requirements of the  
25 order. No. It's very, very clear that the

1 requirements of the order that apply to a transfer  
2 of the stock or of the demand are the proffered  
3 conditions.

4           And if we go beyond that, it's a  
5 Pandora's box because Northstar is not in this  
6 proceeding to make sure that the Wisconsin  
7 ratepayer is protected. Northstar is in this  
8 proceeding for its own competitive interest, which  
9 you recognized very clearly in your order  
10 admitting them to participate on a permissive  
11 basis; and you know, we didn't appeal that order  
12 because we feel that it was appropriately bounded  
13 by the things that you identified Northstar might  
14 be able to bring to the table here, but they don't  
15 include the kinds of things that we could expect  
16 to see with an issue broadened to include the  
17 reasoning and the other things in the order that  
18 have nothing to do with the Commission's scope of  
19 jurisdiction here.

20           MR. CHASCO: Your Honor, if I could.

21           I think it's somewhat remarkable  
22 for the parties to repeatedly suggest that it's  
23 some Herculean task to understand and explain to  
24 the Commission what this order means, especially  
25 parties who were there at the time.

1           That's all we're asking is to have  
2 an opportunity to argue about what does the order  
3 mean. I don't believe the proffered conditions  
4 were meant to operate without consideration of the  
5 reasoning that is expressly written in the order.  
6 I don't necessarily believe that leaving the list  
7 as you have it would preclude us from doing that.  
8 But we were hoping it'd be really clear that it's  
9 no different than a decision of the Supreme Court.  
10 You read the reasoning and the ultimate decision  
11 together.

12           I don't see why we would need to  
13 restrict the case at this point in time. We do  
14 recognize that there are limits to the  
15 Commission's power over this transaction and these  
16 parties.

17           EXAMINER NEWMARK: Okay. Well, you  
18 know, I think I'm going to go ahead and rule on  
19 this.

20           I think I prefer to leave the  
21 language as is. I think that actually strikes a  
22 balance on both sides here; and, you know, after  
23 thinking it through, that's probably why it's  
24 worded this way in the first place.

25           I think the order does flow

1 through -- the reasoning of the order flows  
2 through the proffered conditions. But the  
3 proffered conditions are the precise items that  
4 the applicants need to comply with.

5           Now, that doesn't preclude  
6 arguments on either side whether compliance has  
7 been obtained or not and to cite to the order in  
8 order to make that argument is certainly valid.  
9 So I think it doesn't really need to be more  
10 specific or less specific. I think we can leave  
11 it the way it is and let parties argue as they  
12 wish.

13           Like I said, the Commission will  
14 need a reason to make the decision in the end. So  
15 providing that reason, you know, your position on  
16 that reasoning is going to be required and useful  
17 for the ultimate decision. So I think leaving it  
18 the way it is will suffice at this point.

19           So any other comments on the  
20 issues?

21           All right. Let's move on to  
22 schedule. Any questions, comments? Let's start  
23 with applicants.

24           MR. HEMAIDAN: Your Honor, applicants  
25 support the schedule as proposed.

1 EXAMINER NEWMARK: Okay.

2 EnergySolutions?

3 MR. HEINEMANN: EnergySolutions supports  
4 the schedule as proposed.

5 EXAMINER NEWMARK: How about  
6 petitioners? Start with Pub Service.

7 MR. JACKSON: Yes, we do too, Your  
8 Honor. Just a typo, maybe say applicants for  
9 December 1st.

10 EXAMINER NEWMARK: Sure. Thanks.

11 MR. JACKSON: Thank you.

12 MR. CARDON: Wisconsin Power & Light  
13 supports the schedule.

14 EXAMINER NEWMARK: So let's move to CUB.

15 MS. COBURN FARIS: We can support the  
16 schedule.

17 I think we were perhaps hoping for  
18 a little more time between applicant and  
19 petitioner direct and intervenor direct. Our  
20 understanding is that applicant may be ready to  
21 file their direct in which case that would benefit  
22 us. That would be helpful.

23 EXAMINER NEWMARK: Okay.

24 MR. HEMAIDAN: Applicants are not ready  
25 to file their direct any time before December 1st.



1 MS. COBURN FARIS: Okay.

2 EXAMINER NEWMARK: Did you have a  
3 proposal, Ms. Faris?

4 MS. COBURN FARIS: Yes. I think that we  
5 would -- we would propose moving intervenor and  
6 Staff direct to January -- let's see -- to a later  
7 time, but I think we would have to discuss that.

8 EXAMINER NEWMARK: Okay.

9 MS. COBURN FARIS: I guess I would  
10 propose just bumping up everything after direct,  
11 bumping it out two weeks.

12 EXAMINER NEWMARK: Let's go off the  
13 record.

14 (Discussion off the record.)

15 EXAMINER NEWMARK: Let's get on the  
16 record.

17 So I'm just curious from the  
18 applicant's point of view if there isn't a  
19 deadline or a time frame that they are seeking an  
20 order by.

21 MR. HEMAIDAN: Well, this is Jordan  
22 Hemaidan.

23 You know, I think context is  
24 important here. We filed our application, Judge,  
25 in this case last May or this past May. So the

1 case from a pretrial standpoint has gone quite  
2 slowly for us. We're interested in moving it  
3 along.

4           There are no deadlines, as you  
5 mentioned, but as soon as possible is really where  
6 we're at within reason, which certainly, you know,  
7 I hate to have to go a year. You know, we've --  
8 we are expecting -- I think the last word I had is  
9 a decision on our application from the Nuclear  
10 Regulatory Commission within a few months; and we  
11 would hate for, you know, the PSC order to lag  
12 very much from that. So hopefully that answers  
13 your question.

14           EXAMINER NEWMARK: Yes, thanks.

15           Any comment from EnergySolutions or  
16 the petitioners on that?

17           MR. HEINEMANN: Your Honor, from  
18 EnergySolutions' standpoint, yes, this has gone on  
19 a long time. We're anxious to get moving. We're  
20 also not prepared to file our direct testimony,  
21 you know, today, but we can hit the December 1st  
22 deadline; and we'd be willing to, I guess, address  
23 the intervenor's request and sort of meet them  
24 halfway by granting the additional week for their  
25 testimony to be due, as Jordan suggested, but then

1 allowing us an additional week with respect to  
2 rebuttal testimony and have everything follow  
3 there and hopefully get a decision as soon as we  
4 can.

5 EXAMINER NEWMARK: Petitioners, any  
6 thoughts?

7 MR. JACKSON: Petitioners can -- WPS can  
8 deal with either schedule, Your Honor.

9 MR. CARDON: For WP&L, that's the same.  
10 We can meet the December 1st  
11 deadline for direct testimony, and we're flexible  
12 with building in the extra week for rebuttal  
13 testimony.

14 EXAMINER NEWMARK: That seems logical to  
15 me.

16 We can get off the record in a  
17 minute, but I'll just say what we can do is push  
18 the schedule back. We can give the two weeks  
19 additional time for the schedule, and I would add  
20 a week to rebuttal. So I don't think we need to  
21 balance those out. I think we just add weeks,  
22 that's fine. There's no statutory deadline here.  
23 It'll only push this back a few weeks either way,  
24 so that should be good.

25 Let's get off the record and just

1 come up with those dates.

2 (Discussion off the record.)

3 EXAMINER NEWMARK: All right. So let's  
4 get on the record.

5 So we have an adjusted schedule  
6 that's been discussed off the record, and that  
7 schedule -- the parties have witnessed me  
8 modifying the document here that will go out. So  
9 we'll leave it at that and have the schedule  
10 according to the new dates that will be presented  
11 in the prehearing conference memo.

12 So what's left is facilitating  
13 matters. Any questions? And as far as I know,  
14 these will be Zoom hearings. We will have a  
15 public session, although the date is to be  
16 determined. So because this will most likely  
17 be -- as far as I can tell, it will be a Zoom  
18 hearing, we have both the facilitating matters and  
19 the supplement for audiovisual hearings.

20 Any questions on those?

21 MR. HEINEMANN: Not from applicants.

22 EXAMINER NEWMARK: Anyone else?

23 MS. COBURN FARIS: None from CUB.

24 EXAMINER NEWMARK: I do want to mention  
25 because, as we know, there may be some discovery

1 issues here.

2 We do have a page in the  
3 facilitating matters order that relates to  
4 discovery motions and response times. And in a  
5 recent case, we're running into some confusion  
6 about that, so I wanted to -- in another recent  
7 case we had some confusion about that.

8 I just wanted to point out what is  
9 intended by part of that. So there is a process  
10 because discovery is much more accelerated than  
11 typical civil practice. There is a requirement  
12 that if a respondent to discovery is planning on  
13 responding with an objection in whole or in part,  
14 that it notify the request or within a certain set  
15 of days on a pretty fast timeline.

16 At that point, I would expect --  
17 even though the initial responses may not yet be  
18 due, at that point when the notice is given, that  
19 should start a meet and confer so that parties can  
20 get to the bottom of their conflicts and possibly  
21 resolve this ahead of time, ahead of the deadline  
22 for the response.

23 There could be simply a typo or  
24 some sort of confusion about the question. Let's  
25 try to resolve those things -- let's get at least

1 the simple things out of the way quickly and  
2 easily because of the fast turnaround.

3 I did want to mention, though, if  
4 parties are working together, they can agree to  
5 forego the deadlines to file a motion to compel or  
6 a motion for protective order; and by agreement,  
7 they would just need to file a letter that says  
8 they both agree to extend the deadline. That,  
9 according to the facilitating order, would go into  
10 effect without further order. Again, I can plow  
11 that back within three days and take a look at it;  
12 but most likely if parties are working together,  
13 they feel that they can reach agreement, they need  
14 not go ahead and file motions to compel or for  
15 protective order.

16 I'll accept them after that  
17 deadline as long as the parties were agreeing to  
18 cooperate and come up with an agreed solution if  
19 they file that request. So just keep that in mind  
20 in case things are -- you're hitting the deadline,  
21 you think you're getting close, but now you have  
22 to file a motion. There is that option to request  
23 some more time to work it out together.

24 So besides that, I think that's all  
25 that's been coming up lately with contentious

1 cases. So I hope we can follow the rules here and  
2 create a complete and understandable record for  
3 the Commission.

4 Anything else we need to deal with?

5 MR. CHASCO: Just a question, Your  
6 Honor, that might help us work out a  
7 confidentiality agreement with EnergySolutions.  
8 We're still in discussions about that.

9 So it's not necessarily -- I've  
10 read your prehearing conference, the facilitating  
11 matters, it made sense to me; but at the moment  
12 there's some dispute between our relative parties  
13 of how much can be designated attorneys' eyes  
14 only.

15 But without getting more into the  
16 specifics of it -- because we are still talking, I  
17 want to respect that -- I was just curious if you  
18 have any guidance for us to bear in mind as we  
19 consider that issue.

20 EXAMINER NEWMARK: Without much of the  
21 context, it's hard to comment. But I mean, I  
22 stand here ready to protect or compel as required,  
23 as justice requires and the rules of discovery.

24 I think that we want to move the  
25 case forward. We want to get the best information

1 to the Commission. So, you know, to the extent we  
2 have an ability to reach agreement should -- I  
3 guess, you know, I can order discovery with  
4 protections. I think it's a better process that  
5 parties enter that in private agreement.

6 I don't really know if I can  
7 provide any -- much more, you know, protection or  
8 latitude than parties can come up with themselves.  
9 So, you know, there's -- you know, I guess I'm not  
10 sure how this is panning out; but, you know,  
11 attorneys' eyes only is certainly a great tool we  
12 have, and I expect that could also extend to, you  
13 know, the expert -- independent experts if that's  
14 an option -- or that helps anyone if that wasn't  
15 already understood.

16 But, you know, potentially if the  
17 companies are not willing to share information  
18 directly, if they can share it with an independent  
19 third party on behalf of the person, the requester  
20 getting the information, possibly that would be a  
21 solution.

22 You know, I'm sure there's  
23 sensitive information here on the one hand, but  
24 also there should be an easy way to resolve this  
25 without a lot of hammering. So I hope that helps.



1 MR. CHASCO: Yeah. Thank you.

2 EXAMINER NEWMARK: All right. Anything  
3 else?

4 Okay. Well, thanks very much.  
5 You'll get the prehearing conference memo shortly,  
6 but at this point just follow the schedule as we  
7 discussed, and all will be good.

8 So thanks very much. We're  
9 adjourned.

10 (The hearing adjourned at 2:00 p.m.)

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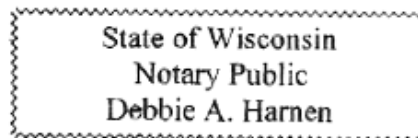
1 STATE OF WISCONSIN )

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3

4 I, DEBBIE A. HARNEN, Registered  
5 Professional Reporter, with the firm of Halma Reporting  
6 Group, Inc., 342 North Water Street, Milwaukee,  
7 Wisconsin, do hereby certify that I reported the  
8 foregoing proceedings had on November 3, 2021, and that  
9 the same is true and correct in accordance with my  
10 original machine shorthand notes taken at said time and  
11 place.

12 *Debbie A. Harnen*  
13



14 Debbie A. Harnen  
15 Registered Professional Reporter

16

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Dated this 4th day of November, 2021.

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