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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) DOCKETS UE-151871
) and UG-151872
PUGET SOUND ENERGY,)
Respondent.)

HEARING, Volume IV
Pages 317 to 525

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

9:04 a.m.

August 3, 2016

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McCULLOCH

1 OLYMPIA, WASHINGTON, AUGUST 3, 2016

2 9:04 A.M.

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4
5 P R O C E E D I N G S

6 JUDGE KOPTA: Let's be on the record in
7 Dockets UE-151871 and UG-151872. This is Wednesday,
8 August 3rd, and we are resuming the evidentiary hearings
9 that began on the 1st. And when we left off,
10 Mr. McCulloch had just gone through cross-examination
11 from the parties and we'll now have questions from the
12 bench.

13 I will remind you that you remain under
14 oath.

15 THE WITNESS: Yes.

16
17 MALCOLM McCULLOCH,
18 having been previously sworn, testified as follows:

19
20 JUDGE KOPTA: So with that, Commissioner
21 Jones, would you like to go first, or Commissioner
22 Rendahl?

23 COMMISSIONER RENDAHL: I'll start. Good
24 morning, Mr. McCulloch.

25 THE WITNESS: Good morning.

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1 COMMISSIONER RENDAHL: So if you look at
2 your rebuttal testimony, MBM-7T, on Page 8.

3 THE WITNESS: Which line?

4 COMMISSIONER RENDAHL: So if you look at
5 Lines 11 through the bottom of the page, you're talking
6 about the types of equipment that will be leased, and
7 you say that the process will result in a specific
8 catalog of equipment that has all the specifics of the
9 products. And this is, I'm assuming, what you have
10 referred to as if the Commission requests you'll do a
11 Compliance Filing.

12 Is that what you're referring to in that
13 statement?

14 THE WITNESS: What I'm referring to in that
15 statement is once we finalize the contracting, we will
16 have the make and model of the products that will be
17 added to the specifications; the size, the other items
18 that we already have today. But that -- whether we need
19 to do a Compliance Filing to provide that information,
20 the Commission would be up to whether that is
21 appropriate in your mind.

22 COMMISSIONER RENDAHL: So this is for the
23 contracting process for the -- for your partners, the
24 contractors, but is this the type of information that
25 will also be in the tariff or available to consumers?

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1 THE WITNESS: The make and model will not be
2 available to the tariff. We may make it available to
3 customers outside of the tariff in communicating them
4 the offer, but it will not be in the tariff. Much like
5 we do today with our existing rental service as well as
6 lighting programs; we don't have specific brands or make
7 and model indicated in the tariff.

8 COMMISSIONER RENDAHL: So obviously
9 consumers are going to want to know what they're getting
10 for the money that they're spending in this program, and
11 so to what extent would you allow the customer to select
12 the equipment for installation? Or will you just advise
13 the customer what product or have the partner advise
14 them what product is going to be installed?

15 THE WITNESS: So within the process of
16 educating a customer regarding the lease, let's take a
17 water heater, for example. There are many factors that
18 take into account what water heater would work best in
19 their situation. For a gas water heater, for example,
20 the actual capacity size of the water heater. So how
21 many people are in the home or how many bathrooms will
22 inform what size that unit should be, as well as the
23 type of venting. It could be direct vent, meaning it
24 goes directly out the wall, or atmospheric, meaning it
25 goes out the chimney.

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1 So there will be some Q&A process where we
2 will be discussing with the customer to understand what
3 their existing unit is to help inform what that product
4 selection would be to align with the equipment that is
5 listed in the tariff. And then the additional piece
6 would be the efficiency of the unit.

7 So those are the parameters the customer
8 would be able to review and discuss. And then we would
9 provide them with the appropriate equipment that they
10 would meet those requirements.

11 COMMISSIONER RENDAHL: So if the -- in your
12 testimony you referred to a specific catalog of
13 equipment. So within that specific catalog of
14 equipment, whatever would meet the specifications for
15 the customer's house or location, would you then give
16 them an option of different specific products that would
17 meet those specifications or does the Company choose
18 that or does the partner choose that?

19 THE WITNESS: So we will work to match with
20 them up front something that is a like-to-like to what
21 they have today, and then talk through efficiency
22 opportunities, so greater efficiency.

23 The customer then selects -- so it's kind of
24 a multiple part process, if I may. And then upon
25 arrival at the home, we will then assess whether that

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1 size is appropriate and if any additional changes.

2 But if you're speaking specifically to
3 whether the customer will be given a choice of the
4 brand?

5 COMMISSIONER RENDAHL: Yes.

6 THE WITNESS: That will not be detailed in
7 the tariff. It may be something that we make available
8 in education, but that is not something that we've
9 determined at this point.

10 Customers have told us through our surveys
11 that brand is not something that is germane to them
12 making that decision. I think 20 percent of the
13 customers identified that they understood the brand of
14 their existing product. So we didn't determine that
15 that was a feature that customers need to have up front.

16 COMMISSIONER RENDAHL: So it may be a
17 slightly different model, but if I'm interested in
18 leasing a vehicle, for example, I'm not going to go into
19 the dealer and say, I'm interested in a mid-size
20 gas-efficient vehicle and have them select a vehicle for
21 me, am I?

22 THE WITNESS: Well, I mean, I think a
23 vehicle might have some different parameters to it. But
24 ultimately I think what our customers have told us and
25 what we've seen through our surveys is that they want a

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1 trusted source to help them make those decisions to
2 provide that service, the heat or the hot water in their
3 home. We certainly have, you know, in our best
4 interests to work with that customer to provide a
5 product that will meet their needs.

6 You will find from any of the heating and
7 air conditioning contractors in the room today that if
8 equipment is not sized properly, it will result in
9 call-backs because the customer does not have
10 appropriate heat or their equipment is not working
11 appropriately.

12 So we believe that through this process we
13 can help the customer understand what it is they have
14 today, how can we get them more efficient equipment that
15 fits the category of what they have today, and then
16 continue to maintain and operate that for the customer.

17 COMMISSIONER RENDAHL: Okay. But you also
18 say in the same rebuttal testimony that, and this is on
19 Page 14, Lines 3 through 5, (as read), Having more
20 product options available through the Lease Solutions
21 service will allow them to choose the equipment that's
22 right for them.

23 So don't you agree that there's some element
24 of customer choice here; you don't just give somebody
25 something?

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1 THE WITNESS: Yes, I do. And I think we've
2 tried to provide that product option by having different
3 efficiencies or different venting types of
4 characteristics for equipment so that it will fit those
5 needs.

6 COMMISSIONER RENDAHL: Okay. I'll turn to
7 my colleagues if they have questions.

8 JUDGE KOPTA: Commissioner Jones, do you
9 have questions for Mr. McCulloch?

10 COMMISSIONER JONES: I'm going to follow up
11 with a few on the energy efficiency side, I think it's
12 MBM-7T and your Exhibit MBM-21.

13 So first, could you explain the NAECA code
14 to us, the federal code?

15 THE WITNESS: Sure. The National Appliance
16 Efficiency Standards were enacted in 2015 that required
17 the residential water heating standards to change. That
18 requirement essentially stipulates that manufacturers
19 after April, I believe it's 15, 2015, have to
20 manufacture equipment to a higher standard. And that's
21 detailed in my testimony on Page 36. There's a chart
22 that details what the current standard was as of prior
23 to that date as well as the 2015 standard.

24 COMMISSIONER JONES: Thank you. Right.

25 THE WITNESS: So the equipment that we have

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1 offered in this service exceeds those standards for
2 50-gallon. For 40-gallon it meets that standard. And
3 then for the standard efficiency tank-style water
4 heater, the products that we have put forward meet those
5 standards. And the heat pump water heater that we have
6 also offered exceeds those standards for rated
7 equipment.

8 COMMISSIONER JONES: Okay. And this is
9 broken down -- I'm going to call it NAECA to the court
10 reporter.

11 THE WITNESS: That's fair.

12 COMMISSIONER JONES: The NAECA standard is
13 0.62 as of April 2015; correct?

14 THE WITNESS: It's .62 for a 40-gallon water
15 heater.

16 COMMISSIONER JONES: Right. That's what I'm
17 referring to. I'm just going to focus on water heaters.

18 So is the NAECA standard pretty much the
19 same as what is called the EF, the energy factor
20 standard?

21 THE WITNESS: The .62 is the energy factor,
22 yes.

23 COMMISSIONER JONES: Okay. So what you're
24 alleging in your testimony as supplemented by MBM-22 is
25 that 110 of the 142 units sold, roughly, after that

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1 standard was -- in effect met that 0.62 standard; is
2 that correct?

3 THE WITNESS: The detail that I have in my
4 exhibit outlines the 50-gallon water heaters, which the
5 federal NAECA standard requires that it meet a .60
6 energy factor. So the units we've been installing in
7 our existing service in that specific example exceed
8 that existing federal standard.

9 COMMISSIONER JONES: If the goal in the
10 state is to require the highest efficiency possible at
11 reasonable cost, why don't you just mandate or just say
12 that one of the requirements is to -- that you will only
13 support the 0.62 EF standard?

14 THE WITNESS: We have only equipment that is
15 .62 in our tariff that is filed.

16 COMMISSIONER JONES: You do?

17 THE WITNESS: Yes. We do not have any
18 equipment filed that is lower than .62.

19 COMMISSIONER JONES: Okay. Well, thank you
20 for confirming that point.

21 THE WITNESS: You're welcome.

22 COMMISSIONER JONES: You responded to
23 Commissioner Rendahl that you do not specify by
24 manufacturer, but in MBM-22 it's primarily Bradford
25 White, a little bit of Ruud, but it's primarily Bradford

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1 White that you've been supporting.

2 THE WITNESS: That's one of the current
3 manufacturers that's installed, correct.

4 COMMISSIONER JONES: Right. So meanwhile,
5 under the current rebate program that we've authorized
6 for energy efficiency, it requires an Energy Star
7 standard; correct?

8 THE WITNESS: Energy Star is a requirement
9 for a gas water heater being installed as a conversion
10 from electric, is my understanding, for the rebate
11 that's available today.

12 COMMISSIONER JONES: The so-called fuel
13 switching?

14 THE WITNESS: Correct. My understanding is
15 that's the only natural gas water heating rebate
16 available under the current conservation program.

17 COMMISSIONER JONES: And what's the energy
18 factor on that one?

19 THE WITNESS: .67

20 COMMISSIONER JONES: So why don't you just
21 require a .67 standard? That's my question.

22 THE WITNESS: Certainly we want to provide
23 options to customers. I think what we've found
24 through -- what our surveys and customer feedback has
25 told us is one of the barriers to installing new

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1 equipment when it's past its useful life is cost.

2 The .67 does have additional costs
3 associated to it. Most specifically, it requires
4 110-volt outlet because it has an electronic ignition,
5 it doesn't have a standing pilot light, as well as
6 sometimes they have power dampers or power venting. And
7 so that's an additional cost burden to a customer.
8 Also, maybe you're going to be required to have an
9 electrician come in to potentially put in that outlet.

10 So we thought it was appropriate to put in
11 equipment as well that is above the existing code but
12 that provides that flexibility in the case where that
13 might be cost prohibitive, or because of the wiring
14 situation in the home it may be prohibitive to install
15 that highest efficient equipment.

16 COMMISSIONER JONES: So do you have that
17 documented anywhere in the record, that there are
18 additional costs related to the higher height of these
19 Energy Star units or the 110 voltage?

20 THE WITNESS: Yes. That's detailed in my
21 rebuttal testimony regarding the size of the units and
22 some of these changes.

23 COMMISSIONER JONES: Well, was that covered
24 in the survey data with Cocker Fennessy, that level of
25 detail?

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1 THE WITNESS: We didn't ask that level of
2 detail to customers, whether they have access to
3 110-volt.

4 COMMISSIONER JONES: My next series of
5 questions is on non-standard installation costs.

6 THE WITNESS: Yes.

7 COMMISSIONER JONES: Would the Company be
8 willing to provide customers in the proposed program the
9 same type of payment plan for non-standard installation
10 as the Legacy rental program?

11 THE WITNESS: Yes. That's what we would
12 intend to do. Currently we offer up to three
13 installments for customers to pay those non-standard
14 costs. There are no fees associated to that additional
15 opportunity.

16 COMMISSIONER JONES: No interest or --

17 THE WITNESS: No, there's no interest.
18 They're on a non-consumption bill.

19 COMMISSIONER JONES: And those costs, again,
20 if it's an Energy Star unit, I think in your testimony
21 you say some of these higher efficiency units tend to be
22 larger, they may require additional space, it may
23 require relocation of the gas line, it could be this
24 electrical ignition issue of 110-volt. Those are the
25 sorts of costs that are included in, quote, non-standard

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1 installation costs?

2 THE WITNESS: Correct.

3 COMMISSIONER JONES: Those are all my
4 questions.

5 THE WITNESS: Thank you.

6 JUDGE KOPTA: Mr. Chairman?

7 CHAIRMAN DANNER: Yeah, I want to just very
8 quickly, I think that ECO-8 was the highly confidential.
9 Do you recall the questions from Mr. Goltz on that?

10 THE WITNESS: Yes, I do.

11 CHAIRMAN DANNER: I just want to follow up.
12 The contractors on that list -- are the contractors on
13 that list, how large are they? How capable are they of
14 serving large numbers of customers? Are these small --
15 I mean, we're talking about averages versus the lowest
16 costs, and I'm just wondering if you were to select the
17 lowest costs, is the lowest cost vendor capable of
18 serving a large swath of the potential Puget customers?
19 Or are you really looking at the need to have multiple
20 vendors to serve your expected customer base?

21 THE WITNESS: So I think based on the folks
22 that responded to the RFQ, there are -- on the water
23 heating side, there are a couple providers that have a
24 large footprint that they could staff up and they could
25 meet that need if we chose to go individually with a

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1 single provider.

2 I think from the perspective of just
3 operating the business, being able to make sure that
4 we're managing customer expectation, it would be
5 beneficial for us to have multiple providers under
6 either the HVAC or the water heating equipment.

7 CHAIRMAN DANNER: And did you see -- with
8 regard to the costs that you got back that are listed on
9 that document, are you seeing that the lower prices tend
10 to come from the companies that have the ability to
11 staff up and serve a larger swath of customers? I mean,
12 is there a correlation between the number given and how
13 low it is to how big the company is and what kind of
14 economies of scale you might have?

15 THE WITNESS: I think there's some economies
16 of scale that can be taken into account. I don't have
17 the individual bidders in front of me, but again, I
18 believe that the costs that we saw were commensurate and
19 that the opportunity to contract those costs would allow
20 us to work with providers that could fulfill our needs
21 throughout the territory.

22 CHAIRMAN DANNER: That's all I have.

23 COMMISSIONER JONES: Just one other line of
24 questioning, if I could.

25 I think Mr. Goltz asked you some questions

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1 yesterday on the original schedule that you presented to
2 your management board, I forget which exhibit, but it
3 was a very aggressive schedule from approval of tariff
4 to the RFQs, the purchase orders, and Compliance Filing.
5 So I'm going to ask you a few questions on this, and I'd
6 like you to be as specific as possible, please.

7 So in your testimony on MBM-17, Page 9,
8 Lines 10 through 15, you basically say, to address the
9 concerns addressed by public counsel and others on the
10 inputs, that you will update rates based on the results
11 of a final contract execution after we hypothetically
12 approve Schedule 75. Right?

13 THE WITNESS: That was -- correct. That was
14 in connection to Ms. Norton's testimony that provided
15 some commitments the company had as far as updating.

16 COMMISSIONER JONES: Correct. And then you
17 go on to say you should be -- you seem to be confident
18 that you can finish this in 60 days.

19 THE WITNESS: That's what I've been advised
20 by my purchasing department, that they feel that they
21 could get it done in 60 days. I think ultimately, if
22 you will allow me to be specific, we have an existing
23 lease business that we operate today. We have contracts
24 that are currently in place for providing equipment,
25 providing commensurate services. And so they feel

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1 because we have that institutional knowledge and we have
2 those documents that we can utilize, that we would be
3 able to move forward quickly through that process.

4 COMMISSIONER JONES: Okay. Well, just let
5 me ask you a few questions, and be as specific as
6 possible, if you could.

7 You've received, in response to the RFQ,
8 responses from 15 HVAC contractors; right?

9 THE WITNESS: It was a mixture of HVAC,
10 water heating contractors, as well as distributors of
11 equipment and manufacturers of equipment.

12 COMMISSIONER JONES: And what is the total
13 universe of HVAC contractors in the counties and the
14 service territories you operate; Thurston, King,
15 Whatcom, Skagit? It's hundreds, isn't it?

16 THE WITNESS: I believe it would be more
17 than that, correct.

18 COMMISSIONER JONES: So let's say
19 hypothetically, to all of you in the room,
20 hypothetically we approve Schedule 75. I would surmise
21 there's going to be a lot more interest in this program,
22 and I think you say so in your testimony.

23 So tell me how long it would take to gauge
24 that further interest in this program if we approve the
25 Leasing Solutions program. I imagine it's going to take

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1 some time to get information out and to hear back actual
2 bids from those contractors. How long would that take?

3 THE WITNESS: Normally we do a two-week
4 turnaround for information and return of interest.
5 Again, however, since we've already done the RFQ
6 process, that kind of mitigates a little bit of that
7 time.

8 So again, I'm speaking, you know, from my
9 understanding of my conversations with our purchasing
10 department, they feel two to three weeks to go through
11 the notification and then to receive bids.

12 COMMISSIONER JONES: And would you be in
13 charge of that process or would the purchasing
14 department be in charge, or would that be a jointly
15 managed program?

16 THE WITNESS: So I would inform that
17 process. The purchasing department manages the process
18 just to provide some --

19 COMMISSIONER JONES: Okay. What happens if
20 there are questions or concerns from the other non-15,
21 I'll call them, the non-15 companies that have a bunch
22 of questions or they want confirmation of certain
23 things? I think you had a few e-mails in some of the
24 testimony.

25 So how would that process, would that timing

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1 be fit in to that?

2 THE WITNESS: So that normally is handled
3 within that initial notification and notice of interest.
4 There's also an opportunity for questions to be
5 submitted and responded to. Normally we do that within
6 a seven- to ten-day period. So that would be handled
7 within that timeframe. And we do that so that we can
8 provide answers to all bidders anonymously, basically,
9 so that we can try to get a full record out there to
10 people.

11 COMMISSIONER JONES: So let's say that
12 works. So you get full answers back to the purchasing
13 department in let's say three weeks. So that
14 information is fed back to you and Mr. Englert in the
15 rates department and you have actual bids.

16 So what would you do with that actual
17 information? Would you go through a similar process the
18 chairman referred to ECO-8 where there was a wide
19 disparity on the air source heat pumps? Would you go
20 through a similar processing of averaging again the bids
21 received on all the types of equipment?

22 THE WITNESS: So I think at that point what
23 we would do is we would work through that competitive
24 bid process with our purchasing department to, again,
25 not only validate pricing but also validate the

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1 performance and capabilities of those providers. But
2 ultimately, as we've stated, we will get to a fixed cost
3 for equipment and service that we will then work to
4 contract to.

5 COMMISSIONER JONES: Yeah, that's what I'm
6 driving at.

7 THE WITNESS: Yes.

8 COMMISSIONER JONES: So then what happens to
9 the tariff, with the compliance tariffs? So talk about
10 the -- and these could be questions for Mr. Englert --

11 THE WITNESS: Sure.

12 COMMISSIONER JONES: -- as well when he
13 comes up. But then how does that feed into -- what I'm
14 trying to drive at is, how do you get from cost
15 estimates to a broader universe of actual costs that you
16 can feed into the equipment in Lease Solutions through
17 this averaging process that you described?

18 THE WITNESS: So once we get to that fixed
19 contracted rate, we have our methodology that we've
20 shared with parties, our work papers. That is what
21 builds up our price. We would make those inputs into
22 that work paper. And if there are changes to the rates
23 that have been filed, we would work with Mr. Englert and
24 his team to put that supplement in front of the
25 Commission for review.

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1 COMMISSIONER JONES: Okay. So the actual
2 cost, the actual tariff rates could change upon the
3 Compliance Filing?

4 THE WITNESS: That's a potential, yes.

5 COMMISSIONER JONES: But you have this
6 program all ready to go, don't you? And upon approval
7 hypothetically by the Commission, you would be out
8 soliciting customers; right?

9 THE WITNESS: We have some work to do. We
10 didn't expect the litigative process that we're
11 undergoing today, so there are some things that we need
12 to do to get our systems in place. However, once
13 approved, we could offer the service, but it would be
14 beneficial for us to finalize some of those additional
15 operational things. There's been a lot of questions
16 about some of the operational pieces. There's certainly
17 training of our contractors, making sure that our staff
18 are knowledgeable about the new equipment.

19 COMMISSIONER JONES: So what I'm trying to
20 drive at here is, one of the questions is the Compliance
21 Filing. How long would it take? You would bring it to
22 an open meeting. It could be suspended, it could not
23 be, we could approve it. I'm sure Staff and all the
24 parties would have questions.

25 In the meantime, you could be out offering

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1 products either through the service path or through a
2 hybrid. So you may have certain customers locked into a
3 15-year lease contract under certain rates, and then
4 with the Compliance Filing there could be hypothetically
5 a whole range of contractors who may want to participate
6 and you could have different rates. And that creates
7 obviously some issues.

8 THE WITNESS: You know, I don't disagree
9 that the cart-before-the-horse challenge that we've been
10 faced with in this process is challenging. I'm not a
11 rate-making expert. I don't know regulatorily as a
12 compliance if that was -- upon approval, that was
13 something the Commission wanted us to do, whether there
14 would be an agreement to, you know, hold service until
15 that Compliance Filing is completed. I think that there
16 may be some opportunity there, but certainly we'll be
17 ready to offer service, but there are some challenges
18 that come with that.

19 COMMISSIONER JONES: And then just one final
20 question. Again, this is a hypothetical.

21 Let's say the Commission were not to approve
22 Schedule 75 as proposed but would authorize it on a
23 pilot basis for one county, let's say Skagit or let's
24 say -- we're here, let's say it's Thurston. Let's say
25 it's Thurston County only.

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1 Do you have enough disaggregated data, both
2 on contractors, your customers and whatever, to do this
3 on a county-wide basis?

4 THE WITNESS: Certainly as a hypothetical
5 that is something that could be considered. I think the
6 main challenge is that there are costs that go into
7 providing this service that are spread across all
8 customers, so that would, I believe, have a negative
9 impact on the rate. So I think that that's something to
10 be considered.

11 COMMISSIONER JONES: Okay, thank you.
12 That's all I have, Judge.

13 JUDGE KOPTA: Thank you. I want to have a
14 couple --

15 COMMISSIONER RENDAHL: I have one more, if
16 that's okay.

17 JUDGE KOPTA: Okay, go ahead.

18 COMMISSIONER RENDAHL: Sorry.

19 THE WITNESS: No, that's okay. That's what
20 I'm here for.

21 COMMISSIONER RENDAHL: So I'm not sure we
22 talked much about it on Monday, but in your testimony
23 you do talk about the 24-hour customer service offer.
24 So that's part of the service, that there's a 24-hour
25 customer service window.

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1 But I do understand that this is limited to
2 normal business hours and not on Sundays or holidays.
3 So if a customer were to have a crisis --

4 CHAIRMAN DANNER: Just one second. I'm not
5 sure -- some of this I believe is confidential
6 information.

7 COMMISSIONER RENDAHL: Thank you. I'm not
8 sure the 24 hours is, but is there an issue with what
9 I've just divulged? I'm sorry.

10 MS. CARSON: Are you looking at a particular
11 document?

12 COMMISSIONER RENDAHL: So I'm not looking at
13 the document per se, but referencing MBM-8HC which is
14 highly confidential. So I guess I would say there are
15 limitations on this service.

16 THE WITNESS: I could answer that if you'd
17 like.

18 CHAIRMAN DANNER: Yeah, and I'd just say the
19 questions we have are dealing with the service. If
20 there are issues with the consumer, does the consumer
21 have 24/7 access to get problems resolved?

22 THE WITNESS: Yes. So some of the things
23 you saw in here were still in draft format as far as the
24 contract. But much like we do today, when customers
25 have emergent issues, their water heater is not working

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1 or there's a leak, we will be able to utilize our
2 service partners to dispatch that 24/7 to assist that
3 customer in that emergency.

4 Certainly if they are having issues that may
5 not be emergent, then we would work with them within
6 that timeframe that you previously discussed. But it
7 would be appropriate for us to make sure the customers'
8 needs are met on an emergent issue.

9 COMMISSIONER RENDAHL: Do you have some sort
10 of approval process for how to work with your partners
11 in ensuring that service outside of this window that
12 you've identified?

13 THE WITNESS: So I'll speak to what I know
14 what happens today, which is the model we use.

15 Say 2:00 in the morning on a Sunday somebody
16 hears water rushing in their basement. They'll call our
17 call center. Our call center has the ability to find
18 out who that customer's -- who the provider is for that
19 customer and then connect that customer to a 24-hour
20 service provider that will then schedule an appointment.

21 So that's how we would envision covering a
22 customer's need in that emergent situation.

23 COMMISSIONER RENDAHL: Thank you.

24 THE WITNESS: You're welcome.

25 JUDGE KOPTA: All right. I'm actually going

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1 to follow up on a couple questions.

2 Who selects the makes and models of
3 equipment that PSE would offer to its customers?

4 THE WITNESS: That would be through the
5 contracting process, or we'd be working with our
6 purchasing department in assessing the equipment that
7 meets the specifications.

8 JUDGE KOPTA: And so the specifications.
9 Are there any other standards that would be employed in
10 determining whether you use Trane or whether you use
11 some other?

12 THE WITNESS: So the standards are a lot of
13 what I've talked about, meeting Energy Star or AHRI
14 certifications. Those are certainly things that we will
15 look at. So they do check on manufacturer
16 specifications.

17 CHAIRMAN DANNER: What is AHRI?

18 THE WITNESS: AHRI is -- I'll let you know.
19 I just know all these acronyms, unfortunately. But it
20 is a body that, like Energy Star, keeps a catalog of
21 equipment and the specifications that meet a certain
22 standard.

23 CHAIRMAN DANNER: This is a private
24 organization?

25 THE WITNESS: I believe it is a private

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1 organization, yes.

2 JUDGE KOPTA: So the contractors essentially
3 are the ones that come up with the make and model as
4 long as they meet the specifications?

5 THE WITNESS: They will provide that in that
6 contracting process.

7 JUDGE KOPTA: Do you have the tariff in
8 front of you?

9 THE WITNESS: I do.

10 JUDGE KOPTA: Couple of questions
11 specifically on Original Sheet 75-T.

12 THE WITNESS: Yes.

13 JUDGE KOPTA: And these are the Lease Terms
14 and Conditions, and focusing on Paragraph 11, Default
15 and Remedies. Do you see where my reference is? And in
16 Paragraph a(2), one instance of default is if the
17 customer fails to pay the monthly lease payment within
18 30 days, then that's a default; is that correct?

19 THE WITNESS: That's correct.

20 JUDGE KOPTA: And then under b(ii), one of
21 the remedies that PSE would have would be to accelerate
22 the lease payments through the end of the lease term.

23 Do you see where I'm referring?

24 THE WITNESS: I do.

25 JUDGE KOPTA: So, hypothetically, six months

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1 into a lease a customer doesn't make a payment. Then
2 one of PSE's options would be to accelerate all of the
3 payments so that the entire amount of the lease payments
4 would be due at that time; is that correct?

5 THE WITNESS: Certainly we would work with
6 our customers to address that late payment before taking
7 action on those remedies that we have available to us.
8 But yes, that is an option that the company has
9 available.

10 JUDGE KOPTA: So what happens to the
11 equipment if PSE exercises that option?

12 THE WITNESS: If we have to exercise the
13 option of terminating a lease, we will remove that
14 equipment from the premise.

15 JUDGE KOPTA: So in my example of after six
16 months you accelerate the lease or terminate the lease,
17 then you would remove that equipment from the customer's
18 location?

19 THE WITNESS: If the lease was terminated,
20 yes, we would remove that equipment.

21 JUDGE KOPTA: And then what happens to the
22 equipment?

23 THE WITNESS: The equipment is recycled.

24 JUDGE KOPTA: So this is a six-month old --

25 THE WITNESS: Or salvaged.

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1 JUDGE KOPTA: This is a six-month old heat
2 pump that is recycled?

3 THE WITNESS: We don't have a process of
4 reselling equipment. We don't think that that's
5 appropriate. It's not very common that we have those
6 types of hypothetical situations, so.

7 JUDGE KOPTA: On the next page, Section 12,
8 Termination, as I read this, this is specific to the end
9 of the lease term, looking at the first sentence under
10 12(a). And a customer must request one of two options,
11 either that PSE replace the equipment and then enter
12 into a new lease, or have PSE come collect the
13 equipment; is that correct?

14 THE WITNESS: That's correct.

15 JUDGE KOPTA: So I don't see a sale option
16 there. Is that not an option for the customer?

17 THE WITNESS: That is not an option at the
18 end of the lease. It's typical with any lease that the
19 equipment is returned to -- or returned at the end of
20 that process.

21 JUDGE KOPTA: So on the last day of the
22 lease term the customer could purchase the equipment,
23 but the day after it expires the customer can't; is that
24 correct?

25 THE WITNESS: That's the options that are

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1 available in this tariff, yes.

2 JUDGE KOPTA: And what if the customer
3 doesn't select either option?

4 THE WITNESS: We would have a file fixture
5 on the equipment. Certainly we could take action if we
6 felt that it was appropriate to go remove that equipment
7 but, you know, we haven't experienced that so I don't
8 know legally what our capabilities would be.

9 JUDGE KOPTA: And if they select to have it
10 removed, is there a charge associated with that?

11 THE WITNESS: No. That cost would be
12 handled through PSE. There's no cost to the customer.

13 JUDGE KOPTA: Is that a cost that's included
14 in the lease term, recovered through the lease term?

15 THE WITNESS: We've incorporated that cost
16 as part of our -- so I will say the removal cost is
17 germane to any installation cost, so we feel like we've
18 appropriately covered those costs in our rate model.

19 JUDGE KOPTA: And then subparagraph (b)
20 under Termination, PSE may terminate the agreement at
21 any time upon 30 days' written notice to the customer.

22 Are there any parameters around PSE's
23 ability to simply terminate the lease on 30 days'
24 notice?

25 THE WITNESS: My understanding, again, I'm

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1 not an attorney so I didn't draft these, but these are
2 predicated on the default and the remedies of the
3 default, as well as the customer use of the equipment.

4 JUDGE KOPTA: Okay. I don't see that
5 limitation here in the tariff. It just seems to give
6 PSE an open end to terminate the agreement whenever it
7 chooses to do so.

8 Is that your understanding?

9 THE WITNESS: I think it provides us that
10 flexibility. But again, we would work with the
11 customers to address the issues that are at hand.

12 CHAIRMAN DANNER: So may I step in? I have
13 a question, because I was also looking at the next page
14 of the tariff which is basically the Disclaimer of
15 Warranties. And let's say that you have a water heater
16 or a heat pump and it's a lemon, all right? So
17 sometimes they just come off the assembly line, and just
18 like a car, it's a lemon. And so you've basically --
19 according to this, the lease terms say this is "as is"
20 so we don't warrant the condition of the appliance.

21 And it starts to malfunction, and so a
22 repair person comes out and makes the repair, and then a
23 week later it malfunctions again, and then a week later
24 floods the basement and a week later is another problem.

25 At some point you're saying, boy, this is a

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1 lot of work; let's terminate the warranty and just be
2 done with it because we've got a lemon here. And we
3 don't need to replace it for a better one because
4 according to the lease terms it's "as is," and the
5 customer accepts the piece of equipment "as is," and
6 there's no liability for any incidental or consequential
7 damage.

8 I'm just wondering, what protections are
9 there for that kind of scenario?

10 THE WITNESS: So I will say that that's not
11 the intent. Obviously we've found from our customers
12 that having a long-term lease where replacement, repair,
13 maintenance throughout the lease term is very important.
14 PSE has stipulated that we will warranty the equipment
15 through the term of the lease.

16 CHAIRMAN DANNER: Wait. That's not what I
17 read in Paragraph 14.

18 THE WITNESS: Again, I'm not an attorney, so
19 I think that this was a standard that we have in our
20 existing rental business that we utilize and mainly to
21 indemnify PSE from the manufacturer's fault. But
22 certainly we would work through the manufacturer if
23 those types of situations arose.

24 There's obviously the Commission that would
25 have oversight if there is a consumer issue. But we

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1 wouldn't be successful in operating the business if we
2 simply just terminated customers' leases because we had
3 challenges with the equipment.

4 CHAIRMAN DANNER: Right. But this is also
5 something that is unlikely to happen with the majority
6 of customers, it's likely to happen to one customer once
7 in a blue moon. Again, it floods the basement. You're
8 not going to be liable for the artwork that was stored
9 downstairs and got flooded, but according to this,
10 you're not going to be -- you don't have any
11 responsibilities.

12 And so I'm just -- I'm trying to figure out
13 how we do consumer protection when the terms of the
14 tariff itself exculpates the Company's responsibilities.

15 THE WITNESS: Certainly -- again, I'm not an
16 attorney, I don't know contract law, but certainly I
17 think that it is our intent to warranty and make sure
18 that equipment in service for the customer is there
19 through the term of the lease. If there are revisions
20 that are appropriate, then certainly I think that we
21 would be amenable to looking at that.

22 CHAIRMAN DANNER: Thank you.

23 JUDGE KOPTA: I have a different scenario.
24 As I understand it, you can come back in, if a tariff
25 were in place, and update rates based on additional

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1 information and costs, that sort of thing, and that this
2 would only be applied to customers who take a lease on a
3 going forward basis; is that correct?

4 THE WITNESS: Correct. Any updates would be
5 for going forward customers.

6 JUDGE KOPTA: Is there anything in the
7 tariff that would preclude the company from terminating
8 an existing lease on 30 days' notice and then
9 renegotiating the lease to apply that higher rate to the
10 customer who has an existing lease?

11 THE WITNESS: Apart from the agreement that
12 we signed with the customer that states the term of the
13 lease, that states that price for that term, again, I'm
14 not a contract lawyer so I don't know if that protection
15 is there. But again, that's not the intent of the
16 tariff and the intent of way we will operate the
17 business.

18 JUDGE KOPTA: And I'm simply asking based on
19 what's in the tariff.

20 THE WITNESS: Sure.

21 JUDGE KOPTA: I believe that concludes
22 questions from the bench.

23 Redirect?

24 MS. CARSON: Thank you, Your Honor.

25

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REDIRECT EXAMINATION

1
2 BY MS. CARSON:

3 Q. Mr. McCulloch, you were asked about if,
4 hypothetically, the Commission approves this and orders
5 a Compliance Filing would PSE offer the service before
6 the Compliance Filing and then have additional rates or
7 new rates after the Compliance Filing.

8 Do you remember that question --

9 A. I do.

10 Q. -- I believe from Commissioner Jones?

11 So is it PSE's intention to -- if a Compliance
12 Filing is ordered, is it PSE's intention to wait to
13 offer the lease service until the Compliance Filing is
14 completed?

15 A. That's not our intention. Our intention is to
16 offer the service to customers upon approval of the
17 service. However, if that Compliance Filing were to
18 request that, we certainly would agree to that term.

19 Q. So if there's a Compliance Filing ordered by the
20 Commission, PSE will wait until that Compliance Filing
21 is completed before offering the service; right?

22 A. That's correct.

23 Q. You made a reference to cost being spread across
24 all customers. I think this was maybe in terms of if a
25 pilot was offered in one county only.

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1 Now, are costs for the lease service spread
2 across all of PSE's customers?

3 A. No. The costs for the lease is -- or for
4 running the lease service is only retained from those
5 customers who participate in the service.

6 **Q. Judge Kopta asked you about if rates are updated
7 and refreshed for new lease customers, if PSE could
8 terminate existing lease, water heater leases, for
9 example.**

10 **Would PSE do that? Would PSE be willing to
11 commit not to terminate existing leases when it updates
12 rates for new customers?**

13 A. Yes.

14 **Q. Does PSE's current water heater rental program
15 offer an option to purchase?**

16 A. Yes, it does.

17 **Q. How long has PSE offered that option to
18 purchase?**

19 A. So I believe it was as a result of a Commission
20 Supplemental Order, a 1992 case. I don't know the
21 docket number.

22 **Q. Have a significant number of customers opted to
23 purchase their water heaters?**

24 A. We see probably on average about a hundred
25 customers a month choose the option. If you look at

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1 today's lease rental business population, that's less
2 than 2 percent of our customers. And normally that's
3 happening in the transaction or the sale of the home.

4 **Q. You testified on Monday that PSE would provide**
5 **customers notice of their option to purchase when the**
6 **equipment fails.**

7 **Can you clarify that?**

8 A. Yeah. So I may have misspoken there. There are
9 certainly many reasons why a customer may call us
10 regarding their service. One of those things may be
11 that the equipment failed. We do, when the equipment
12 fails, provide them the option to purchase if that's
13 something they're interested in. But again, as I said,
14 the majority of those options to purchase discussions
15 that happen today are resultant of a sale of a property
16 or an estate issue.

17 **Q. So it's when the company -- when there's a sale**
18 **of the equipment?**

19 A. When the customer is looking to terminate the
20 lease, not because of the failure of the equipment.

21 **Q. You were asked on Monday about the Cocker**
22 **Fennessy survey and PSE's role. And I believe that you**
23 **testified that PSE team reviewed multiple drafts of the**
24 **survey.**

25 **Can you explain what you reviewed?**

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1 A. We reviewed drafts of the survey questions.

2 **Q. And why did you review drafts of the survey**
3 **questions?**

4 A. Well, as I stated in my testimony, we discussed
5 the service with Cocker Fennessy to give them an
6 understanding of what PSE was going to be offering, and
7 so reviewing the questions allowed us to ensure that
8 that service and that understanding was accurate.

9 **Q. After PSE reviewed the survey questions, what**
10 **was PSE's role in the survey?**

11 A. We had no further role. That was sort of the
12 intent of using Cocker Fennessy is that they would
13 administer and do the assessment, provide the results of
14 the survey independent of PSE.

15 **Q. Mr. Casey asked you on Monday about the**
16 **averaging of costs in setting rates.**

17 **Are you aware of other situations where PSE uses**
18 **averages to set rates?**

19 A. I am. In our basic service we utilize that
20 process. Obviously our gas and electric plant that is
21 used to deliver service to customers, we take that plant
22 cost and it's averaged regardless of what type of
23 equipment or vintage of equipment is used to deliver the
24 service to the customer. And they're all charged
25 basically that same base rate that's based on that

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1 average.

2 **Q. There was a question raised on Monday about**
3 **whether customers are actually requesting equipment, the**
4 **equipment lease service. Are you aware of any requests?**

5 A. I am. As manager of leasing I have access to
6 customer calls, and I periodically do random selection
7 of calls to hear how our agents are engaging with
8 customers. And I've heard multiple customers calling in
9 asking specifically if they can lease equipment, both
10 water heating and HVAC equipment.

11 **Q. On Monday Mr. Casey expressed concern that PSE's**
12 **cost of capital at the time the lease agreement is**
13 **entered into will be used for the life of the lease.**

14 **Are you aware of any other situations where that**
15 **occurs?**

16 A. It is my understanding that our compressed
17 natural gas refueling capabilities has the cost of
18 capital levelized throughout the term of that contract
19 or service.

20 **Q. You were asked questions about the NEEA survey**
21 **and how PSE queried the data in the NEEA survey.**

22 **Can you explain how PSE used that data from the**
23 **NEEA survey in this case?**

24 A. Sure. That was one instrument we used to assess
25 the existence of an unmet need in the market. That was

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1 simply all it was used for. It doesn't inform our
2 pricing model, our market buildup. It was just an
3 opportunity for us to understand the landscape of the
4 market.

5 **Q. And were there other mechanisms used to help you**
6 **understand market need or customer interest in this**
7 **service?**

8 A. Absolutely. We did multiple surveys that
9 informed that information as well.

10 **Q. So there was discussion this morning about the**
11 **warranty and whether PSE would -- what PSE's action**
12 **would be if there was a lemon or the equipment failed.**

13 **Is there a provision in the lease that addresses**
14 **how PSE will respond if there's a problem with**
15 **equipment?**

16 A. I believe our Maintenance and Repair section of
17 the tariff provides detail about how customers can
18 contact PSE and how we will respond to those requests.

19 **Q. And do you have the tariff in front of you?**

20 A. I do. Just bear with me for a minute while I
21 find that section. That is original sheet 75-M, and
22 that continues through 75-P.

23 **Q. And what about 75-Q; is that relevant to your --**

24 A. It is. It discusses the replacement on failure.
25 So as a lemon, yes, if a lemon ultimately fails then

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1 that would provide a loan to customers.

2 **Q. So if the equipment fails in the first month and**
3 **needs to be replaced, would PSE replace it?**

4 A. PSE would replace their equipment any time
5 during the lease term.

6 MS. CARSON: No further questions.

7 JUDGE KOPTA: All right. Thank you.

8 Ms. McCulloch, thank you for your testimony,
9 you are excused.

10 THE WITNESS: Thank you.

11 JUDGE KOPTA: I believe you have additional
12 witnesses?

13 MR. STEELE: PSE offers Mr. Andrew Wigen.

14
15 ANDREW WIGEN,

16 having been duly sworn, testified as follows:
17

18 JUDGE KOPTA: Mr. Wigen, your testimony and
19 exhibits have been admitted already. Unless there are
20 corrections, then I believe we can move to cross.

21 Staff, do you have any questions?

22 Public Counsel?

23 MS. GAFKEN: No.

24 JUDGE KOPTA: Mr. Goltz?
25

GOLTZ / WIGEN

CROSS-EXAMINATION

1
2 BY MR. GOLTZ:

3 Q. Good morning. Is it Mr. Wigen?

4 A. Wigen.

5 Q. Wigen. So in your Exhibit AJW-2, you discuss
6 your background after leaving Washington Energy
7 Services.

8 A. Uh-huh.

9 Q. When did you leave Washington Energy Services?

10 A. 2006.

11 Q. And then you went to Eagle Creek Construction
12 Company?

13 A. Yes.

14 Q. And when was that?

15 A. Immediately. From 2006 to 2008, I was employed
16 by Eagle Creek.

17 Q. And then you went to Emerald City in 2008?

18 A. My business partner and I created a company
19 called eHomeSolutions in 2008, and it has a couple
20 different business marketing arms today. But yes, that
21 company since then.

22 Q. Is Emerald City --

23 A. Emerald City Energy is one of those companies,
24 correct.

25 Q. And that's a window and door company; correct?

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1 A. Primarily, correct.

2 **Q. Exclusively or primarily? What else besides**
3 **windows and doors?**

4 A. Well, because of our other business line with
5 Emerald City Energy, while we market exclusively through
6 Emerald City Energy to customers for windows and doors,
7 when we're out meeting with customers or we're talking
8 with customers, if Emerald City Energy customers are
9 interested in any of the products we do with our other
10 business line, which is a whole variety of products,
11 that we offer those products to them as well.

12 **Q. So describe, in any of your business entities,**
13 **your HVAC and water heater business.**

14 A. You want to know my current business, what it
15 does for HVAC and water heaters? Is that what you're
16 asking?

17 **Q. Yes.**

18 A. Yeah. So primarily that business comes from our
19 relationship with our -- with a local hardware supplier
20 company.

21 **Q. McLendon?**

22 A. McLendon Hardware stores, yes. We have an
23 exclusive relationship. We own the name McLendon Home
24 Services, that's our company. And we do all of the
25 installations for all products for McLendon Hardware

GOLTZ / WIGEN

1 stores.

2 McLendon is a very strong regional player for
3 water heaters in particular and so we do a lot of water
4 heaters through that, and as well as everything else
5 that we do in home for residential customers.

6 **Q. So if I were to go to the McLendon website, I**
7 **could find the hot water heater products that you**
8 **install on their behalf?**

9 A. Yes.

10 **Q. And the HVAC products?**

11 A. McLendon does not sell HVAC products. HVAC
12 products cannot be sold through retailers.

13 **Q. So describe your sales of HVAC products.**

14 A. So McLendon customers will call us and/or come
15 into the store and ask about HVAC products. And they
16 come to us and we talk to them, and we sell, through a
17 standardized model, heating equipment. And we have it
18 installed by a subcontractor.

19 **Q. What brands do you sell?**

20 A. Rheem and Ameristar.

21 **Q. Just those two?**

22 A. Just those two, correct.

23 **Q. What sizes do you sell?**

24 A. We sell the variety of sizes that are needed,
25 anywhere from 60,000 to probably 120,000. Most

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1 customers for McLendon stores are not large homeowners
2 looking for complicated options, and so we rightfully
3 handle fairly straightforward like-for-like or improved
4 efficiency types of improvements.

5 **Q. And if someone has a complicated system, they go**
6 **elsewhere?**

7 A. Yeah, we refer them, absolutely. If somebody
8 wants geothermal or solar or multi-zone systems, then we
9 absolutely refer to other quality contractors that we
10 like.

11 **Q. So you don't offer multi-zone systems?**

12 A. No, we do not.

13 **Q. Do you offer ductless heat pumps?**

14 A. We have contractors that we refer that to.

15 Let me just state that the reason I'm here has
16 partially to do with the company that I represent today
17 and that I have knowledge. We're in over 2,000
18 customers' homes, residential customers. We don't do
19 new construction, we don't do commercial or industrial.

20 So the reason that I believe that I have
21 expertise relates not only to what we do today but
22 consumer behavior, what customers want, and we see
23 thousands of customers every year with our current
24 business model. And so I think I have a pretty good
25 understanding what customers find appealing in the

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1 marketplace.

2 In addition, my background working with one of
3 the largest HVAC contractors in the region also is why
4 I'm here.

5 **Q. Was that in response to one of my questions or**
6 **was that just a talk?**

7 A. That was just to tell you a little bit more of
8 background, as I find that pertinent.

9 **Q. I've read your testimony.**

10 **So are options important for consumers?**

11 A. Options are important for consumers, yes.

12 **Q. Choice of brands are important to consumers?**

13 A. It depends, yes.

14 **Q. On Page 9 of your testimony, you offered a**
15 **definition of "useful life."**

16 **Is that a concept that you thought about prior**
17 **to being retained by Puget Sound Energy?**

18 A. Yes.

19 **Q. So what does that mean to you?**

20 A. What does "useful life" mean?

21 **Q. Well, instead of doing that, you defined it as,**
22 **"The length of time equipment performs well, serves its**
23 **intended purpose, and remains an effective/efficient**
24 **solution relative to current technology."**

25 **And what's your source of information for that?**

GOLTZ / WIGEN

1 Or is just that your review?

2 A. That's my opinion.

3 Q. So I understand the first part, it serves its
4 intended purpose. So if I have an old flip phone, for
5 example, designed to call people, that serves its
6 intended purpose.

7 A. Uh-huh.

8 Q. It performs well, so it performed well, that's
9 the first one. The second one was serve its intended
10 purpose. "And remains an effective/efficient solution
11 relative to current technology."

12 So does that mean a flip phone is beyond its
13 useful life because there's now iPhones?

14 A. It may be, yes.

15 Q. It may be or it is?

16 A. I don't know.

17 Q. And that depends on the customer?

18 A. It depends on what the situation -- in other
19 words, if you are a customer that uses a flip phone and
20 all you want to do is make phone calls, then it is not
21 beyond its useful life relative to current technology.
22 But if you want it to perform an intended use that it
23 can't perform, then it's beyond its useful life.

24 Q. Well, I'm focusing on the "effective/efficient."
25 And by that do you mean effective "and" efficient or

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1 effective "or" efficient?

2 A. Well, as has been pointed out, as equipment gets
3 older its efficiency drops, and also its effectiveness
4 can drop. In other words, it doesn't heat as well as it
5 used to, it doesn't deliver the heat throughout the
6 house as well as it used to, doesn't heat the water as
7 well as it used to. So that's beyond its useful life.

8 Q. So I guess what I'm asking is, it has to be
9 effective "and" efficient, then, or effective "or"
10 efficient? I question your use of the slash there.
11 It's a pet peeve of mine.

12 A. Yeah, okay. I think it would be an "or."

13 Q. An "or," okay. So if I have a furnace that is
14 20 years old and it performs well and serves its
15 intended purpose, it's beyond its useful life or not
16 beyond its useful life?

17 A. It depends on what the customer's needs are. It
18 may be useful and it may not. It depends.

19 Q. It depends on the customer?

20 A. Absolutely.

21 Q. So that could be 20 years or it could be 25 or
22 it could be ten?

23 A. That's right.

24 Q. Did your company respond to the RFQ issue by
25 PSE?

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1 A. No.

2 **Q. None of your affiliated companies did?**

3 A. No.

4 **Q. Do you have a lease program?**

5 A. No.

6 MR. GOLTZ: I have no further questions.

7 JUDGE KOPTA: Mr. King, do you have any
8 questions?

9 MR. KING: Yes, I do, Your Honor.

10

11

CROSS-EXAMINATION

12 BY MR. KING:

13 **Q. Thank you, Mr. Wigen. To follow up on a couple**
14 **of the questions that were asked just for clarification**
15 **then.**

16 **So neither of your affiliated companies actually**
17 **sell HVAC water heaters or heat pumps or furnaces;**
18 **you're dependent upon others that sell them? Your**
19 **companies arrange for installation?**

20 A. Incorrect. We sell them.

21 **Q. Your company actually sells them, not McLendon**
22 **Hardware?**

23 A. That is correct. We are the sales company.
24 McLendon Home Services sells that product, or Emerald
25 City Energy sells those products, yes. We have them

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1 installed. If it's an HVAC product, we have it
2 installed by subcontractors.

3 **Q. You don't do any of the installation?**

4 A. We have our own installers for water heaters.

5 **Q. You have installers for water heaters?**

6 A. That are our employees, correct.

7 **Q. You are a general contractor?**

8 A. Yes. We have a licensed plumber on staff that
9 installs water heaters for us, tankless water heaters,
10 et cetera.

11 **Q. But you're not a plumbing contractor or an
12 electrical contractor?**

13 A. We are not an electrical contractor, no.

14 **Q. Are you a plumbing contractor registered with
15 the State?**

16 A. Yeah, we are not a plumbing contractor
17 registered with the State. We are a general contractor
18 with a licensed plumber on staff.

19 **Q. Thank you. You indicated in your qualifications
20 you were the co-founder of both of these companies.**

21 A. Correct.

22 **Q. But did you actually co-found these individual
23 companies or did you co-found eHomeSolutions and then
24 acquired these two companies?**

25 A. Co-found eHomeSolutions; created, through a

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1 relationship with McLendon Hardware, McLendon Home
2 Services; so we literally cold-called, walked in, told
3 them our program that we could offer for them, created
4 that company for them; and we purchased Emerald City
5 Energy three years ago.

6 Q. So McLendon Home Services did not exist as a
7 subsidiary of McLendon Hardware before you walked in the
8 door and created it?

9 A. Absolutely correct.

10 Q. On your website for Emerald City Energy, I
11 noticed you offer a myriad of windows and door options
12 to the consumer?

13 A. Uh-huh.

14 Q. You've also indicated that you had reviewed the
15 Residential Building Stock Assessment Survey.

16 Would you find that we have, or from your own
17 personal knowledge even, that we have a large gap in the
18 market of people who have not installed energy-efficient
19 doors and windows in this area?

20 A. Yes.

21 Q. Are you aware of anybody that is providing
22 leasing of doors and windows, energy-efficient doors and
23 windows?

24 A. No.

25 Q. The kind of savings that are talked about for --

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1 back up a second.

2 Is the cost of installing energy-efficient doors
3 and windows greater than that of installing a new water
4 heater?

5 A. For an entire house? Most customers on average
6 don't purchase an entire house of windows. So the
7 average cost, if you're asking what the average sale is
8 for windows, it's probably equivalent to an HVAC
9 purchase.

10 **Q. But the benefits that we've heard talked about**
11 **could be gained from having more energy-efficient water**
12 **heaters, HVAC, whatever, the carbon reduction, the**
13 **energy efficiency savings; those kind of savings could**
14 **also be achieved if people installed the**
15 **energy-efficient doors and windows; correct?**

16 A. Yeah, so from -- no, I would not say that. I
17 would say that when we start talking about energy
18 savings with customers, we start by asking them about
19 the envelope of their home, insulation. We work to
20 equipment and then we talk about windows and doors.
21 They're definitely down the list of energy savings
22 opportunities.

23 **Q. But there are energy savings opportunities?**

24 A. Of course, absolutely.

25 **Q. Would you be supportive of the Utility offering**

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1 a leasing program for energy-efficient doors and windows
2 to achieve these kind of savings for our region?

3 A. I'd have to think about that. I think so.

4 Q. On Page 3 of your testimony starting on Line 14,
5 you talk about the dangers of older near or beyond
6 useful life equipment; water heaters, furnaces.

7 Does it concern you that there are tens of
8 thousands of these older appliances in residential homes
9 throughout the region owned by the Utility and very
10 limited replacement of those? I mean, there are
11 approaching over 50 percent of the defined useful life
12 by the Utility.

13 A. I'm sorry, I don't understand the question. Can
14 you restate it?

15 Q. You indicated to us in your testimony the
16 dangers associated with water heaters, furnaces that are
17 near or past end of useful life.

18 If there are some 30,000, plus or minus, of
19 these kinds of appliances in residences throughout our
20 region, potentially dangerous, 50 percent or more beyond
21 what's been defined as useful life of ten years, would
22 that cause you concern?

23 MR. STEELE: I'm going to object. It's a
24 vague and ambiguous question.

25 JUDGE KOPTA: I'm not sure I'm following

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1 you. I don't know where the 50 percent comes from.

2 MR. KING: Of the 15 years or older, there
3 are 50 percent beyond ten, is where the 50 percent comes
4 from.

5 JUDGE KOPTA: I don't believe that's the
6 Company's position. And if that's yours, that's fine,
7 but I don't think you should ask this witness to accept
8 that necessarily. If you can simplify your question a
9 bit.

10 BY MR. KING:

11 **Q. We'll drop the 50 percent and just indicate that**
12 **we have appliances that are that many appliances beyond**
13 **useful life, if you're defining as potentially dangerous**
14 **in our residences throughout the region, is that cause**
15 **for concern?**

16 MR. STEELE: I'm still going to object as
17 vague.

18 THE WITNESS: I will answer this. If there
19 is one furnace that has a cracked heat exchanger out
20 there and the customer does not have a carbon monoxide
21 detector in their home, yeah, I'm concerned about that.

22 If there was a way to get that one customer,
23 if there's only one, let alone there's probably a lot
24 more, but if there was a way to get that one customer to
25 compel them to replace that furnace in a way that the

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1 market doesn't do so today, I welcome that opportunity.

2 BY MR. KING:

3 **Q. If that furnace is owned by a third party?**

4 A. I don't understand what that means. You're
5 saying if they're leased by PSE down the road 15 years
6 from now? I'm not sure I understand what you're asking.

7 **Q. I'm talking about the 30,000 or so appliances**
8 **currently rented by PSE, owned by PSE that are in homes**
9 **and residences.**

10 A. Oh, you're talking about the existing water
11 heaters that are under the current lease program for
12 PSE. I don't know anything about who those customers
13 are and I wouldn't speculate on that.

14 I was bringing up an example of a furnace with a
15 cracked heat exchanger and the health risks, and that's
16 why I brought that particular example up in my
17 testimony.

18 **Q. You also brought up examples of water heaters.**

19 A. Well, you're pointing on Line 14 and that's what
20 I'm referencing in terms of my concern.

21 **Q. Line 14 and continuing, the very next sentence.**

22 A. Yeah, correct. Again, I'm not sure I understand
23 what you're saying.

24 MR. KING: Let me finish with it, Your
25 Honor.

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1 JUDGE KOPTA: All right, thank you.

2 Any questions from the bench?

3 CHAIRMAN DANNER: Yeah, I do.

4 So a lot of these appliances are things that
5 are in the basement, and the homeowner, the resident in
6 the home doesn't see them every day. So it's unlike a
7 car where you can sort of tell that it's getting worse
8 for wear, it's out of sight, out of mind.

9 And a lot of times in the energy world we
10 talk about the early adopters, the ones who really want
11 to manage their own energy, and others who are the
12 passive customers who really just want to let it alone.
13 From your experience, how do you define the world out
14 there? I know that's a vague question, but what I'm
15 really asking (laughter) -- we have all day.

16 My question is, what percentage of the
17 market do you see as being active energy users and what
18 percentage are passive energy users?

19 THE WITNESS: That's an excellent question
20 that I really don't -- I would only be speculating. All
21 I know is the market is very large for our area, and
22 there's a whole mix of consumers in a variety of
23 different states from, they need something replaced but
24 they don't do it because they can't afford to; they
25 don't know they need something replaced but if they

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1 could get more educated and more information put in
2 front of them they would consider it; and then there's
3 people that are definitely actively seeking what are my
4 options, what can I do.

5 I wouldn't know how to define that other
6 than all three of those segments are large; they're very
7 significant.

8 CHAIRMAN DANNER: So in your business, do
9 you deal with all of those or do you generally deal with
10 the active customer, the one who wants to manage his or
11 her home?

12 THE WITNESS: Well, as contractors, every
13 day we're trying to find new and innovative ways to
14 market to customers that are not active. So obviously
15 the active, we want to be in front of them every day
16 saying, hey, we're here for you so when you're ready,
17 come talk to us about our options.

18 And then for the non-active customers that
19 are either afraid to get into the market because they
20 don't know who to trust, and then the non-active
21 customers who are just oblivious, if it isn't broken,
22 I'm not going to worry about it, we would love to find
23 ways to be more creatively reaching those customers to
24 say, hey, there are things for you, you should consider
25 this, high efficiency is an option, all of that.

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1 Those are things that we constantly would
2 try to figure out how to get to.

3 CHAIRMAN DANNER: So in your business you
4 don't necessarily have a strategy for reaching out to
5 those people who may have something in the basement that
6 is inefficient and potentially dangerous that if
7 somebody were to look at it, whether the Utility or
8 contractor or contractor of the Utility, that they would
9 say this absolutely needs to be replaced now, how do you
10 identify those customers?

11 THE WITNESS: Yeah, our strategy is to
12 creatively market and advertise to wherever we can.
13 We're going to try and find age of home data, we're
14 going to try and find neighborhoods. When we do an
15 installation we're going to try and see if we can
16 connect with neighbors because they're likely to be in
17 the similar situation.

18 There's an endless list of strategies that
19 we have to try and access customers. If there was more
20 information that could be had to educate customers to
21 come to the market, we would love to have that as well.

22 CHAIRMAN DANNER: All right, thank you.

23 JUDGE KOPTA: Any other questions? All
24 right.

25 Redirect?

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1 MR. STEELE: No redirect, Your Honor.

2 JUDGE KOPTA: Thank you, Mr. Wigen; we
3 appreciate your testimony, you are excused.

4 Your next witness?

5 MR. STEELE: PSE offers Mr. Eric Englert.

6 ERIC ENGLERT,

7 having been duly sworn, testified as follows:

8

9 JUDGE KOPTA: Mr. Englert, your testimony
10 and exhibits has been admitted. Unless you have
11 corrections then we're prepared to go to
12 cross-examination beginning with Commission Staff.

13 Mr. Casey?

14

15 CROSS-EXAMINATION

16 BY MR. CASEY:

17 Q. Can you please turn to EEE-1T, Page 8, please.

18 A. I'm there.

19 Q. I want to talk to you about the two questions
20 and answers at the bottom of this page so I'll give you
21 a second to review.

22 A. Yes.

23 Q. So energy conservation is merely an additional
24 feature of this program; correct?

25 A. I've indicated that this optional -- yes.

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1 Sorry, excuse me, a qualified yes. That is one
2 component of it, yes.

3 **Q. And not all of the equipment that PSE proposes**
4 **to offer is energy-efficient; is that correct?**

5 A. A qualified yes. All of the equipment will meet
6 or exceed code.

7 **Q. Is simply meeting code PSE's definition of**
8 **energy-efficient equipment?**

9 A. No.

10 **Q. You testified that the proposed leasing program**
11 **is not a conservation program; correct?**

12 A. Correct.

13 **Q. Is it not a conservation program because it's**
14 **not filed under Schedules 200 to 299?**

15 A. That's one reason, correct.

16 **Q. Why is that reason important?**

17 A. Just from a structural standpoint of the tariff
18 schedules. I think also those are the schedules that
19 rate recovery under Schedule 120 is specified for.

20 So if you looked at Schedule 120, which is the
21 conservation cost recovery mechanism where essentially
22 every customer is paying for those conservation
23 services, that's how those two are connected.

24 Also, those Schedules 200 through 299 are also
25 governed by Schedule 83 on the electric side and

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1 Schedule 183 on the gas side. So there's a lot of
2 background and rules and just how those programs are
3 run. So like I said, Schedule 83 and 183 would govern
4 those conservation schedules, and that schedule is not
5 needed to govern this.

6 I would also say the nature of this transaction,
7 it's a long-term transaction with the customer.

8 **Q. Would the proposed program be constrained or**
9 **limited in any way if it was filed under a schedule**
10 **between the number 200 and 299?**

11 A. I think it would be. I think we look at how
12 best to run a program, and I think we came to the
13 conclusion that the best way to run this program was the
14 way we filed it.

15 **Q. How would it be constrained by being filed under**
16 **schedules somewhere between 200 and 299?**

17 A. I'm trying to think of specific provisions in
18 Schedule 83 or Schedule 183. But I think I would go
19 back to my statement that this is a long-term agreement
20 between the customer and the company, and I don't think
21 that -- in general, a lot of our conservation programs
22 are not necessarily like that, and so I just feel like
23 that would be a constraint on the design of the program,
24 in my mind.

25 **Q. This service is intended to deliver conservation**

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1 savings; correct?

2 A. As Dr. Faruqui has indicated and I think as
3 we've generally indicated, we believe that conservation
4 savings will be created, yes.

5 Q. So you just said they will be created. To me
6 that's different than intending to deliver them.

7 Does this program intend to deliver customers
8 conservation savings?

9 A. I don't understand the difference between those
10 two phrases.

11 Q. Well, you say conservation is merely an
12 additional feature. I want to know if this program is
13 designed to ensure that customers receive that
14 conservation benefit.

15 A. You just stated -- I think you misstated what I
16 said. I didn't say it's "merely," I did not use the
17 word "merely."

18 Q. Sorry. But you do use the word "additional
19 feature;" correct?

20 A. I do.

21 Q. You testified that this survey is not subject to
22 the State's Energy Independence Act because it is not a
23 conservation program; correct?

24 A. Are you referring to a specific part of my
25 testimony?

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1 Q. Yes. Let's turn to EEE-3T, I believe it's Page
2 26.

3 A. I believe you used the word "survey." But at
4 Line 3, I do say, on Page 27, I believe I say, "PSE's
5 proposed equipment leasing service is not a conservation
6 program and therefore not governed by the EIA."

7 Q. There we go, thank you.

8 But you do believe that this program will
9 further the goals of the EIA; correct?

10 A. Yes. I believe I said that in my testimony as
11 well.

12 Q. Next I want to talk about your statement at the
13 bottom of Page 27, that last Q&A.

14 Can you explain why you believe the EIA
15 provision set out in RCW 19.285.040(1) which states (as
16 read), Each qualifying utility shall pursue all
17 conservation that is cost-effective, reliable, and
18 feasible, is just a preface to the process and does not
19 create a substantive requirement in law?

20 A. Yeah, I believe that's true because that's what
21 the law says. It's the first sentence of the law.

22 Q. And you believe that first sentence is just a
23 preface to the process and does not create a substantive
24 requirement?

25 A. Yes. When I look at that law, that is literally

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1 the first sentence. And then the subsections of that
2 then go on to give very specific or describe a very
3 specific process.

4 **Q. Are conservation savings necessary for**
5 **demonstrating PSE's proposal is in the public interest?**

6 A. I think they can be a part of it, yes.

7 **Q. But are they a necessary part, a necessary**
8 **condition for demonstrating that it's in the public**
9 **interest?**

10 MR. STEELE: Object as vague.

11 MR. CASEY: I'm sorry, I didn't hear the
12 objection. As what?

13 MR. STEELE: As vague.

14 JUDGE KOPTA: Overruled. To the extent you
15 can answer.

16 THE WITNESS: I'm sorry, would you remind
17 repeating?

18 BY MR. CASEY:

19 **Q. Are conservations necessary for demonstrating**
20 **PSE's proposal is in the public interest?**

21 MR. STEELE: Object to the extent it calls
22 for a legal conclusion.

23 JUDGE KOPTA: We've been talking about legal
24 issues and it's in his testimony, so I think it's
25 appropriate for him to answer.

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1 THE WITNESS: I think it's one topic that
2 could be considered, but I don't think it's the only
3 measure.

4 BY MR. CASEY:

5 Q. So for clarification, that's no, it is not
6 necessary?

7 A. Correct.

8 Q. PSE is not committing to deliver a specific
9 amount of conservation savings through this program;
10 correct?

11 A. Not at this time, no.

12 Q. And under its proposal, PSE would not be
13 accountable for obtaining a specific amount of
14 conservation savings; correct?

15 A. That's correct. There's a process in place to
16 have the CRAG look at conservation savings and how those
17 get built into a biennial conservation target.

18 Q. For clarification, you said that's in place. My
19 understanding is that it's merely a potential commitment
20 that was offered in Ms. Norton's Exhibit 3, that that is
21 not in place.

22 A. Perhaps I misunderstood your question. I was
23 referring to the general process by which electric
24 conservation is put into place.

25 Q. So back to PSE's proposal as currently

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1 constructed, PSE would face no consequence for failing
2 to deliver conservation savings under this program;
3 correct?

4 A. Correct.

5 **Q. Is it sufficient for PSE to intend to give -- to**
6 **produce conservation savings without commitment or**
7 **without consequence for not doing it?**

8 MR. STEELE: Object as vague and ambiguous.

9 JUDGE KOPTA: I'll sustain that. Can you
10 rephrase that, Mr. Casey?

11 BY MR. CASEY:

12 **Q. Can PSE demonstrate a favorable public interest**
13 **on mere -- on intentions without offering commitments**
14 **and without having consequences for failing to meet**
15 **those commitments?**

16 MR. STEELE: Same objection.

17 JUDGE KOPTA: I think he can answer that.

18 THE WITNESS: I'm sorry, can you repeat that
19 question?

20 MR. CASEY: I'm not sure I can. Can the
21 reporter help?

22 (Court reporter read back as requested.)

23 THE WITNESS: Thank you.

24 I don't believe that there's a standard in
25 place that would require that.

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1 BY MR. CASEY:

2 **Q. Should there be?**

3 A. I don't think there needs to be, because there
4 is a process, and I'm speaking of a general -- the
5 electric conservation approval, the interaction with
6 stakeholders, the presentation of those conservation
7 savings, and ultimately the Commission approving a
8 target. I think for the established conservation
9 programs, I think that makes sense to me.

10 **Q. But we're talking about the proposed program.**
11 **Should there be -- should PSE have to commit to its**
12 **intentions and should there be consequences for failure**
13 **to meet any commitments in order to demonstrate**
14 **favorable public interest?**

15 MR. STEELE: Object as vague and ambiguous.

16 JUDGE KOPTA: I think that's asked and
17 answered.

18 MS. BROWN: He didn't answer the question.

19 BY MR. CASEY:

20 **Q. PSE plans to use the leasing platform to expand**
21 **its business to products and services it has never**
22 **offered before; correct?**

23 A. Yes, a qualified yes. I believe in our original
24 Advice Letter we talked about potential additional
25 services that we could offer, correct.

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1 Q. So you agree that this proposal constitutes an
2 expansion of what is regulated utility service; correct?

3 A. I do not.

4 Q. So help me reconcile your past two statements.
5 You said you agree that this proposal will lead to
6 offering products and services in some instances that
7 PSE has never offered before, but this is not an
8 expansion of PSE's regulated utility service?

9 MR. STEELE: Objection as a
10 mischaracterization of his testimony.

11 JUDGE KOPTA: I believe he can clarify it.
12 If you would.

13 THE WITNESS: I will, thank you.

14 The products -- the services and products
15 that we have that are currently part of this proceeding
16 are an extension of a service we're already offering.

17 JUDGE KOPTA: Mr. Casey, would you let us
18 know when you're through with this line of questioning
19 since we will need to take our morning break?

20 MR. CASEY: I can pause here. We can pick
21 up.

22 JUDGE KOPTA: Let's do that. It's now
23 10:35. Please be back at ten minutes to the hour.
24 Thank you. We're off the record.

25 (A break was taken from

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1 10:36 a.m. to 10:53 a.m.)

2 JUDGE KOPTA: Let's be back on the record.
3 We've returned from our morning break and we'll resume
4 the cross-examination of Mr. Englert from Staff.

5 Mr. Casey?

6 MR. CASEY: I realized I have one question
7 left from my previous line of questioning, sorry.

8 BY MR. CASEY:

9 **Q. We were talking about the leasing platform**
10 **expanding its business, the scope of the Company's**
11 **utility service. I have a question with respect to the**
12 **electric side of the house.**

13 **Isn't it true that PSE currently has no leased**
14 **property on customer premises?**

15 A. PSE does have property on electric customer.

16 **Q. Leased property.**

17 A. We have services that are like leases and rents,
18 yes.

19 **Q. So you're saying services similar to, but does**
20 **the company have leased property on customer premises on**
21 **the electric side?**

22 A. Yes, we do. I would direct you and others to my
23 prefiled testimony where I have a table, it's the only
24 table, on Page 3, and that has Optional Company-Owned
25 End-Use Equipment Services. And on the electric side,

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1 there are the lighting schedules, and there's also a
2 Substation Rental, Schedule 62. And it uses the word
3 "rental" but I believe in the agreements of customers it
4 uses the word "lease." So I believe that using the term
5 "lease" or "rental" is appropriate.

6 JUDGE KOPTA: And this is part of your
7 direct testimony in EEE-1T; correct?

8 MR. CASEY: He's on Page 3, I believe.

9 THE WITNESS: Yes, Your Honor.

10 JUDGE KOPTA: I'm just identifying which
11 part of your testimony it's in, for the record.

12 BY MR. CASEY:

13 **Q. So to make sense of your last response, you**
14 **lease substations which you put on customer premises?**

15 MR. STEELE: Objection; vague.

16 MS. BROWN: For heaven's sake.

17 JUDGE KOPTA: Overruled. Go ahead.

18 BY MR. CASEY:

19 **Q. Substations are leased property on customer**
20 **premises?**

21 A. They may not be on customer premises, but I
22 would say that if the customer were providing that own
23 service for themselves, the alternative product would be
24 on the customer side or customer premises.

25 And I think that's exactly why I used that

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1 column End Use, to kind of draw attention to that. It
2 would be like an end use that the customer would be
3 using.

4 Q. A substation is an end use?

5 A. The transformation of electricity uses
6 electricity.

7 Q. Are you aware that on PSE's FERC Form 1, there's
8 a line item for leased property on customer premises?

9 A. I'm not aware of that FERC Form 1 page.

10 Q. Okay. So I'm going to ask a vague question.
11 (Laughter) And I'm happy to clarify it.

12 JUDGE KOPTA: Shall I rule on the objection
13 now?

14 BY MR. CASEY:

15 Q. But I want to get at, how public does the public
16 interest need to be? And I'm asking that question
17 because this is a -- you have this leasing program that
18 you want to make it an optional service for customers
19 where they can decide if the value is sufficient to
20 them.

21 Is simply making an optional service available
22 sufficient to meet the public interest?

23 MR. STEELE: I'll object; calls for a legal
24 conclusion and vague.

25 JUDGE KOPTA: Overruled. Answer to the

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1 extent that you can, Mr. Englert.

2 THE WITNESS: I believe that giving
3 customers choice is a benefit and all customers can
4 avail themselves of that benefit. But I think -- and I
5 don't want to -- Dr. Faruqui is not here, but I think
6 Dr. Faruqui has demonstrated that there are public
7 benefits in general. So I think that's in the record on
8 this case, in this case.

9 BY MR. CASEY:

10 Q. Yeah, but we also just discussed before break
11 how PSE has made no actual commitment to deliver those
12 benefits and there would be no consequence for a failure
13 to deliver those benefits; correct?

14 A. We discussed that. We didn't come to a
15 conclusion.

16 Q. Oh. I thought we had.

17 PSE's proposal would have optional regulated
18 tariff-based products and services compete in the free
19 market with unregulated products and services; correct?

20 A. Just as we do now.

21 Q. Who else -- what other service providers provide
22 electricity to PSE's customers?

23 A. There is limited availability for retail
24 wheeling customers, I believe under Schedule 449 or 448.
25 I do not know the names of those individual -- providers

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1 of electricity to those individual customers.

2 **Q. Did PSE have to compete for its customer base?**

3 A. On the electric side, there are no certificated
4 service areas for electricity service.

5 **Q. PSE's testimony in multiple places talks about**
6 **its trusted relationship with customers. Where did that**
7 **trusted relationship come from?**

8 A. I'm not sure I discussed that in my testimony.
9 Could you point where I said that?

10 **Q. Are you not aware -- do you deny that PSE has a**
11 **trusted relationship with its customers?**

12 A. I do not deny anything else Jason, Liz or
13 Malcolm have said in that regard.

14 **Q. But you acknowledged that PSE didn't have to win**
15 **over its general customers; I mean, PSE has a de facto**
16 **monopoly?**

17 A. On the service we're talking about, even though
18 we have 33,000 customers that are on this particular
19 service, every day they decide whether they want to
20 continue to take this service from PSE. They --

21 **Q. I want to talk not about the Legacy Leasing**
22 **Program, I want to talk about your general customers,**
23 **your -- I guess your core business.**

24 A. And what's the question?

25 **Q. I want to know how PSE gained this status of**

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1 being a trusted service provider when PSE is all most of
2 your customers know.

3 A. I think you've already heard evidence of that in
4 this case. I think it's now on the record that
5 customers are calling and asking about this service as
6 well as other services that we provide.

7 Q. Again, I don't want to talk about -- I'd like to
8 talk at a little bit higher level than just the leasing
9 proposal.

10 And again, I'm interested in -- you say, or PSE
11 says, and you don't deny, that PSE's customers, its
12 general customers, place trust in PSE. And I want to
13 know why.

14 JUDGE KOPTA: I'm going to interject at this
15 point. I believe we're beyond the scope of this
16 witness's testimony. There are other witnesses that
17 specifically address this point. And unless you can
18 point to something in Mr. Englert's testimony, I think
19 we need to move on to talking about what he has raised
20 in his own testimony.

21 BY MR. CASEY:

22 Q. Do you think PSE's customers gain assurance from
23 the fact that the Commission approves rates as just,
24 reasonable, and sufficient?

25 A. Assurance? I'm not sure what you mean

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1 specifically by "assurance."

2 **Q. Are PSE's customers more confident that they are**
3 **getting a good deal because the Commission approves**
4 **rates as just, reasonable, and sufficient?**

5 A. I think a "good deal" isn't articulated as a
6 standard and, therefore, I don't think customers should
7 necessarily jump to that conclusion. I would focus on
8 the latter part of what you said, is that the Commission
9 will approve rates that were shown to be fair, just,
10 reasonable, and sufficient.

11 **Q. I want to turn to MBM-36. And this is the home**
12 **page of Puget Energy's website.**

13 A. I have it in front of me.

14 **Q. I want to focus on that middle paragraph. Would**
15 **you mind reading it?**

16 A. The entire middle paragraph?

17 **Q. Yes, please.**

18 **JUDGE KOPTA: We don't need to read this**
19 **into the record.**

20 BY MR. CASEY:

21 **Q. Okay. Do you agree with this description of the**
22 **core business as being accurate?**

23 A. Yes. I think the core business as defined in
24 our tariffs include things as -- there are many things
25 that go into that retail service. I've laid those out

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1 in my testimony.

2 On the gas side, it includes the installation
3 and operation of distribution facilities, it includes
4 the sale or transportation of gas, it includes the
5 rental of natural gas equipment, it includes safety and
6 inspection services, and it includes demand-side
7 management, a/k/a conservation.

8 That's how gas service is defined in our tariff
9 and that's our core service.

10 **Q. PSE earns a rate of return on the capital**
11 **investment it makes; correct?**

12 A. No. PSE is allowed the opportunity to earn the
13 rate of return on its investments.

14 **Q. Thank you for that clarification.**

15 **And what do you make of the description at the**
16 **end of that paragraph which says the core business**
17 **includes farsighted investments in energy delivery**
18 **infrastructure?**

19 A. I'm sorry, what do I make of that?

20 **Q. Well, let me rephrase.**

21 **In this program, does the equipment that would**
22 **be leased, is that -- would that be part of PSE's energy**
23 **delivery infrastructure?**

24 A. No. I wouldn't characterize it that way.

25 **Q. Where does PSE deliver energy to?**

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1 A. If you're talking about -- well, I guess whether
2 gas or electric services. In some cases the molecules
3 or electrons, the delivery point could be at a meter and
4 in some services they're not at a meter. So a meter is
5 not necessarily a definition point.

6 I think the answer to that question may depend
7 on the actual service.

8 **Q. PSE determines when it has delivered energy to a**
9 **particular customer by use of its meter; correct?**

10 A. Not in all cases.

11 **Q. And can you give me an example?**

12 A. Sure. I think the electric lighting schedules
13 are a great example of that. In that case the energy is
14 being used for providing light.

15 **Q. So lighting is a service that's on the utilities**
16 **side of the meter; correct?**

17 A. No, I wouldn't say that.

18 **Q. So it's on the customer side of the meter?**

19 A. In some cases there is a meter, and there is
20 that delineation where PSE owns that equipment. I think
21 for the expediency and cost effectiveness or the cost of
22 providing that lighting service, sometimes there is no
23 meter.

24 But once again, like we've talked about before,
25 I think you have to evaluate that as if the customer

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1 had -- if they were providing -- if they were procuring
2 their own poles or lighting, that would be the way to
3 sort of make that delineation.

4 I think on the compressed natural gas service,
5 we are essentially selling compressed natural gas to the
6 customer.

7 **Q. Can we go back to this lighting service? In**
8 **most situations, the lighting service is on the**
9 **utilities side of the meter; correct?**

10 A. Well, as I've said in several cases, there is no
11 meter.

12 **Q. I'm trying to understand if no meter is the**
13 **general rule or the exception within the service.**

14 A. It's my understanding that I believe the
15 majority of cases there isn't a meter.

16 **Q. Do you believe the vast majority of those cases?**

17 A. I don't know that I would use the word "vast."
18 I just said the majority.

19 **Q. A hair over 50 percent?**

20 A. I'll give you that.

21 **Q. You testify that HVAC and water heat equipment**
22 **or the HVAC and water heat equipment PSE hopes to offer**
23 **falls within the broad definition of electric plant;**
24 **correct?**

25 A. Could you direct me where I said that, please?

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1 Q. **EEE-3T, Page 20.**

2 A. I'm sorry, I don't --

3 Q. **Towards the bottom of the page you discuss**
4 **definitions, the Commission's jurisdictional authority,**
5 **RCW 80.28.110 [sic].**

6 A. I don't see a reference to HVAC systems there.

7 Q. **Is it your understanding that the equipment PSE**
8 **wishes to offer would qualify as an electric plant?**

9 A. I believe -- yes, I believe it would be an
10 electric rate. It would be a rate-based item.

11 Q. **Are you familiar with the definition of**
12 **"electric company"?**

13 A. I think I did read it at some point, yes.

14 Q. **So you're aware that an electric company is a**
15 **company who owns and operates any electric plant for**
16 **hire within the state; correct?**

17 A. Correct.

18 Q. **So if the HVAC and water heat equipment, if HVAC**
19 **and water heat equipment qualifies as electric plant,**
20 **can the members of SMACNA and WSHVACCA be considered**
21 **electric companies?**

22 MR. STEELE: Your Honor, I'm going to object
23 to the extent it calls for a legal conclusion.

24 JUDGE KOPTA: Yeah, I believe it does.

25 MR. CASEY: And I believe Mr. Englert's

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1 testimony is full of legal conclusions. He testifies
2 about the EIA, he testifies about the definitions, he
3 testifies about the Cole case. You know, these are
4 questions that go to the heart of -- the scope of the
5 Company's utility service.

6 JUDGE KOPTA: Well, and I don't see anything
7 in his testimony where he talks about the applicability
8 of statutes to other parties than PSE. I think that's
9 better addressed on brief.

10 MR. CASEY: Okay.

11 BY MR. CASEY:

12 Q. So I'd like to talk about the sentence that
13 starts at Line 14 on Page 20 and goes into the next
14 page. It goes from Page 20 to Page 21 on that first
15 line. And the sentence ends, "to be rendered in
16 connection therewith."

17 How direct does the connection between a product
18 or service PSE wishes to offer and its kind of core --
19 the core services it provides? How strong of a
20 connection needs to be there?

21 A. I don't think the Supreme Court or the
22 Commission made it a prerequisite, so I don't believe
23 there needs to be a connection. I don't think there
24 needs to be a demonstration of connection.

25 Q. The previous witness said he would support

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1 utilities leasing potentially windows and doors because
2 of conservation savings they could offer.

3 Do you agree that that would fall under a
4 potential regulated utility service?

5 A. I believe he answered that in the context of a
6 conservation program, and I think conservation programs
7 are part of a utility service.

8 **Q. Do you believe that PSE could, if this program**
9 **were approved and it were to come back with, you know, a**
10 **slightly expanded portfolio of products or services,**
11 **that leasing windows and doors could be included in**
12 **that?**

13 A. Yes, I think we could have a similar process to
14 this.

15 **Q. Could PSE potentially lease insulation?**

16 A. I think that's possible, but I think you have to
17 put into context what Liz and other witnesses have
18 stated. The offering of these services I think is a
19 convergence of a lot of both customer interest, customer
20 demand, I think also just the abilities of customers to
21 want that service, or is this something that they want
22 to pay for over time, the affordability question.

23 And then I also think PSE, is this something
24 that PSE could work with others and provide. I think
25 it's a convergence of all those topics, all those

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1 issues, all those qualities.

2 **Q. Do you believe that there is some limitation to**
3 **what constitutes regulated utility service?**

4 A. Not specifically. I didn't see that articulated
5 in the Cole decision or here in the Commission's
6 language.

7 **Q. I want to turn back to your direct testimony,**
8 **Page 10. So Page 10 covers one of the major sections in**
9 **your testimony. That section is titled, Lease Solutions**
10 **Has Extensive Customer Protections.**

11 MR. STEELE: Are you in the direct or
12 rebuttal?

13 MR. CASEY: Direct testimony. This is
14 EEE-1T, Page 10.

15 BY MR. CASEY:

16 **Q. You stand by your testimony that the program has**
17 **extensive consumer protections in place; correct?**

18 A. I do. I think that's why you see the language
19 in the tariff, you see the terms and conditions. And
20 that's why we were thoughtful to try to clarify what are
21 the obligations to the customer from the company.

22 **Q. Chairman Danner asked Mr. McCulloch about the**
23 **"as is" provision in the tariff.**

24 A. Could you be more specific?

25 **Q. Yes. So this is tariff original sheet 75-V, the**

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1 "as is" provision.

2 A. What I see on 75-V is a Disclaimer of
3 Warranties.

4 Q. Yes. And within that it says, "Customer hereby
5 accepts the equipment in an 'as is' condition."

6 Is that "as is" condition part of what PSE would
7 disclose when it discloses the warranty?

8 A. So we're obviously disclosing that provision
9 here in the tariff? Is that what you're asking?

10 Q. Would PSE undertake any additional education to
11 make sure that customers are familiar with this "as is"
12 condition?

13 A. Additional -- I don't understand your term
14 "additional education."

15 Q. Would PSE go above and beyond simply handing
16 this tariff to customers to make sure that they are
17 aware that they accept the equipment in an "as is"
18 condition?

19 A. Yes. I do believe that other witnesses have
20 talked about that.

21 Q. In your understanding of the tariff, is there a
22 conflict between this "as is" provision and the fact
23 that PSE will be committing to maintain and repair the
24 equipment for the life of the lease?

25 A. No, I don't believe there's a conflict. I think

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1 when that question was being proffered and I think when
2 Malcolm answered it, and in addition I believe that was
3 answered on redirect, I was thinking the same thing
4 about the wording on Original Sheet Number 75-Q which is
5 that equipment failure during the lease term. And in my
6 mind, that was answering the Chairman's question.

7 And I think these two paragraphs, these two
8 sections, can operate together. And in fact, I think
9 that section on equipment failure during the lease term
10 addresses the hypothetical and I think it addresses the
11 question that you just stated.

12 **Q. Earlier we also talked about the default**
13 **provision where PSE would have the flexibility to**
14 **accelerate the remaining cost of the lease on 30 days**
15 **late payment.**

16 **You're familiar with that provision?**

17 A. I'm looking at the Default and Remedies section
18 now, yes.

19 **Q. Mr. McCulloch said it was not PSE's intention to**
20 **use that provision in most cases.**

21 **Do you agree with that sentiment?**

22 MR. STEELE: Objection; it mischaracterizes
23 Mr. McCulloch's testimony.

24 JUDGE KOPTA: Can you rephrase it?

25 BY MR. CASEY:

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1 **Q. Is it PSE's intention to use this provision?**

2 A. I think it's our intention to have the
3 flexibility to use all these provisions, and I think
4 that's why we put them in there. I don't see this as
5 any different than making payment arrangements with
6 customers. We do that quite a bit.

7 And I think we wanted this to be flexible; we
8 want to align our interests with customers. That's why
9 we listed all these provisions. And we really came at
10 this from the approach that this is flexible.

11 But I think we want to work with customers, we
12 want them to have a service, and that's why we -- I
13 think that's why we wrote it this way.

14 **Q. You just said you want the Company's interests**
15 **to align with customers' interests.**

16 **Would you agree that when PSE's financial**
17 **interest and the customers' interests are aligned, there**
18 **is greater assurance that the Company will act in the**
19 **best interest of customers?**

20 A. That's a vague question, but I generally agree
21 with you.

22 MR. CASEY: Mr. Steele didn't object on
23 vagueness. (Laughter.)

24 MR. STEELE: I was about to.

25 BY MR. CASEY:

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1 **Q. Is it problematic if the Company's financial**
2 **interest and the customers' interests does not align?**

3 A. Is it problematic?

4 **Q. Yes.**

5 A. No. I think that's why we have -- we want to
6 lay out the specifics of customer obligations and
7 Company obligations. I don't think that's a problem. I
8 think clarity is a benefit.

9 **Q. Would it be problematic if the Company's**
10 **financial interest and the customers' interests do not**
11 **align and there are no tariff provisions or consumer**
12 **protection rules that speak to how to deal with that**
13 **situation?**

14 MR. STEELE: I will object to this as vague.

15 JUDGE KOPTA: It's convoluted, certainly.

16 And I think the witness has already questioned the use
17 of the term "problematic."

18 BY MR. CASEY:

19 **Q. How can the Commission ensure that consumers**
20 **will be protected in situations where the Company's**
21 **financial interest and customers' best interests do not**
22 **align and there are no rules or tariff provisions that**
23 **speak to how to address that issue?**

24 A. It's my testimony that we have -- we're already
25 running a program and that there are rules in place.

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1 And we currently run this program with the rules in
2 place.

3 **Q. Can we turn to Original Tariff Sheet 75-P.**

4 MR. STEELE: Which page?

5 MR. CASEY: This is Sheet 75-P as in Peter.

6 BY MR. CASEY:

7 **Q. So 7(f) at the bottom of the page addresses a**
8 **situation if equipment is inoperable and PSE is unable**
9 **to provide the required repair service within a 48-hour**
10 **window, this limits -- this provision limits the**
11 **customer's remedy in those situations; correct?**

12 A. It states what the remedy is, yes.

13 **Q. Could you explain that remedy, please.**

14 A. Is there something unclear in the language that
15 I need to explain or would you prefer that I read it?

16 **Q. Yes, it's unclear to me.**

17 A. Okay. So I think the relevant part that you're
18 referring to states (as read), The customer will receive
19 a credit equal to 1/30th of the monthly lease payment
20 for each 24-hour period, or portion thereof, after the
21 initial 48-hour period that the equipment remains
22 inoperable.

23 **Q. Does this provision preclude consumer protection**
24 **staff from bringing a complaint against the Company if**
25 **PSE is unable to fix someone's water heater for, say,**

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1 two weeks?

2 MR. STEELE: Calls for speculation.

3 JUDGE KOPTA: Overruled.

4 THE WITNESS: I think it's my understanding
5 of the role of consumer protection staff at the UTC to
6 look at the language in the tariff. And they have the
7 opportunity to make their own decision on whether the
8 Company is abiding by the terms of its own tariff.

9 BY MR. CASEY:

10 **Q. So that's a yes?**

11 A. I'm sorry. You said does it limit the consumer
12 protection staff?

13 **Q. Could there ever be any additional remedy beyond
14 what is articulated in provision 7(f)?**

15 A. Not from the Company perspective of adhering to
16 an approved tariff schedule.

17 **Q. PSE has no obligation to run its business in a
18 manner that goes above and beyond the provisions and
19 statutes and Commission rules and in the tariffs;
20 correct?**

21 MR. STEELE: Objection; argumentative.

22 JUDGE KOPTA: Yeah, I'm not sure where
23 you're going with this. And I'm also concerned about
24 time. You estimated 40 minutes with this witness.

25 We're now at over an hour, even excluding a break, and

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1 we're running out of time.

2 MR. CASEY: This is my last question. And I
3 will also cede my time for Mr. Marcelia to make up for
4 that.

5 BY MR. CASEY:

6 Q. But I just want to know, what I'm trying to get
7 at is that what's articulated in the tariffs, the rules,
8 statutes, that spells out PSE's obligation; right?

9 A. I agree with that.

10 MR. CASEY: No further questions.

11 JUDGE KOPTA: Thank you.

12 Ms. Gafken?

13 MS. GAFKEN: Public Counsel has no
14 questions.

15 JUDGE KOPTA: Thank you.

16 Mr. Goltz?

17 MR. GOLTZ: Thank you.

18 Good morning, Mr. Englert.

19 THE WITNESS: Good morning to you.

20 JUDGE KOPTA: One moment, Mr. Goltz. I hate
21 to interrupt, but there is the Exhibit MBM-36 that's not
22 been admitted. Is Staff seeking to have it admitted?

23 MR. CASEY: Yes.

24 JUDGE KOPTA: Any objection?

25 MS. CARSON: To MBM-36?

1 JUDGE KOPTA: Yes. Puget Energy website
2 home page.

3 MS. CARSON: No objection.

4 JUDGE KOPTA: Then that is admitted.

5 MR. GOLTZ: Before I start, Your Honor, I
6 just want to confirm that the pre-cross-examination
7 exhibits that SMACNA of Western Washington has provided
8 in EEE-12 through 14, Number 12 has been admitted, the
9 other two have not; is that correct?

10 JUDGE KOPTA: That's correct.

11

12 CROSS-EXAMINATION

13 BY MR. GOLTZ:

14 Q. Mr. Englert, turn to Page 4 of EEE-3T. You
15 referenced this earlier in your responses to Mr. Casey.

16 You say there starting on Line 12 that every day
17 33,000 customers decide to keep their leases?

18 A. Yes, I did.

19 Q. Does that mean every day people get up in the
20 morning and say hot water's fine, let's keep it; or is
21 it just that they have it and they just keep on going
22 with it?

23 A. They can choose to end that service at any time
24 every day.

25 Q. But you aren't saying they actually get up and

1 make a decision in the morning because the hot water is
2 doing well or not doing well, that they just keep it?

3 A. No, I'm saying they have that opportunity.
4 Maybe they make that decision every month they pay their
5 bill.

6 Q. Okay. And also in the same sense that I've got
7 a 2001 Subaru that's got 160,000 miles on it, every day
8 I get up and I decide not to buy a Prius, I keep it, or
9 not to lease a car. Every day I do that?

10 A. I would say yes, that's true.

11 Q. Because I make those -- just like your PSE
12 customers, they get up every morning, and periodically
13 when they pay their bill they make some sort of
14 cost-benefit analysis for themselves?

15 A. They make a decision for themselves, yes.

16 Q. A cost-benefit analysis?

17 A. For themselves.

18 Q. My car is running fine; I don't want to spend
19 \$40,000?

20 A. Yes.

21 Q. Okay. So on Page 6 of your prefiled direct, you
22 list a number of factors, starting on Line 3 going
23 through Line 11, of some of the advantages of the Lease
24 Solutions proposal?

25 A. I characterize those as -- we're on Page 6;

1 correct?

2 **Q. Yes.**

3 A. I think I'm characterizing those as similarities
4 with a current optional service.

5 **Q. Right, but you're -- I think you're listening**
6 **too carefully to my questions.**

7 I'm basically saying Items 1 through 7, like
8 your Schedule 54, I'm not talking about that, but the
9 Lease Solutions program, you listed seven advantages.
10 Do you agree with that?

11 A. I listed the similarities. I can review them to
12 see if they're all advantages.

13 **Q. Okay. Well, let me ask you this.**

14 One is it provides cost savings for customers,
15 which is Number 3.

16 A. That's an advantage.

17 **Q. And when you say it provides cost advantages, do**
18 **you mean -- cost advantages over what?**

19 A. I say cost savings --

20 **Q. I'm sorry, cost savings.**

21 A. And we both characterized that as an advantage.

22 **Q. Let's use your words, savings. Savings over**
23 **what, compared to what?**

24 A. Compared to the service or equipment that they
25 have now.

1 **Q. So it is cheaper to lease a piece of equipment**
2 **than to not lease a piece of equipment?**

3 A. I think what I was stating there is focusing on
4 the efficiency of the unit. And so I think there are
5 cost savings of having a more efficient and newer unit,
6 piece of equipment.

7 **Q. So you're saying that the customer, like me,**
8 **gets up every morning and decides to keep his 2001**
9 **Subaru Legacy despite the fact it's not as efficient as**
10 **a Prius, that if I bought a Prius, that would be a cost**
11 **saving for me?**

12 A. Yes, that would be an element of cost savings
13 for you, and you might consider that an advantage. And
14 then in this case, it's a part of a list of similarities
15 between this other service.

16 **Q. But to not lease and just go with your existing**
17 **equipment, that might be a cost -- that might be less**
18 **expensive?**

19 A. I think that customer could make that
20 determination, yeah.

21 **Q. Okay. You also -- this is a little bit leading**
22 **to a different topic, but Number 6, it offers price**
23 **structures that allow the Company to update prices as**
24 **necessary.**

25 Is that what Mr. McCulloch and I were talking

1 **about yesterday, which was, well, next year the prices**
2 **may change; we might be able to find a furnace that's**
3 **less expensive so we're going to update prices to reduce**
4 **the price, that sort of thing?**

5 A. Well, I would agree. I think in the context of
6 Schedule 54 what we've done there is over time, as PSE
7 provides that optional gas compression service, there's
8 various components that go into that rate. And if over
9 time there are components that become less expensive or
10 less costly, that the rate to the customer would reflect
11 that.

12 And I think when we were thinking about the
13 structure of this optional service, we were thinking
14 that over time there's opportunities -- that the rate
15 structure and the structure of the tariff that would
16 allow that to occur over time.

17 **Q. So you said earlier in a response to Mr. Casey,**
18 **and I think I had this quoted correctly, "this is an**
19 **extension of an existing service."**

20 **Do you recall saying that? Lease Solutions**
21 **would be an extension of the existing service?**

22 A. I believe that was a fair characterization of
23 what I said, because we currently offer this service.

24 **Q. So can you reconcile that statement with**
25 **Ms. Norton's statement that, we're looking to the**

1 utility of the future? Your testimony seems to be,
2 we're looking to the utility of the past.

3 A. No, I don't believe I would characterize my
4 testimony that way. I think my testimony points to the
5 fact that half a century ago the Supreme Court of the
6 State of Washington and the Commission allowed this type
7 of structure for this type of service.

8 I think it's not -- I think what we're saying is
9 we're taking the same service and we want to offer it in
10 a platform, as Liz Norton says, and that platform could
11 be conducive to what she and Jason have testified to.

12 Q. Right. But your model is a past service?

13 A. I wouldn't use the word "model."

14 Q. Okay. So I'll let that rest.

15 So I believe Ms. Norton testified to this, but I
16 wanted to confirm, that in evaluating and developing
17 this program, you did not consider -- Puget did not
18 consider the option of providing an unregulated lease
19 service?

20 A. I think we answered that in a Data Request.
21 That is not what is before the Commission. I did not
22 evaluate that because there was already -- there was
23 already something to look at.

24 We looked at what was existing, we looked at the
25 language in the tariff, we looked at past decisions. We

1 looked at our current program and said, well, what's the
2 best way to offer this service; what is the clear path
3 that is supported by the legislative branch, the
4 executive branch, and the judicial branch.

5 **Q. This is a regular civics class. (Laughter.)**

6 I know you answered it in the Data Request, and
7 the answer in the Data Request was no, we did not
8 consider an unregulated service option?

9 A. I believe that's true.

10 **Q. Okay. So do you know how prices are set in an**
11 **unregulated service?**

12 A. No, not specifically.

13 **Q. Does anybody at Puget Sound Energy involved in**
14 **this project know how prices are set in an unregulated**
15 **service?**

16 MR. STEELE: Calls for speculation.

17 MR. GOLTZ: If you know, that's fine. If he
18 doesn't know, he can answer "I don't know."

19 JUDGE KOPTA: Overruled. Please answer, if
20 you know.

21 THE WITNESS: I don't recall having any
22 conversations with anyone that would indicate they do
23 know that.

24 BY MR. GOLTZ:

25 **Q. So isn't what we're doing here just one big**

1 **hassle? Wouldn't it be simpler to just set the prices**
2 **to recover the costs in an unregulated basis, operate a**
3 **lease program and move on?**

4 A. I don't believe it's one big hassle. I think
5 you're oversimplifying the process. I think what I've
6 stated earlier is we have a path; we're offering this
7 service currently. We do have more pages in this tariff
8 than the current tariff, but from our viewpoint it's --
9 this service is already -- especially on the gas side,
10 it's very clear that we can offer this service as a
11 general service.

12 So when you have an existing tariff, when you
13 have broader language in your existing tariff schedule
14 that says you can offer rental and leasing service, and
15 that is intrinsic just like all the other services we
16 offer, when you have the Supreme Court say it's okay to
17 do this, when you have a Commission decision that says
18 you can do this, when you have all these things, to me
19 that's the clear path, that's the easy way, that's the
20 non-hassle way to do this.

21 I think you did articulate a few steps there,
22 but all those steps have a lot of other steps in them,
23 and to me that's not the clear, easy, non-hassle path.
24 And I'm not even going to get into merger commitments
25 right now. But it's complicated. I think you're

1 oversimplifying the steps involved there.

2 **Q. So in order to change your prices you would file**
3 **a tariff; correct?**

4 A. Correct.

5 **Q. In order to offer a new product you would file a**
6 **tariff?**

7 A. Correct, with prices.

8 **Q. With prices, yeah. Lesson learned.**

9 **In order to discontinue a product you file a**
10 **tariff?**

11 A. Correct.

12 **Q. If you were operating as an unregulated**
13 **business, none of that would have to happen?**

14 A. Correct.

15 **Q. In order to file a tariff you have to send out**
16 **RFQs to a number of providers that you would pick?**

17 A. I think Malcolm answered that question.

18 **Q. And then you'd have to evaluate that and then**
19 **ask for a tariff approval, and then upon approval**
20 **refresh the rates with a competitive bid process?**

21 A. I don't know that that step would necessarily
22 have to happen every time in the future.

23 **Q. So on Page 6 of your rebuttal testimony, you**
24 **responded to some concerns about consumer issues.**

25 A. Correct.

1 **Q. And you said that the Commission's existing**
2 **complaint process is available to handle those consumer**
3 **complaints?**

4 A. Yes. I said the Consumer Protection Division is
5 already handling complaints from utility customers when
6 they arise.

7 **Q. And how is that consumer complaint process**
8 **funded?**

9 A. I believe the Commission is funded by fees from
10 utilities.

11 **Q. And in a Data Request EEE-13, we asked you about**
12 **regulatory fees. Do you recall that? And you prepared**
13 **the response?**

14 MR. STEELE: We objected to that as beyond
15 the scope of the Intervenors.

16 MR. GOLTZ: Do you want me to argue that
17 now, Your Honor?

18 JUDGE KOPTA: Well, we are going down --
19 that's a different objection than I thought they had.
20 They're saying this is beyond the scope of his
21 testimony.

22 Is that what you're prepared to address,
23 Mr. Goltz?

24 MR. GOLTZ: Well, I don't believe it's
25 beyond -- I was prepared to address Mr. Steele's

1 objection. But it's not beyond the scope of his
2 testimony because he talked about a consumer affairs
3 issue in his response, rebuttal testimony.

4 The reason for the response -- responsive to
5 both his objection and your potential one, is the
6 response to that Data Request gives figures of how many
7 regulatory fees this process would generate.

8 I would submit it's pretty obvious from that
9 amount that it is a paltry amount given the burden that
10 Mr. Englert and Mr. McCulloch have suggested may be
11 thrust upon this Commission in the future, in the next
12 few years, for revised prices, confirming existing
13 prices, refreshing prices, oversight, consumer
14 protection, and offering new products.

15 So let's assume one of two things from that
16 number, which is obviously in front of you, it's \$20,485
17 for calendar year 2018, one of two things happens;
18 either the Commission Staff steps back, spends \$20,485
19 in their review and kind of waves at these things as
20 they come through and really doesn't give them any
21 scrutiny, or there's going to be a much greater
22 expenditure of that.

23 If it's the latter and there's a greater
24 expenditure, that is a subsidy from the other electric
25 functions, the other ratepayers to this program. And

1 that, a subsidy, is exactly one of the concerns of the
2 intervenors. And so we have a case where there's a
3 subsidy and there's exorbitant prices.

4 So I think that it's well within the scope
5 of the intervention and it's well within the scope of
6 his testimony.

7 JUDGE KOPTA: So you're saying that there's
8 a cross-subsidy because all of the fees that would be
9 paid to the Commission from this program would not cover
10 the costs that the Commission would incur to administer
11 the program?

12 MR. GOLTZ: Absolutely, by a long shot.

13 JUDGE KOPTA: And is that the only instance
14 in which fees paid to the Commission do not cover the
15 costs the Commission incurs to regulate?

16 MR. GOLTZ: I'm sure it's not. But the
17 point is that here we have a program that ostensibly is
18 argued to be -- it covers itself. We aren't going to --
19 no other ratepayers are going to be paying for this.
20 And this is an example, it's not the hardest example in
21 the universe, but it's an example of why that is just
22 simply wrong.

23 There may be other examples as well in the
24 record, but this is an example where -- and again, it's
25 not just about the subsidy; it's about does this

1 program, should this really be a regulated program. It
2 doesn't fit with the statutes, as I talked some about
3 the other day and we'll talk about more in the briefing
4 process; it doesn't really fit in the statutes.

5 They've never even considered offering this
6 as an unregulated service. They don't know how prices
7 are set in the unregulated market. They're offering
8 this perhaps to some comfort level. And it doesn't
9 cover its costs -- it doesn't cover its regulatory
10 costs. So I think it's a relevant piece of information.

11 JUDGE KOPTA: Mr. Steele?

12 MR. STEELE: Your Honor, we appreciate that
13 Mr. Goltz has a lot of experience in this area of the
14 law and the industry, but his understanding of these
15 points doesn't give SMACNA the grounds to explore all
16 these issues. I mean, Mr. Goltz had stated numerous
17 assumptions and speculations about the future of the
18 program and his concerns about how it will burden the
19 Commission. I think that those are speculative; I think
20 that it's beyond the scope of SMACNA's concern in this
21 case.

22 Their role in this case is to provide market
23 expertise as to -- based on their role as contractors in
24 the marketplace. And Mr. Goltz speculating as to how
25 regulatory fees will impact these programs is beyond

1 SMACNA's scope in this case.

2 JUDGE KOPTA: At this point we will sustain
3 the objection and move on to other topics.

4 MR. GOLTZ: Okay. We'll continue with the
5 consumer protection issue, which is one of his
6 statements, stating that PSE would comply with
7 Commission rules on consumer protection.

8 THE WITNESS: What page are you at?

9 BY MR. GOLTZ:

10 Q. Page 5 of rebuttal, I believe.

11 A. Yes, I did state on Page 5 that PSE intends to
12 abide by these and all existing applicable rules,
13 correct.

14 Q. And I gather that the Commission utility
15 rules -- the Commission's consumer protection rules are
16 contained in -- for electric companies are contained in
17 Chapter 480.100 WAC, Washington Administrative Code?

18 Do you know that?

19 A. You gather, or?

20 Q. Well, I'm asking you for the source of the
21 consumer protection rules for the Washington Utilities
22 and Transportation Commission.

23 A. Didn't I state those on Line 4 through 6?

24 Q. Yeah, you did.

25 A. I did. (Laughter.)

1 Q. So what about the type of rules that relate to
2 deceptive practices? Do I find those in the Commission
3 rules?

4 A. I don't know.

5 Q. In the unregulated world, there's a state
6 Consumer Protection Act that governs that; correct?

7 MR. STEELE: I'm going to object.
8 Mr. Englert is not a lawyer.

9 MR. GOLTZ: Well, he's talking about what's
10 covered. I think I should be able to ask him what's not
11 covered.

12 JUDGE KOPTA: He may ask if he's familiar
13 with regulations outside of what the Commission has.

14 BY MR. GOLTZ:

15 Q. Are you aware?

16 A. I am not.

17 Q. Okay. So let's switch topics then.

18 You talked about the tariff earlier; you talked
19 about it in response to Mr. Casey.

20 How will this work with a multi-family dwelling
21 where the owner is one person or entity but the
22 occupants are renters, but yet it's separately metered
23 so the individual renters would be paying utility bills?
24 Is this lease service available to those renters? Do
25 you know that?

1 A. It's my understanding it's the owner would get
2 the bill for the lease service. It's the owner of the
3 building that would be signing the contract.

4 **Q. Right.**

5 A. And getting the bill and the charges for this
6 service.

7 **Q. So in that scenario, then, as I understand it,**
8 **if I were to give this as a homeowner and I were to**
9 **lease a product under this proposal, I would pay this**
10 **through my utility bill?**

11 A. Correct. I believe the tariff states that PSE
12 has the option to put this on your normal utility bill.

13 **Q. But that's an option. So in case of a**
14 **multi-family dwelling or apartment building, you may**
15 **just bill the -- you would not bill the individual**
16 **renters because they aren't the owner?**

17 A. Yes, that's my understanding.

18 **Q. So is it your understanding that you will offer**
19 **this tariff throughout the service territory?**

20 A. Yes, this is available throughout our service
21 territories.

22 **Q. Assuming, of course, that you have partners that**
23 **are able to provide the service? If you don't, it won't**
24 **be offered?**

25 A. It may be limited in some areas, correct.

1 Q. And that's optional with PSE?

2 A. Correct.

3 Q. So let's take Seattle. You provide natural gas
4 service in Seattle?

5 A. Correct.

6 Q. So you would offer gas appliances in Seattle
7 through this program, assuming a vendor participates?

8 A. Correct.

9 Q. And you would also offer electric appliances in
10 Seattle?

11 A. The tariff is structured to allow for that.

12 Q. So you would be in Seattle City Light's electric
13 service territory offering equipment for lease?

14 A. I'm not sure that we have a Boundary Agreement
15 with Seattle City Light.

16 Q. Okay. So you don't have Boundary Agreements --
17 Service Area Agreements, I believe they're called, with
18 every public utility district or every municipal utility
19 in Western Washington?

20 A. I believe that's true, that we don't.

21 Q. So there would be some areas where your Service
22 Area Agreements would not prohibit you from offering
23 this lease service?

24 A. The tariff wouldn't prohibit that, no.

25 Q. And assuming it could arise where you would

1 offer this to a Seattle City Light customer, offer an
2 electric hot water heater that's up to code but not the
3 highly efficient hot water heater for a long-term lease
4 in Seattle City Light's service territory?

5 A. Yeah, the tariff doesn't preclude that.

6 Q. And as a matter of fact, would your statutory
7 obligation to serve require that?

8 A. In Seattle?

9 Q. Yeah.

10 A. I don't know.

11 Q. It would require it in Olympia, though?

12 A. It's an optional service. So I guess I don't
13 understand your question.

14 Q. Well, I'm wondering if the obligation to serve
15 even applies here, in PSE's view.

16 A. I don't know. This is an optional service. I
17 don't know the answer to that question.

18 MR. GOLTZ: I have no further questions.

19 I guess I've already been denied EEE-13.
20 EEE-12 is already in the record. And I've got the
21 answer for EEE-14 so I don't need to offer that.

22 JUDGE KOPTA: All right, thank you.

23 Mr. King?

24 MR. KING: No questions. Unless is it
25 lunchtime?

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1 JUDGE KOPTA: Well, that's what we're hoping
2 for.

3 I believe there will be some questions from
4 the bench, but I think we may best do it after lunch.
5 All right, we'll finish with this witness; fine by me.

6 Questions from the bench? Commissioner
7 Jones?

8 COMMISSIONER JONES: Good afternoon,
9 Mr. Englert.

10 THE WITNESS: Good afternoon.

11 COMMISSIONER JONES: A few questions on
12 internal credit metrics. And I won't get into
13 confidential information here.

14 But from your testimony and that of others,
15 it's a little bit unclear how the creditworthiness of
16 customers interested in Lease Solutions will be
17 determined. So a few questions on this.

18 What are your internal credit metrics and
19 what data source will you be using? Is it primarily
20 bill payment history?

21 THE WITNESS: That is my understanding, it's
22 bill payment history.

23 COMMISSIONER JONES: Do you have access to
24 FICO scores when you are reviewing eligibility?

25 THE WITNESS: I personally don't know the

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1 answer to that question, but I'm recalling that I
2 believe we may have access to that. I don't know
3 whether we have to pay for it or not.

4 COMMISSIONER JONES: Well, maybe I would
5 make that a bench request. I would like to know if you
6 have access to FICO scores. And let's just phrase it
7 broadly.

8 And that would be in which department?
9 Would that be in your department or the customer
10 solutions department or whatever it's called?

11 THE WITNESS: I do know it's not in my
12 department. (Laughter.)

13 MR. STEELE: Your Honor, Mr. McCulloch said
14 the answer is no.

15 COMMISSIONER JONES: The answer is no, okay.
16 Tell me, how would you go about -- have you done any
17 initial run yet of what percentage of your total
18 customers in all the service territories, and I guess I
19 would include what Mr. Goltz just mentioned if you
20 really intend to offer electric heat pumps and water
21 heaters in the City of Seattle, that's kind of a new
22 avenue to me, but I wasn't thinking of that, but what
23 percentage of customers have you done any screening yet
24 to see how many would qualify?

25 THE WITNESS: So what I do know is that in

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1 the pricing model and what feeds into it, there are
2 numbers and assumptions about what that -- I'm trying to
3 use the right term -- what that available market is.

4 I think to go deeper into that, there may
5 have to be a bench request on that. I don't know, other
6 than those numbers were considered, those numbers are in
7 the pricing model. I don't know the percentages.

8 COMMISSIONER JONES: Counsel, would this be
9 characterized by you as a confidential number? What I'd
10 like is some gauge or indicator of percentages or
11 numbers of customers.

12 MS. CARSON: And that's the numbers of
13 customers that would qualify under the credit metrics?

14 COMMISSIONER JONES: Right, whatever process
15 that is either in place today or will be in place under
16 Schedule 75, how many customers would be eligible, maybe
17 broken out by income category.

18 MS. CARSON: Sure. And I thought there was
19 testimony on that, but we can verify and respond to
20 that.

21 COMMISSIONER JONES: Okay.

22 JUDGE KOPTA: That will be Bench Request
23 Number 1.

24 So you understand what the question is?

25 MS. CARSON: I believe so. So the number of

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1 customers that qualify, an explanation of the credit
2 metrics?

3 COMMISSIONER JONES: Part A would be an
4 explanation of the credit metrics, the internal metrics
5 you use to determine eligibility for Lease Solution
6 programs, all products, residential and commercial.

7 And Part B would be if you had done any
8 initial screening as part of Mr. McCulloch's program,
9 either what percentage of customers or total number of
10 customers would be eligible.

11 MS. CARSON: Got it, thanks.

12 JUDGE KOPTA: All right, thank you.

13 COMMISSIONER JONES: Mr. Englert, you heard
14 my exchange, I think it was Monday or today, with
15 Mr. McCulloch over the Compliance Filing process, the
16 60-day process?

17 THE WITNESS: I did.

18 COMMISSIONER JONES: Do you have anything to
19 add as direct or in your responsibilities in rates and
20 Compliance Filings, to add what to he said about how
21 long it would take and what issues you would be looking
22 at to develop a Compliance Filing within 60 days?

23 THE WITNESS: Yeah, I think maybe what I
24 would add to that line of answer would be that we do
25 have this pricing model out there. Other parties have

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1 had access to it and would have access to it in the
2 future, or a similar pricing model. And so I think as
3 the data flowed into that, it would be -- I would say
4 that it would be familiar to the various parties.

5 COMMISSIONER JONES: So are you confident
6 that you, working with Mr. McCulloch and the purchase
7 team, could get a Compliance Filing to the Commission
8 within 60 days?

9 THE WITNESS: I do think that's reasonable.

10 COMMISSIONER JONES: In response, I think,
11 to some questions from Mr. Casey and Mr. Goltz, you
12 talked about one of the -- both legal bases and tariff
13 bases for this program is that you've had this water
14 heating rental program in place for a number of years;
15 correct?

16 THE WITNESS: Correct.

17 COMMISSIONER JONES: And you base that both
18 on the Cole Supreme Court decision and the fact that you
19 have 30,000 plus customers and you're dealing with those
20 customers on a regular basis; right?

21 THE WITNESS: Correct.

22 COMMISSIONER JONES: Would you not agree
23 that the water heater program is a month-to-month
24 program? It is not a long-term commitment from the
25 customer; correct? Or is it?

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1 THE WITNESS: I think that the pricing that
2 we've put forward here, I mean we saw that as having
3 that known price last for the term of that customer. I
4 think what is different on the current program is that
5 that price for the current water heater service can
6 change as a result of a general rate case or some other
7 proceeding.

8 COMMISSIONER JONES: But can the customer
9 call your customer department and terminate the program
10 at any time, either equipment failure or because the
11 customer either sells the house or is dissatisfied with
12 the equipment?

13 THE WITNESS: Yes, I agree with that.

14 COMMISSIONER JONES: So would that be
15 different under the Lease Solutions program under the
16 Schedule 75 proposed and the 15-year commitment?

17 THE WITNESS: I think the customer is
18 allowed to stop the service upon equipment failure. So
19 I think that's similar.

20 COMMISSIONER JONES: So you would point us
21 to -- I think you were discussing that with Mr. Casey
22 before -- Schedule 75, Original Sheet 75-P?

23 THE WITNESS: Yes. You got there quicker
24 than I did.

25 COMMISSIONER JONES: So this would be your

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1 answer to if a customer is dissatisfied or if there is
2 an equipment failure? Although this is the sole remedy
3 for the customer. But this is your answer to my
4 question?

5 THE WITNESS: Yes, it is.

6 COMMISSIONER JONES: Okay. That's all I
7 have.

8 JUDGE KOPTA: All right, thank you.

9 One clarification on the bench request. I'm
10 going to make sure that I picked up on this correctly.

11 Do you also have information by income level
12 to ensure that the eligibility criteria apply to low
13 income as opposed to -- you don't have any? I'm looking
14 at Mr. McCulloch who is shaking his head. So you don't
15 have information at that level?

16 MR. McCULLOCH: Not to that level of
17 specificity.

18 JUDGE KOPTA: Okay, all right; thank you.
19 Commissioner Rendahl?

20 COMMISSIONER RENDAHL: Good afternoon.

21 THE WITNESS: Good afternoon.

22 COMMISSIONER RENDAHL: So in your
23 conversation you were having with Mr. Casey, you were
24 talking about a hypothetical that if the company were to
25 offer windows and doors or insulation.

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1 Do you remember that line of questioning?

2 THE WITNESS: I do.

3 COMMISSIONER RENDAHL: And I understood you
4 to say that that could be part of this leased program.
5 Did I understand you correctly?

6 THE WITNESS: Yes, I think I suggested that
7 it's a possibility. I didn't see anything that would
8 preclude that. But there may be other -- all those
9 other components or issues that would also allow the
10 possibility that we wouldn't want to do that, our
11 customers wouldn't want that.

12 COMMISSIONER RENDAHL: So the basis for the
13 lease program, as I understand in your testimony and in
14 your discussion about Cole and the statutes, is that the
15 lease program, similar to the water -- the current
16 rental program, is that it's based on "in connection
17 with" providing the utility service; is that correct?
18 The words "in connection with" or in connection with the
19 utility service in the statute?

20 THE WITNESS: I think that's true.

21 COMMISSIONER RENDAHL: I can point you to
22 your testimony if you'd like.

23 THE WITNESS: Yes, I remember that.

24 MR. CASEY: Can you point me to his
25 testimony?

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1 THE WITNESS: 21 of rebuttal?

2 COMMISSIONER RENDAHL: It was in your
3 rebuttal testimony, yes. I think it's Page 20. Starts
4 on Page 20 at the bottom and goes on to the top of Page
5 21: "The Commission has jurisdiction over 'all
6 charges... by any gas company... for gas... or for any
7 service rendered or to be rendered in connection
8 therewith.'"

9 So your discussion is the fact that this
10 lease service is in connection with gas service;
11 correct?

12 THE WITNESS: That is correct.

13 COMMISSIONER RENDAHL: So can you explain to
14 me how windows and insulation and doors would be in
15 connection with a gas service?

16 THE WITNESS: Yeah, I cannot think of a
17 direct connection, but I also recall that entire line of
18 questioning started with a reference to Mr. Wigen, his
19 testimony about whether windows and doors would be an
20 appropriate conservation service. So I could have been
21 thinking about that.

22 COMMISSIONER RENDAHL: Well, that was the
23 next question I had. So whether or not you would agree
24 that it is in connection with gas service, it could be a
25 part of a conservation program; correct?

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1 THE WITNESS: The windows and doors?

2 COMMISSIONER RENDAHL: And insulation.

3 THE WITNESS: And insulation. It could be.

4 COMMISSIONER RENDAHL: And that would be an
5 entirely different tariff service? It would fall under
6 the Commission's -- under your conservation tariff and
7 under the conservation options that you provide, and
8 then fall within the various requirements that are
9 subject to the conservation tariff; correct?

10 THE WITNESS: Correct.

11 COMMISSIONER RENDAHL: Okay. You also
12 mentioned in your response to questions with Mr. Goltz
13 about an easier path being -- whether an easier path
14 would be an unregulated service. And I recall your
15 answer to be that you weren't -- it was not an easier
16 path, and then referenced merger commitments.

17 So that leads me to a question about ring
18 fencing. And you may not be the appropriate witness for
19 that, but since you mentioned merger commitments, I'm
20 going to ask you.

21 So there has been testimony about how this
22 service would not be subsidized by other customers. So
23 can you direct me to any part of your testimony or other
24 witnesses that provide for how specifically the company
25 plans to ring fence the ratepayers, general ratepayer

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1 from the administrative billing program development and
2 customer service clause from this program? How
3 specifically will other customers not be subsidizing
4 this program?

5 THE WITNESS: And I think that's why we
6 provided the pricing model. And there have been Data
7 Requests on the subject of how overheads are allocated,
8 how development costs -- I believe we've talked about
9 software development and things like that. And I think
10 that has been part of the discovery process.

11 COMMISSIONER RENDAHL: And have all of the
12 responses to those Data Requests been submitted in the
13 record either by the Company or other parties and been
14 admitted?

15 THE WITNESS: I do not know.

16 COMMISSIONER RENDAHL: So those wouldn't be
17 before us for review if they're not in the record?

18 THE WITNESS: That's correct.

19 COMMISSIONER RENDAHL: Okay. That's all I
20 have.

21 JUDGE KOPTA: Chairman?

22 CHAIRMAN DANNER: First, even though the
23 questioning from Mr. Goltz was beyond the scope of
24 SMACNA's interests, I am concerned and interested in
25 regulatory fees.

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1 And I'm wondering, if I were to ask you what
2 the estimated regulatory fees in 2016, '17 and '18 would
3 be, would those be numbers similar to those that you
4 offered in the Data Request, meaning \$1,365 in 2016,
5 \$11,519 in 2017, and \$20,485 in 2018?

6 THE WITNESS: So those numbers were
7 produced, those estimates were produced using that
8 pricing model and the assumptions. So I think that is
9 our best guess.

10 CHAIRMAN DANNER: That's your best guess of
11 what the regulatory fees would be?

12 THE WITNESS: Correct. For just Schedule
13 75, obviously.

14 CHAIRMAN DANNER: For Schedule 75. And so
15 if there were to be consumer protection issues, other
16 issues that are requiring the time, attention and
17 resources of the Commission that go over and above those
18 amounts, those would be the costs that would be
19 socialized to other ratepayers? Or how would those
20 costs be covered by the Commission?

21 THE WITNESS: Covered by the Commission?

22 CHAIRMAN DANNER: Well, the Commission Staff
23 would be the ones that would be putting in work. And
24 assuming they didn't stop when the \$1,365 was spent and
25 they continued, how would other expenses be covered?

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1 THE WITNESS: Well, I think maybe I'm
2 stating the obvious, but PSE's overall regulatory fees
3 are much greater than that, so.

4 CHAIRMAN DANNER: Right, okay. And you
5 mentioned the gas compression service as a point of
6 comparison, and that's another service that is under
7 rate-based.

8 Are you aware, are there sufficient
9 customers right now that that service is paying for
10 itself or are there costs there are being covered by the
11 ratepayers at this time?

12 THE WITNESS: So I think there may be one
13 customer that is either in the process or has signed up
14 recently. And I think just to review how those rates
15 are created, we take those costs that are associated
16 with that particular facility and put that into that
17 model or that pricing model, if you will.

18 So that's how we take all those costs and
19 that customer's monthly or overall --

20 CHAIRMAN DANNER: Okay. So that program is
21 basically covering its expenses?

22 THE WITNESS: We believe so, yes.

23 CHAIRMAN DANNER: Okay. And then I wanted
24 to get back to the tariff language itself, because you
25 were talking about how these various provisions are

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1 working together. And I wanted to make sure that --
2 because I see it as potentially having tariff terms that
3 are in conflict with one another, and I wanted you to
4 comfort me that that's not the case.

5 It says that in M, for example, that Puget
6 will inspect the equipment and will keep it operational.
7 And in Q it says that Puget will replace it if the
8 deficiencies are not due to the customer's own actions.
9 There's other places that says that the customer himself
10 or herself has to inspect it -- and this is in O -- has
11 to inspect it twice a year and then notify Puget within
12 ten days. And then there's V, of course, which is all
13 the "as is" language. And Mr. Wigen talked about some
14 of the deficiencies or problems that may come from
15 manufacturer's warranties.

16 So I just want to make sure that we don't
17 have some language that's canceling out other language.
18 I mean, if a customer doesn't inspect equipment twice a
19 year, and I'm speaking as a homeowner who probably
20 should get down in the basement more often, the question
21 I have is, are you going to say, hey, you haven't done
22 your part, therefore we're not going to inspect and keep
23 it operational or we're not going to replace it because
24 it's due to your actions, you didn't inspect it
25 regularly?

ENGLERT

1 I mean, how are we going to make sure the
2 customer is protected when you have this language that
3 you say works together but I see it as being a potential
4 conflict?

5 THE WITNESS: We had many groups look at
6 this language, and I think we put forth our best faith
7 effort to make sure that this all worked together.

8 I think if there's something that's here
9 that -- if there's something specific that can be made
10 more clear, I think we're open to that. But it is our
11 intention to offer excellent customer service and to
12 make these things work together.

13 And when I was following your exchange with
14 Malcolm, I had the same similar thought as
15 Mr. McCulloch, that that Disclaimer of Warranties can
16 still work with what's in there in terms of the
17 maintenance and that we will replace a unit. So I --

18 CHAIRMAN DANNER: Okay. And I don't have
19 any reason to disbelieve you; I do think that you want
20 to have these things work together.

21 I think the question is, when I read these
22 things and I kind of apply the statutory construction
23 that lawyers apply, and I see that there's general
24 language and there's specific language, and sometimes
25 the specific is the way you define the general or it

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1 overrules a general. And so I have questions about
2 that.

3 So what you're telling me is that you don't
4 think there's a conflict; is that what I'm hearing you
5 saying?

6 THE WITNESS: I don't believe there is. And
7 that certainly isn't our intention.

8 CHAIRMAN DANNER: Thank you; that's all I
9 have.

10 JUDGE KOPTA: All right. Because the
11 Commission inquired about the information on Exhibit
12 EEE-13, I'm going to admit that into the record. I
13 think that will make it clearer. Since you read it into
14 the record there's no reason not to.

15 MR. GOLTZ: Is that now in my win column or
16 not? (Laughter.)

17 CHAIRMAN DANNER: It's beyond the scope.
18 (Laughter.)

19 JUDGE KOPTA: Redirect?
20

21 REDIRECT EXAMINATION

22 BY MR. STEELE:

23 Q. Mr. Englert, earlier today Mr. Casey asked you
24 about Schedules 200 to 299.

25 A. Correct, he did.

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1 **Q. Are there other reasons why PSE's proposed lease**
2 **service couldn't be offered under those schedules?**

3 A. I think as was mentioned, but maybe it was a
4 different context, that those -- the cost recovery of
5 those schedules is done under Schedule 120 for both gas
6 and electric, and all customers are paying for those
7 conservation services because those conservation
8 services are used by all customers. I think with these
9 rate schedules, it's very specific to the participating
10 customers.

11 **Q. Can you explain how the program costs -- which**
12 **ratepayers will bear the program costs?**

13 A. We've designed this, and I think the pricing
14 model reflects, that the participating customers on this
15 program will pay for those costs.

16 **Q. What about in the context of a general rate**
17 **case?**

18 A. Because these rates and these costs are being
19 recovered through this schedule, it's my understanding,
20 then, that that would not occur in a general rate case
21 by design.

22 **Q. Will PSE remove those costs from the general**
23 **rate case?**

24 A. I believe we would.

25 MR. STEELE: No further questions, Your

1 Honor.

2 JUDGE KOPTA: Thank you, Mr. Steele. And
3 thank you, Mr. Englert; we appreciate your testimony
4 today and you're excused.

5 We will now take our lunch break, and we'll
6 discuss off the record when to come back.

7 (Lunch break.)

8 JUDGE KOPTA: Let's be back on the record.
9 We are returning from our lunch break and resuming our
10 evidentiary hearings continuing with witnesses for Puget
11 Sound Energy.

12 Would you call your next and last witness, I
13 believe.

14 MS. CARSON: That's correct. PSE calls Matt
15 Marcelia.

16 MATT MARCELIA,
17 having been duly sworn, testified as follows:

18
19 JUDGE KOPTA: Mr. Marcelia's testimony and
20 exhibits have been admitted so he is available for
21 cross. I believe Mr. Casey has waived cross.

22 That leaves you, Ms. Gafken.

23 MS. GAFKEN: My understanding is our
24 cross-exhibits are already in the record, so I also have
25 no questions for Mr. Marcelia.

GOLTZ / MARCELIA

1 JUDGE KOPTA: All right. Moving right
2 along.

3 Mr. Goltz?

4 MR. GOLTZ: My understanding is that our
5 cross-exhibits are not in the record.

6 MR. STEELE: That's correct, Your Honor.

7 JUDGE KOPTA: That's my understanding as
8 well.

9
10 CROSS-EXAMINATION

11 BY MR. GOLTZ:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. What I'd like to do is basically three things; I
15 hope to be very brief. First, I'm going to ask you to
16 identify several of the cross-exhibits that I've
17 submitted, you can identify them, and then I'm hoping
18 they can be admitted.

19 A. Okay.

20 Q. Second, I'll ask you a question about the
21 property tax passthrough tariff, and I'm going to ask
22 you a question or two about local utility taxes.

23 A. Okay.

24 Q. So, first, do you have the cross-exhibits in
25 front of you?

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1 A. Yes, I do.

2 Q. Looking at the final three, that is to say
3 MRM-7, 8 and 9, and those are responses to either -- the
4 first one, 7, is a response to a UTC Staff Data Request,
5 and the other is various schedules of PSE on tax
6 adjustments; is that correct?

7 A. Yes. Particularly 8 and 9 are tariff -- or
8 schedules that we filed with the Commission.

9 Q. And maybe these don't need to be exhibits if
10 they're tariffs and they can be noticed, but I would
11 offer them.

12 But going back to MRM-7, does this generally
13 discuss the applicability of state and local utility
14 taxes to the Lease Solutions program?

15 A. Yes.

16 MR. GOLTZ: I would like to offer MRM-7, 8
17 and 9.

18 JUDGE KOPTA: Mr. Steele?

19 MR. STEELE: Your Honor, as we've stated
20 today and Monday, we believe that tax issues are beyond
21 the role of SMACNA as an Intervenor in this case. We
22 think tax issues are better handled by Staff and Public
23 Counsel, and that SMACNA's role in this case is to
24 provide its expertise as a contractor in the
25 marketplace, not as a tax expert.

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1 MR. GOLTZ: Well, relating to the market
2 issues, we've been having a theme from two days ago and
3 today our argument that these two systems, the regulated
4 system and the non-regulated system, just don't fit very
5 well together.

6 And what we have in the tax system is a
7 burden, especially -- I'm not just talking about tax
8 sales but I'm talking about other taxes like local
9 utility tax, light and property taxes, those are passed
10 through the customers on a different tariff. So when
11 one looks at the tariff rate in the schedule for the
12 leased equipment, there will be a figure there, \$21,
13 \$28. Those figures do not reflect the burden of any
14 other state tax that's going to be passed through.

15 That is different than, as Mr. Fluetsch
16 communicated in his testimony, that is different than
17 someone in the competitive market. Granted, the
18 competitive market won't be passing through -- will be
19 charging separately a state and local sales tax, as
20 would Puget Sound Energy on every single lease payment,
21 but contrary to that, local utility taxes and property
22 taxes would be passed through separately stated, whereas
23 for Mr. Fluetsch's company or any other SMACNA
24 contractor, those taxes are just embodied into the rate.
25 So there's that competitive difference.

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1 And second, the other point is, it is just
2 more complicated. We heard this morning from
3 Mr. Englert that, oh, this is really a simple system.
4 It is not simple, and this is just one more example of
5 that complexity.

6 MS. BROWN: Your Honor, Sally Brown for
7 Commission Staff.

8 I would add only that given these exhibits
9 are -- or Exhibit 7 is a PSE Response to Commission
10 Staff Data Request Number 68, and 8 and 9 are tariffs,
11 as Mr. Goltz pointed out, which can be noticed by the
12 Agency, Commission Staff would be pleased to offer
13 Exhibit 7 given its admission by party opponent PSE.
14 And Mr. Steele has just stated that it would be
15 appropriate for Commission Staff to address the taxation
16 issue.

17 MS. GAFKEN: And I'll weigh in as well just
18 quickly.

19 So the Response to Staff Data Request Number
20 68 was offered by Public Counsel as Exhibit MRM-3, and
21 that's been admitted into the record. So it's in. That
22 doesn't answer the question about the two tariffs, but.

23 JUDGE KOPTA: That was the question I was
24 going to ask, if there's a distinction between MRM-3 and
25 MRM-7. Apparently there is not, they're the same. So

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1 MRM-3 is already part of the record. We'll just assume
2 that MRM-7 is withdrawn or not offered.

3 MR. GOLTZ: That's fine.

4 CHAIRMAN DANNER: Or denied.

5 JUDGE KOPTA: Well, I'm taking the knife
6 before the guillotine. And 7 and 8 are just tariffs
7 that we can take official notice of. I think it's
8 easier to have them in the record just for reference
9 purposes.

10 So I think that given Staff's -- excuse me,
11 it should be MRM-8 and MRM-9. Given Staff's offer, I
12 think that pretty much takes care of the objection. And
13 so I will admit MRM-8 and MRM-9.

14 MR. GOLTZ: Thank you, Your Honor.

15 BY MR. GOLTZ:

16 Q. So Mr. Marcelia, if you could turn to MRM-6.

17 Do you recognize that as an exhibit that you --
18 as a Response to SMACNA Data Request 25?

19 A. Yes.

20 Q. And you prepared that response?

21 A. Yes.

22 Q. So before we get to that detail, as I understand
23 it, the property tax burdens on Puget Sound Energy get
24 passed through to its customers?

25 A. That is correct.

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1 Q. Through a separate tariff schedule?

2 A. Correct, Schedule 140.

3 Q. And so in the Lease Solutions proposed tariff
4 where there are several pieces of equipment with monthly
5 lease rates, in addition to that, taxes other than --
6 other taxes would be separately passed on to the
7 customer?

8 A. Other taxes?

9 Q. I'm sorry. Taxes, period, would be passed --
10 the burden of taxes would be passed on to the Lease
11 Solutions customers?

12 A. The Lease Solutions customers will bear their
13 share of the tax burdens relative to the leasing
14 activity.

15 Q. Right. So there will be separately stated sales
16 tax?

17 A. Correct. Sales tax will be separately stated,
18 yes.

19 Q. And in the jurisdiction or jurisdictions in
20 which there's a local utility tax, that burden would be
21 passed on to Lease Solutions customers?

22 A. Yes. And that would only be the City of
23 Bellingham, but yes.

24 Q. And then in addition, there will be a property
25 tax burden that we passed on to the Lease Solutions

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1 customer; is that correct?

2 A. Yes. Under Schedule 140, our agreement, which
3 the Commission approved, was to collect property taxes
4 based on the actual tax paid, no more, no less. So that
5 burden is still in place.

6 When we do our Schedule 140 analysis every year,
7 which comes before this Commission, we would take the
8 part of that tax that's relative to the leasing, and
9 that would go over and be collected through Malcolm's
10 Schedule 75.

11 **Q. But the price in Schedule 75 does not reflect**
12 **the property tax burden, does it?**

13 A. That's -- well, in the pricing model there's no
14 property tax built into the revised pricing model, so
15 not coming from the Schedule 140 would be an adder to
16 that. But it's not like it's going to be separately
17 stated on a bill. Because today Schedule 140 is not
18 separately stated on a bill, it's embedded into the
19 other tariffs that make up the bill.

20 **Q. So I know you're a tax guy.**

21 A. Correct. How did you guess? It's that obvious?
22 (Laughter.)

23 **Q. So if I'm a customer of PSE and I'm thinking of**
24 **leasing a HVAC system from PSE under the Lease Solutions**
25 **tariff --**

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1 A. Yes.

2 Q. -- and I'm one of a minority of PSE customers
3 that's actually read all of your tariffs --

4 A. Okay.

5 Q. -- and let's say you're the customer service
6 rep. And I say, so how is this property tax passthrough
7 going to impact me if I get this HVAC system?

8 A. Well, I think the response would be along the
9 lines that we pass along the property tax that we pay,
10 so it's a direct passthrough, no more, no less, of our
11 actual property tax payment.

12 Does that answer your question?

13 Q. Well, then how is that -- if the price in the
14 tariff, and I don't have it in front of me, but let's
15 say the price is \$60 a month for this piece of
16 equipment.

17 A. Okay.

18 Q. Does that \$60 a month include the property tax
19 passthrough or would it be in addition to that?

20 A. I guess it depends on how we would instruct the
21 call center reps to respond to that type of a question.
22 We could say it's 60 plus a dollar for property tax or
23 we could say it's \$61. I don't know exactly how we
24 would script that conversation, but certainly we would
25 embed the property tax in the communication to

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1 customers. It's not hidden.

2 **Q. What I'm saying, though, if the tariff rate says**
3 **60, is the tariff rate plus the property tax passthrough**
4 **greater than 60?**

5 A. I'm not quite sure how to answer that.
6 Certainly we will recover the property tax based on what
7 we've actually paid. Whether I would use the
8 nomenclature that that is part of the tariff rate or
9 whether that's an adder to the tariff rate, I don't know
10 exactly the distinction there. But certainly the
11 collection from the customer would include whatever that
12 base level rate is, which is constant over the life,
13 plus the property tax, which is going to move a tiny bit
14 over the life.

15 **Q. Right. So I think I hear you saying that, under**
16 **my hypothetical, the tariff rate is \$60 a month for the**
17 **life of the lease, it might be 18 years, and then in**
18 **addition to that there will be modest property tax**
19 **passthrough that's going to vary from year to year?**

20 A. That could be one answer. Or I could say that
21 the actual tariff rate is \$59, and when quoting you a
22 \$60 rate, that's because the property tax is one dollar.

23 And so I think we're talking about the
24 nomenclature. Property tax will be included, certainly.
25 Whether you use the nomenclature that the tariff rate is

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1 \$59 and property tax is \$1 -- (Court reporter
2 interruption.) Sorry, I'm excited. (Laughter.) I'll
3 try to restrain my enthusiasm. I was making a really
4 good point and I can't remember what it was.

5 Oh, yeah, the nomenclature. I don't know how
6 exactly to understand the nomenclature that you're
7 using, because, well, if the price would go to \$60, we
8 either say it's \$60 including the property tax or it's
9 \$60 and then we need to add the property tax. However
10 you say that, we're going to recover the property tax.

11 **Q. Right. And I think I heard you say that the**
12 **burden of the property tax did not get built into the**
13 **pricing model.**

14 A. Let me give one clarification. In the initial
15 submission of the pricing model it was in there, and in
16 the revision to it, it's been removed out.

17 MS. CARSON: If I could just clarify. It
18 has not been removed out.

19 THE WITNESS: Oh, it hasn't?

20 MS. CARSON: We said that we would remove it
21 in a Compliance Filing because -- I don't want to
22 testify --

23 JUDGE KOPTA: Too late. (Laughter.)

24 MS. CARSON: It was originally included, and
25 the more appropriate way to deal with it is to not

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1 include it in the pricing model, so what's in the tariff
2 would actually go down a bit and then it would be added
3 on as part of Schedule 140.

4 So there has not been a revision to the
5 pricing model.

6 COMMISSIONER RENDAHL: Where is that in the
7 testimony?

8 MS. CARSON: I believe that's in
9 Mr. McCulloch's testimony.

10 COMMISSIONER RENDAHL: Just trying to
11 clarify.

12 BY MR. GOLTZ:

13 **Q. So given what Ms. Carson said, ultimately, and**
14 **the file prices are defined in the tariff, there will be**
15 **in addition to that final price a passthrough of some**
16 **amount to reflect the property tax burden?**

17 A. It will be either embedded in it or in addition
18 to it. Property taxes will be recovered.

19 So, for example, Schedule 140 today kind of
20 infects a whole bunch of different schedules, and
21 whether you say that the number of that schedule has
22 already been infected by 140 or whether you say 140 is
23 an adder to it --

24 **Q. So you're saying that's still a work in**
25 **progress?**

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1 A. I think we know how we're going to do it.
2 Obviously the tariff hasn't been finalized, so I guess
3 in that regard it is a work in progress as the entire
4 tariff is.

5 Q. So let me ask this. If I have a furnace in my
6 house that I own, that's a fixture, part of the value of
7 my home; correct?

8 A. Yes.

9 Q. And that value of my home, including the
10 fixture, forms a basis for the county assessor assessing
11 property tax on my home?

12 A. Yes.

13 Q. If I decide to lease instead, I decide I want to
14 lease my furnace from PSE, will PSE contact the county
15 assessor and say, oh, hey, by the way, Jeff Goltz's home
16 is now -- we own the HVAC system, so take something into
17 account when you assess his property?

18 A. PSE is -- no, PSE is not going to tell the
19 county assessor that you're leasing it. It's incumbent
20 upon the homeowner to pay the proper -- that their
21 houses are valued properly is the homeowner's
22 responsibility, and they have equipment that would be
23 included in there.

24 I think there's a question about the relative --
25 value of the equipment relative to the size of the

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1 house. So, for example, the medium price of a house in
2 King County is \$500,000. You're talking about a \$2,000
3 piece of equipment. If your appraisal is accurate to
4 2/500ths, that's probably an accurate appraisal, because
5 the county assessor doesn't appraise it at a level of
6 granularity to where a small piece of equipment like
7 that would probably change his conclusion. But it is
8 incumbent upon the homeowner to make sure that the
9 county assessor is properly valuing their house.

10 **Q. So you're saying for a median priced home in**
11 **King County switching from an owned HVAC system to a**
12 **leased HVAC system, that homeowner's property tax owed**
13 **to the county will not go down?**

14 A. I think there's a double negative in there
15 that's confusing me. That property will not go down?

16 **Q. In other words, if the owner of a median priced**
17 **home in King County of \$500,000 starts to lease an HVAC**
18 **system from PSE, given what you said about the**
19 **leasing -- or the assessing practices of the King County**
20 **Assessor, that person's property tax owed to the**
21 **assessor will not go down because of the lease?**

22 A. I don't know if his value would go up or down,
23 because in some cases leasing is going to increase the
24 value of the property. If you have a very old water
25 heater or HVAC and you're replacing it with something

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1 newer, you're perhaps getting rid of a liability. Does
2 that improve the value of the house? I don't know. But
3 it's one component to the value of a house, and so the
4 value could go up or down.

5 **Q. Up to the homeowner to take that up with the**
6 **assessor?**

7 A. Yes.

8 **Q. In rough terms, the property tax burden of a**
9 **\$10,000 piece of equipment is at least one percent of**
10 **the value of that equipment; is that correct?**

11 A. As a rule of thumb, I think that would be
12 accurate if you're talking about a homeowner. For PSE,
13 that becomes more convoluted because we are centrally
14 assessed so our valuation is -- it's a convoluted
15 process to calculate that. I would say for PSE, it's
16 probably less than one percent, as a rule of thumb.

17 **Q. So speaking of convolution, could you refer to**
18 **MRM-6, which is where I ask the hypothetical about this**
19 **issue and you responded, saying among other things, it**
20 **can't be answered simply.**

21 A. Yes, yes.

22 MR. GOLTZ: So I would like to offer Exhibit
23 MRM-6 as a complement to his testimony where it is one
24 more thing where it is not a simple situation, when
25 Mr. Fluetsch's company, he doesn't pass through property

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1 taxes, it's just part of the cost of doing business,
2 it's part of the tariff.

3 What we see here is very, very complex, and
4 I think that issue of complexity is relevant. So I'd
5 like to offer MRM-6.

6 THE WITNESS: I would like to respond that
7 although it is -- he's passing through property tax as
8 well as speaking to his rate. Ours is passed through on
9 a dollar-for-dollar basis. We're talking about almost
10 like geography. I mean, it's not --- we're both passing
11 through property taxes and so we both have a similar
12 level.

13 Ours is complex because we're centrally
14 assessed. But coming down to the Schedule 140, all of
15 it is right there and it will be allocated over. So I
16 don't see it as being that -- a point of
17 differentiation.

18 MR. GOLTZ: Well, my point is that it's
19 complicated. If a customer wishes to call PSE's
20 consumer representative to try to figure this out,
21 you're in for a long conversation. That's my point in
22 offering this. In addition to the point that there's a
23 potential, if not a reality, of whether it's in effect a
24 double burden, because one's property tax is not going
25 to go down, the assessor is not going to know if I'm

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1 leasing a HVAC system or not. For a water heater, no
2 big deal. For an HVAC system, that can get pricey.

3 So I'd offer MRM-6.

4 JUDGE KOPTA: Mr. Steele?

5 MR. STEELE: Is this an oral argument we're
6 having? I mean, Mr. Goltz is making legal arguments to
7 the Commission. It's inappropriate.

8 JUDGE KOPTA: He's responding to your
9 objection and perhaps --

10 MR. STEELE: Hasn't the objection been
11 settled?

12 JUDGE KOPTA: Not with respect to this
13 particular exhibit.

14 MR. STEELE: I mean, I think our position,
15 we stated throughout that Mr. Goltz, I believe he
16 understands tax issues and believes he'd like to argue
17 them here. But again, I think it's beyond the role of
18 SMACNA in this case to provide expert analysis as to how
19 taxes are going to impact PSE and PSE's leasing service.

20 I think that's not their role in this case.
21 And I appreciate that Mr. Goltz has -- believes he has
22 experience in this area, but I don't think that's
23 SMACNA's role in this case.

24 JUDGE KOPTA: I appreciate that, but we've
25 had rather extensive discussion, and I believe it's been

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1 beneficial both from the point of view of your witness
2 as well as from argument from Mr. Goltz. So I will
3 admit this exhibit.

4 BY MR. GOLTZ:

5 **Q. So finally, one final question.**

6 **You mentioned in your testimony and also here**
7 **this morning that a number of localities impose a local**
8 **utility tax that is different from the state public**
9 **utility tax?**

10 MS. CARSON: Objection; misstates the
11 testimony.

12 JUDGE KOPTA: If you can ask him what he
13 testified to.

14 BY MR. GOLTZ:

15 **Q. Am I correct that a number of local**
16 **jurisdictions in the state of Washington impose a local**
17 **utility tax that is different from the state utility**
18 **tax?**

19 A. There are 106 cities where PSE offers service
20 that have a municipal utility tax.

21 **Q. That's exactly. And you testified that only**
22 **Bellingham's local municipal utility tax is passed**
23 **through to the utility customers in Bellingham?**

24 A. That is true. Of every municipal utility tax,
25 it is passed through only to the people who live within

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1 that jurisdiction.

2 Q. I apologize. What I meant to say was, there's a
3 distinction that I believe can be made between the
4 utility revenue and non-utility revenue in the tax
5 context.

6 A. Correct, there is.

7 Q. And that distinction was argued in the court
8 case you talked about regarding Bellingham that was
9 decided in 2011?

10 A. Yes, and that court case is specific to the City
11 of Bellingham.

12 Q. Right. And that Court of Appeals Division I
13 decided that PSE's non-utility revenue, including its
14 revenues from its existing lease program, would be
15 subject to Bellingham's municipal utility tax?

16 A. The case did not hinge on leasing; that was not
17 a main point of the case. But there is a reference to
18 rent in that decision, so the rent is subject to the
19 utility tax in Bellingham.

20 Now, I think that's the wrong decision, but that
21 is the way -- that's a decision that we have in the City
22 of Bellingham.

23 Q. And you stated on Page 4 of your rebuttal
24 testimony, and I'll paraphrase this, that the tax laws
25 are subject to change both because they may be amended

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1 but also because of change in interpretations; is that
2 true?

3 A. Yes.

4 **Q. So it is possible that other local jurisdictions**
5 **that have utility tax could, either through changing**
6 **them or through varying differing interpretations, could**
7 **come to the same conclusion that Bellingham did?**

8 A. That is possible, but I think it's more likely
9 that Bellingham will change and become more common,
10 because I think the Bellingham decision is outside the
11 law. It's an illogical conclusion to apply a retail tax
12 and utility tax to the same transaction. That just
13 doesn't make any sense.

14 But anybody who enters into that transaction,
15 because of the way the tax laws should be administered,
16 it should be common to all. So whoever is engaged in
17 activities similar to what PSE is -- (Court reporter
18 interruption.) Whoever engages in a transaction similar
19 to what PSE is engaged in would bear the same utility
20 tax if it meets the definition of utility revenue.

21 You don't have to be a regulated utility, in
22 quotes, to be subject to a utility tax; you only have to
23 have revenue that meets the definition of utility
24 revenue in that jurisdiction.

25 MR. GOLTZ: I have no further questions.

MARCELIA

1 JUDGE KOPTA: Good. That's about as much
2 tax as I can take. (Laughter.)

3 Mr. King, do you have any questions?

4 MR. KING: No, I do not, Your Honor,
5 although I'm starting to feel more like I'm at Senate
6 Ways and Means. (Laughter.)

7 JUDGE KOPTA: All right, then, questions
8 from the bench? Anything from up here?

9 COMMISSIONER JONES: We won't prolong this
10 any more on the tax side. I have a few accounting
11 questions. Good to see you, Mr. Marcelia.

12 Could you please turn to Page 1 on of your
13 testimony, which is MRM-1T.

14 THE WITNESS: Yes, I'm there.

15 COMMISSIONER JONES: Lines 8 and 9. And I
16 have read our Staff Policy Memo as well as your
17 testimony.

18 So I take it that in Line 9 that your
19 conclusion on this GI-19 is that all leasing activities
20 would be capital in nature, would be capitalized.

21 THE WITNESS: Yes.

22 COMMISSIONER JONES: So that means that
23 whatever Mr. McCulloch has in his business plan in the
24 cap X portion of the business plan, you would record
25 this to this account and they would be capitalized?

MARCELIA

1 THE WITNESS: Yes, yes. The units, the
2 equipment would be capitalized.

3 COMMISSIONER JONES: Okay. And then in the
4 question of Lines 11 through 13, you prefer FERC Account
5 104 to be used for this leasing program; right?

6 THE WITNESS: Yes, that is correct.

7 COMMISSIONER JONES: If you could turn to
8 Page 11, Line 7 through 10. Seven and 8, so here we get
9 into Ms. O'Connell's testimony where she advocates using
10 ASC. What does ASC stand for, for the court reporter?

11 THE WITNESS: Of course you would ask me.
12 It's the Accounting Standard Codification. It replaces
13 what was referred to as the old FASV numbering system.

14 COMMISSIONER JONES: So you seem to
15 dispute -- and I'll ask one final question on ASC 842.
16 But what do you mean by geography and nomenclature here?
17 You were just in a discussion with Mr. Goltz on both
18 geography and nomenclature.

19 What do you mean by that?

20 THE WITNESS: By geography I mean the line
21 item where an item would occur in the Income Statement
22 or in the Balance Sheet. So these would occur -- in the
23 context of this conversation, it would occur on the
24 Balance Sheet. And then it's a matter of geography as
25 to where exactly on the Balance Sheet it would fall.

MARCELIA

1 But it's going to be on the Balance Sheet.

2 COMMISSIONER JONES: I thought it was that.
3 So it's the Balance Sheet, you're on the Balance Sheet,
4 but where it appears and what it's called on the Balance
5 Sheet is what you refer to as nomenclature?

6 THE WITNESS: Yes.

7 COMMISSIONER JONES: But you say the results
8 between the treatment using ASC 842 instead of FERC 104,
9 economically the results would be roughly the same?

10 THE WITNESS: Yes, correct.

11 COMMISSIONER JONES: Let's turn to Page 14,
12 please, Lines 15 through the bottom there.

13 Are you there?

14 THE WITNESS: Yes.

15 COMMISSIONER JONES: I just have a few
16 clarification questions here.

17 When you say, for example, PSE already
18 leases transformers, substations, and space on utility
19 poles to customers, could you go through each one of
20 those and give me an example?

21 Where do you lease a transformer to a
22 customer?

23 THE WITNESS: These are some of the things
24 that would have been included in Mr. Englert's exhibits
25 of some of the things that we do. I am drawing a blank

MARCELIA

1 as to who leases the transformers. I know some of our
2 larger customers lease these types of things from us.

3 COMMISSIONER JONES: Probably a large
4 industrial or commercial customer?

5 THE WITNESS: Yeah. A Boeing or Microsoft
6 or somebody along those lines.

7 COMMISSIONER JONES: And then what about a
8 substation? I think we had an exchange with Mr. Englert
9 on that, but I really didn't understand him precisely.

10 What would be an example of a substation
11 that's being leased? Again, would it be a large
12 industrial customer?

13 THE WITNESS: Yes, yes.

14 COMMISSIONER JONES: And then on space on
15 utility poles, is this what we refer to in the telecom
16 world as pole attachments?

17 THE WITNESS: Correct.

18 COMMISSIONER JONES: Okay. And in the next
19 sentence you talk about the existing rental program. I
20 assume you mean the existing rental program for hot
21 water heaters?

22 THE WITNESS: Yes, I do, that's correct.

23 COMMISSIONER JONES: So right now you are
24 using what treatment for the existing water heater
25 program? Is it GAAP or is it FERC 104 you're using?

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1 THE WITNESS: We're actually using FERC 101.
2 It's going into our gas distribution area.

3 COMMISSIONER JONES: And then what are you
4 saying here? You're saying that under ASC 42, because
5 it's so new and this program would be new,
6 hypothetically if we approve it, that some of PSE's
7 current operating leases would be recharacterized as
8 capital leases for GAAP purposes only.

9 So my question is, I'm confused now between
10 GAAP purposes and FERC purposes. You seem to be saying
11 earlier you prefer FERC treatment, and now you're saying
12 GAAP may be the way to go.

13 THE WITNESS: So I didn't mean to confuse.
14 When PSE issues audited financial statements that are
15 filed with the FCC, the presentation of those statements
16 needs to comply with GAAP, and in this case ASC 842 when
17 that becomes active. So it is likely that regardless of
18 the FERC or WTC requirements, we would have to present
19 these leases as capital leases for GAAP purposes. That
20 doesn't necessarily mean that we would present those in
21 our FERC Form 1 or in filings to this Commission as in
22 that same fashion.

23 Today there are some things that we report
24 them differently for GAAP as for WTC, and so, but I was
25 just kind of trying to point that out here. I don't

MARCELIA

1 want to do the GAAP; I want to follow FERC. I think
2 it's easier, and that's what we have the infrastructure
3 to do.

4 COMMISSIONER JONES: No, I'm very aware that
5 there are two different forms of accounting; there's
6 regulatory accounting and there's GAAP accounting.

7 THE WITNESS: Yes.

8 COMMISSIONER JONES: And you're saying here
9 that you prefer regulatory accounting. But would this
10 have any impact on either the lease rates for the
11 existing water heater program or the rate base of Puget
12 Sound Energy for these 33,000 water heaters if you
13 recharacterize them as capital?

14 THE WITNESS: No, it wouldn't. Again, the
15 geography could slide around, but ultimately they're
16 still going to be on the Balance Sheet, they'll still be
17 included in the rate base. Because the definition of
18 rate base -- GAAP is irrelevant for the definition of
19 rate base, so we would still follow Commission guidance
20 as to what is rate base and what is not.

21 COMMISSIONER JONES: No, you're absolutely
22 correct on the FCC has no authority to define what rate
23 base is. It's the Commission's, FERC and the UTC.

24 THE WITNESS: Yes.

25 COMMISSIONER JONES: Okay, thank you; that's

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1 all I have.

2 JUDGE KOPTA: All right. Redirect?

3 MS. CARSON: No redirect.

4 JUDGE KOPTA: Thank you, Mr. Marcelia; thank
5 you for your testimony. We appreciate you coming and
6 you are excused.

7 That I believe concludes the Company's
8 witnesses. Am I correct?

9 MR. STEELE: Yes, Your Honor.

10 JUDGE KOPTA: Then we move to Commission
11 Staff. Would you call your next witness.

12 MS. BROWN: Commission Staff calls Bradley
13 Cebulko, please.

14 MS. CARSON: Your Honor, we have no
15 questions for Mr. Cebulko.

16

17 BRADLEY CEBULKO,

18 having been duly sworn, testified as follows:

19

20 JUDGE KOPTA: I understand that the Company
21 has no cross for you.

22 Do we have any questions from the bench?

23 Mr. Jones?

24 COMMISSIONER JONES: Mr. Cebulko, welcome.

25 Good afternoon.

CEBULKO

1 THE WITNESS: Good afternoon. Thank you.

2 COMMISSIONER JONES: I have a few questions
3 about energy efficiency.

4 THE WITNESS: Sure.

5 COMMISSIONER JONES: Were you in the room
6 yesterday when I questioned Dr. Faruqui?

7 THE WITNESS: Yes, I was.

8 COMMISSIONER JONES: Okay. And a little bit
9 on the Commission burden and work burden.

10 So I think you discuss energy efficiency in
11 at least a little bit on Page 35 or thereabouts. Maybe
12 you can refer me to the -- don't you broadly make the
13 assertion that this proposed program would do very
14 little or not much at all to increase the energy
15 efficiency benchmarks of the Company overall?

16 THE WITNESS: Yeah, I'm quite uncertain
17 about the magnitude of the benefits. Certainly there
18 are some appliances that will issue energy efficiency
19 savings, but importantly, not all of them. Furthermore,
20 they don't quite know how many they're going to install
21 of energy-efficient versus non-energy-efficient.

22 If you look in the Faruqui Benefit Models --
23 I'll stay away from highly confidential information,
24 but, for example, for hot water heaters on the .6 energy
25 factor, which is energy-efficient, it's a very small

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1 majority, it's a very small amount that they expect.

2 And the .62, which is essentially baseline,
3 if it's a 40-gallon water heater, that is code; if it's
4 50-gallon, it would be slightly above, but it's not
5 energy-efficient. It's the most common appliance in the
6 market. So that would not achieve energy efficiency
7 savings using our methodology.

8 We're quite uncertain about the benefits.
9 The inputs used were based on a survey that we have a
10 lot of questions about. Furthermore, the Company is not
11 guaranteeing that they're going to get these benefits.
12 There's no accountability for getting these benefits.
13 And as we heard today, some of these benefits might
14 accrue in Seattle City Light or Tacoma Power, Snohomish
15 PUD, if they're installing an efficient heat pump in
16 those electric service territories.

17 COMMISSIONER JONES: So define for me, let's
18 be precise with our words here. So by energy-efficient,
19 are you referring to the NAEC code?

20 THE WITNESS: So how we do energy efficiency
21 methodology here in the Northwest. Energy-efficient is
22 savings above baseline. Baseline is often code. It's
23 not always code.

24 COMMISSIONER JONES: Okay. So I think you
25 heard Mr. Englert say that energy efficiency, the energy

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1 efficiency is an additionality to the Lease Solutions
2 program, it's not the goal of the program; right?

3 And so as Staff, if it is not the goal of
4 the program and is not subject to EIA, to the Energy
5 Independence Act, what sort of review would Staff do on
6 either a Compliance Filing or an annual report? Would
7 you review -- what would you review if it is not an
8 energy -- let's say the Commission agrees with them; we
9 approve the tariff and it's not subject to the EIA.

10 What kind of energy, what we call
11 verification analysis, would you do, if any?

12 THE WITNESS: I mean, we would always do a
13 cost-benefit analysis, which the Company says is not
14 relevant in this case. They said that they don't need
15 to demonstrate that the costs are less than the benefits
16 because the Company is -- because the customer will
17 determine for themselves. That's contradictory to the
18 purpose of the Commission to establish rates that are
19 fair, just, and reasonable.

20 But we'd start with the cost-benefit
21 analysis. We'd ask them to demonstrate it, which we
22 don't have. It's not -- generally Staff does not look
23 at one-side analysis that only demonstrates benefits
24 without the cost. So I'm not sure what we would do with
25 it. It would just be there without cost.

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1 COMMISSIONER JONES: So moving on to
2 Dr. Faruqui. You heard my questions and my exchange
3 with him yesterday. So he has a model -- first of all,
4 on the issue of the model, when did you see the model or
5 when did you have full access both to the model, which I
6 think is confidential or highly confidential, we can't
7 get into specifics, but was there a webinar? And then
8 when did you see the full spreadsheet, the full model
9 that's filed?

10 THE WITNESS: So I don't remember when they
11 first made it available to me, but to your specific
12 question about when the webinar occurred, I checked my
13 calendar as March 8th of this year. And so, yeah,
14 that's the first time I saw it.

15 COMMISSIONER JONES: And then, but do you
16 agree with Dr. Faruqui's assertion -- I don't have the
17 cite in his testimony, but it's in there. He asserts
18 that you had full access to the model from quite an
19 early date on.

20 THE WITNESS: I'd say I had it from the
21 beginning of March on.

22 COMMISSIONER JONES: Okay. What do you
23 think of his model? It's called a Societal Benefits
24 Test. That's the way I look at it. It looks at avoided
25 carbon, avoided capacity in the gas transmission system

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1 if gas, avoided electric, and calculates the benefits
2 only.

3 THE WITNESS: Sure, the benefits of the
4 assumptions that were put in there. Yeah, the model
5 flows well. He does great work and I have a lot of
6 respect for Dr. Faruqui.

7 My problem is not so much with the model's
8 outputs as much as it is the inputs, the assumptions. A
9 lot of assumptions that were questionable using the
10 Cocker Fennessy Survey, using vendor feedback to
11 determine how many appliances or what type of appliance
12 would be installed between multiple different types of
13 appliances, those are all not highly documented.

14 COMMISSIONER JONES: So your conclusion is
15 as an economist, which I think you're trained as, and
16 also in public administration, a model is only good if
17 you have garbage in, garbage out, or if you have good
18 stuff putting in, you get good stuff out. So a lot of
19 your --

20 THE WITNESS: Sure, but you're --

21 COMMISSIONER JONES: You seem to be -- let
22 me finish.

23 THE WITNESS: Sorry.

24 COMMISSIONER JONES: You seem to be saying
25 that the model itself is pretty good and you respect his

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1 work, but the data inputs are not necessarily accurate
2 or verifiable or good?

3 THE WITNESS: Yeah. So I have a lot more
4 questions about the inputs than I do the model. But I
5 do have problems with only seeing a benefit analysis
6 without looking at the cost. That's not terribly useful
7 to me.

8 COMMISSIONER JONES: Okay. Well, what would
9 you substitute for it, let's say if we approve this
10 program?

11 THE WITNESS: A Total Resource Cost test at
12 minimum. I mean, if not a Total Resource Cost test, a
13 simple cost-benefit analysis demonstrating that the
14 benefits to the public are greater than the costs, or
15 the benefits to the participant are greater than the
16 cost.

17 The cost of financing is significant. And
18 so you might reduce the volume if you install an
19 energy-efficient appliance, you might reduce the volume
20 of therms going through or kilowatt hours, but the costs
21 might be greater and they will impact.

22 COMMISSIONER JONES: So you're saying that
23 we don't necessarily have to use the Total Resource Cost
24 test, but it could be Utility Cost test or many of
25 the -- and we've had many workshops and discussions on

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1 this, of course, at the Commission, but some sort of
2 cost effectiveness test, in your view, would be
3 necessary?

4 THE WITNESS: I think that's standard
5 Commission practice.

6 COMMISSIONER JONES: So you don't agree with
7 Dr. Faruqui that this is a different program than an
8 energy efficiency program where I think both of us would
9 agree that the costs of those are socialized or spread
10 across all customers or most rate classes, and the
11 benefits supposedly are too?

12 THE WITNESS: So I have a problem with
13 saying that there are benefits to all customers and the
14 costs are borne by the participants who choose that the
15 benefits to them privately are worth it.

16 That's contradictory to Commission practice
17 to set rates that are fair, just, and reasonable. The
18 Commission makes a judgment, and if it's not
19 cost-benefit, it's not cost effective for the
20 participant to do a program, we don't want them
21 subsidizing the non-participant.

22 COMMISSIONER JONES: I understand that, but
23 this is a voluntary program, is it not? It's not a
24 mandatory program.

25 THE WITNESS: That's correct, it's not

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1 mandatory, but if it's not cost effective to them, they
2 are paying for benefits being achieved by
3 non-participants.

4 COMMISSIONER JONES: Right. If it's a
5 voluntary program, one could argue that it is very
6 different from the cost or from the programs, energy
7 efficiency programs stipulated under the EIA; right?

8 THE WITNESS: Yeah, that's right, but I
9 still think the Commission's standards and rules and
10 procedures would nonetheless apply to a voluntary
11 program.

12 COMMISSIONER JONES: Should we look to the
13 RTF, the Regional Technical Forum, and others as we
14 develop -- as Staff and the Commission develops a
15 methodology, hypothetically, if we approve this?

16 THE WITNESS: Sure, I would absolutely work
17 with our usual stakeholders, and particularly how to
18 incorporate the costs of financing into a cost
19 effectiveness test.

20 COMMISSIONER JONES: Looking back on this,
21 this has been a lot of work for you and a lot of work
22 for the parties, for Mr. Goltz, and I see everybody
23 around the table. Do you think this would have been
24 easier if this had gone to the CRAG or the advisory
25 group early on and vetted out and all these objections

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1 or discussions take place there first?

2 THE WITNESS: So I know the Company made
3 presentations to the CRAG at least once, maybe twice. I
4 was not in attendance; I was not assigned to the CRAG at
5 the time. Going through the slides, they weren't very
6 detailed, in depth, and did not appear like they talked
7 about the details of the program, yes, but I think
8 that's -- not talking about the details of the program
9 has been a consistent problem throughout this process.

10 COMMISSIONER JONES: My last question is on
11 the burden to Staff. And maybe you're not the
12 appropriate one to answer this, or maybe Mr. Pesco or
13 Mr. Reynolds is, but you heard Mr. Goltz today ask
14 questions on the regulatory fee versus the burden. He's
15 making the argument that this could be substantial to
16 the Commission Staff.

17 What do you think? We'll have a Compliance
18 Filing within 60 days, we'll have annual reports. There
19 could be more litigation, I don't know. There could be
20 open meeting memos that you have to prepare for the
21 Commission.

22 Do you have any idea -- give us a rough idea
23 of how much work do you think this is going to be?

24 THE WITNESS: Well, this has been half my
25 time for the last eight months or so. So I can't speak

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1 going forward how much time Staff would assign to this
2 program. I think it will be substantial.

3 COMMISSIONER JONES: And how many Staff
4 witnesses do we have on this, Mr. Cebulko? It's you --

5 THE WITNESS: Ms. O'Connell and Mr. Andrew
6 Roberts.

7 COMMISSIONER JONES: And if there are
8 consumer complaints or consumer issues, really we have
9 no idea yet, because it hasn't been approved, of how
10 many consumer complaints there might be; right?

11 THE WITNESS: That's correct.

12 COMMISSIONER JONES: Okay, thank you.

13 JUDGE KOPTA: All right. Redirect?

14 Thank you, Mr. Cebulko; we appreciate your
15 testimony and you are excused.

16 Your next witness?

17 MS. BROWN: Commission Staff calls Elizabeth
18 O'Connell.

19 MS. CARSON: Your Honor, we have no
20 questions for Ms. O'Connell. We also have no questions
21 for Mr. Roberts, just for the record.

22 JUDGE KOPTA: Well, then it will be a short
23 walk because I don't see a need for you to come up here.
24 There are no questions for you. But your testimony is
25 admitted and it will be part of the record. The same

CARSON / KIMBALL

1 for Mr. Roberts.

2 That concludes Staff's witnesses, I believe,
3 yes?

4 MS. BROWN: Yes.

5 JUDGE KOPTA: All right. Public Counsel?

6 MS. GAFKEN: Public Counsel would call Mary
7 Kimball.

8 MARY KIMBALL,

9 having been duly sworn, testified as follows:

10
11 JUDGE KOPTA: Ms. Kimball, your testimony
12 and exhibits have been admitted for the record and,
13 therefore, I believe we are prepared to go to
14 cross-examination from the Company.

15 MS. CARSON: Thank you, Your Honor.

16
17 CROSS-EXAMINATION

18 BY MS. CARSON:

19 Q. Good afternoon, Ms. Kimball.

20 A. Good afternoon.

21 Q. Ms. Kimball, you testified about the variety of
22 water heaters in the market; is that right?

23 A. Yes, I did.

24 Q. And you consulted a water heater buying guide
25 that was prepared by consumer reports?

CARSON / KIMBALL

1 A. Yes, I did.

2 Q. And that's Exhibit MMK-2; correct?

3 A. Yes, that's right.

4 Q. Now, this guide by Consumer Reports recommends
5 features to consider for a new water heater; right?

6 A. Yes.

7 Q. And one of those features is the length of the
8 warranty, isn't it?

9 A. Yes, that's right.

10 Q. And it encourages customers to choose water
11 heaters with as long of a warranty as possible; is that
12 right?

13 A. Yes, it does. I believe it recommends 12 years
14 for a storage tank-style type water heater.

15 Q. And also says that warranties may run anywhere
16 from 3 to 12 years; is that correct?

17 A. That's right.

18 Q. And doesn't it also advise customers that if
19 they have a 12-year warranty on a water heater and
20 they've had their water heater for 15 years, it might be
21 time to get a new one?

22 A. Yes, I believe it says that.

23 Q. So are you aware of -- well, you're aware,
24 obviously, of the leases that PSE is offering for water
25 heaters and their replacement of the water heater during

CARSON / KIMBALL

1 the course of the lease; correct?

2 A. Yes. Are you referring to -- I know that it's
3 covered in a couple of portions of the near 20-page
4 tariff, so is there a particular provision you wanted me
5 to look to?

6 **Q. I think it's in Schedule 75-Q, refers to**
7 **equipment replacement. And according to this tariff**
8 **schedule, PSE will replace the equipment if it fails at**
9 **any time during the lease term; correct?**

10 A. Subject to various qualifications there,
11 including the earthquakes, flooding, other reasons. But
12 yes. And my recollection was that the original tariff
13 did have a warranty period associated with it of 6 years
14 for residential water heaters, the initial tariff that
15 the Company filed in September, I believe.

16 **Q. Right.**

17 A. And so I think when the revision was filed in
18 February this is one of the changes. And so that is
19 something that is a little bit different with the
20 revised tariff.

21 One reason that this occurred to me was that I
22 noticed in looking at the Cocker Fennessy Survey,
23 there's actually a reference to the warranty period in
24 the survey that was conducted, and it was stated that
25 for water heaters, I believe it was 6 years. And so I'm

CARSON / KIMBALL

1 not sure how the survey respondents were to interpret
2 that.

3 **Q. But this is actually more than 6 years, right,**
4 **because the customers will have the benefit of**
5 **replacement of the equipment if it malfunctions and no**
6 **longer works or repair for the full 15-year lease term;**
7 **correct?**

8 A. They would have a replacement and they would
9 continue to pay the lease rate for that 15-year period,
10 that's right. And then at the end of the 15 years, if
11 it was replaced, for example, if the water heater was
12 replaced at year 12 with a brand-new water heater, the
13 customer would continue to pay, my understanding is, the
14 remaining 3 years of that term; and then at the
15 conclusion of that 15-year term, they would then have a
16 choice of entering into a new lease with PSE for a new
17 water heater or they could terminate the lease and the
18 water heater could be picked up by PSE.

19 And then I think that 3-year water heater, if
20 the customer chose that option, it would be recycled or
21 salvaged, is my understanding of what -- I'm not sure if
22 that was Mr. Englert or Mr. McCulloch who testified to
23 that.

24 **Q. You also compare in your testimony a couple of**
25 **different water heaters to PSE's lease option; is that**

CARSON / KIMBALL

1 correct?

2 A. Yes. Are you in a particular place in my
3 testimony?

4 **Q. Page 14 of your testimony and then also MMK-6.**

5 A. Would you like me to go there or Page 14?

6 **Q. Why don't you go to MMK-6.**

7 A. Okay.

8 **Q. So in your testimony you claim that several**
9 **water heaters have the same specifications as the water**
10 **heaters that PSE is offering in its lease; right?**

11 A. That's right. In my example I focused on the
12 standard tank-style water heater of, I think it's less
13 than 55 gallons and .62 energy factor.

14 **Q. And if we look at MMK-6, if we look at the last**
15 **few pages, you compare two specific examples of water**
16 **heaters that have the same specifications?**

17 A. That's right.

18 **Q. And on the very last page is the less expensive**
19 **one, and this is the Sure Comfort water heater?**

20 A. Yes.

21 **Q. And what is the warranty that's offered with**
22 **that water heater?**

23 A. It's a 3-year warranty.

24 **Q. It's a 3-year limited tank warranty; right?**

25 A. That's right.

CARSON / KIMBALL

1 **Q. And then it's a 1-year limited parts warranty;**
2 **correct?**

3 A. That's right.

4 **Q. And then you --**

5 A. And I should say that the warranty period is one
6 of the inputs in the pricing model, and so it is
7 relevant for the price, because if the water heater
8 fails outside of the term of the warranty, then PSE
9 would be responsible for the cost associated with
10 procuring a replacement and installing a replacement.
11 But if the water heater fails within that term of the
12 warranty, then presumably PSE could procure a
13 replacement at no cost. There would still be some
14 installation cost.

15 So it's a relevant input to the pricing model.

16 **Q. Thank you.**

17 A. And helps determine the failure rate.

18 **Q. Thank you. And then if we look on Page 10 of**
19 **MMK-6, this is the more expensive water heater version**
20 **that you compared to PSE's leased water heater; correct?**

21 A. Yes.

22 **Q. And this one has a longer warranty; correct?**

23 A. Yes, it's a 12-year.

24 **Q. But it still wouldn't be a 15-year replacement**
25 **guarantee like PSE offers; correct?**

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1 A. That's right. But I believe one of the
2 recommendations in the Consumer Reports guide is that
3 the 12-year -- generally speaking, a water heater with a
4 12-year warranty is going to have some different
5 features and specifications that will help ensure that
6 the water heater is more likely to last longer.

7 And so to that end, this is why we do believe
8 it's relevant for consumers. We don't know specifically
9 what specific features the water heaters themselves will
10 have that PSE plans to lease.

11 **Q. And going back to that warranty, the 12-year**
12 **warranty, that also is a limited warranty, right, for**
13 **tank and parts?**

14 A. That's what it says there, yes.

15 **Q. And in terms of in-home labor, how long does it**
16 **cover in-home labor?**

17 A. It says 3 years.

18 **Q. Thank you. Could you please turn to Table 5 of**
19 **your testimony, and I believe that's on Page 49. Are**
20 **you there?**

21 A. Yes, I am.

22 **Q. So as I understand it, in this table you purport**
23 **to compare various -- financing options of various water**
24 **heaters to PSE's lease service.**

25 **Is that a fair summary of this table of what**

CARSON / KIMBALL

1 you're trying to do here?

2 A. Yes. I was showing the financing costs from the
3 customer's perspective. I think that the financing
4 costs --

5 Q. If you could just wait until I ask the question,
6 that will probably be a little easier, thank you.

7 A. Okay.

8 Q. So on this table in the left-hand corner, first
9 box, it says Credit Union Loan, 6-year WH. What does
10 that mean?

11 A. Six-year water heater.

12 Q. What's a 6-year water heater?

13 A. With a warranty of about six years. I believe I
14 said in my testimony that a customer would pay a little
15 bit more for a water heater that had a 12-year warranty.

16 Q. Okay. And then if we move over into the third
17 column that's headed Interest Rate, there are two
18 different numbers listed for Credit Union Loan 6-year
19 water heater; correct?

20 A. That's right.

21 Q. One of those is 4.5 percent interest; right?

22 A. Uh-huh.

23 Q. And the other is 8 percent interest?

24 A. That's correct.

25 Q. And so is that intended to show there's a range

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1 of interest rates that the credit union may charge going
2 up to 8 percent or higher?

3 A. Yes. I gave an example of the financing offered
4 by the Puget Sound Cooperative Credit Union, and I
5 believe I also talked about Craft 3. But here this is
6 referencing the range that I found.

7 **Q. And the interest rates can be affected by**
8 **several factors; right? Credit score; that might affect**
9 **what interest rate a customer gets, a consumer gets?**

10 A. It may affect -- are you asking for something in
11 particular?

12 **Q. Well, there's a range of interest rates**
13 **available. I guess we'll just leave it at that.**

14 A. Sure, okay.

15 **Q. Okay. In the box below, Credit Union Loan,**
16 **6-year WH, it says PSE Lease, and it shows a finance**
17 **amount of \$1,000. And then if I move over into the**
18 **column that says Interest Rate, you show a 22.1 interest**
19 **rate.**

20 **Now, PSE hasn't proposed -- PSE doesn't charge**
21 **22.1 percent interest rate, does it? In fact, it**
22 **charges -- it applies its weighted average cost to**
23 **capital?**

24 A. I think as I explain in my testimony on Page 48,
25 Lines 11 and 12, that my table is illustrative, and so

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1 it is intended to illustrate from a customer's
2 perspective what the effective interest rate is for the
3 customer. And if you assume capital costs of \$1,000 for
4 a hot water heater with a 6-year warranty, the effective
5 interest rate from the PSE lease is 22.1 percent. And
6 that includes the financing costs and it includes the
7 maintenance and repair provision.

8 So in effect, that does represent what I also
9 call the premium of what the customer is paying for the
10 lease service.

11 **Q. But it's not an interest rate, is it?**

12 A. I say it's illustrative.

13 **Q. Is it your testimony that consumers ascribe no**
14 **value to a 15-year replacement warranty?**

15 A. Well, I think there are different ways to
16 consider the potential value. What I've testified in my
17 testimony is that I believe these prices are excessive
18 for the -- I believe that they're excessive prices.

19 **Q. Then let's just look at the rest of your table**
20 **below the PSE Lease in the middle, and then you list a**
21 **Credit Union Loan, 12-year WH.**

22 So do I understand this correctly, then, that
23 this is a 12-year warranty on a water heater that's
24 financed through a credit union?

25 A. Yes, that's right.

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1 Q. And again, it shows interest rates of ranging
2 between 4.5 and 8 percent?

3 A. Yes, that's correct.

4 Q. And here you're showing -- below you're showing
5 the PSE lease with higher capital costs, which you call
6 financed amount; is that right?

7 A. Yes.

8 Q. And this you claim under Interest Rate is a
9 13.15 percent interest rate?

10 A. Yes, 13.15 percent if you assume capital costs
11 of \$1,500.

12 Q. And again, that's a premium; that's how you view
13 it, as a premium, not PSE's weighted average cost of
14 capital?

15 A. I view it as an illustrative effective interest
16 rate that consumers are paying for the financing of the
17 equipment and the other components of the lease.

18 Q. Other components like the 15-year replacement if
19 the water heater gives out during the lease term; right?
20 That's included?

21 A. That's correct. But I also -- I do explain, I
22 do have an example in my testimony that in the event --
23 if a consumer purchases a water heater and it fails and
24 it's not within the term of the warranty, they could
25 still come out financially ahead by replacing that water

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1 heater themselves up to three times, actually.

2 **Q. And just to clarify, on this table where you**
3 **have interest charges, the column Interest Charges,**
4 **those aren't really interest charges either; right?**
5 **That's the difference between the capital cost and what**
6 **you call the premium or the --**

7 A. For the PSE lease option.

8 **Q. The PSE lease option.**

9 A. That's correct. They're effective -- they're
10 reflective of the financing costs from the consumer's
11 perspective for those given the assumed capital costs of
12 the lease product.

13 **Q. Including the repair, the in-home repair as part**
14 **of that; right?**

15 A. Yes, I believe we did discuss the repair
16 provisions and the qualifications thereto.

17 **Q. And the in-home maintenance is included?**

18 A. Yes.

19 **Q. And the replacement is included?**

20 A. The maintenance and the repair are, but they are
21 subject to the various provisions of the tariff.

22 MS. CARSON: Thank you. I have no further
23 questions.

24 JUDGE KOPTA: Questions from the bench?

25 COMMISSIONER JONES: Just a couple.

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1 Could you turn to Page 30 of your testimony.
2 You heard my exchange with Mr. Cebulko, did you not?

3 THE WITNESS: Yes, I did.

4 COMMISSIONER JONES: Were you in the room?
5 So on Lines 16 through 20, you talk about that PSE has
6 not performed any traditional cost effectiveness test.

7 So would you agree with Mr. Cebulko that it
8 would be appropriate, if approved, that the Commission
9 apply a TRC test?

10 THE WITNESS: Yes, I believe it is
11 appropriate. I agree with Mr. Cebulko that it's
12 appropriate to consider the cost and the associated
13 benefits of the proposed program. And I explain in my
14 testimony, I do have several concerns with Dr. Faruqui's
15 Benefits Model and particularly some of the inputs that
16 Mr. Cebulko referenced.

17 COMMISSIONER JONES: I was going to ask you
18 about that. But before we get to that, you heard my
19 exchange, I think with Mr. Cebulko, on when you received
20 Dr. Faruqui's model. Did you receive it on or about
21 March 8th and did you receive the full model?

22 THE WITNESS: I know that the model was not
23 filed by PSE as part of the work papers of Dr. Faruqui's
24 testimony; it was provided in response to a Data Request
25 from Public Counsel. I believe the Data Request

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1 response was due on March 25th, so I believe that is
2 when we received it. I did not go back and check my
3 calendar so I did participate in a webinar, but I'm not
4 certain of the date.

5 COMMISSIONER JONES: Turn to Page 32 of your
6 testimony, Lines 1, 2 and 3, Ms. Kimball.

7 THE WITNESS: Yes.

8 COMMISSIONER JONES: This is not
9 confidential, Counsel, I don't think, Lines 1 through 3;
10 right?

11 MS. CARSON: That's correct.

12 COMMISSIONER JONES: So do you stand by the
13 statement that the conservation savings model was not
14 shared with CRAG, of which you are a member; right?

15 THE WITNESS: That's right, it was not
16 shared with the CRAG. And I think as Mr. Cebulko has
17 pointed out, there are quite a few differences between
18 some of the assumptions in the model and the
19 Commission's standard practice.

20 COMMISSIONER JONES: Please elaborate on
21 some of those now. I think you heard my questions with
22 Mr. Cebulko of avoided carbon emissions. He talks about
23 a lot of the societal benefits.

24 THE WITNESS: That's true. All of the
25 benefits derived from the proposed conservation savings

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1 associated with the equipment, but the manner in which
2 many of those savings are calculated are quite different
3 from the Commission's standard practice and our standard
4 practice in the Northwest.

5 Just one example of that is that there are
6 savings assumed for a .62 energy factor residential
7 water heater. That's a tank-style water heater; it is
8 essentially code. If it's a 40-gallon water heater
9 tank, that is what the code requires now.

10 And PSE has not offered a tank-style
11 residential program for several years, particularly for
12 .62 energy factor, and yet there are conservation
13 savings in Dr. Faruqui's model associated with that type
14 of equipment.

15 COMMISSIONER JONES: Ms. Kimball, if I can
16 interrupt.

17 THE WITNESS: Sure.

18 COMMISSIONER JONES: When you say "PSE does
19 not currently offer," could you be more specific? Do
20 you mean they don't currently offer it under Schedule
21 120 under their rebate program?

22 THE WITNESS: In their Schedule 200 series
23 conservation program. Thank you, I should have
24 clarified that, yes. Doesn't currently offer that as a
25 energy efficiency program.

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1 And in my testimony I explain that a
2 significant number of the estimated water heaters or
3 estimated equipment that the company is planning to
4 lease is in fact water heaters of the tank-style
5 variety.

6 And I won't say the exact number, but in
7 Dr. Faruqui's Exhibit AF-5HC, so that's -- yes, in
8 Dr. Faruqui's AF-5HC, at Page 138 of that exhibit -- and
9 that is highly confidential so I won't say the exact
10 number, but --

11 COMMISSIONER JONES: Hang on just a second,
12 if you would. I think the Commissioners are pulling up
13 their books here. And this is Dr. Faruqui's benefits
14 model; right?

15 THE WITNESS: That's correct, it was
16 attached as rebuttal testimony. And in Column 3 of that
17 table, which I think I can at least state the title of
18 that column, I won't divulge a number.

19 MS. CARSON: I think that's correct. I need
20 to get there.

21 THE WITNESS: There is a line C of that,
22 Page 138.

23 COMMISSIONER JONES: 138, okay, there's a C
24 there.

25 THE WITNESS: So in Row C is gas

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1 residential -- excuse me, it's Row B, gas residential
2 water heater with an energy factor of at least .62. And
3 then there's a total premise count, which is reflective
4 of -- that's not shaded so I believe I can state that.
5 It's 1.3 million. That's all of PSE's residential
6 customers. That's gas, electric, and combined.

7 And then in Column 3, the share of the
8 program in the product, so the second number you see in
9 that row, I won't say what it is, but that is reflective
10 of the portion of residential water heaters that they
11 anticipate to be .62 energy factor.

12 And so what concerns me, just an underlying
13 concern with this program, is that we could be creating
14 essentially very substantial lost opportunity, what we
15 say in the energy efficiency world. Because if we're
16 installing tank-style gas and electric water heaters,
17 we're not able to then install more efficient heat pump
18 water heaters, for example.

19 COMMISSIONER JONES: And again, for
20 reference purposes, the Energy Star water heaters for
21 this size would be .67; correct?

22 THE WITNESS: They would be .67. Generally
23 speaking for that size, PSE still does not have an
24 energy efficiency program for those water heaters for
25 their gas customers, because I believe it was in 2010,

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1 there was an evaluation conducted that found the market
2 has essentially been transformed, and where possible,
3 people were already purchasing that.

4 COMMISSIONER JONES: Isn't that what NEEA is
5 supposed to do, Ms. Kimball, is transform the market?

6 THE WITNESS: That's right.

7 COMMISSIONER JONES: Okay. Thank you for
8 that. Just a couple more.

9 Could you turn to Page 41 of your testimony,
10 please. First of all, why do you spend so much time in
11 your testimony on Pages 38 through 41, basically, on the
12 Consumer Protection Act issues and RCW 63.10? Are you
13 implicitly making the argument that this should be an
14 unregulated activity subject to the marketplace rather
15 than a regulated service?

16 THE WITNESS: I believe I testified that we
17 would be addressing that legal issue in our brief. But
18 I do believe there are very substantial consumer
19 protection issues associated with this filing, and so
20 that's what I was endeavoring to explain there.

21 The lease transaction is very complicated.
22 I think PSE has, in their rebuttal testimony in
23 particular, stated a view that it's simple and elegant
24 and turnkey; but in my view, it's a highly complicated
25 transaction. And leasing transactions are fairly

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1 complicated; that's why we have state statutes and
2 federal statutes that require things such as the
3 disclosure of the total payment of the lease over the
4 term of the lease, which is that key information that I
5 believe was missing from the Cocker Fennessy Survey that
6 you discussed.

7 COMMISSIONER JONES: On Page 40, the first
8 bullet, the CPA, Consumer Protection Act, requires a
9 clear statement of the total amount to be paid at the
10 consummation of the lease.

11 I think that's in Schedule 75, is it not?

12 THE WITNESS: This is actually referencing
13 not the Consumer Protection Act but the leasing, the
14 state leasing statute which is RCW 63.10. So that's
15 what I was referring to.

16 COMMISSIONER JONES: Okay. But my question
17 is, isn't this included in Schedule 75? I forget which
18 page it was, but I think the Company has said that they
19 will include the total amount.

20 THE WITNESS: When they revised their
21 tariff, they did include that as part of the lease
22 agreement. It's not fully clear when the customer would
23 be specifically in receipt of that information, if it
24 would be when they get all of that paperwork.

25 COMMISSIONER JONES: My last question is on

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1 the Commission's Interpretive and Policy Statement which
2 you reference on Page 41, Lines 10 and 11.

3 I think you heard my exchange with
4 Ms. Norton yesterday, did you not? Were you in the
5 room?

6 THE WITNESS: Yes.

7 COMMISSIONER JONES: So I asked some
8 questions about how relevant the Interpretive and Policy
9 Statement is to this particular matter, because that was
10 specifically focused, in my view, on net energy metering
11 and third party, solar, distributed generation, was it
12 not?

13 THE WITNESS: Yes, it was.

14 COMMISSIONER JONES: So what sort of linkage
15 do we have here? You seem to be saying it's kind of
16 indirectly linked; it provides a framework of issues to
17 examine for consumer protection. But this leasing
18 activity is not customer generation, is it?

19 THE WITNESS: Well, the Company has stated
20 that if this is approved, they would be interested in
21 expanding to include solar. I think the Interpretive
22 and Policy Statement does discuss the leasing concept
23 and that structure, and so that was also part of the
24 reason why I referenced it. And it's just another area
25 where the Commission has opined on the need for consumer

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1 protections.

2 COMMISSIONER JONES: So it's more from the
3 consumer protection angle on leasing agreements or power
4 purchase agreements that you would call that to our
5 attention?

6 THE WITNESS: Yes.

7 COMMISSIONER JONES: Has the Company filed
8 anything that you have seen related to solar, batteries,
9 or beyond-the-meter applications related to that
10 Interpretive and Policy Statement? Have you seen
11 anything?

12 THE WITNESS: No, I have not.

13 COMMISSIONER JONES: Thank you; that's all I
14 have.

15 JUDGE KOPTA: Mr. Chairman?

16 CHAIRMAN DANNER: Ms. Kimball, is it your
17 position that the Consumer Protection Act is preferable
18 to the Utilities Commissions' authorities and consumer
19 protection?

20 THE WITNESS: I don't believe I testified to
21 that. I think that my testimony discussed the leasing,
22 the state leasing statute.

23 I guess I'm wondering if you're asking me if
24 it's preferable that this be offered as an unregulated
25 service?

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1 CHAIRMAN DANNER: Well, my question is what
2 it was with regard to -- and we'll just use this -- with
3 regard to leases with appliances. What's the better
4 regulatory scheme for consumer protection?

5 THE WITNESS: Well, I think if PSE -- since
6 PSE is pursuing offering this service as a tariff rate,
7 certainly they would be exempt from the Consumer
8 Protection Act, and so this discussion that we're having
9 has largely been with that assumption.

10 And then I think in briefing we'll be
11 delving into if it's -- whether or not it is
12 appropriately a regulated or unregulated service.

13 CHAIRMAN DANNER: Right. But any tariff
14 service, any regulated service that the Commission
15 oversees, is exempt from the Consumer Protection Act,
16 and yet there are consumer protection standards or
17 authorities that the Commission implements.

18 I'm trying to figure out which provides more
19 consumer protection. Especially since you reference on
20 Page 42 that the House Bill 1927 which was for third
21 party solar, and third party solar would be if the
22 Commission were to assume consumer protection over that
23 it would be under our authority, and if we didn't assert
24 it it would be under the Consumer Protection Act. So
25 I'm trying to figure out what's the better scheme.

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1 THE WITNESS: Well, obviously I'm a consumer
2 advocate, so I am an advocate for very robust consumer
3 protections.

4 CHAIRMAN DANNER: As am I.

5 THE WITNESS: And I think one of the complex
6 features of this filing is that there is potentially a
7 hybrid that comes into play, because PSE certainly is
8 subject to the Commission's jurisdiction.

9 Some of the service providers that would be
10 conducting some of the work associated with this
11 program, as service providers they would be subject to
12 the Consumer Protection Act. Whether the activity that
13 they're conducting on behalf of PSE, I think that would
14 be a legal issue, I guess, that would be whether or not
15 they are subject to the Consumer Protection Act or the
16 Commission's jurisdiction.

17 I've maybe muddied the waters a little bit.

18 CHAIRMAN DANNER: So in other words, with
19 regard to which regulatory scheme would be preferable or
20 which consumer protection scheme would be preferable, I
21 hear you as saying -- I don't know what I hear you
22 saying.

23 THE WITNESS: Well, I think they're both
24 very -- they're both very important. And I think there
25 are quite a few legal issues and legal complexities

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1 associated with this filing and that this is one of
2 those issues.

3 CHAIRMAN DANNER: So the legal issues is
4 whichever it is, it should be across the board? I'm
5 sorry, I didn't mean to put words in your mouth. I'm
6 trying to figure out what the words that you're saying.

7 THE WITNESS: Right. Well, I think if PSE
8 were offering this service as an unregulated activity,
9 then that activity would be governed by the Consumer
10 Protection Act. And if the tariff is approved by the
11 Commission then the consumer protections for PSE, my
12 understanding is, would be subject to the Commission's
13 jurisdiction.

14 CHAIRMAN DANNER: And so are there consumer
15 protections that are falling through the cracks either
16 way?

17 THE WITNESS: That could be something that
18 would be considered. I'm aware in the Interpretive and
19 Policy Statement does contemplate concurrent
20 jurisdiction with the Attorney General's Consumer
21 Protection Division and the Commission. So certainly
22 that could be considered, a model such as that.

23 CHAIRMAN DANNER: Thank you.

24 COMMISSIONER JONES: Just one follow-up
25 here. The more we dig into this the more interesting it

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1 becomes.

2 Under the hybrid model that you just --
3 following up on Commissioner Danner's question, the
4 legal standard in the CPA is, quote, unfair and
5 deceptive business practices; right?

6 THE WITNESS: Yes.

7 COMMISSIONER JONES: And maybe you'll cover
8 this in brief, but since you're on the stand I'll ask
9 you now.

10 So let's just hypothetically assume that the
11 service partner is -- whether it be somebody like
12 Mr. Wigen today or a subcontractor to him or a hardware
13 store who regulated in the market has been found to be
14 engaging in unfair and deceptive business practices yet
15 it is a service partner of PSE under the Lease Solutions
16 program.

17 So what kind of quandary does that present
18 to the Commission? Because we regulate PSE under "just
19 and reasonable" and we have a lot of WACs like consumer
20 protection, but if the Attorney General were to pursue a
21 service provider, what would happen?

22 THE WITNESS: I think that's an excellent
23 question and I think that's a legal issue as to which --
24 essentially which law would govern whether it is the
25 Consumer Protection Act or it is --

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1 COMMISSIONER JONES: Okay. Ms. Gafken, I
2 hope you will, because you're part of the Attorney
3 General's office, I hope you cover this on brief.

4 But I'm asking you as a practitioner, you've
5 been involved in this business for at least two decades
6 and I've seen you in many meetings. But how would this
7 work in practice, I guess, is what I'm trying to probe.
8 Forget the legal issues for the time being.

9 THE WITNESS: Sure.

10 COMMISSIONER JONES: Let's say it were a
11 heat pump and it was installed improperly or it didn't
12 have the energy factor rating or it violated the
13 warranty. I mean, who should enforce, the Commission or
14 Consumer Affairs staff or the Attorney General's Staff?

15 THE WITNESS: I think there are a lot of
16 complexities associated with this, and that is certainly
17 one of them. I think a concern that I have from the
18 consumer's perspective is, if a customer right now, a
19 PSE customer is interested in a new furnace, for
20 example, and calls PSE's energy advisors, those energy
21 advisors can provide them with advice, can provide them
22 with a referral for a contractor.

23 If PSE is now also offering as a lease
24 service, the Company certainly would have a financial
25 incentive to try to steer those customers to that

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1 leasing service because of financially what that would
2 accrue to the Company. And so that's just another
3 example of one of the complexities here with this
4 filing.

5 COMMISSIONER JONES: Okay, thank you.

6 JUDGE KOPTA: Ms. Gafken, any redirect?

7 MS. GAFKEN: I just have a tiny bit of
8 redirect.

9
10 REDIRECT EXAMINATION

11 BY MS. GAFKEN:

12 Q. Ms. Kimball, you were asked some questions about
13 your Table 5. Do you recall those questions?

14 A. Yes.

15 Q. That's on Page 49. You were asked in particular
16 about the thing that you called the interest rate.

17 Could you describe briefly how you calculated
18 the 22 percent number and the 13 percent number?

19 A. Yes. The 22 percent effective interest rate was
20 calculated, as I explained I think in the bottom of that
21 table, using the loan calculator from the Puget Sound
22 Cooperative Credit Union.

23 Q. Can you give us an idea of how that was
24 calculated and what you did to calculate it?

25 A. Yes. So the monthly payment amount for the PSE

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1 lease is \$19.13 for a standard water heater with a .62
2 energy factor. That's the lease rate. That's what's
3 shown in that first asterisk. And so at that monthly
4 payment amount, assuming a loan amount of \$1,000 or a
5 capital cost of \$1,000, if you will, results in the 22
6 percent interest rate.

7 **Q. You've also described the interest rate as the**
8 **premium. Would you explain what you mean by that and**
9 **what's included in the premium?**

10 A. My Exhibit MMK-4HC shows what I've calculated or
11 referred to as the premium for each of the different
12 types of lease equipment. And for the standard
13 tank-style water heater, the premium, I can actually
14 reference the specific amount, I won't say the dollar
15 amount, but the ratio that's shown there in that first
16 line was also in Mr. McCulloch's testimony. So I can
17 say that's three times the capital costs, the assumed
18 capital costs.

19 And so what that premium is, which is the amount
20 in Column D of this table, shows the difference, the
21 financial amount that lease customers would pay. So
22 over the total life of the lease, a customer for a
23 residential standard vent tank-style water heater would
24 pay \$3,443. That doesn't include any of the taxes, the
25 sales taxes that would accrue each month for the leased

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1 customer.

2 So the premium amount is the amount shown in
3 Column D. And that reflects essentially, if you will,
4 the added cost above the capital cost that customers are
5 paying for the financing and the various other aspects
6 of the lease service.

7 **Q. And is that also what you were trying to show by**
8 **calculating the interest rate that you show in Table 5,**
9 **just another way to look at that cost to the consumer?**

10 A. It's another way to look at the cost to the
11 consumer. So from a consumer's perspective, if it's a
12 standard water heater with a .62 energy factor, the
13 effective interest rate, if you will, is 22 percent
14 based on the assumed capital cost of about \$1,000.

15 **Q. But your point there wasn't that that's the**
16 **financing cost, but it's the cost of all of the alleged**
17 **benefits of this leasing program?**

18 A. That's right. It includes everything.

19 And I would mention, too, that in some of the
20 early customer surveys that PSE conducted with
21 customers, they did provide some examples of what
22 maintenance costs might be, and for a water heater I
23 believe it was \$200 was the example. So if a customer
24 wanted to pay for two maintenance visits for a water
25 heater, that might cost them \$200 per visit or \$400 over

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1 the term of the lease, or over that 15-year period, I
2 should say, not term.

3 MS. GAFKEN: That's all I have; thank you.

4 JUDGE KOPTA: Thank you, Ms. Gafken. And
5 thank you, Ms. Kimball. I do appreciate your testimony;
6 you are excused.

7 I believe that concludes Public Counsel's
8 witnesses?

9 MS. GAFKEN: That's correct.

10 JUDGE KOPTA: Mr. Goltz?

11 MR. GOLTZ: Our first witness is Ms. Julie
12 Muller-Neff, but no one has reserved cross.

13 MS. CARSON: And just to clarify, we do not
14 have cross for any of Mr. Goltz's witnesses.

15 JUDGE KOPTA: All right. Well, that will
16 make it simple.

17 Although we do have the issue of
18 Mr. Fluetsch, and I believe there's a motion that PSE
19 would like to make with respect to a portion of his
20 direct testimony which has yet to be admitted into the
21 record.

22 MR. STEELE: Your Honor, at the prehearing
23 conference in January, both PSE and Staff opposed to the
24 intervention of SMACNA and WSHVACCA in this case on the
25 grounds that it's beyond the jurisdiction of the

1 Commission to consider the impact of regulated utilities
2 activities on an unregulated competitor. So PSE and
3 Staff both objected to their intervention on those
4 grounds.

5 SMACNA and WSHVACCA represented to the
6 Commission that they had important market information
7 that they believed was relevant to the proceedings in
8 this case, and Your Honor granted their intervention but
9 limited it.

10 And the limitation was stated in the
11 Prehearing Conference Order, which says that (as read),
12 The Commission will consider the market for HVAC
13 equipment to the extent necessary to determine the
14 effect of the tariffs on PSE's customers, not the impact
15 on other market participants. The Commission is
16 allowing SMACNA-WW and WSHVACCA to contribute to that
17 inquiry, and the scope of those associations'
18 intervention is limited accordingly.

19 In Mr. Fluetsch's testimony, he has
20 extensive discussion of what he perceives as harm to the
21 market as competitors. And particularly much of the
22 discussion that we moved to strike centers on actually
23 PSE's past leasing services and past interactions with
24 contractors and in other market participants.

25 We believe that these are beyond the scope

1 of this case. Not only do they touch on a different
2 service at a different time, but they touch on
3 competition in the marketplace, which is beyond the
4 scope of the Prehearing Conference Order and it's also
5 beyond the Commission's decision in Cole where the
6 Supreme Court held that it's beyond the jurisdiction of
7 the Commission to consider the impact to competitors in
8 the marketplace.

9 On those grounds, we move to strike those
10 portions of the testimony and believe that in doing so
11 it will bring those other portions of Mr. Fluetsch's
12 testimony within the compliance of the Prehearing
13 Conference Order - --

14 JUDGE KOPTA: Mr. Goltz?

15 MR. GOLTZ: Mr. Fluetsch has approximately
16 40 years of experience in the competitive market of HVAC
17 hot water heaters and appliances. I dare say he's got
18 more experience than almost everyone else in the room
19 combined.

20 PSE has moved to strike two portions of his
21 testimony. The first one is starting on Page 2, Line 8,
22 and goes through Page 4, Line 21. That involves a
23 summary of two and a half pages or so of the past and
24 Washington Natural Gas involvement in this market.

25 That past wasn't raised by Mr. Fluetsch;

1 that past and history was raised by Puget Sound Energy
2 by various witnesses. They looked to the past as a
3 model for the future; Back to the Future sort of theme,
4 I guess.

5 So this is relevant to the market. And what
6 we're putting this in for is to complete a picture. If
7 you're going to paint a picture about how the leasing
8 programs have worked and can work as an example of an
9 appropriate marketplace entry by Puget, then there
10 should be a complete picture. So that's what we offer
11 Mr. Fluetsch's testimony for, as, again, part of the
12 advocacy for a fair and competitive market.

13 The second portion that they seek to exclude
14 is a much briefer portion, and it's on Page 18, Line 19,
15 through Page 19, Line 6. So the answer that they're
16 seeking to exclude is about nine lines of a response to
17 a question which, If PSE is to allow to enter this
18 market, what competitive advantages would they have?

19 I suppose if I had phrased the question, If
20 PSE is allowed to enter this market, what impact will it
21 have on the market? In that case we wouldn't have used
22 the word "competitive;" we would said what's the impact
23 on the market, which is squarely within the order Your
24 Honor gave authorizing intervention by SMACNA of Western
25 Washington.

1 The things that he mentions on these pages
2 are things that are all in the record. He's just simply
3 summarizing and coming to a conclusion that, yes, these
4 various factors that are in the record already are going
5 to have an impact on the market. So I think it's well
6 within the market impact permission that this Commission
7 gave us in entering this case.

8 JUDGE KOPTA: Mr. Steele?

9 MR. STEELE: -- the only point I'll add is,
10 PSE has simply said that its leasing program -- well,
11 it's said that it's had a leasing program since the
12 early 1960s. Mr. Fluetsch's testimony goes on to
13 discuss what he believes was the impact on competition.

14 And I think most importantly, none of his
15 discussion centers on actual harm to customers, which
16 was the scope of the Prehearing Conference Order, which
17 says to determine the effect of the tariffs on PSE's
18 customers, not competitors. So Mr. Fluetsch's testimony
19 of WNG's history and his personal account of the history
20 focuses on competition, not harm to customers.

21 And I think Mr. Goltz, perhaps he wishes his
22 question was phrased differently on Page 18, but it
23 wasn't; it was on what competitive advantages would PSE
24 have. And I can't change his question. And
25 Mr. Fluetsch answered accordingly, so.

1 JUDGE KOPTA: All right. I obviously
2 remember that order since I wrote it. I also remember
3 the discussion that we had during the prehearing
4 conference.

5 No one asked for a review of that order and
6 so that order governs this case. And I'm afraid I agree
7 with the Company that the testimony that they've
8 highlighted goes to what the impact is on competitors.

9 The Commission does not regulate the market
10 for water heaters and HVAC, so I grant the motion and
11 strike the portions of Mr. Fluetsch's testimony
12 beginning on Page 2, Line 8 through Page 4, Line 21; and
13 again on Page 18, Line 19 through Page 19, Line 6.

14 And with those revisions to the testimony, I
15 admit his testimony into the record.

16 MR. GOLTZ: So Mr. Fluetsch is available for
17 cross-examination by the Commission.

18 JUDGE KOPTA: Do you have any questions for
19 Mr. Fluetsch? No? Then he need not appear. We have
20 his testimony admitted into the record and we can go on
21 to the next witness.

22 MR. GOLTZ: Mr. John van den Heuvel.

23 JUDGE KOPTA: And I believe, Ms. Carson, you
24 said you don't have any questions for him.

25 Any questions from the bench for Mr. Van den

1 Heuvel? Okay. His testimony has been admitted and he
2 is excused.

3 That brings us to Mr. King. Your witnesses?

4 MR. KING: Thank you, Your Honor. We call
5 Steven J. Krecker. And I believe we have a similar
6 issue.

7 JUDGE KOPTA: I do. We have a similar issue
8 with his testimony. And do you have cross-examination
9 for him?

10 MS. CARSON: No, we don't.

11 JUDGE KOPTA: Okay. Then I believe we are
12 just, once again, dealing with provisions in the
13 testimony that the Company asserts is beyond the scope
14 of the intervention granted in the Prehearing Conference
15 Order.

16 And I assume that your arguments are
17 basically the same. Did you want to add anything?

18 MR. STEELE: Yeah. I mean, I think it is
19 the same. And I think for WSHVACCA, Mr. Krecker's
20 testimony beginning on Line 5 says it all: (As read)
21 The concerns with the WSHVACCA center primarily around
22 the damage to the market that could be done by PSE.

23 And he has a similar discussion about WNG's
24 history and about his perceived interaction with the
25 marketplace and his perceived damage to competition in

1 the marketplace. It's a very similar discussion as
2 Mr. Fluetsch. And for the same reasons as SMACNA, we
3 move to strike those portions of Mr. Krecker's
4 testimony.

5 JUDGE KOPTA: Mr. King?

6 MR. KING: Your Honor and Commissioners, we
7 took a slightly different approach to our question and
8 answers partly trying to stay within the role of
9 intervenors, clearly.

10 The one thing, we are testifying to damage
11 to the market; not just contractors, the market. And
12 that affects the market participants, including the
13 ratepayers of PSE, which by PSE's own calculations will
14 be some 80 percent of the appliance owners after 20
15 years will still be dependent upon the market. If the
16 market is damaged, it damages PSE ratepayers. We made
17 that point right at the start as we were summarizing our
18 testimony that, you know, entering not just the market,
19 and that's all market participants, that those
20 ratepayers who still will be depending upon the market
21 for their appliance needs.

22 In discussing the history, we're not trying
23 to raise the question of, oh, they did bad things to us
24 contractors 23 years ago. We're trying to explain the
25 poor relationship between the utility and the industry

1 now that is informed by that history. Puget Sound
2 Energy is dependent upon the industry to implement their
3 proposal.

4 We've seen in testimony that they have not
5 had much of a response rate from the industry. I
6 believe if I caught the figures that different people
7 are throwing around, we've seen 15 responses to RFQs out
8 of hundreds of contractors.

9 I think it's important for the Commission to
10 understand the history that informs this hostility,
11 because you have to make the decision not just if PSE's
12 proposal is a good policy, but also is it practicable;
13 will they be able to implement. They're not proposing
14 to go out and hire a bunch of electricians and plumbers
15 of their own and go do this work; they're depending upon
16 service partners who are not real interested in their
17 proposal, to be frank.

18 And we tried to laid out the history so you
19 could understand and you could judge will these people's
20 minds change if you approve it? Will they all of a
21 sudden embrace this? Or is there going to be a
22 lingering hostility for reasons that we've laid out that
23 is going to severely negatively impact the ability to
24 implement this proposal?

25 The other point I'd like to make is that our

1 testimony has been responded to in rebuttal by the
2 Company, and leaves sort of a weird situation if the
3 rebuttal stays in the record, but the reason for the
4 rebuttal is not there. But the main point is to try to
5 inform the Commission, there is a big problem here. And
6 we thought to put this on the record so you can assess.

7 We have not challenged anybody else's
8 testimony or exhibits because we thought it was
9 important for the Commission to have all the different
10 points of view in front of them. This is a contentious,
11 very contentious issue. And you've seen, by attendance
12 at meetings in November in the middle of a storm, it's
13 easier to get people out in the good weather this month,
14 but they traveled in November, and they care. And we
15 think that's why it's important and this remain in the
16 record.

17 JUDGE KOPTA: Anything further, Mr. Steele?

18 MR. STEELE: Well, I mean, I'll say I think
19 it's in the record that PSE has had service contractors
20 providing service to PSE's customers under its existing
21 programs since the '60s. PSE sent an RFQ and had
22 responses. Plenty of contractors have shown interest in
23 PSE's program.

24 Second of all, I think Mr. King himself just
25 admitted that the testimony from Mr. Kreckler is based on

1 competition in the marketplace. And Mr. Krecker's
2 perceived relationship between contractors and PSE, that
3 goes to the competitive relationship between the
4 parties. None of Mr. Krecker's testimony talks about
5 actual harm to customers, which is what the Prehearing
6 Conference Order required for WSHVACCA's intervention.

7 And so however Mr. King wants to tack on
8 customer harm at the end of the harm to the market, to
9 the competition, he's already violated the terms of the
10 Prehearing Conference Order by touching on harm to the
11 marketplace.

12 JUDGE KOPTA: All right, thank you.

13 Once again, I agree with the Company. I
14 think this testimony goes beyond the scope of what the
15 intervention was granted in the Prehearing Conference
16 Order which governs the proceedings that we have here
17 today.

18 Therefore, I will strike the following
19 portions of Exhibit SJK-1T: Beginning on Page 2, Lines
20 5 through 8; on Line 12, the sentence that begins at the
21 very end of that line with "The," through Line 18; on
22 Page 3 beginning on Line 8, the phrase "the history of
23 the poor relationship between PSE and its predecessors
24 and the HVAC industry"; and again on Page 3 beginning on
25 Line 16, strike everything from that point until the end

1 of Line 20 on Page 5.

2 And with those revisions, the exhibit is
3 admitted into the record.

4 MR. STEELE: The only thing I'll note, Your
5 Honor, is that any exhibits that were referenced during
6 those struck portions PSE believes should also be struck
7 as well.

8 JUDGE KOPTA: I was going to ask about that.
9 That would include pretty much all of his exhibits, I
10 believe, and correct me if I'm wrong.

11 MR. STEELE: So I believe it's
12 Mr. Fluetsch's Exhibit 3, I believe, is referenced on
13 Page 4 of his testimony. And Mr. Kreckler, I think that
14 would be his Exhibit 3 as well, and his Exhibit 4 and 5.

15 JUDGE KOPTA: I agree. Those exhibits,
16 while although they were previously admitted, are now
17 rejected.

18 MS. BROWN: Your Honor, I have a question to
19 clarify. Is the Commission also striking the
20 corresponding testimony by PSE addressing the issues
21 raised in these stricken lines?

22 JUDGE KOPTA: Well, if there is such
23 testimony, then yes. And I would expect PSE, I will
24 refer to that as Bench Request Number 2, identify all
25 portions in your prefiled testimony that address any of

1 the portions of his testimony that has been stricken so
2 that we can identify what portions should be taken out.

3 MR. STEELE: Yes, Your Honor.

4 MS. BROWN: Thank you.

5 JUDGE KOPTA: Are there any questions from
6 the bench for Mr. Kreckler? Then he is excused. His
7 testimony, as we've discussed, has been admitted with
8 the exceptions we just talked about.

9 And I believe you have one more witness,
10 Mr. King?

11 MR. KING: Mr. William Pinkey.

12 JUDGE KOPTA: I don't believe there's any
13 controversy about his testimony.

14 Do you have any questions for him?

15 MR. STEELE: No, Your Honor.

16 JUDGE KOPTA: Any questions from the bench?
17 Then Mr. Pinkey's testimony has been admitted and he is
18 excused from testifying.

19 I believe that brings us to the end of our
20 witness list. Is there anything further that we need to
21 discuss at this point?

22 We have a briefing schedule as established
23 in the Prehearing Conference Order, or actually a
24 subsequent scheduling order or notice.

25 Ms. Gafken?

1 MS. GAFKEN: I do have one thing, an update
2 on the customer comment exhibit. There are at least one
3 or two customer comments that did come in. The Consumer
4 Affairs staff has forwarded those to me so I do have an
5 exhibit to offer. What would you like me to number it
6 as?

7 JUDGE KOPTA: How about PC-1?

8 MS. GAFKEN: Okay.

9 JUDGE KOPTA: And there are two bench
10 request responses outstanding. The record will remain
11 open to receive both PC-1 and the bench request
12 responses.

13 And other than that, I believe the record is
14 closed.

15 MS. BROWN: Before we adjourn, will you be
16 distributing an updated exhibit list?

17 JUDGE KOPTA: That was my intention, yes.

18 MS. BROWN: Thank you.

19 JUDGE KOPTA: Anything further? Thank you,
20 everyone, for your participation, and we'll look forward
21 to your briefs. We're off the record.

22 (Deposition concluded at 3:27 p.m.)
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

THIS IS TO CERTIFY that I, Diane Rugh, Certified Court Reporter in and for the State of Washington, residing at Snohomish, reported the within and foregoing testimony; said testimony being taken before me as a Certified Court Reporter on the date herein set forth; that the witness was first by me duly sworn; that said examination was taken by me in shorthand and thereafter under my supervision transcribed, and that same is a full, true and correct record of the testimony of said witness, including all questions, answers and objections, if any, of counsel, to the best of my ability.

I further certify that I am not a relative, employee, attorney, counsel of any of the parties; nor am I financially interested in the outcome of the cause.

IN WITNESS WHEREOF I have set my hand this _____ day of _____, 2016.

DIANE RUGH, RPR, RMR, CRR, CCR
CCR NO. 2399