

00301

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 AIR LIQUIDE AMERICA)
CORPORATION, AIR PRODUCTS AND)
4 CHEMICALS, INC., THE BOEING) Docket No. UE-001952
COMPANY, CNC CONTAINERS,) VOLUME IV
5 EQUILON ENTERPRISES, LLC,) Pages 301 to 685
GEORGIA-PACIFIC WEST, INC.,)
6 AND TESORO NORTHWEST CO.,)

7 Complainants,)
)
8 vs.)

9 PUGET SOUND ENERGY,)
)
10 Respondent.)

-----)

11 In the Matter of)
) Docket No. UE-001959
12 Petition of Puget Sound) VOLUME IV
Energy, Inc., for an Order) Pages 301 to 685
13 Reallocating Lost Revenues)
Related to any Reduction in)
14 the Schedule 48 or G-P)
Special Contract Rates,)
15 _____)

16 -----

17 PORTIONS DESIGNATED CONFIDENTIAL

18 -----

19

20 A Hearing in the above matter was held on
21 January 8, 2001, at 8:00 a.m., at 1300 South Evergreen
22 Park Drive Southwest, Olympia, Washington, before
23 Administrative Law Judge DENNIS MOSS and Chairwoman
24 MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD.
25 Joan E. Kinn, CCR, RPR
Court Reporter

00302

1 The parties were present as follows:

2

3 THE COMMISSION, by DONALD T. TROTTER and
4 ROBERT D. CEDARBAUM, Assistant Attorneys General, 1400
5 South Evergreen Park Drive Southwest, Olympia,
6 Washington 98504-0128.

7 PUGET SOUND ENERGY, INC., by STAN BERMAN and
8 TODD GLASS, Attorneys at Law, Heller Ehrman White &
9 McAuliffe, LLP, 701 Fifth Avenue, Suite 6100, Seattle,
10 Washington 98104, and by JAMES M. VAN NOSTRAND, Attorney
11 at Law, Stoel Rives, LLP, 600 University Street, Suite
12 3600, Seattle, Washington 98101.

13 THE PUBLIC, by SIMON J. FFITCH, Assistant
14 Attorney General, 900 Fourth Avenue, Suite 2000,
15 Seattle, Washington 98164-1012.

16 AIR LIQUIDE AMERICA CORPORATION, AIR PRODUCTS
17 AND CHEMICALS, INC., THE BOEING COMPANY, CNC CONTAINERS,
18 EQUILON ENTERPRISES, LLC, GEORGIA-PACIFIC WEST, INC.,
19 and TESORO NORTHWEST COMPANY, by BRADLEY VAN CLEVE and
20 by MELINDA DAVISON, Attorneys at Law, Davison Van Cleve,
21 P.C., 1300 Southwest Fifth Avenue, Suite 2915, Portland,
22 Oregon 97201 and by MICHAEL EARLY, Attorney at Law, 1300
23 S.W. 5th Ave., #1750, Portland, OR 97201.

24 BELLINGHAM COLD STORAGE COMPANY, by TRACI
25 GRUNDON, Attorney at Law, Davis Wright Tremaine, 1300
Southwest Fifth Avenue, Suite 2300, Portland, Oregon
97201.

PUBLIC UTILITY DISTRICT NUMBER 1 OF WHATCOM
COUNTY, by BRIAN WALTERS, 817 Rucker Avenue, Everett,
Washington 98201.

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS,
by FRANK D. PROCHASKA, Northeast Washington/Alaska Area
Representative, 3124 Grand Avenue, Everett, Washington
98201.

CITY OF ANACORTES, by IAN MUNCE, City
Attorney, P.O. Box 547, Anacortes, Washington 98221.

00303

1	-----	
2	INDEX OF EXAMINATION	
3	-----	
4	WITNESS:	PAGE:
5	HOWARD DEAN MAXWELL	
6	Direct Examination by Ms. Davison	353
7	Examination by Chairwoman Showalter	357
8	Direct Examination by Ms. Davison	358
9	Examination by Judge Moss	378

10	Cross-Examination by Mr. Trotter	380
11	Examination by Judge Moss	392
12	Cross-Examination by Mr. Trotter	394
13	Examination by Judge Moss	396
14	Cross-Examination by Mr. ffitich	397
15	Cross-Examination by Mr. Berman	399
16	Examination by Commissioner Hemstad	407
17	Examination by Chairwoman Showalter	408
18	Redirect Examination by Ms. Davison	419
19	Recross-Examination by Mr. Berman	420
20	MATTHEW GERARD FRANZ	
21	Direct Examination by Ms. Davison	422
22	Cross-Examination by Mr. Trotter	446
23	Cross-Examination by Mr. ffitich	454
24	Cross-Examination by Mr. Berman	464
25	Examination by Chairwoman Showalter	479

00304

1	Examination by Commissioner Hemstad	483
2	Examination by Chairwoman Showalter	485
3	RUSSELL CRAWFORD	
4	Direct Examination by Ms. Davison	488
5	Examination by Judge Moss	492
6	Direct Examination by Ms. Davison	494
7	Cross-Examination by Mr. Cedarbaum	502
8	Cross-Examination by Mr. ffitich	512
9	Cross-Examination by Mr. Cedarbaum	513
10	Cross-Examination by Mr. Berman	515
11	Examination by Chairwoman Showalter	533
12	Examination by Commissioner Hemstad	536
13	KENNETH DOUGLAS CANON	
14	Direct Examination by Mr. Van Cleve	548
15	Cross-Examination by Mr. ffitich	574
16	Cross-Examination by Mr. Berman	576
17	Examination by Chairwoman Showalter	610
18	Examination by Commissioner Hemstad	622
19	Examination by Judge Moss	627
20	Examination by Chairwoman Showalter	628
21	Examination by Commissioner Hemstad	629
22	Recross-Examination by Mr. Berman	631
23	Redirect Examination by Mr. Van Cleve	633
24	Examination by Chairwoman Showalter	636
25	Examination by Judge Moss	637

00305

1	DONALD W. SCHOENBECK	
2	Direct Examination by Mr. Van Cleve	644
3	CONFIDENTIAL TESTIMONY OF DONALD SCHOENBECK	
4	Direct Examination by Mr. Van Cleve	650
5	Examination by Commissioner Hemstad	653
6	Examination by Judge Moss	653
7	Examination by Chairwoman Showalter	654
8	Examination by Commissioner Hemstad	655
9	Direct Examination by Mr. Van Cleve	656
10	Examination by Judge Moss	657
11	Direct Examination by Mr. Van Cleve	658
12	Examination by Chairwoman Showalter	668

13	Direct Examination by Mr. Van Cleve	669
14	Examination by Chairwoman Showalter	678
15	Direct Examination by Mr. Van Cleve	680
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

00306

1	-----		
2	INDEX OF EXHIBITS		
3	-----		
4	EXHIBIT:	MARKED:	ADMITTED:
5	HOWARD DEAN MAXWELL		
6	101		357
7	102		367
8	103		368
9	104		369
10	105		362
11	106	397	397
12	107	412	413
13	108	412	414
14	MATTHEW GERARD FRANZ		
15	201		428
16	202		434
17	203	445	462
18	C-204	462	487
19	RUSSELL CRAWFORD		
20	C-301		491
21	302	510	511
22	303	514	515
23	C-304	524	526
24	KENNETH DOUGLAS CANON		
25	501		562

00307

1	502		562
2	503		565
3	504		567
4	505		569
5	506	Reidentified as Bench Request 10 Response	
6	508		571
7	511	543	565
8	512	576	576
9	513	599	605
10	514	601	605
11	515	604	610
12			
13	Records Requisition 1	389	
14	Records Requisition 2	418	
15	Records Requisition 3	420	

16 Records Requisition 4 644
17
18
19
20
21
22
23
24
25

00308

1 P R O C E E D I N G S
2 JUDGE MOSS: Good morning everyone. My name
3 is Dennis Moss. I am an Administrative Law Judge for
4 the Washington Utilities and Transportation Commission.
5 Later this morning, Commissioner Hemstad and Chairwoman
6 Showalter will be joining me on the Bench. I will be
7 the presiding officer in the proceeding and will take
8 care of its conduct and most of the evidentiary rulings,
9 and I will talk a little bit more about that in a
10 minute.
11 We're going to go back into the full range of
12 formalities this morning. We have been taking some
13 shortcut methods in some of our prior proceedings, but
14 we will take full appearances here in a minute.
15 And I am now going to note for the record
16 that we are convened in the matter styled Air Liquide
17 America Corporation et al. against Puget Sound Energy,
18 Inc., Docket Number UE-001952. That matter is
19 consolidated with the petition of Puget Sound Energy,
20 Inc. for an order reallocating lost revenues related to
21 any reduction in the Schedule 48 or G-P Special Contract
22 rates, Docket Number UE-001959.
23 I will just quickly run through our basic
24 agenda for the day and then return to the first point.
25 We will take appearances. I have a few preliminary

00309

1 matters to discuss with you. We will talk about witness
2 order, exhibits. We will determine an order of
3 examination for counsel to follow throughout the
4 hearing. I have a few words to say about objections. I
5 want to talk a little bit about recesses. And we will
6 take up any other housekeeping matters that parties wish
7 to bring to my attention. We have a couple of motions
8 pending; we will take care of those. And then we will
9 get into our direct and cross-examination of witnesses.
10 And we will take a break between those two items so that
11 we can get the commissioners into the room.
12 Let's begin with our appearances, and we will
13 start with the Complainant.
14 MS. DAVISON: Good morning, Your Honor. This
15 is Melinda Davison. I'm here on behalf of Complainants
16 with the law firm of Davison Van Cleve. Do you want me
17 to give my full --
18 JUDGE MOSS: Yeah, full appearance today,

19 please.

20 MS. DAVISON: Okay. 1300 Southwest Fifth
21 Avenue, Suite 2915, Portland, Oregon 97201. Our fax is
22 (503) 241-8160. Our E-mail is mail@dvclaw.com. Also
23 with me today is Brad Van Cleve from the same firm and
24 the same address and Michael Early from the law firm of
25 Michael Early, and he is also at 1300 Southwest Fifth,

00310

1 Suite 1750, Portland, Oregon 97201. His phone number is
2 (503) 402-8705. His fax number is (503) 402-8882. And
3 his E-mail is michaelearly@earthlink.net. Thank you.

4 JUDGE MOSS: Thank you very much.

5 For Respondent.

6 MR. BERMAN: Hello, Your Honor. My name is
7 Stan Berman with the law firm of Heller Ehrman White &
8 McAuliffe representing Puget Sound Energy. My address
9 is 701 Fifth Avenue, Suite 6100, Seattle, Washington
10 98104. My phone number is (206) 389-4276. My fax
11 number is (206) 447-0849. My E-mail address is
12 sberman@hewm.com. Also with me today from the law firm
13 of Heller Ehrman is Todd Glass, G-L-A-S-S. And I will
14 let my co-counsel give his own appearance for the
15 record.

16 MR. VAN NOSTRAND: Thank you, Your Honor,
17 also representing Puget Sound Energy, James M. Van
18 Nostrand with the law firm of Stoel Rives, LLP, 600
19 University Street, Suite 3600, Seattle, 98101, telephone
20 (206) 386-7665, fax (206) 386-7500, and E-mail address
21 jmvannostrand@stoel.com.

22 JUDGE MOSS: Thank you.

23 I'm going to go through the interveners and
24 see if we have representatives present for the
25 interveners, and then I will turn to other counsel who

00311

1 are up front.

2 Do we have anyone participating today for the
3 Association of Western Pulp and Paper Workers?

4 Would you come forward, please, state your
5 name loudly and address and so forth so the reporter can
6 get it down on the record.

7 MR. PROCHASKA: Frank Prochaska,
8 P-R-O-C-H-A-S-K-A, 3124 Grand Avenue in Everett,
9 Washington 98201, office phone, voice, and fax area code
10 (425) 339-6196, and E-mail address
11 fprochas@premier1.net.

12 JUDGE MOSS: Mr. Prochaska, you might want to
13 sit up front here in case the situation should arise
14 when you want to participate. And you're not an
15 attorney; is that correct?

16 MR. PROCHASKA: Representing pro se, yes.

17 JUDGE MOSS: Thank you.

18 How about for Whatcom County Public Utility
19 District Number 1.

20 MR. WALTERS: Yes, Your Honor, Brian Walters,
21 address is 817 Rucker Avenue, Everett, Washington 98201.

22 Phone number area code (425) 303-8770, fax number the
23 same, E-mail address dbrianw@cs.com.
24 JUDGE MOSS: And are you an attorney, sir?
25 MR. WALTERS: No, I am not.

00312

1 JUDGE MOSS: Thank you.
2 Bellingham Cold Storage? Do we have anyone
3 on the bridge line for Bellingham Cold Storage?
4 All right, we did arrange that parties could
5 monitor the proceedings via the bridge line but not
6 participate, so at this moment at least we don't have
7 anybody for Bellingham.
8 Public Counsel.
9 MR. FFITCH: Morning, Your Honor, thank you.
10 Simon ffitich, Assistant Attorney General, Public Counsel
11 Section, Washington Attorney General's Office, 900
12 Fourth Avenue, Suite 2000, Seattle, Washington 98164.
13 Phone number is (206) 389-2055. Do you need
14 additional --
15 JUDGE MOSS: Yeah, just the full appearance
16 that we normally take.
17 MR. FFITCH: Fax number (206) 389-2058,
18 E-mail simonf@atg.wa.gov.
19 JUDGE MOSS: And, Mr. ffitich, my notes
20 reflect Mr. Cromwell's appearance in this, and I'm not
21 positive he actually has entered an appearance. Is it
22 the intention that he would have an appearance on the
23 record?
24 MR. FFITCH: It wouldn't be necessary, Your
25 Honor. I think we initially were at a prehearing

00313

1 conference because we weren't sure of the timings of the
2 hearings, but at this point, my appearance would be
3 adequate for our office.
4 JUDGE MOSS: For staff.
5 MR. CEDARBAUM: Thank you, Your Honor. My
6 name is Robert Cedarbaum. Also appearing with me is
7 Donald Trotter, we are assistant attorneys general. Our
8 business address is the Heritage Plaza Building, 1400
9 South Evergreen Park Drive Southwest, Olympia,
10 Washington 98504. My telephone number is area code
11 (360) 664-1188. Mr. Trotter's phone number is area code
12 (360) 664-1189. Our fax number is (360) 586-5522. My
13 E-mail is bcedarba@wutc.wa.gov. Mr. Trotter's E-mail is
14 dtrotter@wutc.wa.gov.
15 JUDGE MOSS: Thank you very much.
16 Does that complete our appearances for the
17 record?
18 Yes, sir.
19 MR. MUNCE: Your Honor, Ian Munce, attorney
20 for the City of Anacortes, I-A-N, M-U-N-C-E, P.O. Box
21 547, Anacortes, Washington 98221. My E-mail address is
22 simply ian@cityofanacortes.org.
23 JUDGE MOSS: All right. And, of course,
24 you're named among the Complainants.

25

MR. MUNCE: Yes, sir.

00314

1 JUDGE MOSS: So you will be represented today
2 by Ms. Davison and colleagues?

3 MR. MUNCE: Yes, sir.

4 JUDGE MOSS: Any other appearances we need to
5 note for the record?

6 All right, I have a couple of preliminary
7 matters I want to discuss. Most of you I recognize, and
8 so I know you're quite familiar with the administrative
9 hearing process, but for those who have not participated
10 in this sort of thing before, I just want to make a
11 couple of comments.

12 The administrative hearing process is a
13 formal hearing process. It is much like a civil trial,
14 if you have perhaps observed those in your career. A
15 key difference is that the Bench itself may take a more
16 active role in ensuring that there is a full and
17 complete record on the issues at hand that will support
18 a decision by the Commission. The commissioners may ask
19 questions from time to time, as may I, when witnesses
20 are on the stand. Counsel will be given an opportunity,
21 of course, to recross or redirect, whatever the correct
22 terminology would be, with respect to questions from the
23 Bench just as they would with respect to questions by
24 other counsel.

25 Another distinction between the practice in

00315

1 administrative fora and civil courts is that we are a
2 little bit more relaxed on certain formalities and
3 rules. I'm going to say a little bit more about that in
4 connection with the rules of evidence in just a moment.

5 I would like to compliment the parties
6 because I have observed that they have undertaken an
7 exhaustive preparation to the goal of ensuring a fair
8 and efficient hearing process today and possibly
9 tomorrow. I am sure that you all will continue to
10 exhibit the highest order of professionalism to help us
11 achieve that goal. You are all experienced counsel. I
12 am going to give you a few reminders here on some points
13 for practice in the hearing room to help keep those
14 things in the forefront of our minds as we go forward.

15 We have established a witness order.
16 Everybody should have received a copy of the witness
17 list. We will, of course, be hearing Complainants'
18 witnesses first starting with Mr. Maxwell, Mayor Maxwell
19 I should say, and we will proceed through the
20 Complainants' witnesses. Staff's witnesses will be
21 next, Public Counsel's witness will follow, and then
22 Respondent's witness will be last.

23 Now as far as the exhibits are concerned, you
24 all are intimately familiar with the preparation we have
25 been having in that regard since yesterday. Everybody

00316

1 has now provided their exhibits to be used on direct
2 examination and also exhibits not sponsored by any
3 witness. I have prepared exhibit lists with numbers.
4 You will have noticed, if you have reviewed those, that
5 each witness is given a unique number, and then the
6 exhibits themselves are numbered serially beginning with
7 1 after the unique number. So we have, I think, a good
8 organization that will work for us. The
9 cross-examination exhibits will simply pick up numbering
10 for each individual witness wherever we leave off with
11 direct examination exhibits.

12 I realize it is probably an impossible goal
13 in a hearing of this size and with this many exhibits
14 and witnesses, to the extent possible, however, if a
15 particular document has been introduced with a
16 particular witness, I would ask that you try to avoid
17 reintroducing it. We don't need multiple copies. I
18 know we have already got some of that, and we will try
19 to work with that as we go along and eliminate the
20 duplication. It will result in a better record and
21 probably a better referenced order ultimately if we
22 simply have the document in once instead of multiple
23 times.

24 I will refer you back to the notice of
25 hearing guidelines dated January 5, 2001. It's a two

00317

1 page exhibit. Most of that has already been taken care
2 of in that you have submitted most of your exhibits. I
3 remind you for your cross-examination exhibits, the same
4 principles apply. Those do need to be 3-hole punched
5 before they're handed up to the Bench. We maintain our
6 hearing records in 3-ring binders, and that's an
7 essential step for us, so do that. If there's not a
8 3-hole punch in the room, we will arrange for one in
9 case you have a need in that regard.

10 If you find that you have inadequate copies
11 of any exhibits, and that means that you need to have
12 copies sufficient to distribute to all counsel, to the
13 witness, one for yourself, of course, and five copies
14 for the Bench. If you find you don't have enough, you
15 can go downstairs to the records center, and they will
16 make copies for you. They will charge you for that, but
17 at least you will be able to get them promptly.

18 I will point out that on the direct
19 examination exhibits, I want you to furnish your witness
20 with a complete set when the witness takes the stand.
21 And I hope those are appropriately tabbed so the witness
22 can easily find the exhibits you refer to during the
23 course of your questioning.

24 On cross-examination exhibits, counsel need
25 not ask permission to approach the witness or the Bench.

00318

1 I want you to make this run smoothly and efficiently.
2 Just furnish the exhibit, give it first to the counsel
3 whose witness it is, to other counsel, to the Bench,

4 and, of course, to the witness.

5 If the exhibit is confidential or highly
6 confidential under our protective order, you should
7 point that out before giving it to the witness. Let the
8 Bench know, and if we have to make special arrangements
9 for hearing about such an exhibit, then we will make
10 those arrangements at the time.

11 Another point on that is we did not have an
12 opportunity to go through the entire set of exhibits and
13 determine which of those are premarked as confidential
14 or highly confidential, so you will notice that your
15 exhibit lists do not reflect that designation. You will
16 need to let me know as we go along or through the course
17 of hearing if you've got confidential matters that need
18 to be noted. We will add a C for confidential or an HC
19 for highly confidential on the exhibit list, and that
20 will guide counsel and the Bench as to the handling of
21 that material in the future.

22 Let me ask the preference of counsel with
23 respect to the exhibits not sponsored by any witness.
24 Those are, of course, that's another departure from
25 civil practice in that we do allow that sort of thing.

00319

1 We could have those in at the beginning subject to
2 objections, or we could wait until the end of each
3 party's presentation and do them then. Do counsel have
4 a preference in that regard?

5 Mr. Van Cleve.

6 MR. VAN CLEVE: Your Honor, I think that we
7 just received the company's documents a few minutes ago,
8 so we haven't had a chance to look at them.

9 JUDGE MOSS: Well, I meant at the beginning
10 of the case in chief or the conclusion of the case in
11 chief, so we don't really need to get into that. I just
12 want to know generally how you want to do it.

13 MR. VAN CLEVE: Yeah, how about at the
14 conclusion so we can see whether any objections develop
15 during the case.

16 JUDGE MOSS: All right.

17 Does that work all right for you, Mr. Berman?

18 MR. BERMAN: Yes, Your Honor.

19 JUDGE MOSS: Okay, fine.

20 Anybody else?

21 MR. CEDARBAUM: That's fine.

22 JUDGE MOSS: Okay, that's what we'll do then,
23 we'll take those up at the conclusion of each party's
24 case in chief.

25 Let's talk a minute about the order of

00320

1 examination. Complainants will be presenting their case
2 in chief first.

3 And in terms of the cross-examination,
4 Mr. Berman, is it your preference that PSE conduct its
5 cross-examination immediately following the direct
6 examination with other counsel then to follow you, or

7 would you prefer to go last or some other order?
8 MR. BERMAN: My preference would be to go
9 last, Your Honor.
10 JUDGE MOSS: Okay.
11 MR. CEDARBAUM: Your Honor.
12 JUDGE MOSS: Yes, sir.
13 MR. CEDARBAUM: Our preference would be for
14 the company to go first since they are the Respondent in
15 the matter, especially with respect to the Complainants'
16 witnesses. It seems to make more sense for them to go
17 first, since I would assume that would cut down on the
18 cross-examination of other parties as well.
19 JUDGE MOSS: Well, it might have that effect,
20 Mr. Berman, but I am going to give deference to your
21 preferences in this regard since you are the Respondent
22 in this proceeding. I had thought you would want to go
23 first, but if you want to go last, that's fine.
24 MR. BERMAN: I prefer to go last, Your Honor.
25 JUDGE MOSS: All right, then I'm going to

00321

1 give deference to the Respondent's wishes in that
2 regard.
3 As between Staff and Public Counsel, do you
4 all have a preference which of you goes first? We're
5 going to follow the same order every time, so.
6 MR. CEDARBAUM: I don't have a preference,
7 but I'm happy to go first.
8 JUDGE MOSS: All right. Then staff will go
9 first, Public Counsel.
10 Are any of the interveners planning to
11 conduct cross-examination today?
12 All right, good, that will save some time,
13 thank you. And I think that we can expect that things
14 will be thoroughly covered among Staff, Public Counsel,
15 and PSE.
16 Now Staff's witnesses are next. What order
17 of cross-examination would the parties prefer there?
18 And we have it gets a little complicated because Staff
19 is in some ways adverse and in some ways not adverse,
20 so. But I would expect that Staff would have the
21 opportunity to cross-examine -- I'm sorry, we're talking
22 about staff's, of course you will be examining
23 Complainants' witnesses. I'm just thinking out loud,
24 are Complainants adverse to Staff? I suppose on the
25 question of emergency.

00322

1 MS. DAVISON: Yes, we are adverse to Staff on
2 the question of emergency, and certainly there may be
3 some other issues that we're not in agreement with Staff
4 on.
5 JUDGE MOSS: All right. So you would want an
6 opportunity to cross-examine staff's witnesses as to
7 those points where you are adverse?
8 MS. DAVISON: Perhaps, yes.
9 JUDGE MOSS: All right. Would you prefer to

10 go first?

11 MS. DAVISON: I am flexible, Your Honor, so
12 if Mr. Berman --

13 JUDGE MOSS: All right.

14 How about PSE, do you have a preference?

15 MR. BERMAN: Your Honor, this depends to some
16 extent on what happens with the motion to strike. If
17 the motion to strike by PSE is granted, then I would
18 expect that we're not adverse to Staff, because we are
19 in agreement with Staff that there is no emergency, that
20 there is no right to interim relief for an emergency.
21 And so I would think that given the time that's allowed
22 here, we would not be having -- we would not be wasting
23 our time with friendly cross-examination.

24 JUDGE MOSS: No, we won't be allowing
25 friendly cross-examination, so we certainly won't be

00323

1 wasting our time with it. As far as the motion, I'm
2 going to get to that in a minute, but let's operate
3 under the assumption that your motion is denied.

4 MR. BERMAN: With that assumption, Your
5 Honor, I think that I would prefer to go last again.

6 JUDGE MOSS: All right. Then to the extent
7 we have cross-examination of staff's witnesses, I will
8 ask the Complainants to go first.

9 I'm just thinking here, Mr. ffitch, I don't
10 believe that you would be adverse to Staff in any way,
11 would you?

12 MR. FFITCH: We don't have any
13 cross-examination for Staff, no.

14 JUDGE MOSS: Okay. So it would be
15 Complainants and PSE then as far as the staff's
16 witnesses. Now for Public Counsel's witnesses, why
17 don't we follow the same order to the extent of any
18 adversity.

19 And then for PSE's witnesses, Mr. Van Cleve,
20 Ms. Davison, do you all prefer to go first or last with
21 respect to the PSE witness?

22 MS. DAVISON: We would prefer to go first,
23 Your Honor.

24 JUDGE MOSS: All right, Complainants will go
25 first, and why don't we just follow the order of Staff

00324

1 and Public Counsel or the other way around. I don't
2 really care, but I've got it down as Staff and Public
3 Counsel, so we will do it that way.

4 All right, any questions about the order of
5 examination?

6 All right, on objections, we're going to
7 follow a practice in this hearing that I have not seen
8 followed at the Commission before, but I have seen in
9 other fora, and it works very well. And I'm going to
10 try it here, and if it works, then we will follow it
11 throughout the hearing, and if it doesn't work, then we
12 will shift gears. The practice is that during the

13 course of a question, if counsel recognizes that they
14 may have an objection to the question, they should
15 simply rise at their seat. That is a signal, not only
16 to the counsel who is posing the question, but also to
17 the witness, to the Bench, and, of course, to all
18 assembled that an objection is to be stated. The
19 witness, and I will remind the witnesses of this as they
20 take the stand, should, of course, not answer until I
21 recognize counsel and hear the objection. Because of
22 the need to use the microphones, once I recognize you, I
23 will ask that you go ahead and sit back down, and, of
24 course, that way you can also refer to your notes but so
25 that you can use the microphone in stating your

00325

1 objection.
2 What I want you to do when you state your
3 objection, and I mentioned this in a conversation that
4 some of us, if not all of us, had the other day on the
5 telephone, is I want you to state the basis for your
6 objection in the terms that should be familiar to you in
7 terms of the rules of evidence. For example, tell me
8 that your objection is one of relevance, one of lack of
9 foundation, that it's friendly cross, or what have you.
10 I will let you know if we need to hear any argument on
11 the point. If I recognize it as friendly cross, for
12 example, I will simply rule on it, and we don't need to
13 hear any argument. That will save time. If it's one of
14 relevance, I may very well want to hear some argument on
15 why counsel posing the question believes it to be
16 irrelevant and why counsel objecting believes it is not
17 relevant. And in that type of objection, I may even
18 pause and confer with the commissioners before ruling.
19 So we will handle these as they come up in the fashion
20 that I have described.
21 I want you all to remember as we go through
22 this that the rules of evidence are designed for jury
23 trials. The Commission is not bound by the civil rules
24 of evidence, although we do look to them for guidance.
25 Because those rules are designed for a different type of

00326

1 proceeding, we are a bit more relaxed in applying them
2 in administrative proceedings.
3 A principal example with which you are all
4 familiar is that we allow hearsay in administrative
5 proceedings. That is a rule that is followed so far as
6 I know throughout the United States and certainly at the
7 federal level. That doesn't mean that you can't make a
8 hearsay objection. Typically if you just want that
9 noted for the record, I will simply rule that it is
10 noted, and that way you will have the record marked in
11 that regard for later reference, and, of course, we will
12 have it noted as well. You don't need to worry about
13 it. We recognize hearsay when we read the transcripts
14 whether or not the objection is noted, and we do handle
15 it appropriately by giving it the weight to which its

16 reliability affords weight.
17 So having said that, if you believe that the
18 hearsay is of such a quality that it has no indices of
19 reliability, then you may make that argument, that it
20 should be excluded from the record, should not be
21 admitted on that basis. So there might be a case where
22 you have embedded hearsay, third or fourth level
23 hearsay, something like that where you feel like it
24 really is just a little too far out and should be
25 excluded, and we will consider that objection if you

00327

1 choose to make it. But that should be, I would think, a
2 rare situation.

3 I want to make a comment about direct
4 examination. Some of you may have at some point in your
5 career or may currently engage in civil trial practice
6 and therefore be familiar with the difficulties, if you
7 will, the challenges of direct examination. Most
8 attorneys in my experience who have limited their
9 practice to administrative adjudication have very
10 limited experience, if any, with direct examination.
11 Typically the direct evidence in these proceedings is
12 prefiled, and examination is limited to
13 cross-examination. The key distinction, of course, is
14 that cross-examination is typically conducted more or
15 less exclusively by the use of leading questions,
16 whereas direct examination is not conducted by the use
17 of leading questions.

18 Now having said that and having prefaced it
19 with some comments about relaxed rules, the complexity
20 of the subject matter that we deal with at the
21 Washington Utilities and Transportation Commission is
22 such that I anticipate that some leading will be
23 necessary to keep things moving along, and so I don't --
24 I would prefer if counsel not rise and object to leading
25 questions every time they come up. If you find that a

00328

1 question if you think it's excessively leading or if you
2 believe that counsel is making excessive use of the
3 leading technique, then it would be appropriate for you
4 to rise and object, and we will make appropriate rulings
5 and perhaps even instruct counsel, if necessary.

6 Let me add the caution for all of you that if
7 it is essentially counsel testifying, that testimony may
8 carry less weight in the ultimate deliberations than if
9 it is testimony coming spontaneously from the lips of
10 the witness. So you probably will find it to be in your
11 very best interests to use the non-leading format for
12 direct evidence.

13 On the subject of recesses, ask the Bench if
14 you require a recess at some point. I will ask you to
15 try to time those for those periods where we are having
16 a witness leaving the stand and another witness taking
17 the stand so that will be the least disruptive.
18 However, if you need a recess at some other point in the

19 hearing, bring it to my attention. Our court reporter
20 understands that she may interrupt at any time to let me
21 know that we need to take a brief recess for whatever
22 needs she may have.

23 Another word about our court reporter,
24 sometimes we tend to speak a little quickly, I know I
25 sometimes lapse into that myself. Sometimes we tend to

00329

1 speak a little softly, I seldom lapse into that, but I
2 know from experience that some of you do. I will ask
3 you to use the microphones, please. Pull them up close
4 and use them, share them with co-counsel or fellow
5 counsel as the need arises, and do keep your voice
6 elevated so that everyone can hear. Do try to moderate
7 the pace at which you speak so that the reporter can
8 keep up with you, and she will alert us if there is a
9 problem in that regard, and we will slow ourselves down.

10 I will remind any parties who are on the
11 teleconference bridge line, the purpose of that being
12 available today is monitoring only. Anyone who wishes
13 to participate must do so in person, and that was
14 noticed to the parties by previous notice entered a week
15 or so ago.

16 Now let me ask if there are other
17 housekeeping matters we need to cover before I go into
18 the motions.

19 Yes, ma'am.

20 MS. DAVISON: Thank you, Your Honor. I had
21 previously mentioned that Mr. Clancy would only be
22 available today because of surgery, and I was mistaken.
23 His surgery is not until Wednesday, so he is available
24 on both days. However, I did fail to neglect to mention
25 that Mr. Canon is available all day today, but only

00330

1 today. So those are my two points on I guess
2 housekeeping matters.

3 JUDGE MOSS: All right. Well, if we move a
4 lot more slowly than I anticipate, then we may need to
5 take Mr. Canon out of order to be sure to get him on
6 today, and we will do that.

7 MS. DAVISON: Thank you.

8 JUDGE MOSS: Anything else?

9 MR. FFITCH: Your Honor, Simon ffitch for
10 Public Counsel. First of all, we filed a response or an
11 answer to the motion to strike yesterday, PSE's motion
12 to strike. I have additional copies in the hearing room
13 if you would require them or if any person or party here
14 needs an additional copy. We did attempt service
15 yesterday.

16 Secondly, as we noted when we filed our
17 exhibits, two exhibits for Mr. Lazar, we believe those
18 exhibits are not confidential. However, we had
19 previously designated similar information contained in
20 data responses as confidential, and I just wanted to
21 give other parties an opportunity to correct us if we

22 are mistaken in our analysis. So I wanted to just make
23 that statement for the record right now. And we had
24 suggested that those not be distributed beyond
25 signatories to the protective order until noon today so

00331

1 that we could hear from other parties if there was a
2 problem with that non-designation.

3 Third point I just wanted to make is that
4 Mr. Lazar is available for examination this week on any
5 given day but has requested that his examination take
6 place within one day. So I will be attempting to
7 advocate on his behalf in terms of scheduling to make
8 sure that he's on and off in one day.

9 JUDGE MOSS: All right, well, as we go along,
10 we will have a better idea of whether we should schedule
11 him for later today or tomorrow at some time. I fully
12 expect that we're going to require both days, and I want
13 to comment on a couple of points that you made. One
14 that you remind me of is the timing. I expect that we
15 will require most if not all of the two days, and
16 depending on where we are late this afternoon, we may
17 decide to continue into the evening hours. If we do
18 that, we will take a dinner break, keep everybody's
19 blood sugar up. So we will just play that by ear as we
20 go along and see where we stand.

21 We do have a couple of planned recesses
22 today. We will be breaking at about 11:45 for the
23 luncheon recess to accommodate one of the commissioner's
24 prior obligations. And at this point, I don't know if
25 that will be a one hour and 15 minute break or perhaps

00332

1 one hour and a half break. I will let you know when we
2 take a recess. As far as the evening recess is
3 concerned, I think we have a little flexibility there,
4 and we will determine that on the basis of where we are
5 with the witnesses. Tomorrow, I'm not certain, I know
6 we have a -- there will be a planned recess tomorrow
7 afternoon, but I forget the exact hour. I will have to
8 announce that tomorrow morning and let you know what
9 that is.

10 The other point that Mr. ffitch brings to
11 mind, if I haven't said something about it already, I
12 certainly intended to and I will say it now, on
13 confidential matters, as far as confidential documents
14 are concerned, I think I did mention something about
15 this earlier, we didn't have a chance to mark those on
16 the exhibit list. That means as we go through them, it
17 will be up to the counsel who are responsible for those
18 documents to bring it to our attention that they should
19 be afforded either confidential or highly confidential
20 handling as appropriate to the protective order.

21 And one further point on that, and I think I
22 have mentioned this in some of our prior get togethers,
23 to the extent you believe that you can waive
24 confidentiality at this point in time as the exhibit

25 comes in, I want to encourage you to do that, and I am

00333

1 particularly concerned about the depositions. Folks
2 have indicated that they want the depositions to come
3 in. I have reviewed the depositions, and I have tried
4 to review most everything so I have a good sense of
5 what's in the case. It does strike me that probably a
6 great deal of the confidential cover, if you will, for
7 the depositions can be eliminated. There may be a few
8 points in those depositions where parties would wish to
9 preserve confidentiality. We will either need to work
10 on that today, tomorrow, or afterwards to identify those
11 parts and just segregate them in that fashion.

12 Mr. Berman.

13 MR. BERMAN: Yes, Your Honor, I wanted to
14 note that on Wednesday of last week, Your Honor granted
15 motions to compel that were submitted by Puget Sound
16 Energy because of the incomplete responses by
17 Complainants. You will recall that there was much
18 information that was claimed to be irrelevant or over
19 broad, and Your Honor advised various resolutions to the
20 various requests and ordered the Complainants to produce
21 information.

22 We have not yet received the responses to all
23 of those requests. And so to the extent Your Honor said
24 earlier today that you are expecting this to be a full,
25 fair, and efficient hearing, Puget Sound Energy

00334

1 disagrees. We have been provided inadequate information
2 about the Complainants, and we think that that's
3 inappropriate and that the Complainants should be
4 subject to whatever sanctions are appropriate for their
5 failure to provide the discovery.

6 JUDGE MOSS: All right, well, we will
7 probably want to take that up in the form of a motion at
8 some point, and I think it would be best if the
9 commissioners hear that, so we will put that off. I'm
10 sure you will bring it back to my attention. I will
11 probably overlook it, so I will count on you to do that.

12 If there are other similar disputes that
13 parties have between or among themselves, then similarly
14 I would expect them to raise those points by oral
15 motion, and we will set aside some time to do that today
16 or tomorrow and hear that.

17 All right, Mr. Cedarbaum.

18 MR. CEDARBAUM: I wanted to go back to some
19 housekeeping matters.

20 JUDGE MOSS: Sure.

21 MR. CEDARBAUM: I guess I have three quick
22 points. The first is looking at the exhibit list for
23 the Bench requests, I noticed that the Commission has
24 marked Exhibit 12 as highly confidential. That, I
25 believe, is the November financial reporting package,

00335

1 which was declassified, so it's now only just
2 confidential.

3 JUDGE MOSS: You are correct, and what you
4 see on that exhibit list reflects the fact that it was
5 prepared quite early before that motion was resolved,
6 and I simply did not go back and edit it. So counsel
7 may edit their own copies. That particular exhibit
8 bears the confidential designation, not the highly
9 confidential designation, consistent with the
10 Commission's ruling on that point.

11 MR. BERMAN: Your Honor, on that point, I
12 would note that pursuant to the protective order, if
13 there is a challenge to a designation, that the
14 challenged designation remains for ten days to allow an
15 opportunity for appeal. And I have asked the company if
16 it's willing to waive that ten day period for appeal. I
17 have not yet gotten a response to that. And so for the
18 time being, I have to insist that we maintain the
19 confidentiality at the level that we initially
20 designated it.

21 JUDGE MOSS: All right, thank you for
22 reminding me of that point in the protective order.

23 Ms. Davison.

24 MS. DAVISON: Your Honor, with all due
25 respect, that is not our reading of the protective

00336

1 order. We believe that the ten day requirement applies
2 when someone seeks to have something designated as
3 confidential and the Commission determines that there
4 will be no confidentiality of that particular document,
5 then the ten day requirement kicks in. It's our reading
6 of the protective order that when someone has designated
7 highly confidential, it then goes into a confidential
8 level of protection, which the Commission specifically
9 ruled in this instance was sufficient protection for
10 PSE, that the ten day requirement does not apply.

11 JUDGE MOSS: All right. Anybody else want to
12 be heard on this point?

13 MR. CEDARBAUM: Your Honor, not on the legal
14 point, but I would only indicate that based on the
15 Commission's order declassifying that document from
16 highly confidential to confidential, we submitted two
17 Staff exhibits, DLL-1 and 3, assuming that that
18 information was only confidential. If it remains highly
19 confidential, then we need to know that so we can
20 retrieve that document from the people who shouldn't
21 have it.

22 JUDGE MOSS: All right. Well, one of the
23 advantages of having all of you sharp counsel before me
24 is that you can remind me of things that I haven't
25 focused on in a while. I haven't looked at the

00337

1 protective order in a few days. I believe Ms. Davison's
2 reading of it is correct, Mr. Berman, that the idea
3 behind that principle, in fact, is that we have the

4 confidential designation in the conduct of a hearing,
5 which limits the distribution of the document to the
6 indicated parties for purposes of adjudication. The ten
7 day rule is actually in there to provide some symmetry
8 with the public records rule so that the document does
9 not become public, it does not become disseminated
10 beyond those who are entitled to look at it in the
11 conduct of the adjudication, and that is my recollection
12 and reading of the protective order, which was drafted
13 quite some time ago, but I believe that is correct, so
14 that would be the ruling.

15 MR. BERMAN: Your Honor, if I might ask, if
16 that's the reading of the rule, does that mean that
17 there's no right to review, that is if something is
18 designated as highly confidential and a ruling is made
19 that it should be disseminated, if you're saying that
20 there's no time available to appeal that decision, then
21 the information can be disseminated to people who would
22 not otherwise have had access to the information, and
23 there's no recourse available whatsoever. I don't think
24 that's consistent with the law, that there be no
25 recourse whatsoever in the case of a situation where the

00338

1 company believes that certain documents are entitled to
2 confidential protection of a certain order and where an
3 adverse ruling has been entered.

4 I would note that it was the Complainants who
5 asked that the highly confidential protective order with
6 the terms that are spelled out there be entered here.
7 They proposed the form of the order. We frankly would
8 have proposed a somewhat different form to the order if
9 we were proposing it. But in light of the fact that
10 they proposed an order, they proposed it. But given
11 that they proposed an order, we think it's appropriate
12 that we get the protections of that order, which say
13 that there will be an opportunity for review.

14 JUDGE MOSS: Okay, well, that's where we
15 differ, Mr. Berman. I'm reading the order differently,
16 and it maintains its status as confidential, however, so
17 it is limited to those who have signed the appropriate
18 papers certifying that they will comply with the
19 protective order and what have you, so that is the way
20 it is written. And perhaps in the future there may be
21 some need to modify that, or parties may wish to modify
22 it or propose to modify it in future proceedings. But
23 it is a more or less standard form of protective order
24 that we use and have used for some time, with good
25 success I think.

00339

1 MR. CEDARBAUM: Your Honor, I'm sorry to
2 interrupt, I have two other housekeeping matters.

3 JUDGE MOSS: You're not interrupting,
4 Mr. Cedarbaum, that's where we are, and I want to hear
5 them.

6 MR. CEDARBAUM: The second point was I think

7 we are assuming for purposes of cross-examination that
8 the deposition exhibits in their entirety, whether
9 confidential or not, will become part of the record for
10 all witnesses that were deposed. Is that a correct
11 assumption?

12 JUDGE MOSS: It's my understanding that that
13 is what the parties wish, and I think I previously
14 indicated that we would do that and we wouldn't worry
15 about the five day notice rule and the other things that
16 sometimes govern the use of depositions. Now having
17 said that, that does not mean that parties are thereby
18 waiving their opportunity for cross-examination. If you
19 wish to conduct a cross-examination in the traditional
20 manner, then you certainly should do that, and the
21 deposition is just an exhibit. But on the other hand,
22 if you feel like you've got everything you need in the
23 record in that regard, then you can do that.

24 MR. CEDARBAUM: That was one of my points. I
25 just wanted to confirm that the admission of the

00340

1 deposition exhibits were both for witnesses that will be
2 subject to direct exam during these hearings and
3 witnesses who have not been designated as direct exam
4 witnesses.

5 JUDGE MOSS: It's my understanding you all
6 wanted all the depositions in. If I'm incorrect, let me
7 know.

8 MR. BERMAN: Your Honor, we have not offered
9 the depositions of Mr. Schoenbeck. There were two
10 depositions of Mr. Schoenbeck. The first one was kind
11 of a null deposition because Mr. Schoenbeck showed up
12 and said he had nothing to say. The second deposition
13 lasted longer, but it was also the case that
14 Mr. Schoenbeck still had not formulated his opinions.
15 He had merely done various analyses. We asked a lot of
16 questions about what he had looked at and what he had
17 not.

18 We frankly have no idea whatsoever given the
19 way the proceeding has gone what analyses he will be
20 presenting today, and we don't want to offer into
21 evidence his descriptions in the deposition of some
22 analyses that may bear nothing whatsoever to what
23 actually shows up on the stand. In that regard, we, of
24 course, would reserve our right to use the deposition
25 for impeachment purposes, but we are not offering that

00341

1 deposition.

2 JUDGE MOSS: Okay, then that's fine.

3 Is anybody else not -- are you offering
4 Gaines?

5 MS. DAVISON: Your Honor, yes, we are filing
6 a -- we had made a Federal Express filing that should
7 arrive this morning to the Commission to offer the full
8 transcript and exhibits of Mr. Gaines. Also, Your
9 Honor, we would like to offer both transcripts of

10 Mr. Schoenbeck.

11 JUDGE MOSS: Well, we will take that up when
12 Mr. Schoenbeck is on the stand and probably have
13 argument on it. I would anticipate that based on what I
14 have heard.

15 MR. CEDARBAUM: Third -- I thought they were
16 housekeeping matters.

17 JUDGE MOSS: They sometimes provide
18 opportunities that we don't anticipate, don't they,
19 Mr. Cedarbaum.

20 MR. CEDARBAUM: The third point is that
21 Mr. Trotter and I will be dividing responsibilities with
22 respect to the cross-examination of Complainant and
23 Company witnesses based on the depositions that we were
24 able to -- how we divided up the depositions, and we
25 will let you know each time that those come up. With

00342

1 respect to that also, we have essentially divided the
2 workload in this case between myself handling emergency
3 type issues and Mr. Trotter handling remedy type issues.
4 So in that respect, Mr. Trotter will be the one to argue
5 the Staff's position on the Company's motion to strike
6 the Staff and Public Counsel's rate cap proposal.

7 JUDGE MOSS: All right.

8 MR. CEDARBAUM: And any other matters that
9 might come up into either one of those categories.

10 JUDGE MOSS: I have no difficulty whatsoever
11 with multiple counsel participating for any given party,
12 subject to the caveat that it's one at a time, no tag
13 team on a witness. And the same is true with respect to
14 objections, only one counsel, all right. But as far as
15 sharing the workload among witnesses, that's fine.

16 MR. CEDARBAUM: And just a final point on
17 that point is that when we get to the Staff case, I will
18 be the attorney presenting Ms. Linnenbrink, and
19 Mr. Trotter will present Mr. Buckley.

20 JUDGE MOSS: That's fine.

21 All right, any further housekeeping matters
22 before we turn to the motions?

23 All right, I have before me Puget Sound
24 Energy, Inc.'s motion to strike joint proposal of
25 Commission Staff and Public Counsel. With respect to

00343

1 that, I have Complainant's response to PSE's motion to
2 strike joint proposal of Commission Staff and Public
3 Counsel. And to shorten things a little bit, I have
4 Public Counsel's answer to the motion, and I also had a
5 -- I received an E-mail, Mr. Cedarbaum, from you. I
6 assume you copied all parties on that?

7 MR. CEDARBAUM: Yes, I did, Your Honor.

8 JUDGE MOSS: Okay, and that simply indicated
9 a couple of points that you anticipated that you would
10 want to have oral argument on today should the
11 Commission have any need for oral argument on the
12 motion. Because of the importance of the motion, I took

13 it up with the commissioners yesterday, along with the
14 responses that we had including your E-mail, which is
15 why I wanted to make sure everyone had seen it. The
16 commissioners have determined on the basis of the
17 written pleadings that the motion to strike should be
18 denied.

19 And the reason is that although it is true
20 Staff has taken the position through its prehearing
21 brief that there is no emergency here but it has
22 nevertheless advanced this proposal, that does not limit
23 the Commission's consideration of the proposal in the
24 event the Commission should find that at the conclusion
25 of the hearing on the basis of the evidence presented

00344

1 that such an emergency as has been pled does, in fact,
2 exist. In other words, it is one among several possible
3 remedies that should be considered at least in the event
4 that ruling is made.

5 I will remark further that it will have some
6 relevance if we go into a phase two, it will have some
7 bearing on that. And, of course, we would anticipate
8 further process in connection with that.

9 As to whether PSE will want some further
10 opportunity to present evidence on the point as we get
11 to the end, that probably will turn on how the question
12 of emergency comes out, because certainly that
13 opportunity will eventuate if the conclusion is that
14 there is no emergency, PSE's opportunity I mean for
15 further rebuttal.

16 And in the opposite event, in the event it
17 comes out the Commission determines there is an
18 emergency, then we would certainly give PSE an
19 opportunity to argue that it should have a further
20 opportunity to address the proposal and any other
21 proposals that are made for remedy at that time.

22 So we want to -- we're not going to deny
23 anybody's rights or cut anybody's rights off. We're
24 certainly going to hear it fully and fairly. But for
25 present purposes, for purposes of presenting our

00345

1 witnesses in testimony, then the motion to strike is
2 denied.

3 The other motion I have before me is Public
4 Counsel's motion to compel response to Public Counsel
5 Data Request Number 2.

6 Now, Mr. ffitich, all I have is a copy of the
7 bare motion, and I understand there are attachments. I
8 haven't had an opportunity to look at those. You said
9 you had some copies with you today.

10 MR. FFITCH: Yes, Your Honor.

11 JUDGE MOSS: Why don't you just hand one up
12 to the Bench, and if other counsel need them, indicate
13 to Mr. ffitich, and he will furnish you with them.

14 MR. FFITCH: I apologize, Your Honor.

15 JUDGE MOSS: It may, in fact, be in my

16 office.

17 MR. FFITCH: The good news is it's a one page
18 attachment.

19 JUDGE MOSS: I have had one or two other
20 things to do, so I haven't seen all of my facsimiles.
21 In fact, I was handed two this morning. I haven't even
22 had time to look at them.

23 Okay, now as I understand it then looking at
24 the attachment here, and I previously have read the
25 motion, there's not an objection here, Mr. Berman. It

00346

1 just says that PSE does not have the requested
2 information.

3 Now as I recall the motion, Mr. ffitch, it
4 asserts at least some doubt with respect to that
5 proposition, so I think the appropriate thing to do
6 would be simply to hear from Mr. Berman. PSE says it
7 doesn't have the requested information.

8 MR. BERMAN: Your Honor, I have asked at the
9 company and spoken to a number of officers at the
10 company, and I have been informed that there is no such
11 information.

12 JUDGE MOSS: Mr. ffitch, I don't know of
13 anything I can do in the face of that.

14 MR. FFITCH: Your Honor, what I would -- I
15 guess we would continue to assert our doubt with regard
16 to the accuracy of that information. It may be that we
17 are not asking for the forecasting information in
18 precisely the correct terminology. If that's the basis
19 of Puget's statement that they do not have this
20 information, I would suggest that that is inconsistent
21 with the spirit of and indeed the specific provisions of
22 the discovery rules of this Commission.

23 And given the Company's statements on this
24 point, I think we will have to explore this issue
25 further as the hearing goes forward through the

00347

1 witnesses. And I would reiterate the request that we
2 have in our motion that the Commission consider issuing
3 a Bench request for this information if it becomes
4 apparent through the testimony of witnesses that there
5 is such information available.

6 JUDGE MOSS: Well, we do have this practice
7 of so called records requisitions, and so if it becomes
8 apparent during the course of examining a witness that
9 such information as you seek through your request,
10 whether artfully or inartfully stated, then you can make
11 that request at that time, and we can take it up.
12 Beyond that, I would say there's really nothing for me
13 to rule on here. There is not an objection, which is
14 what I would rule on.

15 But I would encourage the Company to work
16 with Mr. ffitch to ascertain whether there is, in fact,
17 some class of information, some category of information
18 that is responsive to his request and that, you know, we

19 not allow ourselves to be too concerned about precise
20 wording. That is typically what happens when counsel
21 conduct discovery. There are a lot of telephone calls,
22 a lot of E-mails, a lot of conversation to describe more
23 fully than can sometimes be artfully stated in a written
24 request.

25 So you all will have to take advantage of the

00348

1 breaks that we have to conduct any conversation like
2 that. And, of course, again, you will have the
3 opportunity during the course of examination to follow
4 the practice that we are familiar with. That's about
5 all I can do for you.

6 MR. FFITCH: Thank you. We have already
7 conducted those kinds of conversation. We will continue
8 to do so and continue to pursue this.

9 JUDGE MOSS: All right.

10 MR. BERMAN: Your Honor, I would just note
11 for the record that we answered that there was no such
12 information because there was no such information. If
13 there had been such information, we would have objected
14 on the grounds of relevance. But given that there was
15 no such information, we did not assert that objection.

16 JUDGE MOSS: Okay, well, if it becomes
17 apparent during the course of the examination and
18 there's an objection to that examination, then we will
19 take that up at the time.

20 All right, now I have no other motions before
21 me. Are there any other motions to be made at this
22 time, preliminary motions?

23 All right, then we --

24 MR. BERMAN: Your Honor, I guess this is in
25 some ways a motion, in some ways a procedural request.

00349

1 A concern that I have is that I have the sense that the
2 Complainants intend to put on the witness stand the
3 various I will call them the customer witnesses who
4 discussed the situation of the various customers and
5 that they intend to offer additional direct testimony
6 from those witnesses.

7 I believe that the appropriate way to
8 approach this is that they have offered affidavits
9 stating their case, that they have been subject to
10 deposition in which their affidavits have been probed.
11 It would be entirely unfair and inappropriate if new
12 information were suddenly put into the record by these
13 witnesses concerning their situation. They have had the
14 opportunity to put information into the record and
15 through the Bench request responses which are in the
16 record, through the depositions, and in their
17 affidavits. So everything they do now will either be
18 one, duplicative because they will be repeating what has
19 already been said, or two, it will be new information
20 and thus will unfairly prejudice us since we should have
21 had an opportunity to see that information previously.

22 JUDGE MOSS: Well, Mr. Berman, this is an
23 unusual proceeding, as I mentioned at the outset, in
24 that we have contemplated from the beginning that we
25 would have live direct testimony. And, of course, while

00350

1 that is not the usual course of procedure in
2 administrative hearings, it is certainly a procedure
3 that is not unfamiliar to counsel in terms of civil or
4 criminal trial practice. That is the way those
5 proceedings are conducted. And while it is unusual to
6 conduct a proceeding in that fashion in an
7 administrative agency, that nevertheless is what we have
8 contemplated doing all along, and I'm not going to cut
9 off any party from presenting direct examination, and we
10 will just have to do -- each attorney will have to do
11 the best they can on cross-examination.

12 I don't think it's perhaps as much of a
13 challenge as you represent. I think you will all do
14 very fine. You are all very well informed about this
15 case and its underlying facts because of the affidavits,
16 the various data requests and responses, the Bench
17 requests and responses, and the other body of material
18 you mentioned. So I don't doubt for a second that all
19 counsel in this room are very well prepared for whatever
20 comes across in direct examination.

21 And, of course, there's always the
22 possibility that you may want to submit a motion at some
23 point during the hearing, at the end perhaps, for the
24 opportunity for additional testimony, rebuttal, what
25 have you. The Commission will hear that motion and rule

00351

1 on it accordingly, and so that's how we're going to
2 proceed.

3 Anything else?

4 All right, then that brings us to the moment
5 of truth, time to begin the direct and cross-examination
6 of witnesses. As I mentioned earlier, we will take a
7 brief recess now, and I will go tell the commissioners
8 that it's time to come in, and I will ask that Mayor
9 Maxwell be prepared to take the stand when I return in a
10 few moments. Thank you.

11 (Brief recess.)

12 JUDGE MOSS: All right, after a brief recess
13 we are back on the record, and Chairwoman Showalter and
14 Commissioner Hemstad have assumed the Bench.

15 A couple of minor matters to begin with. I
16 confirmed off the record with counsel for Complainants
17 that the affidavits of Mr. Warner and Mr. Darnell that
18 are attached to the first amended complaint, which is
19 the complaint on which we are proceeding, those
20 affidavits are withdrawn, so counsel need not be
21 concerned about those. They will not be part of our
22 record.

23 The second point is that Ms. Grundon came in
24 earlier this morning but after we had appearances, so I

25 wanted to give her an opportunity now to enter her

00352

1 appearance for Bellingham Cold Storage.
2 If you would come forward, please, and state
3 your full appearance.
4 MS. GRUNDON: Traci Grundon on behalf of
5 Bellingham Cold Storage.
6 JUDGE MOSS: And you have previously entered
7 an appearance?
8 MS. GRUNDON: Yes, Your Honor.
9 JUDGE MOSS: So we will dispense with the
10 full information in this instance. Thank you very much.
11 MS. GRUNDON: Thank you.
12 JUDGE MOSS: Are there any other appearances
13 that we missed this morning?
14 All right, with that -- we're not quite ready
15 at the Bench yet.
16 (Discussion off the record.)
17 JUDGE MOSS: All right, we're ready to
18 proceed with our first witness.
19
20 Whereupon,
21 HOWARD DEAN MAXWELL,
22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:
24
25

00353

1 D I R E C T E X A M I N A T I O N
2 BY MS. DAVISON:
3 Q. Good morning, Mayor Maxwell, could you please
4 state your full name for the record.
5 A. My name is Howard Dean Maxwell.
6 Q. And what is your occupation?
7 A. I'm the Mayor of Anacortes. It's a full-time
8 job, administratively essentially.
9 Q. What are your responsibilities as the mayor?
10 A. We have 180 employees that I'm responsible to
11 provide administration for. We also run a municipal
12 water utility, sanitation services, police, fire,
13 paramedic service, street maintenance, typical mayoral
14 duties.
15 Q. Thank you. Who does the City provide water
16 service to?
17 A. The City of Anacortes is the largest provider
18 of water in Skagit County. We serve approximately 19
19 million gallons a day. We have an intertie with the
20 public utility district that supplies water to Mount
21 Vernon and Burlington. We also sell water to the City
22 of La Conner, to the City of Oak Harbor, to the
23 Skokomish Tribe, to both -- two of our largest users are
24 the Equilon refinery and the Tesoro refinery, and the
25 City of Anacortes also takes water from that system

00354

1 obviously.

2 Q. Does the City of Anacortes Municipal Water
3 Utility receive its electric service from Puget Sound
4 Energy?

5 A. Yes, we do.

6 Q. What is the size of your electric load for
7 the water utility service from PSE?

8 A. We are I believe what's classified as
9 somewhat less than 1 megawatt.

10 Q. So your load is not over 2.4 average
11 megawatts then?

12 A. Not to my knowledge, no.

13 Q. Okay, thank you. Who is Mr. Jim Pemberton?

14 A. Mr. Jim Pemberton is our public works
15 director. He retired Friday night. We had his
16 retirement going away. He has worked for the City for
17 26 years.

18 Q. Was Mr. Pemberton directly responsible for
19 the water utility operations?

20 A. Yes.

21 Q. Currently under what PSE rate schedule does
22 Anacortes water utility receive its electric service?

23 A. Schedule 48.

24 Q. Do you know what tariff you received your
25 electric service prior to Schedule 48?

00355

1 A. Schedule 49.

2 Q. And when did you switch from Schedule 49 to
3 Schedule 48?

4 A. I believe the specific date was early in June
5 1998.

6 Q. Could you explain for the Commission why you
7 made the switch from Schedule 49 to Schedule 48?

8 A. I will try to. Again, we didn't -- we didn't
9 go and -- I didn't know anything about Schedule 48. We
10 didn't go and look PSE up. PSE showed up early in the
11 spring of 1998, and Mr. John Campion apparently set up a
12 meeting to come and see us at my office and showed us
13 the benefits that the City of Anacortes could receive
14 under Schedule 48, showed us some information that would
15 be -- could be utilized to interpret that rates in the
16 future might be somewhat less than they currently were.
17 According to Mr. Pemberton, we paid a high demand charge
18 under Schedule 49, and it was an opportunity for us to
19 get away from the demand charge and possibly save the
20 community some money.

21 Q. Mayor Maxwell, you have before you an exhibit
22 that we have previously marked as HDM-1. Can you get
23 that, please.

24 JUDGE MOSS: And for our purposes, that's
25 Number 101.

00356

1 A. Okay.

2 Q. Is this a document that was provided to you
3 at the time you were considering whether to switch from

4 Schedule 49 to Schedule 48 by PSE?

5 A. Yes, it is.

6 Q. And can you just in the most general way
7 describe what this document is?

8 A. It talks about historic loads, projected
9 loads into the future, and essentially, you know, gives
10 a description of where things have been in the past and
11 where I assume PSE, the experts, assumed things would be
12 in the future as far as costs for electricity. It
13 compares the two different rates, 49, 48. It actually
14 goes through a cumulative total that the bottom line
15 seems to benefit the community by a great amount of
16 money.

17 Q. In other words, Mayor Maxwell, this document
18 shows that PSE projected that the City of Anacortes
19 would save a great deal of money if they switched to
20 Schedule 48; is that accurate?

21 A. Yes.

22 Q. Thank you.

23 MS. DAVISON: Your Honor, if I understand
24 correctly what we agreed to this morning, I should wait
25 until the end of Mayor Maxwell before I move the

00357

1 admission of this exhibit, or would you like for me to
2 do that at this time?

3 JUDGE MOSS: Why don't you move the admission
4 of exhibits as we go along, so we can keep an orderly
5 record.

6 MS. DAVISON: All right, thank you.

7 Your Honor, I would like to move the
8 admission of the Exhibit marked as 101.

9 JUDGE MOSS: Any objection?

10 MR. BERMAN: Your Honor, I don't think a
11 proper foundation has been laid for this exhibit. We
12 don't know exactly who produced it, how it was produced,
13 what went into the exhibit. Apparently it was discussed
14 at some meeting, but I don't think it's clear that the
15 mayor has adequate foundation to say where this exhibit
16 came from.

17 JUDGE MOSS: All right, overruled, it will be
18 admitted as marked.

19

20 E X A M I N A T I O N

21 BY CHAIRWOMAN SHOWALTER:

22 Q. Well, could the witness explain what his
23 understanding of this is, or did you sufficiently?

24 A. I'm sorry?

25 Q. Well, what is your understanding of what this

00358

1 document is?

2 A. This document is a document that was produced
3 at a meeting by John Campion between Mr. Pemberton,
4 Mr. Khtaian, and myself, and the document shows our
5 historic costs under Schedule 49 and then does a
6 comparison between 49 and 48 and actually tries to show

7 us what the future may look like through the year 2001.

8 Q. And who is Mr. Campion?

9 A. Mr. Campion is a representative of Puget
10 Sound Energy.

11 CHAIRWOMAN SHOWALTER: Thank you.

12 JUDGE MOSS: Go ahead, Ms. Davison.

13 MS. DAVISON: Thank you.

14

15 D I R E C T E X A M I N A T I O N

16 BY MS. DAVISON:

17 Q. Did the City initiate contact, or did PSE
18 contact you regarding changing to Schedule 48?

19 A. PSE contacted the City of Anacortes. Again,
20 we didn't have any knowledge of Schedule 48 at all.

21 Q. Did Mr. Campion encourage you to switch to
22 Schedule 48?

23 A. Absolutely.

24 Q. Did Mr. Campion or anyone else from PSE
25 explain to you the details and the risks associated with

00359

1 taking your electric service under Schedule 48?

2 A. No, we knew that there could be some market
3 fluctuations, but we assumed that those would be
4 reasonable. Looking at the documentation that we have,
5 you know, we could handle a small fluctuation obviously.

6 Q. Did PSE explain to you that by signing up for
7 this rate Schedule, it meant that you would no longer be
8 what is termed a core customer?

9 A. No, I never heard that term until two weeks
10 ago when we were in the mediation. One of the comments
11 from one of the representatives from PSE was that they
12 no longer wanted to provide us service, and I think my
13 comments in the deposition were we're one of the oldest
14 incorporated municipalities in the State of Washington
15 and have never had this type of relationship with my
16 local power company. I don't understand.

17 Q. So prior to the information that you learned
18 during this proceeding, you would not have known what it
19 meant to be core versus non-core customer?

20 A. No, these are very complicated documents. I
21 rely on others to help me.

22 Q. Did PSE explain to you that you may be forced
23 to pay the index price at Schedule 48 no matter how high
24 that index price may go?

25 A. No, in fact, in my conversations with

00360

1 Mr. Pemberton, he was under the impression that that
2 would be based on their cost of service. We didn't
3 realize that we would be paying Mid-Columbia prices. We
4 thought it was based on their cost of service.

5 Q. Did PSE provide you with the materials from
6 the WUTC proceeding in 1996 when Schedule 48 was
7 approved by the Commission?

8 A. No.

9 Q. And you did not participate in that

10 proceeding, I assume?

11 A. No.

12 Q. If you understood that according to PSE that
13 they had no obligation to secure power for you since you
14 would be a non-core customer, would you have signed up
15 for Schedule 48?

16 A. Absolutely not.

17 Q. Do you know how much the City spent for
18 electricity in 1999 under Schedule 48?

19 A. Yes, we spent \$550,000.

20 Q. And do you know how much the City spent for
21 electricity through December 2000 under Schedule 48?

22 A. We had to reconstitute December based on the
23 Mid-Columbia, because we weren't able to get those
24 figures from PSE, tried to bring them down here so that
25 everybody would have those, so that's a reconstituted

00361

1 number. But through the year 2000, we spent \$1.6
2 Million on electricity, and our budgeted amount is
3 \$550,000, which represents approximately 11% of our
4 water treatment plant budget.

5 Q. Okay.

6 JUDGE MOSS: I'm sorry, clarification, which
7 figure represents 11%?

8 THE WITNESS: The \$550,000 represents 11% of
9 our water treatment plant distribution budget.

10 BY MS. DAVISON:

11 Q. So, Mayor Maxwell, what is previously marked
12 as HDM-5, which is a chart that has the listing power
13 costs 2000, power costs 1999, you have updated that
14 information; is that correct?

15 A. Yes.

16 Q. And could you, since we're at this exhibit,
17 could you describe this exhibit including who prepared
18 it and what it shows?

19 A. This is an exhibit that's prepared by one of
20 our staff. That indicates the monthly cost for
21 operation of the water treatment facility. I believe it
22 was produced as a combined effort between the plant
23 manager and the city finance director.

24 MS. DAVISON: Your Honor, I would like to
25 move the admission of HDM-5, which is, I'm sorry, which

00362

1 is marked as Exhibit 105.

2 JUDGE MOSS: It has been premarked as Exhibit
3 105. Any objection?

4 Hearing none, it will be admitted as marked.

5 MS. DAVISON: Thank you.

6 BY MS. DAVISON:

7 Q. Do you know since June 1998 when you first
8 took service under Schedule 48 through some point in
9 2000, say November 30th or if you have the information
10 through the end of the year, approximately how much more
11 the City has paid for electricity under Schedule 48 as
12 compared to 49?

13 A. Yes, we have paid approximately \$987,000 more
14 for electricity under 48 versus Schedule 49 through the
15 year 2000.

16 Q. Thank you. Are you collecting sufficient
17 revenues from your water rates to pay for these high
18 electric bills?

19 A. No, but with the caveat that we are able to
20 pass on 70% of the costs to our two major customers,
21 Tesoro and Equilon. It is not as easy to do that with
22 the cities of Oak Harbor and La Conner. We go through
23 major rate studies every three years. We have just
24 finished a rate study. The City governments, it's very
25 difficult to get a rate increase. You have to go

00363

1 through the public hearing process, and it's a
2 nightmare.

3 Q. Do you have some contractual limitations on
4 your ability to just simply pass these electric costs
5 through increases in your water rates to Tesoro and
6 Equilon?

7 A. Yes, we do.

8 Q. Thank you. So how are you paying for these
9 high electric bills if the budgeted amount is far in
10 excess or the actual amount is far in excess of your
11 budget and your revenues are not sufficient to cover
12 these electric bills, how are you paying your bill to
13 PSE?

14 A. We're paying it out of our water fund
15 reserves.

16 Q. And what are those reserves normally for?

17 A. Those reserves are in place for capital
18 improvements. We have a major water line replacement
19 project underway. We have 70 year old what's called
20 invasion pipe that's in the ground that was rejected by
21 the City of Seattle some 70 odd years ago. We put it in
22 the ground, and it failed us at least once in the last
23 two years, and we need to replace that pipe. It has
24 come to the end of its life.

25 Q. Could you turn to Exhibit 102, have that

00364

1 ready. I would like to turn to the issue of the
2 optional price stability provision in Schedule 48. Has
3 the City ever tried to purchase what's termed a hedge or
4 some other type of financial instrument pursuant to the
5 optional price stability provision in Schedule 48?

6 A. Yes.

7 Q. And could you tell the Commission what
8 happened when you tried to invoke that provision?

9 A. We were again working with Mr. Campion along
10 with the Schedule 48 tariff. Mr. Campion had mentioned
11 the opportunity to go ahead and be able to do what was
12 called a hedge. When we asked Mr. Campion to go ahead
13 and get us some prices on what it would cost us to
14 hedge, PSE apparently has a relationship with Duke
15 Energy, and so I pushed throughout the course of the

16 summer to try and get this information. And in
17 September, we were told that we were too small to obtain
18 a hedge from Duke Energy.

19 Q. And this was September of 1998, correct?

20 A. September of 1998, yes.

21 Q. Looking at Exhibit 102, this is an E-mail to,
22 I'm not going to pronounce his name correctly, a
23 gentleman on your staff, could you explain who the
24 E-mail is to and your understanding of the subject
25 matter of the E-mail?

00365

1 A. The E-mail is to George Khtaian. He's the
2 City of Anacortes finance director. He's one of the
3 reasons I ran for mayor. I trust him very much. This
4 E-mail, let me have a chance to read through it quickly.
5 This E-mail makes reference to the cost of electricity
6 and also to the fact that Mr. Champion has a call in to
7 two electrical commodity trading companies. I believe,
8 my copy has the first name blanked out, but I believe
9 that says Duke and the second says Enron:

10 To try and take another run at getting
11 the City a firm price. Both companies
12 are reluctant to do such since the
13 City's load is less than a megawatt.
14 They typically want to deal in loads of
15 10 megawatt or larger. I will let you
16 know what I hear.

17 This was never followed up by any
18 documentation in any of our files. We never saw any
19 information from PSE that showed us that we were able to
20 obtain a hedge.

21 Q. So as far as the understanding you were under
22 in 1998 is that your load was too small to hedge; is
23 that correct?

24 A. That's correct.

25 MS. DAVISON: Your Honor, I would like to

00366

1 move the admission of Exhibit 102.

2 JUDGE MOSS: Hearing no objection --

3 MR. TROTTER: Your Honor, just one. There is
4 an erasure on the left side. If counsel could tell us
5 what the bottom two lines -- I'm particularly interested
6 in what average megawatt figure that is. It appears to
7 be 1.5, but it may be something different. If we know
8 what it is, could we have it read into the record so I
9 could write it onto my copy?

10 JUDGE MOSS: Do you have a clean copy of
11 this?

12 MS. DAVISON: Your Honor, this is a copy of
13 the original document in its original condition.

14 I apologize, Mr. Trotter, that we don't have
15 a copy.

16 MR. TROTTER: Perhaps Mr. Maxwell can recall
17 what the number should be on the second to last line of
18 the message.

19 JUDGE MOSS: I think the question is probably
20 the City's full load.

21 THE WITNESS: You know, I'm not -- it looks
22 like 1.5 to me, but I couldn't confirm that.
23 Mr. Pemberton could, but he's not here, so I don't know
24 what that number is. I don't want to speculate.

25 JUDGE MOSS: All right, well, Ms. Davison, we

00367

1 will ask that some confirmation of that number be
2 obtained and before we conclude our proceedings, so we
3 will confirm that number for everyone's satisfaction.
4 It does also look like 1.5 to me, but I think we
5 probably should have confirmation on the exact figure,
6 so please provide that.

7 MS. DAVISON: Thank you, Your Honor.

8 JUDGE MOSS: And I didn't hear an objection
9 to 102, so it will be admitted as marked.

10 BY MS. DAVISON:

11 Q. Mayor Maxwell, could you turn to Exhibit 103,
12 please.

13 A. (Complies.)

14 Q. And I would point you to the bottom of that
15 exhibit, which is an E-mail to yourself from
16 Mr. Pemberton. Mr. Pemberton indicates that he has
17 contacted Mr. Campion, John C, Mr. Campion, and
18 apparently Mr. Pemberton asked PSE about the City going
19 back to Schedule 49, and this E-mail indicates that PSE
20 has declined to allow you to do that. He also
21 references continued contact with Duke Energy. Do you
22 recall at this time why you wanted to go back to 49?

23 A. In my conversations with Mr. Pemberton and
24 Mr. Khtaian, Mr. Khtaian was under the opinion that at
25 any time during the first year we could go back to

00368

1 Schedule 49. We were attempting to clarify whether or
2 not we could go back to 49 at that point. That would be
3 for this E-mail.

4 MS. DAVISON: Thank you. Your Honor, I would
5 like to move the admission of Exhibit 103.

6 JUDGE MOSS: Hearing no objection, it will be
7 admitted as marked.

8 BY MS. DAVISON:

9 Q. Mayor Maxwell, could you turn to what's been
10 marked as Exhibit 104, please.

11 A. (Complies.)

12 Q. And this is an E-mail from yourself to
13 Mr. Pemberton, and could you describe for the Commission
14 essentially what's going on here with this E-mail?

15 A. The original message is from John Campion to
16 George Khtaian and Jim Pemberton, and the subject is
17 Schedule 48 versus 49 comparison. Mr. Campion is
18 writing March 23rd to say that:

19 The water treatment plant now shows a
20 savings of \$2,700.43 on Schedule 48.
21 Savings should continue with the hydro

22 conditions in the next few months. Let
23 me know if you would like to take
24 another look at a hedge of some price.
25 Now would be a good time to hedge.

00369

1 And Jim has forwarded that to me FYI, and my
2 comment back to both Mr. Pemberton and Mr. Khtaian is
3 whenever you have the information regarding the hedge,
4 let's sit down and talk.
5 Q. Did that meeting occur?
6 A. No.
7 Q. Do you know why that meeting didn't occur?
8 A. That meeting didn't occur because we never
9 got that information.
10 MS. DAVISON: Thank you. Your Honor, I would
11 like to move the admission of Exhibit 104, please.
12 JUDGE MOSS: It will be admitted as marked.
13 BY MS. DAVISON:
14 Q. Mayor Maxwell, you have in front of you an
15 excerpt from the brief that Puget Sound Energy filed, a
16 prehearing brief that they filed in this case; can you
17 turn to that, please.
18 A. Yes.
19 Q. And on that page --
20 JUDGE MOSS: Slow down a minute, Ms. Davison,
21 where are we looking?
22 MS. DAVISON: I'm sorry?
23 JUDGE MOSS: Are we in somebody's prehearing
24 brief?
25 MS. DAVISON: We are in Puget Sound Energy's

00370

1 prehearing brief, page 23.
2 JUDGE MOSS: I think we have that.
3 BY MS. DAVISON:
4 Q. On page 23, there is a paragraph numbered 8,
5 City of Anacortes, have you had an opportunity to read
6 those two paragraphs?
7 A. Yes, I have. I read them yesterday, and I
8 read them today again.
9 Q. Could you tell the Commission anything
10 contained in those two paragraphs that is not correct?
11 A. Yes, I can. It's not a wastewater treatment
12 facility that PSE references; it's a water treatment
13 facility. And the second paragraph talks about the
14 City's ability to unilaterally raise its rates to cover
15 its rising energy costs, and that's not correct. I
16 guess we can talk about the problems with diesel
17 generation later if you would like. It doesn't fit.
18 Q. And what about the very last sentence, do you
19 agree with that statement?
20 A. I do not. The City is absolutely going
21 through a crisis. I have thought about this issue every
22 day since December 12th. It's been on my mind every
23 single moment. I don't know how we will get through
24 this. I'm hopeful that we will.

25 Q. Perhaps I should ask you the question

00371

1 directly. Have the impacts associated with the high
2 electric prices that you're paying under Schedule 48
3 created an emergency for your community?

4 A. I think they have from a number of different
5 perspectives. We have a -- one third of our community
6 is retired and elderly and on fixed income. We don't
7 have the ability to just raise rates to cover our costs
8 at this point with 30% of our customers, which includes
9 the City of Anacortes.

10 We are in the process of trying to figure out
11 how to operate a diesel generator to provide electricity
12 at the plant, and I had called one of the operators
13 yesterday that was on duty and spoke with him, and the
14 river has high turbidity conditions currently, and he is
15 one of our more senior operators, and basically they're
16 running back and forth and switching pumps on and off
17 trying to make sure that they don't ultimately shut the
18 diesel generator down and shut the system down. And
19 he's worried about the younger operators coming on shift
20 today and trying to operate that generator.

21 The other element from my community, and it's
22 outlined in the brief, is that as all of these diesel
23 generators come on line, 30 at Equilon, 12 at Tesoro, 1
24 at the Anacortes water treatment plant, we're going to
25 be burning 2 million gallons of diesel a month, and the

00372

1 NOX emissions standards will be exceeded in a short
2 period of time. And if they're not lifted or removed,
3 we're going to be back on Mid-Columbia rates. So, you
4 know, I feel like -- I feel like we're in deep trouble.

5 In addition to that, if we lose one of our
6 larger customers, either Tesoro or Equilon, because of
7 the high electric rates, the high and unreasonable
8 electric rates under Schedule 48, we're out of business.
9 We will lose this water utility, my community won't be
10 able to pay the bills, and I'm sure I won't be the
11 mayor.

12 Q. And you talked about your diesel generator.
13 I don't think I have actually asked you any questions
14 about that yet. Could you explain to us why you are
15 running a diesel generator for generating electricity
16 for running your water facility?

17 A. We are running a diesel emergency generator
18 at this point in time to try and get around the high
19 costs of electricity, the high and unreasonable costs of
20 electricity that we have experienced over the course of
21 the last month. Again, our December costs for
22 electricity were \$400,000. That's approximately what we
23 spent in one year prior to this occurrence. So, you
24 know, again, I have to be accountable to my rate payers
25 in my community, to the communities that we serve.

00373

1 And we're typically conservative. La Conner
2 at this point in time, one of the communities that we
3 serve, is looking away -- is looking at getting away
4 from some of the services they provide, I assume it's
5 budgetary, and contracting with the county. So you're
6 talking about communities where \$5,000 or \$15,000 means
7 a great deal.

8 Q. This temporary emergency generator that you
9 have talked about, is that a long-term solution for the
10 City?

11 A. Absolutely not. Again, these are labeled
12 emergency generators. We have never been able to feel
13 like we could afford to have one at the water treatment
14 facility. We would like to have one there in case we
15 would lose electricity at one point and the generator
16 would come back on board.

17 To go back a few years, I believe it was
18 1996, there were six members of one of our refineries
19 that were killed in an explosion that was caused by an
20 electrical outage. So to move back and forth between
21 the power that PSE provides us and what we can generate
22 is extremely dangerous.

23 And for our customers down line, if we're off
24 line at any point in time, you know, they have to begin
25 to shut down their operations. So, you know, not to

00374

1 mention the stress and strain that any kind of shut down
2 puts on the pipelines that convey water.

3 Q. Mayor Maxwell, it was suggested to you during
4 your deposition that couldn't you just solve all of
5 these problems by jacking up your water rates to Tesoro
6 and Equilon, why can't you just take the full brunt of
7 these high electric costs and just pass it on to those
8 two large industrial customers; why doesn't that work?

9 A. Because we have contracts with those two
10 customers.

11 Q. Are you aware of any impacts to your
12 community right now resulting from these high electric
13 prices?

14 A. Yes, I --

15 Q. Sorry, more specifically than what you have
16 already described?

17 A. I think that I have a pretty good
18 relationship with most of the people that work with me,
19 and I particularly like to keep in touch with our police
20 officers and with our paramedics. And I received an
21 E-mail in December during the cold snap from one of our
22 paramedics, Dave Albert, that they went to a medical
23 call, and there was an individual there that was blue,
24 an older gentlemen. He was blue because he couldn't
25 afford to turn the electricity on in his house. And so

00375

1 they got him to the hospital, and he had some other
2 medical problems and essentially --

3 THE WITNESS: Would you like me to stop?

4 JUDGE MOSS: No, you can go ahead, finish
5 your answer, and then we will have the objection.
6 A. Essentially this gentleman was unable to pay
7 his bills. We found a way to help him once he got out
8 of the hospital.
9 JUDGE MOSS: Okay, let's have the objection.
10 MR. BERMAN: Your Honor, I would move to
11 strike the last response. The issue that was being
12 addressed was apparently something related to the level
13 of the electric bills paid by residential customers
14 within Anacortes. That's not an issue in this case
15 except to the extent that if the rates are reduced, if
16 the revenues that are received are reduced for
17 industrial customers, it may lead to an increase in
18 residential rates. But whether or not residential
19 customers today are facing electric bills that they
20 think are high and whether there are some customers who
21 have trouble paying those bills is not an issue in this
22 proceeding.
23 JUDGE MOSS: Ms. Davison, relevance.
24 MS. DAVISON: Your Honor, I think if Mayor
25 Maxwell had fully continued his thought, I think the

00376

1 point of what he was trying to make is that residents in
2 his community are not wealthy residents. These are
3 people who can barely pay their bills right now. And I
4 think he's trying to explain his reluctance to just
5 simply increase their water rates since they are already
6 in a position that they can't pay their current bills,
7 and that's something that's very important to Mayor
8 Maxwell.
9 JUDGE MOSS: All right, the objection will be
10 overruled.
11 Go ahead with your questions, Ms. Davison.
12 BY MS. DAVISON:
13 Q. Are you aware of any specific job losses in
14 your community resulting from the shutdown of the
15 Georgia-Pacific Bellingham mill?
16 A. Yes, there's a company, and I have the -- the
17 executive director of the Economic Development
18 Association in Skagit County here with me today, there's
19 a company in Skagit County that's named Lignatech.
20 Receive their raw product from Georgia-Pacific. They
21 have 25 high paying jobs that they're shut down now.
22 They don't -- Since GP is shut down, they don't receive
23 their raw product that they manufacturer. In addition
24 -- well.
25 Q. Are you aware of whether self generation by

00377

1 Tesoro and Equilon will have any impact on the tax
2 revenue that city and county folks receive from those
3 two refineries as a result of perhaps a reduction in the
4 utility taxes they would normally pay?
5 A. I would -- I guess I would leave that
6 question to Mr. Khtaian. Obviously if they buy less

7 product, there will be an impact.

8 Q. Thank you. Is there anything else further
9 that you would like to tell the Commission regarding the
10 emergency that the City of Anacortes or for that matter
11 the County of Skagit is facing as a result of these
12 Schedule 48 electric prices?

13 A. Just again to say that, you know, I think
14 that as a mayor of a small community in a small rural
15 depressed county, I get to look at a lot of different
16 things. Hopefully my vision is wide, and I truly
17 believe that if we don't find a resolution to the high
18 cost of electricity that we're going to push some of
19 these companies over the edge, and we have already seen
20 the impacts with Lignatech.

21 You know, mayors like to talk about
22 sustainable communities, and I guess at this point in
23 time, I would just like to see some certainty so that we
24 can try to work towards sustainability. And, you know,
25 we have a 20 year planning process, we do 6 year capital

00378

1 facilities plans, and with all the initiatives that have
2 come our way and with all the uncertainty, you know, I
3 thought we were -- we were doing okay. This one, again,
4 I woke up December 12th in the morning and realized that
5 we're in serious trouble. I don't know where -- I don't
6 know where this is going to end. I don't know if the
7 Mid-Columbia Index can go to \$20,000 a megawatt. I
8 don't know what's going to happen here. We're in
9 trouble if we don't resolve this issue.

10 MS. DAVISON: Thank you, Mayor Maxwell. I
11 have no further questions on direct.

12 JUDGE MOSS: Before we move on to the cross,
13 I had one question.

14

15 E X A M I N A T I O N

16 BY JUDGE MOSS:

17 Q. I would like some clarification if you can
18 help me, Mayor Maxwell. Early on you mentioned
19 something about a surcharge in the water rates to
20 Equilon and Tesoro, or at least I thought you did. And
21 then later in the testimony, you mentioned that there
22 were some contracts that at least limited your ability
23 to pass on the higher electrical costs to those major
24 industrial customers of your water utility. And I
25 wonder if you could explain there exactly what's going

00379

1 on.

2 A. Thank you, Your Honor. I don't believe that
3 I ever mentioned a surcharge. What I did say was that
4 Equilon and Tesoro are responsible for 70% of the cost
5 of our water utility. We have contracts with them, so
6 we can't allocate them 100% of the costs. But there are
7 variable components in that rate structure, so we can
8 pass on the electric costs to those two customers. But
9 they're receiving a double, triple, quadruple hit in

10 this Schedule 48 Mid-Columbia, high Mid-Columbia rate
11 structure.

12 Q. But the 30% --

13 A. The 30% is responsible, my community, Oak
14 Harbor, La Conner, the Skokomish Tribe, the PUD and its
15 residential customers, over 35,000 residential
16 customers, 850 to 900 businesses, are going to have to
17 absorb the 30% of these costs that are above and beyond.

18 JUDGE MOSS: Okay, thanks for that
19 clarification.

20 All right, we have an agreed order of
21 cross-examination, and we begin with Staff, Mr. Trotter.

22 MR. TROTTER: Thank you, Your Honor.

23
24
25

00380

1 C R O S S - E X A M I N A T I O N

2 BY MR. TROTTER:

3 Q. Mayor Maxwell, would it be fair to say that
4 the City of Anacortes had certainty under Schedule 49?

5 A. Yes.

6 CHAIRWOMAN SHOWALTER: Mr. Trotter, can you
7 pull the microphone a little closer to you.

8 MR. TROTTER: Oh, certainly.

9 CHAIRWOMAN SHOWALTER: Or just pull it over
10 more toward the direction you're speaking.

11 BY MR. TROTTER:

12 Q. Just so I am clear, the various city
13 customers that you serve such as La Conner and Oak
14 Harbor as well as the City of Anacortes itself plus the
15 large customers, Equilon and Tesoro, the Anacortes city
16 counsel sets the rates for all of those accounts, does
17 it not?

18 A. We go through -- every three years, we go
19 through a rate study. We ask the -- we ask our
20 customers to come and participate in that rate study.
21 Ultimately the Anacortes city counsel does vote to set
22 the rates, but we try to -- we try to treat all of our
23 customers as customers. We want them to understand, you
24 know, what components go into their rate structure, what
25 is fair, what the market looks like, what other

00381

1 communities do, so we want to treat our customers as
2 customers.

3 Q. I just wanted to be precise. Does the City
4 of La Conner have a veto power over any rate increase
5 that the City of Anacortes votes as appropriate for the
6 City of La Conner?

7 A. No, but certainly we would work to get them
8 as much information as we possibly could so they would
9 understand their component, and we don't treat La Conner
10 differently than Oak Harbor.

11 Q. Has the City taken any action to increase any
12 rate since early summer of the year 2000?

13 A. Again, as we finish this rate study --
14 MR. TROTTER: Excuse me, Your Honor, could I
15 have a yes or no and then an explanation, because
16 sometimes the explanation doesn't get to the yes or no?
17 Can I have the witness answer the question if he can yes
18 or no, as the question is quite specific.
19 JUDGE MOSS: Well, this is the first point
20 this has come up in the hearing, so I will pause long
21 enough to say to all witnesses who are present, to the
22 extent a question does seem to call for a yes or no
23 answer, if you can give that answer but then feel the
24 need for some explanation, then that's the appropriate
25 way to proceed. And sometimes counsel thinks a question

00382

1 calls for a yes no answer, and the witness doesn't
2 believe it can be answered that way, so it's not a
3 mandatory thing but just an aspirational thing.
4 You may answer.
5 A. I would answer the question with a yes. We
6 are working with the company that consults with us to
7 help us set our rates, to figure out what percentage of
8 this increase we need to reallocate back to our -- the
9 30% that's not -- that's responsible for the 30% that
10 Tesoro and Equilon doesn't pick up.
11 BY MR. TROTTER:
12 Q. So what rate increase has been imposed by the
13 City of Anacortes?
14 A. I don't have -- we haven't done that.
15 Physically I don't have those numbers exactly. And
16 again, it's hard based on -- we had a high of \$1,290 in
17 December on December 11th, and typically the month
18 before maybe would have averaged somewhat less. So it's
19 hard, it's hard to build that -- it's hard to build that
20 rate. We know there will be some increase, yes.
21 Q. Maybe I didn't ask the question I thought I
22 did, but has the City of Anacortes actually increased a
23 rate to any of its water customers, wholesale or retail,
24 since July of the year 2000, actually increased a rate
25 and imposed that increase?

00383

1 A. We have passed along the costs of electricity
2 to Tesoro and Equilon since July, yes. Have we been
3 able to pass along the costs to the rest of the utility,
4 no. We're working on trying to get those numbers.
5 Q. So the higher charges that you have been
6 paying to Puget for electricity, to the extent those are
7 associated with your services to Equilon and Tesoro, you
8 have been able to pass those costs on to those
9 customers?
10 A. I wouldn't -- would you restate your question
11 again?
12 MR. TROTTER: Could I have his answer read
13 back, the answer to my last question. I thought that's
14 what he said. I just wanted to clarify.
15 JUDGE MOSS: Yeah, I thought we did have the

16 question asked and answered, Mr. Trotter. I believe the
17 witness testified that the costs have been passed along
18 to Equilon and Tesoro but not to the other customers.
19 Wasn't that your question?
20 MR. TROTTER: I thought it was.
21 JUDGE MOSS: We had that testimony, so let's
22 go on.
23 MR. TROTTER: Thank you.
24 BY MR. TROTTER:
25 Q. Could you turn to Exhibit 101, please.

00384

1 A. (Complies.)
2 Q. Am I correct in understanding that this was a
3 document that Puget supplied to you at a meeting in
4 1998?
5 A. Yes.
6 Q. On the first page, it shows projected load,
7 and there's a column historic, and there's a figure of
8 2.451 megawatts. Do you see that in the first line?
9 A. Yes.
10 Q. And you testified earlier that the load of
11 the City under Schedule 48 was something less than 1
12 megawatt; do you recall that?
13 A. Yes.
14 Q. Can you reconcile those two figures, please?
15 A. I can't. I'm wondering myself now exactly
16 where we are.
17 Q. Okay. And do you understand that Schedule 48
18 is only available to customers having individually
19 metered accounts with annual loads over 2.4 average
20 megawatts?
21 A. I didn't. I didn't really look at the
22 details until yesterday when I read through Schedule 48,
23 and it's the first paragraph. And I can't -- I don't
24 know where we are exactly. I don't know if we fall
25 under that or I don't know how that works. I have the

00385

1 same question, I guess.
2 Q. Have you ever approached Puget and questioned
3 why you were under Schedule 48 because of the size of
4 your load?
5 A. No. Again, I'm not well versed enough in
6 electric loads to even tell you today exactly where we
7 are. So I'm under the impression we're under 1
8 megawatt.
9 Q. You said in your testimony today that you
10 rely on others to help you; do you recall that?
11 A. Yes.
12 Q. The City of Anacortes did not retain an
13 expert of its own to advise it on the advisability of
14 converting to Schedule 48; is that right?
15 A. No, but if I could elaborate for a moment.
16 We have always had a really good relationship with Puget
17 Power. We have local representatives. The local
18 representative lives in my city and is actually a

19 reserve police officer. He goes to every function, he's
20 a rotarian. You know, small communities count on the
21 experts, and PSE in my mind was the expert. They know
22 all about electric rates. I don't know anything about
23 electric rates or schedules or tariffs, and the
24 relationship that we have had in the past has never been
25 anything like what I'm experiencing now. I mean you

00386

1 can't -- we do a lot of things in my community without
2 hiring an expert each time. We count on people.

3 Q. You said that if you had understood that
4 Puget had no obligation to serve you, you would not have
5 signed the contract. Do you recall that testimony?

6 A. Yes.

7 Q. Is it correct that the City of Anacortes
8 agreement contains the language that "the company will
9 no longer make commitments to have firm power supply
10 resources available to customer"?

11 A. I guess the discussion was core versus
12 non-core. When you read the Schedule 48 tariff, which I
13 did carefully yesterday, I don't see anything in 48 that
14 would have told me that you're not a core customer
15 anymore, don't expect service. I don't understand the
16 details of the Schedule 48 tariff. It's very complex.

17 Q. My question didn't go to the tariff. It went
18 specifically to the terminology in your own contract.

19 CHAIRWOMAN SHOWALTER: Mr. Trotter, is that
20 agreement that you're reading out of an exhibit anywhere
21 here?

22 MR. TROTTER: I believe it will be.

23 CHAIRWOMAN SHOWALTER: Is it identified
24 somewhere?

25 MR. TROTTER: I believe it is. I'm actually

00387

1 reading off the attachment to Schedule 48, which I
2 understand and I think it's been confirmed elsewhere, is
3 the form of the contract used by the City of Anacortes.
4 So I was asking the mayor whether or not -- the question
5 was whether or not his contract contained the language
6 "that the company will no longer make commitments to
7 have firm power supply resources available to the
8 customer"? That was my question.

9 JUDGE MOSS: All right, and we have an
10 objection perhaps from Ms. Davison.

11 MS. DAVISON: Well, not necessarily an
12 objection. I think, Mr. Trotter, Mayor Maxwell isn't
13 going to know what you're speaking of. If you have a
14 copy of this document that you would like to hand him
15 perhaps, or I can try to get a copy. I don't have the
16 City of Anacortes's actual agreement here, but I do have
17 the form service agreement. I don't know whether that's
18 what he actually signed or not, but.

19 JUDGE MOSS: Yeah, I think that's a good
20 suggestion. Do you have the City of Anacortes service
21 agreement, Mr. Trotter?

22 MR. TROTTER: I have the form agreement, and
23 during the deposition, I asked him for the contract. He
24 said he didn't bring it with him, but he acknowledged --
25 my recollection was that he acknowledged that the

00388

1 attachment was reflective of the form that he signed.
2 But I can have him look at it and ask him the question.
3 JUDGE MOSS: We will have to have some
4 foundation for that. Why don't you hand him the
5 document, and we will mark it as a cross-examination
6 exhibit.

7 CHAIRWOMAN SHOWALTER: If we are talking
8 about the agreement that actually was signed, if it's
9 available, I wanted it earlier in this inquiry, and if
10 it is available, I think it should be the one that we
11 ask the witness about.

12 JUDGE MOSS: I see some head nodding out
13 there.

14 MR. TROTTER: I personally do not have it.

15 MS. DAVISON: I will see if we have it in our
16 files.

17 CHAIRWOMAN SHOWALTER: If it's not, I think
18 we should have a Bench request to get that agreement. I
19 had assumed that all the agreements that were actually
20 signed by the Complainants would be part of this. If
21 they aren't, we should make them so.

22 JUDGE MOSS: Are those part of your
23 documents, Mr. Berman?

24 MR. BERMAN: No, Your Honor, they're not.
25 The document that was marked as PSE-9, I believe, is

00389

1 Schedule 48 that has attached to it the form service
2 agreement, but we never entered into the record
3 ourselves all of the executed service agreements by each
4 of the Complainants, and I believe that they appear
5 nowhere in the record.

6 CHAIRWOMAN SHOWALTER: Well, can we have a
7 Bench request to produce those.

8 JUDGE MOSS: Yeah, we will have a records
9 requisition request for the service agreements of each
10 individual customer.

11 And while we are on the subject, let's clear
12 up a point of terminology. The term contract has been
13 freely used, and I'm afraid it's being used to describe
14 a variety of documents. As I understand what these are,
15 they're service agreements, aren't they?

16 MS. DAVISON: That is correct, Your Honor,
17 and I very much appreciate that distinction.

18 JUDGE MOSS: Let's refer to them by what they
19 are, service agreements. They may be contracts as a
20 matter of law, but for purposes of a clear record, let's
21 call them service agreement, please.

22 And the records requisition is Records
23 Requisition Number 1 for the individual Complainants'
24 service agreements under Schedule 48.

25

CHAIRWOMAN SHOWALTER: And who is producing

00390

1 that?

2 JUDGE MOSS: And the Complainants will
3 produce those.

4 MS. DAVISON: Yes.

5 JUDGE MOSS: And when can you have those,
6 Ms. Davison?

7 MS. DAVISON: We will have the City of
8 Anacortes one very shortly. We had produced several of
9 these already, but I will make sure that we have a full
10 set to you no later than two business days.

11 CHAIRWOMAN SHOWALTER: Well, if you have, if
12 there is one available before we get to the end of
13 cross-examination, I would prefer to have one in front
14 of me, if that's available.

15 MS. DAVISON: We are retrieving it right now.

16 CHAIRWOMAN SHOWALTER: Thank you.

17 MR. TROTTER: Maybe I could ask my question a
18 different way.

19 JUDGE MOSS: All right, go at it a different
20 way, Mr. Trotter, and maybe that will save sometime.

21 BY MR. TROTTER:

22 Q. Mayor Maxwell, do you now understand that the
23 core, non-core distinction is based on part on the fact
24 that the company was not making commitments to have firm
25 power supply resources available to the customer?

00391

1 A. I do today, but up until two weeks ago, I
2 didn't know the difference.

3 Q. And would you accept subject to check that
4 the following phrase is included in your contract, "the
5 company will no longer make commitments to have firm
6 power supply resources available to customer"?

7 A. I'm sure that it's there. Again, this is a
8 little bit confusing for me. I know you can buy firm
9 power, you can buy non-firm power. I didn't realize
10 that we would have no power at some point in time.
11 That's not what I thought I was signing. You know, I
12 don't know how you can get a water utility that's got
13 35,000 residences onto a contract where you can cut
14 service. You just can't do that.

15 Q. You didn't actually read the contract before
16 you signed it, but your city attorney did; is that
17 correct?

18 A. I relied on my staff, I relied on
19 Mr. Champion, and I relied on PSE.

20 Q. You didn't actually read the contract before
21 you signed it, but the city attorney for the City of
22 Anacortes did; is that correct?

23 A. We have a contract routing procedure, so the
24 finance director has seen it, the city attorney has seen
25 it, Mr. Pemberton certainly has seen it.

00392

1 Q. You didn't read the contract before you
2 signed it, but the city attorney did, didn't he?

3 JUDGE MOSS: We have an objection.

4 Ms. Davison.

5 MS. DAVISON: Your Honor, I guess I have two
6 objections. One is that I believe that's been asked and
7 answered twice now. And secondly, if Mr. Trotter could
8 please call it a service agreement so we don't have
9 confusion in the record.

10 JUDGE MOSS: Okay, fine. Let me see if I can
11 help out here.

12

13 E X A M I N A T I O N

14 BY JUDGE MOSS:

15 Q. Mayor Maxwell, I understand your testimony is
16 that you have a contract review system I will call it
17 for lack of a better term and that that was followed,
18 but that you did not personally read the contract before
19 executing it.

20 A. I can't say for sure that I personally read
21 it. I would like to think that I did, but I can't say
22 for sure. I see a lot of paper in a day's time.

23 JUDGE MOSS: Okay.

24 MR. BERMAN: Your Honor, I'm standing up to
25 be helpful I hope. We have a copy of a service

00393

1 agreement that was entered by the City of Anacortes, and
2 so that might be helpful to have that in discussion.

3 CHAIRWOMAN SHOWALTER: Well, since we have
4 requested it as a Bench request, is it possible to have
5 copies of that now and let an organized set of Bench
6 responses come in as the formal pleadings to that.

7 JUDGE MOSS: Okay, we will have the document
8 in the record at some point.

9 But, Mr. Trotter, do you have any more
10 questions relative to the service agreement?

11 MR. TROTTER: Not at this time.

12 CHAIRWOMAN SHOWALTER: I would like a copy.

13 JUDGE MOSS: So we want a copy for the
14 record, so furnish that when you can. I think that can
15 be done fairly expeditiously. Thank you, Mr. Berman,
16 for making that offer.

17 CHAIRWOMAN SHOWALTER: I'm saying I would
18 like a copy now. Maybe we could have one of our staff
19 make a copy. I want a copy of this when this witness is
20 being examined.

21 MS. DAVISON: Also, Your Honor, I just got
22 confirmation that the City doesn't have a full signed
23 service agreement. The copy that they have is not
24 completely executed, so I think we need to rely on Puget
25 Sound Energy to fulfill at least a portion of that Bench

00394

1 request, so thank you.

2 MR. BERMAN: I would note that the copy that
3 I have is, I believe, something that was produced in

4 discovery by Complainants. I can't explain the
5 situation, but that's where we dug this up just now.
6 JUDGE MOSS: All right, well, copies are
7 being made, and we will get one up here on the Bench
8 fairly soon, but let's get on with the questioning for
9 now.

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. TROTTER:

13 Q. Have the City's public utility tax revenues
14 increased over historical levels due to higher power
15 bills?

16 A. That would be a question that I would have to
17 defer to our finance director, Mr. Khtaian, but I don't
18 believe so.

19 Q. The public utility tax is imposed on Puget,
20 is it not?

21 A. Yes.

22 Q. To the extent Puget's revenues increase, your
23 public utility tax revenues increase, do they not? You
24 haven't researched that issue, I take it?

25 A. No.

00395

1 Q. And do you know whether if there were any
2 increase in public utility tax revenues for the City,
3 whether they can be used to offset higher water utility
4 rates or costs of the City?

5 A. I don't know. I would be speculating.

6 Q. You mentioned in your testimony that the City
7 of Anacortes had just finished a rate study. Were you
8 referring to the rate study completed in the spring of
9 this year?

10 A. Yes.

11 Q. You also indicated something about Schedule
12 48 being based on the cost of service. That was
13 something that Mr. Pemberton told you; is that correct?

14 A. That was something that he had recalled from
15 our discussions with PSE. I don't specifically remember
16 that.

17 Q. Are you attributing that characterization of
18 Schedule 48 to anyone at PSE in particular?

19 A. That particular subject matter?

20 Q. Yes.

21 A. That's Mr. Pemberton's understanding of what
22 Mr. Campion communicated to him, that somehow there was
23 a --

24 Q. Did you hear anything yourself from PSE that
25 said that Schedule 48 was based on the cost of service?

00396

1 A. I believe that Mr. Pemberton's discussion
2 with Mr. Campion was that --

3 MR. TROTTER: Excuse me, Your Honor, my
4 question is quite direct. I want to hear whether this
5 witness had heard anything directly from PSE.

6 A. No, not that I remember.

7 MR. TROTTER: Thank you.
8 Pardon me for interrupting, Your Honor.
9 JUDGE MOSS: All right, Mr. Trotter, did I
10 hear you say you had completed your questions?
11 MR. TROTTER: I didn't say that, but I am
12 done.
13 JUDGE MOSS: Oh, all right, I was pressing it
14 perhaps.
15 MR. BERMAN: I also do have copies of the
16 contract.
17 JUDGE MOSS: Yeah, we have been handed copies
18 of the service agreement. It was under cover of a
19 letter dated June 17, 1998.

20

21 E X A M I N A T I O N

22 BY JUDGE MOSS:

23 Q. And I note that, Mayor Maxwell, have you been
24 handed a copy of that?
25 A. Yes, I have.

00397

1 Q. Does that appear to be your signature there
2 on the third page?
3 A. That's my signature.
4 JUDGE MOSS: Okay, well, I think we, for a
5 clear record, I think we ought to go ahead and mark this
6 and make it an exhibit subject to any objection. Is
7 there any objection?
8 In that event, I'm going to mark it as 106,
9 and it will be admitted as marked and made part of the
10 record, and I will call it the Anacortes PSE service
11 agreement.
12 All right, Public Counsel.
13 MR. FFITCH: Thank you, Your Honor.

14

15 C R O S S - E X A M I N A T I O N

16 BY MR. FFITCH:

17 Q. Good morning Mayor Maxwell.
18 A. Good morning.
19 Q. Just really one or two questions. You're
20 aware that your attorneys, the firm of Davison Van
21 Cleve, filed a brief on behalf of all the Schedule 48
22 Complainants in this case, I assume?
23 A. Yes.
24 Q. And would you accept, I'm sure you don't have
25 it committed to memory, but would you accept subject to

00398

1 check that on page four of the brief, it is stated that
2 the Commission can provide relief without harming PSE's
3 other commercial, industrial, and residential customers
4 or jeopardizing the financial health of PSE, would you
5 accept that?
6 A. Yes.
7 Q. And it's your testimony a little earlier that
8 about one third of the population of the City of
9 Anacortes is elderly or low income; did I understand

10 that correctly?

11 A. One third of our community are retired and on
12 fixed income, so. And we do have a number of low income
13 also.

14 Q. And am I correct that those are customers of
15 Puget Sound Energy for their electric service?

16 A. Yes.

17 Q. And so am I correct then that Anacortes, the
18 City of Anacortes, is not asking in this case that the
19 Commission adopt a remedy that would shift any cost
20 recovery to Puget's other residential, commercial, or
21 industrial customers?

22 A. You're correct.

23 MR. FFITCH: Thank you, Your Honor, I don't
24 have any other questions.

25 JUDGE MOSS: Thank you, Mr. ffitich.

00399

1 According to my notes from this morning, that would
2 bring us to PSE.

3 MR. BERMAN: Thank you, Your Honor.

4

5 C R O S S - E X A M I N A T I O N

6 BY MR. BERMAN:

7 Q. Good morning, Mr. Mayor.

8 A. Good morning.

9 Q. I would like to first get back to the numbers
10 a little bit. If I heard you correctly, you said that
11 your normal bill from PSE for the year is about \$.5
12 Million, but this year it was about \$1.6 Million; is
13 that correct? And by this year, I should say I meant
14 the year 2000.

15 A. Our utility has experienced costs typically
16 around \$500,000 a year, maybe \$600,000 one year, maybe
17 more, maybe less. And yes, you're correct in saying
18 that our bill this year would be \$1.6 Million.

19 Q. So that means that the amount of excess that
20 you had this year was about \$1 Million; is that correct?

21 A. We are \$1 Million over budget in the water
22 fund this year, yes.

23 Q. Now you had said that for the year 2000, I
24 believe, that that was approximately 11% of your annual
25 budget. At your deposition, you said that your annual

00400

1 budget was about \$13 Million normally but that you in
2 the year 2000 had an additional \$13 Million in your
3 budget for capital improvements; is that correct?

4 A. I believe that the question that was asked in
5 my deposition was how large is the public works budget.
6 At least that's the way that I interpreted the question.
7 The public works budget is indeed about \$13 Million.
8 The water treatment plant and distribution system budget
9 is roughly \$4.8 Million. And I said in my comments that
10 in 1999, the \$550,000 was approximately 11% of our
11 budget. We budgeted \$2 Million for the year 2001, and
12 that's approximately 33% of our budget. And if that

13 number goes higher, it will be a higher percentage.
14 \$2.5 Million is almost 40% of our electric or 40% of our
15 water treatment distribution budget.

16 Q. Was there also a capital improvement amount
17 added to your budget in the year 2000?

18 A. Yes.

19 Q. And how big was that capital improvement
20 amount?

21 A. During my deposition, I told you around \$13
22 Million. I have since gone back and looked through the
23 budget. It's right around \$9 Million.

24 Q. So the total budget for the water for the
25 year 2000 had been approximately \$14 Million, \$15

00401

1 Million; is that correct, adding the capital improvement
2 to the normal budgeted amounts?

3 A. Again, I want to be really clear. I'm not --
4 the total public works budget is around \$13 Million.
5 The water treatment plant distribution portion of that
6 budget is around \$4.8 Million. Our capital improvement
7 project, which I told you I assumed was around \$13
8 Million, is actually \$9 Million. So the total public
9 works budget, is that what you're asking me?

10 Q. I'm asking for the water budget. If it was
11 \$4.8 Million, would we had \$9 Million to that to figure
12 out the total amount for the water?

13 A. Yes, but that's a one time only capital
14 improvement project.

15 Q. Let's talk about that \$1 Million over budget
16 for the year. Do I understand correctly from the
17 questioning that went on earlier that 70% of that \$1
18 Million passes through to Equilon and Tesoro through
19 variable cost provisions in your contracts with Equilon
20 and Tesoro?

21 A. Yes.

22 Q. So of the \$1 Million, \$700,000 gets covered
23 in that method?

24 A. Yes.

25 Q. So that leaves \$300,000?

00402

1 A. Yes.

2 Q. Now do I understand correctly that you have
3 approximately 35,000 residential customers and about 800
4 business customers?

5 A. Approximately.

6 Q. Do you know how the remaining 30% of your
7 budget gets split between the residential customers and
8 the business customers?

9 A. Not exactly. I can tell you percentages by
10 major user, La Conner, Oak Harbor, the Skokomish. I can
11 get you those figures, but I can't tell you which
12 portion of those are businesses and which portions of
13 those are residents.

14 Q. So you don't know if the businesses use up
15 say half of that water or not?

16 A. No, I can't -- too much detail for me.
17 Q. Well, let's say that we took the \$300,000 and
18 just divided it up by the -- assume that all of it went
19 to the residential customers. If we took \$300,000 and
20 divided by was it 35,000 residential customers, would
21 you agree subject to check that that's a little less
22 than \$10 per residential customer?
23 A. I would agree that if your math is correct,
24 those would be the figures. And I'm not trying to be
25 difficult, but I guess that -- what I would like to say

00403

1 is there are -- you can't just take the overage and
2 allocate that across the system. There are people --
3 the system is very complex. You have single individuals
4 who may be elderly or on a fixed income. We charge for
5 our water by the cubic foot. So to give them their
6 percentage of this overage is not fair. You know, we
7 have to -- we have to work on a rate that allocates that
8 in a fashion that's fair. A family of ten gets the same
9 -- what you're advocating is that they get the same
10 surcharge as a single woman on a fixed income, and that
11 doesn't work.

12 Q. So you're saying that some customers might
13 have a surcharge of less than \$10, and some might have a
14 surcharge of more than \$10 depending on how you do the
15 rate making?

16 A. You know, I haven't even had this discussion
17 yet. That's what we need to work on with our
18 consultant, how to allocate this additional \$300,000 to
19 our customers. I don't know how to do that yet in a
20 fair fashion.

21 Q. You have referred to various discussions
22 between representatives of Puget Sound Energy and the
23 City of Anacortes. Is it correct that a Mr. Pemberton
24 was responsible for the bulk of the discussions with
25 Puget Sound Energy?

00404

1 A. Again, Mr. Khtaian, Mr. Pemberton, and myself
2 met with PSE. They came to my office and -- but I would
3 say that Mr. Khtaian and Mr. Pemberton probably had more
4 contact with PSE.

5 Q. Do you know if there were discussions between
6 Mr. Pemberton, Mr. Khtaian, and representatives of Puget
7 Sound Energy that preceded the various E-mails that have
8 been entered into evidence today?

9 A. I don't know.

10 Q. So if there were discussions, you're just not
11 familiar with what the contents of those discussions
12 would be?

13 A. Again, I think I have a good grasp of all the
14 discussions that took place. I don't know specifically
15 that there were any other discussions.

16 Q. Can you say for a fact whether there were
17 other discussions between Mr. Pemberton, Mr. Khtaian,
18 and representatives of Puget Sound Energy concerning the

19 decision to get onto Schedule 48 that you were not a
20 part of?

21 A. I can't say for a fact.

22 Q. I believe you have referred to NOX emissions
23 put out by the diesel generator that you have employed;
24 is that correct?

25 A. Yes.

00405

1 Q. Just to be clear on the record, do I
2 understand that you have now hooked up the diesel
3 generator, and you're not taking any electric service
4 under Schedule 48 from Puget Sound Energy?

5 A. That is correct.

6 Q. At your deposition, you said that the price
7 per megawatt hour for producing power with that diesel
8 generator was approximately \$110 per megawatt hour; is
9 that correct?

10 A. That's what we had projected.

11 Q. Have you done -- have you or have those under
12 your direction done any research to see if there were
13 low emissions diesel generators that could satisfy your
14 air permitting requirements?

15 A. Again, due to this emergency and the high
16 price of electricity, we needed to get something on line
17 at that plant immediately. Now do we have an
18 opportunity to go and find out if there are other types
19 of generation systems? Yes.

20 Q. Just so I understand correctly, you have not
21 -- that means that you have not as of yet researched
22 whether there are generator technologies that employ,
23 for instance, a cathodic reduction in order to reduce
24 the emissions produced by generators and therefore
25 satisfy your air permitting requirements?

00406

1 A. We will be looking into that.

2 Q. Are you personally familiar with the finances
3 of Lignatech?

4 A. I am not.

5 Q. There was some discussion during your direct
6 examination concerning the availability -- concerning an
7 E-mail in which Mr. Champion of Puget Sound Energy said
8 that hedges were available, and you said that that
9 discussion never ended up being followed up. Are you
10 familiar with all discussions that Mr. Pemberton may
11 have had with Puget Sound Energy concerning that offer
12 of hedges?

13 A. Again, I'm not familiar with all discussions
14 that may have taken place, but we do have -- would you
15 like to go to this document?

16 Q. If you would like. I believe it was marked
17 as Exhibit 104, and I see that in that Exhibit 104,
18 Mr. Champion apparently E-mailed Mr. Khtaian and
19 Mr. Pemberton, saying, let me know if you would like to
20 take another look at hedging some of the price risks.
21 Do you know what discussions might have ensued after

22 this set of E-mails to follow up on that request on that
23 question about whether Mr. Khtaian and Mr. Pemberton
24 would like to look at hedging?
25 A. I know that I received a copy of this E-mail,

00407

1 and my response to Mr. Khtaian and Mr. Pemberton was,
2 whenever you want to sit down and talk when you have the
3 information, I will be there, and the information is not
4 in our files.

5 Q. So do I understand correctly that you don't
6 know what discussions occurred afterwards between
7 Mr. Khtaian, Mr. Pemberton, and Puget Sound Energy?

8 A. That's correct.
9 MR. BERMAN: I have no further questions,
10 Your Honor.

11 JUDGE MOSS: Thank you.
12 Does the Bench have any inquiry of this
13 witness before we go to the redirect?
14
15

16 E X A M I N A T I O N

17 BY COMMISSIONER HEMSTAD:

18 Q. I think I heard you say that you have become
19 aware that Puget Sound Energy doesn't want to provide
20 service to Anacortes; did you say that?

21 A. One of the discussions in the mediation was
22 that we were no longer a core customer, nor were they
23 interested in providing us electricity. During the
24 mediation, I don't remember the frame of reference, but
25 I was doubly shocked.

00408

1 Q. Well, do you take that to mean that Puget
2 would now, if it had a choice, would want your business
3 to go away?

4 A. That's the way that -- that's the way that I
5 interpreted it was that somehow, you know, now we're not
6 a core customer, we would just as soon you go away.
7 Maybe we're causing too much trouble; I don't know.

8 COMMISSIONER HEMSTAD: That's all I have.

9 CHAIRWOMAN SHOWALTER: I just have some
10 follow-up questions just to clarify really.
11

12 E X A M I N A T I O N

13 BY CHAIRWOMAN SHOWALTER:

14 Q. You talked about the increased cost to you of
15 Schedule 48 versus Schedule 49, and I think you said
16 that through 2000 you have paid \$987,000 more than you
17 would have under Schedule 49; is that correct?

18 A. That's correct.

19 Q. And was that just for the year 2000 or since
20 Schedule 48 began?

21 A. That was since the inception, June 1st of
22 1998.

23 Q. Okay. And what would be the total amounts
24 that you did pay under 48 versus what you would have

25 paid under 49, in other words \$987,000 out of what?

00409

1 A. Again, I'm sorry, typically we would pay
2 right around \$550,000 a year for electricity, and we're
3 \$1 Million beyond that in the year 2000.

4 Q. I'm trying to get a sense of what percent
5 increase --

6 A. Oh.

7 Q. -- \$1 Million is to your bill.

8 A. To the what?

9 Q. For Schedule 48 versus what it would have
10 been under 49.

11 A. To the water treatment plant distribution
12 system budget or --

13 Q. No.

14 A. How --

15 Q. If you could give me two numbers, and
16 estimates are all right. What is the total amount you
17 would have paid, since its inception, what's the total
18 amount you will end up paying through December 2000
19 under Schedule 48 versus what is the total amount that
20 you would have paid under Schedule 49?

21 A. Okay, I think I can do that, top of my head.
22 For those two years typically under Schedule 49 we would
23 have paid about \$1,100,000. Under Schedule 48 since
24 June 1st, 1998, we have paid roughly \$2.1 Million, so
25 there's -- did that answer your question? Under 49 we

00410

1 would have paid roughly \$1.1 Million for those two
2 years. And I have done the calculations to show you the
3 complete difference between 48 and 49 and that's that
4 \$987,000 number.

5 Q. It may be in an exhibit here. I understand
6 what the difference is. I'm looking for the totals.
7 You apparently subtracted one number from another number
8 to get \$987,000, and I'm wondering what those two
9 numbers are. And if they're somewhere here, I thought
10 we had issued a Bench request to Staff to issue that
11 kind of information.

12 A. Here's the information right here.

13 JUDGE MOSS: And what is this?

14 THE WITNESS: That's the calculation of the
15 difference between the 48 and the 49.

16 CHAIRWOMAN SHOWALTER: Is this an exhibit?

17 JUDGE MOSS: We can make it one if it's
18 answering your question.

19 A. I did that, had that done so that I would
20 have that information.

21 JUDGE MOSS: We will let counsel look at it.

22 BY CHAIRWOMAN SHOWALTER:

23 Q. Okay, so the actual cost that you calculated
24 under Schedule 48 since its inception through December
25 2000, which I guess is a bit of an estimate, but is

00411

1 \$2,571,887.96, I didn't put that too well, but
2 \$2,571,887.
3 A. That sounds right.
4 Q. And that's as compared to what you would have
5 been charged in that same period under Schedule 49 of
6 \$1,585,164?
7 A. Those numbers come from our finance
8 department.
9 CHAIRWOMAN SHOWALTER: Yes, can we make this
10 an exhibit?
11 JUDGE MOSS: Let's show it to counsel.
12 CHAIRWOMAN SHOWALTER: All right, I'm just
13 going to write the numbers down first.
14 THE WITNESS: Now you know why I need a
15 finance director.
16 JUDGE MOSS: I'm going to ask counsel to take
17 a look at that document, simply pass it quickly down,
18 it's fairly brief, and to ascertain if there's any
19 objection. I'm thinking there probably will not be
20 having reviewed it myself very quickly. In that event,
21 we will ask someone from the Commission Staff to step
22 forward and volunteer to make a number of copies of
23 that, and I will also ask that whoever volunteers to do
24 that, if they could possibly put a 3-hole punch on that
25 for the Bench, that would be very helpful to us to keep

00412

1 our papers organized up here.
2 (Discussion off the record.)
3 JUDGE MOSS: All right, I'm sure those copies
4 will be back with us momentarily, and while we're
5 awaiting that, I will take care of a little housekeeping
6 matter. We had previously discussed the depositions and
7 the parties desire to have most of them at least put
8 into the record, maybe one or two exceptions we will
9 talk about as we get to individual witnesses. But I
10 asked Mr. Berman off the record just now if he would
11 like to have the deposition of Howard Dean Maxwell dated
12 12-29-2000 marked, and I have marked it as Exhibit 107,
13 and then I will mark the Schedule 48-Schedule 49
14 comparison as 108. And as I understand on the
15 depositions, counsel had previously agreed there are no
16 objections, but let me ask if there's a confidentiality
17 issue that we need to be concerned with with this
18 deposition.
19 Ms. Davison, can we waive confidentiality on
20 this one?
21 MS. DAVISON: Yes, we can, Your Honor.
22 JUDGE MOSS: So the deposition then will
23 simply bear the 107 number as non-confidential, and
24 parties should note that on their exhibits, because they
25 are, of course, produced with the confidential stamp.

00413

1 MR. BERMAN: Your Honor, for the record, the
2 deposition has -- there were several deposition exhibits
3 that were introduced during the course of the

4 depositions, and we would want those exhibits to be part
5 of the record as well. I think it gets a might
6 confusing, because we used one set of exhibits
7 throughout all of the depositions, so the exhibits that
8 are appended to the Maxwell deposition will not
9 necessarily be the entirety of the exhibits that were
10 referred to during the Maxwell deposition. We would ask
11 that all of the exhibits that were introduced by Puget
12 Sound Energy at its depositions be made a part of the
13 record as well, and they are listed on our exhibit list
14 independently. They were all marked PSE-1 through
15 PSE-14.

16 JUDGE MOSS: All right, well, as long as they
17 are on that list and parties will have an opportunity to
18 consider whether they have objections, then they're
19 covered and you're covered, so that works fine. All
20 right, then, and with counsel previously having
21 indicated there would not be objections on the
22 depositions, then I will admit 107, the deposition of
23 Howard Dean Maxwell dated 12-29-2000.

24 And then Exhibit 108, is there any objection
25 to the Schedule 48-Schedule 49 comparison sheet that we

00414

1 have had an opportunity to look at?

2 Hearing no objection, it will be admitted as
3 marked.

4 MR. BERMAN: Your Honor, if I might ask, we
5 believe that the Bench request responses are very
6 informative concerning the situation of each of the
7 Complainants, and I believe that the Bench request
8 responses are part of the record, but if they're not,
9 then I would move that they be admitted as well.

10 JUDGE MOSS: We intend to make those part of
11 the record, and at some point during the hearing, we
12 will see if there are any objections to any of those
13 that people want to note for the record and that sort of
14 thing, but we don't need to deal with that right now.
15 That is the intention.

16 All right, did you have some more questions?

17 CHAIRWOMAN SHOWALTER: Yes, I do.

18 BY CHAIRWOMAN SHOWALTER:

19 Q. Regarding the water rates, you disputed the
20 statement that the City can unilaterally raise its
21 rates, and I want to pin down what you meant by that
22 specifically. Is there any other legal authority that
23 needs to pass on those rates?

24 A. No, just that it's -- you know what it's like
25 to go through a rate hearing, and then to do it in three

00415

1 or four different communities makes it even more
2 difficult.

3 Q. So am I correct that legally only the City
4 can raise the rates, and they do so unilaterally but
5 subject to a process and law?

6 A. Yes.

7 Q. Thank you. And do you have any sense of what
8 the City's water rates are compared to either a state
9 average or a national average? Are they relatively low
10 rates, relatively high rates?

11 A. The only entity that I can really compare
12 rates to off the top of my head would be the PUD, and
13 our rates, our water rates, are somewhat reduced from
14 theirs. But we typically pay some of the highest sewer
15 bills in the state of Washington. We're in the top ten,
16 so if that's relevant.

17 Q. But can you give me any kind of number for
18 your water rates, either what a typical residence or
19 business uses or pays or any other number that's sort of
20 a bench mark?

21 A. Would it be -- could I give you a base number
22 for all utility charges, just a base monthly amount that
23 if you're a resident with the City of Anacortes, that's
24 where your rates would start?

25 Q. No, I think I'm after the water.

00416

1 A. Okay, we typically charge right around I
2 believe it's \$4 for the first 1,000 cubic feet of water,
3 and then it's right around \$1 for each 100 cubic feet
4 thereon, something like that.

5 Q. So you have a base rate and then additional
6 increments on top of that?

7 A. Yes.

8 Q. Then regarding diesel, do you have a
9 temporary permit for air permit at this time?

10 A. I believe that for whatever reason, my
11 understanding is that we do have the permit. I don't
12 know when we cross the emissions window, but we do have
13 a temporary operating permit, Northwest Air Pollution
14 Control Board is aware that we're up and running and we
15 have worked with them.

16 Q. Does it have an expiration date?

17 A. You know, apparently the calculations are
18 based on the amount of emissions, and once you exceed
19 whatever that limit is, you know, then they need to
20 either extend the permit or give you some authority to
21 operate outside of that original permit.

22 Q. Do you have any projection for how long you
23 can run your diesel under the current permit at the rate
24 you're running it?

25 A. I believe that the permit is 90 days. I'm

00417

1 not real familiar with the permitting process of the NOX
2 emissions standards. I know that Equilon and Tesoro
3 have to aggregate their generators, but I don't -- I
4 think that shortens their window. I don't know by how
5 much or how that works exactly.

6 Q. Okay. Now I was referring to your diesel
7 generator.

8 A. Yes.

9 Q. And your permit.

10 A. Yes, we do have a 90 day window. We do have
11 a permit in place at this time.

12 Q. And now what is your current annual load in
13 average megawatts?

14 A. You know, I apologize, I can't answer that
15 question. I don't know for sure. I am under the
16 impression that we take less than 1 megawatt a day. I
17 don't know how that plays out over the annual load. I
18 can't answer that question right now.

19 Q. Well, can we have a Bench request on this
20 point. It goes to the issue of whether you're qualified
21 to be on Schedule 48, and that is an interesting
22 question.

23 A. I can get the answer to that question for
24 you.

25 JUDGE MOSS: All right, well, we will just

00418

1 make I suppose the records requisition request is the
2 appropriate form, but whether it's that or a Bench
3 request really is immaterial. We want the information.

4 I will ask that, Ms. Davison, you will be
5 making the effort to furnish that, and if that
6 information is only available through PSE, I'm sure PSE
7 will cooperate in getting that information to us for the
8 record as promptly as that can be done. So I'm going to
9 just refer to it as Records Requisition Number 2, and
10 does everyone understand what's being requested? I'm
11 seeing nods in the affirmative, and so we will have that
12 information soon.

13 CHAIRWOMAN SHOWALTER: That's all the
14 questions I have. Thank you.

15 THE WITNESS: Thank you very much.

16 JUDGE MOSS: Ms. Davison, do you have very
17 much in the way of redirect?

18 MS. DAVISON: Very limited.

19 JUDGE MOSS: All right, I think we'll have
20 the redirect, and hopefully there won't be any recross,
21 and then we'll take our break after that. I know we're
22 pushing a little late, but if everybody can bear with
23 it, we'll do that.

24 MS. DAVISON: Thank you, Your Honor.
25

00419

1
2 R E D I R E C T E X A M I N A T I O N
3 BY MS. DAVISON:

4 Q. Mayor Maxwell, I think there may be some
5 confusion about the Tesoro and Equilon contracts for
6 their water supply from the City, so I would like to ask
7 you just a couple of follow-up questions about that. Is
8 it correct that you have service agreements with those
9 two entities?

10 A. Yes.

11 Q. And you have some ability to pass along some
12 costs to Equilon and Tesoro; is that correct?

13 A. That's correct.
14 Q. But are you certain sitting here today that
15 you will be able to collect the entire \$700,000 that has
16 been roughly attributed to these two entities in the
17 form of a surcharge to their current agreements?
18 A. No, I'm not certain.
19 Q. So if it turns out that Equilon or Tesoro
20 would dispute your ability to do that, you would need to
21 have further negotiations with them; is that correct?
22 A. That would be correct.
23 Q. And those negotiations have not occurred,
24 have they?
25 A. No.

00420

1 MS. DAVISON: I have nothing further.
2 CHAIRWOMAN SHOWALTER: Do we have copies of
3 those contracts in our evidence?
4 THE WITNESS: I don't remember if you do or
5 not.
6 MS. DAVISON: I think we -- I think we do. I
7 have produced, I apologize, I have produced so much
8 paper, I really honestly can't tell you specifically. I
9 will make sure that if it is not in our documents that
10 we will produce it.
11 JUDGE MOSS: All right, I will make a third
12 records requisition request, that what be for the
13 service agreement between the City and the two
14 industrial customers that have been referred to
15 repeatedly, Equilon and Tesoro I believe it is.
16 And, Ms. Davison, you will be responsible for
17 furnishing that.
18 MS. DAVISON: Yes, Your Honor.
19 JUDGE MOSS: All right, anybody have any
20 recross on the basis of that redirect?
21 All right, Mr. Berman.
22
23 R E C R O S S - E X A M I N A T I O N
24 BY MR. BERMAN:
25 Q. I just wanted to confirm, at your deposition,

00421

1 you were asked:
2 Do you have any contractual arrangements
3 with these wholesale customers that
4 prohibit you from raising rates on a
5 more frequent basis than the every three
6 years you have mentioned?
7 And you said:
8 We typically work with them on a yearly
9 basis. They're responsible for fixed
10 and variable costs throughout the year,
11 so if things fluctuate, that's passed
12 along.
13 Do you recall that Q and A?
14 A. I do.
15 Q. And was that accurate?

16 A. To the best of my knowledge. Mr. Khtaian
17 actually does the water contracts, and so I'm not
18 intimately familiar with what can and what can't be
19 passed along.

20 MR. BERMAN: That's all, Your Honor.

21 JUDGE MOSS: Thank you very much. I believe
22 then that will complete our examination of Mayor
23 Maxwell. And I think it would probably be prudent in
24 this case, given the way it's proceeding, we will ask
25 that the witnesses will be subject to recall, although

00422

1 they need not stay in the room if they have other
2 commitments. We can always get them back if we need
3 them. But for the moment at least, you are released
4 from the witness stand, and we appreciate your
5 testimony.

6 I think we have pushed a little late this
7 morning, and everybody could probably use a recess about
8 now. All right, we will recess for 15 minutes until 5
9 minutes after the hour by the wall clock. Please be
10 back promptly and ready to go by that hour.

11 (Brief recess.)

12 JUDGE MOSS: Your next witness, Ms. Davison,
13 Mr. Franz, I believe.

14 MS. DAVISON: Yes, Your Honor.

15

16 Whereupon,

17 MATTHEW GERARD FRANZ,
18 having been first duly sworn, was called as a witness
19 herein and was examined and testified as follows:

20

21 D I R E C T E X A M I N A T I O N

22 BY MS. DAVISON

23 Q. Mr. Franz, could you state your full name for
24 the record, please.

25 A. My name is Matthew Gerard Franz.

00423

1 Q. By whom are you employed?

2 A. CNC Containers Corporation.

3 Q. What is your title, please?

4 A. I am the vice president of operations.

5 Q. And as the vice president of operations, what
6 are your responsibilities?

7 A. I'm responsible for the safety, quality,
8 productivity, and profitability of our operation to
9 include the four manufacturing sites that we have.

10 Q. Are you responsible for energy?

11 A. Yes, I am.

12 Q. Could you briefly describe who CNC Containers
13 is?

14 A. CNC Containers manufactures plastic bottles
15 and preforms. We make carbonated soft drink bottles,
16 water bottles, juice bottles, dairy bottles, liquor
17 bottles. Give you a sense, I guess, the bottle that
18 Ms. Davison has right in front of her is one of our

19 bottles. Thank you very much. So that will give you an
20 idea of what we do.

21 Q. Do you have a facility located in Tumwater,
22 Washington?

23 A. The Tumwater facility was the first facility
24 that we opened up. It was where the first business
25 opportunity really arose nine years ago.

00424

1 Q. And is that business opportunity related to
2 who you sell your products to?

3 A. Oh, absolutely, absolutely. We have
4 currently, oh, I believe 18 or so customers in the state
5 of Washington.

6 Q. Can you give us, you don't have to list all
7 18, but who are some of your major customers of your
8 product?

9 A. We sell to all of the Pepsi fillers, both the
10 corporate Pepsi fillers as well as the franchise Pepsi
11 fillers. We sell to Shasta, A&W, Northstar Beverage,
12 Talking Rain, Clearly Canadian, Cascade Clear,
13 Sweetwater, Hood River Liquor, Dairygold is a dairy
14 customer in the Northwest. Give you a sense of our
15 customers up here.

16 Q. Thank you. How many employees do you have at
17 CNC?

18 A. We have -- the total company or at this
19 facility in the Northwest?

20 Q. Both.

21 A. At the facility in the Northwest, we have
22 about 300 employees. That includes the corporate folks
23 as well as the people at the manufacturing site. In the
24 company overall, we have about 750.

25 Q. And where are your other facilities located?

00425

1 A. We have facilities in Tucson, Arizona, Los
2 Angeles, California, and Lathrop, California, which is
3 right outside of Stockton.

4 Q. Is Tumwater your largest facility?

5 A. Yes, it is. As I said, it's got about, oh,
6 300 of the 750 employees that we have. It also does
7 about 40% of the revenue of the whole company.

8 Q. How long has CNC been in business?

9 A. CNC has been in business for nine years now.

10 Q. And until this recent spike in electric
11 prices, how has business been?

12 A. We are a company that has rather a bright
13 story to tell. We have grown dramatically for the last
14 five years since I have been there. We have grown 30%
15 to 40% per year and have done rather well.

16 Q. Are you currently taking electric service
17 under Schedule 48 for your Tumwater facility?

18 A. Yes, we are.

19 Q. Do you know when you began taking electric
20 service under Schedule 48?

21 A. We began taking service in March of 1997.

22 Q. And what tariff did you take electric service
23 under prior to Schedule 48?
24 A. Schedule 31.
25 Q. How large is your electric load

00426

1 approximately?
2 A. I believe it's approximately classified as an
3 8 megaload according to PSE.
4 Q. At the time that you switched to Schedule 48,
5 were you unhappy with your Schedule 31 rate?
6 A. You know, I don't think we were unhappy with
7 the Schedule 48 rate at that time in '97. As I said,
8 we're growing rapidly, we're adding equipment, our load
9 was growing as well, so it was kind of a natural thing
10 that we come off of rate Schedule 48 and PSE would
11 switch us to a different tariff.
12 Q. You mean come off of Schedule 31?
13 A. Schedule 31 and switch to a different tariff,
14 I'm sorry.
15 Q. Do you know who initiated contact regarding
16 changing your electric service from Schedule 31 to
17 Schedule 48?
18 A. I believe it was PSE.
19 Q. Who at PSE?
20 A. At that time our key accounts manager was a
21 gentleman by the name of Mike Richardson.
22 Q. Why did you change to Schedule 48?
23 A. At that time, he presented a substantial
24 amount of data that showed the benefits of Schedule 48
25 versus the current schedule we were on. There were

00427

1 gross rate comparisons between Schedule 31 to Schedule
2 48. There were projections of Schedule 48 from 1996
3 through, gee, I believe 2002 that showed how rate
4 Schedule 48 would do compared to rate Schedule 31.
5 Q. Is it safe to say that this document which I
6 believe what you're referring to has been previously
7 marked as Exhibit 201; do you have that in front of you?
8 A. Yes, I do, yes, it's 201, that's correct.
9 Q. Maybe I should back up. Is Exhibit 201 a
10 document provided to you by PSE?
11 A. Yes.
12 Q. And who at PSE provided you this document?
13 A. Mike Richardson.
14 Q. And how did Mr. Richardson characterize this
15 document?
16 A. Gee, he characterized it as projections of
17 the rate Schedule 48, basically what we would pay on
18 rate Schedule 48 versus rate Schedule 31, as well as the
19 savings we could expect to realize under rate Schedule
20 48.
21 Q. Did he convey, as this document contains,
22 projections that would show substantial savings for CNC
23 Containers under Schedule 48?
24 A. Oh, absolutely, you can see, I guess, oh, on

25 the first page of the document the Schedule 48

00428

1 projections in both sentences. It marches through
2 January of 01, progressively gets lower and lower, so
3 that in January of 01 the rate Schedule 48 projection is
4 2.8 cents per kilowatt hour.

5 MS. DAVISON: Your Honor, I would like to
6 move the admission of Exhibit 201.

7 JUDGE MOSS: Hearing no objection, it will be
8 admitted as marked.

9 BY MS. DAVISON:

10 Q. Did Mr. Richardson of PSE recommend to you
11 that you switch to Schedule 48?

12 A. Absolutely. He told us at the time that all
13 industrial customers were going that way, and it was a
14 method by which we could expect to save a lot of money
15 versus Schedule 31.

16 Q. Did PSE offer you or explain to you Schedule
17 49?

18 A. Schedule 49, they didn't present Schedule 49
19 to us. I think we were probably aware of Schedule 49 at
20 the time, but they didn't come down and give us the
21 tariff for Schedule 49.

22 Q. Did they offer you or discuss with you rate
23 Schedule 46, which is an interruptable tariff?

24 A. No, rate Schedule 46 is interesting. The
25 first time I found out about rate Schedule 46 was when I

00429

1 read the PSE brief last week. And obviously that's very
2 disturbing, simply because as I understand it, rate
3 Schedule 46 is an interruptable rate, and we have
4 historically signed up for interruptable rates at all of
5 our facilities simply because our processors are set up
6 such that we can interrupt, and it is -- it is something
7 that we can do in our manufacturing process quite
8 easily.

9 Q. If you had been informed about Schedule 46
10 back in I guess 1997, correct?

11 A. Correct.

12 Q. Back in 1997, would you have still signed up
13 for Schedule 48?

14 A. No, I don't think we would have. We have
15 signed up for interruptable rates in all of our other
16 manufacturing facilities when they were offered. So
17 we're on an interruptable rate in Southern California.
18 We're also on an interruptable rate in our Northern
19 California facility.

20 Q. Thank you. Did PSE explain to you in 1997
21 the difference between being a core and a non-core
22 customer?

23 A. No, I hadn't heard that terminology until a
24 couple of months ago.

25 Q. Were you aware of the existence of Schedule

00430

1 48 prior to your contact from PSE in 1997?

2 A. No.

3 Q. Did PSE provide you with any documents from
4 the original filing of Schedule 48 that would provide
5 you with further explanation about what Schedule 48 is
6 all about?

7 A. Well, they provided us with this, that we
8 have as the exhibit, we had the tariff, and then we
9 signed the service agreement.

10 Q. And that's all they provided you?

11 A. Yes.

12 Q. Did Mr. Richardson provide you with any type
13 of oral discussion about the previous history of
14 Schedule 48 or anything to give you a broader picture of
15 what you were signing up for?

16 A. You know, I don't really recall that other
17 than what's already spelled out in this November, the
18 projection for November '96 to December of '96 that at
19 that time wasn't a projection anymore. It was actually
20 the rate that had been in place on Schedule 48.

21 Q. Did you understand that under Schedule 48 you
22 would be subject to market risk for the price of
23 electricity?

24 A. Well, I mean I guess the answer to that
25 question is yes and no. We understood that there could

00431

1 be variation, and we understood that there could be some
2 price fluctuations. You know, I certainly didn't
3 understand that the price could go up 5 times, 10 times,
4 50 times in a relatively short amount of time.

5 Q. Let's turn to the issue of hedging. Did you
6 enter into a hedge after you signed up for Schedule 48
7 in 1997?

8 A. Yes, we did.

9 Q. And for what time period did that hedge
10 cover?

11 A. We signed up for a hedge from March 1997 to
12 mid 1999, I believe.

13 Q. And why didn't you extend that hedge after
14 its expiration?

15 A. After its expiration, we had a significant
16 amount of experience with rate Schedule 48. We had
17 PSE's projections of rate Schedule 48, that it would
18 continue to be low and stable, and we also had the
19 recommendations from our key account manager at that
20 time, Mike Richardson, who said he believed we didn't
21 need to hedge anymore.

22 Q. When prices shot up in August of 2000, did
23 you inquire about a hedge from PSE?

24 A. We got information from PSE about both hedges
25 and -- this is in August of?

00432

1 Q. 2000.

2 A. 2000, we got information about a hedge from
3 PSE in August as well as rate projections for the

4 Mid-Columbia Index at that time.

5 Q. And who did you get that information from?

6 A. Charlie Black.

7 Q. And what did Mr. Black tell you about
8 entering into a hedge during the August 2000 time frame?

9 A. Well, discussions at that time, the
10 projections on the Mid-Columbia Index were that in the
11 fourth quarter it would drop, in the first quarter of
12 2001 as well as the second quarter of 2001, the
13 Mid-Columbia would continue to drop, so that around the
14 second quarter at, I don't remember the exact numbers,
15 but it was about \$50 to -- low \$50's I think per
16 megawatt hour, somewhere in that neighborhood. What he
17 said to us was, buying a hedge when prices are high is
18 not a particularly good idea, because you will pay more
19 for a hedge. With price projections going lower, it's a
20 much more sound course of action to purchase a hedge at
21 the end of first quarter, beginning of second quarter,
22 because you will get a better deal.

23 Q. And is that what you planned to do based on
24 Mr. Black's advice?

25 A. That's exactly what we planned to do.

00433

1 Q. Have you seen prices go down since August of
2 2000?

3 A. No, the latest projections from PSE on
4 forward prices as of January 3rd was \$267 a megawatt
5 hour for all of 2001. That's cumulative.

6 Q. Mr. Franz, could you turn to what is marked
7 as Exhibit 202.

8 A. (Complies.)

9 Q. This is an E-mail to --

10 A. Yes.

11 Q. -- someone from CNC from John Malowney of
12 Enron; do you have that?

13 A. Yes, I do.

14 Q. Can you tell us what this document is?

15 A. It's basically a price quote for a hedge for
16 2001 with the quote of \$260 a megawatt hour.

17 Q. Did you purchase this product?

18 A. No, we did not.

19 Q. Why not?

20 A. Because we couldn't afford it. At \$260 a
21 megawatt hour with our load, we had have paid
22 approximately \$18 Million a year for electricity.
23 That's -- we can't do that. We would not be able to pay
24 that for electricity.

25 MS. DAVISON: Thank you.

00434

1 Your Honor, I would like to move the
2 admission of Exhibit 202, please.

3 JUDGE MOSS: Hearing no objection, it will be
4 admitted as marked.

5 MS. DAVISON: I have too much paper in front
6 of me, just one moment. Mr. Franz, I'm sorry, I tried

7 to be quite organized this morning, and I think what I'm
8 going to have to do is -- oh, wait a minute. Mr. Van
9 Cleve moved it, so I can blame him, he's not here.
10 Maybe not. All right, what's this. All right, I am
11 very sorry for this delay.

12 JUDGE MOSS: What is it you're handing the
13 witness, Ms. Davison?

14 MS. DAVISON: Your Honor, I just handed
15 Mr. Franz an excerpt of the prehearing brief of Puget
16 Sound Energy.

17 BY MS. DAVISON:

18 Q. Mr. Franz, have you read the prehearing brief
19 of PSE's in this case?

20 A. I have.

21 Q. And the sections that pertain to CNC, do you
22 believe that those are --

23 CHAIRWOMAN SHOWALTER: What page are we on?

24 A. Page 20?

25 Q. I'm starting on page 20, there's a discussion

00435

1 about CNC Containers.

2 A. No, they're wrong. On page 20, the second
3 paragraph says that CNC would be shifting assets and
4 equipment to Peru regardless of the cost of electricity
5 in the Northwest. That's absolutely not true. The only
6 reason we're moving equipment out of the Northwest is
7 because of electricity prices.

8 It also, I guess, infers in here that the
9 layoffs that we have had are due to seasonal
10 fluctuations in our business. Again, that's absolutely
11 not true. The permanent layoffs that we have had are
12 due solely to cost reductions we have had to make
13 because of the price of electricity.

14 And then I guess on page 35 I believe it is,
15 again, I guess it says that it's a thin margin business
16 and we're increasing and decreasing workload levels
17 depending on a variety of factors and that there is no
18 credible evidence, I suppose, that layoffs are due to
19 electricity prices. Again, I want to say the, to make
20 it just crystal clear, the layoffs that we have had are
21 solely due to cost reductions due to electricity prices,
22 and the plant layoffs that we have had are solely due to
23 cost reductions because of electricity prices.

24 Q. Is CNC in a competitive business?

25 A. It's a very competitive business. It's a

00436

1 price sensitive business. It's a business where a lot
2 of our products are almost a commodity.

3 Q. Can you simply pass along these high electric
4 prices to your customers as Mr. Berman suggested to you
5 during your deposition?

6 A. No, we can't. Our contracts do not allow for
7 us to pass cost increases along in that manner to our
8 customers. The only thing that we can pass along to our
9 customers for cost increases is fluctuations in the

10 price of resin, not in the price of electricity.

11 Q. So if you're unable to pass along these high
12 electric prices to your customers in the form of a
13 surcharge, who is paying these high electric bills?

14 A. CNC is paying the bills, and I guess
15 indirectly our employees are.

16 Q. And what have you done to address these high
17 electric prices?

18 A. We disconnected from Puget Sound Energy on
19 December 10th, and we currently are running nine 1.25
20 meg generators at the CNC facility, diesel generators.
21 We're not taking power from PSE anymore. It was the
22 only way that we saw that we could continue to run and
23 operate at CNC without paying the, at that time, very,
24 very high prices for the month of December.

25 Q. Why didn't you, given these high prices and

00437

1 your competitive business, why didn't you just shut your
2 facility down in its entirety?

3 A. I guess there's a couple of reasons for that.
4 One, we have obligations to our customers, and we are
5 bound to provide product to our customers, and we
6 obviously want to continue to meet those obligations. I
7 guess the second reason is that even short of a short
8 term layoff, this was December 10th right before
9 Christmas, gee, what a horrible time to shut down the
10 facility for a period of time for our employees. Those
11 are really the two reasons we didn't do that.

12 Q. You mentioned that you're operating with
13 diesel fuel to generators. How is that working for you?

14 A. Well, I guess marginally at best. Besides
15 the environmental issues with diesel generators, there's
16 a number of operational issues that make it very tough
17 to run. We have nine generators, like I said. Each of
18 the generators needs to be shut down once every 15 days
19 for maintenance, so you have nine interruptions every 15
20 days for a portion of your operation as you lose that
21 generator for the time it needs to be worked on,
22 typically about four hours. You have a myriad of a
23 number of unscheduled operations shutdowns as generators
24 break or there is problems with a the fuel supply.
25 We're moving about 440,000 gallons of diesel a month to

00438

1 support these generators, so we have problems with
2 diesel. And then the generators themselves may have a
3 problem where they come out of sync with one another,
4 and then again that shuts down a portion of your
5 operation.

6 Even beyond that, balancing the load across
7 the facility with these nine generators is very tough to
8 do. We have a couple of machines that are down and will
9 remain being down because we don't have enough power at
10 the switch gear where these generators are supporting,
11 so we're still trying to find a solution for that
12 problem.

13 Q. Do you know how much you paid for electricity
14 at your Tumwater facilities for 1999?

15 A. We paid about \$2.1 Million.

16 Q. I understand you haven't received your
17 December bill, and you will certainly not be receiving
18 the full brunt of it since you disconnected from PSE's
19 system on December 10th, but through November 30th, do
20 you know how much you have paid for electricity?

21 A. Oh, November 30th, I don't know. I have a
22 good estimate of -- a very good estimate of what we paid
23 for electricity through all of 2000.

24 Q. What is that estimate?

25 A. That's \$6.4 Million, so we paid \$4.3 Million

00439

1 more for electricity in 2000 than we did in 1999.

2 Q. As the result of these high electric prices,
3 is CNC facing an emergency?

4 A. Absolutely. It's safe to say we're fighting
5 for our lives right now. Forward price projections for
6 electricity are very high. We are on temporary
7 generators. We have had to take a number of
8 extraordinary measures to reduce costs. Those include
9 we have laid off six managers and staff on November
10 30th. We have begun to move load out of the Northwest,
11 meaning move equipment out of the Northwest. We are
12 currently in the process of shutting down and shipping
13 out 9 of our 23 injection molding machines in the
14 facility and moving them out of the state of Washington.
15 That is solely to reduce load so that we reduce our
16 electricity bill in the state of Washington. We're also
17 planning another layoff before the end of January. It's
18 just something we have to do to reduce costs to pay the
19 electricity bills.

20 Q. Do you know how many additional employees you
21 plan to lay off?

22 A. Well, with the layoffs, we're looking at
23 about 6 at the Tumwater corporate office. In addition
24 to that, we will eliminate probably about 35 jobs as a
25 result of moving all the equipment out.

00440

1 Q. While we're talking about layoffs, can you
2 describe the impacts that this is having on your
3 employees?

4 A. Well, I think our employees are terrified.
5 You know, we have disconnected from the utility, we have
6 rolled in nine temporary generators, we have laid off
7 people, we have cut benefits, we have, you know, I don't
8 -- I think that the other layoff is not announced yet,
9 but it's safe to say that our employees are very nervous
10 about our business prospects.

11 Q. Can you describe the benefits that you have
12 reduced to your employees as a result of these high
13 electric bills?

14 A. As of January 1st, we began charging our
15 employees for medical benefits. That's the first time

16 we have ever done that. It -- horrible thing to do,
17 just a terrible thing to do. But again, we just -- we
18 just have no options. I guess the -- in the nine years
19 of the history of the company, we have never done that,
20 and it was always kind of a source of pride that our
21 employees had no contribution to their medical benefits.
22 Obviously that's changed. It's a bit of concern with us
23 that a lot of employees will opt out of paying for those
24 benefits and then have no benefits at all, which, gee,
25 will then be a real problem if they don't have medical

00441

1 benefits, health benefits, and something happens to
2 them.

3 Q. Can you describe generally the contributions
4 that you make to the community and specifically the City
5 of Tumwater?

6 A. Well, we have 300 employees in the City of
7 Tumwater. A lot of the revenue that the Tumwater plant
8 generates obviously goes right back into the local
9 community. I had our controller take a look at about --
10 give an estimate of about how much that was, and she
11 estimated about \$30 Million that CNC pays back into the
12 local community for just a myriad of things, salaries,
13 benefits, local suppliers, taxes. I know we paid over
14 \$1 Million for our personal property and real estate tax
15 in 1999. We pay about \$25,000, \$30,000 a month B&O tax.
16 Obviously it has been a windfall for the City of
17 Tumwater for the utility tax that we have had to pay for
18 the year 2000 as well.

19 Q. Although I guess with self generation,
20 that --

21 A. Well, as of December 10th, that's right, but
22 certainly for all of 2000, it has been far higher than
23 it has been by about three times.

24 Q. Do you think they, as a result of the impacts
25 on CNC due to these high electric prices, that this has

00442

1 translated into an emergency for your community?

2 A. Oh, I think so. I mean we certainly have 300
3 employees over there that anybody could talk to that
4 think it's a dire emergency. We also have all of the
5 other suppliers to CNC who are very, very concerned, and
6 gee, those guys include local machine shops, janitorial
7 services, gardening people. We have large, large
8 freight contracts with local Washington suppliers
9 including we employ seven contract carriers as well who
10 work for shipping companies that do nothing but ship
11 product for us. We run a three truck shuttle from the
12 Port of Seattle or Tacoma that does nothing but shuttle
13 resin down to our facility, obviously making good
14 revenue for the trucking company that has that contract
15 for us as well. If there are other issues with CNC
16 being able to continue to provide bottles to our
17 customers, obviously our customers have a huge dilemma
18 as well.

19 Q. If we continue to see these high prices in
20 the range of what you have been given by PSE of say
21 \$260, in the long run, will CNC be forced to shut down
22 its Tumwater facility?

23 A. For 2001, we -- price projections are \$260 or
24 \$267 a megawatt hour from PSE. We will not be able to
25 purchase electricity and do business in the state of

00443

1 Washington with that energy price. We won't be
2 competitive, and we certainly won't be able to support
3 that. Right now we're in emergency mode, shipping
4 equipment out, and quite frankly that's limited just by
5 a couple of things, the amount of space we have in our
6 other facilities to accept equipment that we can ship
7 out and the amount of planning we can simply put
8 together in a short amount of time.

9 Q. Is there anything further that you would like
10 to tell the Commission regarding this emergency and what
11 you're facing under Schedule 48?

12 A. Yeah, I think so. It's interesting we're
13 talking about whether this is an emergency or not an
14 emergency. There are 300 employees over there who
15 absolutely believe it's an emergency. It's an emergency
16 for them. It's certainly an emergency for their
17 families and spouses. And, you know, the -- I think the
18 -- the rude awakening of it for the management group and
19 the employees is it's an emergency that I'm not sure no
20 matter what we do at CNC, no matter what the management
21 group at CNC does, that we can change the outcome unless
22 we get some help. I think that's quite clear.

23 We have generators temporary permitted for
24 through April. Our permit ends May 1st. After that, we
25 will have to purchase electricity from PSE. Our

00444

1 permitting authority has made it pretty clear that they
2 will not extend the permit. If we have to buy
3 electricity from PSE at \$260 a megawatt hour, that will
4 be a death sentence for our company. There's no doubt
5 about it.

6 MS. DAVISON: Thank you, Mr. Franz, I have no
7 further questions on direct.

8 JUDGE MOSS: Thank you, Ms. Davison.

9 We're running up against the previously
10 announced recess that we were going to run from 11:45
11 until what did we say, 1:15?

12 CHAIRWOMAN SHOWALTER: 1:15.

13 JUDGE MOSS: 1:15, so I don't really see any
14 benefit in starting the cross and having it interrupted
15 after just a couple of questions. So let's defer that
16 until after the luncheon recess, and I would like to ask
17 that everyone be back here promptly at 1:15 ready to go.

18 MR. TROTTER: Your Honor, the company did
19 give me a moment ago the contract for CNC. I would be
20 happy to distribute that before the break so people can
21 look at it if they wish, if you're amenable.

22 JUDGE MOSS: Sure. Are you intending to use
23 that on cross?
24 MR. TROTTER: I just intended to put it in
25 through the witness per the Bench request.

00445

1 JUDGE MOSS: I will tell you what I will do
2 then. I will go ahead and -- you're going to want the
3 deposition in, right, Mr. Berman?
4 MR. BERMAN: Yes, Your Honor.
5 JUDGE MOSS: So we will go ahead and mark
6 that. Well, no, I will defer on that, because you will
7 be cross-examining last. I will mark this as 203. So
8 we will mark the Schedule 48 service agreement with CNC
9 and Puget Power as 203.
10 Anything else before we go off the record?
11 All right, fine, then let's be in recess
12 until 1:15. Thank you.
13 (Luncheon recess taken at 11:45 a.m.)
14
15

16 A F T E R N O O N S E S S I O N
17 (1:15 p.m.)
18

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

20 JUDGE MOSS: We have had our luncheon recess,
21 and we are ready, I believe, for Mr. Trotter's
22 cross-examination of Mr. Franz.
23 MR. TROTTER: Thank you, Your Honor, is
24 Exhibit 203 the service agreement?
25 JUDGE MOSS: Yes, it is, we premarked the CNC

00446

1 PSE agreement as 203.
2
3 C R O S S - E X A M I N A T I O N
4 BY MR. TROTTER:
5 Q. Mr. Franz, I would refer you to that exhibit.
6 A. I have it.
7 Q. 203, and this is the February 10, 1997,
8 contract between CNC and Puget?
9 A. Yes.
10 Q. The third page of the exhibit is called a
11 selection agreement. Can you tell me what that is?
12 A. It's the optional firming.
13 Q. And is it also optional price stability?
14 A. Correct.
15 Q. And did CNC decline on both of those?
16 A. That's correct, we did.
17 Q. On the page after that, page four, is simply
18 the account number and service address; is that right?
19 A. Yes, I think so.
20 Q. And then the next page is actually has a
21 handwritten page five, this is just simply a notary
22 acknowledgment of the contract?
23 A. That's correct.
24 Q. And then the last page of the exhibit is

25 another service selection agreement dated October 25th

00447

1 of the year 2000; do you see that?

2 A. That's correct.

3 Q. Can you explain the circumstances that led to
4 this page being signed by you?

5 A. Circumstances, I'm not sure I understand what
6 you --

7 Q. Was this last page executed in October of
8 last year?

9 A. Yes, it was.

10 Q. And how did this come to your attention?

11 A. Puget Sound sent this to us to fill out prior
12 to, I believe, November 1st.

13 Q. And unlike the prior form, this did not have
14 an entry for optional price stability; is that correct?

15 A. Well, I think the other one did too.

16 Q. I believe this, the one on the last page does
17 not have anything that says optional price stability; is
18 that correct?

19 A. Oh, that's correct, yeah.

20 Q. So all this was dealing with the optional
21 firming service?

22 A. That's correct.

23 Q. In questions from your counsel this morning,
24 you mentioned that CNC understood that it assumed risks
25 associated with the price of electricity. Could you

00448

1 refer to page two of the exhibit, paragraph eight, and
2 my question to you is whether this paragraph is the
3 paragraph as you understand it that addresses the risk
4 of the price of electricity being more than it would be
5 otherwise?

6 A. I'm not quite sure what the question is.

7 Q. Let me start over. You indicated to your
8 counsel this morning that CNC knew it was assuming risks
9 associated with price of electricity. Do you recall
10 that question?

11 A. Yes, I do.

12 Q. Is paragraph eight of your service agreement
13 Exhibit 203 the part of the agreement that as you
14 understand it discusses risk of price increases?

15 A. Yes, it is.

16 Q. The last sentence of that paragraph says:
17 Customer has had an opportunity to
18 consult its own legal counsel and power
19 market experts in its evaluation of the
20 risks associated with taking service
21 under Schedule 48.

22 Do you see that?

23 A. Yes, I do.

24 Q. CNC did not, in fact, consult with its own
25 power market experts prior to signing this contract, did

00449

1 it?
2 A. No, we did not. Well, power market experts
3 was the question or attorneys?
4 Q. Power market experts.
5 A. Well, the power market experts we consulted
6 with was PSE.
7 Q. Did you retain them?
8 A. No, we did not.
9 Q. So my question I think was independent power
10 market experts.
11 A. No, we did not.
12 Q. And if I didn't use that term, I should have.
13 A. No, we did not.
14 Q. You mentioned also in your testimony that
15 your contracts with your customers who buy plastic
16 bottles and preforms from you, that there are terms in
17 those contracts so if the cost of resin increases, your
18 cost of resin increases, then you are able to pass that
19 along to them; do you recall that?
20 A. Yes.
21 Q. But there's nothing in your contracts that
22 says if the price of electricity, your price, your
23 cost --
24 A. No.
25 Q. -- goes up --

00450

1 A. No.
2 Q. -- you can pass that along; is that right?
3 A. No.
4 Q. Am I correct that CNC has not sought to
5 reform any of its contracts with its plastic bottle and
6 preform customers on grounds of emergency, commercial
7 frustration, mutual mistake, or other theory?
8 JUDGE MOSS: All right, Ms. Davison has an
9 objection.
10 MS. DAVISON: I object to the question to the
11 extent that it's seeking a legal opinion, and it's also
12 using a lot of legal terminology that has precise
13 meaning within the legal world, and I'm not sure that
14 this witness is qualified to necessarily understand what
15 reformation of a contract is, for example.
16 JUDGE MOSS: All right, well, that objection
17 is well taken. To the extent the term was used in a
18 technical sense, which it may not have been, but,
19 Mr. Trotter, let me just ask you to rephrase the
20 question. And we'll deal with it if you do mean in the
21 technical legal sense or if you just mean renegotiate.
22 MR. TROTTER: I will do so, thank you.
23 BY MR. TROTTER:
24 Q. Has CNC contacted any of its plastic bottle
25 or preform customers and stated that an emergency exists

00451

1 and the contract will no longer be followed?
2 A. We haven't stated that to -- we have not said
3 the contract no longer exists to any of our customers.

4 Q. Have you sought to renegotiate any of your
5 contracts on the basis of an emergency?

6 A. We have sought to charge our customers more
7 for the bottles.

8 Q. We will get into that in a second, but I
9 think my question is more focused on whether you sought
10 to engage them in renegotiation of a contract?

11 A. No.

12 Q. But you have sought to, at least you are
13 considering imposing surcharges on your customers for --

14 A. Well, we're not considering.

15 Q. -- electricity related costs?

16 A. We're not considering, we're trying.

17 Q. During the deposition, I had asked you
18 whether you had actually invoiced a customer for that,
19 and I believe at that time you had not. Have you done
20 since then, or is my -- maybe if you had done before
21 then, then feel free to refresh my recollection on that
22 point.

23 A. We have invoiced customers for an additional
24 surcharge for bottles. To date, none of our customers
25 have agreed to pay it. We are currently sending them

00452

1 reams of information about the state of emergency that
2 exists within our company and that they should pay it.
3 As of last week, none of our customers have agreed nor
4 will agree to pay that surcharge.

5 CHAIRWOMAN SHOWALTER: Can I interrupt a bit.

6 Anyone who is listening on the conference
7 bridge, if you have a mute button, please press it,
8 because your papers are rustling and interfering with
9 our listening abilities. Thank you.

10 BY MR. TROTTER:

11 Q. So I take it it's correct then that no legal
12 action has been instituted against any of your customers
13 by CNC based on any --

14 A. Absolutely not.

15 Q. I also asked you in the deposition and I
16 believe you testified in the deposition that CNC for the
17 year 2000 was at a net zero earnings position. Do you
18 recall that?

19 A. I think you asked me whether I had a sense of
20 where we're at, and I said ball park yes, at about zero.

21 Q. Would that be your testimony today?

22 A. I went back and checked because we sent in --
23 no, we have made a small amount of money through
24 November.

25 Q. Under \$100,000?

00453

1 A. No, between \$1 Million and \$2 Million.

2 Q. And I also asked you during your deposition
3 what CNC's retained earnings were, and you didn't know.
4 I was wondering if you went back and checked.

5 A. I do not know.

6 Q. And do you know what CNC's cash reserves are?

7 JUDGE MOSS: We have an objection.
8 MS. DAVISON: I just -- right now we are not
9 invoking any confidentiality. This is not a publicly
10 traded company where this would be available through a
11 10-Q. So to the extent I guess I would ask the witness
12 if we need to -- I'm not instructing him not to answer.
13 I just want to make sure that he's not revealing
14 confidential information that he would not want publicly
15 disseminated. This is a public hearing, and we're now
16 starting to get into sensitive --
17 THE WITNESS: I'm uncomfortable with this.
18 JUDGE MOSS: We can mark this portion of the
19 transcript as confidential.
20 CHAIRWOMAN SHOWALTER: Well, we have
21 everybody in the room. Well, couldn't we ask him to put
22 something on a piece of paper that we could then
23 introduce into the record?
24 JUDGE MOSS: As a confidential exhibit?
25 CHAIRWOMAN SHOWALTER: Right.

00454

1 JUDGE MOSS: We could do it that way, or we
2 could clear the room of those who have not signed the
3 certificate.
4 COMMISSIONER HEMSTAD: Well, we also have the
5 conference bridge.
6 CHAIRWOMAN SHOWALTER: I mean if we're just
7 talking about a single number, we can do it in writing.
8 MR. TROTTER: He hasn't testified whether he
9 knows it yet.
10 JUDGE MOSS: Maybe we should get over that
11 hurdle first. Mr. Trotter is right.
12 A. No, I don't. That takes care of that.
13 MR. TROTTER: Those are all my questions,
14 thank you.
15 JUDGE MOSS: All right, thank you.
16 Mr. ffitch.

17
18 C R O S S - E X A M I N A T I O N

19 BY MR. FFITCH:

20 Q. Good afternoon, Mr. Franz, Simon ffitch,
21 Public Counsel.
22 A. Hello.
23 Q. Late last week, your attorneys filed a brief
24 on behalf of CNC and the other Schedule 48 customers,
25 correct?

00455

1 A. That's correct.
2 Q. And in that brief, subject to check, the
3 statement was made that the Commission could provide
4 relief without harming PSE's other commercial,
5 industrial, and residential customers or jeopardizing
6 the financial health of PSE; is that correct?
7 A. That's correct.
8 Q. And do you endorse that statement?
9 A. Absolutely.

10 Q. And am I correct then that CNC is not asking
11 the Commission to adopt any remedy that would shift any
12 cost recovery to Puget's other residential, commercial,
13 or industrial customers?

14 A. We are certainly not asking for a subsidy nor
15 to shift costs.

16 MR. FFITCH: Thank you, no further questions.

17 JUDGE MOSS: All right, thank you.

18 Mr. Berman.

19 MR. BERMAN: Thank you, Your Honor. The
20 first point I would like to raise relates to an issue
21 that we addressed this morning prior to the time that
22 the commissioners came into the hearing room, and that
23 is that we had served data requests on various parties
24 including CNC. And CNC like many of the other
25 Complainants refused to provide information, and Puget

00456

1 Sound Energy filed a motion to compel. And you granted
2 that motion to compel on Wednesday ordering the
3 Complainants to produce responsive information.

4 We have yet to receive the response from CNC
5 to those data requests. Accordingly, we think that it's
6 appropriate that sanctions be leveled on CNC to deal
7 with the fact that they have not provided us information
8 so that we can adequately question CNC.

9 JUDGE MOSS: Ms. Davison.

10 MS. DAVISON: Your Honor, we submitted a
11 supplemental filing that contained, I don't have it in
12 front of me, I can retrieve it if we would like to talk
13 about it in specificity, but CNC provided a financial
14 cash flow statement under a highly confidential
15 designation, which Mr. Berman did not sign the affidavit
16 to see that, so we provided that to Mr. Van Nostrand,
17 who received that. We provided updated responses to the
18 data requests, and Mr. Franz went back and did an
19 exhaustive search of his file, and we basically provided
20 everything that we had.

21 I'm not aware of any information for CNC
22 Containers that we did not provide either through a
23 supplemental response or through a designation of highly
24 confidential. I'm just simply not sure what Mr. Berman
25 is referring to. I thought we were complete with CNC.

00457

1 JUDGE MOSS: Okay. Well, Mr. Berman, it
2 sounds as though the Complainants have not been
3 resisting discovery, but perhaps the information you
4 want or think that they might have simply doesn't exist
5 or has been provided under a highly confidential
6 protection that has made it difficult for you to use.
7 So certainly it would be premature at this juncture to
8 consider any form of sanctions.

9 You are free, of course, to file a motion to
10 that effect and allow the Commission to consider the
11 matter in detail with the data requests and responses
12 before it in camera, and we can take that up again as

13 appropriate at the conclusion of our proceedings. But
14 for the meantime, I think we need to go ahead.

15 MR. BERMAN: Yes, Your Honor. If I may, this
16 will be an issue with a number of other Complainants.
17 Should we take the same approach with those other
18 Complainants as well?

19 JUDGE MOSS: Well, to the extent that's
20 workable, yeah, if the answer is going to be the same in
21 every instance. There may be some differences among
22 parties that would warrant us hearing some argument here
23 and allowing the Commission to consider what should be
24 done.

25 I think Commissioner Hemstad has something.

00458

1 COMMISSIONER HEMSTAD: Mr. Berman, you heard
2 Ms. Davison's response. Do you have a response to that?
3 Her position is that they had provided the information
4 as required.

5 MR. BERMAN: Your Honor, Mr. Van -- under the
6 terms of the highly confidential protective order, we
7 were only permitted to designate one counsel, one
8 outside counsel per side to review materials. I knew
9 that I might get called away to deal with my wife who is
10 very pregnant, and so we designated Mr. Van Nostrand to
11 review these materials. And I think he can address the
12 fact that -- of what's been -- what additional
13 information we have received.

14 MR. VAN NOSTRAND: I can report we did not
15 receive any highly confidential information for CNC as
16 of Saturday morning, so I guess we need to look at the
17 information which Ms. Davison says they provided and see
18 if we have any more questions based on that. But we did
19 not -- I am the designated person to look at the highly
20 confidential materials, and with respect to this
21 Complainant, we did not receive any.

22 COMMISSIONER HEMSTAD: Well, maybe the
23 parties need some more -- counsel need some more
24 conversation, and maybe the issue will go away.

25 MS. DAVISON: I think that's a very good

00459

1 suggestion, because it's certainly my recollection that
2 I put it in the Federal Express box. And if it wasn't
3 there, then perhaps I am in error, Mr. Van Nostrand, but
4 it was our intent to provide those documents, and I'm
5 happy to provide another copy if they didn't make it
6 into the box. But that I think probably we can handle
7 off line and work through.

8 The comment I guess that I would say to
9 Mr. Berman's more general response regarding the data
10 requests is that there are some companies who are still
11 gathering documents right now, that even with some of
12 the limited questions or limiting of the questions. For
13 example, Air Products indicated to me that they're still
14 having to gather data for, you know, several hundred
15 facilities that are technically responsive. They

16 couldn't do that in a day. I understand that I will be
17 receiving a huge box of documents today from Air
18 Products, so we are working very, very diligently to
19 provide those documents. We sent out a large photocopy
20 paper box of documents on Friday and then another Fedex
21 box of documents on Friday. We sent out quite a few
22 documents. We are continuing to provide documents, and
23 we're doing the best we can. It's a lot of paper.
24 MR. BERMAN: Your Honor, if I might, Puget
25 Sound Energy has been severely prejudiced by the

00460

1 Schedule in this proceeding. It's been too fast and
2 it's been unnecessary, and we believe that if the
3 Complainants feel that there's an emergency that it's
4 their burdon to produce the information that's necessary
5 for us to test their claims of an emergency. You found
6 at the argument on the motion to compel on Wednesday
7 that the requested information was relevant to those
8 questions, the question of whether there was an
9 emergency and what relief, if any, might be available to
10 respond to the emergency. So we are severely prejudiced
11 by the fact that data has not been provided. And I
12 think that counsel has just acknowledged that for some
13 of the companies, data has not been provided and may not
14 be provided for some time.

15 JUDGE MOSS: Okay.

16 MS. DAVISON: I don't want to prolong this,
17 but I don't think I made such an acknowledgment. I am
18 happy to show you how much it's -- sitting in these
19 boxes behind my legal assistant, Linda Vitelli, are
20 literally notebooks upon notebooks of documents that we
21 have produced in this case. I don't believe that we
22 have prejudiced PSE in any way. We have not only
23 produced reams and reams of paper, we have produced
24 written responses, and we have further made the offer to
25 provide stipulated facts to assist PSE in trying to get

00461

1 the data that they're looking for. In addition, we have
2 made all of our witnesses available for depositions. I
3 believe that we have been very forthcoming with
4 information, and I believe that yes, it's been in a
5 compressed time period, but they have an enormous amount
6 of data and documents that we have provided to them.

7 JUDGE MOSS: Well, unquestionably there has
8 been an exchange of some very significant volumes of
9 information in the course of the proceeding. I have
10 been involved in enough of your discovery disputes to
11 appreciate that we're talking about quite a lot of
12 paper. I think that the best we can do under the
13 circumstances is to proceed with our hearing and let
14 counsel accomplish what they can with what they have at
15 this time in terms of their questioning.

16 I mentioned at the conclusion of our first
17 witness's testimony that we would be asking that our
18 witnesses remain subject to recall. And so if we get to

19 the end and you apparently, Mr. Berman, are going to
20 continue receiving material from Ms. Davison's clients
21 even through the course of our hearing, we can find out
22 what happened with apparently there has been some sort
23 of a delivery problem with some data that is important
24 to you, you say. And if at the end of our two days of
25 hearing, you continue to feel that you are prejudiced

00462

1 and that you need some further examination or some
2 further process with respect to the information that you
3 receive later than certainly would be ideal, then we can
4 take that up at that time and consider what needs to be
5 done. And I suspect it's something that we would want
6 to consider carefully, and I know it's something that we
7 would want to consider carefully and with the fullness
8 of that material having been made available hopefully.
9 So let's see what we can accomplish without that.

10 MR. BERMAN: Your Honor, on that note, I
11 guess I would start my cross-examination. The first
12 thing I would do is offer the deposition transcript of
13 the deposition that was taken of Mr. Franz a few weeks
14 ago. I believe that for the most part that deposition
15 addresses many of the issues that are before us.

16 JUDGE MOSS: All right, I'm going to mark
17 that as 204, and before we consider whether there may be
18 any objections, and I think we may have actually already
19 covered that point with respect to depositions, but 203,
20 Mr. Trotter, you did not offer, and I think that's just
21 an oversight. So is there any objection to 203, which
22 was the CNC-PSE service agreement?

23 There being no objection, it will be admitted
24 as marked.

25 And now that brings us back to 204. We have

00463

1 talked previously about the handling of these. Now let
2 me ask about the confidentiality, and Ms. Davison is
3 momentarily distracted, but I wanted to ask you about
4 the confidentiality on this transcript, can we waive it
5 on this one as we did on the previous one, or are there
6 portions that need to remain under the confidential
7 designation?

8 MS. DAVISON: Your Honor, I went through this
9 transcript quickly during the break, and I need to spend
10 some careful time with the witness, which I have not had
11 time to do, because he does reveal some sensitive
12 financial data. So if you wouldn't mind, I would like
13 to get back to you and give you a letter about which
14 pages we want to keep confidential and then remove the
15 confidentiality of the rest of the pages.

16 JUDGE MOSS: All right. Well, for the time
17 being then, we do have to treat it as a confidential
18 exhibit, so to the extent you're drawing your data from
19 that source and that source alone, Mr. Berman, you will
20 need to alert us if we need to refer to specific data
21 that might be sensitive financial data. Is that the

22 only type of data in here that we need to be concerned
23 about?

24 THE WITNESS: Yes, I believe so.

25 JUDGE MOSS: So I think we may have to take

00464

1 some extra precautions. Counsel are generally adept at
2 referring to the information in a general way and avoid
3 the sort of problems that we are concerned about. We do
4 have the conference bridge line open, and we do, I'm
5 sure we have people in the room who haven't signed
6 confidentiality agreements. So we have to be cautious
7 about that, and I will ask for your cooperation in that
8 regard.

9

10 CROSS - EXAMINATION

11 BY MR. BERMAN:

12 Q. Mr. Franz, I want to march through and
13 confirm a few points. First of all, I believe you have
14 referred to the fact that some of your operations are
15 being shifted toward Peru; is that correct?

16 A. We're shipping two pieces of equipment to
17 Peru.

18 Q. And the equipment that you're shipping to
19 Peru, is that to a company that you have an equity stake
20 in?

21 A. We have ownership in the company in Peru,
22 yes.

23 Q. And did you establish your ownership in that
24 company in Peru after the electric power issues arose in
25 late 2000?

00465

1 A. I'm not sure exactly when it was, 2000.

2 Q. Isn't it correct that you have had ownership
3 in that company in Peru for several years?

4 A. I don't think so. I think we have had
5 ownership in 2000, and we have done a lot of business
6 with that company previous to 2000.

7 Q. Did you acquire your interest in the company
8 in Peru -- strike that.

9 Am I correct that your business is a seasonal
10 business?

11 A. There's seasonality to our business, yes, in
12 that we -- we have larger demand in second and third
13 quarter than we do in first and fourth.

14 Q. In simple terms, would that be that folks
15 consume more beverages in the summer than in the winter?

16 A. They drink more water and soda typically
17 summer than in the winter.

18 Q. As a result of that seasonality in your
19 business, do you alter the employment at your plant on a
20 typical annual basis?

21 A. Typically only with temporary employees.

22 Q. Is it correct that on an annual basis you
23 might pick up as many as 50 extra employees in high
24 summer and that they might go off in the off season?

25 A. That's correct.

00466

1 Q. We have talked a little bit about imposing a
2 surcharge on the products that you sell to account for
3 electric prices.

4 MR. BERMAN: If I could just talk with
5 counsel for one second.

6 JUDGE MOSS: Sure, go ahead.

7 MR. BERMAN: Your Honor, I have a question
8 that I need to ask, and I have been informed that it
9 would require disclosing confidential information.

10 JUDGE MOSS: Can we ask it by having the
11 witness furnished with a copy of the deposition and have
12 him confirm a number, or is it something that you need
13 to actually disclose the number through your question?

14 BY MR. BERMAN:

15 Q. Let me ask if the witness has his deposition
16 in front of him.

17 A. I do not.

18 MS. DAVISON: I can provide it. I think
19 that's a very helpful suggestion. You could just refer
20 to the page and line.

21 JUDGE MOSS: And we have it, Mr. Berman, on
22 the Bench, and why don't you go ahead and give us the
23 page.

24 MR. BERMAN: It was 28, Your Honor.

25 JUDGE MOSS: Okay.

00467

1 BY MR. BERMAN:

2 Q. Mr. Franz, on page 28 of your deposition, you
3 may recall that I asked you at your deposition how much
4 you would have to increase the cost of a two liter
5 bottle, a two liter plastic bottle that's used for soft
6 drinks, if you were to impose an electric surcharge to
7 recover your costs. And in the questioning at page 28
8 continuing on to the very top of page 29, you gave an
9 indication of what the surcharge would be per thousand
10 bottles. Do you recall that questioning?

11 A. Yes, I do.

12 Q. And on page 28 where you give your estimate
13 of the surcharge per thousand bottles, is that a fair
14 indication of what the surcharge would have to be to
15 recover the additional electric costs that have been
16 imposed on you?

17 A. I think that number is in the ball park with
18 electricity prices as an estimate of where we have been
19 running, which is \$120 to \$140 a megawatt hour, yeah.
20 That's probably -- that number is probably in the ball
21 park, yes.

22 Q. So if we took that price per thousand bottles
23 there that's listed there and divided it by 1,000, we
24 would get an indication of the extra cost per soft drink
25 bottle that you sell to a bottler of soft drink; is that

00468

1 correct?

2 A. That's an estimate of what the surcharge
3 would be, yeah, I mean --

4 Q. And so assuming the retailer or the seller of
5 the soft drinks were to pass on its costs, that's an
6 indication if you take that cost that's referenced on
7 line 8 of page 28, divide by 1,000, and then add that to
8 the cost of each bottle of soft drink, that would be a
9 good indication of how much it would raise the price of
10 each bottle of soft drinks; is that correct?

11 A. Well, that's an assumption that they will pay
12 us for it, I guess, which is a huge leap.

13 Q. So you're saying that if they were to pay you
14 the surcharge, then that's how much extra it would cost
15 per two liter bottle of soft drink?

16 A. No, I'm not saying that. What I'm saying is
17 I don't believe they will pay us the surcharge.

18 Q. And when you say you don't believe they will
19 pay you the surcharge, is that because they have access
20 to other sources of the soft drink bottles?

21 A. Well, I think it's for a lot of reasons.
22 One, contractually they don't have to. And two, for a
23 surcharge, let's pick a number of \$10 a thousand, you
24 can ship bottles a long way, probably 750 miles. On a
25 surcharge of \$20 a thousand, you can ship bottles from

00469

1 the Midwest. So it becomes much more economical to ship
2 bottles than to produce them in the Northwest with an
3 electrical surcharge.

4 Q. Do you have any reason to believe that
5 there's a shortage of soft drink bottles as a result of
6 electric issues?

7 A. Not yet, no.

8 Q. Am I correct that the year 2000 was a record
9 year in production at your Tumwater plant?

10 A. You have to define that. If you -- and I can
11 qualify that. If you -- if you say did we make more
12 bottles than in any other year out of the Tumwater
13 plant, that's accurate. Total units, I don't believe --
14 I don't believe we did that simply because we had our
15 injection mold facility shut down a large amount of
16 time. So total unit output, no, I don't think so.

17 Q. I would like you to turn back to what's been
18 marked as Exhibit 203. Do you have that in front of
19 you?

20 A. Yes, I do.

21 Q. And referring you to paragraph eight, which I
22 think you have seen previously and were referred to
23 previously, I just want to get here a number of things.
24 Is it correct that you understood when this was entered
25 into that depending on a number of uncertain factors,

00470

1 including the market for power, including supply and
2 price, that you could experience either a shortage of
3 electricity or that you could be paying more for

4 electricity under Schedule 48 than you would have
5 otherwise?

6 A. I think we understood that, yes. As a matter
7 of fact, I think that's the reason since we had no
8 experiences with this that we initially decided to
9 hedge.

10 Q. So you entered -- was that pursuant to the
11 optional price stability provisions of the tariff?

12 A. No.

13 Q. Did you arrange that hedge through Puget
14 Sound Energy?

15 A. No, we arranged it through Duke/Dreyfus.

16 Q. Am I right that Puget Sound Energy hooked you
17 up with Duke/Dreyfus?

18 A. They could have; I don't remember.

19 Q. And so in the initial period of your
20 contract, you locked in a price for about two years; is
21 that correct?

22 A. From March '97 to mid '99, yeah, about two
23 years.

24 Q. And could you have extended that hedge?

25 A. I don't know that.

00471

1 Q. I would like you to take a look at what has
2 been marked as Exhibit PSE-10, which was an exhibit that
3 you were shown at your deposition. I believe that you
4 have --

5 JUDGE MOSS: And that's attached to the
6 deposition transcript, I believe, PSE-10; is that right,
7 Mr. Berman, is that what we're referring to?

8 MR. BERMAN: Yes, Your Honor, and we have a
9 binder of all the exhibits that were labeled by PSE, and
10 we have just put that in front of the witness.

11 JUDGE MOSS: And just to note for the Bench's
12 benefit as much as anything else, our copies of that
13 particular notebook are not in the room at the moment,
14 but the exhibit is here with the deposition transcript,
15 and so have something usable.

16 CHAIRWOMAN SHOWALTER: We have ours.

17 JUDGE MOSS: Oh, are they back. That's not
18 it, so look at your deposition transcript.

19 We're working with your exhibits.

20 MR. BERMAN: Thank you, Your Honor. Also, I
21 would note that Your Honor has numbered PSE-10 as 1510
22 in the prenumbering that Your Honor did.

23 JUDGE MOSS: Yes, and those are being marked
24 for our binders now, so they're not in the room, but
25 it's attached to the deposition transcript, so we have a

00472

1 means of referring to it.

2 BY MR. BERMAN:

3 Q. Looking at what had been marked as PSE-10,
4 you testified at your deposition that that was an E-mail
5 that you had received from Charlie Black at Puget Sound
6 Energy; do you recall that?

7 A. That's correct.

8 Q. And so as of August of 2000, you were shown
9 pricing that could have gotten you a hedge in the
10 neighborhood of \$63 per megawatt hour; is that correct?

11 A. Well, I guess if Enron would have sold us
12 that hedge, and that is for a hedge from 2000, September
13 4, 2000, through August 31st, 2002, but that is the
14 number they have on there, correct.

15 Q. So the theory is that if you were willing to
16 lock in, if you wanted stability for a period of time,
17 you could have gotten \$63 per megawatt hour. But if you
18 wanted stability for a shorter period of time, the price
19 would be a little bit higher; is that correct, that was
20 what was spelled out in the E-mail?

21 A. Well, the price for the hedge was for from
22 September 1st, 2000, through December 31st, 2000, was
23 \$85.80 per megawatt hour. Nothing else would have made
24 sense for us to do at that time. Because as you know,
25 rate Schedule 48 expires November of 2001. So after

00473

1 that, we weren't quite sure what was going to happen.

2 Q. So if you only wanted to go through November
3 of 2001, you could have acquired the hedge up through
4 August 31st, 2001, at \$73.30 a megawatt hour; is that
5 correct?

6 A. That's correct.

7 Q. And at \$73.30 a megawatt hour, would keeping
8 your facility in operation be economic?

9 A. Yes. Well, I think so.

10 Q. Is it your view that a hedge is valuable only
11 if in retrospect it turns out to have been lower priced
12 than the spot prices that the hedge replaced?

13 A. No, I don't think so, but you have to
14 remember for our company, we're rather small. We don't
15 have energy managers, nor do we have staff attorneys.
16 Most of the information we glean from the market comes
17 directly from Puget Sound. So when this came in from
18 Charlie Black, one of the questions I always ask him is,
19 if you were us, what would you do, okay. And the
20 question was clearly asked.

21 And what he told us was, gee, everybody
22 thinks energy prices are going to fall, they're going to
23 fall in the fourth quarter, they're going to fall in the
24 first quarter of 2001. You would be better off buying a
25 hedge in the first quarter of 2001.

00474

1 Q. When you say what he told us, are you talking
2 about conversations you had personally with him, or is
3 that conversations that others had with Mr. Black?

4 A. That's conversations I had with Charlie Black
5 on the telephone.

6 Q. And are you quoting his exact words?

7 A. No, I'm quoting what I remember, but that's a
8 question I always ask him.

9 Q. And were any of those conversations reflected

10 in writing?

11 A. No.

12 Q. Do you have any E-mail follow ups relating to
13 those issues?

14 A. No.

15 Q. So the only E-mail that you're aware of is
16 this E-mail that quotes the prices to you?

17 A. Well, I think there was another E-mail that
18 Puget sent to us that had price predictions for each of
19 the quarters starting with fourth quarter of 2000.

20 Q. Is it right that Puget Sound Energy has, in
21 fact, been providing you with predictions and estimates
22 based on its putting its thumb on the pulse of the
23 marketplace since this summer?

24 A. The first one we got was at the beginning of
25 August. They started again, I believe, in November.

00475

1 But since then, yes, we have been getting periodic
2 updates at about -- I believe it's called price
3 indications for the Mid-Columbia Index.

4 Q. And I think you indicated earlier that you
5 had contacted Enron in early January of 2001 to discuss
6 hedging opportunities; is that correct?

7 A. That's correct.

8 Q. Now did you discuss hedging opportunities
9 with Enron or anyone else yourself during the summer or
10 fall of 2000?

11 A. No, I don't think we did.

12 Q. Is it fair to say that you experienced some
13 price spikes during June of 2000 that alerted you that
14 the prices on the Mid-C Index could be both highly
15 volatile and reach very high levels?

16 A. Well, we talked to PSE in July after the
17 price spike in June and had a meeting with their, I
18 guess it was their supervisor of customer accounts, a
19 woman by the name of Lael Saulsman. She actually came
20 down to our plant. We had numerous discussions with her
21 about where they believed the market was going to go and
22 what recourse we had. That meeting was initiated by
23 CNC.

24 Q. And so they gave you their best indications
25 of where they thought the market was going to go?

00476

1 A. Yes.

2 Q. Just so I'm clear, today do you take any
3 power pursuant to Schedule 48?

4 A. We have disconnected from PSE our
5 manufacturing site, so the answer I believe is no.

6 Q. So you're relying instead on self generation?

7 A. That is correct.

8 Q. And I think you referred to some emissions
9 issues concerning the generators that you have obtained?

10 A. Well, I didn't refer to any emissions. I
11 referred to that our permit was through April of 2001,
12 and I believe it states that we have to have all of our

13 temporary generators removed by May 1st of 2001.

14 Q. Have you researched the availability of low
15 emission generators using cathodic reduction technology
16 or other new technologies that reduce the emissions of
17 diesel generation?

18 A. For temporary generators, that's not an
19 option. I'm not aware of anybody that has those on
20 temporary generators around the country. We checked
21 with three companies, Colar, Agreco, and NC Machinery.
22 They don't exist for temporary installations. For
23 permanent installations, there are all kind of things
24 you can add to diesel generators or others to make the
25 emissions more favorable.

00477

1 Q. To your knowledge, has Puget Sound Energy
2 caused the power prices that you're experiencing, or
3 instead are the power prices the result of issues in the
4 wholesale power markets?

5 JUDGE MOSS: And we have an objection from
6 Ms. Davison.

7 MS. DAVISON: Your Honor, I do not believe
8 this witness is qualified to answer that question. He's
9 not an expert. We will have an expert who will be
10 available to Mr. Berman shortly, well, at some point in
11 this proceeding, Mr. Schoenbeck, and he is prepared to
12 give extensive testimony on that very issue.

13 JUDGE MOSS: Well, we will look forward to
14 that, but in the meantime, I think if he has a lay
15 opinion that it can be a proper question, and we can
16 understand it for what it is, which is a lay person's
17 opinion. We understand he's not an energy expert.

18 So do you have the question in mind,
19 Mr. Franz?

20 THE WITNESS: No, could you repeat it,
21 please?

22 BY MR. BERMAN:

23 Q. To your knowledge, has Puget Sound Energy
24 caused the power prices that you're experiencing, or
25 instead are the power prices the result of issues in the

00478

1 wholesale power markets?

2 A. Gee, I would be guessing. I don't know.

3 Q. If you had put in place optional price
4 stability in the summer of this year, would you be
5 facing an emergency?

6 A. I don't know. We did not have the ability to
7 put in optional price stability in the summer of this
8 year.

9 Q. If you had taken advantage of hedges that
10 were available in the summer of 2000, would you be
11 facing an emergency?

12 CHAIRWOMAN SHOWALTER: Why don't you define
13 summer; when do you mean, June or September?

14 Q. Let's say August of 2000 at the time that the
15 E-mail from Charlie Black was sent.

16 A. You know, hindsight is 20/20 on all of these
17 things. Obviously in retrospect knowing what we know
18 now, you know, it was a terrible decision. We should
19 have hedged. But, you know, the data we had to make
20 that information came from PSE, and it was bad, and the
21 recommendations we had from PSE were wrong. So yeah, we
22 made a bad decision, no doubt about that. It was a
23 terrible decision, but, you know, we had a lot of help
24 getting there.

25 MR. BERMAN: No further questions, Your

00479

1 Honor.

2 JUDGE MOSS: From the Bench.

3

4 E X A M I N A T I O N

5 BY CHAIRWOMAN SHOWALTER:

6 Q. I just wanted to ask you a little more about
7 Exhibit 203, that's the service agreement. You said you
8 do not have an in-house attorney. Do you have an
9 attorney that you use on occasion to --

10 A. We have an attorney we use on occasion, yes.

11 Q. Did you ask an attorney to review this
12 agreement?

13 A. We did not.

14 Q. Did you consult with or have any
15 conversations with ICNU about either this service
16 agreement or Schedule 48 before you signed it?

17 A. We did not. As a matter of fact, we didn't
18 even know ICNU existed until the summer.

19 Q. But did you personally read the service
20 agreement before you signed it?

21 A. I did, yes. It was actually executed by our
22 CFO, but I did. I did read it and recently reread it.

23 Q. And as I understood your testimony, you did
24 understand that you would be taking the risk of
25 fluctuations in the market, you just didn't anticipate

00480

1 that the fluctuations would be so large; is that
2 correct?

3 A. That's absolutely correct. You know, I guess
4 is what's acceptable risk, the prices double, triple,
5 five times, ten times. I mean that that's not what we
6 expected nor interpreted from reading this.

7 Q. But again, I want to make clear or make sure
8 that I understand that. You knew you were taking the
9 risk of whatever the market was. You knew that. You
10 just didn't expect that risk to turn out to be so grave.
11 Am I right on that?

12 A. Well, I, you know, I guess paraphrasing, we
13 didn't expect the Mid-Columbia to be as volatile nor to
14 move as high as it did so quickly.

15 Q. But you understood that this agreement didn't
16 have built into it automatically any way -- any ceilings
17 or caps?

18 A. Oh, we understood that, yes.

19 Q. Okay. And then this is regarding the last
20 page of that exhibit in the -- when you declined to
21 enter into a hedge October 25th, that's a little later
22 than the E-mail from Charles Black, so I don't know what
23 prices you were looking at at that moment. But my
24 general question is, after the wake up call of the
25 summer when prices did spike up, why is it that you

00481

1 didn't elect the stability of a hedge? Was it simply
2 the prediction that you had that the market would go
3 down?

4 A. It was the forward price predictions that
5 everybody believed that prices in the Mid-Columbia Index
6 were going to continue to fall in the second quarter and
7 that we had a spike in the summer, and what was out
8 there was next summer pretty much the same, and you
9 would again see price spikes. And we talked to a lot of
10 people about that, including PSE, and that was what
11 everybody believed the market was going to do.

12 Q. The dynamics, one of the dynamics that's
13 coming out in all of the testimony and the evidence that
14 we're reviewing is that hedges look good when the market
15 is going to go down or when the predictions are that
16 it's going to go down, because that makes the hedge a
17 low price. But if the price is expected to go up, the
18 hedge as well is going to be higher. So it appears that
19 there is no good time to buy a hedge. And I don't mean
20 that as a judgment of my own. I think there are good
21 times to buy a hedge. But that people get in a box of
22 not wanting to buy a hedge if the price is fairly good,
23 because that means really that the market is going to go
24 down, and not wanting to buy a hedge if the market is
25 high or if the market is going to go up, because that,

00482

1 of course, is reflected in the hedge. Doesn't it at
2 some point, don't you have to just judge for yourself
3 what is a reasonable stable price you can afford, or you
4 make the business judgment to ride the market?

5 A. You know, I think that's a reasonable
6 assessment. In the framework of where the Mid-C was and
7 historically had been, the hedge was about two, two and
8 a half times of what we had historically paid for
9 electricity forever. At that time with prices predicted
10 to fall, it didn't seem like it was a prudent course of
11 action. Now obviously that was not a good decision. I
12 wish we had it to do over again. But we didn't.

13 Q. I wanted to ask you, you mentioned medical
14 benefits, did you eliminate medical benefits or reduce
15 the employer's contribution to medical benefits?

16 A. We reduced the employer's contribution. Our
17 employees will be paying 25% of their medical benefits,
18 and we're reevaluating that as we speak. That may not
19 be enough. We may have to go to 50%, 75%.

20 Q. But at the moment, you're paying 75% and the
21 employees are paying 25%?

22 A. As of January 1st, we are, yes.
23 CHAIRWOMAN SHOWALTER: That's all the
24 questions I have. Thank you.
25

00483

1
2 EXAMINATION
3 BY COMMISSIONER HEMSTAD:
4 Q. Do you know the current Mid-C Index price?
5 A. For today, I really wouldn't know that for
6 three more days. I have a sense of where it's at and
7 where it's been.
8 Q. And what is that?
9 A. It's about \$150 a megawatt hour that it's
10 been last week, I believe.
11 Q. Do you have a current sense of whether,
12 projecting ahead, whether that's going to rise or fall,
13 or have you given up predicting?
14 A. No, I think we have resigned ourselves that
15 there's no sanity to it. We have Puget Sound Energy's
16 Mid-Columbia price indications as of January 3rd that
17 shows the cumulative average at \$267 a megawatt hour for
18 all of 2001. We have a quote from Enron for a hedge for
19 2001 for \$260 a megawatt hour. Those are what the
20 experts are saying.
21 Q. And in your deposition, you referenced what
22 your diesel generators are costing per megawatt, and
23 what is that figure?
24 A. Well, it's between -- currently it's between
25 \$120 and \$140 a megawatt hour. Really depends on where

00484

1 we're buying diesel and how we're buying diesel.
2 Q. In your earlier testimony, you say that you
3 will not be able to continue operating at that kind of a
4 power cost.
5 A. You know, we are doing things right now to
6 try and survive. Obviously we're moving equipment out
7 of state. Our focus has been over the course of the
8 last month and a half to shift load out of the state of
9 Washington. And to that end, that's what we're doing.
10 Now certainly we're far better off at \$120 a megawatt
11 than we are at \$240 a megawatt. We're bleeding a lot
12 slower, and it gives us more time to make adjustments to
13 the costs of electricity. Those may be moving the site,
14 shifting more equipment off site, you know, I don't
15 know.
16 Q. Do you lease those generators for a fee for a
17 fixed term?
18 A. Our purchase order was for two months, which
19 ends the middle of February, and then we have the option
20 to renew monthly for those generators. It's a rental,
21 not a lease.
22 Q. I think you testified earlier that your air
23 pollution permit runs out in April. Is that what you
24 indicated?

25 A. I think the permit actually states that all

00485

1 of our temporary generators have to be removed prior to
2 May 1st.

3 Q. And have you had any discussion with the air
4 pollution control agency with regard to possibly
5 extending that or modifying that requirement?

6 A. We have had lots of discussions with the
7 Olympic Air Pollution Control Authority. I think their
8 position is now it's highly unlikely that they will
9 extend the air permit.

10 COMMISSIONER HEMSTAD: That's all I have.

11 CHAIRWOMAN SHOWALTER: I have just one more
12 question, and it may be in here.

13

14 E X A M I N A T I O N

15 BY CHAIRWOMAN SHOWALTER:

16 Q. Using say 1999 electricity costs, if it's not
17 a confidential number for you to say it, what percent of
18 your costs are electricity costs historically?

19 A. Oh, gee, I think I did the calculation for
20 variable costs. I can kind of give you a sense for
21 incremental amounts and where our profit levels are. At
22 \$260 a megawatt hour, we will have to pay about \$18
23 Million for energy at our current load. That's only
24 about half of what we have ever made as a profit as a
25 company. So I mean it's a huge number that we in no

00486

1 way, shape, or form will be able to pay.

2 Q. When you said as a company, did you mean your
3 whole company, or did you mean --

4 A. Corporate wide, yes.

5 Q. But you don't know in terms of your -- the
6 cost of your plant here what percent of it historically
7 has been electricity costs?

8 A. You know, it's in the original -- it is in
9 the original documents I turned in, but I don't recall
10 what the number is.

11 Q. In your affidavit that you signed for the
12 complaint?

13 A. Yes.

14 CHAIRWOMAN SHOWALTER: All right, I will look
15 there. Thank you.

16 JUDGE MOSS: Redirect?

17 No redirect, all right.

18 Then, Mr. Franz, when we say a witness is
19 subject to recall, it means there's some possibility we
20 may call you back to the stand, but for the moment at
21 least, you may step down, and you have our appreciation
22 for your testimony today.

23 THE WITNESS: Thank you.

24 JUDGE MOSS: Ms. Davison, I seem to recall
25 you told me at the outset that you had perhaps an

00487

1 availability restraint with respect to Mr. Canon; is
2 that right?

3 MS. DAVISON: Yes.

4 JUDGE MOSS: Do we need to think about
5 putting him on now then?

6 MS. DAVISON: I think we can continue on with
7 Mr. --

8 JUDGE MOSS: Crawford.

9 MS. DAVISON: -- Crawford and then see where
10 we are after that.

11 JUDGE MOSS: All right, very good. I'm not
12 sure I noted it for the record or not, but the 204,
13 which was the deposition transcript, was admitted, and
14 it does carry the C designation to indicate that it for
15 the moment at least remains confidential, and counsel is
16 going to review that and see if we can narrow that down
17 to a fairly small part of that.

18 And with that then, call your next witness.

19 MR. BERMAN: Your Honor, I would just note
20 that during my examination, I referred specifically to
21 Exhibit PSE-10, but also as we have discussed earlier in
22 the depositions that we're moving into the record, we
23 used 14 exhibits, PSE-1 through 14, I don't recall what
24 our agreement was about whether we move to admit those
25 now or later or whether they're admitted already.

00488

1 JUDGE MOSS: Well, my thought was that the
2 attachments to the depositions would be admitted as part
3 of the depositions, and if that's agreeable to everyone,
4 we will do it that way. And to the extent counsel have
5 objections to any of those particular attachments, they
6 will need to let us know at the time we admit the
7 depositions. And I'm seeing some nods of assent, so
8 that is the way we will proceed.

9 All right, Mr. Crawford.

10

11 Whereupon,

12 RUSSELL CRAWFORD,
13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15

16 D I R E C T E X A M I N A T I O N

17 BY MS. DAVISON

18 Q. Will you please state your full name for the
19 record.

20 A. Yeah, Russell Crawford.

21 Q. And who is your employer, Mr. Crawford?

22 A. Tesoro Northwest Company.

23 Q. What is your position at Tesoro?

24 A. I am the process engineering manager at the
25 Anacortes refinery.

00489

1 Q. And as the process engineering manager, what
2 are your responsibilities?

3 A. I am responsible for project development,

4 unit optimization, economics and scheduling, and just in
5 general trying to make sure we have an idea of trying to
6 improve the safety, the environmental compliance, the
7 profitability, and just the fundamental understanding of
8 the refinery operations.

9 Q. So is it fair to say that your job focuses on
10 safety issues as well as cost issues?

11 A. Yes.

12 Q. Does Tesoro take its electric service from
13 Puget Sound Energy under rate Schedule 48?

14 A. Yes, we do.

15 Q. What is Tesoro's average electric load at
16 Anacortes?

17 A. We average about 20 megawatt hours load, day
18 in, day out.

19 Q. What products does Tesoro produce at its
20 Anacortes facility?

21 A. We make a full range of refinery fuels,
22 propane, gasoline, jet fuel, diesel, marine fuel, and
23 road asphalt.

24 Q. Could you turn to what is marked as Exhibit
25 301, please.

00490

1 JUDGE MOSS: And I notice that that is a
2 confidential exhibit.

3 MS. DAVISON: I think we will be able to get
4 through that issue fine without having to clear the
5 room.

6 JUDGE MOSS: All right. Who is asserting
7 confidentiality? I mean I don't know where the document
8 came from yet, so.

9 MS. DAVISON: We are asserting
10 confidentiality, Your Honor.

11 JUDGE MOSS: Can it be waived?

12 MS. DAVISON: Unfortunately, it can't.

13 JUDGE MOSS: All right.

14 BY MS. DAVISON:

15 Q. Having that ready but putting it aside for
16 the moment, as of today, has Tesoro saved any money on
17 its electric bill taking service under Schedule 48
18 versus Schedule 49?

19 A. I don't know as of today. When we did a
20 quick look back in late '98, it looked like it was a
21 comparable Schedule with 49.

22 Q. But given the high electric prices, you would
23 not expect that your rate under Schedule 48 would be
24 lower than what you would have paid if you stayed on
25 Schedule 49; is that correct?

00491

1 A. Correct.

2 COMMISSIONER HEMSTAD: Did you say as of late
3 '99?

4 A. Excuse me, late '98 was our last look at a
5 comparison between the two schedules.

6 Q. So if we turn to Exhibit 301 and you look at

7 the document, it appears to be a comparison between
8 Schedule 48 pricing and Schedule 49 pricing. And as of
9 September 1998, what would your assessment be of
10 comparability of the pricing of the two schedules?

11 A. Really no differences between the two
12 schedules.

13 Q. So as of September '98, you hadn't seen huge
14 savings under Schedule 48; is that correct?

15 A. Right.

16 MS. DAVISON: Your Honor, I would like to
17 move the admission of Exhibit 301.

18 JUDGE MOSS: All right, hearing no objection,
19 we will admit it, and I note that it should carry the C
20 designation to indicate that it's confidential, and I'm
21 going to ask just one quick question about it so I'm
22 sure I understand the exhibit without having to study it
23 in great detail.

24

25

00492

1

2

E X A M I N A T I O N

3 BY JUDGE MOSS:

4 Q. I'm looking in the far right-hand column. Is
5 a negative number there an indication of a savings of
6 Schedule 48 relative to Schedule 49, or is it the other
7 way around?

8 A. Let's see, a negative number, it looks like
9 49 would have actually been in total higher than a
10 Schedule 48 number.

11 Q. Okay, so the negative number would show a
12 savings for Schedule 48 relative to 49, and a positive
13 number would show the opposite?

14 A. Right.

15 Q. Okay.

16 A. And month to month they vary.

17 Q. Sure.

18 A. On the whole, they look like they're
19 comparable.

20 JUDGE MOSS: That was just a point of
21 clarification. That's all I had.

22 CHAIRWOMAN SHOWALTER: As long as we're
23 taking a break, have we made the request for this kind
24 of information from all, for all Complainants for the
25 whole period of time?

00493

1

2 JUDGE MOSS: We have a Bench request in the
3 works to that effect, but I need to consult with someone
4 off the Bench before we finalize that.

5 MS. DAVISON: Your Honor, I guess in response
6 to that, that sort of request probably should go to PSE.
7 It's extremely difficult for Complainants to prepare
8 these type of charts. They were -- in the days -- in
9 the early days, PSE prepared them for us, but they're
the ones that actually have the 49 price, which we don't

10 have. We can only guess at it.

11 JUDGE MOSS: Well, I would hate to create
12 suspense. I don't have the Bench request finalized, but
13 the intention was before I came on the stand after the
14 lunch recess was to direct it to Staff. And we will see
15 once they have had a look at it whether they are in a
16 position to respond to it or not. And if they're not,
17 we may have to discuss having someone else respond to
18 it. But I would like to get it finalized before we have
19 any further discussion about it. And as I said, I need
20 to at the next recess consult with someone here at the
21 Commission before we finalize it so that we're sure we
22 state it in a way that is most useful. All right.

23 MS. DAVISON: Thank you, Your Honor.

24 JUDGE MOSS: Thank you.

25

00494

1

2 DIRECT EXAMINATION

3 BY MS. DAVISON:

4 Q. Mr. Crawford, what actions has Tesoro taken
5 to respond to the high electric prices it has been
6 facing recently?

7 A. We have taken probably three very
8 extraordinary moves to decrease our usage of power since
9 we seem to have no control over the price. We -- when
10 we first received the phone call in early December that
11 power price would go to \$3,000 to \$5,000 a megawatt hour
12 the next week, we essentially curtailed about 20% of our
13 throughput to the refinery. We also implemented a lot
14 of emergency power curtailment procedures where we
15 actually put on our steam emergency drive pumps in a lot
16 of our units. And we also started looking at this
17 temporary emergency generator, what it would take, how
18 many, how would we do it, that sort of thing.

19 Q. You talked about reduction of your
20 throughput. In layman's terms, I know operating a
21 refinery is extremely complicated and I'm trying to get
22 the lingo down myself, so you have to help me if I don't
23 say quite the right words, but in reducing your
24 throughput, I assume that that means that you are
25 reducing your production of virtually all of your

00495

1 products; is that correct?

2 A. That's correct, we're reducing crude rate
3 throughput by 20%, and correspondingly we're also
4 reducing the production of all of our fuels.

5 Q. Let's talk about the production of propane
6 for a moment. How has the electric power prices that
7 you're facing impacted your propane production and sale
8 to the market?

9 A. The reduction throughput probably has
10 impacted propane the most, because we -- there was
11 actually a few days where we did not produce any propane
12 for sale. And propane is a very valuable product in the

13 Northwest, Washington. It's used to heat many homes in
14 the Northwest and Skagit County. Not all homes are
15 hooked up to natural gas.

16 Q. Thank you. You mentioned that you brought in
17 some emergency temporary generators. Could you explain
18 some problems associated with trying to run a refinery
19 on this type of generation?

20 A. We are pursuing installing, I think, up to 12
21 of these temporary emergency generators to help
22 supplement most of the power for the refinery, not all
23 of it. But this is the first time I am aware of that we
24 have ever attempted such a feat. The -- just in the
25 process of hooking up the 4 first emergency generators,

00496

1 we have had to shut down some units to logistically even
2 safely tie those into the electrical grid in the
3 refinery. We also see great challenge within the
4 refinery to balance the load within various parts of the
5 refinery, so it's very critical how and where we set
6 these up and tie these in.

7 We do know there will be a constant
8 operational and maintenance. They're going to require
9 constant attention. We're not used to running with
10 diesel generators to power the refinery, and they will
11 have to be constantly refueled, maintained, and, you
12 know, periodically looked at. It's essentially like
13 trying to run 20 diesel trucks or 12 diesel trucks 24
14 hours a day, 7 days a week.

15 Q. During your deposition, Mr. Berman noted that
16 even at these very high prices, electricity prices, that
17 you continue to run your refinery. Can you explain
18 that?

19 A. Yes, we did, and we have still a lot of
20 outstanding obligations and commitments for product.
21 People depend on our products for home heating and
22 propane. SeaTac depends on our jet fuel for jet fuel,
23 and we just have contractual obligations and commitments
24 that we feel we have to make.

25 Q. Thank you. I have provided you excerpts of

00497

1 PSE's prehearing brief. I would point you to pages 22,
2 23, and 34. Are there any statements contained in the
3 prehearing brief that relate to Tesoro on those three
4 pages that you consider to be inaccurate or misleading?

5 A. I guess I would take exception --
6 CHAIRWOMAN SHOWALTER: Can you wait until we
7 get to --

8 MS. DAVISON: Sure, I'm sorry.

9 A. I guess at the bottom of page 22, I would
10 take exception to marginally impacted. 20% is
11 significant. It is essentially our minimum operation,
12 and until that date, we were running maximum capacity to
13 supply product. We are near minimum operation presently
14 and strictly inflicted by electric prices. And I don't
15 know of a time or even can get feedback of a time we

16 have ever done that before just due to electrical
17 prices.

18 And I guess I would take exception that as
19 far as the throughput in Tesoro's other operations have
20 been increased to make up the difference, there's some
21 of that that can take place. Our other operations are
22 in Kenai, Alaska and Honolulu, Hawaii. So it's a little
23 tough to get the product here in a timely fashion, but
24 there's also no way they can make up our difference.
25 And to best explain that, if you combine their total

00498

1 gasoline production of both refineries, we still make
2 three times as much as both of those refineries. So to
3 supplement product, we would be on the market buying
4 product.

5 And I guess I wouldn't word it in terms of we
6 found ways to deal with the situation. These are very
7 extraordinary moves that we have taken in an emergency
8 basis. I am literally amazed we have been able to
9 curtail or conserve about one third of our total power
10 intake, which is a real credit to a lot of people in the
11 refinery that has done a lot of hard work to try to do
12 such a thing. I think everybody is still kind of in awe
13 that we were able to curtail so much power, but we don't
14 look at this as a way to deal with it. Shifting load to
15 steam power drive is very costly, and we are using our
16 emergency steam drive backup pumps intentionally full
17 time all the time to run the refinery. And then just
18 shifting some load to diesel generators, like I say, we
19 haven't done this before to this magnitude to try to run
20 a refinery on diesel generation. And even at that, we
21 don't look at that as a long-term solution, because it
22 is not, and it's got its own issues dealing with as far
23 as generating power.

24 And I guess another fundamental thing to keep
25 in mind, refineries were not designed to run on

00499

1 temporary emergency generators I mean they're not set up
2 to do it. We have had to shut down units to set them up
3 to be able to do some of this. And, you know, we still
4 will not be a fully powering refinery on nothing but
5 diesel generators. We will still be importing some
6 power.

7 BY MS. DAVISON:

8 Q. Does that complete your answer?

9 A. For this?

10 Q. Did you look at page 34 as well?

11 A. Yeah, I think there is a -- there is a
12 mistake here on the I think in the first paragraph of
13 page 34 where it's talking about, you know:

14 Petroleum refineries like Equilon and
15 Tesoro to operate their own generation
16 facilities are likely net winners from
17 the increases in the energy crisis over
18 the past year.

19 We presently at the refinery have no
20 electrical power generation on site. They may be
21 confused with our other locations. We have some
22 supplemental power generation at Kenai, Alaska and some
23 generation also in our Hawaii refinery. But at the
24 Anacortes refinery, we do not have any existing power
25 generation capability.

00500

1 Q. Mr. Crawford, how many employees are at the
2 Tesoro Anacortes facility?

3 A. We presently employ about 330 full-time
4 employees and some 200 contractors presently working on
5 major improvement projects.

6 Q. Do you believe that the Tesoro facility in
7 Anacortes is facing an emergency because of these high
8 electric prices?

9 A. Absolutely, I think we're in very
10 extraordinary times. I don't think we would ever
11 imagine our effective power bill to multiply times ten.
12 I think it really calls into question some of our
13 operation even to the point where we have had to
14 actually reduce throughput. But to -- essentially we're
15 running in the emergency type curtailment operations to
16 keep our -- to keep our plant running. In fact, it's
17 probably elevated to our number one threat.

18 Q. Do you believe that as a result of the
19 emergency that Tesoro is facing that that translates
20 into an emergency for the community?

21 A. I know we have impacted the local community
22 with propane sales. We hear real quick when propane is
23 not available, can we make some, we need to have some.
24 At the reduced throughput, for a while there we didn't
25 make any. We do also, with a lot of our curtailment

00501

1 procedures, we end up fueling, actually burning up
2 propane ourselves within the refinery. But propane is
3 probably the first and foremost impact. And we know
4 we're impacting the long term marketplace, because we're
5 not producing the products.

6 The next most crucial will probably be jet
7 fuel into SeaTac. SeaTac is really, you know, pretty
8 much limited to bringing jet fuel in off of the pipeline
9 system, and the Northwest refineries supply jet fuel to
10 SeaTac. SeaTac does not have the ability to import jet
11 fuel to fuel the airport. And all of the other products
12 at some point in time, you know, are going to be shorter
13 in supply. You may not see it right now with some of
14 our inventory, but when we're not producing it, it's
15 creating a shortage of those products.

16 Q. Do you think that your consumption of diesel
17 fuel to fuel your own temporary emergency generators
18 will ultimately have an impact on the diesel fuel
19 market?

20 A. We're not real sure, but these things are not
21 real energy efficient. They do consume a lot of diesel.

22 Some of these machines are two gallons a minute in
23 consuming diesel fuel.
24 MS. DAVISON: Thank you, Mr. Crawford, I
25 don't have any further questions.

00502

1 JUDGE MOSS: Mr. Cedarbaum.
2 MR. CEDARBAUM: Thank you.
3
4 C R O S S - E X A M I N A T I O N
5 BY MR. CEDARBAUM:
6 Q. Mr. Crawford, let me start by asking you a
7 couple of questions about Exhibit C-301.
8 A. Sure.
9 Q. Just by way of clarification, this was an
10 exhibit that your company prepared or Puget prepared?
11 A. You know, I'm not sure, but it was in my
12 files under the discovery, and I produced it as a
13 comparison of 48 and 49.
14 Q. So you don't know who produced this, who
15 created this document basically?
16 A. No. I see a reference to Shell 41 XLS, but I
17 have not found that file or know for sure where it came
18 from.
19 Q. There is a date in actually I guess the upper
20 right-hand corner. You have to turn the document
21 sideways to read it. It says October 22, 1998. Do you
22 know, is that the date this document was prepared?
23 A. I think that's the date it was printed.
24 Q. So you don't know if this is a document
25 provided by Puget at the time they were discussing

00503

1 Schedule 48 with you or by someone at some other time?
2 A. No, I don't for sure.
3 Q. Okay. If you look at the column all the way
4 on the right-hand side, and as I recall your -- I think
5 your prior explanation of the exhibit, a number that's
6 in parentheses would mean Schedule 48 savings over 49,
7 and a number that's not in parentheses would mean
8 Schedule 49 savings over Schedule 48. Is that the way
9 it works?
10 A. I'm just trying to look at the two total
11 columns, and it appears that's the way it works.
12 Q. Without drawing attention or stating any
13 specific numbers, if you look at the August and
14 September 1998 lines way down at the bottom.
15 A. Yes.
16 Q. Those show positive numbers, which would mean
17 Schedule 48 was more expensive than 49 for those two
18 months; is that right?
19 A. Yes, it would.
20 Q. Do you know if Tesoro made any attempts to
21 acquire any kind of financial hedges or risk management
22 type tools during those time frames, given what this
23 data shows?
24 A. No, I don't know.

25 Q. Switching to a different topic, you were

00504

1 discussing the topic of diesel, diesel generators and
2 diesel fuel. What is the price that you can say on the
3 record today of the generators that you're leasing now
4 to run?

5 MS. DAVISON: Perhaps --

6 A. The price of the generators or the price of
7 the diesel fuel?

8 Q. The price to run the generators, the total
9 price to run the generators.

10 A. Oh, we have analyzed those costs somewhere
11 between \$133 to \$143 a megawatt hour.

12 Q. And was it required for the company to obtain
13 any kind of emission permit to operate the generators?

14 A. I'm not sure of the environmental details of
15 the permitting process, but it is my understanding is
16 that we have a 90 day window from commencement of
17 operation in which we then must have an operating permit
18 in place to exceed 90 days.

19 Q. When is that initial 90 day period over; do
20 you know?

21 A. As soon as we start.

22 Q. So you're not running the generators now?

23 A. Presently I think we have just tied in four
24 diesel generators, but I don't know if they're
25 operational as of yet. We're proceeding as fast as we

00505

1 can to install them.

2 Q. I have some questions on that subject from
3 your deposition transcript, which at this point is
4 confidential, so I don't know if I will be asking you to
5 state any confidential information or not.

6 MR. CEDARBAUM: Maybe counsel can help me out
7 on that. Do you still intend this document to be
8 confidential?

9 MS. DAVISON: We are extremely sensitive
10 about any data related to the oil refineries. They are
11 under -- Equilon and Tesoro are under very, very strict
12 antitrust orders from the Department of Justice, so I'm
13 okay with kind of general discussions, but anything that
14 relates to the specific costs of the refinery above and
15 beyond pretty much what we have heard from Mr. Crawford,
16 I think we need to be very, very sensitive to those
17 antitrust concerns.

18 MR. BERMAN: Your Honor, I would note that
19 last week we raised the issue at the depositions and it
20 was agreed by the parties that we would review the
21 depositions and specifically mark and identify which
22 portions of the depositions really needed
23 confidentiality prior to the time that they needed to be
24 introduced at the hearing. I'm concerned about these
25 vague statements that the entirety of the deposition

00506

1 needs to be confidential right now. I think that there
2 are just a very, very, very few figures, if any,
3 addressed in the depositions themselves, and the figures
4 were that addressed were largely drawn from press
5 releases that were introduced as exhibits during the
6 deposition. I think that it's incumbent upon counsel to
7 identify specifically those areas that really require
8 confidential protection.

9 JUDGE MOSS: Well, we're here at nearly 3:00
10 in the afternoon, Mr. Berman, and we need to move along,
11 and we can't stop to do that now. So if it hasn't been
12 done, it hasn't been done. There are a couple of ways
13 to handle it, of course.

14 Mr. Cedarbaum, you can consult with
15 Ms. Davison with regard to specific points in there that
16 you want to ask about, and she can perhaps address those
17 specific points. And I know that you have experience in
18 handling these sorts of things in terms of directing the
19 witness to look at the deposition. We can all look at
20 it and have the figures confirmed or not and that sort
21 of thing, so there are different ways to handle it, and
22 we'll see if we can't get by.

23 MR. CEDARBAUM: I think given the guidance
24 that I got from Ms. Davison that specific numbers and
25 figures are off base but other matters are not, I think

00507

1 I can proceed.

2 JUDGE MOSS: Okay, thank you.

3 BY MR. CEDARBAUM:

4 Q. Mr. Crawford, in your testimony earlier
5 today, I think you stated that your company has seven
6 diesel generators; is that right?

7 A. There is some confusion in the deposition
8 with the numbers when I tried to correct what was
9 actually installed and what was actually being delivered
10 versus how many we were planning to install. But at the
11 time of the deposition, we had received seven generators
12 on site to be installed.

13 Q. And are those seven now being operated?

14 A. No, they are not.

15 Q. You indicated earlier in your testimony that
16 there are problems with running the generators.

17 A. Correct.

18 Q. Operational problems. And in your deposition
19 at page 31, you indicated that you have the 7 on site
20 but that you were going to try to increase that number
21 to 12; is that correct?

22 A. Correct. We are planning to put 12
23 generators in service when we're done. Some of the
24 problems with installing is how many you can put where
25 on which bus, and I can't explain all the electrical

00508

1 balancing problems you encounter, but the first 4
2 generators were tied in this last weekend to be put in
3 operation. As of yet, I do not think we're running any

4 generators.

5 Q. Despite the operational problems that you're
6 discussing though, the company's intent is to increase
7 the 7 that you have on site now to 12; is that right?

8 A. Correct.

9 Q. You referenced propane, and it sounded to me
10 like you put that at the top of your list of the
11 products produced by your company in terms of
12 importance; is that correct?

13 A. That's what we hear about first because of
14 the local demand, minimum inventories we work with, and
15 we are a major supplier of propane in the region.

16 Q. Is it your testimony that propane is
17 unavailable in the region because of the impact of
18 electrical prices on your company?

19 A. No, I don't know that.

20 Q. When you discussed the number of employees
21 you have, you said 330 full time, 200 on a contract
22 basis. Have any of those employees been temporarily or
23 permanently laid off?

24 A. No, they haven't. In fact, at least in our
25 permanent employee base, I mean these are very high

00509

1 skilled people. I mean it doesn't matter what rate we
2 run. We need that many people to help safely operate
3 the refinery. I mean it is very skill oriented, and we
4 invest years of training in some of these people. You
5 just don't lay off numbers of people because of
6 throughput or economics or you name it.

7 Q. I apologize for skipping around subject to
8 subject, but I'm just trying to go down my list here.

9 Were you in the hearing room this morning
10 when Mayor Maxwell from the City of Anacortes testified?

11 A. Yes, I was.

12 Q. There was some discussion with him concerning
13 the fact that Tesoro and Equilon combined take 70% of
14 the capacity from the Anacortes water treatment
15 facility. Is that an accurate statement to the best of
16 your knowledge?

17 A. Yeah, to the best of my knowledge, yes.

18 Q. Are you familiar with the billings that come
19 from the City of Anacortes for the water treatment
20 operations to Tesoro?

21 A. I am not personally.

22 Q. Do you know whether or not the City of
23 Anacortes has imposed the increases in electrical costs
24 upon Tesoro in accordance with the contract that they
25 have with Tesoro?

00510

1 A. I don't know if that's happened as of yet,
2 but I would fully expect it to follow the terms of the
3 agreement.

4 Q. Do you know of any reason why Tesoro would
5 not pay that increased electric cost from the City of
6 Anacortes?

7 A. No, not at all.
8 MR. CEDARBAUM: Your Honor, if I could have
9 the service agreement marked for identification, please.
10 JUDGE MOSS: All right, it will be number
11 302.
12 MR. CEDARBAUM: Mr. Van Nostrand, if you
13 would hand one to our witness, I would appreciate it.
14 MR. VAN NOSTRAND: (Complies.)
15 BY MR. CEDARBAUM:
16 Q. Do you have Exhibit 302, Mr. Crawford?
17 A. Yes, I do.
18 Q. Do you recognize this as, well, it says Shell
19 Anacortes Refining Company. Is Shell the predecessor to
20 Tesoro?
21 A. Correct.
22 Q. And so this represents Tesoro's service
23 agreement under Schedule 48 with Puget Sound Energy?
24 A. Yes, it does.
25 Q. I guess the first two pages are general

00511

1 recitals and provisions of the agreement itself; is that
2 right?
3 A. Correct.
4 Q. Followed again by acknowledgment page three.
5 Page four, is that an accurate description of the
6 account numbers to the best of your knowledge?
7 A. To the best of my knowledge, yes.
8 Q. On page five in an agreement dated April 21,
9 1997, it indicates that Tesoro declined both optional
10 firming and optional price stability; is that right?
11 A. Correct.
12 Q. And then on the last page, it shows that
13 Tesoro on October 27, 2000, declined optional firming;
14 is that correct?
15 A. Correct.
16 MR. CEDARBAUM: Your Honor, I would offer
17 Exhibit 302.
18 JUDGE MOSS: There being no objection, it
19 will be admitted as marked.
20 MR. CEDARBAUM: Thank you, those were all my
21 questions.
22 JUDGE MOSS: Mr. ffitch.
23 MR. FFITCH: Thank you, Your Honor.
24
25

00512

1
2 C R O S S - E X A M I N A T I O N
3 BY MR. FFITCH:
4 Q. Good afternoon, Mr. Crawford.
5 A. Sure.
6 Q. Simon ffitch with Public Counsel. You may be
7 able to anticipate my question if you have been here
8 today so far. A brief was filed in this case on your
9 behalf and on behalf of the other Schedule 48

10 Complainants. In the brief, a statement was made, the
11 Commission can provide relief without harming PSE's
12 other commercial, industrial, and residential customers
13 or jeopardizing the financial health of PSE. Is that
14 correct subject to check?

15 A. Yes.

16 Q. And does Tesoro endorse that statement?

17 A. Absolutely, we just want a fair and market
18 price.

19 Q. So I would be correct then that Tesoro is not
20 asking the Commission to adopt any remedy that would
21 shift any cost recovery to Puget's other residential,
22 commercial, or industrial customers?

23 A. That is correct, and we wouldn't expect to.

24 MR. FFITCH: No further questions. Thank
25 you, Your Honor.

00513

1 JUDGE MOSS: Thank you, Mr. ffitich. I
2 believe that brings us to PSE.

3 MR. CEDARBAUM: Your Honor, I'm sorry to
4 interrupt, I overlooked about two questions. Can we
5 back up?

6 JUDGE MOSS: Well, sure, go ahead,
7 Mr. Cedarbaum.

8

9 C R O S S - E X A M I N A T I O N

10 BY MR. CEDARBAUM:

11 Q. Mr. Crawford, in Exhibit 302, the service
12 agreement, item number eight, the last sentence
13 discusses customer's opportunity to consult its own
14 legal counsel and power market experts. Do you know if
15 that occurred before Tesoro entered into this agreement
16 with Puget Sound Energy?

17 A. I do not. This predates my employment with
18 Tesoro.

19 MR. CEDARBAUM: Thank you.

20 JUDGE MOSS: Is that it?

21 MR. CEDARBAUM: Yes.

22 JUDGE MOSS: Okay, fine, then we're to PSE.

23 Mr. Berman, will it be you?

24 MR. BERMAN: Thank you, Your Honor. The
25 first thing I would do is offer the deposition of

00514

1 Mr. Crawford that was taken on December 28, 2000. I
2 understand from our discussions earlier that for the
3 time being it will be marked confidential, but I think I
4 understand that counsel for Complainants will indicate
5 later which portions of the document need to remain
6 confidential. On my review, I couldn't find any numbers
7 in here other than power price numbers and other numbers
8 from press releases, but maybe there is something in
9 there that I didn't see that's confidential.

10 JUDGE MOSS: And to the extent that you want
11 to refer to that type of thing, you're free to consult
12 with Ms. Davison, and if she agrees with you that that's

13 the sort of thing it is and it doesn't need
14 confidentiality or confidential treatment, then that
15 will be fine, or we will handle it however we need to.
16 By reference, of course, is another option that works
17 pretty well since we all have it in front of us.

18 And did I indicate it will be marked as 303,
19 and I think you went ahead and moved its admission, and
20 pursuant to our earlier discussions and agreements, it
21 will be -- Ms. Davison has something to add before I
22 rule on it.

23 MS. DAVISON: Your Honor, I completely -- I
24 am sorry, I have to apologize, there is nothing in
25 Mr. Crawford's deposition that I had to have designated

00515

1 as confidential. I had a list of what I had gotten
2 through before the hearing, and I had completely
3 forgotten that I did get the okay from Tesoro's counsel
4 to remove the confidential designation.

5 And I apologize, Mr. Cedarbaum, that I forgot
6 that. It is not confidential.

7 JUDGE MOSS: We gratefully accept your
8 apology, and we will remove the confidential designation
9 from Exhibit 303.

10 Mr. Berman, that should lighten your day.

11 MR. BERMAN: It does, Your Honor.

12

13 C R O S S - E X A M I N A T I O N

14 BY MR. BERMAN:

15 Q. Mr. Crawford, I would like to first turn you
16 back to Exhibit 302. And looking at Exhibit 302, do you
17 see paragraph two on the first page there? It says
18 that:

19 Puget agrees to provide service under
20 the terms and conditions of Schedule 48
21 and at the rates reflected in Schedule
22 48.

23 A. Yes.

24 Q. Are you familiar with Schedule 48?

25 A. More and more every day, yes.

00516

1 Q. Why don't you take a look at what has been
2 marked as Exhibit PSE-9, and we will put a copy of that
3 in front of you just now.

4 MR. BERMAN: That was, Your Honor, that was
5 attached to the Franz deposition, and so you may have
6 that in front of you from earlier. It was also in the
7 binders that we had produced earlier.

8 JUDGE MOSS: All right, well, I think for
9 ease of reference right now, we will probably need to
10 look at the Franz deposition exhibit, which is --

11 CHAIRWOMAN SHOWALTER: So just for general
12 reference, it's Schedule 48, so there might be people
13 who have Schedule 48 in other guises.

14 JUDGE MOSS: I suspect we have it in several
15 guises.

16 MR. BERMAN: I suspect it's labeled as
17 numerous different exhibits scattered throughout each
18 party's exhibits.
19 JUDGE MOSS: So if everybody up here is okay,
20 fine, go ahead.
21 BY MR. BERMAN:
22 Q. Mr. Franz, if you could look at the first
23 page of Exhibit PSE-9 and look at paragraph four, could
24 you read that to me?
25 JUDGE MOSS: And I believe you misspoke, you

00517

1 are addressing Mr. Crawford.
2 Q. I'm sorry.
3 A. (Reading.)
4 Customers taking service under this
5 schedule assume the risk of variability
6 in energy prices and availability of
7 energy availability to customer except
8 as otherwise provided in this schedule.
9 Q. And are you aware that under Schedule 48 you
10 are assuming the risk of variability in energy prices
11 and availability of energy for delivery?
12 A. Yes.
13 Q. And if you could flip forward to page six of
14 Exhibit PSE-9, do you see that? It's a page that says
15 up on top, second revised sheet number 48C canceling
16 first revised sheet number 48E. Actually, I think it's
17 48E. Do you have that page?
18 A. Yes.
19 Q. And paragraph three, optional price
20 stability, and I will read that for you.
21 Available optional price stability
22 services may include guarantees on
23 average commodity price, price caps on
24 the non-firm prices, or collars on the
25 non-firm price. Rates for these

00518

1 optional price stability services will
2 be determined according to market
3 conditions.
4 Were you aware that optional price stability
5 was a provision of this tariff?
6 A. Yes.
7 Q. And if I could refer you back to Exhibit 302,
8 on the page five of 302, I see that, in fact, there is a
9 reference to optional price stability. That's the
10 service agreement. And if you look at page five,
11 there's a reference to optional price stability and
12 optional price stability was declined; is that correct?
13 A. That's correct.
14 Q. I would like to turn you back to paragraph
15 eight, and I apologize for jumping around, but I would
16 like to turn you back to paragraph eight on page two of
17 Exhibit 302.
18 JUDGE MOSS: And, Mr. Berman, if we're going

19 to do any more reading, I will ask that we try to slow
20 the pace a little bit. Sometimes we get a little fast
21 on that.

22 MR. BERMAN: I'm sorry, Your Honor.

23 JUDGE MOSS: That's all right.

24 BY MR. BERMAN:

25 Q. Do you have page two of Exhibit 302?

00519

1 A. Yes.

2 Q. Looking at paragraph eight, it provides there
3 generally speaking that the customer understands and
4 agrees that it is assuming certain risks by voluntarily
5 choosing to take service under Schedule 48. It notes
6 that those risks include the market for power, including
7 supply and price, and that those risks can lead to one,
8 a shortage of electricity, or two, lead the customer to
9 pay more for electricity than it would have otherwise.
10 Were you aware of those risks?

11 JUDGE MOSS: And we have an objection from
12 Ms. Davison.

13 MS. DAVISON: Your Honor, this witness has
14 already testified that he was not employed by the
15 company at the time that this service agreement was
16 signed. In fact, the company who signed the service
17 agreement at the beginning of Schedule 48 is Shell and
18 not Tesoro. So I have in the interests of moving the
19 hearing along allowed several questions without
20 interjecting an objection. But I don't believe that if
21 Mr. Berman is seeking from Mr. Crawford if they
22 understood this at the time that this was signed, that,
23 one, he doesn't have any knowledge of that, he wasn't
24 employed by the company, and number two, he isn't the
25 they. It was a predecessor company.

00520

1 MR. BERMAN: I will rephrase the question,
2 Your Honor.

3 BY MR. BERMAN:

4 Q. Are you aware today that the customers under
5 Schedule 48 are subject to those risks?

6 A. That's what this says, yes.

7 Q. And this is the contract that the predecessor
8 of Tesoro signed; is that correct?

9 A. Yes.

10 Q. I note there that it says that there's the
11 risk that you might pay more for electricity than the
12 customer would have otherwise. Do you know if Tesoro
13 had obtained optional price stability earlier in the
14 year if it might have locked in prices for electricity
15 that are less than are available under Schedule 49?

16 A. I don't know that, because one, I don't know
17 Schedule 49.

18 Q. Do you know that or are you aware if whether
19 Tesoro had obtained optional price stability earlier in
20 the year it might have locked in prices for electricity
21 than are less than are available under other rate

22 schedules that are available from Puget Sound Energy?
23 JUDGE MOSS: Ms. Davison has an objection.
24 MS. DAVISON: I object on the basis that I
25 think the question is overly vague and ambiguous in

00521

1 terms of what time frame we're talking about earlier in
2 the year. I think what we have established today is
3 that the prices have been quite volatile and that he
4 must be precise to provide a specific reference in terms
5 of what period of time we're talking about. I assume
6 we're talking about the year 2000, but that's not clear
7 either.

8 JUDGE MOSS: Let's do be clear on time
9 frames, Mr. Berman, I'm sure you can rephrase your
10 question to accommodate that concern.

11 BY MR. BERMAN:

12 Q. Are you aware that there were periods during
13 the year 2000 that you could have obtained optional
14 price stability in the form of hedges or other
15 arrangements that would have locked in prices at levels
16 below the rates that were available under other Puget
17 Sound Energy rate schedules?

18 A. I'm not aware of that.

19 Q. Is that because you did not research the
20 prices that would have been available under hedges or
21 other optional price stability options?

22 A. Yes, I wouldn't be aware of what was our
23 options in that case.

24 Q. I would like to turn you to page 33 of your
25 deposition. Do you have your deposition in front of

00522

1 you?

2 A. No, I do not.

3 JUDGE MOSS: I think we can get a copy to the
4 witness here fairly quickly.

5 A. Okay.

6 Q. And on page 33, you were asked if you were
7 aware that prior to May, and I believe that's May 2000,
8 you could have obtained financial instruments that would
9 have guaranteed fixed power prices to your plant for
10 significantly less than the power prices that you have
11 actually been experiencing under Schedule 48. And you
12 answered that you became aware there was a possibility
13 that was an option. I asked when you became aware of
14 that. You said you're not sure. I asked if you further
15 explored that option. And you said, I don't understand
16 them real well, and until I understand it, I wouldn't
17 pursue it.

18 JUDGE MOSS: Ms. Davison has an objection.

19 MS. DAVISON: Well, Your Honor, actually it's
20 more in the form of a clarification. Mr. Berman has
21 been asking this witness a series of questions that go
22 beyond the scope of my direct examination of
23 Mr. Crawford, and I guess the question is I certainly
24 don't have anything to hide and I want there to be a

25 full and complete record, but I'm wondering if this will

00523

1 be the same sort of courtesy that will be extended with
2 Mr. Gaines, or I'm trying to understand what are the
3 parameters of the hearing?

4 JUDGE MOSS: Well, Ms. Davison, we always
5 give counsel a bit of latitude in these proceedings so
6 that we do have the development of that full and
7 complete record. And I haven't heard anything in
8 Mr. Berman's questions that I would consider to be
9 outside the scope of matters that are pretty more than
10 critical here. So I don't think that we have an
11 objection, but I will give you that clarification. And,
12 of course, I will extend that same degree of latitude to
13 all parties to the extent the Bench judges it's
14 appropriate to do so.

15 MS. DAVISON: Thank you, Your Honor.

16 JUDGE MOSS: Mr. Berman, I apologize for that
17 interruption, and the witness probably has lost the
18 question by now, so you may have to go back.

19 THE WITNESS: Please.

20 BY MR. BERMAN:

21 Q. Well, referring you to that interchange on
22 page 33, is that an accurate description of what you
23 said at your deposition?

24 A. Yes, it is.

25 Q. And is it, in fact, accurate that you don't

00524

1 understand hedges very well, and because of that, you
2 have not pursued hedging options?

3 A. I really don't understand hedging real well,
4 and it's hard for me to find a good reasonable point in
5 time to buy or even recommend a hedge.

6 Q. Are you aware that Tesoro itself acquires
7 financial derivative products to protect itself from
8 variability in market valuation for other products?

9 A. I am not aware of that.

10 MR. BERMAN: Your Honor, I would like to
11 introduce a new exhibit which I'm afraid has some
12 confidential information attached to it designated as
13 such by the Complainants, and this is Tesoro's response
14 to Data Request Number 5, which is basically copies of
15 corporate risk management and hedging strategies and
16 policies for Tesoro.

17 JUDGE MOSS: All right, we will simply mark
18 it for identification as 304-C, and people will afford
19 it the confidential treatment to which we have all
20 become accustomed.

21 MR. BERMAN: And, Your Honor, there are
22 actually three documents that have to be bundled
23 together, but we will get those circulated.

24 (Discussion off the record.)

25 JUDGE MOSS: And the three documents taken

00525

1 together, Mr. Berman, will be the exhibit, single
2 exhibit?

3 MR. BERMAN: Yes, Your Honor.

4 JUDGE MOSS: And again, I have marked that as
5 Exhibit 304-C.

6 While we're at a little bit of a break in the
7 action, Mr. Berman, do you have an estimate about how
8 much longer you might be with this witness?

9 MR. BERMAN: I would be surprised if it was
10 more than about 10 more minutes, 10 or 15 minutes would
11 be my max.

12 JUDGE MOSS: I think we should press ahead
13 and see if we can finish the witness then before we take
14 our afternoon recess. Go ahead.

15 BY MR. BERMAN:

16 Q. Mr. Crawford, have you seen this data
17 response before?

18 A. The request?

19 Q. The request and the response.

20 A. The response on this first page, yes.

21 Q. And have you seen the attached documents that
22 contain crude product and derivative risk management and
23 trading policies?

24 A. No.

25 Q. For Tesoro?

00526

1 A. No, I have not.

2 MR. BERMAN: Your Honor, the witness is not
3 able to identify the documents. I would ask given that
4 these are part of a data response by the Complainants
5 that they be admitted into evidence.

6 MS. DAVISON: No objection.

7 JUDGE MOSS: No objection, they will be
8 admitted as marked.

9 BY MR. BERMAN:

10 Q. Were you aware, Mr. Crawford, that the
11 company has rules and guidelines for obtaining
12 derivative products to manage financial risks are
13 related to commodity products?

14 A. No, I was not.

15 Q. If you were aware of that, would you have
16 employed any of the tools that are referenced in these
17 guidelines to protect yourself from risks related to the
18 variability in electric pricing?

19 A. I don't know.

20 Q. I would like to turn you to what's been
21 marked as Exhibit PSE-5, which was attached to your
22 deposition.

23 A. I don't have it. Okay.

24 Q. Do you have that in front of you?

25 A. Yes, I do.

00527

1 Q. Do you remember being asked questions about
2 this document at your deposition?

3 A. Yes.

4 Q. We agreed at the deposition that this was a
5 press release put out by Tesoro generally describing
6 their third quarter earnings for the year 2000; is that
7 correct?

8 A. That's correct.

9 Q. Down at the bottom of the first page, it
10 references the fact that:

11 Refining margins in the Western U.S.
12 were very high reflecting the tightness
13 of supply and refining capacity in that
14 region.

15 And it says that:

16 Tesoro capitalized on these conditions
17 by operating its refineries at
18 historically high rates.

19 Is that accurate?

20 A. Yes, we were at maximum rates until December.

21 Q. Is it correct that Tesoro when there's a
22 tightness of supply will charge more for its product and
23 make more money for its product even if its costs don't
24 change?

25 A. The marketplace sets the price of our

00528

1 products that we sell. We don't set the prices.

2 Q. So you're saying that if the marketplace goes
3 up that you charge more for your products even though
4 your costs don't necessarily go up?

5 A. Supply and demand will set the price of our
6 products and which can't be completely independent of
7 our operating costs.

8 Q. So if supply is tight and the prices are
9 high, you can absorb higher costs than you would
10 otherwise; is that correct?

11 A. For some time, yes.

12 Q. I would like to turn you to what's been
13 marked as Exhibit PSE-6, which is also attached to your
14 deposition and was used as an exhibit in your
15 deposition. Do you have that in front of you?

16 A. Yes, I do.

17 Q. And do you recall that we agreed at your
18 deposition that this was a press release from Tesoro
19 describing fourth quarter 2000 earnings?

20 A. Correct.

21 Q. Is it correct from this press release that
22 total earnings for the year 2000 were going to be
23 between \$1.72 and \$1.82 per diluted share?

24 A. Yes, that's what it says, that's what we
25 expected.

00529

1 Q. And that's about three times what it was last
2 year?

3 A. Yes.

4 Q. And then in the paragraph before that, that's
5 the third paragraph on the page, it says that because of
6 high electric prices in the Pacific Northwest that the

7 earnings would be reduced by 5 to 7 cents per share; is
8 that correct?

9 A. That's correct.

10 Q. So just so I have this correct, the earnings
11 for Tesoro tripled from 1999 to 2000, going up to \$1.80
12 per share, but they are 5 cents lower than they would
13 have been, 5 to 7 cents lower than they would have been
14 if not for the high electric prices; is that correct?

15 A. We have had a very good year, if that's what
16 you're saying. And right up until fourth quarter since
17 the high electric costs, it has essentially -- it has
18 impacted every share of the company by 5 to 7 cents.
19 And that's strictly at the Anacortes refinery, which is
20 not a favorable comment we like to have about our
21 Anacortes refinery.

22 Q. And when you say we have had a very good
23 year, is that because there has been continued tightness
24 of supply in the overall petroleum, refined petroleum
25 products industry, which has led to high prices for

00530

1 refined petroleum products?

2 A. That's noted one of many factors, but I
3 really don't know all of the factors. But as a
4 corporation overall, we did very well.

5 Q. Well, in the second paragraph there, it says
6 that you're experiencing unseasonably strong West Coast
7 refined products margins; is that correct?

8 A. That's correct.

9 Q. It goes on to refer to throughput issues
10 relating to the Washington refinery. Are the statements
11 in the rest of that paragraph correct?

12 A. Correct.

13 Q. Did I hear you say that you were able to
14 reduce energy consumption by a third by improved
15 efficiency in your plant?

16 A. No, we have been able to reduce our power
17 intake by a third, but don't get the impression that
18 that's efficiently done. In fact, it's done very
19 inefficiently.

20 Q. Have you improved efficiency at the plant at
21 all? Have you found ways to improve the energy
22 efficiency of the facility?

23 A. Over the years, yes.

24 Q. Am I correct that right now you are using
25 steam units to power your facilities?

00531

1 A. Yes, we are.

2 Q. And the ability to use steam is built in to
3 the facilities at the refinery?

4 A. Correct, it is an emergency backup system to
5 help keep pumps and drivers operating in an emergency.
6 Some are designed to come on in auto start mode.

7 Q. Just so I'm 100% clear, is it correct that
8 employment levels have not been reduced at all at your
9 facility as a result of the energy prices you have been

10 experiencing?

11 A. That is correct.

12 Q. You referenced 200 employees who are working
13 on I think you called it a major improvements project.
14 Could you tell me what that is?

15 A. We have a major capital improvement project
16 to help improve the efficiency and upgrade capability of
17 the refinery.

18 Q. So you have employees at the facility now
19 working on these upgrades to the refinery; is that
20 correct?

21 A. That is correct.

22 Q. And when you say to improve the efficiency
23 and upgrade the capability, that means that you will be
24 able to have more throughput; is that correct?

25 A. No, that's not the major driver. The major

00532

1 driver here is to better convert the barrel of crude
2 into gasoline, jet, and diesel and essentially make less
3 fuel, oil, and asphalt type products.

4 Q. So you're saying that you will be able to
5 produce higher profit products from the petroleum that
6 you start out with; is that correct?

7 A. Higher value products, yes, that's the
8 economic driving force.

9 Q. Do you expect those improvements to increase
10 the profitability of the facility?

11 A. Yes, we do.

12 Q. Can you give me a ball park estimate of what
13 you're spending on those improvements?

14 A. I think that's public information, and we
15 have announced a \$94 Million capital improvement plan.

16 Q. How much of that money has been spent so far?

17 A. I have no idea.

18 Q. Do you have a rough idea of, you know, is it
19 a half or a quarter or three quarters?

20 A. A third.

21 Q. A third?

22 A. And don't quote me on it.

23 Q. And is it correct that those 200 people are
24 there working on this right now; you haven't halted that
25 project?

00533

1 A. No, we have not.

2 MR. BERMAN: No further questions.

3 JUDGE MOSS: Thank you, Mr. Berman.

4 From the Bench.

5 CHAIRWOMAN SHOWALTER: I just have some
6 clarifying questions.

7

8 E X A M I N A T I O N

9 BY CHAIRWOMAN SHOWALTER:

10 Q. When you said you had reduced your need for
11 electricity by a third, it's unclear to me, do you mean
12 electricity per se or your need to draw on Puget for

13 Schedule 48 electricity?

14 A. Both. Really we were at a 22 megawatt load,
15 and after our actions, we were able to drop that load to
16 about 17 megawatts, and we take power from Puget under
17 48.

18 Q. Okay. If life went back to 1998 days and you
19 were on electricity at a reasonable rate in your own
20 view, would you still be achieving that one third
21 savings?

22 A. No, we would be at maximum capacity, back to
23 normal operation.

24 Q. I see. And what percent capacity are you
25 right now?

00534

1 A. We're about 80%.

2 Q. All right. So part of that one third is a
3 reduction in capacity?

4 A. Absolutely.

5 Q. And another part is some kind of
6 efficiencies?

7 A. Right, about half and half. Half is related,
8 half is switch to steam drive. And in general, anywhere
9 we could shut down electric pump, we did.

10 Q. All right. So from what I'm gathering, you
11 have reduced your capacity by about 20% and switched to
12 steam and also diesel. None of those is what I would
13 consider to be efficiencies or conservation measures.
14 Are there efficiency or conservation measures as well,
15 the kind of permanent improvement in your operations
16 that would survive this episode?

17 A. Well, we haven't started the diesel
18 generators yet.

19 Q. Okay.

20 A. Just the rate and the switching to steam.
21 But you're absolutely right. Those are more efficient
22 ways to do our business on a per barrel basis. But
23 longer term, I mean capital project improvements in
24 general help drive it, safety issues, environmental
25 issues, and efficiency type issues.

00535

1 Q. All right. So that when you alluded to
2 curtailing your electricity by one third, these were
3 actions you have taken or are taking to get through this
4 the short term?

5 A. Correct.

6 Q. All right. And then when you -- what is your
7 plan for your generators if you get them all running?
8 Will that mean you will draw no Schedule 48 electricity
9 or some amount?

10 A. I think the current plan is once we have all
11 12 installed and running, we will be importing about 1
12 megawatt all total.

13 Q. And what is your plan at the moment or your
14 timetable for getting those running?

15 A. We're working as fast as we can. That's

16 another hidden cost that people don't see. A lot of the
17 refinery has had to drop everything else they were doing
18 to get these installed. But the plan was over the next,
19 let's see, about four per week, so I would say over the
20 next two or three weeks, we will have these installed.
21 So by the end of January, we should have them installed.
22 Q. Then turning to the products that you make,
23 first diesel, is the price of diesel up in December over
24 a year ago levels?
25 A. I don't know off the top of my head. I would

00536

1 think so, but.
2 Q. Do you know about jet fuel?
3 A. No, I don't know.
4 Q. Do you know of any shortage in the Northwest
5 region of jet fuel?
6 A. Not at this time.
7 CHAIRWOMAN SHOWALTER: I think those are all
8 my questions, thank you.
9 BY CHAIRWOMAN SHOWALTER:
10 Q. I'm sorry, I forgot to look at Exhibit 302.
11 On the last page of Exhibit 302 is your election or your
12 declining of optional firming, and this was dated
13 October 27th, 2000. Do you know at that time what a
14 firming option would have cost you?
15 A. No, I do not. We would normally decline the
16 firming option.
17 Q. So were you declining more as a matter of
18 your general practice rather than a decision to reject a
19 particular proposal?
20 A. Correct.
21 CHAIRWOMAN SHOWALTER: Thank you.
22
23 E X A M I N A T I O N
24 BY COMMISSIONER HEMSTAD:
25 Q. Schedule or Exhibit 301, which is the

00537

1 comparison to Schedules 48 and 49, it goes from April of
2 '97 to September of '98, have you done any analyses
3 later than September '98?
4 A. No, we have not, and I haven't seen anything
5 in the files.
6 Q. Why not?
7 A. I was just trying to get educated on Schedule
8 48 since that's what we agreed to and that's what we're
9 on.
10 Q. So you don't have even a ball park sense, or
11 do you have a ball park sense of how much more costly
12 Schedule 48 has been now more recently than 49 would
13 have been?
14 A. Well, we know right now presently 48 is sky
15 high. I mean its ridiculous.
16 Q. Right.
17 A. But we have not kept up this comparison, if
18 that's what you're asking, to date.

19 Q. In your responsibilities with the company, do
20 you or does your group have overall responsibility for
21 energy management or energy procurement?

22 A. Yes, we do.

23 Q. Okay. Do you have a sense from that
24 perspective, either directly or say conversations with
25 your counterparts throughout the industry, as to whether

00538

1 the Mid-Columbia Index reflects an accurate market
2 price?

3 A. It appears to me that the Mid-C Index doesn't
4 even reflect a market. It doesn't even appear to be a
5 normal functioning market. It's so volatile and so
6 erratic, it just doesn't make sense.

7 Q. Well, assume for this discussion that Tesoro
8 would have direct access to the market and you could buy
9 on the spot market directly or on contract for the
10 delivery of electricity say over some period of time, a
11 month, three months, or a year, could you today do you
12 believe obtain a spot market or a contract price that
13 would be better than the Mid-C Index?

14 A. I don't think you could do that today given
15 the present situation on the whole West Coast, but --

16 Q. Okay, now --

17 A. -- I don't really know. I haven't checked.

18 Q. I was about to say, but why not?

19 A. I just haven't checked. I would have to look
20 and see what was available at what price.

21 Q. Well, that's the point I'm trying to get to.
22 If the Mid-C Index is erratic, irrational, it would
23 suggest that a buyer could go into the market and buy at
24 some kind of a nullable price, wouldn't it, that would
25 not be erratic, irrational, but would be rational in the

00539

1 sense of reflecting call it a true supply and demand
2 environment?

3 A. I would hope so if we were allowed to.

4 Q. All right. Then why the difference, or is
5 there a difference?

6 A. I have no idea.

7 Q. You indicated that you have reduced your
8 demand for electricity by about a third?

9 A. Correct.

10 Q. And I would assume that other industrial
11 customers in, well, if not your equivalent situations,
12 but in their particular circumstances but who are
13 substantial users of electricity are taking, within the
14 context of their activities, are taking similar steps to
15 try to reduce their demand; isn't -- wouldn't you think
16 that would be the case?

17 A. Well, we know that to be the case. We are,
18 you know, and very, very concerned that we're seeing the
19 first impact of the high cost of energy, but -- and
20 electric prices, but a lot of our industry in this state
21 is also very interrelated and as you can start to pick

22 up, I think. The cost of water delivered from the City
23 of Anacortes is going to go up. We know the price of
24 liquid nitrogen is -- people are looking for surcharges
25 higher than the price of nitrogen itself. We know the

00540

1 price of caustic is doubled. And we're getting
2 secondary indirect pricing increases on just about
3 everything we buy based on the power prices.

4 Q. Well, is it industrial operators like you and
5 others similar situated are substantially reducing their
6 demand, wouldn't it follow that reducing demand would
7 mean that prices would be falling?

8 A. I think they're -- well, they're reducing the
9 supply of their products to us. I mean in the case of
10 nitrogen, we know some of the air plants have shut down.

11 Q. Well, I mean if demand is falling, shouldn't
12 the price of electricity be falling?

13 A. I would hope so. I mean yeah, if we're not
14 using as much electricity, I would sure hope so.

15 Q. Do you have any opinion as to why it is not
16 falling?

17 A. I have no idea.

18 Q. Well, what I'm trying to get at is whether
19 there is a disconnect between the Mid-C Index and what
20 one could say a "true" market price of supply and
21 demand?

22 A. Oh, we believe so. We believe the market,
23 the index is just completely broken. I don't know what
24 it represents. It just doesn't seem to make sense.

25 Q. But that's why I was asking the question, why

00541

1 wouldn't you be able to -- why wouldn't parties then be
2 able to buy products on the market at a price that did
3 not reflect the Mid-C Index?

4 A. I would hope so. I haven't tried to inquire
5 about it.

6 COMMISSIONER HEMSTAD: That's all I have.

7 THE WITNESS: Okay.

8 JUDGE MOSS: How much redirect, if any?

9 MS. DAVISON: (Indicates.)

10 JUDGE MOSS: None, all right, music to my
11 ears.

12 We need a 15 minute break. Let's come back
13 about five before the hour by the wall clock, please.

14 (Brief recess.)

15 JUDGE MOSS: Couple of housekeeping matters
16 before we continue. I have handed out during the break
17 a notice of issuance of Commission Bench request dated
18 today and bearing a due date of today, recognizing that
19 the due date of today may be an impossible thing, but
20 Staff will do what it can I'm sure to get that as soon
21 as possible and understanding that's what that date
22 means, as quickly as possible. This is directed to the
23 Commission Staff. It has been pointed out that there is
24 a scribners error in the I suppose it is in the anti

25 acknowledgment line of the data request, it says

00542

1 December 2001. It should say December 2000. Other than
2 that, I believe it is correctly stated, so. And we can
3 talk at the end of the day if there is any problem with
4 this and any further need for --

5 MR. CEDARBAUM: Can I just ask a clarifying
6 question?

7 JUDGE MOSS: Sure, go ahead.

8 MR. CEDARBAUM: Are you asking for this
9 information in the aggregate or customer by customer?

10 JUDGE MOSS: Both.

11 MR. CEDARBAUM: Okay.

12 JUDGE MOSS: I apologize if the wording is
13 not perfectly clear.

14 MR. CEDARBAUM: I have passed the Bench
15 request off to Staff, and so they will start working on
16 it and get it to you as soon as possible.

17 JUDGE MOSS: There is some thought that this
18 information may be available in the Commission's records
19 and that the production of that material would be
20 satisfactory to move that into our records. I believe
21 we can do it by notice, but it would be preferable in
22 terms of just handling the paper to have it presented,
23 so we will do that. And to the extent, of course,
24 there's any confidentiality issue, it can be presented
25 under a confidentiality classification consistent with

00543

1 the protective order. And if its available
2 electronically, that would be the preferred supplement
3 to the paper.

4 MR. CEDARBAUM: I am relatively certain,
5 although not positive, that we have not received the
6 December 2000 report yet, so we will provide whatever we
7 have. And I guess this may or may not be helpful, but
8 just for your information, one of the exhibits that
9 Staff had prepared for Ms. Linnenbrink, Exhibit DLL-3,
10 which is a confidential exhibit, does have some data
11 with respect to the impact of, I think asked customers
12 as a class if they were on Schedule 49 versus 48, so
13 that may be helpful. But we will certainly reply to the
14 Bench request as best we can.

15 JUDGE MOSS: Okay, thank you very much.

16 The other housekeeping matter was we were
17 handed out during the break another direct examination
18 exhibit that will apparently be used in Mr. Canon's
19 examination here coming up, and that has been premarked
20 as Number 511, and I have described it as Docket
21 UE-960696, Commission Staff memo.

22 Mr. Berman.

23 MR. BERMAN: Your Honor, this does not relate
24 to the exhibit you just mentioned. It was another
25 housekeeping matter. You will recall that this morning

00544

1 before the commissioners joined us, we discussed the
2 Public Counsel's motion to compel, and I just wanted to
3 advise you that we found some documents that though in
4 in our view are not responsive to the wording of the
5 data request, were in the spirit of things things that
6 we decided should be produced, and we have produced
7 those documents to Public Counsel. So I just wanted
8 that to be clear. And we have told Public Counsel that
9 we're happy to work with him if he has more concerns or
10 questions.

11 JUDGE MOSS: And does that resolve the motion
12 as far as you're concerned, Mr. ffitich?

13 MR. FFITCH: Your Honor, at this time, I have
14 just received the documents. We're reviewing them. I
15 would say that the request remains outstanding. We're
16 going to review the documents and see if they're
17 responsive and whether there are going to be other
18 things we want to pursue. But I appreciate the
19 cooperation of the Company at this point.

20 JUDGE MOSS: As do we, Mr. Berman, thank you
21 for working with Mr. ffitich on that point. I'm sure it
22 will be satisfactorily resolved by the end of things.

23 All right, yes, you've got a housekeeping
24 matter?

25 MS. DAVISON: On that same note, Your Honor,

00545

1 this document is responsive to a previous data request
2 that the Complainants had submitted to PSE.

3 JUDGE MOSS: This document being which
4 document?

5 MS. DAVISON: I'm sorry, the document that
6 was just provided during the break and has been marked
7 highly confidential. We would like -- I would like to
8 look at it a little more carefully, but I believe that
9 we will be challenging the highly confidential
10 designation of that document.

11 JUDGE MOSS: All right, well, we will take
12 that up by motion if it becomes necessary to do that.

13 MS. DAVISON: Thank you, Your Honor.

14 JUDGE MOSS: That's a little bit of a time
15 consuming process, as I'm sure you appreciate.

16 All right, anything else before we swear
17 Mr. Canon?

18 Did you have something, Mr. Van Cleve?

19 MR. VAN CLEVE: Well, Your Honor, maybe I
20 should deal with this issue before we get into
21 Mr. Canon's direct testimony. In the documents that
22 have been submitted as direct exhibits, there is one
23 that doesn't really belong here, but I would like to
24 deal with it, and it's been marked as 506, and on the
25 copy that you have, it's not on colored paper.

00546

1 JUDGE MOSS: It's confidential but not on
2 colored paper?

3 MR. VAN CLEVE: Well, yes, it was, that's

4 correct. This document came from the previous complaint
5 case, and it was marked as confidential in that docket.
6 And my first question with respect to this document is
7 whether the Company would be willing to waive
8 confidentiality. And let me also state that we do not
9 intend to use it in Mr. Canon's direct. And, in fact,
10 we would like to file this document as a supplemental
11 response to the 10th Bench Request regarding curtailment
12 of Schedule 48.

13 JUDGE MOSS: Well, let's take it one step at
14 a time and see if there remains an issue of
15 confidentiality from PSE's perspective. And you would
16 not offer it through Mr. Canon. You would propose to
17 offer it as a supplement to the Bench request response,
18 and, of course, it can be handled confidentially there
19 if that's what we need to do.

20 MR. BERMAN: Your Honor, I believe that this
21 document reflects internal guidelines used by the
22 company in relation to Schedule 48. It turns out that
23 in general our representatives of the client are not in
24 the room right now. We're going to try to get them, and
25 we will at the next available opportunity try to get an

00547

1 answer on whether we can waive confidentiality.

2 JUDGE MOSS: All right, appreciate that. In
3 the meantime, I'm simply going to treat it as not being
4 offered. We're not going to renumber any of the other
5 exhibits or anything.

6 MR. BERMAN: Your Honor, we will waive
7 confidentiality on this document.

8 JUDGE MOSS: All right, fine. So we will
9 include this as a supplement to Bench request response
10 which?

11 MR. VAN CLEVE: Number 10 from the December
12 18th Bench request.

13 JUDGE MOSS: All right, so people who have a
14 document premarked as Exhibit 506 should remove that to
15 the response to Bench Request Number 10, and
16 confidentiality has been waived, so you should note that
17 on your document. Therefore the fact that it is not on
18 colored paper is no longer an issue.

19 All right, anything else before we swear the
20 witness?

21 MR. VAN CLEVE: No, that's it.

22 JUDGE MOSS: All right.

23

24 Whereupon,

25 KENNETH DOUGLAS CANON,

00548

1 having been first duly sworn, was called as a witness
2 herein and was examined and testified as follows:

3

4 DIRECT EXAMINATION

5 BY MR. VAN CLEVE

6 Q. Could you please state your name.

7 A. Kenneth Douglas Canon.
8 Q. Are you the executive director of the
9 Industrial Customers of Northwest Utilities?
10 A. Yes, I am.
11 Q. Could you please describe that organization?
12 A. ICNU is a regional trade association of
13 industrial customers of Northwest utilities. It focuses
14 on regulatory matters, legislative policy, legal matters
15 regarding electric energy. It's been in existence for
16 about 20 years.
17 Q. Could you please describe what your role is
18 with that organization?
19 A. As the executive director, I guess I do a lot
20 of things. I'm in charge of directing the activities of
21 the association. I'm the primary interaction between
22 the members of the association and the people that
23 represent the association and a number of these policy,
24 legal, legislative type of forums. And in addition, I
25 work closely with the membership obviously in

00549

1 formulating policy and which policies to take on
2 specific matters.
3 Q. How long have you held the position of
4 executive director of ICNU?
5 A. Since August 3rd, 1981.
6 Q. Were you involved in the development of
7 Schedule 48?
8 A. Yes, I was very much involved in that
9 schedule.
10 Q. And when did that occur?
11 A. The actual Schedule 48 development occurred
12 primarily in May of 1996.
13 Q. Can you give us a description about how
14 Schedule 48 came about?
15 A. Yes, I can. Schedule 48 came about as part
16 of the Puget Sound Power and Light/Washington Natural
17 Gas merger. That began in late December 1995 where we
18 had some meetings when we had heard that merger was
19 being proposed. Had a meeting I believe it was in
20 January of 1996 with representatives of Washington
21 Natural Gas and Puget Sound Power and Light. At that
22 point in time, we told the companies that -- the
23 companies heard that the industrial customers were very
24 dissatisfied mostly on the Puget Sound Power and Light
25 side. I think they were encouraged by what they had

00550

1 seen over the past couple of years, '94, '95, from
2 Washington Natural Gas. They had made some management
3 changes, and that had worked very well.
4 And so as we began the merger, we were
5 engaged in a regulatory process before this Commission.
6 And sometime in the late April or May, the two companies
7 came to ICNU and said that they had a suggested path in
8 which to hopefully we could settle our issues with the
9 merger, and that essentially was the starting point of

10 the Schedule 48 development.

11 Q. Were the industrial customers originally
12 opposed to the merger?

13 A. Very much so. Primarily the concern that the
14 industrial customers had was that they had seen
15 considerable progress with Washington Natural Gas and
16 because of changes there. And there was -- there was a
17 real concern that that might be lost through a merger.
18 And I -- and there was ongoing difficulty with Puget
19 Sound Power and Light between the industrial customers
20 and that utility.

21 Q. Can you tell us who the key players were from
22 the merging companies that were involved in these
23 discussions?

24 A. Probably four or five. Ron Davis, who is a
25 vice president of Washington Natural Gas, was the

00551

1 primary lead from the applicants, the two proposed to be
2 merged companies. Christy Omohundro was working for
3 Puget Sound Power and Light. I don't remember her
4 position, but I believe it was in regulatory affairs.
5 Jim Heidell, I believe from Puget Sound Power and Light,
6 was also involved. He was a finance person. Kevin
7 Owens was the industrial rep from Puget Sound Power and
8 Light. And then Ron Amen was from Washington Natural
9 Gas. And since I didn't -- since I don't do much gas
10 work at all, I don't remember what his position was.

11 Q. Did the industrial customers ultimately
12 change their position on the proposed merger?

13 A. Yes, they agreed after we went through a long
14 series of negotiations to support the merger.

15 Q. Can you please refer to what's been marked as
16 Exhibit 501.

17 A. Yes, I have it.

18 Q. Can you identify this document?

19 A. This is the settlement agreement between a
20 number of industrial customers, individually in some
21 cases, and kind of under the umbrella of Industrial
22 Customers of Northwest Utilities, and the two utilities
23 are Washington Natural Gas and Puget Sound Power and
24 Light. This is -- it's always difficult.

25 Q. Were you one of the signatories to the

00552

1 settlement agreement?

2 A. Yes, I was.

3 Q. Can you describe generally what the purpose
4 of the agreement was?

5 A. The purpose of the agreement was to reach a
6 negotiated agreement between the utilities and the
7 industrial customers, for us, for the industrial
8 customers to support the merger, and for the two
9 companies to propose Schedule 48 and to take other
10 actions.

11 Q. Was one element of the settlement agreement
12 avoiding bypass of Puget system?

13 A. That was -- that was one element. There were
14 a number of different elements that were wrapped into
15 Schedule 48. There were a couple of special contracts
16 that were being negotiated at the same time, so it was
17 seen -- and one of those was an Intel special contract
18 that had turned fairly contentious, and so it was seen
19 as a way of wrapping that special contract into a tariff
20 and not having to go through that issue.

21 Q. Can you explain how the concept of retail
22 open access played into this agreement?

23 A. Yes, you go back to 1995 and 1996, the energy
24 market was just greatly forming. The COB, for example,
25 Index had been formed in June of 1995, and there was

00553

1 considerable interest in retail access not only in
2 Washington and Oregon and obviously California and
3 nationwide. At the same time, there was the
4 comprehensive review taking place which started in
5 January of 1996. This was a group of 15 people on a
6 steering committee that was appointed by the four
7 governors of the Northwest states. And they had as one
8 of their three elements or four elements of the
9 comprehensive review retail customer choice. So at that
10 point in time in 1996, it was very much a -- very much
11 of an issue. A great deal of interest focused on it.

12 Q. I would like to refer you to page one of
13 what's been marked as Exhibit 501 in recital C.

14 A. Yes.

15 Q. It talks about open access to competitive
16 markets on an economic basis to all customer classes.
17 Can you describe your understanding of exactly what open
18 access means in that context?

19 A. Open access as we were discussing it here was
20 the ability -- and it's important to realize that in the
21 settlement agreement that it was open access for all
22 customers. Open access is the ability to, either
23 individual customers or groups of customers, to be able
24 to contract with the power supplier of their own choice
25 and to then pay a distribution fee and a transmission

00554

1 fee and have that power delivered essentially to their
2 end use.

3 Q. Why was it important that the settlement
4 agreement referred to open access for all customers?

5 A. For several reasons. First of all, the idea
6 in 1996, and I think probably still even more true
7 today, is that to have a viable market, you need
8 liquidity, and that means multiple buyers and sellers.
9 And so the idea was we want to encourage a market to
10 develop, and the more buyers out there, the better.

11 In addition, there was considerable concern
12 at the time that Schedule 48 was adopted voiced by other
13 parties, hospitals and some others who wanted open
14 access and were frustrated by the fact that there was a
15 certain megawatt limit in Schedule 48. And so it was

16 the clear understanding of the parties was that what
17 Schedule 48 was to be was a transition, an experimental
18 transition to open access for all parties, for all
19 customers.

20 Q. If you could refer to page four of the
21 exhibit marked as 501 and specifically to section three,
22 paragraph A.

23 A. Yes.

24 Q. Well, let me just ask you generally. Does
25 this section identify some commitments that Puget made

00555

1 in this agreement?

2 A. Yes, it does. What it outlines in simplified
3 form is kind of three steps that Puget would take, and I
4 would characterize them as (A) being that Puget would
5 propose legislation on open access, would work with the
6 industrial parties, the industrial customers, and the
7 idea was work with all customers, to development and
8 propose legislation for open access. And then (B) is
9 that they would work with all the parties to formulate a
10 tariff that would provide open access to competitive
11 markets. And then (C) is if those two didn't work out,
12 then they would -- then the utility would unilaterally
13 propose a tariff I believe by January 1, 2001.

14 Q. Let me first ask you with respect to 3A.
15 Since the execution of this agreement, has Puget ever
16 worked with any industrial parties to the best of your
17 knowledge to develop and propose legislation that would
18 provide for open access to all customer classes?

19 A. I do not believe they have.

20 Q. Let me ask you with respect to paragraph 3B,
21 to the best of your knowledge has Puget ever since the
22 execution of this agreement worked with the industrial
23 parties to prepare or propose rate schedules that would
24 provide for open access for all customer classes?

25 A. No, they haven't.

00556

1 Q. With respect to paragraph 3C, have you had
2 any conversations with any employees or officers of
3 Puget Sound Energy regarding their willingness to file
4 open access tariffs?

5 A. Yes, we have had over the last four or five
6 months, four or five months, a number of conversations
7 with PSE executives in the context of our Schedule 48
8 discussions, and we have gotten a clear indication from
9 them that they're not going to be proposing any open
10 access type of tariffs.

11 Q. And who specifically have you had these
12 conversations with?

13 A. The conversations have been involved -- Gary
14 Swafford, Steve McIellan, both of PSE.

15 Q. Are those both officers of PSE?

16 A. I believe they are. They're fairly senior
17 people at PSE.

18 Q. I would like to ask you now, Mr. Canon, about

19 some of the assumptions about the market that in your
20 mind form the basis of Schedule 48. Can you talk to us
21 about that?

22 A. Yes, I can. If you go back to 1996 and look
23 at the time frame in which Schedule 48 was being
24 developed, they had a very robust, evolving market. The
25 assumption that -- actually, there were a number of

00557

1 assumptions that underlie Schedule 48. One would be
2 that we would have a competitive market. Two, that we
3 would have an index that would -- and it would be a
4 credible index that would track that competitive market.

5 There were other elements as well that
6 underlie Schedule 48. Industrial customers were going
7 to pay transition charges to essentially keep their
8 rates at the then present level for several years to
9 allow -- to allow the utility to renegotiate some
10 natural gas contracts. There were provisions to limit
11 bypass. And those are all fundamental aspects of
12 Schedule 48 that provide the foundation for that tariff.

13 Q. Were the customers who switched from embedded
14 tariffs to Schedule 48 tariffs expected to save money?

15 A. That was their assumption. I think that was,
16 at that time, that was PSE's assumption as well.

17 Q. Did you have a general -- well, let me ask it
18 this way. What was your assumption about what market
19 prices would be under Schedule 48?

20 A. As I said in my deposition, the general range
21 of market prices that we were looking at that we were
22 kind of aware of was, at that point in time, it was
23 really around 15, 16 mils. And we saw the upper side of
24 the range being, you know, the opportunity to go back to
25 Schedule 49 with some sort of surcharge or premium

00558

1 reflective of a long run resource. And we had been
2 heavily involved in PSE's least cost planning process
3 and the counsel's least cost planning process, and we
4 saw that upper range being in the 50 mils a kilowatt
5 hour range.

6 CHAIRWOMAN SHOWALTER: You said 50?

7 THE WITNESS: Yes.

8 BY MR. VAN CLEVE:

9 Q. You said one of the assumptions was a robust
10 power market; is that correct?

11 A. That is correct.

12 Q. And do you believe that that assumption
13 proved to be false?

14 A. I think it's very clear that we no longer
15 have a market on the West Coast. Any time you have a
16 Secretary of Energy directing generators to run and all
17 the caps that are in place and, you know, obviously one
18 thing that we never anticipated was the CAL-PX, the
19 CAL-ISO, and the impacts that they would have on the
20 market.

21 Q. You also mentioned an index that tracked

22 market prices, that Schedule 48 was based on an
23 assumption that that would exist, do you believe that
24 that assumption proved true?
25 A. Unfortunately, I do not believe that that's

00559

1 proven true. At this point in time, I don't know what
2 the index really tracks, but it's not the type of market
3 that we assumed and actually seemed to be operating for
4 until about May of 2000.

5 Q. Another assumption that you mentioned was
6 that this would be a transition to retail access in five
7 years. Is there anything that indicates that that
8 assumption was correct?

9 A. Apparently not. We made very little progress
10 in moving to open access.

11 Q. I believe you also mentioned that there was
12 an assumption that Schedule 48 would avoid customers
13 bypassing PSE's system. Can you comment on whether that
14 assumption has proven correct?

15 A. In the sense that -- obviously the idea in
16 signing a ten year service agreement was to have these
17 companies in most cases to be buying their power from
18 PSE. With the diesel generation that we see going in,
19 obviously there is a bypass. There is a provision in
20 Schedule 48 that allows self generation. It was -- it
21 was never anticipated that there would be the kind of
22 the short-term emergency self generation. What we were
23 talking about at that point in time was the larger
24 combined cycle combustion turban type of self
25 generation. So from my perspective, even the limitation

00560

1 or trying to ensure that there wasn't going to be
2 bypass, even that hasn't worked.

3 Q. This is somewhat of a rhetorical question,
4 but the assumption the customers would save money on
5 Schedule 48, has that proven to be true?

6 A. Listening to what I have heard today,
7 probably not.

8 Q. Can you comment on the interplay of the
9 assumption that customers would save money and the
10 transition costs that were included in Schedule 48?

11 A. The transition costs, as I said, were
12 structured to -- around the idea of keeping these
13 industrial customers' rates relatively high or close to
14 then current levels for about two, two and a half years.
15 And then over time -- and they were -- they were
16 premised on power actually around the 15, 16 mil range.
17 And then over time, those would drop off, and the
18 savings would start to accrue, you know, post late 1998
19 and really in the 1999, 2000 time frame.

20 Q. So to summarize, have any of the basic
21 assumptions that underlie Schedule 48 in your view
22 proven to be true?

23 A. Unfortunately, no.

24 Q. Did you view Schedule 48 at the time that it

25 was drafted and adopted to be an experiment?

00561

1 A. It was, it was very much an experimental
2 transitional tariff in the sense that, you know, we had
3 very, very limited experience with indexes. As I said,
4 the COB Index was created in May or June of 1995, and we
5 used it for the first six months or so. Because at that
6 point in time, the Mid-C Index did not even exist. And
7 it was seen as, you know, that would be one way of
8 reflecting competitive market prices.

9 Q. What was supposed to happen if the experiment
10 failed?

11 A. I think there were a couple of things
12 contemplated. One obviously, the Commission obviously
13 retains jurisdiction over Schedule 48. It is a tariff.
14 There are provisions on the index itself for PSE to
15 propose index changes. And then ultimately if the index
16 did not work out was the movement back to 49 modified by
17 the provisions of Schedule 48. I probably shouldn't say
18 49. It's any, it doesn't specify 49. It says any
19 applicable tariff.

20 Q. I would like to just walk you through some
21 documents now. If you could refer to what has been
22 marked as Exhibit 502.

23 A. Yes.

24 Q. Which is a two page letter dated May 24th,
25 1996.

00562

1 A. Yes.

2 Q. And it's signed by Christy Omohundro,
3 director of rates and regulations. You stated that
4 Ms. Omohundro was a participant in the Schedule 48
5 negotiations; is that correct?

6 A. That is correct. I see here she's the
7 director of rates and regulation at that point in time.

8 Q. And in the first paragraph of Exhibit 502, I
9 think the third sentence down, it states that this
10 filing initiates a market transition plan that will
11 result in choice for all of our customers. Can you
12 describe your understanding of what the market
13 transition plan was and how Schedule 48 fit into it?

14 A. The market transition plan was the overall
15 plan that PSE had presented as part of the merger filing
16 to move all customers to open access. And it involved
17 Schedule 48, it involved the other commitments that were
18 made in the settlement agreement. It eventually evolved
19 into pilot programs, collaborative, followed by open
20 access pilot programs.

21 MR. VAN CLEVE: Your Honor, before I forget,
22 I would like to offer Exhibit 501 and also Exhibit 502.

23 JUDGE MOSS: There being no objection, those
24 will be admitted as marked.

25 BY MR. VAN CLEVE:

00563

1 Q. Mr. Canon, if you could now turn to Exhibit
2 503.

3 A. Yes.

4 Q. Do you know what the purpose of this letter
5 was?

6 A. Looking at it, as we went through Schedule
7 48, the utilities were very concerned about getting
8 something filed by I believe May 24th and asked for some
9 different procedural handling of Schedule 48, and so
10 this resulted in a number of letters back and forth
11 clarifying Schedule 48, and this appears to be one of
12 those, one of the first clarifying letters for Schedule
13 48.

14 Q. If you could refer to page two of what's
15 marked as Exhibit 503, the first full paragraph on that
16 page refers to some confusion about transition charges,
17 and then there's a sentence after that, if you could
18 just read that second sentence.

19 A. (Reading.)

20 The transition charges in Schedule 48
21 reflect the difference between current
22 core sales tariffs and the proposed
23 non-core sales tariff.

24 And that's -- that's what I was saying in a
25 sense, that the transition charges were to buy time for

00564

1 the merged companies to reduce some of their costs, and
2 it was structured to essentially keep industrial rates
3 relatively close to the rates in place at that point in
4 time.

5 Q. And were the transition charges based on the
6 assumptions at that time about what the market prices
7 would be?

8 A. As I remember it, the transition charges were
9 based on kind of the low end of that range, you know, in
10 the range of 14 to 17 mils per kilowatt hour.

11 Q. Why don't we refer to what's marked as
12 Exhibit 511, which is a Commission Staff report related
13 to Schedule 48, and if you could look at page five of
14 that exhibit.

15 A. Yes.

16 Q. Does this show one of the forecasts that was
17 being used at the time of what market prices would be?

18 A. Yes, it does. It shows -- what we have here
19 before us is what Schedule 48 was forecast to be and for
20 Schedule 31 customers and then Schedule 48, both high
21 and low load factor customers. And on the second column
22 from the left, you see an energy charge, and that's the
23 energy charge that I was referring to. If you go down
24 to the bottom where it says current Schedule 49 customer
25 high load factor, you can see 1997, they did use about

00565

1 15.4, and then that escalates up to about 17 in 2001.
2 And then you go over six columns, and you will see the
3 transition charge.

4 MR. VAN CLEVE: Your Honor, I would like to
5 offer both 503 and 511.

6 JUDGE MOSS: Apparently no objection, those
7 will be admitted as marked.

8 MR. FFITCH: Excuse me, Your Honor, may I
9 inquire what 511 is?

10 JUDGE MOSS: 511 is the Staff memorandum
11 dated September 25th, 1996. It was the one we added.

12 MR. FFITCH: Thank you.

13 BY MR. VAN CLEVE:

14 Q. Could you please refer to what's marked as
15 Exhibit 504.

16 A. Yes.

17 Q. Is this another letter from Ms. Omohundro
18 clarifying the Schedule 48 filing?

19 A. Yes, it is. It's part of an ongoing series
20 of such letters.

21 Q. If you could refer to page four of that
22 letter, the first two lines at the top of the page, in
23 your view, does this indicate that the Schedule 48
24 customers would have the option in the future to become
25 core customers again?

00566

1 A. Yes, it does, and the whole idea was to be
2 able to go back and become core customers with different
3 standards applied to them.

4 Q. And do you know what the reference here to an
5 appropriate surcharge is?

6 A. The idea at the time that Schedule 48 was
7 negotiated was that the customer -- the other customer
8 representatives and the Commission wanted to ensure that
9 costs were not shifted onto other customer classes. And
10 so to the extent that these customers at the end of
11 Schedule 48 decided that they wanted to come back to
12 core customer, then that they would be responsible for
13 long run or long-term resource costs, and that's where
14 the 50 mils per kilowatt hour number came from that I
15 mentioned. At that time, that was considered to be the
16 cost of a combined cycle combustion turban.

17 Q. If you could refer to page five at the top of
18 the page, the carryover paragraph.

19 A. Yes.

20 Q. Do you know what was meant there by
21 incremental costs for power supply?

22 A. It was the -- it was generally considered the
23 next block of power that the utility purchased to serve
24 these new non-core loads.

25 MR. VAN CLEVE: Your Honor, I would offer

00567

1 Exhibit 504.

2 JUDGE MOSS: Okay, there's no objection, it
3 will be admitted as marked.

4 BY MR. VAN CLEVE:

5 Q. Turning now to what's marked as Exhibit 505,
6 if you could refer to the second page of that exhibit,

7 the second full paragraph, can you read that first
8 sentence there?
9 A. Yes.
10 The primary purpose of Schedule 48 is to
11 serve as a timely and necessary bridge
12 until retail wheeling policy can be
13 established and made available to our
14 customers.
15 Q. And do you believe that that's an accurate
16 characterization of the primary purpose of Schedule 48?
17 A. Yes, it was definitely a transitional tariff.
18 Q. If you could now refer to page four of the
19 document marked as Exhibit 505.
20 A. Yes.
21 Q. And the second paragraph, the second to the
22 last sentence, the one with the date in it, could you
23 read that sentence?
24 A. It says:
25 Absent this agreement, we will

00568

1 unilaterally file open access tariffs no
2 later than January 31st, 2001.
3 CHAIRWOMAN SHOWALTER: I'm sorry, where are
4 you looking, where are you?
5 THE WITNESS: I'm on the first full paragraph
6 on page four, and it's two lines from the bottom.
7 CHAIRWOMAN SHOWALTER: I see.
8 BY MR. VAN CLEVE:
9 Q. If you look back at Exhibit 501, which was
10 the settlement agreement, and paragraph 3C on page four
11 of that document.
12 A. Yes.
13 Q. Does the language that you just quoted from
14 Exhibit 505, does that reflect the commitment that's
15 made in the settlement agreement in paragraph 3C?
16 A. Yes, it does. It essentially says that if we
17 couldn't work through the legislative and the tariff
18 arrangements, then that PSE would file unilaterally by
19 that time.
20 Q. And that was open access for all customer
21 classes?
22 A. Yes, open access for all customer classes.
23 Q. And if you could refer to page seven in the
24 exhibit that's been marked as 505, in the first
25 paragraph, the last sentence.

00569

1 A. Yes.
2 Q. Is that -- can you go ahead and read that
3 sentence?
4 A. (Reading.)
5 This commitment is reversible only to
6 the extent that they are willing to pay
7 all the costs associated with returning
8 to core sales service whereas PSE would
9 again plan to meet their long-term

10 energy requirements.
11 MR. VAN CLEVE: Your Honor, I would offer
12 Exhibit 505.
13 JUDGE MOSS: All right, there's no objection,
14 it will be admitted.
15 BY MR. VAN CLEVE:
16 Q. If you could turn to Exhibit 508.
17 A. Yes.
18 Q. This is a statement by Ron Davis. Can you
19 refresh us on what his role was in the Schedule 48
20 negotiations?
21 A. Ron Davis was a vice president at Washington
22 Natural Gas and headed up the merger approval process
23 and was the lead negotiator for the two companies on the
24 Special Contracts and on Schedule 48.
25 Q. And I would like you to read the entirety of

00570

1 paragraph 12 starting with page 2.
2 A. Yes.
3 In determining whether it is appropriate
4 to apply the Mid-Columbia non-firm
5 electricity price index, it is crucial
6 to determine whether the index is a
7 credible index. To be a credible index,
8 it must be robust, which means it must
9 have a sufficient number of transactions
10 and a sufficient volume of energy traded
11 on a daily basis (a) to be an accurate
12 reflection of the market, and (b) not to
13 be subject to movement as a result of
14 purchases to serve the Schedule 48 load.
15 Thus, for example, if the volume of
16 energy traded on any given day were for
17 a fraction of the Schedule 48 load, the
18 index would not be a credible index and
19 should not be applied.
20 I have not analyzed whether this has, in
21 fact, happened.
22 Q. Do you think that that's an accurate
23 characterization of the intent of Schedule 48?
24 A. Yes, I do.
25 MR. VAN CLEVE: Your Honor, I would offer

00571

1 Exhibit 508.
2 JUDGE MOSS: Being no objection, it will be
3 admitted as marked.
4 BY MR. VAN CLEVE:
5 Q. Mr. Canon, are you aware of a buy-sell
6 arrangement that PSE has proposed known as Schedule 448?
7 A. Yes, I am aware of that.
8 Q. What's your understanding of how that tariff
9 would work?
10 A. My understanding of how that tariff would
11 work would be that the customer would identify a
12 proposed power purchase, and then that customer would

13 take that information to PSE. Essentially PSE would buy
14 it from the energy supplier and then turn around and
15 sell it to the company, the industry.

16 Q. Is that kind of arrangement the same thing as
17 open access?

18 A. It is certainly not in our mind open access.
19 Open access is where the customer is able to go to the
20 market and have direct contact and only direct contact
21 with an energy supplier.

22 Q. Do you think that that was the type of open
23 access that was contemplated in the market transition
24 plan?

25 A. No, I do not.

00572

1 Q. Do you see any potential problems with
2 Schedule 448?

3 A. I think it's very complex. I think that
4 there is a question of how many people can access a
5 buy-sell tariff as far as their load size. I think
6 there are a number of difficulties with 448.

7 Q. The settlement agreement refers to open
8 access for all customer classes, correct?

9 A. That is correct.

10 Q. Do you believe that Schedule 448 would be a
11 practical way to provide open access for all customer
12 classes?

13 A. I think it would be an administrative
14 nightmare to have that occur. I guess I would just note
15 I mean that up until September, PSE had consistently
16 told us that buy-sell arrangements were not legal,
17 because we had looked at having a buy-sell agreement for
18 the firming option under Schedule 48. And that was
19 resolutely resisted by PSE on the basis that it was not
20 legal.

21 Q. Looking back at the commitments that Puget
22 made in the settlement agreement regarding open access,
23 do you know why they changed their position on the whole
24 idea of open access?

25 A. I don't know. I can surmise. There were

00573

1 management changes at PSE. In fact, immediately the day
2 or two after the merger was actually consummated,
3 Mr. Vitato, who was the CEO of Washington Natural Gas,
4 decided not to stay with the company. And then we saw a
5 migration of a number of the natural gas related
6 personnel from the company, and those were the people
7 that we had dealt with through this process. Those were
8 the people that had considerable experience with
9 offering customers choices in natural gas.

10 Q. In your opinion, has the purpose of Schedule
11 48 been frustrated?

12 A. Yes, I think -- I think the fundamental
13 foundation of Schedule 48 as far as a transition to open
14 access, transition to robust market, both of those do
15 not exist at this point in time.

16 MR. VAN CLEVE: That's all the questions I
17 have, Your Honor.
18 JUDGE MOSS: All right, just to make sure I
19 have a clear record, you're not going to tender 507 and
20 510 or 509?
21 MR. VAN CLEVE: That's correct.
22 JUDGE MOSS: All right. Let's go ahead with
23 Staff's cross.
24 MR. CEDARBAUM: I have no questions, Your
25 Honor.

00574

1 JUDGE MOSS: Public Counsel.
2
3 C R O S S - E X A M I N A T I O N
4 BY MR. FFITCH:
5 Q. Good afternoon, Mr. Canon, just a couple of
6 questions. You talked about the fact that you were
7 present way back in the 20th Century while this was
8 being negotiated and about the fundamental assumptions
9 and about one of those assumptions being savings for the
10 Schedule 48 customers, correct?
11 A. Correct.
12 Q. And those savings that we're talking about
13 are savings as compared with tariffed rates, and those
14 savings if experienced by the customers would result in
15 lost revenue to Puget; isn't that correct?
16 A. That is correct.
17 Q. And do you recall from your experience of the
18 adoption phase of this schedule that Public Counsel
19 initially opposed the adoption of Schedule 48?
20 A. I do.
21 Q. And that was out of concern that these lost
22 revenues we have talked about would result in cost
23 shifting to remaining core customers; isn't that right?
24 A. That is correct.
25 Q. And the Commission ultimately imposed a

00575

1 condition which adopted a guarantee that no shifting of
2 those costs to other customers would occur, a condition
3 on the approval of Schedule 48; is that correct?
4 A. That's correct.
5 Q. Am I correct that you are not recommending in
6 this case that that guarantee be disturbed in any way?
7 A. That is very correct.
8 MR. FFITCH: Thank you, I don't have any
9 other questions, Your Honor.
10 JUDGE MOSS: All right. Mr. Berman, I wonder
11 if you can give me any sort of a reasonable estimate on
12 the time for cross-examination of this witness?
13 MR. BERMAN: Your Honor, I would guess 15
14 minutes to half an hour.
15 JUDGE MOSS: All right, let's keep going
16 then, go ahead.
17 MR. BERMAN: Your Honor, I would note just
18 generally on the timing issue that as days progress,

19 scheduling issues start to arise. We had been planning
20 on and hoping on getting this thing done in two days,
21 and I'm wondering if we could discuss for just a moment
22 how we're going to deal with the timing. It's not clear
23 to me right now how the timing is going to progress.
24 Were we intending to go late today or not? I think that
25 our preference would be to keep going and try to get

00576

1 this done rather than encounter timing and scheduling
2 burdens.

3 JUDGE MOSS: Miss Davison.

4 MS. DAVISON: Oh, I'm sorry, I was just
5 grabbing documents.

6 JUDGE MOSS: All right, well, it's 5:00 now.
7 Let's go off the record.

8 (Discussion off the record.)

9 MR. BERMAN: First thing I would like to do
10 is introduce the deposition of Ken Canon. I would note
11 that although this deposition was previously designated
12 as confidential, I believe that Complainants have
13 indicated that they would withdraw the claim of
14 confidentiality.

15 JUDGE MOSS: I am seeing a nod of affirmation
16 from Ms. Davison, so we will remove the confidential
17 designation, and I will mark it as number 512.

18 And consistent with our prior arrangements, I
19 take it there's no objection, and it will be admitted.
20

21 C R O S S - E X A M I N A T I O N
22 BY MR. BERMAN:

23 Q. Mr. Canon, do you have your deposition with
24 you?

25 A. No, I do not.

00577

1 Q. We can get a copy for you.

2 A. Thank you.

3 Yes, I do have it now.

4 Q. Could you turn to page 18 of your deposition?

5 A. Yes, I do, I do have it.

6 Q. And you say there at line five that Schedule
7 48, you were asked at line five if the settlement
8 agreement or Schedule 48 required Puget Sound Energy to
9 use any particular set of resources to serve the
10 customers under Schedule 48, and you said no; is that a
11 correct answer?

12 A. That is a correct answer.

13 Q. All right. And then you were asked if those
14 agreements link the costs that are charged under the
15 tariff to Schedule 48 customers to the prices of energy
16 resources used to serve those customers, and you said no
17 as well; is that correct?

18 A. That is correct.

19 Q. Turning to the bottom of page 20, you were
20 asked a question about whether Puget Sound Energy could
21 unilaterally raise the charges to Schedule 48 customers

22 if it finds that its costs are higher than the prices
23 charged under Schedule 48. And then on the top of page
24 21 of your testimony, you said it does not have the
25 unilateral right to do so, to do that; is that correct?

00578

1 A. That is correct.

2 Q. And then you were asked, is that because
3 Puget gave up the right to unilaterally alter the rates
4 or raise the rates. And your answer was, it negotiated
5 away in combination with other elements of the
6 settlement that right; is that correct?

7 A. That is correct.

8 Q. So is it your view that, just so I'm
9 straight, is it your view that Puget Sound Energy
10 negotiated away its right to alter the rates under
11 Schedule 48?

12 A. Yes, it did, and it agreed to do other things
13 under Schedule 48.

14 Q. Don't the Washington statutes generally allow
15 a utility to alter the rates charged under a rate
16 Schedule, to your knowledge?

17 A. Yes, the utilities have the ability to change
18 rates, or propose to change rates I probably should say.

19 Q. Can you explain why in the case of Schedule
20 48 the utility did not have the right to alter its rate
21 Schedule?

22 A. Because at the time, it was premised that
23 this would be a transition to open access, and therefore
24 we wanted to reflect market prices and chose an index as
25 a manner of reflecting market prices, and that was the

00579

1 basis of Schedule 48.

2 Q. So do I understand correctly that it's your
3 view that Puget Sound Energy negotiated away certain
4 statutory rights when it entered into Schedule 48?

5 A. Yes, it did.

6 Q. Did the customers negotiate away any
7 statutory rights when they entered into Schedule 48?

8 A. Yes, they did.

9 Q. If you could turn to page 44 of your
10 transcript.

11 A. (Complies.)

12 Q. Do you have that in front of you?

13 A. Yes, I do.

14 Q. Line 16, you're asked, what's the difference
15 between a non-core customer and a core customer. You
16 say there, a core customer would have some claim to
17 embedded cost resources; is that correct?

18 A. That's what it says. It's probably more
19 appropriate to say they have a claim, not just some
20 claim.

21 Q. Would you agree that a non-core customer has
22 no claim to embedded cost resources?

23 A. Yes. They do have the ability to come back
24 as core, but their pricing mechanism is different.

25 Q. On page 51 of the deposition transcript, you

00580

1 were asked about the participation of ICNU in various
2 FERC proceedings. Do you recall that questioning?

3 A. Yes.

4 Q. Is it correct that ICNU has intervened in
5 docket number EL 00-95 at FERC?

6 A. Yes.

7 Q. And that's the California proceeding?

8 A. That is correct.

9 Q. Is it also true that ICNU has intervened in
10 docket number EL 01-10, which is the complaint
11 concerning Northwest power prices initiated by Puget
12 Sound Energy?

13 A. That is correct.

14 Q. If FERC were to correct wholesale power
15 markets in those two dockets, would that solve any
16 emergency problem for the Schedule 48 customers?

17 A. I guess it just depends on how they correct
18 them. They have -- it seems they have the, in their
19 mind, that they have corrected them where there is a
20 problem, which is in California, which probably hasn't
21 helped us in the Northwest at all.

22 Q. Do I understand you to be saying or is it
23 correct that you're saying you think FERC did not go far
24 enough in its December 15th, 2000, order addressing
25 those dockets we just referenced?

00581

1 A. Yes. We believe, as does I think everyone in
2 the Northwest that's been involved in this, that they
3 could and need to go farther.

4 Q. Do you intend to state that in a request for
5 a rehearing in those dockets?

6 A. We have not gotten to that point yet.

7 Q. Would you agree that FERC has the power to
8 address power markets in a way that would solve any
9 emergencies for the Schedule 48 customers?

10 A. I wouldn't agree, because I just don't know.
11 They obviously have the ability to influence the CAL-PX,
12 because I think that is something that is within their
13 purview. The broader power market, I just don't know.

14 Q. I think you have indicated that you believe
15 that there are problems with the broader power market;
16 is that correct?

17 A. Yes.

18 Q. Do you believe that the Mid-C, the
19 Mid-Columbia Index, overstates the prices that are
20 available in the broader power market as it exists?

21 A. I don't know at this point in time.

22 Q. Do you have any reason to believe that it
23 does?

24 A. I don't.

25 Q. I would like to turn you to Exhibit PSE-1,

00582

1 which was an exhibit that was used at your deposition.

2 A. Okay.

3 Q. It should be appended to your deposition, I
4 believe. No, we will put a copy in front of you.

5 A. Thank you.

6 Q. And frankly that's a copy of the settlement
7 agreement, and so it would be just as well to refer to
8 Exhibit 501, which is the same thing, and I apologize
9 for that confusion.

10 A. Yes, I have it.

11 Q. If you would look at paragraph E on page two;
12 do you see that?

13 A. Yes.

14 Q. It says there that:

15 Availability of Schedule 48 allows
16 customers to transition to unbundled
17 pricing based on equivalent margin, to
18 access electric supply at incremental
19 market costs, and to assume more risk
20 associated with power supply
21 availability and price variability.

22 Would you agree that that was a goal of
23 Schedule 48?

24 A. Yes, I believe that it was specifically the
25 idea that there would be a market and that these

00583

1 customers would be participating through an index on
2 that market.

3 Q. And your goal was to have the customer served
4 at incremental market costs as it says there?

5 A. Our goal was open access, but this was a
6 transition to that, an incremental market cost, yes.

7 Q. And the assumption of risk associated with
8 power supply availability and price variability was part
9 of the deal; is that correct?

10 A. They assumed more risk associated with power
11 supply and availability.

12 Q. You referred in your direct examination to
13 the open access issues. Is it your view that it would
14 be a sound public policy to initiate open access for all
15 customer classes served by Puget Sound Energy at this
16 time?

17 A. No, I think it's clear that a number of the
18 fundamental aspects of Schedule 48 just haven't
19 transpired or started and then ended, for example, the
20 market, and at this point in time that open access would
21 be problematic for anyone and everyone, and so the
22 underlying basis of Schedule 48 no longer exists.

23 Q. Is it your view that the customers served
24 under Schedule 48 would want open access in your
25 terminology if it was offered to them today?

00584

1 A. Probably not.

2 Q. If you could turn to Exhibit A to the
3 settlement agreement, it's at the back of that

4 settlement agreement you were just looking at.
5 A. Hang with me, I just switched. Number one,
6 thank you, yes, I have it.
7 Q. That's a copy of Schedule 48 or at least the
8 Schedule 48 that was proposed at the time of the
9 settlement agreement; is that correct?
10 A. It is a Schedule 48. I don't know if it's
11 the one that was proposed at the time of the settlement
12 agreement. We had a number of them.
13 Q. And is it right that after the settlement
14 agreement was entered into that a number of
15 modifications were made to the Schedule 48 to deal with
16 concerns of Staff and Public Counsel?
17 A. I do not know when those were made in the
18 continuum between the time it was proposed and May 24
19 and finally adopted.
20 Q. If you would look on that first page of
21 Exhibit A, paragraph 4 under Roman Numeral I, scheduled
22 availability.
23 A. Mm-hm.
24 Q. Do you see paragraph 4?
25 A. Yes.

00585

1 Q. And it states there:
2 Customers taking service under this
3 Schedule assume risks of variability in
4 energy prices and availability of energy
5 for delivery to customer except as
6 otherwise available in this schedule.
7 Is it correct that when this was put together
8 that it was intended that the customers assume risks of
9 variability and energy prices?
10 A. Yes, along with other assumptions.
11 Q. And if you could flip ahead to -- if you
12 could flip ahead, there's a next page, next page, and
13 then a next page, and there's Roman Numeral III,
14 explanation of rates and services.
15 A. Can you show me yours, and then I can perhaps
16 find it.
17 Q. There's a table two, Schedule of DSM charges.
18 A. Yes, I have it.
19 Q. And right below that table, there's an
20 explanation of rates and services.
21 A. Yes.
22 Q. And there in that explanation, it describes
23 the index that's used for calculation of the energy
24 charges; is that correct?
25 A. In the second paragraph?

00586

1 Q. Yes.
2 A. Yes.
3 Q. And in the first paragraph there, it once
4 again says, risk for price movement in the index, energy
5 prices born by customer; is that correct?
6 A. That's correct.

7 Q. So there were a lot of reminders that the
8 risk was born by the customer; is that correct?
9 A. That is correct.
10 Q. And then if we could flip ahead a few more
11 pages, we eventually get to the optional price stability
12 provision, and I apologize that at least the version I
13 have does not have page numbering on it.
14 MS. DAVISON: Exhibit 1 does.
15 A. It's 14 in mine.
16 Q. Well, the version I'm looking at, sorry. Do
17 you see the optional price stability provision there?
18 A. Yes.
19 Q. And is it correct that when Schedule 48 was
20 entered into that it was contemplated that there would
21 be volatility in prices but that customers might want to
22 limit that volatility through the use of caps or collars
23 or other financial mechanisms?
24 A. Yes, there was an understanding that there
25 would be some volatility in prices, and these were the

00587

1 mechanisms that customers could use.
2 Q. Would you agree that optional price stability
3 is something like auto insurance, that you buy it up
4 front to have certainty even if you don't know if you
5 will really need it as the year progresses?
6 A. I don't know if I would -- I hadn't thought
7 of it in those terms. I don't know if I would
8 characterize it that way or not.
9 Q. Let me ask you if -- do you have auto
10 insurance?
11 A. Sure, I do.
12 Q. If you go to the end of the year and you
13 didn't have an accident so that you made no claims on
14 the auto insurance, do you look back and say it was a
15 bad deal to have bought auto insurance even though you
16 had no occasion to benefit from claims under that
17 policy?
18 A. No.
19 Q. So would you agree that it might be prudent
20 for an individual to enter into arrangements that would
21 stabilize their expectations even if the risks are slim
22 that they will actually face high costs that are avoided
23 by the stability?
24 A. I think a lot of it would depend on the price
25 that you would have to pay. Obviously with auto

00588

1 insurance, it's an obligation that we have as well.
2 Q. To your knowledge, could customers under
3 Schedule 48 have locked in prices under the optional
4 price stability for the entirety of the term of Schedule
5 48?
6 A. I don't know.
7 Q. If customers had done so, do you know if they
8 would have been ahead of where they are today?
9 A. I would only be speculating on that.

10 Q. There's a service agreement attached to
11 Schedule 48 that attached to the Schedule 48 that's
12 attached to the settlement agreement; do you see that
13 service agreement?

14 A. Yes, I do.

15 Q. I note that there are seven paragraphs to
16 that service agreement, but when we have looked at the
17 service agreements that customers have actually signed,
18 there were eight paragraphs; do you recall that?

19 A. No, I do not.

20 Q. Why don't I give you a copy of one of the
21 service agreements that customers have actually signed.
22 I'm showing you a copy of the Shell service agreement,
23 which we just picked at random. I'm afraid my version
24 doesn't have the exhibit number marked on it. We will
25 work on tracking down that number. That's Exhibit 302

00589

1 for the record. And I see that I was mistaken in saying
2 that there were just eight paragraphs in the actual
3 service agreements that were signed. I see that several
4 additional ones were added. But noting paragraph eight,
5 do you see paragraph eight on Exhibit 302?

6 A. Yes, I do.

7 Q. Do you recall that Staff and Public Counsel
8 asked that paragraph eight be added to the service
9 agreement so that there could be certainty that
10 customers who were signing on to Schedule 48
11 acknowledged that they were assuming risks in entering
12 into Schedule 48 because of Staff and Public Counsel's
13 concern about cost shifting?

14 A. I do not remember that.

15 Q. Would you agree that in paragraph eight of
16 the service agreement, there's an additional
17 acknowledgment of the risks of market volatility that
18 the customers are exposed to?

19 A. When you say additional --

20 Q. Additional to the several instances that we
21 noted in the settlement agreement and at Schedule 48
22 itself?

23 A. Yes, there is that provision in there.

24 Q. Let's turn to Exhibit PSE-2, which was also
25 an exhibit to your deposition.

00590

1 A. Yes, I have it.

2 Q. Do you recall being asked questions about
3 this exhibit at your deposition?

4 A. Yes, I do.

5 Q. And this exhibit is a memorandum to you
6 memorializing a conference that you had with the UTC
7 Staff about Schedule 48; is that correct?

8 A. That is correct.

9 MR. VAN CLEVE: Excuse me.

10 JUDGE MOSS: Mr. Van Cleve.

11 MR. VAN CLEVE: You're referring, I'm sorry,
12 Your Honor, I was looking something up, are we referring

13 to what's marked as PSE-2?
14 JUDGE MOSS: Yeah, it's PSE-2 to the Ken
15 Canon deposition. It's a memorandum dated August 21st,
16 1996, from Clyde MacIver to Ken Canon. I notice it does
17 have a confidential mark. Is that why you're concerned?
18 MR. VAN CLEVE: No, Your Honor. Mr. MacIver
19 was the attorney for Mr. Canon at the time, and this is
20 a privileged communication between a client and his
21 attorney, so we would object to questioning regarding
22 this document or its admission.
23 JUDGE MOSS: Well, that raises the question
24 of whether that privilege may have in some fashion be
25 waived.

00591

1 Mr. Berman.
2 MR. BERMAN: Your Honor, this is a document
3 that was found in our files. I can't answer how it
4 ended up in our files, but I believe that the privilege
5 has indeed been waived.
6 I would note that at the deposition of
7 Mr. Canon, I asked a number of questions about this
8 exhibit. Only after I had asked a number of questions
9 did they raise this issue then and said that it was
10 something they would look into. Now a number of weeks
11 have passed since then, and in those weeks nothing
12 further was done about the exhibit. I introduced the
13 exhibit again, asked several questions, and only after
14 several questions did they raise the issue again.
15 I believe that the privilege has surely been
16 waived by their allowing questioning about this document
17 if not by the fact that it was provided to the public.
18 An attorney-client privilege communication is only a
19 communication that is held confidential between the
20 attorney and client and is not a communication that has
21 been provided to outside parties.
22 JUDGE MOSS: And you want us to infer from
23 the fact that you found it in Puget's files that it has
24 been provided to the public?
25 MR. BERMAN: I would call Puget the public,

00592

1 Your Honor, because we're neither the attorney nor the
2 client that they seem to be asserting the privilege
3 about.
4 JUDGE MOSS: Right, I understand, I just
5 wanted to make sure that I understood what your argument
6 is.
7 MR. VAN CLEVE: Your Honor, first I would say
8 that at the deposition, Mr. Canon -- Mr. Ricks who was
9 representing him there reserved any privilege related to
10 this document. And second, I would say that in both
11 this case and the prior complaint case, all documents
12 which the Complainants produced were bate stamped, and
13 this document obviously is not bate stamped, and we have
14 no reason to believe that we produced this document and
15 have no knowledge about how it came into PSE's

16 possession, and apparently they have no knowledge
17 either. So under those circumstances, the mere fact
18 that they have it I don't think shows that the privilege
19 has been waived.

20 CHAIRWOMAN SHOWALTER: I've got a question.
21 It appears to be from the face it's a fax. At the top
22 it's dated September 3, 1996, Canon and Hutton. It
23 appears to have been faxed from Mr. Canon's office, I
24 presume, to -- I guess we don't know that, we don't know
25 where it was faxed to. It was faxed from, but we don't

00593

1 know where to.

2 MR. VAN CLEVE: That's correct.

3 JUDGE MOSS: Let's ask Mr. Canon, he's the
4 ostensible client here, whether there's anything in this
5 four year old document that needs to be kept subject to
6 an attorney-client privilege. Have you reviewed this
7 document?

8 THE WITNESS: I just saw it briefly at the
9 deposition. It was a surprise to me at the deposition
10 quite honestly. ICNU would like to have Your Honor
11 consider this to be attorney-client privileged.

12 JUDGE MOSS: Let me ask if Staff has any
13 experience with this document. If it's been disclosed
14 beyond the attorney and client, I do believe that that
15 is the law on that subject matter. If it's been
16 released beyond the attorney and client, then it is the
17 privilege is waived as I recollect the law on that
18 subject. It's not an area of law that we have to deal
19 with. In fact, I don't believe it has ever come up in
20 my experience in 20 years of practice, but I want to be
21 careful about handling it, because that is an important
22 privilege, and we don't want to say that it was waived
23 willy-nilly. But on the other hand, if it's something
24 that has been produced in other Commission proceedings
25 or what have you, then that would be helpful to know.

00594

1 Do you have any knowledge at all,
2 Mr. Cedarbaum?

3 MR. CEDARBAUM: The answer to that question
4 is I don't have any knowledge, but I can certainly ask
5 the Staff people who are in the room if they have ever
6 seen it. I would note for what it's worth that there
7 were other people at the meeting that's referenced
8 beyond Mr. Canon and Mr. MacIver.

9 JUDGE MOSS: I don't think that helps us.
10 It's a question of the document itself. If it was
11 intended to be kept under wraps by the attorney and the
12 client, then I think that's the basic test of when the
13 privilege applies. And one indication of when that's
14 not true is when they have shared it with third parties
15 who are not say within the corporation or the group or
16 what have you.

17 MR. CEDARBAUM: The only thing I guess I
18 could add maybe to get us by this is that at least my

19 recollection from the discussion at the deposition was
20 that some of the points Mr. Berman was making were the
21 same type of subject matters we have been covering
22 already, and maybe in his mind this is just duplicative
23 and we can dispense with it. That's his call and I just
24 raise that as a possibility.

25 JUDGE MOSS: Can you ask your questions

00595

1 without the use of this document, and we can if you want
2 to make it as an offer of proof, and we can hold it and
3 find out whether it's been disseminated to the world or
4 whatnot? I don't think we're going to resolve this
5 sitting right here tonight.

6 MR. BERMAN: Your Honor, it has certainly
7 been disseminated to the world. This was attached to
8 our brief, and we filed it at the Commission, it's in
9 the Commission's public records. No complaint was ever
10 raised. It's, I believe, a document that's fully
11 discoverable under the Public Records Act. It's a
12 public document for all to see and for the world to look
13 at.

14 JUDGE MOSS: I'm afraid that we are treading
15 into some subtle questions of attorney-client privilege,
16 and if the document somehow came into PSE's hands
17 inadvertently without the intention of the privilege
18 being waived, then the fact that PSE has subsequently
19 made use of it I don't think really bears on the
20 question. The question is how it was used or
21 disseminated by the attorney and the client involved,
22 and again, we're getting into an area here where I feel
23 like I am skating on thin ice in that this is not
24 something we typically have to deal with, and it's not
25 something I have looked at in a very long time. And so

00596

1 I don't want to -- I will be cautious, and so I don't,
2 unless my -- unless the commissioners want to confer
3 briefly and perhaps have some sage advice for me in this
4 regard, I'm going to be very cautious.

5 MR. CEDARBAUM: Your Honor, I did, while you
6 were talking, Mr. Trotter did touch base with some of
7 the Staff people in the room, and it had not, to the
8 best of their knowledge, it had not been disseminated to
9 them or anyone else, not Staff that they know of.

10 JUDGE MOSS: All right.

11 MR. BERMAN: Your Honor, I would just note
12 that the types of information that I intend to deal with
13 relate to discussions that were held with Staff that are
14 merely reported here. And mostly I was using this for
15 the purpose of refreshing the witness's recollection.
16 For instance, in paragraph 20, he reports that he
17 performed no studies, and he reports that he advised
18 Staff that he had performed no studies to support their
19 view that --

20 JUDGE MOSS: Well, let's don't be talking
21 about the contents of the document, Mr. Berman.

22 MR. BERMAN: Your Honor, what I'm concerned
23 about is asking questions about what these people
24 believed, what they did, and what they discussed with
25 Staff, and perhaps he could read the document and

00597

1 refresh his recollection as to what he said and
2 believed.

3 JUDGE MOSS: Well, if he needs to do that to
4 refresh his recollection, then he certainly I suppose
5 can do that without this document being made an exhibit
6 of record in this proceeding. And, of course, there's
7 only a need for him to do that if his recollection is,
8 in fact, dim. And I noticed that Mr. Canon's
9 recollection of the events of four years ago when this
10 was negotiated seem to be to be quite sharp. He listed
11 off all of the major participants who were at the
12 meeting in May of 1996 and in various other ways has
13 testified in a fashion that convinces me he's got a
14 pretty sharp memory of all of this.

15 So let's first have the questions and see if
16 he can answer. And if he says I don't recall, then he
17 can perhaps be asked to review this document quietly to
18 himself and see if it refreshes his recollection without
19 getting into the specifics of the document. I think
20 that's a fair and conservative way to proceed under the
21 circumstances.

22 MR. BERMAN: I will do that, Your Honor.

23 BY MR. BERMAN:

24 Q. Mr. Canon, do you remember that you had
25 meetings with Staff on or about August 1996?

00598

1 A. Yes, we did, we did meet with the Staff
2 during the pendency of Schedule 48.

3 Q. Do you recall that they were concerned about
4 whether prices would stay low and about whether if
5 prices went high there would be some opportunity for
6 cost shifting?

7 A. I think that that had come up a number of
8 different times.

9 Q. Did they ask you if you had ever performed
10 any studies to verify that prices would stay low?

11 A. Yes, they did ask, and we were operating on
12 the same basis that the utility was at that time, that
13 it's very hard to conduct a study of future events.

14 Q. Is it fair to say that you advised them that
15 you had performed those studies, you were willing to go
16 with what the market did?

17 A. Yes, assuming there was a market.

18 Q. I will turn to a different document. I would
19 like to show you now a document that we will mark as or
20 that we have premarked as Exhibit PSE-79, and we will
21 circulate a copy of that right now.

22 JUDGE MOSS: And for the record, I will
23 premark that as Exhibit 1579. It makes our record sound
24 all the more daunting, doesn't it.

25

MR. CEDARBAUM: What was the number, Your

00599

1 Honor?

2 JUDGE MOSS: 1579. Let me back up off that
3 mark a minute. Mr. Berman, are you planning to use this
4 and introduce this through this witness as a
5 cross-examination exhibit?

6 MR. BERMAN: Yes, Your Honor.

7 JUDGE MOSS: I'm going to give it a different
8 number then. Strike that 1579 number, and we will mark
9 it as, give me half a second, I've got to flip through
10 this notebook, it will be 513 then.

11 BY MR. BERMAN:

12 Q. Mr. Canon, do you recognize Exhibit 513?

13 A. Yes, it is my prefiled testimony in the
14 previous Schedule 48 complaint case, Docket Number
15 UE-981410.

16 Q. So this is sworn testimony that you gave to
17 this Commission in a prior proceeding?

18 A. Yes, it is.

19 Q. Do you recall that in that prior proceeding,
20 there was an issue concerning whether the Mid-Columbia
21 Non-firm Index matched the quality of the power product
22 actually delivered under Schedule 48?

23 A. Yes.

24 Q. Do you recall that it was Puget Sound
25 Energy's contention that the index did not match the

00600

1 quality of the product, and that if forced to serve
2 using the index, it would under collect its costs
3 because the quality of service required more expensive
4 power?

5 A. Generally, yes.

6 Q. And do you recall that you argued that there
7 was no link between the index and the product that was
8 actually being sold?

9 A. That is correct, the Mid-C Index was used as
10 a pricing index.

11 Q. If you could turn to page 3 of this exhibit
12 and look at line 16 going down, you were asked, did the
13 industrial customers make concessions in the
14 negotiations, and you say, yes, they agreed to become
15 non-core customers, which meant Puget no longer had an
16 obligation to --

17 A. I'm sorry, did you say page three?

18 Q. Page three, yes.

19 JUDGE MOSS: It's page four of the exhibit,
20 page three of the transcript.

21 MR. BERMAN: I'm sorry, Your Honor, page four
22 of the exhibit.

23 CHAIRWOMAN SHOWALTER: And what line were
24 you?

25 MR. BERMAN: Line 16.

00601

1 BY MR. BERMAN:
2 Q. All right, you were asked if the industrial
3 customers made concessions in the negotiations, and you
4 said they agreed to become non-core customers, which
5 meant Puget no longer had an obligation to acquire
6 resources to serve these customers. As a result, sales
7 under Schedule 48 are not backed by Puget's generating
8 system. Do you recall that?
9 A. Yes, I do.
10 Q. And is that correct?
11 A. That is correct.
12 MR. BERMAN: I would like to have the witness
13 look now at what we have premarked as Exhibit PSE-80,
14 which you have designated as 1580, but perhaps you will
15 give it a different designation now.
16 JUDGE MOSS: Did we go that high in your
17 prefiled exhibits? I thought not. All right, it will
18 be 514.
19 THE WITNESS: Your Honor.
20 JUDGE MOSS: Yes.
21 THE WITNESS: Can I go get my glasses?
22 JUDGE MOSS: Sure.
23 (Discussion off the record.)
24 BY MR. BERMAN:
25 Q. Are you familiar with this document,

00602

1 Mr. Canon?
2 A. Yes, I am.
3 Q. And what is this?
4 A. This is my deposition in the prior complaint
5 case.
6 Q. And so this was further questioning about
7 whether it was necessary and appropriate to use the
8 Mid-Columbia Non-firm Index for pricing rather than some
9 other price indicator; is that correct?
10 A. Yes.
11 Q. I would like you to look at page 41 of the
12 transcript, which appears on page 11 of the exhibit.
13 And I apologize for the small size, but that's what we
14 have.
15 A. Yes, I have it.
16 Q. Actually, if you could look at the question
17 starting on page 40 of the transcript at the very bottom
18 of that page, it says:
19 What was your understanding of what
20 resources would be used to meet non-core
21 customers' needs?
22 And your answer was:
23 It could be any resource available in
24 the West, including PSE's resources to
25 meet those needs.

00603

1 Do you see that Q and A?
2 A. I don't, could you help me here?
3 Q. Going from page 40, line 25.

4 A. I have it now.
5 Q. And do you see that Q and A now?
6 A. Yes.
7 Q. And is that correct?
8 A. That is correct, that under Schedule 48, it
9 wasn't predetermined at all which resources PSE could
10 use. They could use their own if it was more economic,
11 or they could buy if it was more economic.
12 Q. So let me get that straight. You were
13 advocating in this, in the proceeding where this
14 deposition was given, that the Mid-Columbia Non-firm
15 Index price be used; is that correct?
16 A. Yes, instead of the blended price that PSE
17 had unilaterally chosen to use.
18 Q. And you said that it's appropriate to use
19 that index no matter what resources Puget Sound Energy
20 actually uses to serve the Schedule 48 customers; is
21 that correct?
22 A. That is correct.
23 Q. And you agreed that it was appropriate to use
24 that index even if Puget Sound Energy used its own
25 resources to serve the customers; is that correct?

00604

1 A. Yes.
2 Q. So if Puget Sound Energy had some let's say
3 low cost hydro resources and it had enough capacity in
4 those resources given its needs to meet the needs of
5 core customers to also serve the non-core customers, it
6 could do so using those low cost resources but would
7 still charge you pursuant to the Mid-Columbia Non-firm
8 Index; is that correct?
9 A. That is correct.
10 Q. And it was your position that Puget Sound
11 Energy was obligated under the agreement to stick to
12 that index and could not vary from that index; is that
13 correct?
14 A. It was our belief that they could not
15 unilaterally do so. They could voluntarily work with
16 customers to come up with another tariff or another
17 index.
18 Q. I would like to now show you what we have
19 marked as Exhibit PSE-81, and this is another
20 cross-exhibit that will need I think an exhibit number
21 from the judge.
22 JUDGE MOSS: 515.
23 Did you want to move 513, Mr. Berman?
24 MR. BERMAN: Your Honor, I would move 513 and
25 514.

00605

1 JUDGE MOSS: Hearing no objection, they will
2 be admitted as marked.
3 BY MR. BERMAN:
4 Q. Are you familiar with this document,
5 Mr. Canon?
6 A. Yes, it is my rebuttal testimony in the prior

7 Schedule 48 complaint case.

8 Q. So again, this is sworn testimony that you
9 provided to this Commission in a prior proceeding?

10 A. It is.

11 Q. And is it fair to say that this testimony
12 again addresses the issue that the Mid-Columbia Non-firm
13 Index should be used no matter what quality of power or
14 no matter what the source of the power that Puget Sound
15 Energy is supplying to the Schedule 48 customers?

16 A. Yes.

17 Q. Looking at page three of the exhibit, page
18 two of the testimony, there's a Q and A starting on line
19 15 that goes on to the next page. Do you see that Q and
20 A? And the Q goes, why do you say that Mr. Gaines'
21 testimony is inaccurate?

22 A. Yes, I do see it.

23 Q. And your Q and A there is addressing the
24 issue that the quality of power is unrelated to the cost
25 of the power; is that correct?

00606

1 A. That is correct.

2 Q. The view being that the cost would be based
3 on the Mid-Columbia non-firm index no matter what price
4 Puget Sound Energy actually had to pay to get the power;
5 is that correct?

6 A. That's correct.

7 Q. You refer to the fact that those issues were
8 defined and negotiated separately. What is the
9 relevance of the fact that they were defined and
10 negotiated separately?

11 A. I'm sorry?

12 Q. Or why did, I will rephrase that, why did you
13 -- why is it that you referred to the fact that the
14 quality of power issues and the pricing issues were
15 defined and negotiated separately?

16 A. Because PSE was trying to link them in this
17 proceeding.

18 Q. When you referred to the fact that they were
19 negotiated, was it your understanding that if certain
20 terms were negotiated that the parties would be unable
21 to change those terms without the consent of the other
22 parties?

23 A. When you're talking about -- I'm just not
24 understanding certain terms.

25 Q. When you refer to, for instance, the fact

00607

1 that the pricing terms of the tariff were negotiated,
2 was it your view that those terms could not be altered
3 without the prior consent of the other parties?

4 A. That is correct.

5 Q. On the following page, well, on page five of
6 the exhibit, page four of the testimony, you say there
7 that the use of a non-firm index was an essential
8 element of the tariff; is that correct?

9 A. That is correct.

10 Q. And so in your view, is it use of the
11 Mid-Columbia Non-firm Index was an essential element of
12 the agreed tariff arrangement?

13 A. Yes.

14 Q. And it was an essential element of the
15 settlement agreement between Puget Sound Energy and ICNU
16 and the other parties to that settlement agreement?

17 A. I don't know if it was an essential term of
18 the settlement agreement itself. I don't remember how
19 much the settlement agreement got into non-firm. It was
20 an essential element of Schedule 48, and there were
21 other essential elements, I think, of a settlement
22 agreement.

23 Q. Let's move on to page eight of the exhibit,
24 page seven of your testimony.

25 A. Yes.

00608

1 Q. You say on line 12 that, it's preposterous
2 that the industrial customers would be demanding below
3 cost pricing. Would you agree that it would be
4 preposterous to be demanding below cost pricing?

5 A. Under the circumstances here, yes, where they
6 were trying to link quality to an index when that wasn't
7 the intent.

8 MR. VAN CLEVE: Your Honor, if I could
9 interrupt, I think Mr. Canon has been on the stand now
10 for a couple of hours, and the cross appears to be much
11 more extensive than what had been estimated, and I'm
12 wondering if we could take a short break.

13 JUDGE MOSS: We can certainly take a short
14 break if you need it, but let's find out first how much
15 more we have to go. Mr. Berman is indicating a very
16 little bit.

17 How many minutes does that represent?

18 MR. BERMAN: Your Honor, my big finish was
19 going to be at the end of the next page of this exhibit,
20 so there's not too much further to go.

21 JUDGE MOSS: All right, well, we have some
22 questions. We can take a break before ours. Let's let
23 Mr. Berman finish while the thunder is still pealing in
24 the background. Go ahead.

25 BY MR. BERMAN:

00609

1 Q. Still looking at page eight of the exhibit,
2 which was page seven of your testimony, you say that
3 looking -- starting at line 22, they, meaning the
4 industrials, accepted the risk of being non-core
5 customers in order to have an opportunity for lower
6 prices by having the commodity price of Schedule 48
7 based on a non-firm index; is that correct?

8 A. That is correct.

9 Q. The next sentence, which is on page nine of
10 the exhibit or page eight of the testimony, says:

11 The risk of where the index price would
12 be in relation to PSE's energy related

13 costs was and is completely unknown,
14 therefore both parties assumed equal
15 price risk.
16 Were you telling the truth when you wrote
17 that statement in your testimony?
18 A. Of course I was, and I was within the context
19 of this proceeding, the prior complaint proceeding. I
20 think that the thing I would reflect on is that we were
21 in a time period when the market seemed to be working,
22 and we are in a completely different time period now.
23 MR. BERMAN: I have no further questions.
24 JUDGE MOSS: All right, well, we have had a
25 request for what I gather for a brief recess would be

00610

1 adequate, and so let's take five minutes. We will come
2 back at 5 after 6:00.
3 (Brief recess.)
4 JUDGE MOSS: Mr. Berman, I believe you had
5 concluded.
6 MR. BERMAN: Yes, Your Honor, I realized that
7 I neglected to move Exhibit 515 into evidence.
8 JUDGE MOSS: Hearing no objection, it will be
9 admitted. I believe we have some questions from the
10 Bench.
11 CHAIRWOMAN SHOWALTER: Yes.

12
13 E X A M I N A T I O N

14 BY CHAIRWOMAN SHOWALTER:
15 Q. If you would turn to Exhibit 501, that's the
16 settlement agreement.
17 A. Yes.
18 Q. Has this settlement agreement ever been
19 formally reviewed or approved by this Commission?
20 A. I don't believe so.
21 Q. Well, are you, in your view, can this
22 Commission enforce the terms of this agreement?
23 A. I don't know.
24 Q. Is it fair to say that this was a private
25 settlement agreement, some of the terms of which led to

00611

1 the formal filing of Schedule 48 which the Commission
2 did approve?
3 A. Yes, it was privately negotiated, and I just
4 don't remember how much it was either referenced in the
5 Commission order or came up during that time period.
6 Q. On page four of that settlement agreement,
7 there's the issue of, it's on the -- it's paragraph C,
8 and it's a sentence that begins, if the collaborative
9 participants and Puget do not agree.
10 A. Yes.
11 Q. And then it goes on to say:
12 Puget will on its own initiative submit
13 for filing with the Commission a cost
14 based rate schedule of general
15 applicability regarding open access to

16 competitive electric energy markets on
17 an economic basis for all customer
18 classes.
19 I just don't understand what that means.
20 What is a cost based open access tariff?
21 A. What was meant there is that the distribution
22 charges would be unbundled and cost based.
23 Q. I see.
24 A. And that's what that would --
25 Q. So it's a cost based distribution tariff

00612

1 where the commodity would be open access?
2 A. That is correct, and it's not only
3 distribution but transmission as well within that frame.
4 Q. Isn't it the case that of all these
5 possibilities for moving toward open access, all of them
6 would require either the approval of the Commission or
7 perhaps a state legislature?
8 A. Yes, and I think that's what was contemplated
9 here in A, B were kind of mechanisms of doing that, and
10 then C would be the fall back where if we couldn't work
11 through those mechanisms, where they would unilaterally
12 file something with this Commission.
13 Q. But that would still have to be approved by
14 this Commission and in the public interest?
15 A. Absolutely.
16 Q. So isn't the most that can be said is that
17 pursuant to a private agreement, unless it turns out we
18 have approved this, that in your view Puget has failed
19 to work to develop proposals with you period?
20 A. That is correct.
21 Q. You mentioned the people involved in
22 developing Schedule 48, and I'm wondering how much
23 contact you had with your own members in the development
24 of Schedule 48. Did you keep them all apprised of the
25 issues?

00613

1 A. Yes, I did. Working with a trade
2 association, you engender considerable risk if you
3 don't. And so a number of them were there at the -- we
4 had long 20 hour negotiation session where this was
5 first approached, and we worked through a number of the
6 issues and then some. But it was all in a very, very
7 compressed time frame, and I want to say it was a real
8 challenge trying to get the feedback from, I don't know,
9 say seven or eight different members and then working
10 with specifically Ron Davis to try and solve some of
11 those issues.
12 Q. Do you think that your members understood
13 that they were going onto a service agreement or service
14 arrangement whereby they were undertaking the risk of
15 the market index?
16 A. I think that they clearly understood that
17 they were taking the risk of prices that would be
18 reflective of a competitive market. And that's, you

19 know, noted a number of times in a number of documents,
20 is that there was the belief that there would be a well
21 functioning market out there, and it's -- and actually
22 probably true until about May.

23 Q. Have you kept track of the advantage that
24 Schedule 48 has provided your members versus Schedule 49
25 or the disadvantage?

00614

1 A. No, that's -- I don't really track my
2 members' usage or cost at all, and so I have not.

3 Q. I think you have asserted that the Mid-C
4 Index is not a credible index; is that right?

5 A. Yes.

6 Q. Or is not a credible reflection of a market
7 or the market?

8 A. It is just my general feeling, my general
9 understanding, that this market that we have is kind of
10 unknown to all of us. And from what I understand, that
11 the Mid-C Index is becoming increasingly thinly traded
12 and not reflective of a robust market like we assumed
13 there would be.

14 Q. Since the resolution of the last Schedule 48
15 case, have you made any attempts to agree on a different
16 index or a substitute index or a substitute method of
17 measuring the market under Schedule 48?

18 A. No, we have not. It was, again, that case
19 was concluded in August of '99, I believe, and the
20 prices stayed within a range that seemed to be, you
21 know, kind of what we, you know, understood that would
22 be the range. And then, as I said, in May something
23 fundamentally happened, and I think people were hoping
24 that that would be just a temporary, you know, two or
25 three month excursion, and they were looking at prices

00615

1 going down. And then what happened in December
2 obviously was -- was something I think that calls into
3 question the whole West Coast energy market.

4 Q. I think there would be two ways you could
5 look at the Mid-C Index as perhaps being problematic at
6 a minimum. One would be if the Mid-C Index did not
7 reflect the market, and the other would be if it may
8 well reflect the market, but the market itself is not a
9 very well functioning market. And I'm wondering as
10 between, do you think both are the case or that it's the
11 latter that is the case?

12 A. At this point in time, I don't know about the
13 former, but the latter certainly seems to be the case,
14 where you have differential price caps, price caps for
15 California, for example, then that are -- can seemingly
16 move, you know, prices up into the -- into the Mid-C
17 Index and cause all sorts of havoc there. So I think
18 that once you start treating the market kind of
19 differentially, we do not have a well functioning market
20 in that sense.

21 Q. I want to back up just a little bit to what

22 the breadth of Schedule 48 is. Do you agree it is not
23 simply putting the customers on the Mid-C Index, it has
24 more alternatives than just that?
25 A. That is correct, yes, I do understand that.

00616

1 Q. So when we're evaluating whether Schedule 48
2 is still a reasonable tariff, don't we need to look at
3 all of the options available to the customers under
4 Schedule 48, not simply the primary element, the Mid-C
5 Index?

6 A. Yes, I think that is reasonable. I think
7 that you look at that, you look at kind of the
8 fundamentals that underlie Schedule 48, what its
9 intended purpose was, and take all of that into
10 consideration.

11 Q. Do we also need to look at its operation over
12 time and the customers' use of it over time?

13 A. I'm not sure. In the sense that customers
14 have been on it since the tariff became available, sure.
15 But I don't think I'm answering the question you're
16 asking.

17 Q. No, I think you did.

18 A. Okay.

19 Q. I guess the question I'm posing is that it's
20 difficult to evaluate Schedule 48 by taking a snapshot
21 of it on a single day. It has built into it a number of
22 elements that are available to the customers throughout,
23 including the possibility of various hedging
24 instruments, which could be under -- could be bought for
25 a month, two years, the whole term of Schedule 48.

00617

1 A. Right.

2 Q. Don't we have to look at Schedule 48 as a
3 whole to see how it -- if whether it is operating
4 fairly?

5 A. I think that's very reasonable. I think that
6 as you do that, you look at, it's, you know, hindsight
7 is so great, and look at the kind of the reasonable
8 expectations and also the reasonable operating history
9 that people had under that, I think that there's no
10 question both on the natural gas and electric side that
11 looking back that, you know, customers and utilities
12 wish they would have done different things. But I think
13 that's fair.

14 Q. Have you either advised your members or
15 circulated information to them over the course of the
16 last year about Schedule 48 and the alternatives it
17 provides?

18 A. No, not specifically.

19 Q. I think you were asked -- I think you were
20 asked the questions about Schedule 48 and what happens
21 when it comes to an end, and I believe I heard you say,
22 or maybe it was in your earlier testimony, that
23 customers could go back on some other schedule,
24 including Schedule 49, but only if they pay for their

25 long run incremental costs. Is that right?

00618

1 A. Yes, I think there's -- at the point in time
2 when Schedule 48 was being not only negotiated but taken
3 through this process, it was admittedly an experimental
4 transitional tariff, and so there was a considerable
5 question about what happens at the end. And the option
6 is obviously that you might have open access, you could
7 stay on Schedule 48, or if you have, you know, or if,
8 you know, it didn't work out, then that you could go
9 back to any applicable tariff, and I think that's
10 relevant just because some people were on 31, some
11 people were on 49, but in any case look to the long run
12 resource cost. And as I said, that was generally
13 assumed at that point in time to be a 50 mil resource, a
14 combined cyclic combustion turban. That was kind of the
15 resource of choice at that point in time.

16 Q. Well, wasn't the point of that that neither
17 the -- neither Puget's other customers nor Puget would
18 be responsible for the costs of bringing the 48
19 customers back on? Isn't that what it means to be a
20 non-core customer?

21 A. That is correct.

22 Q. So if we were in that situation today if
23 Schedule 48 were terminated shortly, to be consistent
24 with the terms of Schedule 48, wouldn't it mean that if
25 the customers wanted to elect to be on Schedule 49 that

00619

1 they would be required to pay their long run incremental
2 costs?

3 A. Yes.

4 Q. And wouldn't that mean in essence going out
5 on this market and buying a forward contract for perhaps
6 say two years? I don't know what the right -- what the
7 period of time it would take Puget to plan to bring back
8 48 customers back into the core, but supposing it is two
9 years, wouldn't the customers be faced with a forward
10 contract for two years?

11 A. I think what the customers were looking at at
12 that time --

13 Q. No, I'm talking about now.

14 A. Oh, okay, now, but it relates to what the
15 tariff says.

16 Q. Yes.

17 A. Which is long run resource cost.

18 Q. Right.

19 A. And within the kind of the scheme of a least
20 cost plan, that's longer than two years. You know, I
21 don't think that the customers would have agreed at that
22 point in time that essentially you get off of an index
23 and then just come back onto an index with a slightly
24 longer term. We were looking at long-term resource
25 cost, long-term within that 20 year context.

00620

1 Q. Well, all right, maybe it would mean that you
2 could come on right away, but wouldn't it still mean
3 that the cost, the long run cost would be whatever it
4 takes to serve you collectively for the next ten years?

5 A. Yes.

6 Q. Including -- but you agree, don't you, that
7 Puget doesn't have at this moment the resources to
8 provide for you? In fact, isn't it guaranteed that they
9 can use their resources for themselves and their other
10 customers?

11 A. Yes, that is true. I don't know that they
12 don't have the resources, but the -- I think that
13 Schedule 48 clearly does say that these are more
14 non-core customers and there is a surcharge of some sort
15 that is applied to them.

16 Q. Well, in so far as a plant can't be built
17 overnight to serve 48 customers who might want to come
18 back, doesn't it mean necessarily some kind of interim
19 price until that plant or long-term contract is arranged
20 unless I suppose it's a contract that's arranged for the
21 next ten years?

22 A. It could be a contract. I don't know myself
23 as far as whether that's a pricing mechanism as far as
24 kind of getting an idea of price versus tying it into a
25 specific arrangement.

00621

1 Q. But in any event, isn't it -- aren't those
2 costs I was about to say over and above, but then I
3 think separate than what Puget's current resources and
4 obligations to its other customers entailed?

5 A. Yes, they are.

6 Q. And if that's the case, if that's the price
7 of getting back onto 49, how does that differ from the
8 ability under 48 also to arrange a long-term contract?

9 A. Again, I think you're moving back to core
10 service from PSE, and that means you're still core, you
11 just have slightly different pricing mechanism.

12 Q. Well, maybe the question was how does it
13 differ financially? I think if you elected to go onto
14 49 and paid some costs to do that, you would become a
15 core customer either instantly or in a few years. I'm
16 not sure which.

17 A. Right.

18 Q. But at a particular price. What I'm
19 wondering is under Schedule 48 itself, you also can
20 enter into a long-term contract or make an arrangement
21 for a long-term contract which is all -- which is going
22 to be, I would think, a roughly comparable price if
23 you're going out into the market and saying in the same
24 time period for the same length of time.

25 A. It could be. I just don't know.

00622

1 CHAIRWOMAN SHOWALTER: I think that's all the
2 questions I have, thank you.

3

4

E X A M I N A T I O N

5 BY COMMISSIONER HEMSTAD:

6 Q. From your testimony, I take it it's the
7 position of ICNU that PSE failed to live up to its side
8 of the bargain?

9 A. That is correct.

10 Q. And in that it hasn't developed an open
11 access tariff proposal, but what is the consequence of
12 that? Your position now from your testimony is that you
13 wouldn't want open access, so is it failure with which
14 you concur?

15 A. It's a matter of timing, I think. Obviously
16 we were hoping to have open access earlier. It gives
17 industry a lot more flexibility.

18 Q. Right, but let's assume you had it two years
19 ago, would you be happy now?

20 A. I don't know. I think it would give
21 individual customers a lot more choices as far as how
22 they go out and structure their power arrangements, and
23 I think it would also make it much clearer their
24 responsibility to do so. It was -- it was one of the
25 underlying, and I think the fact that it, you know,

00623

1 doesn't look probably that attractive to anyone is an
2 indication that, you know, one of the fundamental
3 underlying basis of Schedule 48, that being that there's
4 a competitive market out there and a robust market, just
5 isn't operable anymore.

6 Q. Does it follow from that that the development
7 of a buy-sell option is even less attractive?

8 A. Yes, it is.

9 Q. Because you wouldn't have as much
10 flexibility?

11 A. You have some of the flexibility but also
12 much more complication. You have another party to a
13 contract, and obviously you're also going out in a time
14 of a very flawed market. We had looked at buy-sells
15 several years ago on just the firming option, and we
16 weren't given that option at that point in time by
17 Puget.

18 Q. Well, okay, the question of a flawed market,
19 did I understand your testimony to be that the Mid-C
20 Index or the Mid-C activity has become increasingly and
21 more thinly traded and progressively less active, is
22 that --

23 A. That's my understanding. I think you will
24 hear more from Mr. Schoenbeck on that.

25 Q. I see. But that it was working effectively

00624

1 earlier, but not now?

2 A. It seemed to be much more stable within a
3 range for four years or so and then in May just went
4 beyond anything that I think anyone assumed.

5 Q. And do you think that's, maybe Mr. Schoenbeck
6 is going to talk more about this, but is that driven by

7 California, or is that driven by events here in the
8 Northwest itself, or both?

9 A. Probably both. Obviously probably more in,
10 you know, the response to California as far as, you
11 know, capping some part of the market and then leaving
12 other parts of the market uncapped.

13 Q. Well, if there were no cap in California,
14 would we be better off now?

15 A. I have no idea of knowing. You know, just it
16 is so hard to predict what would happen. I don't know.

17 Q. I believe it has been your testimony that,
18 well, Puget has not followed through, one of the things
19 that I believe the settlement agreement requires is that
20 they develop an open access tariff by January 31, 2001.
21 That date hasn't arrived yet. Is it your understanding
22 they have no intention of doing that?

23 A. That's only what I have been -- that's what I
24 gleaned from talking to the executives, that they're not
25 supportive of open access, and I take it that they're

00625

1 highly unlikely to file something by January 31st, 2001.

2 Q. But apparently you wouldn't want them to do
3 so anyway?

4 A. I wouldn't necessarily say that. I think
5 that would be a question that we would all have is would
6 it be useful at this point in time, but it may be useful
7 at some point in time.

8 Q. If PSE at least initially was not
9 particularly enthused about a Schedule 48 type
10 arrangement, we have heard from at least two relatively
11 smaller customers, Anacortes and CNC, although they're
12 not really small, but why do you think Puget was then
13 urging them to pursue the Schedule 48 option?

14 A. I don't remember that I said that PSE was not
15 enthused with Schedule 48. I must have miscommunicated
16 something. I'm sorry.

17 Q. Well, I guess I had that impression either
18 from you or from the other witnesses, and maybe I'm
19 wrong. Well, let me ask you, was it your impression
20 that Puget was enthused about this Schedule 48
21 arrangement?

22 A. I think they were somewhat neutral about it.
23 They may have become a lot less enthused about it based
24 on the pricing that this Commission adopted in August of
25 1999, but.

00626

1 Q. Well, wasn't the original assumption at least
2 of the industrials that their prices would be lower. If
3 that were the case, then wouldn't Puget be at greater
4 risk of lower revenues?

5 A. Yes, but it seemed to be when we were going
6 through and creating Schedule 48 and bringing it to this
7 Commission that they were, you know, very much in
8 support of it, and they pushed that through.

9 Q. I mean in the context of getting your

10 support.

11 A. Yes.

12 Q. For the merger.

13 A. For the merger and thereafter, I don't know,
14 I mean I have a hard time to measure enthusiasm.

15 Q. All right. Then finally, you were asked do
16 you think that the Mid-C overstates prices, and your
17 answer was that you don't know. Well, I was a bit
18 puzzled by that answer. I would have thought you would
19 have said that the Mid-C does overstate prices.

20 CHAIRWOMAN SHOWALTER: I think it was does it
21 overstate the market.

22 Q. I'm sorry, that's a better way to phrase it,
23 that it overstates the market. I would have thought you
24 would have said that the Mid-C is overstating the
25 market.

00627

1 A. And I think my previous answer is that would
2 be speculation on my part. I think a large part of that
3 is that it's, as I was talking previously, it's hard to
4 know what the market is.

5 COMMISSIONER HEMSTAD: That's all I have.

6 JUDGE MOSS: I just had one quick question
7 for you, Mr. Canon.

8

9 E X A M I N A T I O N

10 BY JUDGE MOSS:

11 Q. Early in Mr. Berman's cross-examination, he
12 asked you the question did the customers give up
13 statutory rights, did they negotiate away statutory
14 rights in the development of all of this. And you said
15 yes, and I was puzzled by your answer. What statutory
16 rights were you referring to that the customers
17 negotiated away?

18 A. Bypass specifically, and I wouldn't -- I was
19 thinking about that myself as I said that, it's a --
20 it's a right that they have. It's not a -- it's a right
21 that the statutes don't prohibit, and so that's
22 something that they did negotiate away by signing up to
23 PSE's distribution system for ten years.

24 JUDGE MOSS: Okay, thank you.

25

00628

1

2 E X A M I N A T I O N

3 BY CHAIRWOMAN SHOWALTER:

4 Q. I just have one follow up on the promise, if
5 it was one, of Puget to file an open access tariff. Do
6 you agree that if Puget filed an open access tariff that
7 opened up purchases to all customers, not just 48
8 customers, that that would have a material impact on all
9 those other customers?

10 A. Yes, I would, obviously.

11 Q. And would you guess that at this moment that
12 many of those other customers would not want that?

13 A. Absolutely, and I doubt that you would
14 approve that.

15 Q. All right. So isn't the best that Puget can
16 do in this regard is a buy-sell type of arrangement
17 where the 48 customers have the option to purchase on
18 the market, without significantly impacting other
19 customers?

20 A. I don't -- I think that they could still file
21 something that would provide open access to even a
22 limited set of customers, which would be kind of the
23 middle road.

24 Q. I don't know the law here, but if that -- if
25 doing that potentially legally required all open access,

00629

1 you would agree that that would have that same --

2 A. Yes, it would.

3 Q. -- significant effect?

4 A. Yes, it would.

5 Q. And I don't know that it does.

6 A. I don't either.

7 COMMISSIONER HEMSTAD: I have one more
8 question.

9

10 E X A M I N A T I O N

11 BY COMMISSIONER HEMSTAD:

12 Q. I was struck by the testimony of the three
13 operational witnesses that we have heard here, and I
14 don't mean this as an unfriendly comment, but it struck
15 me as a relative naivete of those ICNU participants, one
16 of whom is not Anacortes. Does ICNU, does it see any
17 obligation to its members to provide any tutorials or
18 how to do it sessions or providing sort of a stream of
19 information about what forward hedging opportunities
20 there are in the marketplace? What do you do?

21 A. I think that's a very fair question. We have
22 generally have done some general kind of market opening
23 type of tutorials and -- but there's a clear line of
24 what ICNU and what a trade association can do and what
25 we can't do, and on operational matters, we just simply

00630

1 don't get involved.

2 Q. But what puzzles me about that, ICNU was
3 representing them in negotiating Schedule 48 and
4 arriving at a settlement and driving this as sort of the
5 premise of how the merger would proceed. It seems to me
6 you almost walked away from it, didn't you?

7 A. Oh, no, I mean remember it wasn't just ICNU
8 that drove this, it was the members through ICNU. And
9 they were involved in the negotiation sessions, and they
10 were involved throughout, and, you know, it is trade
11 associations' obligation obviously is to do what they
12 want me to do. And we have had, in fact, relatively
13 recently just some as you call them tutorials, but it's
14 on a broader subject of looking at, you know, how do you
15 get ready for open access on Schedule 48. It is a -- it

16 is a tariff that is available through PSE that these
17 industries have signed up for, and if they have
18 questions, they can certainly ask. If they even have,
19 you know, if they may want to ask me for a
20 recommendation, they can ask me. I'm very loathe to
21 give recommendations, because I am, you know, I am
22 distanced from their circumstance.

23 COMMISSIONER HEMSTAD: Thank you.

24 JUDGE MOSS: Any redirect?

25 MR. BERMAN: Your Honor, I have a follow-up

00631

1 question, if I may.

2 JUDGE MOSS: Sure, go ahead.

3

4 R E C R O S S - E X A M I N A T I O N

5 BY MR. BERMAN:

6 Q. Mr. Canon, there was a discussion of the
7 statutory rights that were waived by the customers by
8 entering into the settlement agreement and Schedule 48,
9 and you referred to bypass. That frankly wasn't the
10 right that I had been thinking of when I asked the
11 question, so I want to follow up on your response.

12 Would you agree that in entering into the
13 settlement agreement and then Schedule 48 that the
14 customers gave up the right to petition the Commission
15 for a change in rates under Schedule 48?

16 A. To petition, I don't know that they gave up
17 the right to petition the Commission for a change of
18 rates.

19 Q. Let me see if I've got this right. You said
20 earlier that Puget Sound Energy gave up its right to
21 come to the Commission and seek changes in the rates in
22 Schedule 48; is that correct?

23 A. That is correct.

24 Q. But you're saying that the customers did not
25 give up their right to come to the Commission and seek

00632

1 changes in the rates under Schedule 48?

2 A. Yes, I would agree that we did not.

3 Q. So you think that Puget Sound Energy agreed
4 to a one sided opportunity for the customers to seek
5 changes but not for the company to seek changes?

6 A. I don't know what PSE was agreeing to, quite
7 honestly, from their perspective.

8 Q. But from your perspective, the agreement
9 embodied a one sided opportunity for the customers to
10 seek changes in the rates but not for the company to
11 seek changes in the rates?

12 A. I think the question is what do you mean by
13 the term seek changes to the rates? Now we're in this
14 proceeding right now, does that include this proceeding?

15 Q. I think I'm speaking more generally. I mean
16 seeking changes to the -- to -- let's say seek changes
17 to the pricing provisions in the tariff. Is it your
18 view that Puget Sound Energy gave up its right to seek

19 changes to the pricing provisions in the tariff when it
20 entered into the settlement agreement in Schedule 48?

21 A. Generally with that notable exception where
22 they seek the agreement of the customers, then they
23 could do that, yes.

24 Q. Would you agree that absent the agreement of
25 Puget Sound Energy, that the customers gave up their

00633

1 right to seek modification to the pricing provisions of
2 Schedule 48?

3 A. Yes.

4 MR. BERMAN: No further questions.

5 JUDGE MOSS: Did the Commission or the
6 Bench's questions prompt any other follow up?

7 All right, then I think we're ready for
8 redirect.

9

10 R E D I R E C T E X A M I N A T I O N

11 BY MR. VAN CLEVE:

12 Q. Mr. Canon, you had some questions regarding a
13 complaint that PSE has filed at FERC; is that correct?

14 A. Yes.

15 Q. And you stated that ICNU was a party in that
16 case?

17 A. Yes, we were, are.

18 Q. And do you know what the status of that case
19 is?

20 A. That proceeding was dismissed by FERC.

21 Q. You were asked some questions about the types
22 of risks that the customers had assumed in entering into
23 Schedule 48; do you recall that?

24 A. Yes.

25 Q. Do you believe that the customers assumed the

00634

1 risk that the wholesale market would be fundamentally
2 flawed?

3 A. No, I do not. It was one of the fundamental
4 premises of Schedule 48 that there would be a robust
5 competitive market.

6 Q. Do you believe that the customers assumed the
7 risk that the index price wouldn't reflect market
8 prices?

9 A. I don't think they understood that risk at
10 all.

11 Q. And I believe that you testified earlier that
12 it was at least the assumption that market prices would
13 have an upper bound that was equal to the cost of new
14 resources?

15 A. That's correct.

16 Q. Do you believe that customers assumed the
17 risk that market prices would have no relationship to
18 the cost of new resources?

19 A. I do not believe that they understood that
20 risk.

21 Q. Did they assume that risk?

22 A. I don't believe that they assumed that risk.
23 Q. And you were asked some questions about other
24 options under Schedule 48, and is hedging a primary
25 option that you understand to be the alternative to --

00635

1 A. It appears to be, yes, on the pricing side.
2 Q. Is it, to your knowledge, is there any option
3 in Schedule 48 to actually purchase power from PSE other
4 than at the Mid-Columbia Non-firm rate?
5 A. No.
6 Q. Do you have an understanding about what this
7 optional price stability service that Puget offers is?
8 A. Very limited.
9 Q. Do you think that hedging is the solution
10 once we're in a condition where the market is
11 fundamentally flawed?
12 A. I think -- I think as we have heard that
13 hedging when we get into this situation is very
14 difficult.
15 Q. On the question of waiving statutory rights,
16 did the customers ever intend to give up the right to
17 have their rates regulated by the Commission?
18 A. No, this was a tariff sales service tariff.
19 Q. Were you ever told that the customers were
20 giving up the right to have their rates be just and
21 reasonable?
22 A. No.
23 Q. And finally, if I could refer you back to
24 Exhibit 504 and to Exhibit 4.
25 A. I'm sorry, 504?

00636

1 Q. I'm sorry, Exhibit 504, page four.
2 A. Thank you.
3 Q. And the first two lines talk about customers
4 being able to return to the core class, and the
5 discussion that you and the Chair had, I heard a concept
6 that I guess the way I interpreted that the company
7 would build a virtual utility to serve the class of
8 customers. And I guess I want to know whether you think
9 that building a virtual utility is really what was meant
10 by returning to the core class?
11 A. I think that the idea of core class was, as
12 we know it today, that these customers would become core
13 and that they would have some separate pricing
14 provisions that applied to them, but they would still,
15 you know, they would be core customers.
16 MR. VAN CLEVE: That's all I have, Your
17 Honor.
18 CHAIRWOMAN SHOWALTER: This is a follow up to
19 that, since I think it's my comments that are being
20 interpreted here.
21
22 E X A M I N A T I O N
23 BY CHAIRWOMAN SHOWALTER:
24 Q. Assuming that at some date in the future the

25 48 customers could become fully melded in to all other

00637

1 industrial customers, isn't it still necessarily the
2 case that between now and then, there has to be some
3 kind of bridge rate that doesn't affect the rest of the
4 operations of the company if we're to be consistent with
5 Schedule 48?

6 A. I agree, and I think the question of what
7 that rate would be would be, you know, part of the
8 proceeding that was mentioned in there.

9 CHAIRWOMAN SHOWALTER: Thanks.

10 JUDGE MOSS: I also wanted to follow up on
11 one of your answers in response to redirect, raised a
12 question in my mind.

13

14 E X A M I N A T I O N

15 BY JUDGE MOSS:

16 Q. As I understand things, the Mid-C Index was
17 not even in existence at the time Schedule 48 was
18 negotiated and approved.

19 A. That is correct.

20 Q. And you said that the customers did not
21 understand that the Mid-C might not work out as a market
22 based index, and so I'm curious. There is a provision
23 in Schedule 48 that allows for another index to be
24 agreed between the company and the customers.

25 A. Correct.

00638

1 Q. So they must have had some understanding that
2 it might not work out.

3 A. Yes, I mean the question that goes to that
4 was we were moving to a Mid-C Index, and we did it on
5 faith that that index would, in fact, be formed in 1997
6 or so when we anticipated that it would be formed. And
7 if it didn't, if it wasn't formed by then, then we
8 needed to look at another index.

9 JUDGE MOSS: All right, I believe that will
10 complete our examination subject to recall of Mr. Canon.

11 And we will let you leave the stand,
12 Mr. Canon. Thank you very much for your testimony.

13 And I suppose we need to make plans for our
14 dinner recess.

15 (Discussion off the record.)

16 JUDGE MOSS: Yes, Ms. Davison.

17 MS. DAVISON: Your Honor, I'm very reluctant
18 to raise this, but I think given the significance and
19 the seriousness of the issue that I would like to raise,
20 I don't want to let this slide and forget in everything
21 that's going on in this proceeding to raise this issue.
22 I would like to raise an oral motion to strike two
23 exhibits that are attached to PSE's brief in this
24 matter. My basis for raising this motion to strike is
25 that I believe that these exhibits have been attached in

00639

1 violation of the protective order issued in this case.
2 I don't know if you would like to hear argument on this
3 now given the late hour, but I do want to make sure that
4 we do not lose sight of this issue.

5 JUDGE MOSS: I will count on you to bring it
6 back to our attention, Ms. Davison, but now is not the
7 time.

8 MS. DAVISON: Thank you.

9 JUDGE MOSS: So let's be in recess until 8:30
10 this evening.

11 (Dinner recess taken at 7:00 p.m.)
12
13

14 E V E N I N G S E S S I O N

15 (8:30 p.m.)
16

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

18 JUDGE MOSS: While the exhibits are
19 continuing to be organized by some, I'm going to take up
20 another matter and deal with it. I thought some over
21 the dinner hour about this confidentiality matter that
22 has come up with respect to a couple of documents
23 apparently that were filed as part of exhibits to PSE's
24 prehearing brief, and then there's also this sort of
25 lingering in my mind of this matter of this document as

00640

1 to which attorney-client privilege has been asserted.

2 I think at a minimum at this juncture what I
3 would ask the parties to do is those who have filed
4 documents that are in question should tomorrow when the
5 records center is open take a visit to the records
6 center and discuss with the Staff there what needs to be
7 done to mark those as confidential in the Commission's
8 files. We can sort out later whether there is some
9 challenge to confidentiality and that sort of thing.
10 And if it's inappropriate that they be confidential,
11 then we will remove that classification from them. But
12 I think the prudent and careful first step will be to
13 designate them in the first instance as confidential as
14 they have been asserted to be, and then again, we will
15 sort it out later if someone wants to challenge those
16 designations.

17 As far as the attorney-client privilege
18 document, I think it would also be prudent of any who
19 are in the possession of that document to do what I'm
20 going to do, which is shred my copy and get rid of it.
21 And then if somebody wants to argue that that document
22 is no longer subject to attorney-client privilege and
23 should be part of our record, then they can make those
24 arguments, and we will be able to consider them
25 carefully and in the light of some further study of this

00641

1 matter, which I acknowledge further is one that I would
2 prefer to have the opportunity to revisit my law books
3 on. So I think that will be the cautious way to

4 proceed.

5 Mr. Berman.

6 MR. BERMAN: Your Honor, just for clarity, as
7 I understand it, one of the two documents on which
8 Complainants are asserting confidentiality in the
9 prehearing brief is the, I believe, the attorney-client
10 document that they're referring to.

11 JUDGE MOSS: Okay.

12 MR. BERMAN: And for the record, on inquiry,
13 I concluded that the way that Puget Sound Energy
14 obtained that is that it was faxed to us so that the
15 ICNU could report to us what had happened at their
16 meeting with the Commission Staff. Certainly we regard
17 that as a waiver of any privilege that might otherwise
18 have existed for that document.

19 JUDGE MOSS: And it may well be, but I just
20 don't want to have to try to rule on that tonight in the
21 absence of some deliberation and perhaps study of the
22 attorney-client privilege and the principles that
23 pertain to that.

24 CHAIRWOMAN SHOWALTER: But in the meantime,
25 if Complainants' counsel could confirm that with you,

00642

1 then I think it would obviously be waived, and we
2 wouldn't have to go through all this.

3 MR. VAN CLEVE: I think even if we waived it,
4 it was a confidential exhibit to the deposition that was
5 filed, and it was marked confidential.

6 JUDGE MOSS: Well, then I would comment
7 further that my recollection of this area of the law,
8 which may not be quite as dim as I'm representing out of
9 caution, is that the only persons who can waive the
10 attorney-client privilege are the attorney and the
11 client. So you couldn't waive it unless you were the
12 attorney involved, and I don't understand that to be the
13 case. So I think we need to proceed cautiously as I
14 have described, and then we can sort it out later. And
15 I don't think we need to spend any more time on it
16 tonight. We've got more important business to conduct.
17 So I just wanted to say those few words about it, and
18 let's proceed in that fashion.

19 MR. BERMAN: Your Honor, I have an unrelated
20 housekeeping matter to address.

21 JUDGE MOSS: All right.

22 MR. BERMAN: There was an open question that
23 was raised earlier today that I think perplexed a number
24 of people about the City of Anacortes and why they might
25 be taking service under Schedule 48 or how they

00643

1 qualified. I wanted to point out that pursuant to the
2 availability provisions of Schedule 48, the rate is
3 available to all customers served at high voltage and to
4 customers served at primary voltage having accounts with
5 annual loads over 2.4 average megawatts. The City of
6 Anacortes is served at high voltage for their water

7 treatment facility and thus pursuant to, because that's
8 a, well, I guess it's a question of how you read and --
9 but the -- but I --

10 MS. DAVISON: You need to put a witness up,
11 excuse me.

12 JUDGE MOSS: Ms. Davison, that's all right,
13 and really we don't have time tonight, let's deal with
14 this tomorrow. We'll take this up again tomorrow.

15 MS. DAVISON: You need to put a witness up to
16 testify.

17 JUDGE MOSS: Ms. Davison, no sidebar, please,
18 we're on the record.

19 MS. DAVISON: Sorry.

20 JUDGE MOSS: Now was there something I was
21 needing to discuss with respect to Anacortes, something
22 that comes to mind?

23 CHAIRWOMAN SHOWALTER: Yeah, there was one
24 question I failed to ask, so I guess it could be turned
25 into a Bench request or something. But I just want to

00644

1 know when, as of what date was Anacortes disconnected
2 from Schedule 48 electricity. I heard the witness say
3 they're no longer drawing, but I don't know when that
4 total disconnection occurred.

5 JUDGE MOSS: The answer to that will be in
6 response to Records Requisition Request Number 4,
7 please.

8 All right, now I believe with all of that
9 taken care of, and again, we can take these matters up
10 tomorrow to the extent we need to, I believe we're now
11 ready for Mr. Schoenbeck.

12 So, Mr. Schoenbeck, if you will rise.

13

14 Whereupon,

15 DONALD W. SCHOENBECK,
16 having been first duly sworn, was called as a witness
17 herein and was examined and testified as follows:

18

19 D I R E C T E X A M I N A T I O N

20 BY MR. VAN CLEVE:

21 Q. Mr. Schoenbeck, could you give us a brief
22 summary of your company, your position with the company,
23 and your experience as an expert witness in utility
24 regulatory matters.

25 A. Certainly. My firm is regulatory and

00645

1 co-generation services. It's been in the consulting
2 area advising large industrial customers and from time
3 to time the utilities with respect to energy matters,
4 primarily related to electricity, gas, as well as
5 everything involved with the development of
6 co-generation facilities. The company was formed in
7 1988. With respect to representing industrial
8 customers --

9 CHAIRWOMAN SHOWALTER: Can you bring your

10 mike closer.

11 A. With respect to representing industrial
12 customers, the practice has precedes or predates the
13 formation of regulatory co-generation services. I
14 started representing large industrial customers as an
15 employee of Grayson Brubaker and Associates in 1980.
16 Prior to that employment, I worked for the Saint Louis
17 based investor owned utility known at the time as Union
18 Electric, which had both gas and electricity, steam and
19 water operations.

20 JUDGE MOSS: Let me stop, there was one more
21 housekeeping matter. As I understood it before the
22 break that we were going to delve deeply into
23 confidential documents with the direct examination of
24 this witness.

25 MR. VAN CLEVE: That's correct, Your Honor.

00646

1 JUDGE MOSS: All right, well, let me ask if
2 there is anyone in the room who is not either exempt by
3 virtue of being on the Bench support team or who has not
4 executed an appropriate certificate under the protective
5 order to be entitled to listen to testimony and view
6 exhibits under the confidentiality of the protective
7 order, is there any such person present?

8 All right, apparently there's not.

9 CHAIRWOMAN SHOWALTER: What about the --

10 JUDGE MOSS: Yeah, I was going to touch next
11 on the conference bridge line. My preference would be
12 to simply cut it off at this point. I wonder if there
13 is anybody present in the room who knows how to do that.
14 I don't.

15 CHAIRWOMAN SHOWALTER: You go in the back
16 room there and do something.

17 JUDGE MOSS: Some of our Staff folks are
18 going to see to that, and I will just ask in the
19 meantime, is there anyone on the teleconference bridge
20 line at this moment?

21 CHAIRWOMAN SHOWALTER: They're not talking.

22 JUDGE MOSS: We, of course, have to trust the
23 good faith of those who might be listening in until our
24 colleagues can turn that off. In the meantime, why
25 don't you go ahead with your questions and anything that

00647

1 doesn't get into confidentiality, and I think we will be
2 safe by the time you get to those points, Mr. Van Cleve.

3 BY MR. VAN CLEVE:

4 Q. Mr. Schoenbeck, have you testified before
5 this Commission before?

6 A. Yes, I have. I can't recall the exact year,
7 but it was approximately 1985, so I have appeared before
8 this Commission for about the last 15 years.

9 Q. And have you appeared on both gas and
10 electric matters?

11 A. Yes, I have.

12 Q. Were you a witness in the previous complaint

13 case involving Schedule 48?
14 A. Yes, I was.
15 Q. Are you generally familiar with the terms of
16 Schedule 48?
17 A. In a very general sense, yes, that's correct.
18 MR. VAN CLEVE: I think we're at the point,
19 Your Honor, where we're going to need to delve into
20 confidential information.
21 JUDGE MOSS: Let me ask, it appears from our
22 electronic signal in the room that someone has just
23 joined us on the conference bridge line, I would ask
24 that you identify yourself at this point.
25 MS. LINNENBRINK: That was me testing.

00648

1 JUDGE MOSS: That was Ms. Linnenbrink for the
2 record. All right, well, we're still on apparently, but
3 I will ask again, is there anyone on the conference
4 bridge line monitoring our proceedings?
5 Apparently there is not, so I think we can
6 proceed if you feel comfortable with that. Well, no, I
7 don't think we want to do that.
8 Have we managed to pull the plug back there
9 yet, Ms. Linnenbrink?
10 MS. LINNENBRINK: No, we can't get into the
11 cabinet, it's locked. So I think we're on permanently.
12 I think we can tell by the tone if anyone joins. We
13 can't disconnect without disconnecting the mikes.
14 MR. BERMAN: Your Honor, I think that the
15 documents that are confidential were designated as such
16 by Puget Sound Energy in general, though it was to
17 protect customer information, but we don't have any
18 concern with going forward with the possibility that
19 someone might come in, and if we hear a tone, we can
20 ask.
21 JUDGE MOSS: I think that's the best we can
22 do under the circumstances. I feel fairly comfortable
23 that no one is on the bridge line at this hour
24 monitoring these proceedings. And I also think we do
25 have to rely to a certain extent that anybody who would

00649

1 be on is someone who is a participant or what not and
2 would certainly understand that when I inquire I expect
3 them to answer me if they're there. So I feel pretty
4 comfortable with it if counsel does.
5 Mr. Van Cleve, are you prepared to proceed
6 under the circumstances?
7 MR. VAN CLEVE: Yes, Your Honor.
8 JUDGE MOSS: All right, go ahead then.
9 MR. BERMAN: Your Honor, I would also note
10 that we will waive confidentiality on Exhibit 601.
11 JUDGE MOSS: Thank you.
12 (The following testimony designaged
13 confidential.)
14
15

16
17
18
19
20
21
22
23
24
25