

00686

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 AIR LIQUIDE AMERICA)
CORPORATION, AIR PRODUCTS AND)
4 CHEMICALS, INC., THE BOEING) Docket No. UE-001952
COMPANY, CNC CONTAINERS,) VOLUME V
5 EQUILON ENTERPRISES, LLC,) Pages 686 to 1058
GEORGIA-PACIFIC WEST, INC.,)
6 AND TESORO NORTHWEST CO.,)

7 Complainants,)
)
8 vs.)

9 PUGET SOUND ENERGY,)
)
10 Respondent.)

-----)
11 In the Matter of)
) Docket No. UE-001959
12 Petition of Puget Sound) VOLUME V
Energy, Inc., for an Order) Pages 686 to 1058
13 Reallocating Lost Revenues)
Related to any Reduction in)
14 the Schedule 48 or G-P)
Special Contract Rates,)
15 _____)

16 -----
17 PORTIONS DESIGNATED CONFIDENTIAL
18 -----

19 A Hearing in the above matter was held on
20 January 9, 2001, at 9:00 a.m., at 1300 South Evergreen
21 Park Drive Southwest, Olympia, Washington, before
22 Administrative Law Judge DENNIS MOSS and Chairwoman
23 MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD.

24 Joan E. Kinn, CCR, RPR
25 Court Reporter

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1 The parties were present as follows:

2

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

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

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

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

24 BELLINGHAM COLD STORAGE COMPANY, by TRACI
25 GRUNDON, Attorney at Law, Davis Wright Tremaine, 1300
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97201.

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

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

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

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1 P R O C E E D I N G S
2 JUDGE MOSS: Good morning, everyone. I trust
3 everyone got some sleep last night and is well rested
4 for today's adventure. Last night, for those who were
5 not with us into the evening hours and for those of you
6 who are on the teleconference bridge line monitoring
7 this proceeding, we got into an area of testimony with
8 Mr. Schoenbeck on the stand that requires frequent
9 reference to material that has been marked confidential.
10 Last night we cleared the hearing room of
11 anyone who is not privy to such information under the
12 terms of our protective order in this proceeding. That
13 means you must have executed the appropriate certificate
14 under the protective order in order to participate in
15 this particular phase of our hearing.
16 Because we clearly can not be assured that we
17 will not have people who are not privy to this
18 information on the teleconference bridge line, we made

19 efforts to ensure that there was no such person on the
20 line last night. Due to technical difficulties, we
21 could not simply turn it off. This morning, however, we
22 have addressed our technical difficulties, and I want
23 those of you who are on the teleconference bridge line
24 to know that we are going to shut it off in just a
25 moment, and we will turn it back on when we move beyond

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1 the confidential area.

2 Mr. Berman.

3 MR. BERMAN: Your Honor, I had a few points
4 to make that I think probably we should make before we
5 shut everyone off. It would not require confidential
6 information, but it relates to how we would proceed with
7 Mr. Schoenbeck.

8 JUDGE MOSS: All right, fair enough, go
9 ahead.

10 MR. BERMAN: Your Honor, we have been trying
11 to sort through the analysis that Mr. Schoenbeck
12 performed, and in looking through his analysis, we
13 concluded that among other things, there were some items
14 that were not -- that were either not flagged in a way
15 that Mr. Schoenbeck could understand or that were
16 flagged confusingly and that that led to analysis by
17 Mr. Schoenbeck that just really doesn't reflect what's
18 in the data.

19 For instance, Mr. Schoenbeck does some
20 analysis of transactions that were reported to the
21 Mid-C, were reported to Dow Jones concerning the
22 Mid-Columbia Non-firm Index and the Mid-Columbia Firm
23 Index. And in a legend that described various counter
24 parties who were not reported to the Mid-Columbia, it
25 turns out that Puget Sound Energy neglected to mention

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1 one of the counter parties. What that means is that in
2 Mr. Schoenbeck's analysis, he assumed that some
3 transactions were reported to Dow Jones when, in fact,
4 those transactions were not reported to Dow Jones, and
5 that alters the impact of his analysis.

6 Additionally, there are certain sorts of
7 transactions that Mr. Schoenbeck has expressed concern
8 about in the reporting and in the data, and in reviewing
9 the data, we figured out what it was he was talking
10 about and what those transactions are, and I think that
11 we could explain those to Mr. Schoenbeck to his
12 satisfaction if we had a chance.

13 That raises the issue of what to do about
14 that. My proposal would be that we have Mr. Schoenbeck
15 conclude his testimony to the extent he has testimony
16 that he can present that does not relate to or that does
17 not -- that he thinks would not be impacted by these
18 sorts of errors but that we -- and that we then go on
19 and do cross-examination and do our best to complete the
20 hearing.

21 But then on an off line basis after the

22 hearing, we have Mr. Schoenbeck meet with a technical
23 person from the company. They can work through the data
24 issues. Mr. Schoenbeck can try to get comfortable with
25 the data, produce updated reports to the extent he still

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1 thinks the reports are relevant or necessary, and at
2 that point, Mr. Schoenbeck could perhaps submit those
3 new reports with some written description, and Puget
4 Sound Energy could then submit some written responses to
5 any new analysis that he has.

6 We think that once he understands the data
7 better and we have had an opportunity to do that that we
8 don't think that he will find anomalous things that he
9 has to report on. But if he does, then he should have
10 that right. But right now, the data analysis that he
11 has done really has been impacted by these errors.

12 JUDGE MOSS: All right, and to be sure that I
13 understand completely, what you're saying is that in
14 providing the data, that certain of these errors as you
15 describe them were not flagged by PSE due to the press
16 of time or what have you.

17 MR. BERMAN: Yes, Your Honor. Well, and some
18 of them, for instance in the data set that was provided
19 that we put an -- that we were asked to put an indicator
20 of whether or not a transaction had actually been
21 reported to Dow Jones for inclusion in the indexes, and
22 given that there are so many data points, this was not
23 something that could be done in a manual way, but it
24 turned out that we had flags in our computer systems
25 that allowed us to generally report the transactions

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1 that were reported to the index. But then in a
2 narrative data response, we explained certain sorts of
3 exclusions that were performed manually on any given day
4 in the reporting to exclude certain types of
5 transactions.

6 JUDGE MOSS: Recognizing that we didn't get
7 out of here until 10:00 last night, have you had an
8 opportunity to discuss this with Complainants' counsel
9 prior to now?

10 MR. BERMAN: We had a -- I had an incredibly
11 brief opportunity to discuss this with Mr. Schoenbeck,
12 and I believe that Complainants' counsel was listening
13 in to that conversation, but we did not reach any
14 agreement or conclusions about this.

15 JUDGE MOSS: All right. Let's turn to
16 Complainants' counsel at this juncture then and ask what
17 your view on this is.

18 MR. VAN CLEVE: Well, Your Honor, what I
19 didn't hear from Mr. Berman is their intent with respect
20 to Mr. Gaines, and I guess if Mr. Gaines is going to go
21 on today, that might impact my answer, or if he's going
22 to be pushed off to some later time in the week, then we
23 might preserve the ability for Mr. Schoenbeck to present
24 additional direct testimony once these various errors

25 have been corrected in the data that was provided.

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1 JUDGE MOSS: I'm a little puzzled by your
2 response in the sense of the question on the table seems
3 to be that it's your expert witness has been provided
4 with some data that is less than accurate, and the
5 question is how to proceed in the face of your witness
6 having performed his analysis on a set of data that is
7 not entirely accurate, and PSE has now discovered some
8 of the inaccuracies and is certainly willing to point
9 those out to you and your witness and so forth. Are you
10 comfortable proceeding with your witness's direct
11 examination under the circumstances?

12 MR. VAN CLEVE: Yes, with the reservation of
13 the right to present some additional testimony once the
14 new data is available.

15 JUDGE MOSS: And I think that's consistent
16 with what you were suggesting, Mr. Berman.

17 MR. BERMAN: Yes, though I was envisioning
18 that, frankly, that there be written submittals. I
19 don't know that I'm firmly committed to any course on
20 how exactly we would deal with this situation. It's
21 also not clear to me how long it would take to deal with
22 this. I understand from my conversations with
23 Mr. Schoenbeck that his data guy is sick, and so it
24 could just take a little while to actually do the -- to
25 do or redo any analyses, and it would also obviously

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1 take time to have the meetings occur where they could
2 discuss these things and work through the issues.

3 JUDGE MOSS: Okay. I think then that we
4 should just proceed and do what we can. And when we get
5 to the end and the data have been exchanged and
6 everybody has had a chance to consider them, then we can
7 see if we need to have some further process with respect
8 to it, whether it be in the form of written submissions
9 that counsel can agree, whether it be stipulated facts,
10 or whether we will have to have some additional
11 examination of Mr. Schoenbeck on the stand. We will
12 just have to make that decision as we get to it.

13 Is there anything else that a party wishes to
14 raise at this time before we go back into our
15 confidential session, which will require turning off the
16 bridge line?

17 MR. FFITCH: Two brief matters, Your Honor,
18 Simon ffitch for Public Counsel. Good morning, first of
19 all. Just a reminder that we had raised the issue of
20 the confidentiality of Mr. Lazar's exhibits yesterday
21 morning. We don't believe they are confidential, and we
22 allowed yesterday really for people to come forward and
23 tell us that we were wrong and, in fact, there needed to
24 be protection for those exhibits. I have not heard from
25 any party, and so at this point I'm just going to take

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1 the position going forward that they are, in fact,
2 non-confidential.

3 JUDGE MOSS: All right. And you did fairly
4 raise the issue, and parties have had an opportunity to
5 contact you, so I think you can take their silence as an
6 affirmation that you may proceed in that fashion.

7 MR. BERMAN: Your Honor, our silence was not
8 intended as an affirmation of that position.

9 JUDGE MOSS: All right, then let's be sure
10 that we have the appropriate contacts among counsel so
11 we can have these things clear.

12 MR. BERMAN: We will look at those exhibits
13 and get to Mr. Ffitch at the next break. There's been a
14 lot going on in the past day.

15 JUDGE MOSS: Yes, there certainly has, and I
16 think the fact that the communication has not occurred
17 is certainly understandable under the circumstances, so
18 I will allow that further opportunity.

19 Any second point, Mr. Ffitch?

20 MR. FFITCH: Yes, Your Honor, thank you. I
21 just wanted to note for the record that with regard to
22 our motion to compel, as Mr. Berman noted yesterday,
23 some materials were provided to us, we have reviewed
24 them, and we have late yesterday made a request for
25 supporting work papers for the documents that were

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1 provided to us. I haven't yet had a chance to talk to
2 Puget people this morning to find out where the response
3 is on those, but that's the status of our document
4 request at this point.

5 JUDGE MOSS: All right, well, we will take a
6 break during the morning, and that discussion perhaps
7 can follow then, and if not then, by lunch certainly.

8 So anything else that we need to discuss
9 before we go into our confidential session?

10 Apparently not, so if we could -- I don't
11 know if he's back there still. If you could cut off the
12 conference bridge line at this point.

13 Okay, we are now secure in that sense, and I
14 will reiterate that if there is anyone in the room who
15 has not signed a certificate under the protective order
16 entitling them to be privy to the confidential
17 information in this proceeding, they will have to find a
18 comfortable place to sit for a while, and we will take a
19 break, so people can have an opportunity to come back
20 in.

21 (The following testimony designated
22 confidential.)

23

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1 JUDGE MOSS: All right, then we can designate
2 this portion of the transcript as non-confidential. I
3 think what we want to do then is see if we can make some

4 arrangement to get the conference bridge line turned
5 back on, although I don't know how anyone is going to be
6 informed that they can call back in. But these are
7 practical difficulties that from moment to moment may
8 prove insurmountable. So I think a member of the
9 Commission Staff has left the room to -- perhaps a
10 member of the Commission Staff has left the room to
11 inform Mr. Singleton that we can turn the conference
12 bridge line back on.

13 CHAIRWOMAN SHOWALTER: Also, is there anybody
14 else sitting outside?

15 JUDGE MOSS: And inform anyone who is in the
16 hall.

17 MS. DAVISON: Right, all the Complainants
18 want to come back in.

19 JUDGE MOSS: Thank you, we will pause just
20 for a moment or two.

21 (Discussion off the record.)

22 JUDGE MOSS: Ms. Davison, did you have
23 something?

24 MS. DAVISON: Your Honor, I just -- I wasn't
25 sure if we were waiting for the bridge line to come back

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1 on, and if so, I did have answers to two of the records
2 requests that if this is a convenient time I'm happy to
3 hand it out. But if it's not a convenient time, I'm
4 happy to do it whenever is convenient for you.

5 CHAIRWOMAN SHOWALTER: Why don't you go
6 ahead.

7 MS. DAVISON: Okay.

8 JUDGE MOSS: So we have been handed responses
9 to Records Requisition Requests 2 and Records Request 3,
10 and for now, we will just put those to one side.

11 We are on the record.

12 CHAIRWOMAN SHOWALTER: Well, I will say that
13 this response to Records Request Number 2 was what we
14 asked for, which was the average megawatt use for
15 Anacortes, and it is stated here as 1.8. There may be
16 some other explanation, but it seems like possibly it
17 calls for yet another request, which was what was it,
18 not what is it, but what was it. And what's in my mind
19 is, was and is Anacortes eligible for Schedule 48. And
20 if they were eligible and got on it, that leads to a
21 separate question of what happens if you dip down. And
22 I don't know what the answer to that is. But if they
23 were eligible when they signed the agreement, then we've
24 got a legal issue, a separate legal issue.

25 JUDGE MOSS: And the response to that may be

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1 that it's a primary voltage or a high voltage, that you
2 need to take into account the full range of criteria by
3 which eligibility is considered, so let's do that.

4 CHAIRWOMAN SHOWALTER: I guess what we're
5 really asking for is the relevant information about
6 Anacortes that bears on the question of whether they

7 were eligible and whether they are still eligible at the
8 physical level regardless of what the legality might be
9 of dropping down or not.

10 MS. DAVISON: Yes, I understand what you're
11 asking for, and we will make this, what, an amendment to
12 Number 2 or a supplement?

13 JUDGE MOSS: Just supplement your response
14 with that information.

15 MS. DAVISON: And I guess the question I have
16 is having talked to the City of Anacortes folks, it's
17 not an incredibly easy thing for them to figure out. We
18 could make the bills available that would show the
19 actual usage, or I'm trying to figure out what would be
20 the best type of information to provide you to answer
21 that question.

22 MR. BERMAN: Your Honor, if I might suggest
23 if we could just confirm that they are served at high
24 voltage, that would answer the question since Schedule
25 48 provides that customers -- that all customers served

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1 at high voltage are eligible for Schedule 48
2 notwithstanding the amount of load at the location.

3 JUDGE MOSS: And, of course, all the Bench
4 request responses, and I'm sort of folding the records
5 requisitions into that whole category, other parties are
6 invited to respond to those questions as well. So to
7 the extent that's an appropriate thing to do, perhaps
8 PSE would offer some additional response on this subject
9 as well.

10 MR. BERMAN: Your Honor, we will attempt to
11 gather information about the voltage level at which they
12 are connected.

13 JUDGE MOSS: Thank you.

14 All right, then let's, Mr. Van Cleve, you may
15 proceed with your examination.

16

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

18 BY MR. VAN CLEVE:

19 Q. Mr. Schoenbeck, do you have a proposal for
20 establishing a rate that you believe would be superior
21 to the one suggested by Staff and Public Counsel?

22 JUDGE MOSS: And Mr. Berman has an objection.

23 MR. BERMAN: Your Honor, we object. The
24 Complainants offered a proposal in their amended
25 complaint, and Staff and Public Counsel offered an

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1 alternative proposal that we moved to strike. Now
2 apparently we're going to hear yet a new proposal being
3 offered on the witness stand today. We have been
4 severely prejudiced by the speed at which we have been
5 proceeding. We have been severely prejudiced by the
6 fact that apparently we're going to consider issues that
7 go to whether we're overearning on return on equity,
8 though no one has offered a return on equity witness.
9 We are severely prejudiced by the entire manner in which

10 this proceeding has gone forward. But to have to deal
11 with yet another proposal today violates the due process
12 rights of Puget Sound Energy.

13 I would note that apparently this proposal
14 was worked out sometime prior to now, and they could
15 have put it in writing and let us see it, but they
16 waited until this afternoon to present it orally on the
17 stand I would suggest so that we would not have an
18 opportunity to work out issues in relation to the
19 proposal. We think it's unfair and should not be
20 permitted.

21 JUDGE MOSS: Okay, thank you, Mr. Berman.

22 Well, I think, Mr. Berman, I first will
23 remark that certainly the Bench is taking every step it
24 can to ensure the protection of all parties' rights in
25 this proceeding, and we are striving mightily to do

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1 that. And I think that we will have the proposal. We
2 will hear it just as we ruled on the previous objection
3 that was stated with -- or motion to strike with respect
4 to the Staff proposal.

5 And insofar as the question of relevance is
6 concerned, as I explained in connection with that motion
7 to strike, sort of the principal issues at this stage,
8 if you will, are the existence of an emergency and the
9 minimum actions necessary if such a finding is made.
10 And so we need to have the evidence that would permit a
11 determination either way on each issue, so we will have
12 the evidence.

13 In terms of your client's rights and your
14 need to protect your client's interest, then I think as
15 we get to the end, if you feel at that point in time
16 that there is some need for an additional process to
17 ensure the protection of those rights, then I will
18 expect you to raise that at that time and tell us what
19 that is, and the Bench can consider that and what
20 further might need to be done or not under the
21 circumstances at that time. So with that, let us
22 proceed.

23 CHAIRWOMAN SHOWALTER: If we have an hour
24 lunch, it may be -- I think that Complainants should
25 inform Mr. Berman of what this proposal is so he has

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1 some minimal time to anticipate it.

2 (Discussion off the record.)

3 MR. BERMAN: Your Honor, if we're going to go
4 forward with the proposal, I would rather have
5 Mr. Schoenbeck describe the proposal before lunch rather
6 than afterwards so that I could at least hear it before
7 lunch. So without waiving my objection to the proposal,
8 I would rather hear it before than after lunch.

9 JUDGE MOSS: That is what we will do.

10 Go ahead with your questions.

11 MR. VAN CLEVE: I would just state for the
12 record, Your Honor, that we have just developed this

13 proposal. We haven't had time to put it in writing. We
14 are responding to information in real time, and we're
15 certainly not trying to withhold anything. And I think
16 you will see from Mr. Schoenbeck's answer that it's a
17 rather simple proposal that will be rather easy to
18 explain and easy to respond to.

19 BY MR. VAN CLEVE:

20 Q. So with that, I will let Mr. Schoenbeck go
21 ahead and describe it.

22 A. Sure, I will describe it, and I will also be
23 able to refer to a confidential document where it is set
24 forth what it would be. I believe in keeping with the
25 spirit of Schedule 48 service to those customers be

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1 based on Puget's incremental cost, but also be based on
2 an index, a market index. My recommendation at this
3 time is to use a gas index. Move off the Mid-Columbia
4 Index and use the SUMAS gas index on a bid week basis.

5 In other words, we would use a publication
6 such as inside FERC, Gas Market Report, the gas price
7 reported in the first publication of the month at SUMAS
8 would be the price used in a formulated straightforward
9 approach. That gas price would be multiplied times the
10 average heat rate of Puget's CT's, set and fixed at
11 12,130 btu's per kilowatt hour. To be added to that
12 would be the variable cost of \$9 per megawatt hour, in
13 my view which would be reflective of a margin. And that
14 would be the resulting energy rate component under
15 Schedule 48 and the applicable contracts.

16 For those in the room that have the
17 confidential exhibit, can I -- I don't know if I can go
18 here.

19 JUDGE MOSS: You can refer to it without
20 disclosing its contents.

21 A. Okay, Exhibit 617, page two of three, the
22 factors listed under CT cost would be an illustrative
23 implementation of that proposal. So the, not stating
24 the values, but the line labeled total variable dollars
25 per megawatt hour, if these gas prices were, in fact, to

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1 occur as the bid week prices reported in the
2 publications, that would be the energy values to be used
3 to charge Schedule 48.

4 As I said earlier, I believe it does -- it
5 reflects a market index which was the intent of 48. It
6 reflects the highest incremental cost resource Puget has
7 available to serve those customers. And in addition to
8 that, what it provides to the Schedule 48 and Special
9 Contract customers themselves is an opportunity to more
10 accurately schedule their operations for the upcoming
11 month. Given that it's a bid week value, they will know
12 in advance what their energy price will be for that
13 month, and then they could more accurately or with
14 foresight know what their energy prices would be for
15 that month.

16 It obviously then would not have any audit
17 associated with it, as would be required under the soft
18 cap proposal of Staff and Public Counsel. Given that
19 we're talking a term of approximately 11 months, 10
20 months at most to implement, I think it would be an easy
21 straightforward application given the situation we find
22 ourselves in. It also to a certain extent de-links
23 these customers from the dysfunctional market that has
24 occurred in California and is correlated to the Mid
25 Columbia Index.

00776

1 Obviously to the extent PSE also can look at
2 the resources available to serve this load and to the
3 extent they can serve it with their own hydro or lower
4 cost coal resources, that would just be additional
5 margin under the proposal than the direct incremental
6 cost that are reflected by the heat rate and the gas
7 price.

8 Q. In your opinion, Mr. Schoenbeck, would PSE be
9 able to remain financially healthy under your proposal?

10 A. I believe so, because in my mind, the -- the
11 line labeled variable O&M is the margin, is the margin
12 on -- effective margin on the transaction, so it would
13 contribute a known contribution above the cost of
14 serving the customers.

15 Q. And does Exhibit 605 show that there are many
16 times during the year when the company should be able to
17 serve its variable priced loads at costs that are lower
18 than its highest cost single cycle combustion turban?

19 A. I'm looking at Exhibit 605, the page that has
20 the Arabic 3 at the bottom, using the critical hydro
21 condition, and yes, that would be correct. There would
22 be the month of February and March where it might be
23 slightly above the CT price that's reflected on here as
24 well as December. But for all other months, you would
25 be within the range of the variable priced resources, if

00777

1 not the CT block.

2 Q. Is there anything about your proposal that
3 you believe would require cost shifting to other
4 customer classes?

5 A. I don't believe so, not since the foundation
6 of it is to use the highest cost resource PSE has
7 effectively, and effectively assume that resource is
8 used 720 or 740 hours a month every month of the 12
9 month period or 10 month period, whatever, for the
10 duration of the Schedule 48 term.

11 Q. Is there anything else you wanted to say
12 about your proposal?

13 A. Well, if we wanted to keep it simple, I think
14 that's about as straightforward as it can be.

15 CHAIRWOMAN SHOWALTER: I have one question at
16 this point.

17
18

E X A M I N A T I O N

19 BY CHAIRWOMAN SHOWALTER:

20 Q. Is there anything here that shows what the
21 swing is from 48 to your proposal in the same manner
22 that we had the swing of \$221 Million from 48 to the
23 soft cap proposal?

24 A. Actually we --

25 Q. I just remembered we're in the --

00778

1 A. Yeah, I could give you monthly illustrations.
2 We would have to start talking figures though. I just
3 don't know.

4 Q. Well, is there any set, is there on this
5 chart any set of columns or rows or anything else that
6 gets at that issue?

7 A. Yes, there would be. I have turned to page
8 two of three, and if you look at the months of July,
9 August, September, and October, and November, you would
10 see this exhibit is reflecting 100% CT utilization all
11 those months. So if you then use those months in doing
12 a comparative analysis on page three of three, the cost
13 to serve line, the section of the rows on this exhibit
14 we were talking about earlier, the revenue at market,
15 the cost to serve line, the revenue at soft cap, the
16 revenue at Schedule 49 are shown. So you can compare
17 the cost to serve for certain months to the revenue at
18 Schedule 49 for certain months and see the difference.

19 CHAIRWOMAN SHOWALTER: I think I will ask you
20 at a later time when we're in a confidential setting.

21

22 D I R E C T E X A M I N A T I O N
23 BY MR. VAN CLEVE:

24 Q. Maybe we could calculate what that number is
25 and provide it after lunch.

00779

1 A. Certainly.

2 MR. VAN CLEVE: Your Honor, I don't have any
3 further questions. I would like to move for the
4 admission of Exhibits 601 through 617, with the
5 exception of Exhibit 614, which I don't believe we asked
6 any questions about.

7 MR. BERMAN: Your Honor, I would prefer that
8 we reserve ruling on the admissibility of those exhibits
9 until after Puget Sound Energy has had an opportunity to
10 cross-examine the witness and test the exhibits. We may
11 find whether the exhibits are worthy or not of being
12 admitted into evidence after that cross-examination.

13 JUDGE MOSS: All right, we will reserve on
14 that.

15 MR. VAN CLEVE: Also, Your Honor, we would
16 like to move for the admission of Mr. Schoenbeck's
17 deposition transcript, and it was our understanding that
18 there was an agreement between the parties that all of
19 the deposition transcripts in this case were going to be
20 admitted into the record.

21 MR. BERMAN: Your Honor, it was not our

22 intention to offer the Schoenbeck deposition transcript.
23 From our perspective, it's permissible for an adverse
24 party to offer something like that, but it's not
25 appropriate for the party sponsoring a witness. We

00780

1 asked questions in an inquisitive mode to find out the
2 state of Mr. Schoenbeck's analysis at an early day, and
3 those questions don't go into the analysis that he
4 presented at hearing today. And that's the reason why I
5 indicated in our discussions last week that we were
6 concerned about offering the Schoenbeck deposition.
7 It's not like the fact witnesses where the depositions
8 really went into the substance of what their affidavits
9 and testimony were about. We think that it would be
10 unfair.

11 JUDGE MOSS: I think too, Mr. Van Cleve, you
12 have had the witness on direct. To the extent there was
13 a subject that was testified in the deposition that you
14 believe was relevant, you have the opportunity to pose
15 those questions now live. And it was, after all, a
16 deposition conducted by your adversary, and I have a
17 little difficulty understanding how it would be
18 appropriate to have it admitted on your direct
19 examination when it is really more in the nature of a
20 cross-examination type of document, which is how I had
21 anticipated the depositions would be used when we worked
22 out the agreement and had the discussion about letting
23 the depositions in without being overly concerned about
24 some of the technical requirements that we normally
25 associate with that practice. So I would be happy to

00781

1 hear further from you on it, but that's how I'm drifting
2 at this moment.

3 MR. VAN CLEVE: Your Honor, one of the
4 reasons that we would like to put Mr. Schoenbeck's two
5 depositions in is Mr. Berman made a number of statements
6 yesterday on the record to the effect that the Company
7 had been prejudiced because Mr. Schoenbeck had not been
8 prepared or that he had not developed his theories
9 enough for them to discover what our theories in the
10 case were, and I think we would like the depositions to
11 speak for themselves about what Mr. Schoenbeck had to
12 say and whether there was any prejudice to the Company
13 from that.

14 JUDGE MOSS: So you would, if I understand
15 you correctly, you're asking that they be made of record
16 for a limited purpose, which I presume would be to have
17 that material in the event there is ultimately an appeal
18 rather than for the substance of what is involved, but
19 rather for a suggestion that Mr. Berman has lately
20 raised that in his view his assertion that PSE's due
21 process rights have been violated in some fashion.

22 MR. VAN CLEVE: That's correct.

23 JUDGE MOSS: All right, I will consider that
24 over the luncheon hour and make a ruling when we return.

25 And as far as the other exhibits are concerned, we're

00782

1 also going to reserve ruling on their admission until we
2 have had the cross-examination, which is a not
3 unfamiliar practice. So we will do that too.

4 Is there any other business we need to take
5 up before we have our luncheon recess?

6 Apparently not, so let's have a one hour
7 break until 1:00. See you then.

8 (Luncheon recess taken at 12:05 p.m.)

9

10 A F T E R N O O N S E S S I O N

11 (1:00 p.m.)

12

13 Whereupon,

14

JAMES W. CUNNINGHAM,
15 having been first duly sworn, was called as a witness
16 herein and was examined and testified as follows:

17

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

19 BY MR. EARLY:

20 Q. Good afternoon, Mr. Cunningham.

21 A. Good afternoon.

22 Q. For the record, would you state your name and
23 your business address, please.

24 A. My name is James W. Cunningham. My business
25 address is Georgia-Pacific Corporation, 300 West Laurel

00783

1 Street, Bellingham, Washington 98227.

2 Q. And how long have you been employed by
3 Georgia-Pacific?

4 A. Approximately 30 years.

5 Q. And what is your current position at the
6 Bellingham plant?

7 A. I am the general manager.

8 Q. And how long have you held that position?

9 A. A little more than six years.

10 Q. Could you describe for the Commission your
11 responsibilities as general manager at the Bellingham
12 plant?

13 A. I have responsibility for the entire
14 facility, the safety of the employees and the community,
15 environmental compliance, productivity and cost
16 responsibilities, quality and customer service, and
17 personnel.

18 Q. And do your responsibilities include supply
19 of energy to the Bellingham plant?

20 A. That would be included, yes.

21 Q. Do your responsibilities as general manager
22 at the Bellingham plant include any corporate, overall
23 corporate responsibilities?

24 A. I report to the corporate organization.

25 Q. But that's the extent of your corporate

00784

1 responsibilities?

2 A. Yes.

3 Q. Mr. Cunningham, I would like to ask you a
4 series of questions that relate to the year of 2000. I
5 would like to begin by asking you to describe your
6 plant's situation a year ago today, in January of 2000.
7 And the first question is, were you at full operation?

8 A. Yes.

9 Q. And by full operation from an electrical
10 point of view, what was your load?

11 A. Approximately 40 megawatts.

12 Q. And at that time, what was your -- how many
13 people did you employ at your Bellingham plant?

14 A. The number would have been 820 or so, plus or
15 minus.

16 Q. Can you break that down between union,
17 salaried, hourly?

18 A. It would be about 190, 195 salary, remainder
19 union.

20 Q. And the 820 is employees. Do you have other
21 people who regularly or routinely work at your plant who
22 are outside contractors?

23 A. We would have some outside contractors. They
24 would come and go from the facility probably on the
25 order of a few dozen.

00785

1 Q. Can you estimate the average wage and
2 benefits of your employees at the Bellingham plant?

3 A. Our employees' average compensation, wages
4 and benefits, close to \$70,000 a year.

5 Q. And as the general manager of the Bellingham
6 plant, are you called upon to participate in community
7 activities in Whatcom County of a business nature?

8 A. Frequently, number of boards and committees.

9 Q. Could you identify some of those boards,
10 please?

11 A. I have been on the United Way board and the
12 campaign chair, I am a board member of Junior
13 Achievements. I am a board member of the Economic
14 Development Counsel. I am a trustee of Bellingham
15 Technical College, to name a few.

16 Q. You mentioned the Economic Development
17 Counsel, that's for Whatcom County?

18 A. Yes.

19 Q. And what, did you hold a position on that
20 counsel?

21 A. A board member.

22 Q. And as a board member on the Whatcom County
23 Economic Development Counsel, did you have occasion to
24 become familiar with the overall economic situation in
25 Whatcom County?

00786

1 A. Yes.

2 Q. Would you know the comparative size of the
3 Bellingham plant compared to other industries in Whatcom

4 County in terms of employment levels?

5 A. We're the largest private employer in the
6 City of Bellingham.

7 Q. And do you have a sense of how your wages at
8 the Bellingham plant compare to the average wages in
9 Whatcom County?

10 A. Yes, the -- one of the concerns of the
11 Economic Development Counsel and the community leaders
12 is that Whatcom County tends to lag behind other areas
13 of Puget Sound. On a just wage basis, I remember a
14 number of reports that indicated that a family wage may
15 be only on the order of \$25,000. That would compare on
16 an equivalent basis to our mill somewheres in the low to
17 mid \$40 thousands.

18 Q. Based upon your participation on the Economic
19 Development Counsel, do you have a sense of what the
20 overall financial contribution is of the Bellingham
21 plant at full operation to the County?

22 A. Yes, our annual revenue is approximately \$250
23 Million that flows through into the Northwest region.
24 And specifically in Whatcom County, if you take into
25 consideration wages, benefits, goods and services, and

00787

1 taxes, about \$100 Million.

2 Q. Mr. Cunningham, for the benefit of the
3 Commission, could you describe your production, the
4 production process at the Bellingham plant from the raw
5 inputs to the finished products in a general way?

6 A. Yes, generally speaking, we take waste wood
7 chips, then we digest them down into a fiber stream in a
8 what we -- it's a lignin binder, which really is the
9 binder that holds the tree together, into a chemical
10 stream, which I will come back to in a moment. We
11 process the fiber, we clean it, we bleach it, then we
12 make a range of tissue products, bath products, and
13 towel products, about 200 to 250 tons a day of tissue
14 products. We make about 400 to 450 tons a day of pulp.

15 I might add on the tissue that we sell our
16 tissue regionally on the West Coast. On the pulp, we
17 sell our specialty pulp and our market pulp globally.
18 And just as a -- just to give you a flavor of how
19 special our pulp might be, switch plate covers, which
20 I'm sure everyone has in their home, is a plastic
21 melamine product. It contains 35% pulp roughly, and it
22 probably contains our pulp, and the requirement is to be
23 a very much chemically pure product, because the dye lot
24 colors are very important to the people that make
25 matching colors in this industry. Plus it has to be

00788

1 very clean, because once you form the product, a
2 melamine product, you can not recycle it. It can only
3 be accepted or rejected. We make a number of specialty
4 products in our pulp line similar to that.

5 And back to the chemical side of the
6 business, the lignin business, we make about 650 tons a

7 day of lignin products that go into concrete add
8 mixture, drilling mud, additives for the petroleum
9 industry, slurries such as making sheet rock or drywall
10 for your home.

11 Q. Your current service provider of electricity
12 is Puget Sound Energy?

13 A. Yes.

14 Q. And you are currently served under a Special
15 Contract?

16 A. That's correct.

17 Q. Do you know when that contract became
18 effective?

19 A. I believe it was May-June time frame of 1996.

20 Q. Are you familiar with the decision by
21 Georgia-Pacific, by the Bellingham plant, to enter into
22 that Special Contract?

23 A. Yes, I am.

24 Q. And am I correct that the price charged by
25 Puget Sound Energy under that Special Contract is tied

00789

1 to the Mid-C Index?

2 A. Yes, it is.

3 Q. Can you provide what was the context in which
4 the decision was made by the Bellingham plant to enter
5 into that Special Contract?

6 A. We were looking at an alternative supply by
7 way of a bypass involving our local PUD, and this
8 resulted into negotiations with Puget Sound Energy that
9 ultimately resulted into our Special Contract.

10 Q. So was the Special Contract your first
11 preference at that time, or would you rather have had
12 different arrangements?

13 A. I don't know if we had a particular
14 preference. We were looking for competitive pricing.

15 Q. In the discussions that you had with Puget
16 Sound Energy leading up to the execution of the Special
17 Contract, what factors persuaded you to sign that
18 contract?

19 A. I had the idea presented to me that suggested
20 that pricing would be in the \$20 megawatt hour range
21 during the period of this contract. If anything, it
22 might drift on the lower side of that range. And the
23 expectation was that the higher side should not exceed
24 the Schedule 49 rates that we had been paying. In
25 addition to that, there was an expectation that this was

00790

1 a step towards open access, so we would have true market
2 access to develop a portfolio of supply in the future.

3 Q. You said data was provided to you, by whom
4 was that data provided to you?

5 A. It was provided by my team who reported to me
6 the progress that they were making in negotiations with
7 Puget Sound Energy.

8 Q. And where did your staff receive that data
9 from?

10 A. I believe from Puget Sound Energy.
11 Q. You have in front of you a number of exhibits
12 which have been distributed to counsel. I would like
13 you to look at the first exhibit, which is identified as
14 401. It is marked as a confidential exhibit, but I
15 believe we can accomplish what we want without clearing
16 the room.
17 COMMISSIONER HEMSTAD: What is the exhibit
18 number?
19 MR. EARLY: It's 401.
20 JUDGE MOSS: But the confidentiality will
21 remain?
22 MR. EARLY: By way of background, what this
23 document is is a response by Puget Sound Energy to an
24 informal data request from Staff in a prior proceeding,
25 and it was identified as confidential in that

00791

1 proceeding, I believe by Puget. This document was
2 responsive to a data request we submitted in this case,
3 and my understanding is rather than reproducing the
4 response was that we were free to use this document that
5 was produced in a prior proceeding in this proceeding as
6 well, and in abundance of caution, we kept it
7 confidential.
8 JUDGE MOSS: Okay, Mr. Berman, are you in a
9 position to tell me whether we need to keep this
10 confidential?
11 MR. BERMAN: I'm looking at it quickly, Your
12 Honor. Your Honor, if I am understanding this -- if I
13 could have a moment.
14 JUDGE MOSS: That's all right, let's work it
15 out later. He said he doesn't need to refer to the
16 specific data in it, so let's just go ahead. For the
17 time being it will be marked as 401-C.
18 BY MR. EARLY:
19 Q. Mr. Cunningham, am I correct that this is a
20 data request in which it calls for the Company, meaning
21 Puget Sound Energy, to provide its best estimate of spot
22 market electricity prices?
23 A. That's what it appears, yes.
24 Q. And attached to this are a number of sheets
25 that provide those specific -- those best estimates as

00792

1 it relates to the Bellingham plant; is that correct?
2 A. That's correct.
3 Q. And am I correct that the date of these
4 estimates is as indicated on the document, May of 1996?
5 A. That's correct.
6 Q. And I believe you testified that you executed
7 your contract in May of '96?
8 A. Yes.
9 Q. And are the numbers, are the price forecasts
10 in this document representative of the price forecasts
11 that were provided by Puget to your staff and then to
12 you in the negotiations of the -- of your Special

13 Contract?

14 A. These numbers appear to be consistent with
15 what my team presented to me with the expect -- relative
16 to the expectations of this contract during the five
17 year period.

18 MR. EARLY: Thank you, Mr. Cunningham.

19 I would like to move to admit 401 at this
20 time, Your Honor.

21 JUDGE MOSS: All right.

22 MR. BERMAN: Your Honor, I just wanted to
23 note that Puget Sound Energy is willing to waive
24 confidentiality, but there are two customers who are
25 referenced in this document, GP and BCS, and I would --

00793

1 we're willing to waive it as long as those customers, GP
2 and BCS are both comfortable with that.

3 MR. EARLY: If I might, Your Honor. The data
4 request references both the Georgia-Pacific Bellingham
5 plant and Bellingham Cold Storage. What's attached here
6 are only sheets relating to Georgia-Pacific, so there's
7 no sheets here attached for Bellingham Cold Storage.

8 MR. BERMAN: If GP is comfortable, Your
9 Honor, we're comfortable.

10 JUDGE MOSS: Well, we can't really know, so
11 I'm going to keep the designation for the time being,
12 and perhaps some further checking can be made to be
13 certain that we can waive the confidentiality.

14 In the meantime, is there any objection?

15 Hearing no objection, 401-C will be admitted
16 as marked.

17 BY MR. EARLY:

18 Q. Now before we turn to the document, you said
19 one of the expectations was, in signing the contract,
20 was that this would be a transition to open access.
21 Have you received -- has Puget Sound Energy indicated to
22 you that they are prepared to provide open access to you
23 or available to the Bellingham plant upon the expiration
24 of your Special Contract?

25 A. No.

00794

1 Q. And just to be clear, what do you mean by --
2 what does open access mean to you?

3 A. My understanding of open access is that we as
4 a customer could purchase power supply from anyone who
5 would sell to us and that we would take delivery, in
6 this case, I assume over Puget's wires.

7 Q. So open access is, in your understanding, is
8 different than a buy-sell arrangement in which -- in
9 which Puget is involved in taking title and reselling
10 the power?

11 A. Yes.

12 Q. Would open access as an option be of value to
13 the Bellingham plant?

14 A. Yes.

15 Q. And is that something you would like and

16 expect to see Puget Sound Energy file and make available
17 at the end of -- by the end of your Special Contract?

18 A. Yes, and we would have liked to have seen it
19 earlier as well.

20 Q. Mr. Cunningham, you testified earlier that
21 when you signed the Special Contract, you had certain
22 expectations based upon the documents provided by Puget
23 about what Mid-C prices would be over the term of the
24 contract. Was it also your understanding that those
25 numbers were Puget's expectations as well as your

00795

1 expectations?

2 A. Yes.

3 Q. In the current, at the current time, have
4 those expectations been met?

5 A. Certainly not.

6 Q. I would ask you to turn to what's marked as
7 Exhibit 402.

8 CHAIRWOMAN SHOWALTER: Mr. Early, can you
9 speak up just a little bit.

10 MR. EARLY: Oh, I'm sorry.

11 BY MR. EARLY:

12 Q. Can you identify this document, please?

13 A. Yes, it's a document that we have been
14 receiving periodically, I think on a weekly basis, from
15 Puget Sound Energy since the end of July. I typically
16 look at the table that shows Mid-Columbia power price
17 indications, and there's a date that indicates when they
18 were projected. And typically it's covered from the
19 time frame that I received it into and often through the
20 year 2001.

21 Q. And this document in particular is dated
22 December 27th of 2000.

23 A. Yes, this one is.

24 Q. And it provides Puget Sound Energy's price
25 forecast for a forward period of time?

00796

1 A. Yes.

2 Q. And are these prices consistent with the
3 prices that were provided to you in 1996?

4 A. No, they're much, much higher.

5 MR. EARLY: Now I would like to, Your Honor,
6 I would like to move at this time Exhibit 402.

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

9 BY MR. EARLY:

10 Q. Mr. Cunningham, you previously identified
11 that a year ago in January of 2000 you were at full
12 operation at 40 megawatts and at full employment, 820
13 people.

14 A. That's correct.

15 Q. I would like you to identify next, what is
16 the next material event that happened during the course
17 of 2000 with relation to your power supply?

18 A. Towards the end of May 2000, first part of

19 June, don't remember the exact dates, prices on the
20 Mid-Columbia Index spiked up to a level beyond our
21 ability to cover our variable costs. It was a rather
22 quick spike to a very high number well in excess of, I
23 believe, \$500 a megawatt hour. We made the decision at
24 that point to shut our facility down for approximately
25 two days. I say approximately, it takes a day and a

00797

1 half to shut the facility down and the better part of a
2 couple of days to start it up, so we tried to respond in
3 that time frame.

4 Q. So your response to the high index, you took
5 your plant down. Is it totally down?

6 A. Essentially the plant is totally down. As I
7 say, it takes the better part of a day and a half to
8 shut it down, so it was a process to really shut it down
9 and within a day start it to start it back up again.

10 Q. And what happened in June of that year?

11 A. Well, we ran the rest of that -- now I think
12 the shut down we're talking about was the end of May and
13 the first part of June. Then we ran the rest of that
14 month.

15 Q. And at that time, did you attempt to take
16 steps to address the risk of your power supply
17 situation?

18 A. Yes, we did. In fact, during the month of
19 June, we ultimately took out a hedge for the month of
20 July.

21 Q. Before taking out the hedge, did you explore
22 other means of managing your risk?

23 A. I don't remember what conversations we had
24 with Puget Sound Energy, but this was thought to be the
25 really only alternative we had short term.

00798

1 Q. Did you look at physical supply options?

2 A. We ended up looking at physical supply
3 options during the month of July and August. In fact,
4 during the time our hedge was in effect, we had numerous
5 meetings with Puget Sound Energy with the assistance of
6 some of Governor Locke's staff and explored what has now
7 come to be known as a buy-sell opportunity to buy
8 physical power for a period of time in the market, and
9 that was something that we were more than willing to do
10 at that time. And even though prices had spiked up that
11 resulted into our shut down for a few days, they had
12 come back down to a lower level, and we were attempting
13 to secure power in that price range. I don't -- I
14 remember the price range being \$40 plus or minus a
15 little bit.

16 Q. And were you successful in securing a
17 buy-sell arrangement at that time?

18 A. No, we were not.

19 Q. And why were you unable to secure a buy-sell
20 arrangement at that time?

21 A. Well, essentially there was some issue that

22 Puget thought it was illegal to provide that kind of
23 service.

24 Q. So Puget refused to do it for you?

25 A. That's correct.

00799

1 Q. You said you hedged for the month of July.
2 What was the nature of that hedge, the financial
3 parameters, if you recall?

4 A. It was for a one month period. Basically it
5 was hedged against the Mid-Columbia Firm Index, and my
6 understanding of this product is that it, for our
7 purposes, Georgia Pacific's, it replaces the index in
8 terms of our power costs.

9 Q. And were you better off or worse off
10 financially at the end of the hedge period?

11 A. We were worse off. We calculated by the end
12 of the month that we spent \$700,000 more.

13 Q. So what decision did you make with regard to
14 August?

15 A. Our experience with the company is that we
16 depend primarily on reasonably behaving markets. We're
17 a pulp and paper industry, and I think most people know
18 that pulp and paper is very much a cyclical business,
19 and prices in the range of two to three times are not
20 uncommon. We are used to operating within that kind of
21 a competitive environment.

22 We looked at this hedge result and said to
23 ourselves, hedges typically add cost, the best they do
24 is smooth out the cost. At this point in time, we were
25 given advice that this is not the time to lock in the

00800

1 higher cost for a longer period of time. We decided to
2 go for the month of August without a hedge to -- and we
3 were in the mist of conversations with Puget Sound
4 Energy at this point relative to what's termed a
5 buy-sell arrangement and thought that that had promise.
6 Furthermore, we thought that come the fall time frame,
7 and we had some projections to indicate this to be the
8 case, that prices would tend to come down from the peak
9 pricing in the summer months, so we were looking ahead
10 past August into the fall.

11 Q. In your answer, you indicated you received
12 advice not to hedge at this time. Who was that advice
13 from?

14 A. That would have been from probably a
15 combination of folks within the company and outside,
16 within Georgia-Pacific and from outside Georgia-Pacific.

17 Q. Did that advice come from, in part, from
18 Puget Sound Energy?

19 A. Not directly that I remember, and I quite
20 frankly have had so many of these energy projections
21 come by, I can not remember what the projections at that
22 point in time, specifically at that point in time were.
23 I can say as the data developed, certainly in this time
24 frame and beyond, the projections that we have just

25 referred to on forward pricing did show the expectation

00801

1 that prices were going to work their way down in this
2 time frame.

3 Q. So the other point in your earlier response
4 was that you saw projections that prices were coming
5 down, and those projections were from Puget?

6 A. We had projections at some point in time that
7 clearly showed that. I just don't know at this point in
8 time relative to the decision in August if we had them
9 yet, but we eventually had them.

10 Q. For a moment, back in July when you were
11 looking at physical supply to manage your risk and also
12 looking at hedges, were the price of those two products
13 the same?

14 A. It was very difficult at that point in time
15 to determine that. Quotes would change literally hour
16 by hour. And where we had a number one day, we had
17 quite a different number, I would say on the order of
18 10% or 20% different, for the next day. I would like to
19 refer back to a previous time when things were more
20 stable in the electrical industry. And when we were
21 talking with Puget, I believe it was towards the end of
22 1999, given the fact that open access didn't appear to
23 be available, we began looking into the bypass option
24 again. At that point in time, we did have a comparison
25 of some true market pricing that we could obtain if we

00802

1 had a bypass versus an offer from Puget, which I believe
2 was a hedge although I can not say for sure. The price
3 that we had from the market was \$23, and the price we
4 had from Puget was ranging from \$28 to \$32. I tended to
5 confirm our opinion that financial instruments like
6 hedges do cost more than physical product.

7 Q. And the physical supply offer you had at \$23
8 per megawatt hour, what was the term of that offer, if
9 you recall?

10 A. I believe it was five years.

11 Q. And again, you were unable to take that
12 offer. Why didn't you take that offer?

13 A. It was only in the context of a planning
14 process to implement a bypass, and that bypass was never
15 implemented.

16 Q. But if Puget had been in a position to offer
17 open access or offer a buy-sell of that physical
18 product, physical supply you had arranged, would you
19 have taken it at that time?

20 A. Yes.

21 Q. And if you had taken it at that time, what
22 would your rate today be?

23 A. It would be \$23.

24 Q. And would you be here today?

25 A. No, I wouldn't.

00803

1 Q. Can you tell me what happened, what actions
2 you took at the Bellingham plant in December of this
3 year in response to Mid-C prices?

4 A. Pricing from the price projections that we
5 received from Puget were behaving somewhat reasonable
6 through the October, November time frame. In fact,
7 looking ahead, we were down in the \$70 range 12, 15
8 months out. But then there started to be an increase
9 into the \$200, to 300, and eventually we heard some
10 numbers -- we have heard numbers in the thousands. When
11 those numbers clearly exceeded our ability to cover our
12 variable costs, we shut the facility down on or about
13 December 7th.

14 Q. So from December 7th to today, you have not
15 taken any electric power service from Puget Sound
16 Energy?

17 A. That's correct.

18 Q. Nonetheless, your plant is running partially
19 today; is that correct?

20 A. Partially, yes.

21 Q. Can you tell me what your current -- how are
22 you currently supplying your power?

23 A. Within about two weeks time of shutting the
24 facility down, we began bringing in portable diesel
25 generators, normally one megawatt per unit. And we

00804

1 today have 15 megawatts connected to our substation, and
2 we're able to operate our tissue mill and a small
3 portion of our chemical operation.

4 Q. For the benefit of the Commission, can you
5 describe these turbans and particularly how they are
6 mobile?

7 A. They are actually reciprocating diesel
8 engines on roughly a 40 foot trailer, and they operate
9 on diesel fuel. So you have some logistics issues, of
10 course, of locating these units, of connecting them to
11 the electrical bus, a need for transformers, of
12 synchronizing them, of fueling them, and maintaining
13 them and such.

14 Q. You said you have 12 of them and they provide
15 roughly 15 megawatts. Your full operation load is 40.
16 Why are you not acquiring more?

17 A. Well, there's a couple of issues here. One
18 is this becomes a more challenging logistics issue to
19 solve. We have essentially circled our substation with
20 the units we have, and we physically can't get any
21 closer. We have to relocate into a generating farm, you
22 might say, farther away. There are also unresolved
23 environmental air issues. We have been discussing with
24 our Department of Ecology what we are going to be
25 allowed to do and not to do, and at this point that is

00805

1 not clear.

2 Q. What is your understanding from the
3 environmental agency as to what is the likely period

4 that you would be allowed to run these diesels?
5 A. More often than not, 90 days is discussed.
6 As I say, we're not getting any clear answer yet.
7 Q. And you started these in mid December, late
8 December?
9 A. Late December.
10 Q. So late March is probably about it for these;
11 is that service would no longer be available?
12 A. I'm anticipating concern, yes, at that point.
13 Q. Now these diesels burn what?
14 A. We're required to burn number two low sulfur
15 diesel.
16 Q. And how many, with 12 turbans, do you have an
17 estimate of how many gallons you're burning?
18 A. The number I saw the other day was 284,000
19 gallons per month.
20 Q. And how did you acquire these diesels?
21 A. We're renting them on an monthly basis.
22 Q. Given that you as a practical matter can only
23 with these diesels produce 15 megawatts, which is less
24 than half of your energy requirements, can you describe
25 for the Commission how your plant operations are

00806

1 different than they would normally be?
2 A. We're not able to operate the process that
3 begins with the wood chips. Therefore, we are not
4 making pulp. We are not supplying any of our specialty
5 customers pulp. I say that as an area of grave concern
6 in the sense that we're one of four or five mills in the
7 world that can make these kind of specialty pulps. As I
8 mentioned, we do sell and compete on a global market.
9 Our customers are very anxious at this point about what
10 our outcome is going to be.
11 We have a similar concern on our lignin, our
12 chemical side of the business, because we're not --
13 that's derived from the wood chip as well, and we're not
14 operating that other than to run out the inventory,
15 which is essentially accomplished. We are the largest
16 single supplier in North America of the lignin products.
17 We are running our tissue operation, as I
18 mentioned, by bringing in a combination of outside pulp
19 and paper.
20 Q. So we're clear on this, with your curtailed
21 operations, you no longer bring in waste wood chips into
22 the plant as your basic raw material?
23 A. That's correct.
24 Q. And instead the starting point of your
25 production process is pulp from other places that is

00807

1 brought into your plant?
2 A. That's correct.
3 Q. And because you are not processing waste wood
4 chip waste into pulp, some of the secondary products
5 including lignin and specialty pulp are no longer being
6 made at your plant?

7 A. That's right.

8 Q. Can you describe for the Commission what the
9 impact has been on your employees, on your employment
10 levels, because of the curtailment due to high Mid-C
11 prices?

12 A. Initially we laid off approximately 500
13 employees. As we have brought back part of the process
14 as we have installed some of these generators, and this
15 has taken place over two or three weeks time, we have
16 about half those folks back on the job operating our
17 tissue mill primarily.

18 Q. So your current employment level is
19 approximately 410, half of the 820?

20 A. Probably 425, 450, something like that.

21 Q. And that includes union and salaried
22 employees?

23 A. Yes.

24 Q. In roughly the percentage of your original
25 numbers?

00808

1 A. Salaried personnel were not laid off. If the
2 outage were to continue, that would be addressed as
3 well. So we have brought back roughly half of our
4 hourly work force who were laid off. That's why the
5 number is a little higher than you think.

6 Q. Now just to be clear, is there an exclusive
7 cause of your current curtailment, production
8 curtailment?

9 A. It is solely due to the cost of electricity.

10 Q. Can you describe the current and anticipated
11 impacts on your community of the curtailment, and if it
12 comes to that, the closure of your facility?

13 A. Well, obviously there is a direct impact on
14 our employees. We have employees that are off work in
15 the holiday season at the end of last year. We have
16 employees and their families not knowing if they're
17 going to have a job again. These same employees are
18 faced with losing their medical benefits at the end of
19 this month. The City has announced a study, I guess, to
20 determine what they're going to do without the revenue
21 streams from Georgia-Pacific, specifically the utility
22 tax, in terms of the impact on their budget. We have
23 customers in the area, I think it was mentioned
24 yesterday, Lignatech was shut down with 25 employees.
25 We're the only supplier to them. We have other

00809

1 customers I suspect that are in jeopardy if this
2 continues.

3 Q. You mentioned before, does the City of
4 Bellingham have a local electricity tax?

5 A. Yes.

6 Q. And as a consequence of your curtailment, are
7 they still -- are they recovering that tax?

8 A. No.

9 Q. And do you know by reason of your community

10 participation activities whether the City of Bellingham
11 is anticipating a necessity of taking any actions
12 because of the loss of that revenue?

13 A. Yes, immediately -- not long after we shut
14 down, one of the first phone calls was to find out how
15 long and what the impact is going to be on their lost
16 revenue. There was an article in the local paper
17 discussing how they're going to have to readjust their
18 budget. But quite frankly, I didn't study it as much as
19 I should, because I had my own problems. But the
20 problems are substantial to the community as well.

21 Q. And I believe you testified earlier that you
22 believe that the Bellingham plant at full operation
23 contributed roughly \$100 Million a year into the local
24 economy?

25 A. Yes.

00810

1 Q. And at full closure, that \$100 Million would
2 be gone?

3 A. That's correct.

4 Q. And at your current level, do you have any
5 estimate of how much is already gone?

6 A. No, I don't have number.

7 Q. I would like to return for a moment to your
8 customers. I think you have testified already that at
9 your reduced operational level, you are no longer
10 processing waste wood chips and thus not producing
11 lignin. I think you also testified earlier that --
12 maybe I will ask you. Are you the -- how many
13 manufacturers of lignin are there in North America?

14 A. Well, globally there's two large
15 manufacturers. We're the second in size. And then
16 there's a few smaller ones. We're a very significant
17 player in the world market. And in specifically in
18 North America, we're the largest supplier.

19 Q. And it is only at the Bellingham plant that
20 Georgia-Pacific produces this product?

21 A. Yes, this is a unique process only at the
22 Bellingham plant.

23 Q. And I believe you identified earlier one of
24 your customers of lignin, I believe it was Lignatech?

25 A. Yes.

00811

1 Q. Could you for the benefit of the Commission
2 tell them where they are and what they produce?

3 A. They're located in Skagit County. They take
4 our lignin as a raw material, process it into products,
5 that they then sell into the market.

6 Q. Do you know what kind of products?

7 A. Just generally. They compete in some of the
8 same markets we do with their final product. The
9 concrete add mixture business and the drilling mud
10 business I mentioned, that kind of thing.

11 Q. And because of the curtailment of your
12 facility due to electricity prices, you are no longer

13 able to supply them?

14 A. That's correct.

15 Q. And do you know if they have found an
16 alternative supplier?

17 A. Not that I know.

18 Q. Okay. With regard to pulp, I think you
19 identified that, well, with your reduced curtailment,
20 with the curtailment of your plant, are you able to
21 produce the specialty pulp products you produced at full
22 production?

23 A. No, we're not.

24 Q. Can you identify some of those customers?

25 A. I spoke a little bit to the customer category

00812

1 that makes the plastic molding that require extremely
2 high brightness and cleanliness and chemical purity.
3 There are other customers that make paper products that
4 are really almost chemical products. Maybe some of the
5 counter tops in this room are imitation wood, and they
6 would use products that we would make as a base sheet
7 and then add resins and texturing. And they have
8 similar requirements as the plastic molding in that the
9 product has to be chemically pure and clean such that
10 when the final product is made, you can't really recycle
11 it and reprocess it, you either have to discard it to a
12 landfill or accept it as a high volume, high value added
13 product. We have a number of customers in these type of
14 areas.

15 Q. So at your reduced operation levels, the only
16 product you produce as a practical matter is tissue?

17 A. That's correct.

18 Q. Is the market in which you compete to sell
19 your tissue products competitive?

20 A. Definitely.

21 Q. Can you describe who your competitors are,
22 how -- can you describe that market and who your
23 competitors are?

24 A. Tissue is a rather light product, so that
25 your ability to ship it to great distances is somewhat

00813

1 limited. So our market is primarily in the Northwest
2 and Northern California. For example, we have bath
3 tissue, a market share in the Seattle-Portland markets
4 of 30%. We're a very large player and a significant
5 market share in Northern California. There are
6 facilities that make similar products in Everett,
7 Washington and in Haywood, California and in Oregon, and
8 we, of course, must be competitive with all of those
9 facilities, because we all serve the same market area.

10 Q. Do you have any ability in the tissue market
11 to unilaterally raise your -- well, do you have the
12 right -- start over.

13 In the product market where your tissue
14 products, do you have the ability to pass along your
15 increased power costs by way of a surcharge?

16 A. No, we don't. The market sets the price.
17 Q. Mr. Cunningham, have you had an opportunity
18 to review year end financial data for the Bellingham
19 plant?
20 A. Yes, I have.
21 Q. Would you, for the benefit of the Commission,
22 would you address the year end financial condition of
23 the Bellingham plant, particularly with regard to the
24 impact of increased power costs?
25 A. Compared to our projected budget for the year

00814

1 of 2000, which would have been developed in the fall of
2 1999, we spent \$19 1/2 Million more on electrical and
3 electricity than we anticipated for a total bill that's
4 about \$32 1/2 Million.
5 Q. So your budget then was, if I'm doing my math
6 right, 13?
7 A. Approximately.
8 Q. So just your power budget is, just so we have
9 this clear, your budgeted amount of \$13 Million?
10 A. Yes.
11 Q. And you were \$19 1/2 Million over budget?
12 A. Over budget.
13 Q. And what was the impact of that on your
14 bottom line?
15 A. Bottom line, we made a little over \$1.4
16 Million for the year.
17 Q. And putting that in context, well, were the
18 overruns from budget amounts in your electricity budget,
19 were they spread evenly across the year?
20 A. No, only in the last half of the year.
21 Q. And do you have a sense of what -- of whether
22 the Bellingham plant was operating profitably or not
23 toward the end of the year?
24 A. For example, in December, we lost \$3.6
25 million.

00815

1 Q. How is the financial, if you know, how is the
2 financial viability of the Bellingham plant judged
3 within the larger Georgia-Pacific corporation?
4 A. We're measured as an independent profit
5 facility.
6 Q. Absent some relief from this, from your
7 electricity, current electricity rates, do you have an
8 expectation with regard to the future operations of your
9 plant?
10 A. I would have to say with -- if you look at a
11 whole year like last year, our facility will not
12 operate. I'm not sure any portion of it will operate
13 for sure. If you extrapolated last year for a whole
14 year we would probably be losing close to \$20 Million,
15 so it's pretty clear that we wouldn't operate.
16 Q. Mr. Cunningham, during the course of the
17 hearing, there has been a great deal of interest in
18 whether over the term that you have been on Schedule 48

19 you -- oh, I'm sorry. During the term that you have
20 been under your Special Contract, whether you are in
21 aggregate better off financially versus the option of
22 remaining on Schedule 49 during that period. Have you
23 done a calculation, or do you have a sense of whether
24 you're better off or worse off?

25 A. I have a sense. I believe in the prior

00816

1 proceeding in June, there was a reconciliation. Given
2 where it was in June, and I believe the Staff or someone
3 else anyway has prepared this, I believe we're in the
4 neighborhood of \$10 Million to \$11 Million unfavorable
5 to Schedule 49 at this point at the end of 2000.

6 Q. Mr. Cunningham, I believe you have with you
7 an excerpt from the prehearing brief of Puget Sound
8 Energy, it's pages 21 and 22.

9 A. Yes.

10 Q. And we can take a moment if the commissioners
11 want to find those. It's Puget Sound Energy's
12 prehearing brief, pages 21 and 22.

13 Mr. Cunningham, have you reviewed that
14 portion of the brief on pages 21 and 22 that discusses
15 the Bellingham plant?

16 A. Yes, I have.

17 Q. Are there any factual assertions in those two
18 pages with regard to the Bellingham plant that you would
19 like to respond to?

20 A. Yes, I would. Bottom part of page 21 where
21 there is a discussion about four lines up about a down
22 market for pulp products, we're kind of in between.
23 We're not at the peak, but we're nowheres near the
24 bottom. We're solidly in the middle of a market cycle.

25 Georgia-Pacific is not looking through a

00817

1 consolidation process to affect or close the Bellingham
2 facility. In fact, Georgia-Pacific would like to
3 operate the Bellingham facility if we could get
4 reasonable electrical prices.

5 I take exception with a low margin operation.
6 I think from some of the numbers already discussed, if
7 electrical costs could be reasonable, we would have a
8 very -- very much a contributing facility to
9 Georgia-Pacific and the community.

10 There's a discussion on the top of the next
11 page about down time and sort of an implication that
12 employees may be shut down due to -- for other -- or be
13 laid off due to other reasons.

14 The reference to the new environmental
15 equipment which we have indeed invested in and installed
16 in our facility in this last year was accomplished
17 through an annual maintenance outage. We employ all of
18 our employees, and, in fact, at that point in time, we
19 usually bring in a few hundred contractors in our
20 facility. No one is laid off. The layoff is solely due
21 to high electrical costs.

22 I spoke, in the second paragraph, I already
23 spoke to my experience about the hedge, but I would like
24 to say it again. I believe it was more in the latter
25 part of 1999, because we were looking at resurrecting

00818

1 the bypass option, and we needed 12 to 18 months to
2 accomplish that before the end of our present contract,
3 and that was the period of time that we had a chance to
4 compare we found to be physical market pricing against
5 the hedge that's mentioned here. So in the context of
6 the \$28 to \$32 a megawatt hour that was offered, there
7 was a market opportunity of physical power at \$23.

8 Q. Mr. Cunningham, is there anything further you
9 would like to inform the Commission about relating to
10 the issues in this case at this time?

11 A. I would simply like to reinforce the fact
12 that we have a tremendous amount of uncertainty in our
13 Bellingham community, both at our own facility with our
14 hundreds of employees who are affected by this shutdown
15 and curtailment, the uncertainty about the future of
16 their employment, and of course the impact it has on our
17 whole community. And we're looking for some relief in
18 terms of pricing and looking for a way to get ourselves
19 to a reasonable cost structure and back in operation.

20 MR. EARLY: Thank you, that's all I have.

21 JUDGE MOSS: All right, the witness is
22 available for cross for Staff.

23 MR. TROTTER: Thank you.

24
25

00819

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

2 BY MR. TROTTER:

3 Q. Good afternoon, Mr. Cunningham. Am I correct
4 that as the general manager at the Bellingham GP plant,
5 you're responsible for 820 employees there?

6 A. That's correct.

7 Q. When you're running full?

8 A. Approximately.

9 Q. And your employees and products were
10 competitive nationally and globally while you were under
11 Schedule 49; is that correct?

12 A. I think that's a fair statement, yes.

13 Q. And your employees and products would have
14 been competitive globally had you stayed on Schedule 49;
15 is that correct?

16 A. Schedule 49 was increasing in price, I
17 believe, in the time frame we negotiated the Special
18 Contract at 10% or 12% a year, and I think that
19 concerned us at the time, and so we had a concern about
20 remaining competitive.

21 Q. My question was whether your employees and
22 products would have been competitive globally had you
23 stayed on Schedule 49. Do you have an answer to that
24 question? Can you answer that?

25 A. Historically you're asking?

00820

1 Q. Yes.

2 A. I think the answer is yes.

3 Q. Toward the end of your direct examination,
4 you were referring to a hedge that was available near
5 the end of 1999 for \$28 to \$32 a megawatt hour. Do you
6 recall that?

7 A. Yes.

8 Q. And at that time, you did not have open
9 access, did you?

10 A. No.

11 Q. And you don't now, do you?

12 A. No.

13 Q. And the \$23 price that you were quoted was
14 only available on an open access basis; is that correct?

15 A. Or a bypass basis.

16 Q. Would your employees and products have been
17 competitive globally had you locked in that price at
18 that time?

19 A. Yes.

20 JUDGE MOSS: When you say that price,
21 Mr. Trotter, I'm not sure whether the witness understood
22 if you meant the \$23 or the other price.

23 Q. Thank you, I meant the \$28 to \$32 price.

24 A. I suspect that looking at the conditions
25 we're in now, we would say yes to both. I think that I

00821

1 would like to add that I have emphasized that we compete
2 globally, regionally, major suppliers of product in
3 North America. We provide significant wages. We meet
4 all the strict and stringent environmental regulations
5 and costs to do business in this country. And to us,
6 trying to find an opportunity to save money in our cost
7 structure is very important. So I don't want to
8 downplay the fact that five cents is not important. It
9 is important, or \$5 excuse me, in the cost structure.
10 We're always looking for ways to remain competitive and
11 operate in the Northwest United States, remain
12 competitive globally.

13 Q. Was the \$28 to \$32 range lower than Schedule
14 49 at the time?

15 A. I believe so.

16 Q. You mentioned a negotiating team that GP had
17 when it was negotiating its Special Contract. That team
18 included an attorney that you retained as well as an
19 energy consultant that you retained; is that correct?

20 A. Yes.

21 Q. Can you give us an estimate of the per
22 megawatt cost for running the diesels that you're
23 running now?

24 A. The estimates that I have been looking at
25 range from \$110, \$112 a megawatt hour up to \$125.

00822

1 MR. TROTTER: Your Honor, I intended to
2 address the contract which is attached to the deposition
3 in the interest of not having duplicative exhibits. Do
4 I understand correctly the Company intended or has had
5 that already marked?
6 MR. BERMAN: We have marked that as Exhibit
7 PSE-11, which I think was then numbered by the judge
8 with some number, probably 1511, but perhaps he will
9 assign a different number.
10 JUDGE MOSS: Well, again, it will be attached
11 to the deposition, which I understand you intend to
12 offer.
13 MR. BERMAN: I will certainly be offering
14 this deposition.
15 JUDGE MOSS: So I think if you refer to the
16 deposition attachment, that will be adequate for the
17 record, Mr. Trotter.
18 MR. TROTTER: Then if it has been marked
19 1511, I would like to refer to that at this time.
20 JUDGE MOSS: It will work out that way. Go
21 ahead.
22 MR. TROTTER: And I will refer a copy to the
23 witness.
24 BY MR. TROTTER:
25 Q. Mr. Cunningham, referring you to the exhibit

00823

1 attached to your deposition, it's the deposition Exhibit
2 11, which is --
3 MR. TROTTER: Your Honor, has that been
4 identified separately?
5 JUDGE MOSS: If you just refer to it as
6 Deposition Exhibit Number 11, that would be adequate,
7 because the deposition and all of its attachments will
8 come in, so that will work fine, thank you.
9 BY MR. TROTTER:
10 Q. Do you recognize this as the power sales
11 agreement that you had discussed in your direct
12 testimony between GP Bellingham and PSE?
13 A. Yes.
14 Q. Turning to page four of the exhibit, it
15 appears you signed that agreement; is that correct?
16 A. Yes.
17 Q. And the fifth page of the exhibit sets forth
18 the index that you discussed in your direct testimony.
19 A. Yes.
20 Q. And I notice on that page a little bit above
21 the middle, it says:
22 The customer bears all the risk for
23 price movements in the market price and
24 will receive non-firm energy service in
25 absence of the election of related

00824

1 optional services.
2 Do you see that?
3 A. Yes, I do.

4 Q. So would it be fair to say when you signed
5 this contract, you understood that GP bore the risk for
6 price movements in the index, the market reflected by
7 the index, but you did not anticipate they would go as
8 high as they did?

9 A. That's correct.

10 Q. Now you indicated also in your direct
11 testimony that one of the factors for signing this
12 contract was that you viewed it as a step toward open
13 access. Do you recall that testimony?

14 A. Yes.

15 Q. Is there anything in the power sales
16 agreement itself that addresses that particular issue?

17 A. I don't believe it does.

18 Q. And am I correct that it is this power sales
19 agreement that was brought to the Commission for
20 approval and, in fact, was approved?

21 A. Yes.

22 MR. TROTTER: That's all I have at this time,
23 thank you.

24 JUDGE MOSS: Thank you, Mr. Trotter.

25 Mr. Ffitch, do you have anything?

00825

1 MR. FFITCH: Yes, Your Honor, thank you.

2

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

4 BY MR. FFITCH:

5 Q. Good afternoon, Mr. Cunningham.

6 A. Good afternoon.

7 Q. Your attorney has filed a brief in this case
8 on your behalf and stated that the Commission can
9 provide relief without harming Puget's other commercial,
10 industrial, and residential customers; isn't that
11 correct?

12 A. Yes.

13 Q. And do you endorse that statement?

14 A. Yes, I do.

15 Q. So am I correct that Georgia-Pacific is not
16 asking the Commission to adopt any remedy that would
17 shift any cost recovery to Puget's other residential,
18 commercial, or industrial customers?

19 A. That's correct.

20 MR. FFITCH: Thank you. No other questions,
21 Your Honor.

22 JUDGE MOSS: Thank you, Mr. Ffitch. I
23 believe that will bring us then to PSE, and let me go
24 ahead and mark the deposition as 404.

25 MR. BERMAN: You have guessed what I was

00826

1 going to do, Your Honor.

2 JUDGE MOSS: And pursuant to earlier
3 understandings, I take it there's no objection. It will
4 be admitted with that number.

5 And, Mr. Early, housekeeping matter, I do not
6 believe you referred to the previously marked Exhibit

7 403, nor did you seek its admission.
8 MR. EARLY: That's correct, Your Honor.
9 We're prepared to waive confidentiality on
10 the deposition, Your Honor.
11 JUDGE MOSS: All right, then it will bear the
12 number I have indicated. Thank you for reminding me of
13 its status.
14
15 C R O S S - E X A M I N A T I O N
16 BY MR. BERMAN:
17 Q. Mr. Cunningham, I would like you to first
18 take a look at Exhibit PSE-14, which was appended to
19 your deposition.
20 JUDGE MOSS: That's the 10-K?
21 MR. BERMAN: Yes, Your Honor, it's the 10-K.
22 BY MR. BERMAN:
23 Q. Do you have that in front of you?
24 A. I have the first page.
25 Q. If you could turn to what's been marked as

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1 page 24 of PSE-14, or if you don't have the exhibit page
2 numbering on it, that was page 16 of the Edgar printout.
3 MR. EARLY: I'm sorry, could you say that
4 again?
5 MR. BERMAN: You were on the right page,
6 Mr. Early. It's page 24 as we marked it in accordance
7 with the rules set forth by the judge.
8 JUDGE MOSS: Just so everybody is clear, he's
9 referring to it as the Edgar printout. It's downloaded
10 from the Internet, and so it bears the logo Edgar Online
11 Inc. at the bottom right. So there are page notes at
12 the bottom. Some of them are not marked. Mine is not,
13 for example, so you will have to give both page numbers.
14 Page 16 according to the Edgar Online Inc. numbers on
15 the bottom right.
16 CHAIRWOMAN SHOWALTER: And a 14 right in the
17 middle of the page.
18 MR. BERMAN: There's a 14 in the middle of
19 the page, Your Honor.
20 JUDGE MOSS: Quite right.
21 BY MR. BERMAN:
22 Q. Are you at that page, Mr. Cunningham?
23 A. Yes, I am.
24 Q. If you could go to the paragraph that's, the
25 first full paragraph that's below the number 14 in the

00828

1 middle of the page, do you see that paragraph?
2 A. Yes.
3 Q. I noticed that, skipping the first sentence
4 for a moment and moving on to the remainder of the
5 sentence, it states that:
6 In 1998, the corporation incurred market
7 related down time at its pulp and paper
8 mills resulting in a reduction in pulp
9 and communication paper production.

10 And then it gives some numbers, and then it
11 says:

12 In the third quarter of '98, the
13 corporation indefinitely shut down the
14 hardwood market pulp portion of its
15 operations at Port Hutsa, Louisiana,
16 resulting in a closure of approximately
17 260,000 tons of annual production
18 capacity.

19 Are you familiar with that closure?
20 JUDGE MOSS: Mr. Early has got an objection.
21 Mr. Early.

22 MR. EARLY: Well, we have a 10-K here, Your
23 Honor, and if the witness -- if counsel is just trying
24 to lay a foundation for a question he's going to ask,
25 I'm not going to object. But at some point if we're

00829

1 into simply reading the document, I want to make it
2 clear that he's not affirming necessarily the
3 truthfulness of the document without any personal
4 knowledge. So I don't have any objections to the
5 question as it was phrased though.

6 JUDGE MOSS: Well, if you don't have an
7 objection, Mr. Early, please don't stand up.
8 Go ahead, Mr. Berman.

9 BY MR. BERMAN:

10 Q. Are you familiar with that closure?

11 A. Generally I am.

12 Q. So is it correct that when market related
13 down time is incurred in the pulp and paper production
14 business that Georgia-Pacific sometimes responds with
15 plant and facility closures?

16 A. We may.

17 Q. I note that in the first sentence of that
18 paragraph, it states:

19 During 1999, the corporation incurred
20 market related down time at its pulp and
21 paper mills resulting in a reduction in
22 pulp production of 311,000 tons and a
23 reduction in communication paper
24 production of 17,000 tons.

25 Are you familiar with the market related down

00830

1 time in 1999?

2 A. Not specifically.

3 Q. But again, you would agree that to the extent
4 there are issues concerning softness in the market that
5 production will be curtailed or shut down at
6 Georgia-Pacific mills?

7 A. That can happen. Did not affect the
8 Bellingham facilities.

9 Q. Could I have you look at what has been marked
10 as Exhibit PSE-12. Do you have that in front of you?

11 A. Yes, I do.

12 Q. This moves us forward in time a bit to a

13 press release concerning fourth quarter 2000 results; is
14 that correct?

15 A. It appears to, yes.

16 Q. Looking at the third paragraph here, it would
17 appear it says:

18 Market related down time at many pulp,
19 paper, and container board manufacturing
20 facilities also is affecting fourth
21 quarter performance.

22 Is that correct?

23 A. That's what it says.

24 Q. So would you agree that the issue of market
25 related down time at Georgia-Pacific facilities has been

00831

1 continuing?

2 A. It appears, yes.

3 Q. If Georgia-Pacific is considering closure of
4 facilities as a result of market related down time, does
5 it look to its low margin facilities?

6 A. I would assume that's one factor.

7 Q. In your deposition, you reported your -- you
8 reported that the net revenues associated with your
9 facility in 1999 were \$250 Million; do you recall that?

10 A. That's approximate.

11 Q. And you reported that the annual profit
12 associated with the facility for 1999 was \$9 Million?

13 A. I believe that to be true.

14 Q. Would you consider a profit of \$9 Million on
15 revenues of \$250 Million a low margin facility?

16 A. We have been working to improve that.

17 Q. You have been working to improve efficiency
18 at the facility?

19 A. Yes.

20 Q. Is one of the ways that you have been working
21 to improve efficiency at the facility finding means to
22 reduce employment at the facility?

23 A. We have had occasion both to increase
24 employment in the last couple of years as we brought on
25 more paper converting capacity, and we have had some

00832

1 reductions in force in some parts of the facility.

2 Q. Would you agree that you have reduced
3 employment by at least 50 people since last year as a
4 result of efforts to improve efficiency at the facility?

5 A. We're in the process primarily driven by the
6 present cost issues of reducing 50 people, yes.

7 Q. Were those 50 people union jobs?

8 A. They were both union and salary.

9 Q. Do you know what the average salary of the
10 people that you're letting go because of those improved
11 efficiencies would be?

12 A. Not directly, I'm assuming that they are
13 similar to the average salary in the facility, in the
14 \$45,000 a year range.

15 Q. Do you know what the contribution to the

16 local Bellingham economy would be of those people that
17 you're letting go because of those efforts to improve
18 efficiency would be?

19 A. Not directly.

20 Q. I would like to turn you back to Exhibit
21 PSE-12. That was the fourth quarter 2000 press release.
22 Do you have that?

23 A. Yes.

24 Q. Looking at that paragraph below the paragraph
25 that referred to market related down time, it refers to

00833

1 taking a special charge for facility closures and as a
2 result of the Fort James Corporation acquisition. Can
3 you explain what that's all about?

4 A. I'm not personally involved in that merger,
5 so I don't know the details.

6 Q. Did Georgia-Pacific recently close a merger
7 with Fort James?

8 A. Yes.

9 Q. And as part of its merger with Fort James
10 Corporation, did Georgia-Pacific look to find low margin
11 facilities and see if it could reduce operations at
12 those low margin facilities?

13 A. I was not part of that team that executed
14 that merger, so I don't know what they looked at for
15 sure.

16 Q. It refers there to facility closures in
17 fourth quarter 2000. Are you familiar with which
18 facility closures that might be?

19 A. No, I'm not.

20 Q. But is it fair to say that Georgia-Pacific
21 has closed a number of facilities in fourth quarter
22 2000?

23 A. I don't think I know that, what number, no.
24 I have -- I have not been part of that effort. It does
25 not affect -- has not affected the Bellingham facility.

00834

1 Q. So that would have been folks at the
2 corporate headquarters who made the decisions and are
3 familiar with the other facility closures elsewhere from
4 Bellingham?

5 A. Folks at corporate, yes.

6 Q. Do you know roughly what the annual revenues
7 for Georgia-Pacific corporation are?

8 A. I don't really pay as much attention to that.
9 I'm focused mainly on my own facility.

10 Q. Well, could you turn to Exhibit PSE-13, which
11 was attached to your deposition. Do you have that in
12 front of you?

13 A. Yes.

14 Q. This was a press release from Georgia-Pacific
15 concerning third quarter 2000 earnings; is that correct?

16 A. Yes.

17 Q. Turning to the third page where there are
18 some financial tables, if you go down about two thirds

19 of the way down the page, I see the number total net
20 sales; do you see that?

21 A. Yes, I do.

22 Q. So that says that for the first nine months
23 of 2000 the total net sales was about \$16 Billion; is
24 that correct?

25 A. Yes.

00835

1 Q. Would you be willing to accept for purposes
2 of our discussion that on an annual basis that the
3 annual net sales would be about \$20 Billion or more or
4 in that ball park at least?

5 A. Could be.

6 Q. You said that your electricity costs were \$13
7 Million over budget this year for the Bellingham
8 facility. Do you know what portion of the \$20 Billion
9 that is?

10 A. They were \$19 1/2 Million over budget.

11 Q. If they were \$19 1/2 Million over budget,
12 would you agree that that's about 1/10 of 1% of the
13 total annual revenues of Georgia-Pacific Corporation?

14 A. That amount is extremely critical and
15 important to the Bellingham facility. I don't look at
16 it in the terms of the Georgia-Pacific Corporation.

17 Q. I would like to refer you back to what has
18 been marked as Exhibit PSE-11. That was your contract.
19 Do you have that in front of you?

20 A. Yes, I do.

21 Q. Now Mr. Trotter already asked you some
22 questions about the index pricing provisions and the
23 agreement to bear risk on page five of that exhibit.
24 Could you turn to page six though. Do you have that?
25 Do you see the optional price stability provision there?

00836

1 A. Yes, I do.

2 Q. Would you agree that part of the deal in your
3 special contract is that if you were not satisfied with
4 the index pricing that you could seek optional price
5 stability?

6 A. I believe so.

7 Q. Would you agree that that was something that
8 could be negotiated with Puget Sound Energy in order to
9 suit the customer's needs?

10 A. I believe so.

11 Q. Do you recall how the optional price
12 stability provision got into the contract?

13 A. No, I don't.

14 Q. Could you turn to page nine of the exhibit,
15 and for those who don't have the official numbering, it
16 actually bears page one, it goes up to page eight, and
17 then we have a page one that starts there. It says
18 support agreement at the top of the page. Do you see
19 that?

20 A. Yes, I do.

21 Q. And is this agreement something that you

22 signed?
23 A. Yes.
24 Q. And this was your signature in which you
25 agreed to be bound by the Special Contract?

00837

1 A. Yes.
2 Q. I would like to bring you down that paragraph
3 to midway through the paragraph. There's a sentence
4 that starts, the customer further agrees. Do you see
5 that?
6 A. Yes, I do.
7 Q. And it says:
8 The customer further agrees to the
9 extent permitted under the Norpennington
10 Doctrine or any applicable law, it will
11 at the company's reasonable request
12 support in discussions with other
13 customers of the company and with
14 government officials the adoption and
15 retention during the term of the
16 customer's power sales agreement with
17 the company of the Schedule RTP attached
18 to such power sales agreement.
19 Did you, in fact, agree to that commitment?
20 A. Well, I think I agreed to something that
21 refers back to the word reasonable.
22 Q. You're referring to the fact that it says it
23 will at the company's reasonable request?
24 A. Yes.
25 Q. So I take it you're saying that if the

00838

1 Company has asked you to live by your agreement, you
2 regard that request to be unreasonable?
3 A. Possibly.
4 Q. Well, do you regard that request to be
5 unreasonable?
6 A. Well, right now I regard the price as
7 unreasonable.
8 Q. It says here that that commitment applies
9 during the term of the customer's power sales agreement
10 with the Company. Are we still within the term of the
11 customer's power sale agreement with the Company?
12 A. Yes, we are.
13 Q. It says there that you would support Schedule
14 RTP attached to the power sales agreement. Is Schedule
15 RTP the schedule that includes the index pricing
16 provision?
17 A. I don't know, is it? I think so. I don't
18 know. Is that what it is?
19 Q. If you go back to page five --
20 A. I have a hard time keeping track of all this.
21 Q. If you go back to page five of the contract
22 and look at the top of the page, you see that is says
23 Schedule RTP for powers sales agreement.
24 A. I see that.

25 Q. Do you see that?

00839

1 A. I see that.

2 Q. Would you agree that that index is in
3 Schedule RTP?

4 A. Yes.

5 Q. And so would you agree that when you signed
6 this contract, you agreed that you would support
7 throughout the term of the contract the pricing in
8 Schedule RTP?

9 A. I certainly had expectations of a reasonable
10 price range that I have already mentioned in that
11 context.

12 Q. But would you agree that when you signed this
13 contract, you agreed that you would support throughout
14 the term of the contract the pricing in Schedule RTP?

15 A. I did.

16 Q. Let's talk a little bit about other options.
17 Would you agree that Georgia-Pacific Company engages in
18 hedges and financial derivative transactions all the
19 time?

20 A. I'm not familiar with that.

21 Q. If you could turn back to the 10-K, which was
22 exhibit --

23 JUDGE MOSS: I believe it's 14.

24 Q. -- PSE-14, and go to page 28, or for those
25 with the Edgar version, page 20 with a little 18 in the

00840

1 middle, and I apologize for all the different numbers.
2 If you have that page in front of you?

3 A. Yes.

4 Q. If you could look to the second full
5 paragraph below the 18, would you agree there that it
6 has a statement concerning the corporation's policy
7 concerning hedging interest rate exposure through the
8 use of swaps and options and hedging foreign exchange
9 exposure through the use of forward contracts?

10 A. There's a statement there, yes.

11 Q. Have you consulted with the corporation
12 concerning their hedging and financial derivative
13 policies?

14 A. No, I have not.

15 Q. Now you obtained a hedge once in order to
16 protect against price difficult -- in order -- let me
17 rephrase that.

18 You obtained a hedge once in order to obtain
19 price stability on your contract; is that correct?

20 A. That's correct.

21 Q. And that was for the period of July 2000?

22 A. Yes.

23 Q. And you chose to just get a one month hedge;
24 is that correct?

25 A. That's correct.

00841

1 Q. Could you have gotten a longer term hedge?
2 A. I believe so.
3 Q. How would the pricing for the longer term
4 hedge have compared to the one month hedge?
5 A. I don't remember.
6 Q. Would you agree that the price of hedges
7 varies from time to time?
8 A. Yes.
9 Q. Do you have fire insurance on your house?
10 A. Yes, I do.
11 Q. Would you agree that it would cost more to
12 buy fire insurance if you waited until your house was on
13 fire?
14 A. I don't know if anybody would sell it to me.
15 Q. In your complaint proceeding against Puget
16 Sound Energy this summer, do you recall that proceeding?
17 A. Yes.
18 Q. In that proceeding, Mr. Gaines submitted an
19 affidavit in opposition to your motion for summary
20 judgment; do you recall that?
21 A. Not specifically, but.
22 Q. In that affidavit, he said that in 1997, the
23 year after the 1996 Special Contracts were signed, Puget
24 offered BCS and GP a fixed price swap that would have
25 provided BCS and GP with a fixed price for five years at

00842

1 a price below 20 mils per kilowatt hour. Do you dispute
2 that assertion in Mr. Gaines' affidavit?
3 A. I don't have any personal knowledge of it.
4 Q. Do you dispute that assertion?
5 MR. EARLY: Objection, he said he didn't have
6 any personal knowledge of it. We have a little
7 badgering going on here, so I would like to object.
8 JUDGE MOSS: I don't think I would go so far
9 as to characterize it as badgering, Mr. Early, but I do
10 think he answered that he has no knowledge, and that's
11 probably as far as we can go on that.
12 BY MR. BERMAN:
13 Q. If the affidavit of Mr. Gaines also says:
14 In late 1999, Puget offered BCS and GP a
15 fixed price of 28 mils per kilowatt hour
16 flat for five years.
17 Do you dispute that assertion?
18 A. No.
19 Q. I realize I forgot to cover something. You
20 said that you obtained various diesel generators.
21 A. That's correct.
22 Q. Have you investigated the availability of low
23 emissions diesel generators?
24 A. We asked about the availability of some
25 emission control equipment.

00843

1 Q. Have you heard of silicon cathodic reduction
2 technology that reduces emissions of diesel generators
3 by 85% to 90%?

4 A. Not personally.
5 Q. Yesterday Mr. Franz representing CNC said
6 that at least in retrospect, it was clear that he had
7 made a terrible mistake. Would you agree that your
8 decision not to sign on to the hedges and price
9 stability options that have been offered to you over
10 time were a terrible mistake?

11 A. I can only utilize the benefit of hindsight.
12 None of us had the ability to predict the future, and I
13 think in each case that we had an alternative to compare
14 it to, I don't think it was a mistake at the time to
15 make the decisions we made.

16 MR. BERMAN: I have no further questions.

17 JUDGE MOSS: Thank you, Mr. Berman.

18 Any questions from the Bench?

19 CHAIRWOMAN SHOWALTER: I have a few.

20

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

22 BY CHAIRWOMAN SHOWALTER:

23 Q. Mr. Cunningham, in the time period May-June
24 '96 or before where the Special Contract was being
25 developed, did you have the services of an attorney?

00844

1 A. Yes, we did.

2 Q. And did you have the services of a financial
3 advisor or energy, some kind of energy expert?

4 A. The person that had -- maybe the energy
5 expert category, yes.

6 Q. And was that person paid by you?

7 A. Yes.

8 Q. You referred to getting information from
9 Puget as well, but I take it you didn't pay Puget for
10 that information?

11 A. No.

12 Q. You mentioned -- you mentioned open access
13 and that you would still like to have open access if you
14 could get it, but then you contrasted that with a
15 buy-sell arrangement, that you felt buy-sell is
16 different, and it would not be as desirable. And I'm
17 wondering what do you see as the drawbacks of a buy-sell
18 agreement?

19 A. My understanding is that the buy-sell
20 agreement that we have had an opportunity to look at,
21 Schedule 448, the complexity of that particular
22 agreement has caused some potential suppliers to shy
23 away from wanting to participate.

24 Q. All right. Then it's the particular proposal
25 of the buy-sell that disturbed you, not necessarily the

00845

1 concept of buy-sell? If Puget could deliver to you the
2 power supplier of your choice without too many
3 complications, is that something you desire?

4 A. We would desire, particularly over the long
5 term when hopefully there would be a reasonable market,
6 we would desire, yes.

7 Q. I wanted to be clear about your air pollution
8 permit. You said you were getting unclear answers on
9 how long it lasts. But do you actually have a permit at
10 this time?

11 A. No.

12 Q. So you're negotiating, are you negotiating to
13 obtain a permit?

14 A. There has been considerable conversation and
15 information passed back and forth, yes.

16 Q. Regarding pulp, do other plants of
17 Georgia-Pacific produce pulp besides yours?

18 A. Yes, they do.

19 Q. In the Northwest?

20 A. Now that we're a part of Fort James, yes.

21 Q. What about competitors in the Northwest who
22 produce pulp?

23 A. Yes, there are.

24 Q. Can you provide me with some names of your
25 main competitors?

00846

1 A. On the pulp side, there would be Weyerhaeuser
2 and Cosmopolis in the State of Washington. On the
3 tissue side, there's Kimberly Clark in Everett, Potlatch
4 in Boise, Idaho, Potlatch, Idaho. There's the Fort
5 James mills in Oregon. I'm trying to think of who else
6 makes market pulp.

7 Q. That's sufficient.

8 A. There aren't as many left anymore.

9 Q. Regarding lignin, first of all, what is
10 lignin?

11 A. Lignin is the binding that holds the tree
12 together, I guess in simple terms. If you extracted the
13 lignin out of the tree, it would just collapse in a
14 heap. It's the glue that holds the tree together. It's
15 a complicated organic molecule.

16 Q. So is lignin a product that you produce?

17 A. Yes, in essence as we pulp the wood chips, we
18 separate out a fiber component and a lignin component.
19 And the lignin, maybe to help you understand it a little
20 bit better, is a very great emulsifier, so that if you
21 typically make emulsions of components and use water,
22 you can use less water. And in the case of concrete,
23 you use less water, which makes the concrete set
24 stronger. And another attribute of lignin, it tends to
25 delay or retard setting, so you can ship it farther,

00847

1 particularly to hot climates like Southeast Asia. Same
2 kind of concept when you make sheet rock or dry wall or
3 gypsum. Least amount of water present helps the quality
4 of the product you want as well the drying rate, so
5 higher productivity.

6 Q. I can see we're getting into a subject you
7 like. I thought I heard you say that you are one of two
8 suppliers of lignin; is that correct?

9 A. There are two large suppliers and a few small

10 ones, but the two large ones are definitely the
11 significant players in the world.
12 Q. And when you said two, were you referring to
13 Georgia-Pacific being one of them, or your own plant
14 within Georgia-Pacific as one of them?
15 A. Both. We are the only supplier within
16 Georgia-Pacific, and we are the number two world
17 supplier as well.
18 Q. All right. So if you are not making that
19 right now, does that mean essentially that there's a
20 monopoly supplier out there who is your competitor?
21 A. Beauregard based in Norway is, and they have
22 operations around the world.
23 Q. Do they have any operations in the western
24 United States?
25 A. Lignatech North America, sold their plant in

00848

1 Skagit County, is part of their operation.
2 Q. I would expect if there was only one supplier
3 of lignin that eventually the price would go up first of
4 all. Has it gone up?
5 A. Well, I think the market's just digesting the
6 situation, but some indications might be that we first
7 asked our competitor for some supply. They quickly
8 figured out what was going on, and the answer now is no,
9 there's no more available after the initial request.
10 I'm anticipating something to be happening along those
11 lines.
12 Q. If the price does go up, then doesn't that
13 make it more economic or at some point economic for you
14 to start up again?
15 A. I think it's a catch 22 here. I think first
16 of all, we have to exit the market. For the opportunity
17 when we get back in the market, we will then affect that
18 particular supply and demand balance. It's very much a
19 market reaction.
20 Q. Regarding your electric bills, I think you
21 said your year end 2000 bills were \$32.5 Million; is
22 that correct or expected to be?
23 A. Approximately.
24 Q. And is that just for Puget Sound electricity?
25 A. Yes.

00849

1 Q. And that was compared to \$19.5 Million that
2 you had budgeted?
3 A. That was compared to around 13 that we
4 budgeted.
5 Q. Right.
6 A. The 19.5 was the variance.
7 Q. Okay. So your actual amount is going to be
8 something on the order of 2 1/2 times what you expected?
9 A. That's correct.
10 Q. So turning now to the utility tax, since the
11 utility tax is based on those revenues, wouldn't that
12 mean that the City of Bellingham's utility taxes also

13 would be for the year 2000 something like 2 1/2 times as
14 high in relation to Georgia-Pacific as expected?

15 A. I assume so.

16 Q. I wanted to go back to open access and your
17 expectation that you were going to get open access. I
18 think you answered a question about the service
19 agreement, that it did not seem to be there. I'm
20 wondering, where did you get the expectation that Puget
21 would deliver to you open access?

22 A. My negotiating team had that expectation and
23 explained it to me. In my understanding as to why it
24 didn't appear in the final document was something along
25 these lines, that there was the issue of the gas company

00850

1 merger and the requirement to spend considerable time by
2 Puget Sound Energy's personnel on that topic, and that
3 if we agreed to sign the contract, we did that right
4 after that was accomplished, then there would be people
5 back to our particular situation working out the details
6 that would eventually lead to open access.

7 Q. So is the short answer that you agreed not to
8 insist on that provision in any agreement?

9 A. Yes.

10 Q. Turning now to the attachments to the
11 deposition, well, actually we can begin with Exhibit
12 403, which is one of the attachments, but it's the
13 support agreement that you were questioned on before.
14 Oh, I will find it there as well. It's going to be the
15 ninth page in of the power sales agreement, but it
16 begins with a page one called support agreement. Do you
17 have that?

18 A. I see it; I have it.

19 Q. There is in this agreement a provision that
20 you will support Puget in or support the -- support in
21 the Washington state legislature for legislation
22 necessary to enable PURPA financing. And that
23 apparently was something that Puget wanted your support
24 in. And I'm just asking really the question, if once
25 support for each other's legislation was on the table,

00851

1 wouldn't you expect to find that here if that was really
2 part of the agreement?

3 A. The open access part you mean?

4 Q. Yes.

5 A. Well, we would have liked to have seen it
6 there, but we apparently agreed on the promise.

7 Q. And then on page one of that, well, let's
8 see, I'm in that same attachment to the deposition.

9 A. Okay.

10 Q. Not the power sales agreement, but it's the
11 fifth page in, it's the Schedule RTP. It is the
12 attachment to the deposition.

13 A. Tab 11.

14 Q. Thank you.

15 A. Page five.

16 Q. Yes.
17 A. Okay.
18 Q. I want to draw your attention to the first
19 sentence here in which it says, the customer shall pay
20 an hourly on peak energy price and then goes on to
21 explain it, and the third line is again emphasizes on
22 each peak hour or off peak hour. Was it the intention
23 of the parties at the time to establish an index, some
24 kind of index that was based hour by hour?
25 A. I really don't have the intimate knowledge of

00852

1 that, what that intention might have been. I don't
2 remember any discussion around that topic.

3 CHAIRWOMAN SHOWALTER: That's all the
4 questions I have, thank you.

5

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

7 BY COMMISSIONER HEMSTAD:

8 Q. I want to come back to the open access
9 question. Would you be comfortable if a remedy in this
10 case were to give you open access now?

11 A. I think that the marketplace right now is, I
12 think as I have said, is not reasonable in my mind. I
13 would certainly look forward to open access in the
14 future.

15 Q. Well, I guess I don't really understand. Is
16 what you would want would be open access but still with
17 the option of something like Schedule 49 and payment of
18 additional costs? In other words, you want the choice
19 of either a cost based tariff or open access at your
20 election; is that really what you want?

21 A. I think ideally if there was a choice, that
22 would be good. If the Puget Sound Energy and their
23 customers would work out options to choose, that's
24 reasonable for both parties. I think that would be
25 fantastic.

00853

1 Q. But isn't that heads you win and tails you
2 win?

3 A. No, I think it would have to be worked out to
4 where both parties are winners. I think it has to be a
5 win-win.

6 Q. But I guess the point is that you really
7 wouldn't want open access as your only option in the
8 present environment?

9 A. Not right today. It wouldn't really provide
10 us any solution.

11 Q. I take it from that then that you don't think
12 you could do better in the open market than the Mid-C
13 Index?

14 A. I really don't know. I like to think there
15 might be an opportunity. I don't know if I believe the
16 Mid-C Index is representative of anything valid at this
17 point. I don't know enough about what's going on and
18 what's driving the market. But obviously it doesn't

19 have any validity in my mind.
20 COMMISSIONER HEMSTAD: Thank you, that's all
21 I have.
22 CHAIRWOMAN SHOWALTER: Well, I will just ask
23 a follow up to that.
24
25

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1 EXAMINATION
2 BY CHAIRWOMAN SHOWALTER:
3 Q. Would you like another index, in other words,
4 would you like to stay on Schedule 48 but with an index
5 that is more representative of transactions, I won't
6 call it a market, I will call it wholesale transactions?
7 A. Possibly for a period of time. I think there
8 are other market measures somewhere across the country
9 that are more reasonably behaving. And if that was
10 possible, I think that would be great.
11 CHAIRWOMAN SHOWALTER: Thanks.
12 JUDGE MOSS: Redirect?
13 MR. EARLY: Just a few questions, Your Honor.
14

15 REDIRECT EXAMINATION
16 BY MR. EARLY:
17 Q. Mr. Cunningham, staying with the Special
18 Contract, if you could look on page two of that
19 document.
20 A. Okay.
21 Q. Section 3.3, and the last sentence, if you
22 could read that, if I could ask you how, does that
23 sentence reflect any understanding, reflect in part upon
24 the understanding you had as to the role of open access
25 played in the negotiation of this contract?

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1 A. This was in reference to the retail wheeling?
2 Q. Yes.
3 A. I believe it refers to the expectation that I
4 addressed earlier that open access would be in the near
5 future after parties signed this contract.
6 MR. EARLY: That's all I have, Your Honor.
7 JUDGE MOSS: Okay, then I believe that will
8 complete our examination of Mr. Cunningham.
9 And, of course, Mr. Cunningham, you have been
10 here, you understand that the witnesses will be subject
11 to recall in the event they are needed later in the
12 proceeding.
13 THE WITNESS: Yes.
14 JUDGE MOSS: But for now, on to other things,
15 and thank you very much for your testimony.
16 THE WITNESS: Thank you.
17 JUDGE MOSS: I think this would be a good
18 time to take a recess, and so we typically take a 15
19 minute recess in the afternoon, so let's do that.
20 (Discussion off the record.)
21 JUDGE MOSS: I forgot we have another break,

22 thank you for reminding me. We're actually hard upon
23 the scheduled recess that we were going to take at 3:15,
24 but it also strikes me, unless we have some housekeeping
25 matters to take care of now, or we do have

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1 cross-examination by perhaps Staff or Public Counsel
2 that might be brief enough to fit into the next few
3 minutes?

4 How about it, Mr. Cedarbaum.

5 MR. CEDARBAUM: I think I can be done by
6 3:15.

7 CHAIRWOMAN SHOWALTER: Let's do that.

8 MR. CEDARBAUM: Also, we were on an open --
9 we were not in confidential session just now, but I
10 can't remember if we were for Mr. Schoenbeck, so I don't
11 know if going back into a confidential session and
12 turning off the bridge line will take ten minutes.

13 JUDGE MOSS: It will take a couple of minutes
14 to do that, and indeed I wanted to get a notice for the
15 door. So let's see if there are any housekeeping
16 matters, and then we will go ahead and break. I don't
17 think seven minutes is going to really be determinative
18 of our ability to complete this proceeding today. So
19 are there any housekeeping matters we need to take up?

20 I believe I have one, and that is the matter
21 of the deposition transcript that came up about
22 Mr. Schoenbeck's deposition transcript. I don't believe
23 I commented on that. The Commission has had an
24 opportunity to consider that, and the decision is that
25 for the limited purpose as previously described, that

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1 can become part of the record. It's not offered nor is
2 it admitted for the substance that it contains, but
3 rather to preserve the Complainants' rights in the event
4 of a subsequent appeal.

5 MS. DAVISON: Thank you, Your Honor. And
6 also along the lines of housekeeping, during the lunch
7 break, I distributed a letter to everyone indicating the
8 page numbers of Mr. Franz's deposition that we would
9 like to continue to maintain confidentiality, and for
10 the rest of the deposition pages that are not so
11 indicated on that letter, we are willing to lift the
12 confidentiality designation.

13 JUDGE MOSS: All right, so the letter
14 indicates then that for Mr. Franz's deposition, the
15 confidentiality designation is lifted except for pages
16 12 through 31 and 54.

17 COMMISSIONER HEMSTAD: I would like to go off
18 the record and talk about scheduling.

19 JUDGE MOSS: All right, we will be off the
20 record.

21 (Discussion off the record.)

22 (Brief recess.)

23 JUDGE MOSS: I guess are we at your
24 cross-examination, Mr. Cedarbaum?

25

Now let me just go ahead and ask, do we need

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1 to go into confidential session at this point, or where
2 do we stand?

3 MR. CEDARBAUM: Well, a couple of the areas I
4 have I think are not confidential. A couple of the
5 areas I have are. And then others I assume will
6 probably more likely be in confidential areas than not,
7 so.

8 MR. BERMAN: Your Honor, I would expect that
9 once we get to me, we will very quickly start delving
10 into the confidential exhibits for the vast majority of
11 my questions.

12 JUDGE MOSS: I wonder if the most efficient
13 thing to do might be to just declare this whole session
14 confidential and go ahead and implement those
15 procedures. All right, we will implement our
16 confidentiality procedures that require that anyone who
17 is in the hearing room who is not a signatory to the
18 certificate under the protective order entitling them to
19 have access to confidential information must leave the
20 hearing room at this time, and we're posting a notice on
21 the door that will encourage such people to remain out
22 of the room temporarily.

23 In addition, I would ask if there is anyone
24 on the teleconference line who is similarly situated,
25 that is to say not a signatory to the protective order

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1 certificate, that they hang up at this time. We are
2 taking steps to turn that conference bridge line off,
3 and I think that will probably be accomplished here in
4 the next few minutes, but I think we can also go ahead
5 and proceed.

6 Something preliminary, Mr. Van Cleve?

7 MR. VAN CLEVE: Yes, Your Honor, I just
8 wanted to report that while Mr. Schoenbeck has been off
9 the stand, he has had the opportunity to work on an
10 answer to the Chair's question regarding the impacts of
11 his proposal, and he has prepared an exhibit which we
12 are willing to present via additional direct or as a
13 supplemental Bench response or however the Bench
14 prefers.

15 JUDGE MOSS: Well, if we don't need any
16 additional direct on it, perhaps we can just -- I have
17 to confess, I don't have the specific matter in mind.

18 CHAIRWOMAN SHOWALTER: I remember what it
19 was. We could call it a Bench request, I think. Do you
20 want me to characterize what the Bench request was?

21 JUDGE MOSS: I think for the record we should
22 do that.

23 CHAIRWOMAN SHOWALTER: Well, I think it was
24 to request a comparison of the revenues that Puget would
25 receive under Schedule 48 to the revenues they would

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1 receive under Mr. Schoenbeck's proposal.
2 JUDGE MOSS: All right, and the response is
3 responsive to that request.
4 MR. VAN CLEVE: I believe it is.
5 JUDGE MOSS: All right, we will call that
6 Records Requisition Request Number 5 for the record, and
7 it will be received at this time, so if you will please
8 distribute it to counsel and to the Bench.
9 MR. VAN CLEVE: (Complies.)
10 JUDGE MOSS: And if I could have a couple of
11 extra copies.
12 MR. VAN CLEVE: (Complies.)
13 JUDGE MOSS: Thanks.
14 MR. CEDARBAUM: The number on that again was?
15 JUDGE MOSS: 5.
16 CHAIRWOMAN SHOWALTER: And I should add that
17 that request was all based on the comparable forecast
18 for the other revenue projections that were being made.
19 JUDGE MOSS: Let's do --
20 MR. SINGLETON: Should we cut the bridge?
21 JUDGE MOSS: Yeah, let's do cut the bridge
22 line off, thank you, Mr. Singleton.
23 (The following testimony designated
24 confidential.)
25