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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Petition of )  
 )  
 4 PUGET SOUND ENERGY, INC., ) DOCKET NO. UE-082128  
 ) Volume I  
 5 For a Determination of ) Pages 1 - 21  
 Emissions Compliance and )  
 6 Proposed Accounting Treatment )  
 for the Mint Farm Energy Center; )  
 7 or, Alternatively For an )  
 Accounting Order. )  
 8 -----

9 A prehearing conference in the above matter  
 10 was held on February 2, 2009, at 1:30 p.m., at 1300  
 11 South Evergreen Park Drive Southwest, Olympia,  
 12 Washington, before Administrative Law Judge DENNIS  
 13 MOSS.

The parties were present as follows:

14 PUGET SOUND ENERGY, INC., by SHEREE STROM  
 15 CARSON, Attorney at Law, Perkins Coie, 10885 Northeast  
 Fourth Street, Suite 700, Bellevue, Washington 98004;  
 16 telephone, (425) 635-1400.

17 WASHINGTON UTILITIES AND TRANSPORTATION  
 COMMISSION, by DONALD T. TROTTER, Senior Assistant  
 18 Attorney General, 1400 South Evergreen Park Drive  
 Southwest, Post Office Box 40128, Olympia, Washington  
 19 98504; telephone, (360) 664-1188 (Robert Cedarbaum.)

20 PUBLIC COUNSEL, by SIMON F. FFITCH, Senior  
 Assistant Attorney General, 800 Fifth Avenue, Suite  
 21 2000, Seattle, Washington 98104; telephone, (206)  
 464-7744.

22 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,  
 23 by S. BRADLEY VAN CLEVE, Attorney at Law, Davison Van  
 Cleve, 333 Southwest Taylor, Suite 400, Portland,  
 24 Oregon 97204; telephone, (503) 241-7242.

25 Kathryn T. Wilson, CCR, Court Reporter

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

2 JUDGE MOSS: My name is Dennis Moss. I'm an  
3 administrative law judge with the Washington Utilities  
4 and Transportation Commission. We are convened this  
5 afternoon in the matter styled, In the Matter of the  
6 Petition of Puget Sound Energy, Inc., for a  
7 Determination of Emissions Compliance and Proposed  
8 Accounting Treatment for the Mint Farm Energy Center;  
9 or, Alternatively For an Accounting Order, in Docket  
10 UE-082128. This is our first prehearing conference.  
11 As usual, we will begin by taking appearances and start  
12 with the Company.

13 MS. STROM-CARSON: Good afternoon. I'm  
14 Sheree Strom Carson with Perkins Coie representing  
15 Puget Sound Energy. The address is 10885 Northeast  
16 Fourth Street, Suite 700, Bellevue, Washington, 98004;  
17 phone, (425) 635-1400; fax, (425) 635-2422, and e-mail  
18 address, scarson@perkinscoie.com.

19 JUDGE MOSS: Thank you. Mr. Van Cleve?

20 MR. VAN CLEVE: Thank you, Your Honor. Brad  
21 Van Cleve representing the Industrial Customers of  
22 Northwest Utilities. I'm with the law firm of Davison  
23 Van Cleve, PC. My address is 333 Southwest Taylor  
24 Street, Suite 400, Portland, Oregon, 97204. Telephone  
25 number is (503) 241-7242. The fax number is (503)

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1 241-8160, and my e-mail address is mail@dvclaw.com.

2 JUDGE MOSS: I also have the direct e-mail  
3 for you as bvc? Do you prefer we use the "mail" one  
4 you just gave?

5 MR. VAN CLEVE: Actually, both would be good.

6 JUDGE MOSS: Mr. ffitch?

7 MR. FFITCH: Good afternoon, Your Honor. For  
8 Public Counsel, Simon ffitch, senior assistant attorney  
9 general, 800 Fifth Avenue, Suite 2000, Seattle,  
10 Washington, 98104-3188. Phone number is (206)  
11 389-2055. The fax number is (206) 464-6451. E-mail is  
12 simonf@atg.wa.gov.

13 JUDGE MOSS: Mr. Trotter?

14 MR. TROTTER: My name is Donald T. Trotter.  
15 I'm an assistant attorney general representing  
16 Commission staff. Also, the counsel of record in this  
17 case should be Robert D. Cedarbaum. He's unable to  
18 attend today but will be the attorney for staff for the  
19 balance of this case.

20 His address and mine are the same, PO Box  
21 40128, Olympia, Washington, 98504. His phone number is  
22 (360) 664-1188; fax, (360) 586-5522, and his e-mail is  
23 bcedarbaum@utc.wa.gov. Feel free to "cc" me in the  
24 communications if you wish, but officially, he is the  
25 counsel of record.

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1                   JUDGE MOSS: We will reflect that  
2 Mr. Cedarbaum is lead counsel. Is there anyone on the  
3 conference bridge line who wishes to enter an  
4 appearance today? Hearing nothing, apparently not. A  
5 smaller list of suspects; thank you. I have one  
6 petition to intervene, and that is by the Industrial  
7 Customers of Northwest Utilities, and since we all know  
8 each other, is there any objection to participation by  
9 the ICNU?

10                   MS. STROM-CARSON: No objection from the  
11 Company.

12                   MR. FFITCH: No objection.

13                   JUDGE MOSS: Your clients will be admitted as  
14 a party, Mr. Van Cleve. Ticking off my list here, we  
15 usually have the question of discovery. I assume the  
16 parties will want an opportunity for discovery under  
17 our discovery rules?

18                   MR. TROTTER: Yes. We ask that the  
19 Commission's rule be invoked.

20                   JUDGE MOSS: We will put that in our order.  
21 Do the parties, particularly the Company, anticipate  
22 any need for a protective order in this proceeding?

23                   MS. STROM-CARSON: We do anticipate the need  
24 for a protective order, and it would be our standard  
25 protective order that has highly confidential as well

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1 as confidential provisions.

2 JUDGE MOSS: This is a transaction that has  
3 been consummated; is that right?

4 MS. STROM-CARSON: That's right.

5 JUDGE MOSS: I don't see a whole lot of  
6 highly confidential -- in pending transactions, we  
7 typically have much more sensitive data we have to be  
8 concerned about, so I want you all to be very careful  
9 about that.

10 In recent cases, we have had quite a volume  
11 of confidential and highly confidential, and I'm just  
12 reminding you of something you already know, which is  
13 to be please be careful to keeping that limited to the  
14 minimal necessary.

15 MS. STROM CARSON: We will.

16 JUDGE MOSS: Are there any other motions or  
17 requests that we need to take up, procedural matters?  
18 Very good. That brings us to the question of our  
19 process and our procedural schedule, and I'll just note  
20 that this is a case of first impression in the sense  
21 that it is the first case before the Commission under  
22 the RCW 80.80 provisions concerning the emissions  
23 compliance.

24 Looking at the statute and the rules and the  
25 filing, it appears to me there is three principle

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1 issues here; whether Mint Farm meets the EPS standards  
2 in RCW 80.80. I note too that we received a letter  
3 from Ecology into the record -- I assume we will make  
4 that an exhibit at some point -- that was dated  
5 December 17th indicating Ecology's view that the  
6 facility does meet the standard.

7 So let me just pause there and ask if anyone  
8 expects this issue to be one that's going to require  
9 any hearing time, or can this be something we do on  
10 paper? Anyone have ideas on that? I won't cut you off  
11 from your rights, but I'm trying to get a sense of the  
12 case.

13 MS. STROM-CARSON: The Company had  
14 anticipated that this might be decided on summary  
15 determination, or it seemed like it's a pretty  
16 clear-cut issue, and we've had some discussions with  
17 the other parties about that, and I'm not sure where  
18 they stand on that.

19 JUDGE MOSS: Mr. Trotter or Mr. ffitch, did  
20 you have something?

21 MR. FFITCH: I think at this point, Your  
22 Honor, it's possible there might be a need for a  
23 hearing.

24 JUDGE MOSS: You might need a live witness?

25 MR. FFITCH: It's early days yet, but

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1 possibly.

2 MR. TROTTER: Just a couple of things. First  
3 of all, Your Honor, I think counsel for the Company  
4 said that "this" could be handled by summary  
5 determination, and I was unclear whether she meant the  
6 greenhouse gas standard or the case.

7 JUDGE MOSS: I'm just focused on the  
8 emissions standard right now.

9 MR. TROTTER: Okay. Staff is at a disability  
10 here because there is a new employee coming on board  
11 that's going to be handling this case for Staff, so we  
12 want that person to have a fresh look at the case, but  
13 we have no reason to question the authenticity of the  
14 Ecology letter.

15 Of course, the statute is based on this  
16 facility being a base-load plant as well, so there is  
17 some factual issues surrounding that, but I don't  
18 believe Staff will be contesting what is stated in the  
19 Ecology letter.

20 JUDGE MOSS: That is a defined term in the  
21 statute as I recall, the base load. I think it's 60  
22 percent of operating capacity or something like that.  
23 So again, these don't strike me as the kind of issues  
24 that will spark the necessity for a great deal of  
25 evidence, but that's just my first impression.

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1           The other issues that I see that, and perhaps  
2 you all identify yet others to me, the question of  
3 whether Mint Farm qualifies for deferred accounting  
4 under RCW 80.80.060, sub 6, and the corresponding WAC,  
5 which although I didn't compare it word for word looks  
6 very much like the statute I noticed today. So that  
7 question is there, whether it qualifies for deferred  
8 accounting, and again, there may be some legal  
9 questions that we want to have discussions about during  
10 the course of the case, and there may be some factual  
11 issues as well; although, I didn't anticipate a great  
12 number.

13           Finally, the alternative question, if not  
14 qualified under 80.80.060, sub 6, should the Commission  
15 enter an accounting order under its general authority,  
16 and I suppose there is a subsidiary issue under both of  
17 the latter two, which is the question of what that  
18 accounting looks like. So again, this is the first  
19 time we've done this. That's sort of my view of what  
20 the case is about. Does anyone want to add anything at  
21 this point; Mr. Trotter?

22           MR. TROTTER: First of all, I think you  
23 summarized what the Company is asking for on the face  
24 of their petition, particularly Page 2, Paragraph 2.  
25 The parties did get together for a conference call last

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1 week to try to talk about the issues and generally  
2 discuss the case, and as you are aware, RCW 80.80.060,  
3 sub 5, has three elements to it. The greenhouse gas  
4 element as well as whether the Company has a need for  
5 the resource and whether the specific resource selected  
6 is appropriate. So the need and appropriate standards  
7 are there, and it's my understanding that the Company  
8 intends to address those issues in this proceeding, so  
9 that they do seem to be separate from the greenhouse  
10 gas standard or element, but it's our understanding  
11 that the Company intends to address those other two  
12 issues as well.

13           And then finally in the petition itself, this  
14 may be under the rubric of accounting matters, but they  
15 are also asking for specific treatment of this resource  
16 with respect to the PCA, so there is deferral  
17 accounting, but a piece of that is how does that get  
18 treated, if at all, within the context of the PCA, so I  
19 would just add those to your list.

20           JUDGE MOSS: Thank you. I had reviewed the  
21 statutes and the rules this morning, and then again,  
22 looking at the application a second time that there are  
23 issues of this being something that's consistent with  
24 your IRP, those sorts of things are mentioned. So I  
25 gather that Mr. Trotter is correct. We will covering

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1 all those points.

2 MS. STROM-CARSON: That's correct. The  
3 Company does intend to address those, and in fact, the  
4 IRP and the specific other documents that the statute  
5 and WAC require to be filed were filed, so we will  
6 address the need and appropriateness.

7 As to the two issues of the deferred  
8 accounting methodology and then the alternative request  
9 for an accounting petition, the Company has had  
10 discussions with the other parties about this, and  
11 those issues we are willing, in fact, would like to  
12 stay until the next rate proceeding. And I believe  
13 everyone -- I guess they can all weigh in on this, but  
14 it's my understanding that the parties were not opposed  
15 to deferring those issues and staying that part of it  
16 to have that considered in the next rate proceeding and  
17 focusing on the greenhouse gas standards need and  
18 appropriateness here.

19 JUDGE MOSS: Anybody have any comment on  
20 that? Is that essentially correct from the other  
21 parties' perspectives?

22 MR. FFITCH: Your Honor, I guess I have a  
23 statement to make which is on the same topic. I don't  
24 know if it's a comment exactly. It's a question in  
25 part for the Company, and as Ms. Carson has indicated,

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1 they are willing to defer some of these issues to the  
2 general rate case. It's our understanding that the  
3 Company is planning to file a general rate case in, I  
4 believe, after the first of April, 2009.

5 I believe the question I would like to have  
6 the Company address is whether Puget is willing to  
7 withdraw this proceeding and include all the issues in  
8 the general rate case. I think there is a general  
9 consensus that the deferred accounting issues can be  
10 postponed until then.

11 The need and appropriateness issues that do  
12 come up under the greenhouse gas statute seem to  
13 overlap with the prudence issues that would come up  
14 with this plant, and with this case apparently due to  
15 come in within 60 to 90 days, it would seem to be more  
16 efficient, perhaps, if all the matters were simply  
17 addressed in the general rate case.

18 JUDGE MOSS: We have the question on the  
19 table, Ms. Carson. What does the Company think about  
20 that?

21 MS. STROM-CARSON: I think the concern with  
22 that is that we then potentially don't have a ruling on  
23 anything until sometime next spring, a year from now,  
24 and the Company does need some certainty in terms of  
25 either an accounting order or deferral under the

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1 statute by the end of the year for accounting purposes.

2 JUDGE MOSS: Perhaps I misunderstood what you  
3 were telling me earlier. I thought you were talking  
4 about putting off all the accounting questions.

5 MS. STROM-CARSON: Well, if this plant is  
6 determined to fall under RCW 80.80, then by statute,  
7 the Company is allowed to defer. We can have a debate  
8 about what exactly the deferral entails in the next  
9 rate case, but the Company has the right to defer.

10 JUDGE MOSS: So the two questions you don't  
11 want to put off are the EPS standard itself and the  
12 question of whether you qualify under the accounting  
13 provision in 80.80.

14 MS. STROM-CARSON: Right.

15 JUDGE MOSS: I see. I understand better now.  
16 I misunderstood you before.

17 MS. STROM-CARSON: I should clarify too on  
18 the stay in terms of the accounting petition, that  
19 would not be stayed until the next general rate case.  
20 That would be stayed until we have a determination on  
21 whether or not this plant falls under RCW 80.80. If it  
22 didn't fall under RCW 80.80, then we would want the  
23 accounting petition decided.

24 JUDGE MOSS: In that case, you are not really  
25 deferring anything.

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1 MS. STROM-CARSON: We are. If this falls  
2 under 80.80, then we are deferring the accounting  
3 treatment under 80.80. There is still a dispute even  
4 if this plant falls under 80.80, or there may be a  
5 differences of opinion on what can be deferred and how  
6 that methodology will play out.

7 JUDGE MOSS: If we established today that we  
8 are going to, as you put it, defer this one issue, what  
9 would you do differently with this case than you would  
10 do otherwise?

11 MS. STROM-CARSON: I'm not understanding.

12 JUDGE MOSS: I'm trying to understand how it  
13 affects this case if we decide, okay, you can defer the  
14 question of if you are not qualified under 80.80.060  
15 for accounting treatment, then what's left to do in  
16 another case, other than make the decision whether you  
17 get the accounting treatment under our general  
18 authority? I'm puzzled. I don't understand the  
19 parsing that we are doing here.

20 MS. STROM-CARSON: The Company needs to know  
21 that it can defer either under 80.80, or if not under  
22 80.80, then it needs an accounting in order to defer.

23 JUDGE MOSS: If for some reason I was to  
24 enter an order on behalf of the Commission and it was  
25 to become final that says you are not qualified, then

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1 you are going to want to proceed right away with the  
2 question of whether you get the treatment generally.

3 MS. STROM-CARSON: We would; that's true.

4 JUDGE MOSS: Why don't we do it in this  
5 proceeding and be done with it?

6 MS. STROM-CARSON: We can do that.

7 JUDGE MOSS: If there is some reason to split  
8 this up, I would entertain the idea, but otherwise,  
9 let's just do it.

10 MS. STROM-CARSON: I guess we are pretty  
11 confident that this falls under 80.80, and there is an  
12 automatic deferral right, so it seems like it's a  
13 pretty clear-cut case.

14 JUDGE MOSS: I think in light of everything  
15 that I'm hearing, we will just leave all the issues in  
16 this case and we will proceed as appropriate. I don't  
17 see a whole lot here. In terms of accounting, you and  
18 Staff and the other parties will be talking, I'm sure,  
19 about this accounting treatment, and in all candor, I  
20 would be surprised if you couldn't come up with some  
21 sort of arrangement to work for everybody.

22 These are not highly complex issues. I  
23 understand they are issues to be sure, but unlike a  
24 general rate case, for example, it's not that  
25 complicated. So I'll encourage that you work toward

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1 that end as we always do encourage you to get together  
2 and work these problems out if you can.

3 I think I have a better sense of the case  
4 now. You all have been discussing things. I wonder if  
5 you have discussed any sort of procedural schedule that  
6 would work in this case.

7 MR. TROTTER: We did not come to an agreement  
8 on that because there was a difference of opinion on  
9 how to proceed. The Staff believes that we should  
10 proceed by setting a date for the Company to file its  
11 direct case and then we could immediately schedule a  
12 prehearing conference after that to schedule the  
13 remainder. Once we see their direct case, we will know  
14 what the extent of the issues are.

15 We do think there are some complexities  
16 in the accounting side with respect to PCA and other  
17 things, but in any event, that is Staff's proposal, and  
18 the Company can speak for itself, but you've already  
19 heard the wish to proceed on a summary determination  
20 track.

21 JUDGE MOSS: At least with respect to the one  
22 issue. Was that with respect to all of the issues; you  
23 are thinking we can resolve this without an evidentiary  
24 hearing?

25 MS. STROM-CARSON: Possibly.

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1           JUDGE MOSS: Does the Company intend to file  
2 a motion for summary determination?

3           MS. STROM-CARSON: That was our plan. We are  
4 open to also setting a schedule for filing testimony,  
5 and we can at some point in time file a summary  
6 determination if we feel that's appropriate.

7           JUDGE MOSS: Let's set up a schedule as if we  
8 are going to have an evidentiary hearing, and then you  
9 have the right to file a motion for summary  
10 determination, and when you do that, the other parties  
11 will have their rights in terms of response as defined  
12 in our rules, and we may decide to suspend the  
13 procedural schedule during the pendency of that  
14 determination and reset it, and my schedule is  
15 beginning to look busy as we have two rate case filings  
16 in the door. One of them is perhaps not in the door  
17 yet.

18           In any event, I want you all to work together  
19 toward developing a schedule that will anticipate that  
20 we are going to have a day or two hearing, and of  
21 course you will want to allow opportunity for you to  
22 file a direct case since you didn't file any testimony  
23 with this nor were you required to and so forth. So  
24 you all have long familiarity with this so you need  
25 what you need to determine, and I will leave you to do

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1 that in the first instance. If you cannot resolve it,  
2 then I will set something for you.

3 It's now ten before the hour. 20, 25  
4 minutes? If you get finished sooner, then you can come  
5 look for me in my office. Otherwise, I will check back  
6 with you at about a quarter after. We are off the  
7 record.

8 (Recess.)

9 JUDGE MOSS: Parties took an opportunity  
10 during the break to develop a procedural schedule and  
11 did so very quickly. What I've been handed I'll read  
12 and make sure that I get everything correct.

13 The date for Company to file testimony will  
14 be the 13th of February. Others, as to say, Intervenor  
15 and Public Counsel and Staff, on March 27th, and then  
16 the Company will have an opportunity to file its  
17 rebuttal case, if any, on April the 10th, and that  
18 would also include cross-answering testimony on that  
19 date.

20 Evidentiary hearing, if needed, May 4th and  
21 5th; simultaneous briefs, May 22; reply briefs, June  
22 9th, and if I'm reading this correctly, "order,"  
23 question mark, which suits me just fine, and of course  
24 as we discussed earlier, the Company may decide during  
25 the course of the proceeding that it believes the

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1 matter can be resolved on a motion for summary  
2 determination in which case it will file and the other  
3 parties will exercise their rights, and we will see how  
4 the timing works out, if that does transpire. I will  
5 set that schedule in a prehearing conference order.

6 We now have the electronic submission  
7 practice established as our default practice so you  
8 will all be able to exchange your documents  
9 electronically on the dates indicated on the procedural  
10 schedule with paper copies to be filed here the next  
11 day.

12 As far as service is concerned, I believe  
13 I've been right that you will still have to give each  
14 other a letter of waiving paper service if you just  
15 want to get electronic service. I think that's  
16 required by the statute. Probably electronic is  
17 suitable. It certainly is for me. I'm hoping we can  
18 move towards doing away with all this paper, but in the  
19 meantime here at the Commission, we will need your  
20 original and eight copies of any filings, and if your  
21 filing contains confidential or highly confidential  
22 information, what you should do is just give us one  
23 copy of the redacted version or versions and file  
24 everything else with all the information in it, because  
25 that's what will be distributed to people on the list

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1 if they are qualified to see it. I won't recite the  
2 address and so forth since you all know it very well.

3 I think that's about all I have. Did we have  
4 a date in here for settlement? We need to state a date  
5 in the procedural schedule. It's not formal anywhere,  
6 but as a sort of general requirement, we all do that in  
7 every proceeding, so if you could give me a date for  
8 that, and then you are free to change the date if you  
9 wish, but that's something I can put in. Perhaps after  
10 the response case or something like that?

11 MS. STROM-CARSON: Maybe the week of April  
12 13th? That's after PSE's rebuttal testimony.

13 JUDGE MOSS: So the week of 4/13? Any one  
14 day or the other? Why don't we just set the 13th and  
15 then you all can change it if you want to.

16 MR. FFITCH: Would it be okay to change it to  
17 the 14th?

18 MS. STROM-CARSON: That's fine.

19 JUDGE MOSS: April 14th then. Has anybody  
20 got any other business?

21 MR. TROTTER: Just two questions, Your Honor.  
22 Are the commissioners intending to sit on this hearing?

23 JUDGE MOSS: Not to my knowledge.

24 MR. TROTTER: Then if Staff issued some  
25 informal data requests before the rule was invoked,

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1 does the Company have any understanding when those  
2 might be submitted to Staff?

3 MS. STROM-CARSON: Certainly within ten days  
4 --

5 MR. TROTTER: -- of the asking?

6 MS. STROM-CARSON: Or of today, and possibly  
7 sooner. If we can get them sooner, we will.

8 MR. TROTTER: Thank you.

9 JUDGE MOSS: As usual, I'm sure you will all  
10 operate in good faith in the discovery process. That's  
11 always better than bringing motions to me.

12 MR. FFITCH: Your Honor, may we submit  
13 support staff or other names for the electronic service  
14 list?

15 JUDGE MOSS: Why don't you all to the extent  
16 you want to expand the service list to include others  
17 send me an e-mail tomorrow morning. That will allow me  
18 to get the prehearing conference order out tomorrow  
19 afternoon, so if you could get that information to me  
20 in the morning or even this afternoon, and I will  
21 certainly expand the service list to include that.

22 MS. STROM-CARSON: Do we need to submit a  
23 protective order?

24 JUDGE MOSS: I will just do the standard form  
25 of protective order. I think that's all we will need.

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1    Apparently, there is no other business.  I thank you  
2    all for being here today and look forward to working  
3    through the case with you.

4                    (Prehearing adjourned at 2:15 p.m.)

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