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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3
4 WASHINGTON UTILITIES AND)Docket No. UE-011570
4 TRANSPORTATION COMMISSION,)Docket No. UG-011571
 Complainant,)
5)Volume XVI
 v.)Pages 1957-2101
6)
7 PUGET SOUND ENERGY,)
 Respondent.)
8 _____)

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10 A settlement hearing in the above
11 matter was held on June 14, 2002, at 1:40 p.m., at
12 1300 S. Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge DENNIS J.
14 MOSS, Chairwoman MARILYN SHOWALTER, Commissioner
15 RICHARD HEMSTAD, and Commissioner PATRICK OSHIE.

16 The parties were present as
17 follows:
18 PUGET SOUND ENERGY, by Markham
19 Quehrn and Kirstin Dodge, Attorneys at Law, Perkins
20 Coie, 411 108th Avenue, N.E., Bellevue, Washington
21 98004.

22 CITIES OF AUBURN, BELLEVUE,
23 BURIEN, DES MOINES, FEDERAL WAY, MAPLE VALLEY,
24 REDMOND, RENTON, SEA-TAC, AND TUKWILA, by Carol
25 Arnold, Attorney at Law, Preston, Gates & Ellis, 701
Fifth Avenue, Suite 5000, Seattle, Washington 98104.

 KING COUNTY, by Dennis McMahon,
Attorney at Law, 900 King County Administration
Building, 500 Fourth Avenue, Seattle, Washington
98104.
Barbara L. Nelson, CCR
Court Reporter

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1 SOUND TRANSIT, by Elizabeth
2 Thomas, Attorney at Law, Preston, Gates & Ellis, 701
3 Fifth Avenue, Suite 5000, Seattle, Washington 98104.

3 CITIES OF KENT AND BREMERTON, by
4 Michael L. Charneski, 19812 194th Avenue, N.E.,
5 Woodinville, Washington 98072.

5 MULTI-SERVICE CENTER, THE ENERGY
6 PROJECT AND OPPORTUNITY COUNCIL, by Ronald Roseman,
7 Attorney at Law, 2011 14th Avenue East, Seattle,
8 Washington, 98112.

7 NORTHWEST ENERGY COALITION and
8 NATURAL ENERGY RESOURCES COUNCIL, by Danielle Dixon,
9 219 First Avenue South, Suite 100, Seattle,
10 Washington 98104 (Via teleconference bridge.)

10 INDUSTRIAL CUSTOMERS OF NORTHWEST
11 UTILITIES, by Irion Sanger, Attorney at Law, Davison
12 Van Cleve, 1000 S.W. Broadway, Suite 2460, Portland,
13 Oregon, 97205.

12 THE COMMISSION, by Robert
13 Cedarbaum and Shannon Smith, Assistant Attorneys
14 General, 1400 S. Evergreen Park Drive, S.W., P.O. Box
15 40128, Olympia, Washington 98504-0128.

15 PUBLIC COUNSEL, by Simon ffitch,
16 Assistant Attorney General, 900 Fourth Avenue, Suite
17 2000, Seattle, Washington 98164.

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

2 JUDGE MOSS: All right. Let's be on the
3 record.

4 CHAIRWOMAN SHOWALTER: For those who were
5 in the room yesterday, but not in the room last
6 evening, I think you may know by now that we did
7 deliberate as to how we are going to manage the
8 schedule of this case and our others, and we decided
9 to focus on the subjects that we have the most
10 questions on this afternoon and Monday, that being
11 the cities and then the time of use issue and then
12 power cost adjustment issues, and to rely on the
13 written testimony and materials for the rest of the
14 issues, subject to potential bench requests or other
15 things.

16 This still doesn't mean necessarily that we
17 will make the July 1 date, but we are trying to do
18 that.

19 JUDGE MOSS: All right. That being said,
20 we are convened again in our proceeding styled
21 Washington Utilities and Transportation Commission
22 against Puget Sound Energy, Docket Numbers UE-011570
23 and UG-011571.

24 I would like to take appearances again
25 today. We have quite a few parties in the case, and

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1 of course some are participating for some aspects of
2 the case and some for others. So let's begin with
3 the company, Ms. Dodge.

4 MS. DODGE: Kirstin Dodge, with Perkins
5 Coie, for Puget Sound Energy.

6 MR. QUEHRN: Mark Quehrn, with Perkins
7 Coie, representing Puget Sound Energy.

8 MR. CHARNESKI: Michael Charneski, Attorney
9 at Law, for the cities of Kent and Bremerton.

10 MS. ARNOLD: Carol Arnold, Preston Gates
11 and Ellis, for the cities of Auburn, Bellevue,
12 Burien, Des Moines, Federal Way, Maple Valley,
13 Redmond, Renton, Sea-Tac, and Tukwila.

14 MS. THOMAS: Elizabeth Thomas, Preston
15 Gates and Ellis, for Sound Transit.

16 MR. FFITCH: Your Honor, Simon ffitch,
17 Assistant Attorney General, for Public Counsel.
18 We're appearing today for the time of use portion
19 later. We are not a signatory to the cities
20 stipulation. I will not be sitting at counsel table
21 during this portion, with your permission.

22 JUDGE MOSS: That's fine, Mr. ffitch.

23 MR. CEDARBAUM: Robert Cedarbaum, for
24 Commission Staff.

25 MS. SMITH: Shannon Smith, for Commission

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1 Staff.

2 JUDGE MOSS: Mr. Roseman. I think the
3 switch is on the bottom there.

4 MR. ROSEMAN: I think I've found it. The
5 red light's on. Hello?

6 JUDGE MOSS: There we go.

7 MR. ROSEMAN: Sorry. I'm Ronald Roseman.
8 I represent the joint intervenors, the Multi-Service
9 Center, The Energy Project and the Opportunity
10 Council. We are not here to participate, nor were we
11 a signatory on the cities' or on Sound Transit's
12 issue, but are here on the time of use issue that
13 will follow.

14 JUDGE MOSS: Thank you.

15 MR. McMAHON: My name is Dennis McMahon,
16 I'm a deputy prosecuting attorney. I represent King
17 County.

18 MR. SANGER: My name is Irion Sanger. I'm
19 here on behalf of the Industrial Customers of
20 Northwest Utilities.

21 JUDGE MOSS: Are there other counsel who
22 wish to enter appearances? Apparently not. Mr.
23 Sanger, you can just sit that microphone there on the
24 edge of the table and counsel will know where it is
25 if they need to get it.

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1 MS. ARNOLD: Your Honor?

2 JUDGE MOSS: Yes, Ms. Arnold.

3 MS. ARNOLD: Mr. Roe, Cary Roe, is at the
4 witness table as a spokesman for the cities, but
5 should the Commission ask questions that other cities
6 can answer, the other cities all have representatives
7 here, as well, with one exception.

8 JUDGE MOSS: All right. Thank you very
9 much.

10 MS. ARNOLD: They're in the audience.

11 JUDGE MOSS: All right. Thank you very
12 much. All right, this portion of the proceeding
13 relates to the part of the stipulation that is
14 identified as an issue agreement, and it's marked in
15 the stipulation as Exhibit I, Settlement Terms for
16 Relocation and Underground Conversions.

17 So far, our witness panels have not had
18 narrative testimony, and we have simply launched into
19 questions, but what we would like to ask from the
20 bench on this particular segment is that one of you
21 or more than one of you, if you choose, to give us
22 sort of a run-through, a synopsis of the essential
23 elements, if you will, or aspects, terms of this
24 portion, this issue agreement. So you may wish to
25 confer briefly among yourselves to decide who would

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1 do that, and give us that presentation and then we'll
2 have our questions. Ms. Harris, the black bean is
3 yours.

4 MS. HARRIS: I was just writing down my
5 notes here. The cities collaborative, actually, I
6 think was a very different collaborative than we had
7 in many of the others issues, mainly because if I had
8 to look at the cities collaborative, it was maybe
9 five percent general rate case issues, past
10 litigation issues, and further relationship issues.
11 I think we worked through many issues with the
12 cities.

13 In this settlement and stipulation and the
14 revised tariffs, 72 and 28 have been pulled. The
15 reason why we had actually pulled 72 and 28 is
16 because franchise agreements that we have with
17 individual cities actually are adequate for the
18 company and basically would give the rights and
19 obligations of the company, so we had decided that we
20 did not need Schedule 72 and 28 to perform those
21 services, so part of the stipulation was to actually
22 pull those proposed tariffs.

23 That issue, I think, brings in Sound
24 Transit and King County, who were mainly concerned
25 with Schedule 72 and 28. King County, of course, we

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1 would have other agreements, and Sound Transit, we
2 would continue to work with them under an agreement
3 much like what we have with them today. And we have
4 further discussions going on with Sound Transit.

5 On the cities in general, what we have come
6 up with in this collaborative, the main issues were
7 cost allocation, easements, the design contract and
8 the construction agreement. The cost allocation is
9 revised and is included in Schedule 71. Schedule 71
10 will now pertain to all governmental entities that
11 are performing conversion or asking for conversion
12 services from the company.

13 Schedule 70 will now pertain to private,
14 residential private citizens or developers,
15 nongovernmental entities. We actually split the
16 schedules. Rather than a three-phase/one-phase, we
17 decided it was easier to do it as what type of
18 entity's actually requesting service under these two
19 schedules, and that's how Schedule 70 and 71 now are
20 drafted and proposed.

21 On the cost allocation, this came up with
22 much discussion on cost allocation. We had different
23 technical committees, we looked at revenue and costs
24 and trenching and we had many different side
25 discussions on this. On cost allocation, the

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1 agreement proposes a 60/40 split, so that the company
2 would -- the company's share will be 60 percent and
3 the city's share will be 40 percent of the prescribed
4 costs. That does not include trenching and
5 restoration.

6 The easement issue was a very big issue for
7 the cities, and it was one that required much
8 discussion and much collaboration with the parties.
9 I don't know, without writing on a board, if you can
10 go through the different scenarios, as far as an
11 easement, but the stipulation and the agreements that
12 are attached thereto give a clear roadway of how the
13 company and the cities are going to negotiate and
14 determine what type of easement, if any easement is
15 necessary, what type of an easement is necessary, who
16 pays for such easement, and dispute resolution, so
17 that we will not need to continue along the same
18 lines that we had in the past.

19 I think the most important issue that we --
20 or that we got through in the cities collaborative
21 was the drafting of a design contract and a
22 construction agreement. Much of the costs that the
23 cities bear deal with delays, and in many of those
24 delays, what we were hearing were directly related to
25 the service that the company was providing or the

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1 service that the company was not providing. And so
2 much of our time and our effort was spent on these
3 two contracts that have been attached in form to the
4 tariffs.

5 JUDGE MOSS: Okay. Thank you. Go ahead.

6 CHAIRWOMAN SHOWALTER: My questions are
7 mainly about what is contained in Schedule 70 and 71,
8 but as a first question, tell me, what were Schedule
9 72 and Rule 28 about and why are they not needed?

10 MS. HARRIS: Schedule 72 was for electric
11 service and Rule 28 was gas service, and those were
12 pertaining to the relocation. For instance, not in a
13 conversion, but the relocation of a power pole, our
14 power pole, so to speak, and their -- our power poles
15 are on city rights-of-way, and that is under the
16 terms of the franchise. So each service or each city
17 may have different terms and conditions on their
18 franchise, so it seemed to be a redundant -- we do
19 not need a Schedule 72 for relocation, and we will
20 adhere to the terms and conditions of each franchise
21 that we have within that city.

22 CHAIRWOMAN SHOWALTER: So if there are no
23 tariffs or schedules, it eliminates arguments as to
24 which controls, the franchise agreement or the
25 tariff; is the franchise agreement subject to the

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1 tariff or the reverse, and you're saying that is no
2 longer going to be a question, because there's only
3 one thing called a franchise agreement?

4 MS. HARRIS: Exactly. When we started off
5 the collaborative, honestly, we hadn't pulled
6 Schedule 72, and that was the type of discussions we
7 were having. We were trying to come up with these
8 kind of cookie cutter rules with Schedule 72 and Rule
9 28, and what we were hearing, honestly, was, Wait a
10 second, we negotiated our franchise, we want to -- we
11 want those rights and obligations that we had with
12 the franchise.

13 And the company realized, after about four
14 hours, that we can't come up with a cookie cutter
15 response for Schedule 72 and Rule 28, and we really
16 didn't need one, and so we were comfortable with the
17 franchise agreements in that case.

18 CHAIRWOMAN SHOWALTER: It seems as if it
19 possibly poses what maybe is only a theoretical
20 abstract issue, but supposing the cities franchise
21 puts some kind of conditions on the company that
22 would thwart their ability to fulfill their
23 obligation to serve. I recognize that cities are
24 there to serve and protect their own citizens, but
25 it's a broader mandate than this Commission has to

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1 serve the public interest with respect to
2 electricity.

3 MS. HARRIS: And any time, I believe, at
4 that point, the company would have the right to go
5 out and purchase an easement so that we could fulfill
6 our obligation to serve. And the franchise would
7 govern the rights-of-way. So at any point, if we
8 were threatened in that we had not been adequately
9 represented when we were negotiating the terms and
10 conditions of our franchise, we would still have that
11 right to do so.

12 CHAIRWOMAN SHOWALTER: I'm ready to turn to
13 Schedule 70 and 71, but does anyone have more
14 questions on this issue?

15 COMMISSIONER HEMSTAD: Well, on the issue
16 of the city franchise, I'm unclear as to how narrow
17 or broad the terms of that can be. In other words, I
18 can envision a city franchise that broadly imposes
19 costs on the company that then could socialize to the
20 other ratepayers of the company to the benefit of
21 that particular city. Can that happen?

22 MS. HARRIS: As a matter of -- we pay one
23 hundred percent of relocation costs, on relocation
24 costs as it is today. So the cost sharing mechanism,
25 60/40, or any sort of split, only applies and has

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1 always only applied to a conversion process or the
2 service of conversion.

3 We have our concerns about relocation costs
4 and increasing costs in relocation. However, through
5 the development of the design agreement and the
6 construction agreement and the better relationship
7 that I believe that we're working towards, there was
8 great agreement that we need to work together as a
9 team, and I think it starts in the planning process
10 and it starts in the design -- and it continues
11 through the design and the construction phases, so
12 that we're hoping that, under this new relationship,
13 we'll actually see costs decrease because we'll be
14 able to anticipate relocations, conversions, and
15 whether the company at that point decides that they
16 want to go out and obtain a private easement.

17 So we're hoping, through the process that
18 we've developed, not necessarily the cost allocation,
19 that we'll actually decrease costs of relocation.

20 CHAIRWOMAN SHOWALTER: But I guess -- I
21 mean, we haven't thought much about this issue of
22 having only a franchise and not our tariff, so what
23 are the potential situations where the city's
24 interest might be different than -- not too much the
25 company's, as the company's ratepayers. Where might

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1 we get a tension, or is that not really an issue,
2 because relocation already was the company, i.e., the
3 shareholders, paying a hundred percent?

4 MR. COE: I believe that's correct.
5 Because the relocation responsibility currently
6 resides with PSE, that's not changing. So I think
7 your observation is the cities' perspective on that
8 question.

9 CHAIRWOMAN SHOWALTER: And then what goes
10 into, quote, relocation costs -- I'm going to try to
11 make up something outlandish. I'm trying to get to
12 the extreme case. If a city says not only do you
13 have to pay the cost to move the overhead wires, but
14 you have to plant trees. I really don't know. I
15 don't know if I'm -- if there is no bad scenario or
16 whether you can think of some kind of tension.

17 MR. COE: I'm not aware of one. And
18 obviously, I think Kimberly testified to a very
19 important issue that came out of the collaborative.
20 That is I think the parties generally want to work
21 together, and I think both revisions in the tariff,
22 as well as with the design and construction
23 agreements, it requires us in many ways to better
24 communicate, to better coordinate, and to cooperate
25 with one another, and there's a series, there's a

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1 framework that moves you through that decisional
2 process. And I think you will identify issues much
3 earlier than we have in the past. And there's
4 ability to agree and disagree, and where you
5 disagree, there's dispute resolution.

6 So I'm not personally, and nor do I think
7 the cities are concerned about how we could impose
8 issues on that weren't fair. I think PSE and the
9 cities have ability to address our disputes and work
10 through our disputes without holding up the project,
11 without being unfair to one another.

12 MS. HARRIS: I've been trying to figure out
13 as -- to answer your question, Chairwoman, of why a
14 city would ask us to relocate. And to kind of touch
15 on that, it became very clear in about the second
16 collaborative of -- we relocate our poles for public
17 policy reasons, public safety, and those types, and
18 that really seemed to be the concern of the cities.
19 Not necessarily move it for, you know, other uses.
20 And they were explaining to us that they wouldn't put
21 their own residents through those types of
22 transportation projects and those types of -- so I
23 think we really -- we really focused on public policy
24 and public safety and tried to reach agreement on
25 those types of aspects.

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1 But we found that, although our positions
2 are very different, when we really kind of scraped
3 through the positions, our interests are very well
4 aligned: service of the customers, service of the
5 citizens, and public safety and welfare.

6 COMMISSIONER OSHIE: Bottom line, Ms.
7 Harris, have the rights of the parties been altered
8 at all by relying upon the franchise agreements
9 between the company and the cities and/or the old
10 Schedule 72 and 28?

11 MS. HARRIS: No. In fact, the rights and
12 obligations have not been realigned and I believe
13 actually the company was proposing to realign them
14 with Schedule 72 and Rule 28. So basically, the
15 company has backed off of their litigation position.

16 CHAIRWOMAN SHOWALTER: If things, for
17 whatever reason, did not go well some years down the
18 road, could the Commission entertain a tariff that
19 set things? We'd clearly get various arguments, but
20 that is, if for some reason tariffs are valuable, it
21 can be reintroduced at a later date?

22 MS. HARRIS: It could.

23 CHAIRWOMAN SHOWALTER: All right. Okay.
24 I'm ready to move to Schedule 70, and I'm going to be
25 looking at the schedule itself. And just an opening

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1 question. Now that you've realigned the dividing
2 line between 70 and 71 along nongovernmental entities
3 and governmental entities, does it make sense to have
4 the same numbers, same schedules?

5 MS. HARRIS: No, that's a good point.

6 CHAIRWOMAN SHOWALTER: Well, I thought
7 maybe you had thought of it and you thought, Well,
8 the old 70 and 71 covered the same territory as the
9 new 70 and 71, so we don't want to change the
10 numbers, but the new 70 is very different than the
11 old 70.

12 MS. HARRIS: It is. And actually, that may
13 be -- that may be a very good point and might clear
14 up some issues and, by all means, you can order us to
15 comply with that.

16 CHAIRWOMAN SHOWALTER: Just a thought.
17 We'll talk -- we'll talk about it maybe through an
18 order, but it would -- the company would not be
19 precluded from substituting a number later if it
20 proves to be practical.

21 JUDGE MOSS: Do you have a favorite number,
22 Ms. Harris?

23 CHAIRWOMAN SHOWALTER: Let's see. My first
24 question is under 1-A, sufficient materials and
25 equipment are available. My question is, as

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1 determined by whom? Is this a determination by the
2 company?

3 MS. HARRIS: This one makes my stomach
4 turn, because we spent a lot of time drafting this.

5 CHAIRWOMAN SHOWALTER: Is this a reasonable
6 company standard that the Commission would ultimately
7 determine?

8 MS. HARRIS: Chairwoman, this is a
9 compliment. You can zero in on exactly the term
10 probably that we don't want you to zero in on each
11 time.

12 Because this, of course, is our tariff and
13 our service, it would be on the determination of the
14 company. I don't believe it's a sole determination
15 of the company, but given construction schedules --
16 and this falls back to the fact that we have now a
17 clear time line set forth in these agreements, so
18 that the service is not going to be requested or
19 required within ten days. We are going to have much
20 more lead time and coordination so that, by all
21 reasonable standards, there should be sufficient
22 supplies and any of the equipment that needs to be
23 required for service.

24 CHAIRWOMAN SHOWALTER: But would one say
25 that, at least in the first instance, it would be the

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1 company who would make this determination. If the
2 company had made the determination arbitrarily,
3 perhaps somebody would bring it to our attention?

4 MS. HARRIS: Yes.

5 CHAIRWOMAN SHOWALTER: My next question is
6 on the definition of public thoroughfare, which comes
7 up on page one, 1-C, and the definition is at the end
8 of the schedule, I think. Where are these
9 definitions? I know I have seen them.

10 JUDGE MOSS: They begin at Sheet 70-H, or,
11 no -- they begin, yeah, there, and public
12 thoroughfare is defined on Sheet 70-I at subpart F.

13 MS. DODGE: Could I ask a point of
14 clarification? Are we on Schedule 70?

15 CHAIRWOMAN SHOWALTER: I'm talking about
16 70. But 70 has the term public thoroughfare on the
17 first page, but for some reason I'm still having a
18 hard time finding the definitions. Okay, good.

19 I'm interested in the term "other public
20 right-of-way," the public thoroughfare includes
21 governmental roads or other public right-of-way.
22 What is -- let's take the case of Medina, or Clyde
23 Hill, was it, but a private road, a road that is
24 marked private on the sign, but that ten houses are
25 on and UPS trucks and delivery trucks and visitors go

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1 down this road, but it is marked private road and it
2 is not owned by the city. Is that a public
3 thoroughfare or not? Did I get another question?

4 MS. HARRIS: (Nodding.) I think I
5 preferred being on the revenue requirements team.
6 The Clyde Hill -- and we'll use the Clyde Hill
7 hypothetical. Clyde Hill hypothetical actually is
8 why there's a division -- well, why it made good
9 sense to make a division between Schedule 71 and
10 Schedule 70, based on the entity requesting service.

11 So in the Clyde Hill-type scenario, the
12 private road or the private driveway, because Clyde
13 Hill is the entity requesting service, that private
14 driveway will be treated the same as if it was a
15 public thoroughfare as long as -- then there's
16 different scenarios -- as long as the company is --
17 the company recovers costs of a private easement or
18 relinquishing its rights to a private easement. But
19 the Clyde Hill scenario will fall under Schedule 71,
20 rather than both schedules.

21 CHAIRWOMAN SHOWALTER: I shouldn't have
22 used -- said to you Clyde Hill scenario, because you
23 are imagining in your head Clyde Hill asking for it.
24 I was just trying to name a private road. Let's take
25 a neighborhood that looks like this bench and there

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1 is a -- we live in four houses, and there is a paved
2 road that goes down our houses and it says private
3 drive. And we, the four of us who are in Schedule
4 70, are asking for this.

5 I just want to know if that's a public
6 thoroughfare or not. In other words, under Schedule
7 70-I(C)(i), it talks about regarding the portions of
8 such system to be installed in a public thoroughfare,
9 and I just wondered if that's -- that private street
10 I'm mentioning is one, or is that private street just
11 the same as my backyard, supposing the wires go
12 behind my house, through my back yard?

13 MS. HARRIS: I understand that this is not
14 very clear, reading this. I believe, though, that if
15 it is a private drive, then it is not a public road
16 thoroughfare.

17 CHAIRWOMAN SHOWALTER: So the word public
18 in the definition doesn't mean members of the public
19 get to walk down the road. It's not like a private
20 easement or a -- well, it refers to ownership, an
21 ownership by a government. Am I right on that?

22 MS. HARRIS: Yes.

23 CHAIRWOMAN SHOWALTER: Okay. My next
24 question is the definition of a governmental --
25 government entity.

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1 JUDGE MOSS: Can I ask a follow-up on that?

2 CHAIRWOMAN SHOWALTER: Sure.

3 JUDGE MOSS: I wanted to ask a follow-up on
4 the public thoroughfare issue. My recollection is
5 that there is a definition of this same term in
6 Tariff Schedule 85, which is the line extension
7 tariff, and my question is simply whether this is the
8 same definition as utilized there or a different
9 definition, and if it's different, why?

10 MS. DODGE: If I may answer. Some of these
11 are legal.

12 JUDGE MOSS: Sure, Ms. Dodge, go ahead. I
13 just want to be clear in my mind.

14 MS. DODGE: I believe it's different, and
15 it was negotiated for the specific purpose of
16 Schedule 70 and 71. I believe one of the differences
17 is the -- and I don't have the 85 in front of me, but
18 there's this other public real property rights
19 allowing for electric utility use. Now, Carol, maybe
20 you have some more insight into -- in this particular
21 language?

22 JUDGE MOSS: And let me remind everyone,
23 witnesses and counsel, as well, to please use
24 surnames, so that our record is clear ten years from
25 now when we're all retired and living on our private

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1 drive, as good neighbors.

2 Ms. Arnold, I think the question is whether
3 you might have some further insight as to the
4 different definition in the Schedule 70 for public
5 thoroughfare relative to -- as I'm sure you recall,
6 there was some argument advanced by someone in that
7 case we had earlier this year concerning the fact
8 that there was a definition of this term in Schedule
9 85. And so if this definition's different, I'm
10 trying to understand why.

11 MS. ARNOLD: The definition -- sorry. The
12 definition of public thoroughfare was negotiated for
13 purposes of Schedule 71. And I believe that the
14 drafters just incorporated that definition in
15 Schedule 70 for purposes of consistency.

16 JUDGE MOSS: And so it is the same
17 definition as in 71?

18 MS. ARNOLD: Yes, it is.

19 JUDGE MOSS: But it's a different
20 definition from that in Schedule 85, and that is
21 because it serves a different function in this
22 schedule relative to 85, or is there some other
23 reason?

24 MS. ARNOLD: I can address why it was
25 negotiated this way for Schedule 71, but I wasn't

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1 involved in the Schedule 85 collaborative.

2 JUDGE MOSS: The response to why it's this
3 way in this tariff would be what I'm really looking
4 for.

5 MS. ARNOLD: In order to answer that, I
6 have to go to Schedule 71.

7 JUDGE MOSS: That's fine.

8 MS. ARNOLD: Which I can do.

9 JUDGE MOSS: That's fine. I think we can
10 skip around a little bit.

11 MS. ARNOLD: It was negotiated this way for
12 purposes of Schedule 71 because Schedule 71 does two
13 things. One, it defines -- it determines -- it does
14 two things here. First of all, if there is a
15 discussion about whether there is room for
16 underground facilities on the public thoroughfare,
17 the parties discuss that, and if there's a difference
18 of opinion that can't be resolved, then the company
19 has agreed to purchase a private easement.

20 So the definition was negotiated, in part,
21 to decide what is public thoroughfare. And the
22 reason it appears to be expanded, and I think the
23 Chairwoman's question particularly was about other
24 public right-of-way, and my recollection is that that
25 was intended to cover things like bicycle paths that

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1 may not be actually part of a public street or
2 adjacent to a public street, but might be suitable
3 for a placement of a underground electric facility.

4 CHAIRWOMAN SHOWALTER: And I said
5 government ownership. That might not have been the
6 best term. There could be private land, say on a
7 lake or beach, and there would be a public
8 right-of-way to the beach, maybe. That is, there
9 might be a public right and a piece of private land
10 that nevertheless was a public right-of-way, or do
11 you think this is limited to land that is owned by
12 the government?

13 MS. ARNOLD: I think the -- I think it's,
14 in practical effect, it's limited to land that is
15 controlled by the government, but partly the reason
16 that definition, it appears a little convoluted, is
17 that it was intended to limit the placement of
18 electric facilities within the area that had been
19 franchised to Puget Sound Energy. You see, there's
20 something about under a franchise or other rights.

21 CHAIRWOMAN SHOWALTER: Allowing for
22 electricity. Yes, it's a public right-of-way or
23 public -- or real property rights allowing for
24 electric utility use. So it's a -- it relates back
25 to the use.

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1 MS. ARNOLD: Yes, that's right. And the
2 city attorney of Renton reminded me that some cities
3 have utility areas where water lines are placed that
4 might not be appropriate for electric facilities. So
5 it's intended to limit it to areas that are used for
6 electric utilities.

7 The other broad purpose that this
8 definition was negotiated for Schedule 71 is Schedule
9 71 requires the cities, or the governmental entity,
10 rather, to pay a hundred percent of the cost of
11 relocation -- excuse me, the cost of underground
12 conversion of the company's facilities that are not
13 located on private -- public thoroughfare, that are
14 located on private easements, so the definition is
15 intended to distinguish between what is private
16 easement and what would be public thoroughfare, where
17 the cost splitting would apply.

18 JUDGE MOSS: That leads me to a follow-up
19 question. And of course, I have some of the
20 scenarios in mind from our case earlier this year.
21 The situation, for example, where PSE's facilities
22 are located on a private easement that runs alongside
23 of a public thoroughfare, how does that work?

24 MS. ARNOLD: If that's an easement that's
25 held in Puget's name, and there's some time frames

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1 here, at the time that the underground conversion is
2 requested or at the time the city begins condemning
3 property for its road project, if that is on an
4 easement owned by Puget or in Puget's name, the city
5 then pays one hundred percent of the underground
6 conversion cost.

7 JUDGE MOSS: Okay. Thank you.

8 CHAIRWOMAN SHOWALTER: All right. So back
9 on Schedule 70, the customer requesting service is
10 not a government entity, so that leads to the
11 question, what is a government entity. And looking
12 at that definition, my question first is what is an
13 LID? Would that not be a governmental entity?

14 MS. ARNOLD: I'm going to defer to the city
15 attorneys on this, but I believe that an LID is on
16 private property; is that correct?

17 CHAIRWOMAN SHOWALTER: Well, it's an --
18 it's some kind of entity. It's a -- go ahead.

19 MS. ARNOLD: Could Mr. -- this is Larry
20 Warren, who's a city attorney for the City of Renton.

21 MR. WARREN: Is this on?

22 CHAIRWOMAN SHOWALTER: No.

23 MR. WARREN: My name is Larry Warren, I'm
24 city attorney for the city of Renton. LID stands for
25 local improvement district. A local improvement

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1 district may be constructed within a public road or a
2 public property, but the costs of the improvement are
3 generally passed along to members of the general
4 public or the landowners next to the -- excuse me,
5 the improvement, those people that are specifically
6 benefited by the improvement.

7 For example, there may be need for a sewer
8 line to go through a certain neighborhood, and that
9 can be done by a local improvement district. The
10 city builds it, calculates the costs, and spreads it
11 in an equitable manner to the people that are being
12 served by the improvement. So LID is a local
13 improvement district.

14 The city could also determine to put that
15 improvement in on its own dime and roll it into its
16 capital costs and spread it through connection fees.
17 There's various ways it could be handled, but a local
18 improvement district is the individual property
19 owners paying for a public improvement to the extent
20 that the properties are benefited.

21 CHAIRWOMAN SHOWALTER: Well, I guess my
22 question is if a subgroup of neighbors, a group of
23 neighbors, a block of neighbors wants to have
24 undergrounding, their first option under Schedule 70
25 is simply go to PSE and pay for it, virtually a

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1 hundred percent.

2 MR. WARREN: Right.

3 CHAIRWOMAN SHOWALTER: Another option might
4 be they go to their city and say, Well, city, will
5 you tell Puget that we need to have -- that you, the
6 city, needs to have this undergrounded, because that
7 way, it only costs 40 percent, and we, the
8 homeowners, will pay you that.

9 I'm going to get to that question later in
10 71, but another thing that occurred to me is an LID
11 -- now, is an LID an entity that exists only under
12 the auspices of a city to begin with?

13 MR. WARREN: Yes, it's a city function.
14 It's a method of financing city improvements. I
15 would have to review the LID statute. As part of a
16 larger project, I believe such a cost might be
17 included, but simply to come to the city and ask to
18 have it done as an individual, discrete improvement
19 -- well, let's put it this way. I've been serving as
20 city attorney for 25 years and was an assistant for
21 several years before that, and I've never seen such a
22 request come to the city of Renton. It may have come
23 to others.

24 COMMISSIONER HEMSTAD: Well, not to put
25 words in your mouth, but I assume the conclusion is

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1 that an LID is not, under state law, itself a
2 municipality?

3 MR. WARREN: It is not, no.

4 CHAIRWOMAN SHOWALTER: And I guess it's not
5 only not, but it doesn't really -- it can't itself
6 form and request undergrounding under 70, nor would
7 it want to?

8 MR. WARREN: I don't think -- excuse me.

9 CHAIRWOMAN SHOWALTER: Only the city can
10 form an LID, for whatever purposes LIDs, under law,
11 are allowed.

12 MR. WARREN: Right. I think, under 70,
13 that -- you can't proceed under 70, because it
14 wouldn't be the city.

15 CHAIRWOMAN SHOWALTER: Seventy-one, you
16 mean.

17 MR. WARREN: We'd have to be proceeding
18 under 71, and I don't think we can quite get there.

19 CHAIRWOMAN SHOWALTER: Okay. Then, also,
20 still sticking on what is a government entity, it's a
21 municipality, county, or other government entity
22 having authority over the public thoroughfare.

23 So does this definition exclude things that
24 might be called the government entity, such as a fire
25 district, but that does not have authority over the

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1 public thoroughfare, because it could be a
2 municipality or a county.

3 MR. QUEHRN: Mark Quehrn, for Puget Sound
4 Energy. That is the intent of the language, is to
5 essentially limit this to municipalities that have
6 authority over the public right-of-way. So for
7 example, a school district or a fire district or
8 something like that, they don't have franchise
9 authority, they don't regulate the public
10 right-of-way. Cities and counties, for the most
11 part, are the entities that do that.

12 So the idea here is to create a nexus
13 between the concept of municipality, county, or other
14 governmental entity and authority over public
15 thoroughfares.

16 CHAIRWOMAN SHOWALTER: Who is there other
17 than a municipality or a county that might have
18 authority over the public thoroughfare?

19 MR. QUEHRN: State Department of -- DOT,
20 Department of Transportation, is one.

21 COMMISSIONER HEMSTAD: Port district would
22 be another. At the airport, for example, would have
23 control over the --

24 MR. QUEHRN: Would have control over port
25 property, to some extent.

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1 COMMISSIONER HEMSTAD: Over the public
2 thoroughfare.

3 MR. QUEHRN: I don't know if I want to
4 concede that one, but comment acknowledged. I think
5 that's potentially one, but I'd obviously look at the
6 enabling authority to answer that question.

7 CHAIRWOMAN SHOWALTER: All right. Okay.
8 Then my next question on Schedule 70, if we're done
9 with that area of inquiry, although it will probably
10 come up again in 71, is a couple more pages in. It
11 has a small B at the top. It would be 3-B. The
12 paragraph begins, The customer shall pay to the
13 company. And this is, in general, the paragraph that
14 says, under 70, the customer's paying virtually all
15 the cost.

16 If you look at the second -- the third
17 sentence that begins, If the actual costs of any
18 amounts payable, that sentence. Well, if you just
19 keep tracking that sentence, there is a parentheses,
20 and it seems to me that something is wrong with this
21 sentence, which makes it hard to understand, but it's
22 -- I think that, just above the parentheses, the
23 phrase begins, The company shall refund any excess
24 payment to the customer or bill, and I think there
25 maybe should be a comma and no parentheses, and be

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1 entitled to collect from the customer the appropriate
2 amount. Maybe you can just read that and figure out
3 what it's saying.

4 JUDGE MOSS: And let's -- I wonder if we
5 should turn back, to the extent we can, to our
6 witness panel, and if we need legal --

7 CHAIRWOMAN SHOWALTER: Oh, sure.

8 JUDGE MOSS: -- interpretation, then we can
9 rely on counsel for that.

10 CHAIRWOMAN SHOWALTER: Yeah, right.

11 MS. HARRIS: Well, the difficulty is I know
12 what the sentence is supposed to say, and that is
13 that there will be an estimate and then there will be
14 a trueup, so that if the company has collected --
15 since we have --

16 CHAIRWOMAN SHOWALTER: Oh, I see.

17 MS. HARRIS: -- an estimate of the costs and
18 we're asking for them to pay for them up front, but
19 we cannot recover more than the actual costs and we
20 want to recover at least the actual cost, so this is
21 -- actually, that sentence is basically --
22 inarticulately, it's trying to effect the trueup
23 mechanism.

24 CHAIRWOMAN SHOWALTER: No, I think actually
25 the way -- I think I see -- I think that it is

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1 correct. On the line right above it, if there was a
2 comma after customer, is that -- if they refund any
3 excess to the customer or bill and be entitled to
4 collect from the customer the appropriate amount. So
5 it is -- it's correctly written. I was the one sort
6 of sliding past that or. I understand it.

7 MS. HARRIS: Chairwoman, I know the
8 individual who wrote this sentence, and it's going to
9 take me -- it gives me great pleasure to explain this
10 confusion to Mr. Pope.

11 CHAIRWOMAN SHOWALTER: Well, then, tell
12 that person that I think it's clearer if there's a
13 customer -- I mean a comma after the word customer in
14 the fourth line up from the bottom.

15 MS. DODGE: We could add a comma for the
16 compliance filing.

17 COMMISSIONER OSHIE: Before we leave that
18 section, under Section B, can you explain the
19 difference between subparagraphs one and two and
20 subparagraph three, other than the salvage value
21 deduction?

22 MS. HARRIS: I believe it's just the
23 difference between the design contract and the
24 construction contract. Because of the phasing
25 issues, or there may be instances where, for

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1 instance, a customer wants to -- wants to come to the
2 company and have them design the overhead system or
3 the underground conversion, but then, after looking
4 at the design or actually understanding how much it's
5 going to cost, then decides not to go through with
6 the construction of the system. So we actually
7 decided to separate out the design phase and the
8 construction phase. So I think that's what we're
9 trying to capture there.

10 COMMISSIONER OSHIE: That's how I read
11 paragraphs one and two. But I was -- my question is
12 really about paragraph three, because it looks like
13 you're capturing the same language from paragraphs
14 one and two. Now, you do have a qualifier in one and
15 two, underground distribution system at the end of
16 the sentence, at the end of that, and so I'm curious
17 as to whether there were other costs that were to be
18 captured by three that weren't captured by one and
19 two.

20 MS. HARRIS: No, I believe that actually
21 what you're seeing in three is just the netting out.
22 I think you're correct in your -- what the salvage
23 value is is actually the netting out at the end of
24 the project.

25 COMMISSIONER OSHIE: All right. Thank you.

1994

1 CHAIRWOMAN SHOWALTER: The last question
2 that I have on Schedule 70 is Sheet 70-D, two more
3 pages. It's at the very top, so of course you have
4 to look back at the previous page, but it's about
5 temporary service. And it says, If temporary service
6 is not disconnected or removed within a certain
7 period of time, then there are two options. The
8 customer pays either a hundred percent of the
9 underground distribution cost of the system or a
10 hundred percent of the cost of converting. I just
11 wondered what this choice is and why. And it's up to
12 the customer to elect.

13 MS. HARRIS: Temporary service. Temporary
14 service is, for instance, if you had an LID -- and
15 it's a very specialized provision, but as best as I
16 understand it, if you have an LID and so that three
17 of your houses are ready to put into underground
18 conversion, but, Chairwoman, you are in the middle of
19 taking your home and building a hotel on the
20 property, and so that the conversion goes through the
21 process, but you may have temporary service, because
22 if we're going to underground service within an LID,
23 all service within that area needs to be
24 undergrounded. So that, temporarily, you will be
25 served overhead while the rest of the conversion

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1 process can continue.

2 But it needs to be deemed temporary;
3 otherwise, the entire conversion area wouldn't
4 qualify as an underground conversion. In other
5 words, if there's a conversion area, the company
6 converts the entire area at the same time.

7 CHAIRWOMAN SHOWALTER: Okay. I'm not sure
8 I understood that, but I just wanted some kind of
9 explanation for it on the record.

10 JUDGE MOSS: I have one more on 70. On
11 Schedule 70, at Sheet 70-E, provision Arabic 7, lower
12 case b, there's a reference there to in a timely
13 manner, and I'm wondering if this is one of those
14 terms that is defined somewhere or if this is
15 something that is a matter for potential dispute that
16 might be brought forward for resolution by the
17 Commission if there were some disagreement, since it
18 does allow for a delay or cancellation at the
19 discretion of the company?

20 MS. HARRIS: I believe that this is
21 actually -- I mean, this is a carryover, and it is
22 very important in the Schedule 71, where these types
23 of time constraints and schedules are very important
24 to the governmental entities, so that if Puget had to
25 obtain an easement, the governmental entities want to

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1 make sure that Puget begins working on obtaining that
2 easement as soon as possible.

3 I believe that this term was then inserted
4 in Schedule 70 to be consistent, but basically that
5 if we -- it's an obligation on the company to obtain
6 what rights it needs in a timely manner, so that we
7 do not cause further delay. I believe that the
8 schedule in the design contract and the construction
9 contract are much more fully laid out, rather than in
10 the tariff. Or the tariff may say timely manner, but
11 our obligations are set forth in the attached
12 agreement.

13 JUDGE MOSS: So the form of agreement would
14 include some further definition of what it means to
15 be in a timely manner relative to a particular
16 project?

17 MS. HARRIS: Yes, and it would have dispute
18 resolution and obligations for the company.

19 JUDGE MOSS: And we may have more on this
20 later, but if you could just tell me quickly, sort of
21 generally, what sort of dispute resolution mechanism
22 is in the form of agreement?

23 MS. HARRIS: An arbitration.

24 JUDGE MOSS: Binding, nonbinding, by the
25 Commission, independent?

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1 MS. HARRIS: I believe, and I'm looking at
2 the lawyers as far as dispute resolution --

3 JUDGE MOSS: If the lawyers need to answer,
4 that's fine.

5 MS. DODGE: I would just -- I think there's
6 a little confusion between 71 and 70 at this point.

7 JUDGE MOSS: Well, wherever it is.
8 Actually, Ms. Harris had mentioned the dispute
9 resolution mechanism in her opening remarks.

10 MS. DODGE: It's in Schedule 71.

11 JUDGE MOSS: That's fine. I'm curious
12 about the nature of that mechanism and whether it
13 provides for resolution by this Commission or by some
14 other -- in some other fashion.

15 MS. DODGE: Certain items, certain topics
16 are to be resolved through arbitration, under AAA
17 arbitration. Well, there's actually a whole series
18 of steps, it's first escalated to senior management,
19 and then you go to arbitration. But that's limited
20 to certain topics. There are other topics -- well,
21 things that aren't so designated would go to dispute
22 resolution in the appropriate forum, and that,
23 depending on what the dispute is about, it may be
24 court and it may be this Commission. It really
25 depends.

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1 I mean, if it's just a question of kind of
2 a generic contract dispute, you know, it may well
3 land in court. And if it is much more fundamentally
4 bound up in matters that are within the primary
5 jurisdiction of the Commission, then it would come
6 here.

7 JUDGE MOSS: I do have a concern in this
8 area, and I turn to Staff counsel on this, too. This
9 is the question of delegation. If this is a subject
10 matter that is within the jurisdiction of the
11 Commission, what is Staff's view of having a private
12 arbitration dispute resolution mechanism in place?

13 CHAIRWOMAN SHOWALTER: Before you answer
14 that question, I don't know where we actually are.
15 That is, what are we talking about? Is it the form
16 contract? It's only in 71 or is it in 70?

17 MS. HARRIS: That is what I want to do, a
18 clarification, because I think I caused your jumping
19 off point. I was referring to the contracts that are
20 attached to Schedule 71, and specifically paragraph
21 16 of the project design agreement. So I believe
22 everyone is answering off of my jumping off point,
23 but I believe the dispute resolution at that point is
24 a contract, rather than if we were at dispute
25 resolution over cost allocation or something

1999

1 contained in the tariff, the Commission would have
2 jurisdiction. I was referring to dispute resolution
3 necessarily under the design and contract agreement,
4 so that was going to lead us off to arbitration.

5 MS. DODGE: These are things like, for
6 example, because there's an entire system now in
7 place, we're agreeing to a scope of work, a project
8 plan, time lines, milestones, really the nuts and
9 bolts of day-to-day construction would be at design
10 or actual installation phase. You know, I don't know
11 that this Commission has ever or wants to get into
12 that kind of thing.

13 Is it commercially reasonable to, you know,
14 have an expectation of a certain date by which
15 certain bulldozers will move or, you know, this kind
16 of thing, and the idea was to take subject matters
17 like that that I don't think would be implicated in
18 this Commission's jurisdiction, typically, and have
19 those go through an expedited process that the
20 parties could just have someone resolve it and get on
21 with the work and really the nuts and bolts kinds of
22 issues. Not at all the things that are covered in
23 the tariff with respect to cost allocation and that
24 kind of thing.

25 CHAIRWOMAN SHOWALTER: But is this subject

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1 only relevant to Schedule 71?

2 MR. QUEHRN: Yes.

3 CHAIRWOMAN SHOWALTER: Well, actually, my
4 suggestion is we get to 71, because then we'll be
5 thinking in the mode of the city doing --

6 COMMISSIONER HEMSTAD: It only came up
7 because I think the reference was to identical
8 language that came up in 71.

9 MS. DODGE: And as part of that
10 clarification, I think similarly, in terms of the
11 unavailability of operating rights, that really goes
12 to -- 71 is where the company is committing itself to
13 proceed, whereas in 70, where the customer is
14 responsible for providing operating rights, if
15 they're not provided, the company has a right not to
16 move forward. So that all trues up within 70,
17 because of who's providing the rights and who has the
18 responsibility.

19 CHAIRWOMAN SHOWALTER: If it's okay, can we
20 loop back to this, because I think when we start
21 talking about 71 and talking about how it gets
22 established in the first place, that an underground
23 is going to be done, it starts to scope the issue of
24 or where the tariff controls directly versus where it
25 is pursuant to a contract. Is that all right or do

2001

1 we need more answer?

2 JUDGE MOSS: We can proceed as you wish.

3 That's fine. We can start through 71.

4 CHAIRWOMAN SHOWALTER: Just what we did is
5 we just jumped right into the middle of 71. Well,
6 let's start with 71. There's a transition question I
7 have, segue question, which is if a group of
8 neighbors, let's take the bench, lives on a public
9 street and there are overhead wires on the street and
10 they are interested in getting their wires put
11 underground, they clearly have a choice. They could
12 go the route of Schedule 70, but could they go to
13 their city and say, We're interested in doing this,
14 we'll pay you, as neighbors, the 40 percent that you,
15 the city, are going to owe, if you will just declare
16 that this is a conversion area and needs to be done.

17 I'm not, by the way, saying there's
18 anything necessarily wrong with that, but I'm saying,
19 for purposes of the Tariff 71, is all the company
20 looks at is who is asking that the work be done?
21 Does the company -- or does anything permit the
22 company to look behind the requesting party, i.e.,
23 the city, to say, Well, we know this is really just
24 for four neighbors, or is it the case that as long as
25 the city puts up the 40 percent, that's the end of

2002

1 the question?

2 And I don't mean to suggest that's wrong,
3 because I think an important step would have
4 occurred, a city would have determined that this is
5 an important thing for the city to do, but it would
6 be a way around some of the burden of Schedule 70,
7 which might be an interesting question.

8 MS. HARRIS: Well, referring to paragraph
9 (1)(a) of Schedule 71, I would -- just looking at
10 availability, (1)(a) is the government entity has
11 determined that installation of underground
12 distribution system is or will be required and has
13 notified us in writing.

14 So I believe that theoretically we could
15 look behind that and figure out whether the
16 government entity that's requesting or was it four
17 customers that was requesting such service.

18 And I look further down to subparagraph C,
19 and look that all customers served by the company
20 within the conversion area will receive electric
21 service. At that point, I believe we would look at
22 what is the conversion area, what type of service is
23 being requested by the entity, and is it four
24 neighbors within a block of ten houses or -- we would
25 be looking at the actual conversion area.

2003

1 In a practical sense, I believe, yes, if a
2 city comes to us and asks us to underground, then
3 they fall under Schedule 71, in a very simplistic --
4 that was the determination, was the entity requesting
5 service, but I believe that these availability
6 standards would give the company some leeway to look
7 at the project as a whole.

8 CHAIRWOMAN SHOWALTER: Well, why -- I
9 wouldn't have read it that way. I mean, when I read
10 it, it seems to me that (a) says the government
11 entity has determined -- it determined that
12 installation is or will be required, and it wouldn't
13 matter how the city came to that determination. It
14 might have been a long street or a short street or in
15 a big area or small area, and how the city ends up
16 financing its 40 percent share might be an LID, might
17 be general taxes, might be a check that four
18 neighbors paid, but that it just wouldn't be the city
19 -- the company's prerogative to look behind that
20 determination.

21 MS. HARRIS: Let me clarify. It is not the
22 company's prerogative to look behind the
23 determination. I believe the availability is clearly
24 that the city -- that the city has requested the
25 service. I mean, that was clear, as far as if it's a

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1 developer or residential customer, then they fall
2 under 71. If it's a governmental entity, they fall
3 under 70, or -- I had it backwards. See, we will
4 change the numbers. If it is a residential customer
5 or a developer, they would fall under -- or an LID
6 would fall under Schedule 70, and a governmental
7 entity would fall under Schedule 71. It's the
8 customer type that would be requesting service.

9 MR. QUEHRN: Excuse me.

10 MS. HARRIS: And we would specifically not
11 -- it was addressed, we would specifically not look
12 at funding or where the city's getting its money. I
13 guess I was trying to, as far as a city
14 determination, I guess that would -- it would come
15 down to that -- the definition of whatever a city
16 determination would be, and I don't believe it's a
17 defined term, I guess is what I was --

18 CHAIRWOMAN SHOWALTER: Your attorney wants
19 to get a word in edgewise.

20 MR. QUEHRN: Thank you. Perhaps one of my
21 colleagues from -- representing the cities might want
22 to elaborate on this further. It's a good question.
23 Many cities that the company serves actually have, as
24 part of their local ordinances, provisions where
25 citizens can do just that. They can seek to have

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1 undergrounding occur, and the city actually goes
2 through its own due process to determine that there
3 is essentially a public interest in going forward.

4 And I know that, over the years, the
5 company has worked, and I have been personally
6 involved in helping the company work with cities to
7 look at those ordinances and make sure that they are
8 fair and essentially address a broader public
9 interest, rather than -- not to suggest that this was
10 implicit in your question, but just one or two people
11 who might be looking to get around something.

12 So I think the cities have historically had
13 procedures and processes to deal with these that are
14 reflected in their codes.

15 CHAIRWOMAN SHOWALTER: Well, I guess I
16 think this dividing line that 70 and 71 have set up
17 -- proposed 70 and 71, creates an incentive to go
18 through the city government. I'm not saying that's
19 wrong. I just think it is there. And it seems to me
20 that any set of neighbors first -- maybe even one
21 person, their first choice, if they knew about the
22 choice, would be to go to their city to see if they
23 can get the city to approve this. If the 40 percent
24 is paid for privately by those very citizens, I don't
25 see why the city wouldn't do that.

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1 Now, if we get all the way to there, then
2 you could -- if we get all the way to there, it does
3 raise the question of how these costs are spread,
4 because it -- the rationale for the 60/40 split is,
5 well, the company has got to pay a hundred percent of
6 the overhead relocation anyway, so this is a better
7 deal or kind of a comparable deal to that. But it
8 could mean over time that there would be very little
9 use of 70, as cities and city councilmen got used to
10 doing a favor for their citizens and take the 40
11 percent money and declare the undergrounding
12 necessary.

13 MS. ARNOLD: Could I address that, Your
14 Honor?

15 JUDGE MOSS: Sure.

16 MS. ARNOLD: Carol Arnold, for the cities.
17 The intention was that the four neighbors asking the
18 city to do this situation would be covered under
19 Schedule 70, and that the property owners would pay
20 for it.

21 If there's any kind of street improvement
22 involved, a city cannot just pull out a city
23 improvement project out of thin air; it has to be
24 identified in their capital improvement plan in order
25 to be funded.

2007

1 But secondly, the city cannot -- and there
2 is case law to this effect -- the city cannot do a
3 favor for a private property owner under the guise of
4 it being a public project, because it violates the
5 Constitution. The classic case is the one -- it was
6 in eastern Washington somewhere where the city
7 purchased a piece of property in its name and then
8 turned around and resold it to a private developer
9 who wanted to make a theater out of it. And it was
10 declared unconstitutional.

11 And so for the same reason, the city
12 couldn't say, Okay, you neighbors on this four
13 street, we'll just do you a favor and we'll call this
14 a city project, when it's really for the benefit of
15 the private owners, and there's no public benefit in
16 it if the benefit is solely for those private -- so
17 the intention is your four neighbors would be covered
18 under Schedule 70.

19 CHAIRWOMAN SHOWALTER: Well, first, I sort
20 of recall that movie theater case, but wasn't it the
21 city that bought the property?

22 MS. ARNOLD: Yes.

23 CHAIRWOMAN SHOWALTER: Well, okay. Here
24 I'm just saying the city says that -- why wouldn't it
25 be in the public interest, as well as that private

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1 interest, to have something undergrounded? I live in
2 a nice historic neighborhood, the wires are very
3 ugly, and I don't know why my city wouldn't find and
4 why it actually isn't in the public interest to have
5 those wires go underground, you know, depending on
6 how it gets paid for.

7 MS. ARNOLD: Right. It's a -- it's a gift
8 of public funds question, lending of public credit.
9 The city can't do something that is for the benefit
10 of just those four property owners, even if, in sort
11 of a general way, it might be for the public good,
12 just like -- Ms. Thomas reminds me it was the city of
13 Wenatchee. The city of Wenatchee, I mean, maybe it
14 was a public benefit to have the theater there, but
15 the city can't go out and do something that's really
16 on behalf of a private property owner under the guise
17 of it being a public project.

18 CHAIRWOMAN SHOWALTER: But isn't there a
19 dual character? Let's take an LID. Well, let's
20 change the hypothetical now. Instead of the four of
21 us going, we go to the city and we say, We would like
22 to be an LID, we would like the city to declare that
23 it's in the public interest for seven blocks, ten
24 blocks, you know, a whole neighborhood to go
25 underground, and it will only cost 40 percent and you

2009

1 can tax the owners through an LID to pay for it.
2 Would that be allowed under 71?

3 MS. ARNOLD: You'd have to ask them. I
4 don't think that was -- it was certainly not the
5 intention of the collaborative, but I think maybe the
6 company could answer that better.

7 MR. QUEHRN: And I may quickly get out here
8 on a limb on LID law and refer to colleague, Mr.
9 Warren, to help me, but as I recall the LID law, if
10 you do have an LID improvement project, there is a
11 special benefit assessed back to the private property
12 owner. So you are essentially taking account of the
13 benefit to the individual property owner through that
14 process.

15 Your question is could you use an LID
16 process to implement undergrounding under Schedule 70
17 or 71.

18 CHAIRWOMAN SHOWALTER: Seventy-one, in
19 particular.

20 MR. QUEHRN: Seventy-one, in particular. I
21 don't know that the two processes are necessarily
22 inconsistent with each other, but I don't think
23 that's what was the intent here.

24 MR. CHARNESKI: Michael Charneski, Your
25 Honor. Speaking to the intent, having gone through

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1 the collaborative, obviously these are some fine
2 points that didn't come up and weren't discussed, but
3 I think our intent was that if it is a government
4 entity that makes the determination -- and I think
5 that's why we used the language. If it's a
6 government entity making that determination and
7 requesting undergrounding and it is, in fact, a
8 public thoroughfare, the funding mechanism, LID or
9 otherwise, the funding mechanism should not be and is
10 not, in the text of Schedule 71, the issue.

11 CHAIRWOMAN SHOWALTER: Right. It would be
12 a question of municipal law that the municipal
13 attorneys would have to decide what are the various
14 ways that this could be financed, and so I was asking
15 two different scenarios, LID and four customers
16 saying we'll pay our share. And there may be
17 differences there, but I would think there would be
18 various ways to assess the charges, either to all
19 taxpayers of the municipality or those who specially
20 benefit in some way without it being turned into a
21 gift of public funds.

22 Because there are -- I think you could
23 legitimately say there are public benefits to
24 undergrounding a public street. Otherwise, what's
25 your basis of doing it in the first place as a whole

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1 city?

2 MR. CHARNESKI: Exactly. And I think maybe
3 Kimberly could speak more to this, but on the issue
4 of the intent, being if the government entity has
5 made this determination and has requested
6 undergrounding, that really is the mechanism, without
7 looking underneath. And obviously, if there's a
8 legal problem underneath that were to come up in one
9 case or another and the issue would arise, then that
10 issue would have to be dealt with. But I think, as a
11 threshold matter, this is what it is. It says
12 government entity makes the determination. That was
13 certainly our intent.

14 MS. DODGE: I would just add, as well, that
15 the way that 71 is now set up, there are additional
16 controls. Because if the government entity requests
17 a project under Schedule 71, it's just bought itself
18 a construction project that it's responsible for
19 coordinating and it's got to engage in a lot of
20 process and it's got to be intimately involved in
21 that process in a way that I don't know that a -- I
22 mean, the government entity's going to think about
23 that in addition to just where's the money coming
24 from, I think.

25 MR. CHARNESKI: Michael Charneski again.

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1 So as a practical matter, although some citizens
2 might have the motivation, particularly if they've
3 read the record from today, I don't think, as a
4 practical matter -- I don't think, as a practical
5 matter, the municipality would be inclined to go
6 through all of the hoops that would be necessary to
7 make it fly if it weren't, in fact, a legitimate
8 government request for undergrounding.

9 MS. HARRIS: I would like to touch on -- I
10 was thinking through different scenarios on this, as
11 well. And even in Schedule 71, even though that
12 government entity makes a determination and requests
13 a service, we still have the different cost
14 allocations, depending on whether that service will
15 be provided on a private property, private easement,
16 or a public thoroughfare, so in these types of
17 scenarios, you still have to look whether we're
18 undergrounding service that is going down a public
19 street on a public right-of-way or if we're
20 undergrounding down individual driveways, and then
21 the cost allocation would be one hundred percent, as
22 well.

23 So there may be a practical -- I think,
24 putting all this together, there may be a practical
25 way that we wouldn't see many Schedule 70 type

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1 scenarios turning to Schedule 71 because of the cost
2 allocation.

3 CHAIRWOMAN SHOWALTER: Turning to a
4 different area on page one, I want to make sure I
5 understand what happens when the company and the
6 government entity don't agree.

7 When I look at (1)(a), it says that when
8 the company and government entity have agreed on the
9 provisions of the design agreement, things happen, so
10 of course my first question at that point was, Well,
11 what happens if they don't agree. Then I turn to the
12 next page, under (2)(a), and I'm not sure if this is
13 for the same provision or not, but the last two lines
14 of (2)(a) on Sheet 71-A say they can agree on terms,
15 but that neither the government entity nor the
16 company shall be required to agree to any additional
17 terms beyond what's in the form agreement.

18 My reading of that was somehow you have to
19 agree on this form contract, but either side would
20 have veto power over anything that went beyond that.
21 Is that generally right?

22 MR. COE: I believe that is correct. The
23 idea was to develop these design and construction
24 agreements so there's predictability to both parties,
25 and that we were going to confine ourselves to these

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1 agreements, and things that may go outside that, we
2 had to mutually agree upon. So I think you're
3 correct.

4 CHAIRWOMAN SHOWALTER: So anything beyond
5 the scope of those agreements, it takes two, but now
6 my question is, back within the scope of the
7 agreement, you've got a form agreement, so it gets
8 the parties pretty far there. Then what happens if
9 you can't quite agree to adjust the terms under this
10 form contract?

11 MS. HARRIS: I believe we have agreed to
12 the terms of this form contract. And kind of putting
13 a fine point on this, we heard a complaint in, excuse
14 me, Bellevue, but I loved the Bellevue part. We
15 heard a complaint that they can get four contracts
16 from the company in a two-week period and each
17 contract is different, and how do you start
18 negotiating from different points. So that is why
19 we've attached these form agreements.

20 We also heard complaints that each project
21 is different. Whether you're doing four houses along
22 the street or whether you're doing Highway 99, each
23 project is different, so we need to allow some
24 discrepancy for the parties to agree or to change the
25 rights and obligations within that form agreement.

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1 What the tariff attempts to do is the
2 company has a concern of we do not want to be
3 providing service or obligated to provide service
4 without a signed agreement. So we're -- but there's
5 also been some history where, Gee, it's awfully tough
6 to get the company to sign an agreement.

7 So what the parties came up with is a time
8 line. They request service by writing, we have a
9 certain amount of time to negotiate or sign this
10 agreement, and we sign the agreement and we move on.
11 We've tried to give ourselves time constraints, but
12 these form agreements are the starting point for
13 every single project under Schedule 71.

14 CHAIRWOMAN SHOWALTER: Are you saying that
15 the form agreements are so complete or so almost
16 complete that there's not much left to agree on
17 except a couple of insurance terms?

18 MS. HARRIS: Or the specifics of the
19 project.

20 MR. CHARNESKI: Chairwoman Showalter, I
21 think, if I understand your question correctly,
22 you're also asking do we have to have the agreement
23 signed, as referenced in Section 1 on availability,
24 for anything at all to happen on the project, which
25 raises the question what if one party refuses to

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1 sign, and that, of course, has been the concern of
2 the cities.

3 But to further answer the question, on
4 Sheet 71-D, under Section Four -- it's specifically
5 (4)(a). Under the heading General and Timing, we
6 have a provision that requires the company to
7 commence performance as contemplated in the
8 agreements within ten business days of written notice
9 from the government entity of its determination that
10 it requires installation of the underground system.
11 So things will begin to move forward within ten days
12 regardless of whether there's a signature on the
13 agreement. It may be that it takes longer to
14 negotiate additional terms, for example, that the
15 parties might want to include, but I think the intent
16 is that Section (4)(a) gets the ball rolling.

17 CHAIRWOMAN SHOWALTER: Okay. I think my
18 last question happens to be on that page. It's just
19 above that, under the small D. And it's when the
20 government is engaged with a third party not acting
21 as an agent of the government entity. I'm looking at
22 the last phrase. It says, The government entity
23 shall require the third party, as a condition to the
24 company's performance, to pay the company.

25 My question here has to -- I'm not sure I

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1 understand the relationship of the government entity
2 to the third party, but is it clear that the
3 government entity always will have the authority to
4 require the third party to pay the company for all
5 costs? This is something that the government entity
6 can actually require the third party to do?

7 MR. COE: That's correct. There are code
8 provisions where the city can require the
9 undergrounding along a particular frontage of a
10 street as a condition of the permit. And the concern
11 was that somehow that could get turned, and even
12 though we required that of a private developer,
13 somehow we'd want that private developer, not
14 terribly different than your four citizens, going to
15 the city, saying, Well, make that a public project
16 and we'll get 71 and the 40 percent, rather than a
17 hundred percent on the developer's part.

18 So this particular section was intended to
19 get at and address that particular situation, which
20 happens a fair amount. And in a lot of the cities
21 where if you move -- in the case of Federal Way, if
22 you relocate three poles and/or 500 feet, then that
23 overhead system needs to be undergrounded. And
24 that's a condition of the project and it's an
25 obligation of the developer. This section is trying

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1 to make sure it stays with the developer. That was
2 one of the PSE concerns in the collaborative process.

3 CHAIRWOMAN SHOWALTER: There's a great word
4 there, energization. Energization, yes. Backing up,
5 just overall, what Schedule 71 does is require the
6 city to pay 40 percent. And can you -- Ms. Etchart,
7 you have given testimony as to why that's a fair
8 allocation, especially vis-a-vis the current
9 allocations, but can you assure the Commission that
10 there is a sound basis to provide the city paying 40
11 percent and the company and the rest of its
12 ratepayers 60?

13 MS. ETCHART: Yes, I'm Graciela Etchart,
14 with Commission Staff. We reviewed approaches that
15 were developed in this framework by Puget in 1999,
16 2000 and 2001. The current --

17 CHAIRWOMAN SHOWALTER: I think you've got
18 two microphones close to each other, so if you can
19 put one of those --

20 MS. ETCHART: We reviewed the actual cost
21 of those projects with the current 70/30 division,
22 and then we compared -- we have an estimate of --
23 looking at the current figures or the actual figures,
24 we realized that they were really close to -- the
25 60/40 that was proposed during the negotiation by the

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1 company was very close to the actual costs that were
2 happening with different -- with the current division
3 of 70/30 or 30/70, depending on the circumstances.
4 So it remained pretty much with no material
5 difference in the total cost with the sample -- we
6 thought that was a good sample of the universe of
7 projects. So that is, in this case, what happened
8 with that decision.

9 CHAIRWOMAN SHOWALTER: Okay. Backing up to
10 the other question on the enforceability of the
11 contract and disputes, I guess I was thinking of this
12 something along the lines of the way Puget enters
13 into all kinds of contracts that this Commission
14 doesn't actually know about. You have to comply with
15 our tariffs and you are -- you can't violate any of
16 the terms of our tariff, and if you have, someone can
17 come complain against us, but -- not against us, but
18 to us, but that there could well be contract
19 disputes, say, over the purchase of a truck that
20 could have provisions in it that would govern that
21 contract and we wouldn't have much to say about it.

22 So the question is are the similar
23 provisions in this form contract like those? Could
24 they be argued to scoop up some of our authority, and
25 if they did even, arguably, would we still have our

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1 authority to interpret the contract and the tariff
2 and your performance under it?

3 MS. SMITH: If I might take a stab at
4 answering this question. It's my reading of the
5 schedule and of the agreement that nothing is
6 intended to affect this Commission's primary
7 jurisdiction over the terms of the company's tariff.
8 It's been Staff's position throughout this that this
9 Commission has primary jurisdiction to determine the
10 rights and obligations of parties as that relates to
11 the terms and conditions of the tariff over which
12 this Commission has jurisdiction.

13 There may be some aspects of these
14 agreements that are -- while it's all done sort of
15 under the auspices of the tariff, for example, the
16 undergrounding is taking place under the terms of the
17 tariff, certain pieces of it may not really fall
18 within what we would consider this Commission's
19 traditional area of expertise or jurisdiction. So
20 those particular issues I believe would go to private
21 arbitration, whereas the meat of what the tariff
22 means and what the rights and obligations are under
23 the tariff could come or would come before this
24 Commission.

25 CHAIRWOMAN SHOWALTER: So we wouldn't

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1 expect to hear an argument in front of us that we
2 can't hear this matter because the parties agreed to
3 be bound by arbitration; we would get to decide in
4 the first instance whether the issue involved one of
5 our primary jurisdiction and then say, Well, we're
6 sorry, whatever that contract says, this is a matter
7 for us to determine.

8 MS. SMITH: I believe that's a fair
9 statement of what's in the agreement. I mean, I
10 don't believe the parties can bargain away, nor can
11 this Commission bargain away its jurisdiction within
12 the terms of this agreement. That's something that's
13 not -- it simply can't happen. So there is no intent
14 to do that with this.

15 And the Commission approves these sort of
16 form agreements within the context of approving the
17 tariff schedule, and the Commission is not going to
18 give up its primary jurisdiction and throw that to an
19 arbitrator that has expertise in construction issues.

20 CHAIRWOMAN SHOWALTER: We could make clear
21 in our order that that was our understanding.

22 MS. SMITH: Certainly, yes.

23 CHAIRWOMAN SHOWALTER: Now, in the case of
24 a special contract, for example, that we have to
25 approve, that becomes a tariff or it has the force of

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1 a tariff. In this kind of case where there is a
2 contract to do some work between the company and the
3 city, we don't approve those, do we?

4 MS. SMITH: I don't believe the Commission
5 does. I believe you approve the form contract when
6 you approve the schedule, but the actual contracts
7 themselves are signed and negotiated between the two
8 parties and they don't come before the Commission
9 each time they're executed.

10 Now, if there is an issue about the project
11 or about something -- about -- and since these
12 agreements are subject to the terms of the tariff, if
13 there's a question about what the agreement means
14 with respect to the tariff, that would come here to
15 the Commission. And perhaps before entering the
16 agreement or shortly thereafter, the parties may want
17 to come here and get some clarity as to what the
18 tariff says, but they are subject to -- they're
19 subject to the tariff and they don't come before the
20 Commission, at least I don't believe they do.

21 MR. QUEHRN: That is correct. They're all
22 subject to the tariff, they operate within the
23 parameters of the tariff, so they're not serviced
24 outside of the tariff. There is similar language in
25 these contracts, by the way, as well as the provision

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1 that Ms. Dodge was referring to later in dispute
2 resolution that makes it clear that matters other
3 than -- in the contract I'm looking at -- scope of
4 work, design cost estimates and design schedule,
5 which are the matters subject to arbitration.
6 Anything else is subject to, again, if it's a matter
7 for your jurisdiction, it comes here; if it's a
8 matter for civil court, it goes there.

9 CHAIRWOMAN SHOWALTER: All right. I
10 thought that was the last question, but there's one
11 last question, and that is there's a fair amount of
12 litigation, old litigation, and I believe there are
13 statements in the proposed settlement about what
14 cases would or wouldn't be -- or what cases would be
15 withdrawn as a result, but I'd like to understand for
16 each case what will occur if we adopt the proposal.

17 And let's begin with King County Superior
18 Court Case Number 02-2-07014-1. This is the Clyde
19 Hill appeal of our decision in the UE-011027. What
20 would happen to that case?

21 MS. ARNOLD: Carol Arnold, for the city of
22 Sea-Tac, and I think I can speak -- I think the same
23 thing is happening to Clyde Hill. That litigation is
24 a very narrow issue pertaining to Schedule 70, which,
25 if the Commission approves this settlement, Schedule

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1 70 will be replaced with the new Schedule 70. And
2 the issue in that case had to do with the language of
3 the old Schedule 70, the three-phase issue, and that
4 issue is moot for the future if the new tariffs are
5 approved.

6 But it does still apply to, for the city of
7 Sea-Tac, this one project, and so that one narrow
8 piece of litigation goes forward. The -- I want to
9 call it the main case that involves the cities of
10 Auburn and all the other cities, as well as the
11 cities of Kent and the city of Lakewood, that is not
12 a party to this proceeding at all, those parties have
13 all agreed to dismiss their appeal upon approval of
14 the settlement, plus the -- I think it's 30 days
15 period for appeal, so the main case will be
16 dismissed.

17 CHAIRWOMAN SHOWALTER: All right. I'm not
18 sure I understood your answer on the first case,
19 because Clyde Hill and Sea-Tac are both -- are each a
20 party in -- am I right -- in two cases that have been
21 consolidated?

22 MS. ARNOLD: Yes, that's correct.

23 CHAIRWOMAN SHOWALTER: And so would both of
24 those cities go forward with their litigation or one
25 or none?

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1 MS. ARNOLD: I can't speak for Clyde Hill,
2 but I think that Clyde Hill's not a party to this,
3 either, and I assume that Clyde Hill will go forward.
4 That litigation, as I say, was not a subject of this
5 collaborative. It wasn't something that was
6 discussed or negotiated, it's not really part of this
7 settlement at all.

8 CHAIRWOMAN SHOWALTER: Okay. I don't have
9 any questions.

10 JUDGE MOSS: I just have one other
11 question. With respect to Original Sheet Number
12 71-G, as proposed, Ms. Harris, I think you touched on
13 some of this earlier, so maybe the question is to
14 you. If the -- if the company finds itself in the
15 position of requiring or desiring private easement,
16 the company pays one hundred percent of the cost, as
17 I understood your earlier testimony.

18 If we look at the second page of Original
19 Sheet 71-G at Roman five, it appears that, on the
20 other hand, if the facilities are to be placed in
21 public thoroughfare and that public thoroughfare must
22 be duly acquired in connection with the project,
23 then, in that event, the company will pay 60 percent
24 of the cost for the city or the other governmental
25 entity to acquire the thoroughfare. Am I reading

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1 that right?

2 MS. HARRIS: Yes. Going back through the
3 easements, I think you have to work through the
4 scenarios of the easements. The way that the
5 schedule works, if -- if there is sufficient
6 right-of-way or public thoroughfare for all
7 facilities to be placed in public thoroughfare, then
8 we will pay -- we will -- the company will place
9 those facilities into the public thoroughfare and
10 that placement will be subject to the 60/40 split.

11 If you have a piece of equipment, such as a
12 vault, and that all parties agree that it does not
13 fit in the public thoroughfare and that the city
14 needs to go out and obtain additional public
15 thoroughfares, so that we can actually site that
16 vault, then that cost of that additional public
17 thoroughfare will be subject to the 60/40 split.

18 If for some reason the city says, Well, we
19 see that it doesn't fit in the public thoroughfare,
20 we'll go and purchase this additional piece of public
21 thoroughfare, and the company says no, we would
22 rather have our vault placed over here, we want to
23 have a private easement, then it is up to the company
24 to pay one hundred percent for that public -- private
25 easement, even though we could have had the city

2027

1 obtain additional public thoroughfare.

2 JUDGE MOSS: Okay.

3 CHAIRWOMAN SHOWALTER: If it were -- if it
4 were the Clyde Hill situation and there's a private
5 street in Clyde Hill that says private and it's not a
6 public street, but the city has declared a quite
7 large area to be a conversion area, who pays how much
8 for that street?

9 MS. HARRIS: On the private drive?

10 CHAIRWOMAN SHOWALTER: Mm-hmm.

11 MS. HARRIS: The private drive portion,
12 what you would have to look at is that the company
13 already has private easement rights going down that
14 driveway. And I believe this is scenario six on our
15 board runs. The collaborative will understand that.
16 We already have private easement rights going down
17 that driveway and there will be costs borne by the
18 government entity of a hundred percent of those
19 conversion costs because we have a private easement.
20 So that portion of the conversion that is located on
21 a private easement, the entity will bear one hundred
22 percent of those costs.

23 JUDGE MOSS: Does that complete our
24 questions on this section of the settlement
25 stipulation? All right. If there's nothing further

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1 --

2 MS. ARNOLD: Your Honor, could I clarify
3 one thing? Counsel asked me to clarify this, and I
4 will do so. The Chair's question that Mr. Roe
5 answered about the third party, it was Section
6 (3)(d), it goes to the company's protection against
7 future relocation costs, not the costs of underground
8 conversion.

9 JUDGE MOSS: Okay. Thank you for that
10 clarification. If there's nothing further, then
11 we'll excuse this panel subject to recall and -- give
12 me half a second. We are -- I'm informed that we are
13 not limited to 4:00 p.m. this afternoon, as we had
14 previously believed to be the case. Therefore, we
15 will take a 15-minute recess until 3:30.

16 (Recess taken.)

17 JUDGE MOSS: Let's be back on the record.
18 Our next topic is time of use, and I see that we have
19 Messrs. Pohndorf, Lazar and Lott back on the stand,
20 and you all, of course, remain under oath.

21 MR. QUEHRN: Excuse me, Your Honor?

22 JUDGE MOSS: Yes, Mr. Quehrn.

23 MR. QUEHRN: Before we proceed, just two
24 items, kind of, if you will, a housekeeping matter.
25 Yesterday, reference was made to Bench Request 100,

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1 which is cost of service parity ratios. We have that
2 response, and I would like to hand it up to the
3 bench. And again, I believe that is Exhibit 528.

4 And then, also, we have now the complete
5 set of -- the response to Public Counsel Data Request
6 Number 19, which is Exhibit 529, so I would like to
7 hand those up to the bench, please.

8 JUDGE MOSS: Thank you.

9 MR. FFITCH: Your Honor, with respect to
10 Public Counsel Data Request Number 19, just for the
11 information of the bench, the only additional
12 material that's being provided is the data request
13 cover sheet, which just references the attached
14 table.

15 JUDGE MOSS: All right. Thank you.

16 MR. QUEHRN: And Your Honor, if I may,
17 please, one other item. At some point during the
18 course of the proceedings, and perhaps now might be a
19 convenient time, Mr. Gaines would like to briefly
20 address the Commission.

21 JUDGE MOSS: On what subject matter?

22 MR. QUEHRN: Two items. One has to do with
23 some questions that were put to him yesterday to
24 respond to, and then, also, he wanted to speak
25 briefly as to the PCA testimony and his availability

2030

1 on Monday.

2 JUDGE MOSS: Want to do that now or --

3 CHAIRWOMAN SHOWALTER: Yeah, why don't we.

4 JUDGE MOSS: Why don't we go ahead and hear

5 that now. Mr. Gaines -- this is in the nature of a

6 statement, not testimony, or do we need to go ahead

7 and swear Mr. Gaines? That's my question.

8 MR. QUEHRN: I think you probably do, from

9 the standpoint if you want him to answer the

10 questions that were asked yesterday.

11 JUDGE MOSS: Okay, fine. Let's do that.

12 Mr. Gaines, if you'll remain standing and raise your

13 right hand.

14 Whereupon,

15 WILLIAM A. GAINES,

16 having been first duly sworn by Judge Moss, testified

17 as follows:

18 JUDGE MOSS: Thank you. Please be seated.

19 Do you want to assist Mr. Gaines, Mr. Quehrn?

20 MR. QUEHRN: Just as a point of beginning,

21 and I have not scurried back through my notes to

22 refer to the two questions, but I trust that you

23 recall those questions and maybe can just, if you

24 would, please, Mr. Gaines, respond to them at this

25 time?

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1 MR. GAINES: Yes, the questions yesterday
2 had to do with the relative market price of power
3 winter versus summer, and I believe there was a bench
4 request that asked the company to submit the forward
5 price of power at the Mid-Columbia point and at the
6 Columbia-Oregon border point into the future. And we
7 have that information here in duplicate -- or more
8 than duplicate, I guess. And so we'll make that
9 available as a response to the bench request.

10 But what the data generally shows is that
11 even today, for the year '02 and '03, the price of
12 power in the forward market is slightly higher in the
13 summertime than it is in the wintertime. And that
14 difference has been even more exaggerated. The last
15 time I looked at this data was about two months ago.
16 The difference has collapsed some since then, but
17 it's still there. And it's generally reflective of
18 the fact that the West, as a whole, is summer
19 peaking, because of the influence of California and
20 the Desert Southwest loads, which are relatively
21 larger than the loads in the Pacific Northwest.

22 I think that question was actually one that
23 was punted to me by Mr. Lazar yesterday.

24 JUDGE MOSS: Yes, that's correct. All
25 right. And will those be provided later or did you

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1 want to hand those up now or -- if we need more
2 copies, we can have that data later.

3 MR. QUEHRN: This was bench request number
4 -- I believe it was number -- I think this is Exhibit
5 575, Your Honor, and I'll hand it up now.

6 JUDGE MOSS: That's correct, Exhibit 575.
7 Thank you.

8 MR. QUEHRN: Then I think, Your Honor, just
9 in addition to that, Mr. Gaines wanted to address his
10 availability on Monday.

11 MR. GAINES: Yes, I do have a schedule
12 conflict on Monday, and as I'm sure you know, I
13 submitted testimony and planned to respond for the
14 company to your questions about the power cost
15 adjustment feature of this settlement, but I now
16 understand that you're planning to take up the PCA
17 next Monday, and I do have a conflict that won't
18 allow me to be here on that day, and I do apologize
19 for that.

20 It really is unfortunate, because I had
21 been looking forward to responding to your questions
22 and actually having some dialogue about the PCA
23 that's a part of this proposal, but in my absence,
24 the company would plan to put up two replacement
25 witnesses, John Story and Jim Elsea.

1 Mr. Story and Mr. Elsea each have attended
2 all of the PCA collaborative sessions, they've been
3 involved in drafting the PCA portion of the
4 stipulation and all of its exhibits and have a very
5 good sense of what the company is trying to
6 accomplish with the PCA. And of course, if there's
7 any follow-up for me, I will be happy to respond to
8 bench requests or through whatever other mechanism
9 may be appropriate.

10 I don't want this to be testimony, really,
11 but while I'm here and while I'm sure that a lot of
12 these issues will be taken up Monday, there are three
13 things about the PCA that I'd like to point out just
14 quickly. First, the feature of the PCA proposal that
15 works for the company from a financial point of view
16 is the \$40 million cumulative cap on the company's
17 exposure to power cost variations in the first four
18 years. That's a very important feature for us.

19 Second, the accelerated power cost rate
20 only rate review processes that are included in the
21 PCA stipulation are also important because of the
22 company's near-term need to do long-term resource
23 planning and acquisition. And in fact, we intend to
24 kick that process off immediately on the termination
25 of these proceedings.

1 And then, thirdly, it became clear, at
2 least to me, during the power cost collaboratives,
3 that there's not a sufficiently broad understanding
4 of the sorts of hedging and risk management
5 activities that the company now undertakes in the
6 management of its power supply costs. And because
7 those -- the costs and the benefits of those hedging
8 and risk management activities will flow through the
9 PCA mechanism and because the impacts of them on
10 customers will now be more direct, the company thinks
11 it's important to have some more dialogue with Staff
12 and with other parties so that there's a good
13 understanding of what the company plans to be doing
14 in this area. And we'll be doing that over the next
15 several weeks.

16 That's really all I have to say about the
17 PCA. I'm sure you'll enjoy hearing from Mr. Story
18 and Mr. Elsea next Monday about the mechanics of the
19 mechanism.

20 CHAIRWOMAN SHOWALTER: Well, I'm sorry you
21 can't be here. Obviously, we have scheduled things
22 on the fly, because that's the only way we were able
23 to do this.

24 MR. GAINES: Yes, I do feel badly about it,
25 but I would look forward to following up, if

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1 necessary, through whatever mechanism is appropriate.

2 COMMISSIONER HEMSTAD: I have one question
3 of Mr. Gaines. I guess I don't know how to read this
4 529. And it was the same on the -- let's see, this
5 is the Cobb reference. And the assertion is that the
6 summer costs are now higher than the winter costs.
7 Would you explain that to me, as how that is
8 demonstrated, say, for the year 2002?

9 MR. GAINES: Well, we looked at -- we call
10 the summer the third quarter, for example, and --
11 let's see. I guess I'm looking at calendar year '03.
12 We called the summer the third quarter and we called
13 the winter December, January and February, and if you
14 group them that way, there's about a two mill
15 differential, with summer being higher than winter.
16 If you look at individual months in this table, it is
17 true that there's an individual month in the
18 wintertime that's higher than the summer.

19 COMMISSIONER HEMSTAD: All right. I was
20 looking at 529 and --

21 MR. GAINES: Oh, I'm sorry.

22 COMMISSIONER HEMSTAD: -- the Cobb
23 references, which are annualized, or by summer and
24 winter, and I see -- I take it, for example, 2002,
25 the figure \$29.33 is the cost, and winter is \$30.92?

1 And the same is also true of the on-peak, the winter
2 is higher than the summer. The differences may not
3 be significant, but I'm trying to understand this.

4 MR. GAINES: I hadn't looked at this data
5 before just now. This is the results of our power
6 cost modeling process, as opposed to the forward
7 market prices that we were talking about yesterday.
8 And you're right. It does look like, at least for
9 some of these years, the model is showing higher
10 wintertime costs, at least in the early years.

11 COMMISSIONER HEMSTAD: But apparently 575
12 attempts to demonstrate to the contrary.

13 MR. GAINES: 575 is the actual forward
14 market price as of today. And as I mentioned, I
15 watch this fairly regularly, and up until about two
16 months ago, the differential was really quite large
17 in favor of summer prices. The sheet that I've
18 submitted today as 575, that differential has
19 collapsed some, but the summer still generally is
20 higher. It's not as pronounced as I would have
21 thought.

22 CHAIRWOMAN SHOWALTER: Well, can you just
23 explain to me what months and year you were looking
24 at in the summer, compared to what months in the
25 winter to establish that proposition, and what

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1 column?

2 MR. GAINES: I was looking at calendar year
3 '03. And let's just take the first column, Mid-C
4 peak. If we average together July, August and
5 September of '03, that's about 34 mills, and if we
6 average together December, January and February,
7 that's about 32 and three-quarters mills, so there's
8 about a one and a quarter mill differential in that
9 case. And as I say, we snapshotted this as of --
10 looks like yesterday or Wednesday, and this
11 differential has collapsed in the last month or two.

12 CHAIRWOMAN SHOWALTER: I'm sorry. You're
13 looking at the first column, Mid-C Peak?

14 MR. GAINES: Yes.

15 CHAIRWOMAN SHOWALTER: On Exhibit 575?

16 MR. GAINES: Yes, mm-hmm.

17 CHAIRWOMAN SHOWALTER: And --

18 MR. GAINES: I'm down at the line that's
19 titled July '03.

20 CHAIRWOMAN SHOWALTER: Right. So the
21 36.85, 39.55 there?

22 MR. GAINES: I guess I'm actually looking
23 at the Mid-C flat column, I'm sorry. It's the third
24 column from the left.

25 CHAIRWOMAN SHOWALTER: And why would you

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1 look at that? Why wouldn't we look at peak?

2 MR. GAINES: We could.

3 CHAIRWOMAN SHOWALTER: I mean, if you look
4 at that, I'm just -- I think I was looking at June,
5 July, August. Maybe that's -- maybe it should be
6 July, August, September.

7 MR. GAINES: Right. June really is part of
8 the runoff period in the spring.

9 CHAIRWOMAN SHOWALTER: But it's awfully
10 close. I mean, it's --

11 MR. GAINES: It is awfully close. It's
12 closer than I would have expected, based on the last
13 time I've looked.

14 CHAIRWOMAN SHOWALTER: Well, I guess, in
15 some sense, the numbers speak for themselves,
16 whatever we make of the numbers.

17 MR. GAINES: Mm-hmm.

18 COMMISSIONER OSHIE: Mr. Gaines, just for
19 clarification, in PSE's tariffs, what are the summer
20 months and what are the winter months?

21 MR. GAINES: I'm going to have to --

22 COMMISSIONER OSHIE: Because there's
23 seasonal differences.

24 MR. GAINES: I'm going to have to defer
25 that question to someone who's more familiar with the

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1 tariffs.

2 MR. LOTT: I believe it's October through
3 March is winter.

4 COMMISSIONER OSHIE: Thank you.

5 JUDGE MOSS: All right. We're finished
6 with our housekeeping and other discussions with Mr.
7 Gaines. You're excused.

8 MR. GAINES: Thank you.

9 JUDGE MOSS: And we have our time of use
10 panelists available, and I think we'll just launch
11 into questions from the bench.

12 CHAIRWOMAN SHOWALTER: I'll start with a
13 general one, which is we approved the first time of
14 use pilot, I believe in April or May, for an initial
15 period of five months, at least as I recall it was to
16 go through September 1st. Do you recall if that's
17 correct?

18 MR. POHNDORF: I think that's about right.
19 I can't remember exactly, but it seemed like it was
20 April or May when we approved it.

21 CHAIRWOMAN SHOWALTER: In any event, I
22 recall very distinctly, since we had extensive
23 discussions about it, saying how important it was --
24 it would be to gather data and analyze the data so
25 that by the end of that period, which actually was

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1 last September 1st, we'd be in some kind of a
2 position to decide whether the program was beneficial
3 not to the individuals involved, but to the system.

4 As that date approached, we extended the
5 program to be one full year. And I recall at that
6 time saying, Where is the data, what do we know about
7 this program, and it wasn't available, but we did
8 extend the program one year. Again, I recall very
9 distinctly that I, among others, made a point of
10 saying we must get data about this program, because
11 if it is beneficial, it probably should be required
12 of everyone, if it's a system benefit, and also we
13 need to know what is the appropriate differential
14 rate to charge.

15 But we didn't have the data, so we did
16 extend it a year, and then we were going to have a
17 year's worth of data. Next we extended it until I
18 believe this July 1st, because we were in the middle
19 of a general rate case and it is an appropriate
20 subject of inquiry as to whether this program is
21 appropriate at all, and if so, should it be modified,
22 that kind of thing. So it was some consolation, when
23 we extended it, that, well, we would have this issue
24 in front of us in the general rate case.

25 So here we are today and the proposal is to

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1 extend it yet another time, I think so that the
2 entire program, but modified, would be two years, and
3 one rationale is so that we have time to gather data.
4 And my question is why are we not in a position today
5 to evaluate this program as to whether it is or isn't
6 beneficial to the system and decide, if it is not, to
7 end it; if it is, either to require it of everyone,
8 because everyone benefits, or to account for those
9 system benefits in the costs and benefits of the
10 program instead of just applying the costs. Who
11 would like to take on that one?

12 MR. POHNDORF: I'll take that one. Let me
13 start with data collection, because I think implicit
14 in your questions are both the issues of data
15 collection and then a cost-effectiveness analysis.

16 And the company, to start with, soon after
17 the initial approval, began collecting data on the
18 pilot with the assistance of the Brattle Group. And
19 since that was initiated until now, there have been
20 various data collected about -- about the pilot,
21 about the switching behavior, and about other aspects
22 of the program.

23 What we found through the collaborative
24 process is that there was no agreement from the
25 parties about how you take that data and look at the

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1 cost effectiveness of the program. Do you look at
2 the immediate cost effectiveness? If so, under what
3 methodology? Do you base cost effectiveness upon
4 some projections? So that you build upon a base of
5 data and you say, I assume a certain customer
6 response and I make some assumptions about what that
7 will be in the future.

8 Those kinds of analyses were undertaken by
9 the various parties, but we did not agree on, to be
10 very blunt about it, what to do with the data, and
11 there was disagreement among the parties about
12 whether the company had been collecting the data
13 properly. This program, when we instituted it back
14 in April and May, it was instituted very quickly.
15 The company made some decisions about how to collect
16 the data. And the program, as we originally proposed
17 it, was in part a response to the energy crisis. And
18 as such, we did not work with the parties under the
19 kind of time line I think that we, in retrospect,
20 would like to in order to develop common approaches
21 to, one, the data collection, and then, secondly,
22 what do you do with the data in terms of looking at
23 the program's overall cost effectiveness.

24 So it was only through this collaborative
25 process that we really received the whole breadth of

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1 input about, Boy, how do you look at cost
2 effectiveness for this kind of program, and we heard
3 a number of very valid perspectives on that and a
4 whole litany of assumptions that need to be looked
5 into because, from the company's point of view, we
6 had been looking at it under a certain methodology.

7 We heard about other methodologies and we
8 strongly believed that the best thing to do was to go
9 forward and collaborate about what that methodology
10 ought to be and what the assumptions ought to be for
11 the ultimate cost effectiveness analysis.

12 CHAIRWOMAN SHOWALTER: Well, since the
13 proposal is to continue the program as modified up
14 through -- is it next April 1st?

15 MR. LOTT: Through September.

16 CHAIRWOMAN SHOWALTER: September 2000 --

17 MR. LOTT: Three.

18 CHAIRWOMAN SHOWALTER: Three. For the
19 purposes of -- purpose of analyzing it, that, of
20 course, was the proposal the last three times. So
21 why should we be confident that there will be an
22 actual study or an analysis before us the fourth
23 time?

24 MR. POHNDORF: Let me take a shot at that
25 from a couple perspectives. The first perspective is

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1 a collaborative perspective. I think that, as you've
2 heard, these parties, all 31 parties, have made
3 tremendous progress in tackling some very tough
4 issues as part of this settlement, and we want to
5 build upon that in a collaborative process. To date,
6 there has been no collaborative process before these
7 merger settlement discussions on this program.

8 Secondly, the parties have already done
9 quite a bit of thinking about cost effectiveness and
10 have run their own analyses. I know those analyses
11 are not before you, but they have done that. The
12 companies have done that, other parties have. So
13 there has been a lot of progress made.

14 And I guess the third thing is that we're
15 not -- going forward over the next year, we're not
16 conducting the same experiment. The experiment, up
17 until now, has been an experiment where the customers
18 who are participating in the program are not paying
19 the program's metering and data handling cost. Going
20 forward, they will be, and we believe that will
21 provide a year's worth of very informative data,
22 because now the customers are making the trade-off.
23 They're making the trade-off between the benefits of
24 the program and directly seeing the cost.

25 CHAIRWOMAN SHOWALTER: But they're making a

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1 trade-off between the individual cost to them, as
2 assessed, of the program and the individual benefit
3 to them, but it entirely begs the question of the
4 premise of the program to begin with, which is system
5 benefits.

6 We're not inventing different time of day
7 rates just so someone can pick one to see if it
8 benefits them. The premise was that there is extra
9 cost in the peak -- the breakfast and dinner hours,
10 or extra value to be gained, either in order to avoid
11 the company having to buy power at that time or to
12 enable the company to sell power at that time or,
13 perhaps in a broader, extra, outside the company
14 sense, to avoid congestion at peak times. I mean,
15 there are various benefits one might hypothesize at
16 the peak hours, therefore justifying a differential
17 rate. It was all a hypothesis.

18 But once you recast the program as simply
19 something that might benefit an individual, and
20 therefore the individual pays a price for it if the
21 individual benefits from it, we have not taken into
22 account this broader benefit, if there is one, and so
23 one of the problems I have is that the proposal
24 proposes to change the program to assess individual
25 costs, because some costs are known, but because the

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1 benefits apparently are not known or not agreed upon,
2 they get left out of the equation.

3 So all we're really doing is shifting costs
4 to the individuals in the program. If there are in
5 fact benefits -- and I don't know if there are or
6 aren't. If there are, in fact, system benefits, then
7 the costs of the program also should be borne by the
8 system, not the individuals doing it. But we're in
9 the position of looking at a proposed settlement that
10 looks at one-half of the equation and keeps us blind
11 as to the other half of the equation, and it's
12 difficult to justify changing this program on that
13 basis, to assess costs, but not acknowledge or
14 inquire into the benefits.

15 The bottom line question is is it timely,
16 at this point, to assess costs without benefits?
17 Perhaps modification should await what has been
18 requested three times, an analysis.

19 MR. LOTT: Chairwoman, actually, during the
20 last year, you've been looking at one scenario.
21 You've been offering customers a chance to reduce
22 their bills, but not telling them what it's going to
23 cost the system to do that. In other words, you have
24 not increased the cost that the company's incurred
25 over the last year, and all the customers received is

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1 a benefit.

2 Obviously, one of the things that's being
3 looked at in these analyses is how do the customers
4 react to the program, and customers do react
5 positively to a program in which they don't pay the
6 cost. And in my testimony, I describe -- very
7 quickly, I describe the fact that we looked at the
8 benefits that are supposedly being created by the
9 shift and we tried to allocate that those customers
10 get that benefit, so they are directly receiving the
11 benefit of that shift.

12 In other words, the system benefit goes
13 into these customers getting a lower price. When I
14 shift to nighttime usage, I get the system benefit by
15 getting a lower price in my own bill. If there is
16 other benefits, in this case, there's a small
17 identification of some possible additional benefits
18 beyond that shift cost, you know, a portion of it has
19 been, at least for one year, you know, terming on the
20 persistence of that, been passed on into the
21 conservation rider, but the point is that the
22 benefits of the system are being passed on to the
23 customers through reduced bills, and therefore there
24 is a matching of the benefits to the system through a
25 reduced bill.

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1 If you have two customers and one is
2 getting a lower bill from these greater benefits and
3 the other customers are not receiving any of those
4 benefits, at least in the short term, I agree with
5 you, by the way, in the long run, if this thing is
6 cost effective, it, in the long run, should be a
7 mandatory program. I think that's what the
8 Commission ordered 24 years ago. I don't disagree
9 with what they ordered 24 years ago, and I think -- I
10 think you also need -- there's a lot of problems with
11 these analyses. We've collected a year's worth of --

12 CHAIRWOMAN SHOWALTER: Can I stop you,
13 though, before we go on, because I don't want to lose
14 the point about the benefits.

15 MR. LOTT: Okay, right.

16 CHAIRWOMAN SHOWALTER: That would be true
17 if the differential, the 10 percent or 15 percent,
18 were appropriately set if it captured the system
19 benefits, but we didn't know what that figure should
20 be. We implemented, I think, a kind of a cautious,
21 modest price signal. Part of the purpose of the
22 analysis was to come back and say what is the system
23 value and is it positive, but if it's positive, how
24 big is it. That would -- that would allow the
25 Commission to set that differential appropriately,

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1 because supposing it's too low right now, that would
2 mean that the individual customer is getting the
3 benefit of avoiding that higher price and getting the
4 benefit of the lower nighttime price, which, under
5 this scenario, was too modest. And so the system is
6 benefiting on the rest.

7 On the other hand, if it is set too high or
8 there's no system benefit at all, then I think you
9 are correct, the individuals are getting a benefit
10 that, in effect, they don't deserve, because there
11 really isn't that kind of value in the breakfast and
12 dinner hours.

13 But that's what we wanted to find out
14 about. But now we're assessing the costs without
15 having assessed the benefits.

16 MR. LAZAR: If we just looked at the data
17 that's been collected so far, we could make some
18 judgments based on that. And in the collaborative,
19 we did that. We also agreed that we needed to come
20 up with a way of measuring the long run, and we
21 haven't reached agreement on how to do that.

22 The data that's been collected so far, and
23 the company has filed monthly reports, shows that the
24 on-peak/off-peak market price differential for power
25 is about a half a cent a kilowatt-hour over this

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1 period. These customers are getting a 1.4-cent per
2 kilowatt-hour savings when they shift load from the
3 on-peak to off-peak hour.

4 So in the short run, the very short run,
5 the customers are getting three times as much benefit
6 as the system is getting. And if you only looked at
7 the short run, you would reach a conclusion that the
8 differential should be much smaller than it is and
9 you would reach a conclusion with about 14 kilowatt
10 hours a month per customer shifted, or about seven
11 cents of savings per month, the meter reading cost of
12 \$1.26 a customer are not justified. And if you only
13 looked at the short run, you would reach a conclusion
14 that this program shouldn't go forward, I think.

15 But we don't -- the collaborative all agree
16 that we need to be looking at the long run. Are
17 there capacity deferrals that are possible, do you
18 avoid transmission system upgrades, do you avoid
19 distribution system upgrades. And these concepts
20 were not discussed with the collaborative until we
21 got into settlement. The methodologies just began
22 being developed literally in the last couple of
23 months.

24 I'm confident we can work together with
25 that data and those methodologies to come up with a

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1 good method or methods of looking at the long-term
2 benefits, but we're not there.

3 MR. LOTT: Part of that reason -- this is
4 what I was -- the next statement I was going to make,
5 is you said we've been going for a year. The last
6 data I've seen, and it hasn't been fully analyzed, is
7 from April. It's less than a year. And it takes
8 time to review data, even after you've received it.
9 Of course, we've been working on the collaborative,
10 so we haven't been reviewing the data as closely as
11 we probably should. But --

12 CHAIRWOMAN SHOWALTER: Isn't that exactly
13 one year?

14 MR. LOTT: Well, I thought it was May 1
15 last year, but whatever. I'm not sure of the exact
16 date.

17 CHAIRWOMAN SHOWALTER: That would be 12
18 months.

19 MR. LOTT: Right, okay. What I'm saying is
20 the data that we started with at the beginning of the
21 collaborative was not even that far along. And
22 receiving data and having this data, then do reviews,
23 the company had some people perform analysis onto the
24 -- I'm trying to figure out what the variability of
25 power, you know, the price. I'm having a problem

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1 with the word, sorry, but the people's response to a
2 price change. I'm trying to get the --

3 MR. QUEHRN: Elasticity.

4 MR. LOTT: The elasticity. So we have
5 elasticity things that have been done by one party
6 and been partially reviewed and not fully reviewed by
7 other parties. And that's based on data not through
8 April; this was through data that was based through,
9 I believe, through November or December. So there's
10 some elasticity analysis through that time period.

11 In addition to that, you have to do the
12 economic analysis of what are the avoided costs.
13 Your question earlier was, you know, we've had this
14 thing for a year, why haven't we finished the
15 analysis. Well, if we had all the data, we had
16 economic analysis and you can put them all together,
17 then you would have your analysis. I would suggest
18 -- my personal belief is I would suggest we're still
19 -- if we were all working one hundred percent on
20 that, we're still months away from being able to
21 analyze the full first year. It's not something you
22 have done one year after the project is over.

23 You now have data, you now analyze the
24 elasticities, you now analyze the economic impact,
25 you have to go out and try to determine how much of

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1 the shift is a real reduction in the capacity
2 requirements related to distribution. In other
3 words, these are part of the data that you have to
4 analyze very -- you know, that's going to take --
5 it's not something you do because you now have an
6 analysis of the shift.

7 CHAIRWOMAN SHOWALTER: Well, a year is a
8 nice number, and I think it's nice to have a year's
9 worth of data and analyze it, but it's not the only
10 analysis that could be done. You can analyze five
11 months of data or eight months of data or ten months
12 of data, especially when you have a big decision
13 coming up, like a rate case decision.

14 MR. LAZAR: Yes, it is. I indicated, if
15 you look at the data that's been collected in the
16 short-run power cost differential, that is what we
17 can evaluate in the immediate term. The benefits of
18 the program to the entire system are on the order of
19 one-tenth of the cost of the program to the entire
20 system.

21 But that's, to me, not really an important
22 measurement. What's important is, over the long run,
23 how do the costs and benefits compare. And Mr. Lott
24 has spoken to some of the complexities of doing that,
25 my testimony speaks to some of the complexities of

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1 doing that, and the collaborative, I think, is
2 prepared to take on the complexities of doing that.
3 But it hasn't been done and it couldn't be done in
4 the context of general rate case.

5 CHAIRWOMAN SHOWALTER: What do you think
6 it's going to do to participation rates to start
7 charging people a dollar? At a minimum, won't it
8 tend to start creating a self-selection process where
9 those who behave one way, i.e., benefit by the
10 program, would tend to stay on; those who don't over
11 time would tend to get off. At that point, what do
12 we know? We know that there's a group who can
13 conduct itself such as to benefit this way, and then
14 there's a group that didn't.

15 MR. POHNDORF: I think on the margin that's
16 right. The customer's paying more attention to what
17 they may be saving under the program, but I think
18 they'll be thinking about it a little bit harder.
19 They may be thinking about whether or not even having
20 the information is worth the extra dollar on their
21 bill, and I would venture to say that there are
22 probably a whole number of customers who may even
23 want to pay that dollar just for the information,
24 even though they may not save, but that's just my
25 opinion.

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1 As has been discussed here, really a lot of
2 the difficulty in figuring out cost effectiveness,
3 not just the methodology or perspective you take, and
4 it's not even just, beyond that, looking at what
5 power markets may do, but it's trying to predict
6 customer behavior. And if you have, on the program,
7 you have a year's worth of data about customers who
8 are seeing this direct cost, making that calculation,
9 thinking about it really hard, I think you're --
10 we're going to have improved data to be able to make
11 those projections that we have to make in order to do
12 a long-term cost effectiveness analysis, projections
13 about what customers could do. And I think that's
14 extremely valuable.

15 COMMISSIONER HEMSTAD: If I could break in.
16 Has the company attempted to make any estimate of the
17 number of its customers who will continue to be in
18 the program in, say, September of 2003?

19 MR. POHNDORF: We've just started that
20 analysis, just started to look at, you know, if you
21 apply the new rates and look at customer load shapes,
22 would they be saving, but that has just begun. We
23 still have to get the rates obviously finalized.

24 COMMISSIONER HEMSTAD: Do you care?

25 MR. POHNDORF: Absolutely, we do.

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1 COMMISSIONER HEMSTAD: I don't mean that
2 pejoratively; I mean that financially.

3 MR. POHNDORF: The way this works for us
4 financially, sort of in the broadest terms is that
5 this \$1.26, the incremental metering and data
6 handling cost, is recovered on a variable basis, so
7 if customers opt off, we don't incur those costs and
8 we also don't collect them. So you could say we're
9 whole no matter what happens there.

10 Obviously, there are other transactional
11 costs and there are costs associated with customer
12 notification and processing customers, as well. But
13 we've tried to design this so that it is neutral.

14 COMMISSIONER HEMSTAD: Well, I guess it
15 goes to is the company incented or disincented to
16 encourage people to go onto the system. I ask that
17 as a neutral question, you know. I mean, do you see
18 the company going out and beating the bushes to have
19 people participate or are you indifferent?

20 MR. POHNDORF: You know, that's an
21 interesting question, because we're trying to figure
22 out the answer to that ourselves. I think that the
23 financial incentives are basically neutral.

24 We want to have a valid experiment and so
25 we want to make sure that we have customers

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1 participating in a way that we can continue to learn
2 about this program. Over the last year, we've
3 learned a tremendous amount. But it's really that
4 that's driving us. The financial incentives are
5 roughly neutral when you combine this collection of
6 the metering costs. Also, with the design of the
7 program. The design of the differential is, as Jim
8 Lazar mentioned, it's one so that it is neutral. The
9 system benefit, i.e., the power supply benefit, and I
10 think some additional system benefits are being
11 passed through to the customer through the
12 differential, and so that, you know, that, again,
13 makes us roughly even on this.

14 COMMISSIONER OSHIE: Mr. Pohndorf, how many
15 customers does the company believe it needs to
16 participate in the program in order to have some
17 confidence in the results of the experiment or the
18 analysis of the experiment itself? I mean there's
19 statistical confidence, of course, and there's other
20 --

21 MR. POHNDORF: Yes.

22 COMMISSIONER OSHIE: And there are other
23 confidences that you would attain from your analysis.

24 MR. POHNDORF: Yeah. You're asking me a
25 question that takes me way back to my past, as a math

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1 major in college. And I could probably remember
2 something about sampling, but I don't know enough to
3 answer your question at this point. We have almost
4 300,000 customers on the program now. To develop a
5 statistically valid sample requires a far smaller
6 amount than that. But I don't have a number for you.

7 CHAIRWOMAN SHOWALTER: But, in any event,
8 whatever that number is, the current program is
9 everyone that is -- you know, relatively speaking,
10 it's everyone who happened to be eligible for these
11 meters at one time. Possibly people in really rural
12 areas were different, but it was a total universe.
13 Now it's going to be those who don't get off the
14 program. So even if it's a large group, it's no
15 longer a universal group.

16 MR. POHNDORF: I think that can be right.
17 We have had an opt-off mechanism since we've started.
18 I don't know what's driven those customers to opt off
19 and if that makes the existing set of customers
20 skewed in any way. I don't believe it does, but I'm
21 not absolutely sure on that.

22 CHAIRWOMAN SHOWALTER: But that's been less
23 than one percent.

24 MR. POHNDORF: It has been small, yeah. I
25 really can't predict what will happen in the future.

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1 I do agree that a number of customers will probably
2 look at their direct economics on this and that may
3 influence a sample we have, but where that ends up, I
4 don't know, but I -- if it remains a relatively large
5 sample, then subsamples of that can be studied that
6 probably are still truly random.

7 CHAIRWOMAN SHOWALTER: A question on the
8 PEM versus TOU. I'm a little unclear. Currently, is
9 it only TOU customers who are able to get on the
10 Internet and see their time of day use, their
11 personal time of day use?

12 MR. POHNDORF: The PEM program is much
13 broader than time of use, and we have a number of
14 customers who are on the time of use information
15 program. And I believe those customers can get on
16 the Website, as well, and check their usage.

17 CHAIRWOMAN SHOWALTER: All right. Under
18 the proposed settlement, do those people need to pay
19 a dollar?

20 MR. POHNDORF: They don't. The settlement
21 is silent on what happens with those customers. The
22 customers who are on the information only program,
23 that's an issue the company's dealing with right now,
24 but the settlement doesn't speak to what happens to
25 those customers.

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1 CHAIRWOMAN SHOWALTER: There's no
2 difference, is there, in the cost to provide that
3 information to the information-only versus the time
4 of use customers?

5 MR. POHNDORF: I'm not exactly sure. I
6 would imagine that the costs are less, because in
7 that \$1.26 is some information handling cost to get
8 the metering data into our billing system. We would
9 not be billing those customers, and I probably should
10 stop there. I'm not exactly sure, but I would guess
11 that it would be less.

12 CHAIRWOMAN SHOWALTER: What was the dollar
13 and what was the twenty-six cents? I've forgotten.

14 MR. POHNDORF: The incremental metering and
15 data handling costs are \$1.26, and then the
16 collaborative decided to divide that \$1.26 into three
17 pieces. And the dollar was to be recovered on a
18 fixed monthly basis from time of use customers, 16
19 more cents of the \$1.26 were to be recovered through
20 the energy charges to time of use customers, and then
21 the last ten cents was to be recovered through the
22 conservation rider.

23 CHAIRWOMAN SHOWALTER: So you don't know
24 how much of the \$1.26 would be attributable to just
25 the meter reading and putting it into the Internet

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1 system where a person could read it?

2 MR. POHNDORF: As I recall, the meter
3 reading cost itself in our contract from Schlumberger
4 is a dollar. But then, of that remaining 26 cents, I
5 don't know if there's a smaller portion of that that
6 is the amount that just kind of gets the information
7 to the Internet and is less than the full 26 cents
8 for billing purposes.

9 COMMISSIONER HEMSTAD: Well, so when you do
10 -- when you inform the customers whether they are
11 better or worse off -- and you're going to do that
12 quarterly, I think.

13 MR. POHNDORF: Yes.

14 COMMISSIONER HEMSTAD: You'll calculate
15 that at the rate of \$1.16 per customer, then, I take
16 it?

17 MR. POHNDORF: Yes. That --

18 COMMISSIONER HEMSTAD: Or a dollar plus the
19 -- sorry, the dollar plus the 16 cents for the energy
20 charge.

21 MR. LOTT: You would simply do a comparison
22 of bills based on the dollar and -- I mean, the basic
23 charge, which are a dollar different, and the energy
24 charges, which are different totally, and you just do
25 a comparison of the bills under the two scenarios.

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1 COMMISSIONER HEMSTAD: Well, I didn't state
2 my question very well, but the differential would be
3 reflected by those two factors.

4 MR. LOTT: It would include both of those
5 factors. Obviously, some customers with larger usage
6 might incur more than 16 cents and a small customer,
7 who doesn't consume anything, would be less, so --

8 COMMISSIONER HEMSTAD: Right. Mr. Lazar, I
9 read your testimony, and I was frankly surprised at
10 your statement of your conclusions. I'm looking at
11 page two of Exhibit 551. Of course, we don't have --
12 you did an analysis, but we don't have that in front
13 of us, but I take it this is your analysis only, and
14 the other participants in the collaborative don't
15 necessarily concur in that analysis, do they?

16 MR. LAZAR: That's correct. I did an
17 analysis that was attempting to look at long run
18 impacts of the program. I looked at data that the
19 Staff collected on the very short run impacts of the
20 program, and I looked at the analysis that the
21 company's consultants did, and I refer to each of
22 those. The analysis that was done by me at an early
23 point in this -- in the collaborative process, I
24 would do it differently today, were I to do it now,
25 based on what I've learned through the collaborative

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1 process. I haven't redone it, but -- because I
2 expect to be looking at those questions broadly in
3 the collaborative coming up.

4 COMMISSIONER HEMSTAD: I haven't read the
5 testimony of Ms. Gullekson or Mr. Hirst of the
6 company in the case in chief. Was their testimony
7 asserting that there was a positive cost benefit?

8 MR. POHNDORF: Maybe I could speak to that.
9 Ms. Gullekson's testimony presented a long-term
10 analysis of the cost effectiveness of the program
11 from a certain perspective. It analyzed a number of
12 scenarios. And what we found with that testimony is
13 that the result, as you may guess, is highly
14 sensitive to the assumptions that go into it.

15 And through the collaborative process, the
16 company felt that it was not confident on any one set
17 of assumptions, given the perspectives that were
18 presented by other parties. And actually, if you
19 look at Ms. Gullikson's testimony, even given the
20 various assumptions the company looked at, there were
21 quite a range of results on cost benefit analyses.

22 Mr. Hirst's testimony looked at what I
23 would call more theoretical benefits of time of use
24 pricing. What he looked at was, over a very long
25 term, if time of use pricing or ultimately realtime

1 pricing were implemented throughout the West, which
2 is a very bold assumption, what would happen to
3 market prices. It was meant to be complementary to
4 Ms. Gullekson's testimony. It -- Mr. Hirst's
5 testimony did not look at sort of what customers
6 individually would save just due to changing their
7 load shape and getting the benefits of a
8 differentiated rate, but instead, as you may be
9 aware, various theories have been put out that if
10 load is reduced on peak broadly throughout a region,
11 prices could decline. And that is arrived at
12 principally by looking at what prices do under
13 extreme peaks.

14 And Mr. Hirst did an analysis like that
15 that sort of looked at very long-term, if this were
16 implemented very broadly by a number of utilities,
17 what could that potential be.

18 JUDGE MOSS: Just for the clarity of the
19 record, I think the references were to Exhibit 554,
20 which is Mr. Lazar's testimony on this particular
21 subject matter.

22 COMMISSIONER HEMSTAD: I don't think so. I
23 think it's 551.

24 JUDGE MOSS: 551. Well, let's be off the
25 record.

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1 (Discussion off the record.)

2 JUDGE MOSS: We're back on the record.

3 CHAIRWOMAN SHOWALTER: There might be
4 agreement on this question, I don't know. Is there
5 data showing time of use customers using lower
6 amounts of electricity in an absolute sense compared
7 to the non-TOU customers?

8 MR. POHNDORF: Yeah, there was not
9 agreement on that. And let me give you maybe some
10 insight into the nature of that, is that we did have
11 the Brattle Group look at that question, but it's a
12 very difficult question, because that requires the
13 establishment of a control group, a group that does
14 not have anything -- anything other than the time of
15 use pricing impact them.

16 And these studies were being undertaken
17 starting back in the April, May time period last
18 year, when there were a lot of other things happening
19 in the energy industry, and those things led to a
20 reduction in energy consumption that was quite
21 significant for our customers generally.

22 But there were a number of discussions
23 about that, and the collaborative reached no
24 conclusion as to whether or not there would be this,
25 quote, conservation benefit from time of use pricing.

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1 CHAIRWOMAN SHOWALTER: But weren't all of
2 Puget's customers and everybody else in Washington,
3 for that matter, experiencing all those other things,
4 but only the time of use customers were experiencing
5 time of use rates?

6 MR. POHNDORF: That's true, but you -- this
7 analysis gets caught up in a comparison of -- among
8 years, because obviously you cannot compare one
9 customer's consumption in May to their consumption in
10 June. You have to kind of look back a year. And it
11 was actually a more difficult analysis than it may
12 appear at first.

13 MR. LAZAR: Some of us read the Brattle
14 analysis to show that the time of use customers were
15 using more electricity on an absolute basis than
16 non-TOU customers, and others read those reports
17 differently. We didn't reach anything resembling a
18 consensus. We did reach a consensus that we wanted
19 to study this for another year.

20 However, the stipulation does provide for
21 10 cents of the \$1.26 to be charged to the
22 conservation tariff rider, and that figure was
23 derived from one estimate of 1.7 kilowatt hours per
24 month savings for the TOU participants multiplied by
25 an avoided cost of about six cents a kilowatt-hour.

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1 That's a production, transmission and distribution
2 avoided cost, not just a power supply cost, to get
3 that 10 cents.

4 And so the stipulation that's before you
5 assumes that there is a conservation effect, but
6 clearly, whether that would remain a part of the
7 long-term cost recovery mechanism would be a matter
8 to be explored by the collaborative and brought back
9 before you before September of next year.

10 CHAIRWOMAN SHOWALTER: For comparison
11 purposes, for the conservation measures, the
12 settlement specifies that there is an assignment of
13 distribution and transmission savings in avoiding --
14 in avoided costs. And I think it's \$28.65 for every
15 average kilowatt of reduced consumption. And my cite
16 here is Exhibit F, page 515.

17 MR. LOTT: Paragraph 15?

18 JUDGE MOSS: Paragraph 15.

19 MR. LOTT: Yeah, this was the avoided --

20 CHAIRWOMAN SHOWALTER: Right.

21 MR. LOTT: Yeah, this is a collaborative we
22 had on avoided costs related across a bunch of
23 different groups, including the conservation group.

24 CHAIRWOMAN SHOWALTER: Right.

25 MR. LOTT: There's obviously a question in

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1 there, and you see my testimony depends on what
2 conservation is and whether conservation or
3 curtailment or something actually reduces the
4 capacity requirements related to distribution,
5 whether the distribution portion of the avoided
6 capacity costs would apply.

7 CHAIRWOMAN SHOWALTER: I haven't asked my
8 question yet.

9 MR. LOTT: Oh, I just wanted to say,
10 though, that this was used -- this was measurements
11 of these types of costs, but you have to be able to
12 achieve that type of item in each one of those
13 categories.

14 CHAIRWOMAN SHOWALTER: My question is what
15 degree of confidence do you have that this system
16 benefit here is appropriate when there apparently is
17 no confidence on the TOU items that there is a system
18 benefit? Is there stronger data to support this
19 proposition?

20 MR. LOTT: You're talking about whether the
21 conservation -- Jim participated in both, so --

22 CHAIRWOMAN SHOWALTER: Yes, Mr. Lazar can
23 answer.

24 MR. LAZAR: Thank you. This estimated
25 distribution capacity cost is a long-run distribution

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1 capacity cost. That is, if we lower the demand on a
2 distribution circuit by a kilowatt, we would expect
3 to save this in construction or upgrade costs on that
4 circuit over the life of the distribution circuit.

5 This figure is very consistent with what I
6 see in the many other jurisdictions that I work in,
7 is what utilities use as a marginal distribution
8 capacity cost. So in that sense, it has a fair
9 amount of other science behind it. It's based on a
10 calculation the company did of its capacity upgrade
11 costs for distribution circuits and its load
12 increases on its distribution circuits. So it has a
13 substantial basis and data on this company. And it
14 is precisely that data that I used when I did my
15 analysis and when the company did its analyses that
16 reached -- I'll call them inconclusive results on the
17 TOU program that brought us to the point of the
18 stipulation that's before you.

19 I think that that part of it is somewhat
20 speculative, though. And the simplest example is if
21 I shift my load in my house from on-peak to off-peak,
22 is the company going to change the transformer that's
23 hanging on the pole outside my house soon or ever?

24 CHAIRWOMAN SHOWALTER: Why would it be just
25 outside the house? Why isn't this part and parcel of

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1 the whole transmission, planning, congestion
2 management? Isn't peak shaving an issue that comes
3 to the fore when transmission, big transmission gets
4 congested?

5 MR. LAZAR: There's much less controversy
6 over the transmission avoided costs. I think we're
7 all pretty comfortable with the transmission avoided
8 cost. But the distribution avoided cost, that's the
9 transformer outside my house, the wire that's outside
10 my house, back to the substation that's three blocks
11 from my house.

12 And the issue that Mr. Lott raised and that
13 I concur needs to be examined a little more carefully
14 is does a peak load shift cause any real material
15 change in those costs and distribution end of things.
16 The transmission end, big transmission, the power
17 supply issues, I don't think were nearly as
18 uncertain.

19 CHAIRWOMAN SHOWALTER: When you were doing
20 your analysis and taking into account the peak
21 shifting behavior of TOU customers, did you account
22 for this type of credit that conservation gets?

23 MR. LAZAR: Yes, I did. And I took the
24 data from -- this is where I relied on Ms.
25 Gullekson's testimony. She had -- I'm looking back

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1 at my work papers. She had assumed \$52.65 per
2 kilowatt in her original testimony, and that was the
3 figure that I used. What the collaborative came
4 forward with in the avoided cost calculation was
5 24.95 for distribution.

6 CHAIRWOMAN SHOWALTER: I guess I was asking
7 about the transmission. Are you saying that you
8 don't think time of use peak shifting even computes
9 to a transmission effect?

10 MR. LAZAR: No, we, on the -- the
11 transmission was a hundred and -- Ms. Gullekson's
12 testimony, which I relied on in my analysis, had a
13 transmission avoided cost, a capital cost level of
14 \$126, a distribution avoided cost of \$225 a kilowatt.
15 Combined, that produced 52.65 a kilowatt. That's
16 what I used in my analysis.

17 What the collaborative came up with is the
18 sum for transmission and distribution of 28.65, plus
19 24.95, which is 54 -- \$53.60. It's almost exactly
20 the same amount as I used in my analysis. It's just
21 aggregated a little bit differently.

22 CHAIRWOMAN SHOWALTER: All right. But
23 those two figures are over in the conservation system
24 benefits, at least where I was reading them. So then
25 my question is did you use those same measures when

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1 you did your analysis of time of use?

2 MR. LAZAR: Yes. The analysis that I did
3 of time of use that concluded that the benefits were
4 one-tenth of the costs used almost exactly the same
5 amounts as were used in the conservation analysis.
6 And there was just a little evolution of the data in
7 the two months in between, by about one dollar a
8 kilowatt, by about two percent change in the data.

9 COMMISSIONER HEMSTAD: Well, I was going to
10 ask a quite specific question about the agreement as
11 to how the program would function. And I was, I
12 think, most curious about the end gain. I think it
13 calls for a conclusion of the program, that at some
14 point, that participants would automatically be
15 dropped off the program if the data showed that it
16 was not to their benefit to stay on.

17 I'm a bit puzzled by that requirement. I
18 analogize it to the green power programs. It costs
19 participants more, but they conclude that is
20 environmentally attractive and, therefore, they will
21 pay more. Why wouldn't you leave that decision to
22 the participant, as to whether to stay on or to be
23 automatically dropped off?

24 MR. LOTT: Well, the participant would have
25 the choice of staying on. That is an option the

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1 participant would have. They would be dropped if
2 they didn't choose to stay on.

3 COMMISSIONER HEMSTAD: All right.

4 MR. LOTT: Otherwise, you would -- as long
5 as it stays as an optional program, again, if this is
6 a cost effective program, it would be Staff's
7 position that, as I've heard Chairwoman Showalter
8 say, is that you would ultimately go to a mandatory
9 program if it's cost effective. If it's not cost
10 effective, it stays as an optional program.

11 Customers should be put on a schedule that gives them
12 the lowest prices. They should not be overcharged
13 unless they so choose to be on a schedule. Some
14 customers choose to be on a green power or other type
15 schedules, and a customer should not be automatically
16 placed on a schedule that charges them a higher
17 price. You know, that's the basis of that.

18 COMMISSIONER HEMSTAD: For them, it would
19 shift the default to being off the program.

20 MR. LOTT: If it wasn't to their benefit.
21 But, of course, there's no assumption of what the
22 program's going to be after the end of that -- will
23 it continue to be an optional program, will the
24 company make a filing to make it mandatory at that
25 time because the collaborative demonstrates that it's

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1 cost effective, will the company totally drop the
2 program because it's not worth continuing at all and
3 it's too expensive for the company to run. You know,
4 there's no -- there's no -- what the program will
5 look like. This assumes the company continues an
6 optional program, and there's no decision about
7 whether it will be an optional, mandatory or will
8 exist at all.

9 MR. POHNDORF: If I could just echo that
10 sentiment. The stipulation's silent on whether or
11 not there will be a program after September 2003. We
12 wanted to leave that open because we do want this
13 collaborative to go forward and discuss that issue
14 and to discuss it frankly with the broadest possible
15 participation. You know, sitting here today, I don't
16 know if this is possible.

17 But the company would be encouraged if even
18 policy staff or possibly the Commissioners could
19 somehow engage in those discussions, as well, but
20 given that we don't know if there would be a program
21 or what it would look like, that was part of our
22 thinking in, while still giving a customer a choice
23 as to what schedule they want to be under, if they
24 don't make a choice, to put them on the economically
25 best schedule.

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1 COMMISSIONER HEMSTAD: I have a quite
2 broad, general question. The shift in the company's
3 position I find remarkable. When this program was
4 first proposed, it was proposed as a mandatory
5 program for all classes of customers, with the
6 argument that it was going to have a measurable
7 impact on events that it was then -- well, as a
8 result of our decisions, it became voluntary and
9 initially then was only applicable to the residential
10 class.

11 And I realize this is now as a result of
12 the settlement, but do I take this evolution as a
13 substantial acknowledgement by the company that it is
14 unclear as to whether there are or are not any
15 benefits?

16 MR. POHNDORF: I think that's an important
17 part of it. I would characterize the evolution as
18 something like this: that the company rapidly
19 developed a program during the energy crisis at a
20 time when the differentials in the market were huge,
21 market prices were extraordinary, and the company was
22 just at the point where it could, with some
23 additional effort, use its metering technology in a
24 way that other utilities couldn't, and saw tremendous
25 opportunity, in theory, and based upon some of our

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1 experience with the information-based program, to
2 capitalize upon all this and move forward very
3 rapidly with the time of day program.

4 Then, as the months went on, the energy
5 crisis abated, we collected more information, and we
6 moved into a period of developing a general rate
7 case. Through that rate case, as I've stated before,
8 we have had the benefit of an additional number of
9 months of data, we have had the benefit over the last
10 three months of a collaborative process that has been
11 very open and has included some very frank and
12 vigorous discussion of many aspects of the program.
13 And I think this settlement reflects all of that,
14 changing events, information we've learned, and an
15 openness to collaboration, as well as the results of
16 the analyses that have been done through this time
17 period.

18 COMMISSIONER OSHIE: Let's just briefly go
19 back, just for, at least for me, a purpose of review.
20 And this is a question I think for all the
21 participants, because it's what the parties expect to
22 have at the end of the test period. What is it that
23 you -- you know, when the program ends on September
24 30th, 2003, where will we be?

25 MR. LOTT: Well, some of the things that I

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1 would hope that we would definitely have is we would
2 have better studies on sensitivity of customers'
3 volumes and shifting, more complete, although we do
4 have substantial information on that stuff, but that
5 can be verified through a period, hopefully, that's a
6 little bit more normal than was done during the year.

7 Another area, and this is probably, to me,
8 the more important area, being analysis and a more
9 complete analysis of what the shifting and what the
10 conservation actually do to the occurrence of cost,
11 both related to capacity cost and related to energy
12 cost. Energy cost is something that fluctuates quite
13 a bit. Just in the last year, the difference of a
14 hundred dollars to ten dollars today, or whatever it
15 is.

16 But the capacity costs the company has in
17 all three areas, distribution, in other words, how
18 much are distribution costs really impacted by the
19 shift at a house, how much are -- so this will be
20 something that will be discussed in the collaborative
21 going away from what I call an accounting methodology
22 on both transmission and distribution to more of an
23 economic analysis, hopefully. Here's an accountant
24 going to economics rather than accounting.

25 Those are two areas that I think that will

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1 be really important. Then, when you compile that
2 together, you might have an idea how cost effective
3 the program is.

4 Again, I think we have quite a bit of
5 information and the company's, you know, consultants
6 worked quite a bit with the, you know, the impact on
7 the customers and how they would respond to varying
8 price changes. In other words, by utilizing this
9 information, they weren't only able to say, based on
10 this price differential, this is how much will be
11 switched. They were able to come up with what they
12 believe are statistics that show what different price
13 changes would result in, and those things have to be
14 verified obviously by other people, but, you know,
15 it's coming to an agreement upon those type of
16 numbers and coming to an agreement upon, you know,
17 what the real cost benefits are associated in all
18 three of those areas.

19 COMMISSIONER OSHIE: Has the analytical
20 framework been developed, Mr. Lott, to achieve the
21 goals that you have just outlined?

22 MR. LOTT: That is the problem. They
23 weren't developed a year ago and they need to be
24 developed, and that's why part of the settlement says
25 we need to get this collaborative started now and not

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1 wait until 2003 to get together and start to
2 collaborate on how to develop that analysis, so that
3 we can be collecting the information in a proper
4 fashion. And that's one of the -- Staff
5 consistently, when we were trying to put together
6 this thing, kept saying we're not going to wait till
7 2003 to get the collaborative together. We need to
8 do it today, we need to do it starting before or
9 after the Commission's order and we need to develop
10 those processes.

11 CHAIRWOMAN SHOWALTER: If we approve this
12 settlement effective July 1, what kinds of notices go
13 out to the customers? What will it trigger
14 programmatically for the time of use program?

15 MR. POHNDORF: I can speak to that a bit.
16 What our plans are at this point, and they are still
17 somewhat being developed, but that upon the
18 Commission's order, we would initiate two things
19 immediately. One would be advertisements, largely in
20 print, explaining what we're doing with the program.
21 Secondly, we would send out direct mailings to the
22 customers whose bills -- who are on such billing
23 cycles as that they would be immediately impacted to
24 explain the changes in the program, and then, with
25 billing cycles that are a little bit further out

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1 there, we would include in current bills a bill
2 staffer that would explain these changes.

3 CHAIRWOMAN SHOWALTER: Will there be
4 customers who receive the additional dollar or \$1.26
5 charge who will receive the bill before they receive
6 notification that they're getting this increase?

7 MR. POHNDORF: We are endeavoring for that
8 not to happen, but to the extent that that happens
9 and even beyond that, we will allow some grace
10 period, so that if a customer gets a bill in the very
11 short term, they have a billing cycle that's
12 concluding fairly soon after the 1st of July, that we
13 would inform that customer that they could, if they
14 decided to opt off, they could get their \$1.26 back,
15 so there would be some grace period there.

16 The last thing that we want is for a
17 customer to be surprised by the dollar and have no
18 chance -- kind of, you know, get hit with that for
19 the first month and have nothing to do about it. We
20 want to do everything we can to avoid that.

21 CHAIRWOMAN SHOWALTER: I have --

22 MR. LOTT: I'd like to come back to
23 Commissioner Oshie's question that he posed to all of
24 us for just a moment, if I may, as to where we think
25 we'll be in September of 2003, and I think we'll be

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1 there in July of '03, so that we can have an orderly
2 next phase of this, not bumping up against a
3 termination date.

4 With respect to a cost effectiveness
5 analysis, I think we're -- we have a framework or two
6 that are appropriate and that that will take very
7 little of our time, that the production and
8 transmission cost savings that the program produces
9 are fairly well understood and probably not very
10 controversial, but they are definitely significantly
11 less than the cost of operating the program. You
12 can't justify it on that basis alone.

13 The distribution cost savings are a
14 significant component of the cost effectiveness, and
15 there's a great deal of uncertainty that both Mr.
16 Lott and I have spoken to about whether those will
17 really materialize. And finally, the environmental
18 impacts are uncertain. As I mention in my testimony,
19 a shift of load from the on-peak hours to the
20 off-peak hours often results in a shift of fuel from
21 gas, which is expensive, to coal, which is cheap.
22 And while there's monetary savings, there are adverse
23 environmental impacts.

24 CHAIRWOMAN SHOWALTER: Can I stop you on
25 that point, on the coal plants? Aren't the coal

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1 plants run on a 24/7 basis? If people shift their
2 use to the nighttime, is it going to mean, for Puget,
3 that the coal plants are running more?

4 MR. LAZAR: Yes, it is going to mean for
5 the Western System Coordinating Council, the
6 integrated system in which Puget buys and sells
7 power, that likely coal plants will run more. We
8 modeled this -- I'm a member of the Northwest Power
9 Planning Council's Regional Technical Forum, and we
10 modeled a shift of 50 megawatts in the region from
11 the highest peak hour to the lowest off-peak hour and
12 then looked at how the Aurora model dispatched
13 resources to meet that shifted load.

14 CHAIRWOMAN SHOWALTER: What about just
15 Puget? I mean, that was based on Puget's TOU program
16 only, or was it assuming the whole region went to
17 TOU?

18 MR. LAZAR: It was only assuming a 50
19 megawatt -- what -- we were modeling what happened
20 when 50 megawatts in a region get shifted. Please
21 let me finish. This is a very important point.

22 The Colstrip coal plants run 24/7, because
23 they -- the fuel is less than a penny a
24 kilowatt-hour. But the Boardman coal plant is cycled
25 regularly, the Centralia coal plant is cycled

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1 regularly. Other coal plants in the Western system,
2 particularly those that are not mine-mouthed plants,
3 the Springerville plant, Cholla plant, a number of
4 them follow load on an hourly basis. They are going
5 to be dispatched more if there's more off-peak load.

6 Now, we don't know the -- we modeled this
7 in the RTF. I would not describe our analysis as
8 conclusive or dispositive. We have a sense that
9 there is clearly some increased dispatch of coal that
10 occurs. If you look at the hourly dispatch records
11 for Centralia, it goes up and down, up and down, and
12 up and down almost every night following load. So
13 from a global environmental perspective, there's a
14 lot of analysis yet to be done.

15 The company has a license to use the Aurora
16 model. That is a very good model for studying this
17 question. We've been quite busy trying to put a
18 settlement together, and Mr. Elsea and people who
19 work with him have been very involved in the PCA
20 negotiations. They've not been available to look at
21 this question, but it's something we would hope the
22 collaborative would have time to look at.

23 So the distribution benefits are uncertain,
24 the environmental impacts are uncertain, and the
25 costs are an important thing. When I did my initial

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1 analysis based on Ms. Gullekson's testimony, I used
2 an assumption for costs that she had in her
3 testimony. Since I did that analysis, those costs
4 have come down.

5 If the costs of running the program come
6 down, that's a good thing, as far as the benefit cost
7 analysis goes. So there's a fair amount of work to
8 do and I think that by, you know, the time -- if this
9 collaborative can get working, that we can look at
10 those questions and come up with some responsive
11 results.

12 MR. POHNDORF: I would just add a couple of
13 thoughts to that, in that the cost effectiveness
14 analysis is a critical thing to complete through this
15 collaborative process. I also believe that once that
16 is completed, or even as it's being completed, that
17 will inform the collaborative about potential other
18 approaches, if any, that can be more cost effective.

19 This -- the initial approach the company
20 took to the program was just one approach, and I
21 think that ultimately, if we end up with a time of
22 use program after September 2003, it will be much
23 improved through the input of the collaborative and
24 based upon this cost effectiveness analysis, because
25 that, I believe, will lead the members of the

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1 collaborative to -- possibly to other approaches that
2 improve the cost effectiveness.

3 CHAIRWOMAN SHOWALTER: Could you turn to
4 page two of the TOU document? It's Exhibit E. This
5 states that the TOU rate differential shall be based
6 on two things, the market power cost differential,
7 plus a portion of the estimated long-run marginal
8 capacity costs. And most generally, I'm not sure I
9 understand if there is or isn't going to be a change
10 in the rates effective July 1, if we approve the
11 settlement. Is there any change in the rates?

12 MR. POHNDORF: I'll take it, and then maybe
13 you guys can pick it up. Obviously, there will be an
14 increase in total.

15 CHAIRWOMAN SHOWALTER: Well, the \$1.26, I
16 don't mean that. I mean the differential that we
17 have had thus far, has that differential changed?

18 MR. POHNDORF: It will change very
19 slightly, actually. We've just concluded calculating
20 that based upon this agreement. And of course, there
21 will be a general uptick in rates with the increase
22 in the revenue requirement.

23 CHAIRWOMAN SHOWALTER: And is the
24 differential the same for the morning as the evening?

25 MR. POHNDORF: Yes.

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1 CHAIRWOMAN SHOWALTER: And then is the
2 discount in the night close to the same as it is now?

3 MR. POHNDORF: Yes, it's very close.

4 CHAIRWOMAN SHOWALTER: Is it coincidence
5 that these two elements that are mentioned result in
6 that or was that the current differential was more or
7 less based on?

8 MR. POHNDORF: It's actually coincidence.

9 MR. LOTT: I ought to explain something,
10 because I don't think it's real clear. The three of
11 us were talking earlier and, you know, the question
12 comes down to what does it mean by the ten mills.
13 And I guess why we're saying that there's not much
14 difference, the current difference between the
15 premium hours and the discount hours is more like 15,
16 17 mills, but you also have the mid-day, which is
17 part of the peak hours. I think we all agreed that
18 we would be taking the average peak hours, which
19 includes that mid-day price, and there's a ten-mill
20 difference between that and the nighttime price,
21 which means that you could then still have a higher
22 price. So it's not ten mills from the peak hours,
23 seven to nine, or six to nine, whatever that is,
24 versus the economy hours; it's ten mills -- the
25 average peak versus average non-peak hours, and

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1 that's what -- this group here all agreed that that's
2 what that meant and because we knew that that
3 question would come up.

4 CHAIRWOMAN SHOWALTER: Well, I'm not sure
5 --

6 MR. LOTT: That's why, when you do that,
7 you end up with a price fairly similar to the prices
8 that we -- that's why it's coincidence -- comes out
9 to a price fairly similar to what we currently have
10 in effect.

11 CHAIRWOMAN SHOWALTER: Okay. How did you
12 arrive at the market power cost differential?

13 MR. LAZAR: You have, I believe, Exhibit
14 529, which is the company's Aurora forecast for the
15 next 14 years, and it is the first five years of that
16 forecast that produced the six mill on-peak/off-peak
17 differential.

18 CHAIRWOMAN SHOWALTER: And then, what is
19 the other component, the estimated long-run marginal
20 capacity cost? How was that determined or what is
21 it? I guess I think I understand it conceptually,
22 but with respect to Puget, what is it?

23 MR. LOTT: It's the same numbers that are
24 --

25 MR. LAZAR: It's the numbers -- it's all

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1 derived from the figures that are in the conservation
2 stipulation document.

3 CHAIRWOMAN SHOWALTER: I see.

4 MR. LAZAR: But with some subjective
5 uncertainty applied to how soon and how certain those
6 benefits will be achieved, producing a round number
7 of ten mills. We used the same avoided cost analysis
8 for TOU rate design, for other rate design, for the
9 conservation program design within this stipulation.
10 We were quite insistent on trying to remain cohesive
11 in that regard.

12 CHAIRWOMAN SHOWALTER: All right. On that
13 same page, there's something else, but it's a little
14 bit different topic, so I'll move to that. On that
15 same page, under number six, this is page two, there
16 are a couple of sentences that give me some
17 discomfort. And it's the -- the last two sentences
18 there say that, during the pilot program, PSE will
19 not make any claims in promotional materials
20 regarding the environmental or conservation benefits
21 of the program unless such claims have been reviewed
22 and approved by the TOU collaborative.

23 I'll read the next sentence. Additionally,
24 in any public statements PSE makes regarding its
25 pilot program, PSE will acknowledge that the scope

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1 and extent of environmental and conservation
2 benefits, if any, resulting from its pilot program
3 have yet to be determined and are still being
4 evaluated.

5 This is really more of a kind of a first
6 amendment issue, or it's the propriety of this
7 Commission approving an order like that. It causes
8 one to pause. I recognize the company has agreed to
9 it, but perhaps you would like to offer some reason
10 why it is in the public interest for this Commission
11 to order language like that.

12 MR. QUEHRN: I can speak to the discussions
13 with counsel, between counsel as to that language.
14 There was a -- I think there was a clear intent that
15 the issue of conservation and environmental benefits
16 derivative from this program and public statements
17 that the company might make about those follow the
18 work of the collaborative, that there isn't
19 statements made that are anticipatory of what the
20 collaborative might ultimately agree upon as to what
21 the scope and the extent of those benefits were.

22 The wording does appear to be a little
23 harsh, but I think the intent was merely just to make
24 sure that the agreement reflected that the company's
25 statements would be in line with and not in front of

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1 the work of the collaborative as to these two
2 important issues.

3 CHAIRWOMAN SHOWALTER: The second sentence
4 seems the harsher. Public statements covers a huge
5 range of types of statements. It includes the
6 statements that the company makes here in this
7 Commission, it would include speeches that Steve
8 Reynolds might be making, it includes sitting around
9 at an editorial board, I suppose. I think it
10 probably includes all kinds of statements by all
11 kinds of people, by the way, not just ones who are
12 giving a speech on TOU, but it would be maybe the
13 company representative going out to the rotary club.
14 I don't know.

15 It just gives me some qualms, I think, to
16 be ordering that kind of statement. I recognize that
17 Puget may well be planning, when discussing TOU, to
18 make that kind of caveat. By the way, I always do.
19 When I've been talking about TOU, I always say either
20 these are Puget's numbers, not ours, or we have not
21 yet evaluated these numbers. I don't know that I've
22 said it in every single instance and I just --

23 MR. QUEHRN: Again, I can only say that I
24 think it was viewed as important to the collaborative
25 that these statements be in the agreement to make it

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1 very clear that as these benefits are assessed and
2 determined, whatever they may be, that public
3 statements that the company and I make would follow
4 on those determinations, not precede those
5 determinations.

6 MR. FFITCH: Madam Chairwoman, if I could
7 just add to those comments, I think they really are
8 related to sort of facts on the ground, if you would.
9 There have been claims made both in promotional
10 materials regarding environmental effects and in
11 public statements and in electronic media advertising
12 and in connection with applications for national
13 awards and that kind of thing, and in very public
14 settings, which I think, as has been acknowledged
15 here, are issues that really do need to be further
16 evaluated before -- in the collaborative process, and
17 that was an issue that we raised with the company, a
18 concern about those kinds of claims being made, which
19 many of us were hearing in various kinds of settings,
20 which we were aware of.

21 And the company, I think in an exercise of
22 good faith, has agreed to these provisions. Much of
23 the language was actually suggested by Puget, which
24 we've agreed to. It has agreed to essentially
25 refrain from continuing to make those kinds of

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1 assertions about the program until the further
2 analysis has been done. That's something that we're
3 very appreciative of the company being willing to
4 pull back on for the period of the collaborative.

5 CHAIRWOMAN SHOWALTER: Well, if you look at
6 the -- if you look at the second sentence, I haven't
7 examined the first one, but it's much broader than
8 that. It's any public statement about or regarding
9 its pilot program. It doesn't say you can't make
10 claims about the benefits of the program unless you
11 also say that we're studying the matter. You can't
12 even say we have one.

13 Now, you know, again, I -- this doesn't
14 apply to me, but I have often made the point, for
15 example, that one need not go to a deregulated system
16 to have price differentials. You can have regulated
17 price differentials, and I say we have a time of use
18 program. Something as simple as that, if Puget were
19 saying, they can't utter that word unless they also,
20 because they're talking about its pilot program, they
21 must also acknowledge this caveat. It just seems to
22 me a little far reaching.

23 MR. FFITCH: Well, Your Honor, we worked
24 these sentences out very carefully with the company
25 and agreed to them. The company's agreed to them.

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1 CHAIRWOMAN SHOWALTER: I recognize that
2 it's an agreement. I'm asking about the public
3 policy of this Commission forcing that kind of
4 language.

5 MR. FFITCH: I don't believe that it was
6 the intent of the parties to ever preclude Puget from
7 mentioning the program at all. That certainly was
8 not the intent here. The intent was, as I said, to
9 address the fact of ongoing claims regarding the
10 environmental -- regarding the positive environmental
11 benefits of the program, which have not yet been
12 validated, and the company's agreed to stop doing
13 that. So that's what this language is intended to
14 capture, and nothing more.

15 And you know, as a matter of public policy,
16 I would think it's very important to not have
17 inaccurate assertions being made regarding programs,
18 both to get customers to participate and to perhaps,
19 if you would, sway public understanding or
20 appreciation of a program if they're not factually
21 based. I would think that that's also a major public
22 policy concern.

23 And if -- again, we very much appreciated
24 the company's good faith in being willing to pull
25 back at this time, while we're still evaluating those

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1 --

2 COMMISSIONER HEMSTAD: I think the Chair's
3 concern is about the expansive nature of the second
4 sentence. The first sentence, I think, has some
5 parameters to it. The second sentence says any time
6 they make a reference to the program, they have to
7 acknowledge that it is to be evaluated, which seemed
8 to be --

9 MR. FFITCH: I understand --

10 COMMISSIONER HEMSTAD: -- overreaching.

11 MR. FFITCH: I'm sorry, Your Honor. I do
12 understand that point and the Chairwoman's point on
13 just the wording of the sentence, and that certainly
14 wasn't the -- that very broad reading of it was not
15 the intent. It was simply that --

16 MR. QUEHRN: If I may address this a little
17 further. Mr. ffitch and I actually were the two who
18 had discussed this at one point. I think, again, we
19 have used in various circumstances what-ifs or
20 scenarios to try to get an intent across. And I
21 think here it was the notion that if there was a
22 conference, a speech, or something like that where a
23 discussion of the program were to be something that a
24 Puget person wanted to address, that in the context
25 of making that type of a statement, that they would

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1 acknowledge that environmental and/or conservation
2 benefits are essentially matters that are still being
3 looked at.

4 I actually don't think it was intended that
5 every time the term TOU came out of someone's mouth,
6 that then you would -- but by the way, it was not
7 really intended to be read quite that broadly. It's
8 just that it was an intention on the part of the
9 company to show good faith, that if there are public
10 discussions of the program where we're going to talk
11 about what the program entails, that in that context
12 we would make it clear that the extent of the
13 environmental or conservation benefits have yet to be
14 determined and are still being evaluated.

15 But I would agree that -- with the Chair's
16 reading, that you could overread that to say every
17 time you utter the words TOU, you have to then throw
18 the caveat, as well. And I don't really think it was
19 intended to be read quite that strongly.

20 MR. FFITCH: That wasn't the intent, but I
21 think we were just actually dealing with the
22 practical reality.

23 MR. QUEHRN: Right.

24 MR. FFITCH: Which is that when this
25 program is discussed, we know that the situation in

1 the past year has been that environmental benefits
2 and conservation benefits have been discussed.
3 That's part of the conversation, those are part of
4 the public statements in the ordinary course, and so
5 this language was developed.

6 But it's true, the overreading part of it
7 is true. We're not saying every time you say the
8 words TOU, you have to put the disclaimer in and the
9 fast language at the end.

10 JUDGE MOSS: I think we've probably covered
11 this point with some thoroughness. Why don't we take
12 a break, say -- shoot for about ten minutes and we'll
13 be back on the record at 25 after the hour.

14 (Recess taken.)

15 JUDGE MOSS: All right. We'll be back on
16 the record. I think we have just a little bit more
17 to cover, and we'll do that and wrap up.

18 CHAIRWOMAN SHOWALTER: The question is,
19 given the failure of there being produced any
20 analysis that this Commission can rely on thus far,
21 if we approve this, we will need to set out some kind
22 of milestones so that, by the end of the year, we
23 would have a report, and I invite your comments as to
24 how we might structure or require some mileposts so
25 that we could approve them or include them in our

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1 order should we approve this settlement.

2 I am not saying what we're going to do, but
3 I know one thing I don't want to do, which is simply
4 leave it again to the parties to say they'll come up
5 with something. So we would be putting something in
6 our order, so what should it be? For example, should
7 the collaborative have to report to us quarterly? I
8 don't know what makes sense.

9 MR. POHNDORF: That could be. The
10 Commission could make a statement that the existing
11 program would not be renewed after September 2003,
12 without a cost effectiveness analysis being presented
13 to the Commission by some day prior to that.

14 CHAIRWOMAN SHOWALTER: No, I don't want to
15 wait till the last minute. We want to see, should we
16 do this, that progress is being made on the criteria,
17 on the data analysis, that sort of thing. So how
18 would we set up something in an order that assures us
19 that progress is being made and will culminate in an
20 analysis we can rely on?

21 MR. LAZAR: I think that quarterly
22 reporting to the Commission is a promising concept.
23 I can recall one other collaborative that did
24 periodically meet with the Commission in open session
25 as the last agenda item on a Wednesday. It was when

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1 we were doing the electric restructuring group
2 discussions. And there were periodic meetings with
3 the Commission and with the company.

4 Mr. Pohndorf mentioned that they would like
5 to have the Commissioners in some way involved in the
6 work of the collaborative, and having a quarterly
7 meeting that the collaborative would convene with the
8 Commission in open session might be a way of, one,
9 keeping us on task, and two, keeping you involved.

10 CHAIRWOMAN SHOWALTER: What about a work
11 plan?

12 MR. QUEHRN: I would -- Mark Quehrn, for
13 the Puget Sound Energy. I'm thinking about, as
14 you're saying this, an experience that I've had with
15 another collaborative in a FERC process, the FERC
16 hydro power licensing process, where the first thing
17 the collaborative produced was its milestone case
18 schedule for progress. They produce a work plan and,
19 to some extent, that is a collaborative activity
20 itself, in terms of the folks involved in putting
21 that plan and schedule together, and provide that as
22 the first item of progress, if you will, to the
23 Commission for review. So they would give you a
24 schedule and a plan that would show their progress
25 over the course of time frame that we've allowed for

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1 them to get their work done, and one of the
2 advantages of doing it that way, putting together the
3 plan and the schedule, is in itself a collaborative
4 process in that sense.

5 CHAIRWOMAN SHOWALTER: I would guess that
6 one of the first items on the agenda of the work plan
7 would be to agree on criteria by which the program
8 would be analyzed, and we've talked about many of
9 them today, costs and benefits or potential costs and
10 potential benefits.

11 I'm not sure I heard mentioned the
12 potential benefit of a reduction in the clearing
13 price of peak-hour energy on the hypothesis, once
14 again, that if peaks are shifted, that the net demand
15 for energy in the region, as opposed to for Puget's
16 customers, is reduced, and that that could have the
17 effect of a reduction on the clearing price.

18 And I'm posing all of this as I have,
19 hypothesis, but do the panelists have any objection
20 to testing that hypothesis and using that as one of
21 the criteria by which the program is judged?

22 MR. LAZAR: I think not only would we have
23 no objection, we virtually anticipated that actually
24 in the -- in what we've submitted to you. Because
25 one of the things that we have agreed to look at is

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1 alternatives to TOU pricing, such as critical peak
2 pricing. This is a concept that came up in the
3 collaborative of instead of having a one-cent
4 differential that applies to all weekday hours, to
5 have a large differential that would appear during
6 those hours when there really is a problem in the
7 marketplace, and more of a realtime pricing concept.

8 And we are committed to looking at that,
9 and clearly the objective of critical peak pricing
10 would be to influence the market in the short run,
11 when things are getting out of hand. I certainly
12 would welcome adding that to our task. I think it's
13 part of what we intended to do and may not have
14 expressed very clearly.

15 CHAIRWOMAN SHOWALTER: I think I'm all
16 talked out.

17 COMMISSIONER HEMSTAD: I don't have any
18 more questions.

19 JUDGE MOSS: I'm reminded of a cartoon I
20 saw recently in which the student's hand is up and he
21 says, Ms. Edwards, Ms. Edwards, may I be excused? My
22 brain is full.

23 With that thought in mind, we thank the
24 witnesses for their testimony today, and the panel is
25 excused, subject to recall. Is there any other

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1 business we need to conduct before the end of the
2 evening? We'll be in recess until 9:30 in the
3 morning, Monday, the 17th.

4 (Proceedings adjourned at 5:35 p.m.)

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