

01059

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 VI
5 EQUILON ENTERPRISES, LLC,) Pages 1059 to 1298
GEORGIA-PACIFIC WEST, INC.,) and 1332 to 1438
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 VI
Energy, Inc., for an Order) Pages 1059 to 1298
13 Reallocating Lost Revenues) and 1332 to 1438
Related to any Reduction in)
14 the Schedule 48 or G-P)
Special Contract Rates,)
15 _____)

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17 PORTIONS DESIGNATED CONFIDENTIAL

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19 A Hearing in the above matter was held on
20 January 12, 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
25 Joan E. Kinn, CCR, RPR
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.

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

14

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

23

24 BELLINGHAM COLD STORAGE COMPANY, by TRACI
25 GRUNDON, Attorney at Law, Davis Wright Tremaine, 1300
26 Southwest Fifth Avenue, Suite 2300, Portland, Oregon
27 97201.

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P R O C E E D I N G S

1 JUDGE MOSS: We have had a recess for a
2 couple of days in Docket Number UE-001952, and we're
3 ready to begin this morning, I believe, with a few
4 housekeeping matters, and then I believe we'll have
5 Staff's witnesses after that.
6
7 So the housekeeping matters by and large
8 concern exhibits. I have been handed up this morning
9 some of Complainants' responses to certain of the
10 records requisition requests. I have not made an
11 official declaration of any of this material as exhibits
12 in the record, but as you all know, I have been
13 numbering them and providing you with updated exhibit
14 lists as we go along, and at some point in the
15 proceeding, probably at the end, I will acknowledge the
16 receipt of these materials into the record subject to
17 any statement of objection to any of them that counsel
18 wish to make at that time. So that we have a full and
19 fair record on that, I will wait until the end. I
20 anticipate there be some additional responsive material
21 provided to the records requisition request, Bench
22 requests and what have you, and, of course, I will just
23 continue to add these to that particular section of the
24 exhibit list, and we will take that up at the end.
25 I have also been handed this morning copies

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1 of the confidential deposition transcript of
2 Mr. Schoenbeck's second deposition in this proceeding,
3 which we agreed would be made part of the record for a
4 limited purpose.
5 And I guess I should ask, does that need to
6 remain confidential?
7 MS. DAVISON: Yes, Your Honor.
8 JUDGE MOSS: It does, all right, fine. It's
9 been previously marked and admitted on a place holder
10 basis.
11 So the third thing, I don't believe I'm
12 missing anything here, the third thing that I was handed
13 up this morning is a set of what I understand are
14 supplemental exhibits. These are updated, if you will,
15 corrected exhibits that are identical, if I understand
16 this correctly, and Ms. Davison, I'm going to count on
17 you to correct me if I am wrong, but as I understand
18 these, these simply correct some of the previously
19 considered exhibits, that the admission of which is now

20 pending subject to an objection that has been raised, to
21 correct for certain let's call them deficiencies in the
22 data as it was originally provided by PSE in response to
23 data requests, and PSE has cooperated with you and
24 worked with you in correcting that, as I understand it,
25 and that's what these exhibits reflect.

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1 MS. DAVISON: That's correct, Your Honor.

2 JUDGE MOSS: All right.

3 MS. DAVISON: And the exhibits track the
4 original exhibits in terms of what they are designed to
5 show. So in other words, there's nothing new here, it's
6 simply corrections.

7 JUDGE MOSS: All right. Then I guess the
8 question in my mind is whether these should be
9 supplemental or substitute exhibits.

10 MR. BERMAN: Your Honor, for clarity of the
11 record, I would recommend that they be -- that they not
12 simply replace the other ones, because there was
13 questioning about the other ones, and it could be quite
14 confusing if people don't know what the questioning is
15 related to.

16 JUDGE MOSS: I think that point is well
17 taken, and that the Bench is in agreement with that. So
18 what we will do then is just treat these as
19 supplemental, and we do have objections outstanding, and
20 I want to take that up before we have our witness this
21 morning.

22 And let's be off the record momentarily.

23 (Discussion off the record.)

24 JUDGE MOSS: I'm going to take these up
25 starting at least with number 607 individually. There

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1 is an objection to 607 on the grounds of relevance, and
2 I wanted to hear from counsel on this one. And I
3 believe, Mr. Van Cleve, this was your witness, wasn't
4 it?

5 MR. VAN CLEVE: Yes, Your Honor.

6 JUDGE MOSS: Okay. I wanted to ask you,
7 Mr. Van Cleve, to refresh my recollection whether
8 Exhibit 607 was referred to during the course of
9 Mr. Schoenbeck's examination.

10 MR. VAN CLEVE: Yes, Your Honor, I believe
11 that this exhibit was referred to on more than one
12 occasion. Mr. Schoenbeck stated that he had used the
13 exhibit in performing his analysis, and then I believe
14 that he brought that out in more detail upon questioning
15 from Mr. Cedarbaum about how he used some of the revenue
16 allocations from this study in determining what the
17 rates of return were under certain circumstances.

18 JUDGE MOSS: All right. I feel like I have
19 the matter well in mind, but I will, I suppose, given
20 the two day hiatus, I should offer the opportunity,
21 Mr. Berman, if you wish to argue the point any further.
22 I have your objection in mind, and the argument that you

23 presented the other night was fairly brief, but I give
24 you the opportunity if you have anything to add.
25 MR. BERMAN: I will leave it where it is,

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1 Your Honor.
2 JUDGE MOSS: Okay, that's fine.
3 And, Mr. Van Cleve, since there is an
4 objection, did you have anything to add? I feel like I
5 have it pretty well in mind.
6 MR. VAN CLEVE: No, Your Honor.
7 JUDGE MOSS: All right, then I'm prepared to
8 rule on the objection to 607, and I will overrule the
9 objection, and the exhibit will be admitted as
10 previously marked.
11 I'm going to take up Exhibit Numbers 611-C
12 through 613-C and 615-C through 617-C as a group. These
13 were all objected to on the grounds of relevance, and
14 I'm going to overrule the objection, and those exhibits
15 will be admitted as previously marked.
16 All right, and I believe that takes care of
17 pending matters. I have not received any motions in the
18 last two days, which establishes a record for the case,
19 I believe. Is there any other business we need to take
20 up before we call the Staff's first witness?
21 MR. CEDARBAUM: I have a couple of
22 housekeeping matters and one perhaps not a housekeeping
23 matter. The first housekeeping matter has to do with,
24 and I thought I heard some discussion of this off the
25 record this morning, had it to do with the deposition of

01071

1 Mr. Clancy, who was the client for Air Products. He has
2 not been a witness at the hearing in this case. We
3 would like to have his deposition transcript made an
4 exhibit in the case. I would note for convenience that
5 it was part of the Company's package that they premarked
6 as PSE-68, so we would move the admission of that as
7 either a Bench request exhibit, or however you want to
8 handle it in terms of numbering is fine, but we wanted
9 to have that in evidence.
10 JUDGE MOSS: As I understand it, Mr. Berman,
11 you were just -- you don't have a desire to have
12 Mr. Clancy called to the stand for cross-examination,
13 and you are either indifferent or would support the
14 admission of the Clancy deposition?
15 MR. BERMAN: Your Honor, we feel no need to
16 call Mr. Clancy to the stand. We feel it's important
17 that the deposition be admitted into evidence as that
18 was our opportunity to question Mr. Clancy about the
19 contents of his affidavit and explore his claims of
20 emergency. It had been our intent to admit that as part
21 of our case when we got there given that it was not
22 offered by the Complainants, but we're happy to have it
23 admitted now.
24 I would note in the same regard that in the
25 midst of the other documents that we have submitted as

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1 part of the package of exhibits we submitted, there are
2 documents that relate to other companies that have no
3 witness in the case, and we feel that as part of our
4 case, we were planning to introduce those documents as
5 well. Those include press releases, SEC filings, or
6 other documents, discovery responses, and other
7 documents that reveal information about their situation
8 given that no witness was presented from those
9 companies.

10 JUDGE MOSS: And I think those are all part
11 of your exhibits that are listed as those being
12 unsponsored by any witness or not sponsored by a
13 witness, something like that.

14 MR. BERMAN: Yes, Your Honor.

15 JUDGE MOSS: And that's fine, we will take
16 those up in due course. In the meantime, I think for
17 the, I would say for simplicity's sake although there's
18 nothing particularly simple about it, we will just leave
19 the Clancy deposition as it is marked, and I don't have
20 that exhibit number in front of me, but can anybody give
21 me that number?

22 MR. CEDARBAUM: The only number I have for it
23 was how the Company predistributed it, which was PSE-68.
24 I don't think I ever got an official exhibit list.

25 JUDGE MOSS: I'm sure I assigned Mr. Clancy a

01073

1 witness number, but whatever that exhibit number is, it
2 will be admitted as marked. And if parties are confused
3 by the exhibit number, I will find it later and disclose
4 it on the record.

5 And I do believe I neglected to note also
6 this morning that I did receive responses from PSE to
7 some of the records requisition requests. Because of
8 the volume of paper, I'm not going to attempt to
9 organize those at the Bench at this time. As they
10 become relevant and during a break, I will get them
11 distributed to the commissioners, and we will see if
12 there's anything we need to inquire about with respect
13 to those before the close of the hearing, whether that
14 be today or on Monday.

15 MR. BERMAN: Your Honor, there were a couple
16 of explanatory points that I had wanted to make about
17 the responses to the Bench requests, and I don't need to
18 do it now if you would prefer to do it later.

19 JUDGE MOSS: I think it would be best to do
20 it later so that I can get all that paper organized for
21 myself and the Commissioners, and then we will all have
22 it in a fashion that we can most easily refer to it.
23 It's just too much for me to do right now without a
24 delay that I'm really not prepared to take.

25 All right, does that cover everything then?

01074

1 No, something else, Ms. Davison?

2 MR. CEDARBAUM: That was my --
3 JUDGE MOSS: Oh, Mr. Cedarbaum had another
4 point.

5 MR. CEDARBAUM: I just wanted to make sure
6 that all the parties and the commissioners and you have
7 received our revised Exhibit ELL-3, which we
8 predistributed yesterday, and also our revised response
9 to Bench Request C-1, which is now Exhibit 18-C. That
10 was revised to take into account actual data from
11 November. December is still an estimate, and the way
12 that that estimate was calculated was an averaged price
13 for the prior 11 months was used for the pricing factor.
14 And the loads were November loads except that Staff did
15 make some assumptions with respect to Georgia-Pacific,
16 CNC, and Tesoro, and that assumption for GP and CNC was
17 that their loads were only included as --

18 JUDGE MOSS: Mr. Cedarbaum, I can confirm --
19 I'm sorry, did you have something more to say?

20 MR. CEDARBAUM: I was trying to explain the
21 assumptions that were included in the estimate for
22 December so that you understood what we were doing.

23 JUDGE MOSS: Right.

24 MR. CEDARBAUM: The loads for December that
25 were estimated were based upon November loads except

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1 that with respect to Georgia-Pacific and CNC, only one
2 third of their loads was used to account for some
3 testimony that we heard about reduced load for them in
4 December. And then with respect to Tesoro, 80% of their
5 November load was used, again to account for some
6 testimony we heard from Mr. Crawford on that point. So
7 there was a reduction on some of the November loads and
8 the December estimate.

9 JUDGE MOSS: And I'm glad you brought that
10 point up, Mr. Cedarbaum, we did receive that, and I have
11 put it into my Bench book and confirmed that the
12 commissioners' Bench books also include that. I need to
13 ask though, I guess consistent with what we did with the
14 other Schoenbeck supplemental exhibits, is it your
15 intention that the revised 18-C will replace the
16 existing 18-C, or do you think it would be more prudent
17 to have it supplement the existing 18-C?

18 MR. CEDARBAUM: It seems to me in this case
19 to cut down on the amount of paper and because there
20 really wasn't questioning about the Bench request that
21 we go ahead and substitute it rather than just
22 supplement.

23 JUDGE MOSS: And I note that you did mark it
24 appropriately as required by the rules as a revised
25 exhibit, I appreciate that. So we will then have that

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1 as Exhibit 18-C.

2 CHAIRWOMAN SHOWALTER: I did ask
3 Mr. Schoenbeck whether, I think it was Exhibit 607
4 tracked the Bench request, and the answer was yes, so I

5 think I was asking questions about the earlier one, but
6 I don't think that that question would change with the
7 new exhibit.

8 MR. CEDARBAUM: I'm assuming not since that
9 would have been to the actual data in the reports.

10 CHAIRWOMAN SHOWALTER: Right.

11 MR. CEDARBAUM: I would note in that regard
12 though, the Company's response to Records Requisition
13 Number 9 may or may not have assumed a revised Staff
14 Bench request response, so they may want to consider
15 whether they need to revise their Records Requisition
16 Number 9 to account for the new Bench request response.
17 I just don't know what the answer to that is.

18 JUDGE MOSS: I think we can sort that out
19 before the close of the hearing and take care of that.

20 MR. CEDARBAUM: The final point, which is not
21 a housekeeping matter, is that at the end of the day,
22 the end of the evening on Tuesday, the Company moved to
23 dismiss phase one of this proceeding, and I think we
24 characterized it at that time as a motion for directed
25 verdict.

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1 JUDGE MOSS: Summary determination I believe
2 Commissioner Hemstad corrected my characterization of
3 it.

4 MR. CEDARBAUM: That's correct, Your Honor.
5 When we prefiled our brief, we indicated our preliminary
6 conclusion for Staff, that Staff did not believe that
7 there was an emergency in this case in phase one.
8 Having heard the testimony to date, Staff is still of
9 that mind, and so we are supportive of the Company's
10 motion that was made Tuesday night, and we would ask the
11 Commission to consider that motion now, have oral
12 argument on the motion now. Let's decide the emergency
13 issue now.

14 And if the Commission decides that there is
15 no emergency, that we then end the proceeding for now
16 and consider how to move on to a phase two proceeding.
17 And so we wanted to tee that up first thing this morning
18 so that we would not have to, if the Commission grants
19 the motion, decides to hear it, that we would then be
20 done with evidence at this stage.

21 (Discussion on the Bench.)

22 JUDGE MOSS: The previous ruling was that the
23 motion would be carried with the case, and I have
24 confirmed that that continues to be the ruling on that,
25 so we will not take that motion up right now.

01078

1 Anything else?

2 Miss Davison.

3 MS. DAVISON: Your Honor, two quick things.
4 I've got so much paper in front of me, but I will --
5 what I have underneath my notebook here is the response
6 to Bench request D-1, which was issued by the Bench
7 yesterday and asked for a response today, so I'm

8 prepared to distribute the response that we received
9 this morning from, actually, well, it's an E-mail, so it
10 will speak for itself. And if that is all right with
11 you, I would like to distribute that.

12 The other thing is that I believe it was on
13 Tuesday, I raised an issue regarding some documents that
14 PSE had attached to their prehearing brief that we
15 believe should be treated confidentially, and you ruled
16 that at least for the time being, they should be treated
17 confidentially. I'm not sure if PSE has done anything
18 to correct that. I haven't seen any such action taken.

19 JUDGE MOSS: They have, so I can tell you
20 that that's been done.

21 MS. DAVISON: They have, all right.

22 And then the other matter that I would like
23 to raise is that Exhibit 1406 is a document that I
24 believe is also confidential that is not being treated
25 in a confidential manner, and I would request that we

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1 treat that confidentially. It contains sensitive, very
2 sensitive data regarding an individual Complainant. And
3 when I started looking through these documents when I
4 got back to the office, I was quite disturbed to see it
5 did not have a confidential designation.

6 JUDGE MOSS: And that would be one of
7 Mr. Gaines' exhibits?

8 MS. DAVISON: No, it --

9 JUDGE MOSS: 1406.

10 MS. DAVISON: You're right, thank you, Your
11 Honor.

12 JUDGE MOSS: So we haven't gotten to that
13 yet, and so hopefully it has not been disseminated in
14 any inappropriate fashion. But to the extent
15 confidentiality has been asserted as to it, it must be
16 treated that way unless and until successfully
17 challenged. So I think it is to be expected that in a
18 case with this volume of material that there may be an
19 occasional mistake of this type, although we certainly
20 hope that never happens. But the best we can do then in
21 the light of that is to correct it, and so I will ask
22 that to the extent that exhibit is not being handled as
23 confidential and its confidentiality has been asserted,
24 then it needs to be treated as confidential.

25 Mr. Berman.

01080

1 MR. BERMAN: Your Honor, I would note that
2 with respect to Exhibit 1406, like some of the other
3 documents that are being referred to by counsel, this is
4 not a document that was produced in this proceeding by
5 Complainants. It's a document that we have back in our
6 offices. We don't believe the protective order allows
7 Complainants to designate documents in our files as
8 confidential just because they choose to designate
9 documents in our files as confidential. We think if we
10 have a document and wish to present it to the Commission

11 that we have the right to do so.

12 JUDGE MOSS: Well, let me put the question to
13 you, let us suppose that there was a proceeding in which
14 a document by a company not a party to the proceeding
15 was on one side of a communication with an entity that
16 was in a proceeding before the Commission, and if the
17 party that was in the proceeding said, well, we don't
18 think we need to treat this as confidential, but the
19 other entity that was not even a party in the proceeding
20 were to come forward and say, wait a minute, this is a
21 highly privileged communication between us and you and
22 we want to assert confidentiality, do you think the
23 Commission should not treat that as a confidential
24 document?

25 MR. BERMAN: Your Honor, I'm not sure I fully

01081

1 followed the situation that you described.

2 JUDGE MOSS: Let's say that PSE had a
3 contract with Arco, and PSE was in this, before this
4 Commission in a proceeding against Equilon, and PSE
5 believed that it wanted to put that Arco contract that's
6 a privileged contract or confidential contract into the
7 record. Can PSE waive that confidentiality for Arco
8 without Arco having any right to step in and say wait a
9 minute?

10 MR. BERMAN: Your Honor, I will acknowledge
11 that if we have a confidentiality agreement with Arco
12 that Arco should have the right to enforce that
13 confidentiality agreement.

14 CHAIRWOMAN SHOWALTER: It's just much more
15 broadly, we have rules about that, in general, Puget can
16 not reveal to the public confidential information about
17 its clients. You can't tell, you know, I am a Puget
18 customer, and you can't publish to the world my bill.
19 We have general rules about confidentiality. It's not a
20 matter of whether it's asserted or not in this
21 proceeding.

22 JUDGE MOSS: And I think that really cuts to
23 the heart of the matter, and so my previous ruling that
24 the document should be treated as confidential will
25 hold.

01082

1 MS. DAVISON: Thank you, Your Honor.

2 JUDGE MOSS: Please go ahead and distribute
3 the response. And I should repeat something I said the
4 other day, I believe, which is that I am putting the
5 current day on these records requisitions or Bench
6 requests or whatever as they go out, and that, of
7 course, is aspirational. I understand that under the
8 circumstances with you all otherwise very much occupied
9 that you may not be able to meet those dates, so don't
10 let that be an additional source of stress in your life,
11 but just try to get the responses to us as quickly as
12 you can consistent with the limits of human endeavor.

13 Was there anything else, Ms. Davison?

14 MS. DAVISON: That concludes my list of
15 housekeeping matters.
16 JUDGE MOSS: All right.
17 Then, Mr. ffitch, I think you're the only one
18 who hasn't raised a housekeeping matter. Do you have
19 any?
20 MR. FFITCH: Oh, what the heck. We have an
21 ongoing discussion with Puget about the confidentiality
22 for Mr. Lazar's exhibits. At this point, it's my
23 understanding they have no -- they have no request that
24 1301 be confidential, so on that basis 1301 I think is
25 appropriately treated as a public exhibit.

01083

1 The second exhibit, 1302, we asked on Tuesday
2 for specific designation of information that was thought
3 to be confidential in there, and we didn't get that. We
4 did have a conversation again this morning with counsel
5 for Puget continuing that conversation, so we're now
6 getting close to the time when Mr. Lazar is going to be
7 on the stand, and I'm not sure how or if we're going to
8 quite get to the bottom of this, but that's the status
9 report.
10 JUDGE MOSS: Okay, well, when Mr. Lazar gets
11 ready to take the stand, we will find out if there's any
12 need to treat that second exhibit as confidential. And
13 if there is, we may need to make special provisions in
14 the hearing room as we have done on more than one
15 occasion thus far to protect the asserted
16 confidentiality of the material.
17 MR. FFITCH: And if we have a chance, if
18 there's a break between now and then, we will try to
19 again work it out with counsel.
20 (Discussion on the Bench.)
21 JUDGE MOSS: All right, then I believe that
22 concludes our housekeeping matters, and we are ready
23 then for your first witness.
24 MR. CEDARBAUM: Thank you, Your Honor. Staff
25 calls Dixie Linnenbrink.

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1 Whereupon,
2 DIXIE LINNENBRINK,
3 having been first duly sworn, was called as a witness
4 herein and was examined and testified as follows:
5
6 D I R E C T E X A M I N A T I O N
7 BY MR. CEDARBAUM:
8 Q. If you could please state your name and your
9 business address, and spell your last name for the court
10 reporter, please.
11 A. Okay. My name is Dixie Linnenbrink, that's
12 L-I-N-N-E-N-B-R-I-N-K.
13 Q. And you are employed by the Commission; is
14 that correct?
15 A. I am, I'm employed as the director of the
16 regulatory services division.

17 Q. Can you just describe what the regulatory
18 services division is?

19 A. To start with, the regulatory services
20 division is composed of sort of all the operating units
21 or the technical staff of the Commission. It includes
22 electric, gas, telecommunications, and water utilities
23 as well as some safety aspects in rail safety,
24 transportation, and I think that is the scope of it.

25 Q. What are your general duties as the director

01085

1 of the regulatory services division?

2 A. A large part of my responsibilities are
3 overseeing the recommendations that the Staff makes to
4 the commissioners. This could be through either the
5 open meeting process or formal hearings. I'm not real
6 involved typically in the details or the staff work
7 that's done underlying the recommendations. It's a
8 little bit more of a top level. And then I have the
9 managerial responsibilities, allocation of resources,
10 budgetary aspects. I'm a member of the senior
11 management team that formulates recommendations about
12 administrative policies to the commissioners.

13 Q. How long have you been employed by the
14 Commission?

15 A. Not quite ten years. I began my employment
16 with the Commission in May of 1981 or '91. And at that
17 time, I was director of the utilities division. In
18 January of '96, we consolidated the transportation
19 division and utilities into regulatory services.

20 JUDGE MOSS: Mr. Cedarbaum, I apologize, but
21 since you're just at this preliminary stage of
22 questioning, I want to go ahead and interrupt you now,
23 because I just have recognized a problem with my
24 exhibits, and we need to straighten it out before we go
25 on, so let's go briefly off the record.

01086

1 (Discussion off the record.)

2 JUDGE MOSS: We spent just a moment off the
3 record there correcting some organizational issues with
4 respect to Ms. Linnenbrink's exhibits, and again, I
5 apologize for interrupting the flow, but I think I did
6 it early enough not to disturb the thrust. Go ahead.

7 BY MR. CEDARBAUM:

8 Q. Before we went on that short break,
9 Ms. Linnenbrink, I think you had indicated you had been
10 employed by the Commission since 1991.

11 A. That's correct.

12 Q. Prior to that time, what was your relevant
13 employment experience?

14 A. Prior to coming to work for the Commission
15 here, I was employed by the Oklahoma commission, that
16 was the Oklahoma Corporation Commission. There I was
17 the manager of the accounting department, and the major
18 responsibility there was overseeing rate cases as well
19 as supervising the accounting Staff. I began my

20 employment with them in October of '82 and was employed
21 with them until I assumed my position here.

22 Q. Were you ever employed in another accounting
23 field?

24 A. Yes, I was. I worked for Coopers & Lybrand,
25 a public accounting firm, for approximately two years.

01087

1 Q. And just briefly, what is your education?

2 A. I have a BS in business administration, and I
3 would also note that I was a certified public accountant
4 in the state of Colorado since 1981. I am on inactive
5 status.

6 Q. So based on your employment and educational
7 experience, is it fair to say that you're familiar with
8 the regulatory financial and bookkeeping, accounting
9 practices and principles concerning regulated utilities?

10 A. Yes.

11 Q. You're not appearing today as an expert in
12 rate of return; is that correct?

13 A. That's correct.

14 Q. Are you comfortable though and familiar with
15 the process of assessing the financial status of
16 regulated utilities?

17 A. I am.

18 Q. And just briefly, what sorts of criteria or
19 indexes do you look at in that analysis?

20 A. I would include rate of return, the
21 calculation of return on equity. I would also look at
22 interest coverages, earnings per share, those sorts of
23 data, coverage of dividends.

24 Q. Is that the kind of analysis that you do in
25 your current job?

01088

1 A. Typically we are most focused on rate of
2 return and return on equity rather than the others, but
3 I would say yes to that.

4 Q. And with respect to records that are kept at
5 the Commission, what are your sources of information in
6 doing that financial analysis?

7 A. There are a couple of reports that are
8 regularly filed with the Commission. Those would be the
9 monthly financial reports as well as the results of
10 operations on a semiannual basis. We call those
11 Commission basis reports. And I would also include then
12 the public financial statements that the various
13 companies issue.

14 Q. Have you testified before the Commission
15 before?

16 A. Yes, before this Commission only once, and
17 that was in PSE's merger proceeding.

18 Q. So you are generally familiar with the merger
19 docket and with the order in that case?

20 A. Yes.

21 Q. And the rate plan that was established in
22 that case?

23 A. Yes.
24 Q. And were you in your current position when
25 Schedule 48 and the Special Contracts that are being

01089

1 considered in this case were established and approved by
2 the Commission?

3 A. I was.

4 Q. And so are you generally familiar with the
5 orders and records in those dockets?

6 A. Yes. I would note I did not participate with
7 Staff in the various meetings they had with the Company
8 and the customers, but I was present at the open meeting
9 presentations and had communications with Staff
10 throughout those.

11 Q. Can you tell us what the scope of your
12 testimony is this morning?

13 A. The scope of my testimony is threefold. I am
14 sponsoring Staff's position on whether or not an
15 emergency exists with regards to an immediate danger to
16 the public health, safety, and welfare. And then I am
17 sponsoring a couple of exhibits which go to the current
18 financial status of PSE. And then my last area is
19 sponsoring a couple of exhibits which evaluate the
20 impact of the joint proposal for a soft rate cap, the
21 joint being Public Counsel and Staff, as well as an
22 evaluation of what might happen to PSE on a financial
23 basis if these customers were to return to Schedule 49.

24 Q. And is Staff presenting the testimony of any
25 other witnesses today?

01090

1 A. Yes, Alan Buckley is prepared to testify on
2 the joint rate cap proposal, that being a soft cap. And
3 then also we indicated that if need be, if we need to
4 get into more detail about the exhibits I'm sponsoring,
5 Tom Schooley prepared those exhibits ELL-1 and 2 as well
6 as 3 and Hank McIntosh.

7 Q. They prepared those exhibits under your
8 supervision and direction?

9 A. That's correct.

10 CHAIRWOMAN SHOWALTER: Mr. Cedarbaum, could I
11 just ask you to speak up just a little bit, especially
12 at the end of your questions. Your voice is dropping a
13 little bit.

14 MR. CEDARBAUM: Sorry, about that.

15 BY MR. CEDARBAUM:

16 Q. Let's turn to the first aspect of your
17 testimony, the emergency issue. Can you tell us what
18 the Staff's conclusion is with respect to whether or not
19 there is an emergency in this case under the standard in
20 the APA about an immediate danger to the public health,
21 safety, or welfare?

22 A. I have concluded that there's not an
23 immediate danger.

24 Q. And before you get into the justification for
25 that conclusion, can you tell us the sources of

01091

1 information you relied upon to reach that conclusion?

2 A. I can. I attended the depositions of the
3 witnesses as well as their testimony in these
4 proceedings. I have also reviewed the responses to
5 Bench requests as well as a lot of the data requests to
6 the extent I could given the volume of data that was
7 coming in.

8 Q. Before turning to your exhibit, the reasons
9 why Staff has concluded that there is no emergency, do
10 you have any preliminary comments to make?

11 A. I would. I would just note that while I
12 don't think that an emergency exists, I do think it
13 would be in the public interest to find a resolution to
14 this matter. And I say that because the environmental
15 impacts that are at issue here, job losses. And then
16 also I would have some concern about price flare-ups in
17 other areas, in particular say the diesel fuel. And
18 along with that, I would mention the transportation of
19 that fuel for these temporary generators.

20 Q. Why don't we then turn to the reasons why
21 Staff has concluded there was no emergency, can you go
22 ahead and explain what those reasons are?

23 A. Yes, I looked at two principal areas. One
24 would be, well, the conditions for the emergency, and
25 the Complainants responded mostly to the economic threat

01092

1 rather than any endangerment because of loss of
2 products.

3 Bench Request 12 posed the question, how is
4 the product or products manufactured essential to the
5 public health, safety, or welfare in Washington state.
6 Some of the Complainants indicated that they would shut
7 down or at least curtail, and that, in fact, has
8 happened. But others indicated that they don't have any
9 plans to curtail or shut down. That would include
10 Boeing in their response and then Tesoro, both in the
11 Bench request response as well as testimony during the
12 hearing.

13 On the loss of products, what the
14 Complainants mentioned was three areas, certain air
15 products, petroleum products, and plastic bottles. The
16 oxygen was my principal concern, and during the
17 deposition, Randall Clancy, who is the site manager of
18 the Puyallup facility of Air Products, indicated that
19 there were other plants that produced the same product.
20 I guess in conclusion, -- and I would say that product
21 is more essential to our way of life than an immediate
22 threat.

23 Q. With respect to that, the issue of the
24 availability of products, there was testimony from
25 Mr. Crawford of Tesoro concerning propane. How did that

01093

1 play into your analysis?

2 A. At the hearing, Mr. Crawford did respond that
3 he was not aware of any shortages, and I would expect
4 that he would have been aware if there were shortages,
5 so I considered that factor too.

6 Q. There was testimony Monday and Tuesday and
7 during the depositions with respect to the ability of
8 some of the Complainants to pass on increased energy
9 costs to their own customers.

10 A. Mm-hm.

11 Q. Did that have any play in your analysis?

12 A. Yes, that goes to the point I mentioned about
13 the majority of theirs was the economic impact, and I
14 did think that their ability to pass on price increases
15 was critical, and there were three main factors here.
16 Exhibit 17 of PSE's prehearing brief included a copy of
17 a press release. The date of that press release was
18 September 25th from Air Liquide. And in that, they
19 announced a surcharge to their customers as a result of
20 increasing fuel and power costs.

21 Q. What about the City of Anacortes, there was
22 some testimony from Mayor Maxwell about the City's
23 ability to pass on the higher energy costs?

24 A. This was discussed pretty extensively in the
25 deposition, and he had noted that they did have a

01094

1 process, a three year rate review that they typically go
2 through. Also noted that they had retained a consultant
3 to look at this. And in that, he also acknowledged that
4 70% of their volume was to two large customers who
5 happen to also be Complainants in this proceeding, and
6 that would be Equilon and Tesoro.

7 Q. Do you have with you the Complainants'
8 response to Record Requisition Number 3, which is now
9 Exhibit 20, or I think it's been at least marked as
10 Exhibit 20? This was the contracts between the City of
11 Anacortes and Tesoro and between the City of Anacortes
12 and Equilon.

13 A. I didn't bring it to the table with me, but I
14 do recall it.

15 Q. Did you review that exhibit?

16 A. I did.

17 Q. And what conclusions did you draw from it
18 with respect to the City's ability to pass on increased
19 energy costs to Tesoro and Equilon?

20 A. The contract does provide that what they do
21 is they estimate their costs each year, bill those
22 throughout the year, and then at the end of the year
23 they do calculate what the actual costs were and bill
24 those to the customers and in that variable cost do
25 include electric power required to deliver water from

01095

1 the water supply system. So I conclude that they can
2 and do pass these costs on.

3 Q. And just for the record, you're looking at
4 paragraph four in the sub parts of the contract?

5 A. I am. There's -- Bob, you're missing a page
6 here, but I believe it must be on page three, and I
7 think it was Section 4.3, and then the variable costs
8 are on 4.1 on page two.

9 Q. I believe everyone may have had that problem,
10 and that's only with respect to, I believe, the Tesoro
11 contract.

12 A. Okay, if I go to the further one.

13 Q. The Equilon contract, and maybe I have this
14 in the wrong order, but one of the contracts is a
15 complete copy. One is missing page three, but they're
16 identical.

17 A. Right.

18 Q. Not my fault.

19 JUDGE MOSS: Well, regardless of fault, I do
20 think we need to have the complete exhibit, so if at
21 some point that missing page can be handed up.

22 MR. CEDARBAUM: That's the Complainants'
23 response. We were just going with what they provided
24 us.

25 JUDGE MOSS: All right, so Complainants will

01096

1 see to it that that exhibit is made complete.

2 MS. DAVISON: Yes, Your Honor, I apologize
3 for that. I see that my original copy is missing page
4 three as well. But we will take care of that for the
5 City of Anacortes.

6 CHAIRWOMAN SHOWALTER: Just so I understand,
7 is this Exhibit 20 in our records? I haven't got it in
8 front of me, and I'm not sure why.

9 JUDGE MOSS: It is Exhibit Number 20, and it
10 is part of the Bench request responses, records
11 requisition responses.

12 BY MR. CEDARBAUM:

13 Q. Ms. Linnenbrink, just a couple more questions
14 on the emergency issue. There was, in the record as the
15 exhibit 800 series, there are a number of these, these
16 were offered by the Complainants, there were a number of
17 press releases and documents that discuss the West Coast
18 energy situation today. Are you familiar with those
19 documents in general?

20 A. I am.

21 Q. Can you discuss why those documents, how
22 those documents in your mind present a situation which
23 is different or not from the one that's in -- that we
24 have before us today in this proceeding?

25 A. I perceive that, well, I think the West Coast

01097

1 problem shows that there's much broader issues than just
2 this complaint and the impact that it's having on these
3 customers. I think we would do well to spend our time
4 on the broader problem than the time we have spent on
5 say the emergency for these customers.

6 Q. Do you have anything else to add on the
7 emergency issue?

8 A. I would add, well, I guess two things. I
9 thought it was relevant the customers' testimony that
10 they are not able to raise their prices. I think that
11 does go to the question about are there shortages or
12 supply problems. If there were, in fact, shortages, I
13 think they would have the ability to increase their
14 prices.

15 The other observation I would make is it
16 seems that we have come full circle with these
17 customers. In my merger testimony, I had testimony
18 about these customers leaving the system, what would be
19 the impact on either PSE or the cost shifting issue.
20 And I noted in that testimony that it was a frustrating,
21 I think was the word I used, because these customers had
22 been at the table and participated in PSE's resource
23 acquisitions and, in fact, were supportive of their
24 acquiring power from co-gen facilities, which at that
25 time were one of the major price pressures or cost

01098

1 pressures that were facing PSE, so. And the result of
2 that was then that PSE was sent away to manage those
3 cost pressures.

4 And today we're back, but this time it's with
5 the customers asking to return to Schedule 49, and I
6 would be concerned about the resource implications that
7 has for PSE, particularly given that at least what I
8 have heard is their long-term interest is still being on
9 the market and being tied to market rates rather than
10 cost of service.

11 CHAIRWOMAN SHOWALTER: They meaning?

12 THE WITNESS: The customers.

13 MR. CEDARBAUM: Thank you. Your Honor, I was
14 going to turn to the exhibits now, and two of the three
15 exhibits are confidential. Ms. Linnenbrink, we can do
16 this in an open session with Ms. Linnenbrink referring
17 to lines and columns. Or if it would be easier for her
18 just to refer to the numbers themselves and go into a
19 closed session, either is fine.

20 JUDGE MOSS: Only you know what your
21 questions will be and what sort of answers you need to
22 have for purposes of the record, Mr. Cedarbaum, so I
23 really need direction from you as to whether we need to
24 conduct this as a closed session or not.

25 MR. CEDARBAUM: I guess my preference is to

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1 make the discussions easier, especially during questions
2 from the commissioners, would be to go into a closed
3 session where we can just talk about the numbers.

4 JUDGE MOSS: All right, I noticed that we are
5 approaching the 10:30 hour, would you all like to take a
6 recess, and that will give me an opportunity to turn the
7 conference bridge line off. All right, what we will do
8 is we will take a 15 minute recess, our morning recess,
9 and before we do that, there's a comment that Mr. ffitich
10 wishes to make, and I will also go ahead and comment

11 that when we come back on the record, it will be in
12 confidential session. And during the recess, I'm going
13 to turn the conference bridge line off, so anyone who is
14 listening in on that will not be allowed to do that
15 during the confidential questioning, and we will turn
16 that back on when we remove ourselves from confidential
17 session and you just have to, I guess, check back in and
18 see when that's available to you. And, of course, we
19 will also ask that those who are not signatories to the
20 appropriate certificate under the protective order that
21 is in effect in this proceeding for confidential
22 information not return to the hearing room after the
23 recess. We will send someone out into the hall once we
24 return to non-confidential proceedings and let you know
25 that you can come back in.

01100

1 So, Mr. ffitich, you had something before we
2 break.

3 MR. FFITCH: Yes, thank you, Your Honor. We
4 produced a supplemental response to Puget Sound Energy
5 Data Request Number 1 this morning and provided it to
6 them. It contains material designated as highly
7 confidential by the Company. Other parties have
8 requested in the normal course to receive copies of our
9 discovery production to Puget, and I just wanted to
10 raise this primarily for the benefit of other counsel.
11 I need to find out who is entitled to receive copies of
12 the highly confidential documents, and then I will make
13 those available.

14 JUDGE MOSS: Okay, well, counsel should
15 coordinate with Mr. ffitich during the break on that
16 point.

17 All right, we will be in recess for 15
18 minutes until 20 before the hour.

19 (Brief recess.)

20 (The following testimony designated
21 confidential.)

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01224

1 JUDGE MOSS: All right, we have had our
2 afternoon recess, and we have also taken the opportunity
3 to have some off the record discussion regarding our
4 scheduling issues. And what we are going to try to do
5 this afternoon is finish with our witness panel,
6 Mr. Buckley and Mr. Lazar, and then we will recess for
7 the evening once we have done that. Then we will
8 continue on Monday at 9:30, and at that point in time,
9 we will have Mr. Gaines, and then we will have any
10 rebuttal witnesses who need to be called. And then we
11 will -- did we decide to go ahead and reserve Tuesday
12 for oral argument?

13 CHAIRWOMAN SHOWALTER: Yes.

14 JUDGE MOSS: Yeah, I think we probably better
15 plan on Tuesday for the oral argument, so we will need
16 to make some accommodations to do that.

17 One other housekeeping matter before I swear
18 the witnesses. I was handed up during the break an
19 exhibit for Mr. Lazar. It is an additional direct
20 exhibit as to which I understand there will be no
21 objection on the basis of it being late filed. I have
22 marked it as 1304-HC. It is highly confidential.
23 Because of its highly confidential nature, we will again
24 have to lapse into confidential session.

25 The way we have planned to do that is at the

01225

1 end of the direct examination, that exhibit will be
2 marked officially, and then we will go into confidential
3 session for questioning with respect to that exhibit.
4 We will then have all counsel cross, any cross they have
5 with respect to that exhibit while we're in confidential
6 session. Then we will lapse out of confidential session
7 and return to the orderly cross-examination of the
8 witnesses on the balance of their testimony and
9 exhibits. Does everybody got that? All right.

10 MR. FFITCH: Your Honor, really a minor
11 matter, I noticed the exhibit list omits number 1303.

12 JUDGE MOSS: Scribner's error, but for my
13 sake 1303 will not be used for any purpose in this
14 proceeding. It's just my mistake, and I would rather
15 live with the mistake than try to undo it at this point.

16 (Discussion on the Bench.)

17 (Brief recess.)

18 JUDGE MOSS: Mr. Berman, you have something
19 preliminary.

20 MR. BERMAN: Yes, I wanted to note that we
21 have just distributed PSE's response to Records
22 Requisition Number 10. It is a data response from the
23 UE-960696 case listing customers of Puget who were
24 deemed to be eligible for tariff 48 back at the time of
25 that the data request or data response was provided.

01226

1 I'm sure everyone will immediately flip to the second
2 page and note that the City of Anacortes is listed as
3 one of those customers who was on that list of eligible
4 customers.

5 CHAIRWOMAN SHOWALTER: What's the date, how
6 do we date this document?

7 MR. BERMAN: I'm not sure how we date the
8 document, Your Honor. We could try to track down that
9 information. It was a data request in the initial
10 docket back in 1996, but I don't have an exact date.

11 MR. LAZAR: July '96 is the date on the
12 document.

13 MR. BERMAN: Very good point. On the list of
14 customers on the second page, there's a date on the
15 printout.

16 CHAIRWOMAN SHOWALTER: Okay.

17 JUDGE MOSS: I will just note that although
18 the second page bears a stamped confidential, there is
19 no current confidentiality to the document, and it is
20 tendered as a non-confidential?

21 MR. BERMAN: Yes, Your Honor, I think it
22 doesn't really disclose anything that we could figure
23 out that was confidential about these customers.

24 We also have to distribute right now our
25 response to Records Requisition Number 11. That is a

01227

1 list of Schedule 48 customers with their -- listing the
2 sites that they're served at, the average megawatt hours
3 for the sites, and we have designated this one
4 confidential, because it has customer specific data
5 about those customers.

6 JUDGE MOSS: I will mark that as 30-C, and if
7 I didn't say so, the other response to Records
8 Requisition 10 will be Exhibit 29.

9 (Discussion on the Bench.)

10 MR. TROTTER: Your Honor, could I just make a
11 brief statement with regard to Exhibit 29, which is
12 Records Requisition 10.

13 JUDGE MOSS: Sure.

14 MR. TROTTER: Hopefully for the Bench's
15 benefit, if you look at the order in that docket,
16 initially it referred to primary voltage with aggregated
17 loads over 2.4 average megawatts, so the key there is
18 aggregated loads. And then when you look to the tariff
19 that was ultimately adopted, which is tab 2 of the
20 Company's brief, it talks about aggregating accounts on
21 the same distribution feeder. And so there may be some
22 distinction between customers eligible under kind of a
23 proposed version at one point in time and customers
24 eligible under the final version, because the
25 aggregation concept seemed to change.

01228

1 JUDGE MOSS: Okay, well, other parties will
2 have an opportunity to respond to the records
3 requisition, and if they have some conflicting
4 information, then that should be noted at the time they
5 respond, and we will deal with it then. And, of course,
6 the matter will be available for argument if appropriate
7 at the oral argument, which we are scheduling for
8 Tuesday at 10:00. I would have to call that a tentative
9 at this point.

10 MS. DAVISON: And also, excuse me, Your
11 Honor, just so I'm clear, we are starting on Monday at
12 9:30 a.m.?

13 JUDGE MOSS: That is correct.

14 MS. DAVISON: Thank you.

15 JUDGE MOSS: I believe we are now ready to
16 swear our witnesses unless there are any other
17 preliminary matters. All right.

18

19 Whereupon,

20 ALAN BUCKLEY AND JIM LAZAR,
21 having been first duly sworn, were called as witnesses
22 herein and were examined and testified as follows:
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01229

1 DIRECT EXAMINATION
2 BY MR. TROTTER:
3 Q. Mr. Buckley, would you please state your name
4 and give your business address?
5 A. (Buckley) Yes, my name is Alan P. Buckley.
6 My business address is Chandler Plaza, Building 1300
7 South Evergreen Park Drive Southwest, Olympia,
8 Washington 98504.
9 Q. And you're employed by the Commission as a
10 senior policy strategist; is that correct?
11 A. (Buckley) Yes.
12 Q. What are your duties?
13 A. (Buckley) Among other things, my duties in
14 regards to this proceeding are reviewing rates and power
15 supply issues.
16 Q. Could you please state your professional and
17 educational background?
18 A. (Buckley) Yes, I have a Bachelors of Science
19 in Petroleum Engineering from the University of Texas
20 and an MBA in finance from the University of California
21 at Berkeley. I have been with the Commission since late
22 1993. Before that, I worked with a company R.W. Beck &
23 Associates, an engineering and consulting firm in
24 Seattle. Worked there for approximately four years.
25 Before that, worked at Pacific Gas & Electric in San

01230

1 Francisco for a short period of time. And in the seven
2 years before that, I worked for Standard Oil of Ohio,
3 which is now British Petroleum, as a petroleum engineer.
4 Q. And has your experience in utility matters
5 focused on the electric industry?
6 A. (Buckley) I cover both electric and gas
7 issues.
8 Q. What is the purpose of your testimony today?
9 A. (Buckley) My purpose of my testimony here is
10 to introduce the joint Staff/Public Counsel rate cap
11 proposal and also to explain the assumptions on how that
12 proposal was derived.
13 Q. Do you have before you Exhibit 1001?
14 A. (Buckley) Yes.
15 Q. Which is Attachment A and B to the Staff
16 prehearing brief?
17 A. (Buckley) Yes, I do.
18 Q. And could you refer to Attachment A which is
19 the joint proposal, and give a brief summary of that
20 proposal?
21 A. (Buckley) Yes, I first want to start off by
22 saying that the proposal that we have prepared is what

23 might be called an initial proposal in that it reflects
24 the compressed schedule of this proceeding and also
25 their continued review of data request responses.

01231

1 Another factor is that we are not addressing all issues
2 that have been raised in this proceeding regarding the
3 Mid-C Index or other aspects of the tariff. We are
4 assuming that other issues such as these will be able to
5 get discussed and addressed in I guess the compliance
6 filing.

7 Our proposal in general is only meant to
8 cover what has been called the periods of extreme spikes
9 in the Mid-C Columbia Index that has been experienced as
10 recently as last fall and into the winter. So with
11 that, the basic first item of our proposal is that both
12 Staff and Public counsel are generally supporting the
13 movement of these non-core customers into a buy-sell
14 tariff that would be filed by the Company and approved
15 by this Commission. That is the first aspect of our
16 proposal.

17 The second aspect is one that we believe
18 should be temporary, and at the time we intended it to
19 be immediate, and that was to implement what we're
20 calling a soft cap to the existing Schedule 48 rates as
21 well as those rates contained within certain Special
22 Contracts. And by soft cap, we mean that there are
23 circumstances in which that cap may be increased beyond
24 the initial amount that we're recommending be set.

25 The basics of the proposal are simple. We

01232

1 are proposing that the energy rate under Schedule 48 and
2 certain contracts remain at the Mid-C Index when that
3 index is at or below \$128 megawatt an hour.

4 CHAIRWOMAN SHOWALTER: \$128?

5 A. (Buckley) \$125, sorry. When the Mid-C Index
6 rises above \$125, the actual billing rate for the
7 customers is the greater of \$125 or PSE's demonstrable
8 costs to serve these customers plus a margin. And then
9 there's a maximum billing rate equal to the Mid-C
10 Columbia Index. As you can see, the soft cap is
11 initially set at \$125. For purposes of our initial
12 proposal, we have set the margin as we have called it at
13 \$25 per megawatt hour.

14 And again, this proposal is to be temporary,
15 we believe in place until the outcome of the Schedule 48
16 compliance filing review or customer movement into a
17 buy-sell tariff. The Attachment B of Exhibit 1001 shows
18 several examples of how the rate is to be determined.
19 And if you would like, I can go through those.

20 CHAIRWOMAN SHOWALTER: I'm sorry, what
21 exhibit?

22 THE WITNESS: Attachment A.

23 MR. TROTTER: In Attachment A.

24 BY MR. TROTTER:

25 Q. In Attachment A to Exhibit 1001, you do list

01233

1 several examples. Can you just briefly go through
2 those?

3 A. (Buckley) Yes, and these are for illustrative
4 purposes only. So in the first example where the Mid-C
5 Index is anywhere up to \$125, the customers are billed
6 at the index, and that's the same as the present
7 Schedule 48 and Special Contracts.

8 If the Mid-C Index rises to let's say \$150
9 and PSE's demonstrable cost to serve is at \$75, but the
10 customers are billed at the index or at the cap at \$125.
11 And we can see that the \$75 plus our proposed margin of
12 \$25 is equal to \$100, so it has not reached the point
13 where it's above our soft cap rate.

14 In example number three where the Mid-C Index
15 rises to \$200, in this example, PSE's demonstrable costs
16 to serve these customers rises to \$150. When you add
17 the margin of \$25, the customers would be billed at
18 \$175.

19 Example number four is just simply a
20 continued increase in the Mid-C Index, however, PSE's
21 cost remains at \$150, the margin remains at \$25, so the
22 rate again the customers are billed still at \$175.

23 In example number five, the index continues
24 to increase, however, in this example, PSE's
25 demonstrable cost to serve rises to that level equal to

01234

1 \$500. Under our proposal with the cap at the Mid-C
2 Index levels, the customers are billed at \$500.

3 In the last example presented here is if the
4 Mid-C Index drops to \$100 and PSE's cost to serve drops
5 down to let's say \$150, that the customers are billed at
6 \$100, because the cap mechanism would only apply if the
7 Mid-C Index is over \$125.

8 Q. Just focusing on example six, under the
9 current Schedule 48, if the Mid-C Index is \$100 and
10 PSE's demonstrable cost to serve is \$150, how are the
11 customers billed today?

12 A. (Buckley) It would be as in this example,
13 that they would be at the index rate of \$100.

14 Q. Staying with the Attachment A, in footnote
15 one you explain the source of the \$125 figure, and note
16 three, the source of the \$25 a megawatt figure; is that
17 correct?

18 A. (Buckley) Yes.

19 Q. Do you have anything to add to those two
20 notes at this time?

21 A. (Buckley) Yes. From a Staff perspective, we
22 wanted to point out that this level comes from several
23 different ways of looking at developing a cap level.
24 The first one is that we set the cap at approximately
25 the cost of what we think is the customer's diesel

01235

1 generation option cost. And our point here is that

2 although we recognize that the installation of diesel
3 generation for these customers may result technically, I
4 suppose, into the development of their own cap, they
5 would use that rather than take service under PSE, we
6 think that the Commission should not promote a rate or
7 policy that will result in generation that's less
8 efficient than other available or that may have
9 additional environmental consequences.

10 The \$125 is also approximately equal to the
11 variable cost in running a relatively inefficient simple
12 cycle turbine with gas priced at the high end of the gas
13 range. And for that, we can use an example of a simple
14 cycle turbine with a 12,000 heat rate and apply \$10 gas
15 to it, that gives you a cost of about \$125 per megawatt
16 hour. So we were searching for an appropriate cap level
17 that we would use, and that's, from the aspect of what
18 Staff came up with, that's the genesis of the \$125
19 amount.

20 The \$25 margin amount we feel is
21 approximately equal to the fixed cost associated with
22 PSE's current resources, and the use of that amount is
23 even in times of rising costs to Puget, that you would
24 still retain revenues from these customers that would
25 provide some recovery of fixed cost to the Company. So

01236

1 that was the source of the \$25. And I know that Public
2 Counsel will have some additional comments on their
3 perspective on where that level came from.

4 Q. When you referred to the \$25 margin, is that
5 approximately equal to the margin reflected in the fixed
6 costs associated with PSE's current resources?

7 A. (Buckley) Well, I think that can be a matter
8 of semantics. I think you could say yes, that that
9 would be, that would be using existing rates.

10 Q. With respect to the cap you just testified
11 to, I would like to refer you to Exhibit 1003, and for
12 the record the first couple of pages are the same as
13 Exhibit 622, which went in through Mr. Schoenbeck. But,
14 Mr. Buckley, would you turn to page three of the
15 exhibit, which shows two graphs, and could you please
16 explain what that exhibit shows and how you used the
17 information on these graphs to develop your proposal?

18 A. (Buckley) Yes, we -- this graph, there's two
19 of them on page three, and the first, the top one is the
20 approximately this year, 2000, the year 2000, I'm sorry,
21 non-firm on peak Mid-C Index, and it is graphed there.
22 You must remember that there are really four indexes.
23 We have the non-firm on peak, the non-firm off peak, and
24 then the firm on and the firm off, and this is just one
25 of those. The bottom graph is essentially a showing of

01237

1 the amount that has -- of transactions that were
2 reported to develop the index shown above. The pages
3 after that are the raw data.

4 What Staff used in this is we used this in

5 several ways. One was to just get an understanding of
6 the recent level of events that have been occurring and
7 how they have affected the Mid-C Columbia rate. And we
8 also used it to add a subjective analysis to what cap
9 level we were proposing. And I think it's clear that
10 our intent was to pick a cap that -- or a cap level in
11 which our proposal would be applied to only in periods
12 of spikes that we believe were unplanned and
13 unanticipated by any party. So we used this in, like I
14 said, primarily a subjective fashion to understand what
15 the index was doing during the last year and also to
16 develop, you know, to come up with the cap level that
17 we're recommending.

18 Q. The joint proposal uses what is called PSE's
19 "demonstrable costs" to serve the Schedule 48 and
20 Special Contract customers. Can you describe that
21 feature in a little more detail, please?

22 A. (Buckley) Yes, what we're trying to get to
23 this is by having a future in the cap proposal in which
24 if the Company can demonstrate that its costs to serve
25 these customers are indeed rising to points above the

01238

1 cap that they will get full recovery of those costs.
2 And I think we have heard some testimony in the last few
3 days regarding whether, you know, how this would be
4 determined.

5 And again, this proposal being an initial
6 one, we have not talked a lot with the Company on how it
7 might be implemented, but we're confident that there can
8 be some assumptions made and reporting methods developed
9 at which we could at least derive a reasonable estimate
10 of the cost to serve these customers, which would allow
11 this portion of the cap proposal to be implemented.

12 Q. Would your proposal also need to take into
13 account and protect against opportunities to "game" the
14 demonstrable costs that might be reported?

15 A. (Buckley) Yes, but we believe there are
16 several issues related to calculating demonstrable
17 costs, and one of those, the first one might be the
18 basic assumptions under which you would consider that
19 the customers are being served on a cost basis. Staff
20 and Public Counsel have come up with a term that these
21 customers would be last on the bus when it comes to
22 resource allocations to native load.

23 And I can give an example of that, that under
24 our proposal, if you stack up where these customers
25 might stand in a resource portfolio based on cost, we

01239

1 believe that the core retail customers would come first.
2 We also have in this stack the long-term wholesale
3 commitments that the Company has made and are included
4 in setting rates. And then just above that, we feel
5 that these non-core customers would be positioned.

6 And we want to make it clear that in that
7 stacking that the position that these customers have

8 would be before what I guess Staff would call
9 non-discretionary or discretionary sales, excuse me,
10 into the market. So I think there was some testimony
11 earlier today on this issue, and in our view, that these
12 customers would have I'm going to use the word priority
13 or their position and where cost would be to -- where we
14 would calculate cost would come before hourly or daily
15 sales, discretionary sales by the Company into the
16 market. That's one aspect of the calculating the
17 demonstrable cost.

18 The other would be an attempt to in finding
19 out what those costs were, would be coming up with a
20 solution that would prevent any potential gaming by any
21 party in calculating what those costs are. And we have
22 come up with, you know, some examples.

23 I think the most common, for example, is how
24 do you account for market transactions that the Company
25 is out there making in the market that are unrelated to

01240

1 serving load. All companies that we regulate make these
2 transactions. And so under our proposal, although it's
3 not firmed up as far as exactly how to implement it, we
4 would assume there would be some kind of a netting
5 calculation where you could net out the effect of the
6 Company making sales into the market, purchasing to make
7 those sales, that those transactions would not affect
8 the calculation of the cost to serve.

9 So I think that those are the two principal
10 issues relating to what the calculation of the
11 demonstrable costs would be.

12 Q. Does the proposal assume that PSE retains the
13 incentive to keep its costs down?

14 A. (Buckley) Yes, we think that's a fundamental
15 aspect of this proposal, that with or without a cap, the
16 incentive remains for the Company to serve these
17 customers at the least cost that they can. That doesn't
18 mean that they would be served at the least cost of all
19 their customers. It would be that it meant that you
20 would presumably or be incented to find those resources
21 that could meet this load at the least cost, the same as
22 their existing tariffs are now.

23 Q. So referring back to the chart on page three
24 of Exhibit 1003, is it fair to say that Staff's proposal
25 here is meant to address the spikes in the Mid-C Index

01241

1 above the \$125 level?

2 A. (Buckley) Yes, it is, and again, in that
3 determination, to add something, we looked at the
4 environment, the recent environment. We understand that
5 if you take a look at the Mid-C Index and go back two,
6 three years to this index or the other ones that
7 preceded it that you would see significant different
8 levels in what you're seeing now. And staff's proposal
9 is trying to address the reality of the Mid-C Index and
10 those levels that are being experienced right now.

11 Q. I would like you to turn back to Exhibit
12 1001, Attachment A and Attachment B, and turn to page
13 five, which is Attachment B, which sets forth the
14 general assumptions supporting the proposal.

15 CHAIRWOMAN SHOWALTER: I'm sorry, what did
16 you say?

17 Q. Exhibit 1001, Attachment B, which starts on
18 page five. And is this a concise list of the major
19 assumptions that underlie the proposal from your
20 perspective?

21 A. (Buckley) It's a summary of Staff's
22 assumptions, yes.

23 Q. And are there any that you would care to
24 emphasize now for the Commission's benefit?

25 A. (Buckley) Well, I would like to go through

01242

1 some of them to a certain extent, but I would also like
2 to comment first on the overall context in which we
3 evaluated the issues in this proceeding.

4 As I stated earlier, the proposal, and I
5 wanted to make it clear, only addresses those extreme
6 unanticipated levels that we're seeing now in the Mid-C
7 Index. These rates are used to determine or these index
8 prices are used to determine the rates that are being
9 charged under Schedule 48 and certain Special Contracts.
10 As I stated earlier, there are many other issues
11 regarding these indexes that have been brought up by
12 other witnesses such as whether a market was ever formed
13 and whether this was a valid index. For purposes of our
14 proposal, we tried to make as few changes to the
15 existing schedules as possible and were only meaning
16 again to address those peak periods and not all other
17 issues.

18 We believe in general, Staff believes, that
19 those extreme levels that have been exhibited, when you
20 compare the revenues received under those to the overall
21 costs of the Company, we believe that there may be an
22 environment in which the rates charged under Schedule 48
23 and those Special Contracts would be unfair, unjust, and
24 unreasonable. They certainly would be, we believe,
25 compensatory, but I believe there's no question on that

01243

1 right now. But when looking at the difference between
2 the revenues received and the cost, we felt that we had
3 to make a proposal to address I guess what I call a
4 mismatch there and the potential for rates that are not
5 reasonable.

6 In coming up with our proposal, we did two
7 things. One is we made the attempt to address the fact
8 that Puget's rates or PSE's rates may increase, and we
9 think our proposal addresses that by the soft cap. The
10 other assumption that we made in our proposal is that we
11 are not taking issue with the risks that the customers
12 and the Company have taken with regard to Schedule 48
13 rates other than during these periods in which the rate

14 cap would be implemented. We have no issue at this time
15 with the amount of revenues that have been received,
16 have been either saved by the Company or earned as a
17 result of the tariffs.

18 Again, our proposal is to address that peak
19 period and our belief that the rates might not be fair,
20 just, and reasonable during that period. We addressed
21 just that reality. And under those circumstances, we
22 think that implementing a cap provides the Company with
23 a reasonable revenue stream and under our soft cap
24 proposal provides essentially full recovery of its
25 costs.

01244

1 Q. Do you have anything else you wish to add
2 with respect to the assumptions underlying the proposal?

3 A. (Buckley) We did make a few other
4 assumptions, and one of those that Staff is not
5 supporting any movement of the Schedule 48 or Special
6 Contracts into an existing tariff at this time. We
7 understand that the tariff anticipated that happening
8 with the appropriate surcharges to be made. However,
9 for purposes again of this proceeding, which was to
10 provide an immediate alternative to the Commission for
11 their consideration, we do not feel it appropriate to
12 make -- to continue on with that possibility. We feel
13 that if that happens, it really could only be done in
14 the context of a full review of cost and in a general
15 rate case.

16 As we stated earlier we definitely support
17 the movement of the customers into a buy-sell type
18 tariff. We believe that this kind of tariff would
19 enable the companies to have what has been called I
20 guess virtual access to the market and yet still not
21 bring up some of the concerns that this Commission would
22 have for regarding full open access. So we feel that
23 from a conceptual standpoint, the buy-sell tariff is a
24 favorable option, although recognizing it has to be
25 reviewed by the Staff and the parties and approved by

01245

1 the Commission.

2 Another item we have also considered in
3 developing the proposal is the Company's own actions at
4 FERC in regards to rate caps. We looked at that, and we
5 understand that the context in which their rate cap
6 proposal is made at FERC is slightly different than
7 here. We believe that some of the same concerns that
8 have been expressed by the Company apply here. And I
9 point out in one of the PSE statements in their filing
10 before FERC, they claim that there is a need for
11 fundamental fairness and the desirability of avoiding
12 unnecessary market distortions. That comment is one
13 that we believe in and I think applies in the case of a
14 potential rate cap in this proceeding here.

15 MR. TROTTER: Your Honor, I would like to
16 move for the admission of Exhibits 1001 and 1003. I

17 would note Exhibit 1002 is the same as Exhibit 605, and
18 we simply have nothing to add to what has already been
19 the record on that, so we're not offering 1002 at this
20 time.

21 MR. BERMAN: Your Honor, we have previously
22 moved to strike the joint Staff/Public Counsel proposal,
23 and I know that that motion has been rejected. I just
24 didn't want my sitting still here to be deemed any sort
25 of waiver to our objections to that proposal. I won't

01246

1 burdon you with another argument on the issue.

2 JUDGE MOSS: Okay, thank you, Mr. Berman,
3 your objection is noted.

4 Hearing no other objection for notation or
5 otherwise, the exhibits will be admitted as marked.

6 BY MR. TROTTER:

7 Q. Does that complete your direct testimony,
8 Mr. Buckley?

9 A. (Buckley) I wanted to comment on two short
10 items, and one of those is that there has been some
11 discussion about a potential of a rate cap proposal for
12 cost shifting, and we feel that our soft cap proposal
13 which allows the Company recovery for costs to the
14 extent that they increase above the initial level to be
15 recovered, we feel that the potential for any cost
16 shifting is minimized.

17 The other issue is whether we believe that
18 the rate cap proposal is acceptable within the context
19 of PSE being under a rate plan. And although I
20 understand that a Staff witness, Ms. Linnenbrink,
21 addressed this issue too, from an additional Staff
22 perspective, we believe that the implementation of a
23 rate cap proposal is, if not anticipated, specifically
24 anticipated by language that's contained in any orders
25 approving the merger, approving the rate cap, or other

01247

1 Schedule 48 proceedings, we feel like it is entirely
2 appropriate to be implemented, and we believe that it is
3 within the range of the rate cap or the rate plan that
4 is acceptable to be implemented.

5 MR. TROTTER: Thank you, Mr. Buckley. Those
6 are all my questions on direct.

7 JUDGE MOSS: All right, Mr. ffitch, just a
8 moment, please.

9 (Discussion on the Bench.)

10 JUDGE MOSS: Thank you, Mr. ffitch, you may
11 go ahead.

12 MR. FFITCH: Thank you, Your Honor.

13

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

15 BY MR. FFITCH:

16 Q. Good afternoon, Mr. Lazar. Would you please
17 state your name and business address and occupation for
18 the record.

19 A. (Lazar) Jim Lazar, 1063 Capital Way South,

20 Suite 202, Olympia, Washington 98501. I'm a consulting
21 economist specializing in utility rate and resource
22 issues.

23 Q. Could you please summarize your
24 qualifications?

25 A. (Lazar) I have been engaged in utility rates

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1 and resource consulting since 1979. I have appeared as
2 an expert witness on more than 50 occasions before this
3 Commission and also before numerous other regulatory
4 bodies. I have previously been involved in nearly every
5 major rate proceeding involving Puget Sound Energy since
6 1978, including the Puget/Washington Natural Gas merger
7 and the creation of Schedule 48, both of which I think
8 are relevant to the issues in this docket.

9 Q. And what's the purpose of your testimony in
10 this proceeding?

11 A. (Lazar) While concerned about the impact on
12 local economy if huge price increases to industrial
13 customers, Public Counsel is primarily concerned with
14 the impact any action taken on this complaint may have
15 on core market customers. In that sense, I have also
16 been asked to respond to Puget's petition for deferral
17 of lost revenues that it may experience as a result of
18 this case.

19 Q. And what are your principal conclusions?

20 A. (Lazar) In the event that the Commission
21 determines that there is a problem that needs to be
22 addressed on an immediate basis for these customers,
23 Mr. Buckley and I have prepared the soft rate cap
24 proposal that we believe will ensure that these
25 customers do not pay excessive rates during this period

01249

1 and that Puget will be able to recover its costs and
2 more from them.

3 Q. What's the historical context in which you
4 have reviewed Schedule 48 for this proceeding?

5 A. (Lazar) My practice has been more than 20
6 years, and I'm aware of the extraordinarily successful
7 record of industrial customers in obtaining electric and
8 gas rate concessions, of which Schedule 48 is only the
9 most recent manifestation.

10 Q. And you stated that you have joined with
11 Mr. Buckley in proposing a soft cap that he has
12 described. What factors did you consider in developing
13 this position?

14 A. (Lazar) Well, first I considered the impact
15 on Puget's earnings to ensure that the proposal would
16 not put either shareholders or core market rate payers
17 at any serious risk. Second, I considered the needs of
18 these customers. Third, I considered measures to
19 further protect core customers. And finally, I have to
20 admit I was influenced by the fact that relatively high
21 emission diesel units are being used when they're really
22 not economic.

23 Q. What are the principal problems facing the
24 region's electric supply system in your opinion?
25 A. (Lazar) The 1990's were the age of

01250

1 complacency, low energy costs and not a lot of action
2 taken to prepare for the future. There's now a shortage
3 of low pollution power plants available for dispatch on
4 the West Coast. There's a shortage of natural gas
5 pipeline capacity to the power plants that are available
6 for dispatch. The use of natural gas for electric
7 generation has soared. That has caused a sharp increase
8 in the wholesale cost of natural gas from less than \$2
9 per million btu's a couple of years ago to as much as
10 \$30 this winter and nearly \$10 today. That's affecting
11 gas customers throughout the region on an immediate
12 basis but only a few electric customers.

13 Second, due to the restructuring of the
14 California electricity market, there are much higher
15 demands on the spot market purchases of energy than in
16 the past, and spot market prices have become much more
17 volatile than previously experienced.

18 Third, hydro conditions, fuel cost increases,
19 and the sale of the Centralia power plant has placed
20 Puget at a somewhat less advantageous position than in
21 previous years with respect to its electric generating
22 resources.

23 Q. And what has been the effect of these
24 problems?

25 A. (Lazar) Market clearing prices for

01251

1 electricity have gone from pennys and nickels, \$15 to
2 \$40 a megawatt two years ago, to dimes and quarters,
3 \$100 to \$500 per megawatt hour with sporadic spikes
4 above that level. You know, today the California PX hit
5 \$1,000. This has increased Puget's exposure to such
6 costs and obviously these customers' exposure. Because
7 these customers chose a market based rate, they're
8 directly exposed to the high volatility just like
9 residential and commercial gas customers are exposed to
10 this kind of volatility.

11 Q. Does this combination of circumstances
12 constitute a problem for most of the Complainants?

13 A. (Lazar) Certainly high prices are outside of
14 their planned budgets for the Puget Sound operations and
15 create problems for local managers and possibly even,
16 quote, bring into question the economic viability of
17 local facilities. And Public Counsel is concerned about
18 the macro economic impacts, employment and income in the
19 communities, which may follow if these customers do shut
20 down.

21 Public Counsel also wants to ensure that
22 customers who did not choose market priced power options
23 are not adversely affected by any relief that may be
24 provided.

25 Q. What analysis have you done of a cost impact

01252

1 of the current form of Schedule 48 on Complainant
2 customers in this case?

3 A. (Lazar) I prepared Exhibit 1301, which
4 compares the cost impact of projected rates to the
5 annual revenues of the Complainants.

6 Q. And does that exhibit reflect your expert
7 opinion regarding the cost impact on Complainants of the
8 Existing Schedule 48?

9 MR. FFITCH: Let's pause for a moment, make
10 sure everyone has that. It's originally marked as
11 Exhibit JL-1 and now marked for identification as
12 Exhibit 1301. I have extra copies if the Bench would
13 like.

14 COMMISSIONER HEMSTAD: I need a set.

15 MR. FFITCH: May I proceed, Your Honor?

16 JUDGE MOSS: Yes, sir, go ahead.

17 BY MR. FFITCH:

18 Q. And does Exhibit 1301 reflect your expert
19 opinion regarding the cost impact on Complainants of
20 existing Schedule 48?

21 A. (Lazar) Yes, it shows the effect of
22 Mid-Columbia pricing at the rates that were estimated by
23 Puget in the December 20th forward prices that were a
24 part of the initial Bench request responses without any
25 sort of price cap being implemented.

01253

1 Q. And so referring to Exhibit 1301, could you
2 please explain to the Commission what conclusions you
3 reached with regard to the cost impact?

4 A. (Lazar) Well, if that particular Mid-C
5 forecast were to become fact, and of course all
6 forecasts are wrong, you can be sure of that, but we
7 don't know in which direction.

8 Q. And again, this is the December 20th, 2000,
9 Mid-Columbia price indicator sheet provided by Puget?

10 A. (Lazar) Yes. If those were to become fact,
11 the Complainant customers would have the power cost
12 section of their rate equal \$460 Million for calendar
13 year 2001 under the current form of Schedule 48.

14 Q. That's the second column from, the second
15 column of numbers from the left?

16 A. (Lazar) Right, so \$3.8 Million for Anacortes.
17 That's about eight times the Schedule 49 rate that was
18 the tariff rate. For most of the larger customers,
19 however, power costs would remain a relatively small
20 percentage of the total business revenue.

21 Q. What's the impact on smaller Schedule 48
22 customers?

23 A. (Lazar) Well, for two of them in particular,
24 CNC and City of Anacortes, the impact of these projected
25 power costs amount to more than 5% of annual revenue. I

01254

1 consider that to be fairly severe, at least on a budget

2 planning basis, having previously been responsible for
3 budgeting for public agencies. When the numbers get
4 that big, they, I think they get to be pretty severe.

5 Q. Is there a simple solution to the problems
6 faced by these customers?

7 A. (Lazar) No, there's not. If the customers
8 pay less, Puget will receive less revenue, and its
9 shareholders will receive less net income. The core
10 customers, including the industrial customers who did
11 not choose Schedule 48, are protected from cost shifting
12 by the guarantee and the Commission's approval of
13 Schedule 48 and are under the five year merger rate plan
14 as well.

15 Q. What's the essence of the guarantee against
16 cost shifting from the Commission's order approving
17 Schedule 48?

18 A. (Lazar) Initially Public Counsel was
19 concerned that the expected lower rates and lower
20 revenues from Schedule 48 might create financial
21 pressure on Puget to shift costs to core market
22 customers. In the October 31st, '96 order approving
23 Schedule 48, the Commission emphasized the meaning of
24 the guarantee and Public Counsel cited that on brief.

25 Q. What other assurances were provided to core

01255

1 market customers regarding future rates?

2 A. (Lazar) The merger, rate plan merger
3 contained a five year rate plan that provided for modest
4 annual electric rate increases. The only conditions
5 under which rates could be increased above those levels
6 were set forth in the merger stipulation and order.
7 There were some carve outs, and there was the interim
8 relief provision if the financial condition declined at
9 levels addressed in the PNB proceeding, the 7230
10 proceeding.

11 There was no provision for core customer
12 rates to change as a result of any special treatment
13 given to large customers, including the original
14 Schedule 48 or any relief that might result from this
15 proceeding unless the Company's financial condition
16 declined to the point where interim relief could be
17 justified.

18 Q. Given the prohibition on cost shifting in the
19 merger rate plan, if the Commission ordered lower rates
20 for the industrial customers in this proceeding, is
21 there any way the core customers could be adversely
22 impacted?

23 A. (Lazar) No, not unless their interim rate
24 relief provision were triggered.

25 Q. Do you believe that Puget is profiting from

01256

1 its sales of power to the Complainant customers in this
2 case?

3 A. (Lazar) Yes, Puget's response to
4 Complainants' data request 203, I think it's now Exhibit

5 1002, is the graph that shows that about 90% of the
6 power to serve these customers can be produced at
7 Puget's variable cost, co-generation, and combustion
8 turbine power plants. That power costs Puget \$50 to
9 \$120 a megawatt hour.

10 Based on data contained in Exhibit 14, which
11 is the big thick Bench request response, tab R and a few
12 other sources, those costs are significantly below the
13 December 20th, 2000, estimate of Mid-C prices. That
14 averages \$274 per megawatt hour. Puget will incur
15 significantly less to serve the Schedule 48 customers
16 than the Schedule 48 rate would apply to these sales if
17 that forecast becomes fact, that December 20th forecast.

18 Q. Are we now getting to your Exhibit 1302?

19 A. (Lazar) Yes, we are.

20 MR. FFITCH: Your Honor, at this point, I
21 will just report that counsel for Puget Sound Energy has
22 indicated that they no longer assert confidentiality as
23 to Exhibit 1302, and so I believe that we're now able to
24 just go forward with that as a non-confidential exhibit.

25 JUDGE MOSS: All right.

01257

1 BY MR. FFITCH:

2 Q. Could you start out, Mr. Lazar, by just
3 describing each of the pages of this exhibit quickly.

4 A. (Lazar) Yes, the first page is a summary of
5 the results that are calculated on pages two and three.
6 Page two estimates Puget's cost to serve the Schedule 48
7 customers under both average and critical water
8 conditions. For example, it concludes that Puget's
9 average cost to serve Schedule 48 under critical water
10 conditions in January of 2001 would be about \$155 per
11 megawatt hour compared with the estimated Mid-C rate of
12 \$507 providing Puget with a net profit of \$352 per
13 megawatt hour.

14 Q. And those figures that you just read are
15 found in the first column, the January column?

16 A. (Lazar) Yes.

17 Q. Critical water costs and the margin at market
18 rate are at the bottom of the column, correct?

19 A. (Lazar) That's correct.

20 Q. And then the market price is up in the cost
21 of resources?

22 A. (Lazar) Yes.

23 Q. In the middle of the page. What about page
24 three?

25 A. (Lazar) Page three computes the effect of the

01258

1 proposed soft cap applied on a monthly basis to the set
2 of assumptions that were used in the exhibit under
3 critical water conditions. It shows that the cost of
4 service to these customers for the year would be about
5 \$156 Million. And the Schedule 48 revenue under the
6 current formula would be about \$460 Million. The
7 revenue under the soft cap would be about \$247 Million.

8 And those are the sorts of numbers that get brought
9 forward to page one and a type face that even grownups
10 can see.

11 Q. This exhibits was prepared by you?

12 A. (Lazar) Yes, it was.

13 Q. And it represents your expert opinion on how
14 the Schedule 48 rate of proposed soft cap would affect
15 the Complainants and Puget?

16 A. (Lazar) Yes. Given the assumptions with
17 respect to the cost of the various power sources, the
18 Mid-C price, and the usage of the customers.

19 Q. And could you state your conclusion then that
20 you draw and that's reflected in these exhibits,
21 referring I think most helpfully to the summary page?

22 A. (Lazar) On the summary page, I have put the
23 critical water figures in bold face, because at the
24 moment, hydro conditions are significantly below
25 average. And I think that's closer to -- we're closer

01259

1 to critical than we are to average.

2 Puget's cost to serve these customers, line
3 two, \$156 Million under critical conditions. Company's
4 revenues on line one at the Mid-C rate would be \$460
5 Million. So the Company would achieve an operating
6 margin of about \$304 Million from this group of
7 Complainant customers, which is not all of the Schedule
8 48 load, of about \$300 Million under critical water
9 conditions.

10 Just to put that in context, at the bottom of
11 the page on line 14, I have shown what the revenue would
12 be at the Schedule 49 rate. Some of the other figures
13 that I have brought forward to the summary page, Puget
14 would have net income from the rate cap compared to
15 Schedule 49 of \$179 Million. The customers would save
16 about \$213 Million from the soft cap compared to the
17 uncapped Mid-C rate. Puget would get a net profit from
18 these customers on line 6, about \$91 Million. Maybe
19 it's most interesting to compare line 6 to line 14,
20 Puget's profit from these customers under the soft cap
21 would be about a third higher than its total revenue
22 from them would be at the ordinary tariff rate.

23 Q. Now Mr. Schoenbeck reran your model with
24 somewhat changed assumptions, and I'm referring to his
25 Exhibit 617 I believe is the correct number, similar in

01260

1 format to your Exhibit 1302 here.

2 CHAIRWOMAN SHOWALTER: Can we wait here.

3 MR. FFITCH: We will pause and make sure I
4 have the correct number.

5 I don't have a lot of questions about that,
6 Your Honor. I just wanted to give people the reference.
7 I'm not going to really walk through in great detail,
8 but it is Exhibit 617 of Mr. Schoenbeck.

9 JUDGE MOSS: We have it up here.

10 BY MR. FFITCH:

11 Q. Do you agree with the changes that
12 Mr. Schoenbeck made to your exhibit?

13 A. (Lazar) I agree that the assumptions he made
14 are about as likely to become true as the assumptions I
15 used. The important thing though is that the
16 methodology that Mr. Buckley and I have proposed relies
17 on actual data, actual plant utilization, actual costs,
18 not on forecasts. So while we have presented a forecast
19 of what we think would happen if certain things
20 materialized, the methodology we rely on is what does
21 materialize. And so the differences between the
22 assumptions that we made would become unimportant if
23 this methodology, if the south cap were adopted, because
24 we would look at actuals, not at estimates.

25 Q. Have you considered concerns that others have

01261

1 not examined in this case?

2 A. (Lazar) Yes, although Ms. Linnenbrink brought
3 some of this up earlier. I'm concerned about the impact
4 on diesel fuel supply and the air quality impacts of
5 these customers choosing diesel bugs backup generators
6 under current market conditions.

7 Q. What impact could the Complainants have on
8 diesel fuel supply?

9 A. (Lazar) If all 300 megawatts of the Schedule
10 48 and Special Contract loads switched to diesel
11 generators, that would increase state diesel consumption
12 by about 15%. I'm not at all sure the petroleum supply
13 infrastructure could respond to that kind of increase in
14 demand. I start to wonder about shortages of diesel
15 fuel for ferries and trucks and trains and home heating
16 fuel that could possibly result from a surge in diesel
17 demand.

18 Q. What's your concern with air quality impact?

19 A. (Lazar) The types of generators that CNC is
20 using here in Tumwater emit about 30 times as much NOX,
21 nitrous oxides, per megawatt hour as conventional gas
22 fired power plants, plus diesel emits more carbon
23 dioxide and more particulate matter.

24 Q. Why should the Commission consider this
25 issue?

01262

1 A. (Lazar) The responsibility for regulating air
2 quality lies with other agencies. However, maybe this
3 is the key thing that drove me to the soft cap, if Puget
4 has cleaner power plants that are available to serve
5 these customers, and those cleaner power plants cost
6 less to operate than diesel bugs, then it ought to be in
7 the public interest to craft a pricing scheme that
8 allows the cheaper, cleaner power plants to be the
9 option of choice. And that I think is within the realm
10 of this Commission's role, and I think that the soft cap
11 proposal that Mr. Buckley and I have presented satisfies
12 that.

13 Q. Are there companies you would expect to

14 experience significant adverse impacts if their
15 electricity costs are not mitigated?

16 A. (Lazar) Some of the smaller companies, maybe
17 relatively labor intensive job providers operating in
18 competitive industries where other vendors outside of
19 Puget's service territory may not face the same
20 electricity cost pressures. CNC indicated that it may
21 be eliminating jobs in Tumwater as a result of high
22 electricity costs. I think that's an example.

23 Q. Should the smaller customers be allowed to
24 return to the Schedule 31 tariff rate?

25 A. (Lazar) I considered this option very

01263

1 carefully. Arguably the smaller customers never
2 belonged in the competitive market in the first place,
3 because they do not have the sophistication or the size
4 necessary to attract marketers and hedge vendors or
5 otherwise to take protective steps to avoid the problem
6 that's before the Commission. That lack of
7 sophistication was pretty serious for Bellingham Cold
8 Storage during the processing season last year, and the
9 governor stepped in to help them out. CNC and Anacortes
10 may be small enough to be in that category.

11 Q. Do you have any concerns about allowing these
12 small customers to return to the tariff?

13 A. (Lazar) Puget's industrial rates were already
14 below cost based on the last cost of service study that
15 was prepared by the Company using the methodology
16 approved by the Commission at the time of the last rate
17 case. And one of Mr. Schoenbeck's exhibits shows this.
18 You don't need to turn to it, but on page four of his
19 Exhibit 607, shows the industrial customers paying 93%
20 to 94% of their cost of service with residential at 97%
21 and commercial above 100%. To allow customers that
22 chose to leave the tariff to return to a below cost
23 tariff I think would cause a question in my mind whether
24 taking that action would result in rates that are
25 sufficient to cover costs.

01264

1 Q. What recommendations would you make if the
2 Commission were to consider letting some customers back
3 onto the tariff rate schedule?

4 A. (Lazar) I would suggest a 25% surcharge for
5 the amount of time that the customers were off of the
6 tariff and only for customers with maybe usage of less
7 than five megawatts allowed back onto the tariff rates,
8 those customers that I think there's evidence can't
9 really function in the competitive market, may not be
10 able to negotiate a buy-sell contract or get a hedge.

11 Q. Now you have heard Mr. Buckley a little bit
12 earlier describe the joint Public Counsel and Staff soft
13 cap proposal, notice how I subtly gave us a first
14 billing in that label of the proposal, is there anything
15 you want to add to Mr. Buckley's description?

16 A. (Lazar) The only thing I think I would add is

17 that I think that a 90 day initial term would be
18 appropriate and for two reasons. First of all, I think
19 it would put some pressure on the parties to make the
20 buy-sell arrangement that I understand Puget was filing
21 today work and move from a short term fix to a long-term
22 solution. 90 days also would allow some time to see how
23 it works and see if we have inadvertently dug a
24 different foundation than we thought we were, and I
25 think that's enough time to make -- to test the soft

01265

1 cap.

2 Q. Would you like to add anything to the
3 statement of the basis for the \$125 soft cap and the \$25
4 per megawatt hour margin that you have jointly proposed?

5 A. (Lazar) Just that several of the customers
6 did some studies of costs of diesel bugs, and \$125 is
7 right in the ball park. That's consistent with analysis
8 that I have done for other clients on the cost of using
9 diesel for supplemental power, mostly in places where
10 there isn't a non-oil grid, but that's consistent.

11 \$25 margin is designed to provide Puget with
12 a return on the use of the power plant that makes the
13 electricity, and it's an amount about equal to what's
14 embedded in their normal rates. So if Puget is using
15 its combustion turbine, it gets a return on the use of
16 that that's similar to what they get under its normal
17 rates for the use of the power plant.

18 Because these are the low capital cost power
19 plants that get used, low capital costs and high fuel
20 costs, that's a generous return, and it gives Puget, I
21 think, a lot more than it would have reasonably expected
22 to get when Schedule 48 was established, but it give
23 customers a price that I think would be competitive with
24 dirtier self generation.

25 Q. Is \$125 per megawatt hour fully compensatory?

01266

1 A. (Lazar) Under the terms of the soft cap, it
2 is, because whenever Puget's actual cost exceeds \$125,
3 the method defaults to actual cost. So if their cost to
4 serve is \$50, and that's true for many, many months, in
5 that range, Puget -- if the market is above \$125, Puget
6 gets \$125 and makes a \$75 profit. If the market is at
7 \$300 and Puget is running a machine that costs \$130 to
8 run, they get a \$25 margin on top of that. They make a
9 profit. So under all circumstances, I think it's
10 generously compensatory to Puget.

11 Q. Now you previously stated that in Exhibit
12 1302 you examined the impact of the cap on Puget Sound
13 Energy and on the customers. Would you take a look back
14 at that exhibit again.

15 A. (Lazar) Yes.

16 Q. And could you describe the impact on the
17 customers under average hydro conditions and then under
18 critical hydro conditions?

19 A. (Lazar) Under average hydro conditions, Puget

20 would collect \$105 Million more than --

21 Q. I'm sorry, can you tell us what page of the
22 exhibit you're on?

23 A. (Lazar) Page one of 1302, and that's shown on
24 line 6. The customers would save \$243 Million compared
25 with Mid-C pricing if the December 20th Mid-C forecast

01267

1 were to materialize. That's shown on line 9. The
2 customers would pay \$149 Million more than they would
3 have at the Schedule 49 rate. That's shown down on line
4 15.

5 Q. What about under critical hydro?

6 A. (Lazar) Under critical, Puget would collect
7 \$91 Million more than its costs. That's on line 6. The
8 customers would save \$213 Million compared with Mid-C
9 pricing. That's on line 9. The customers would pay
10 \$179 Million more than the Schedule 49 rate that's on
11 line 15.

12 Q. What did these results indicate to you?

13 A. (Lazar) It indicates to me that the soft cap
14 proposal reasonably balances the Company's right that I
15 believe it has to enjoy higher revenues from these
16 customers under current conditions with the customers'
17 expressed need for relief from the Mid-C pricing. The
18 rates for customers I think will be fair, just, and
19 reasonable. They will become cost based when market
20 conditions become extreme. The revenues to Puget will
21 be sufficient, because they carry a very significant
22 profit margin far, far above what is included in
23 typically utility rates. And I think that it also
24 satisfies Public Counsel's concern that these customers
25 contribute enough revenue to minimize the possibility

01268

1 that Puget might qualify for interim rate relief.

2 Q. Could this proposal create risks for core
3 market customers?

4 A. (Lazar) There's a small chance that this
5 mechanism might depress Puget's earnings to the point
6 that it could seek interim rate relief under the terms
7 of the merger order. If that were to happen, if it were
8 granted, that might raise core customer rates. That
9 depends on a lot of factors that will materialize in the
10 future, gas costs and hydro emissions, power plant
11 reliability, and other things.

12 Q. What probability do you assign to the
13 prospect of interim rate relief prior to the end of the
14 merger rate plan?

15 A. (Lazar) Based on my analysis of Puget's
16 earnings through November and its earnings forecast for
17 2001, I assign an extremely small probability of risk to
18 core market customers.

19 Q. And I will ask you a follow-up question to
20 that when I get to the end of my examination. Let me
21 move on to another area at this point.

22 In the event that Puget requests and

23 qualifies for interim rate relief, does your proposal in
24 this case approve specific treatment of any allowed
25 interim rate relief?

01269

1 A. (Lazar) Yes, if the Company qualifies for
2 interim rate relief prior to the end of the merger rate
3 plan, it would be my proposal that the rate cap should
4 be removed prior to calculating the amount of interim
5 relief. That is the Schedule 48 customers would default
6 back to the Mid-C pricing before the core market
7 customers would bear interim rate relief. That would
8 assure that the guarantee from the original Schedule 48
9 approval remains in effect, and core market customers
10 would not pay more as a result of Schedule 48.

11 Q. And is this portion of your testimony a joint
12 proposal with Staff, or is that solely the Public
13 Counsel proposal?

14 A. (Lazar) That is strictly Public Counsel.
15 That's my proposal, that's Public Counsel's proposal.
16 It is not reflected in Mr. Buckley's exhibits and his
17 attachment.

18 Q. And with this proposal, under what conditions
19 might core customers see a rate increase prior to the
20 end of the merger plan?

21 A. (Lazar) The only way that it would happen is
22 if the Schedule 48 customers were paying the Mid-C rate
23 and even with that Puget's earnings were low enough that
24 it could qualify for interim rate relief, and a small
25 risk of this, but it would be necessary to protect the

01270

1 integrity of the guarantee if the Commission grants
2 relief to the Complainants in this proceeding.

3 Q. Mr. Lazar, have you reviewed Mr. Schoenbeck's
4 proposal alternative to the soft cap, what he calls his
5 gas index approach?

6 A. (Lazar) Yes, generally, although I was not
7 present for the questioning on that.

8 Q. Do you agree with his concern that soft cap
9 may be difficult to administer?

10 A. (Lazar) I think that as a point, it may be a
11 concern. Even if there were no disagreements on
12 methodology, there's a lag period after the end of the
13 month to figure out what happened, to tabulate the
14 actual costs. And therefore at a minimum there would be
15 a lag between the occurrence of costs and figuring out
16 what the proper rate would be under that.

17 Q. Would Mr. Schoenbeck's gas index address
18 those concerns?

19 A. (Lazar) Yes, it would since the cost of gas
20 is knowable from published indexes on a day-to-day
21 basis.

22 Q. Are you therefore supporting his approach?

23 A. (Lazar) Only if there were two significant
24 changes made to it. First, the soft cap of \$125 would
25 remain. Second, it would need to include an appropriate

01271

1 margin for Puget to compensate it for the use of its
2 power plants and to reward Puget for the risk that the
3 Company assumed when it agreed to Schedule 48.

4 Q. And do you have a proposal for how that would
5 be done?

6 A. (Lazar) The \$125 soft --

7 MR. BERMAN: Your Honor, I object, I think
8 we're up to about proposal nine now that's been offered
9 to try to address the contract. We're hearing new
10 proposals every time a witness comes on the stand, and I
11 think that this is terribly prejudicial to the Company
12 to have to repeatedly face new proposals. Now we're
13 getting a Public Counsel modification of the Schoenbeck
14 proposal, when we had understood that we were going to
15 here the Public Counsel/Staff joint proposal, so now
16 there are at least several proposals pending before us.
17 This is terribly prejudicial. We think the whole
18 proceeding has raised serious due process concerns. But
19 we think having to deal with new proposals now further
20 exacerbates the deprivation of Puget Sound Energy's
21 rights.

22 JUDGE MOSS: Thank you, Mr. Berman.

23 It sounds to me as if Public Counsel is
24 getting into an area where there is a rebuttal, in
25 effect, to the Schoenbeck proposal showing certain

01272

1 weaknesses that it may have, as I understand it at
2 least.

3 Mr. ffitich, is that where you're going with
4 this?

5 MR. FFITCH: That's correct, Your Honor.
6 This is my only question on the point. We simply wanted
7 to respond to the proposal and indicate how we thought
8 it might be improved.

9 JUDGE MOSS: Okay, I think that's a
10 reasonable way to go about that and that we should allow
11 the testimony, so the objection is overruled.

12 A. (Lazar) The soft cap of \$125 would operate
13 exactly the way Mr. Buckley described. If the market is
14 at or below \$125, the market price would apply. When
15 the market passes \$125 and if Puget's native load does
16 not exceed the sum of its resources, then the gas index
17 plus the margin would apply.

18 Now we have proposed the \$25 margin over
19 actual cost, and there's about a \$10 a megawatt hour
20 variable operating cost apart from fuel for the
21 turbines, so I think I would put a \$35 margin on top of
22 the gas index price to make sure that Puget recovers all
23 of the direct costs plus the \$25 margin when it's
24 operating its turbines and it's costs are above \$125.
25 BY MR. FFITCH:

01273

1 Q. Turning to Puget's petition for deferred

2 accounting in this case, what action do you recommend
3 the Commission take on that petition?

4 A. (Lazar) The Commission should reject the
5 petition. The terms under which Schedule 48 were
6 approved explicitly precluded any cost shifting to core
7 market customers. As I read it, the petition would
8 appear to violate that guarantee.

9 Q. Are the Complainants asking that costs be
10 shifted in this case?

11 A. (Lazar) No, I don't think so. In their brief
12 and in testimony, they have explicitly stated that they
13 do not propose that any rate relief they may receive
14 cause an adverse impact on core customers.

15 Q. Puget's petition asserts that:
16 The Schedule 48 and Georgia-Pacific
17 Special Contract customers now seek to
18 unfairly and unjustly shift revenue
19 responsibility to the company's other
20 customers.

21 Do you agree?

22 A. (Lazar) No, I don't. I don't read anywhere
23 in the complaint that the Complainants are seeking to
24 shift costs. They're only seeking to reduce the margin
25 that Puget receives above its actual costs of serving

01274

1 them. It's Puget's petition that raises the specter of
2 cost shifting. That's what in my mind violates the
3 guarantee that was a part of the Schedule 48 approval
4 order.

5 The terms that I suggested in the event that
6 interim relief does become necessary, that is basically
7 that it be assigned to the Schedule 48 customers first
8 until they're paying the Mid-C price again, and that
9 only amounts above that would be assigned to other
10 classes assures that there's no cost shifting to other
11 classes as a result of implementation of the soft cap.

12 Q. Puget goes on to assert in its petition that:
13 The Company's power costs are rising
14 sharply as a result of higher prices in
15 the power gas market and that if these
16 increases in variable power costs aren't
17 paid through variable revenues from the
18 industrial customers, the risk of higher
19 market prices will be shifted to other
20 customers.

21 Do you agree with that argument?

22 A. (Lazar) No, Puget has not submitted any
23 quantification of changes in power costs in support of
24 its petition. My Exhibit 1302 at pages two and three
25 actually computes what those costs would be under two

01275

1 water conditions, and the soft cap produces far more
2 revenue than the cost of serving the customers. So the
3 soft cap assures that those costs are recovered from
4 these customers.

5 I guess I'm having trouble following Puget's
6 logic. They seem to be asserting this is a zero sum
7 game for the rate payers as a group, and I don't think
8 that's what the Complainants have proposed, and it's
9 certainly not what we think the guarantee assures. If
10 the Schedule 48 rates are not fair, just, and
11 reasonable, they should be changed. Even if they're
12 changed, however, the terms of Schedule 48 approval
13 guarantee and the merger rate plan dictates what can
14 happen to other rates.

15 Q. What is your recommendation to the Commission
16 in this proceeding?

17 A. (Lazar) Main thing is that the Commission
18 should determine if there is a situation that requires
19 immediate relief. If the Commission determines that
20 there is a need to provide immediate relief, the soft
21 cap proposal as we have discussed it or something
22 similar should be adopted and should have an assurance
23 that Puget gets a margin over its actual costs when its
24 costs are below market and that Puget recover its market
25 costs when it's buying in the market. And I think 90

01276

1 days would be a reasonable term for initial approval in
2 the context of some sort of immediate relief.

3 Q. Do you have a further recommendation?

4 A. (Lazar) Regardless of what's going on today,
5 I think that the buy-sell approach is a better long-term
6 solution. It provides the customers a reasonable
7 opportunity to secure power at competitive prices.
8 There are some very controversial elements to the
9 proposal, so the Commission will need to move
10 expeditiously to address that buy-sell proposal if
11 you're going to seek a long-term solution to this
12 problem.

13 Q. Do you have a specific recommendation with
14 regard to smaller customers?

15 A. (Lazar) Commission may want to consider
16 whether the smallest customers on Schedule 48 should
17 have been allowed to choose that option in the first
18 place. If they're to be allowed to return to the normal
19 industrial tariff though, as I have said, a surcharge
20 for maybe 25% for as long as they were off of it as sort
21 of a reentry fee would be appropriate. And I would
22 limit it to customers with usage of five average
23 megawatts or less, Bellingham Cold Storage and down, not
24 to these bigger customers that have the sophistication
25 to negotiate a buy-sell arrangement on competitive

01277

1 terms. The bigger ones should be okay.

2 MR. FFITCH: Thank you, Mr. Lazar. At this
3 time before moving on to the highly confidential
4 exhibit, Your Honor, I want to offer Exhibits 1301 and
5 1302.

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

8 MR. FFITCH: And, Your Honor, pursuant to our
9 prior sidebar discussion, I do wish to proceed to offer
10 Exhibit 1304, or excuse me, to tender that through
11 examination with Mr. Lazar, and that is designated
12 highly confidential. We are not disputing that
13 designation at this time.

14 JUDGE MOSS: Ms. Davison.

15 MS. DAVISON: Your Honor, we are disputing
16 the designation of the highly confidential, although
17 we're not disputing Public Counsel's designation of
18 highly confidential. They are doing that because they
19 relied on data that was provided from the Company that
20 was listed as highly confidential.

21 The first point that I would like to bring to
22 your attention, Your Honor, is that we asked for this
23 precise data in Data Request 2.07. You may recall that
24 that was the subject matter of our second motion to
25 compel. In oral argument on that motion to compel,

01278

1 Mr. Berman represented that no such data was available.
2 Needless to say, I was quite surprised to arrive at the
3 hearing and find that in response to a similar request
4 from Public Counsel and a threatened motion to compel
5 that that data was provided to Public Counsel with this
6 highly confidential designation.

7 We do not believe this information is highly
8 confidential. We think we have been prejudiced because
9 we do not have a consultant, that's Mr. Schoenbeck, who
10 is in this case that has signed the highly confidential
11 affidavit, which is quite extreme, but he can't do that
12 and continue his practice, in effect. And we would like
13 to request that this particular document be given the
14 confidential designation so that Mr. Schoenbeck may be
15 able to look at that and respond to it.

16 CHAIRWOMAN SHOWALTER: Well, what are the
17 grounds that it -- I don't even know if we can talk
18 about this in this setting, but the question would be
19 you have to justify, someone has to justify why it
20 should be confidential as opposed to highly
21 confidential. On the merits of that issue, what are
22 they? But if you can't answer in open setting, then
23 please don't.

24 MS. DAVISON: Well, I guess I would put that
25 to Puget to justify why it should have, you know, the

01279

1 very extreme designation of highly confidential,
2 particularly for a publicly regulated utility. I
3 believe that in all instances, the confidential
4 designation gives them ample protection. What we have
5 heard from Puget Sound Energy is that they need to have
6 the confidential designation so that they meet their SEC
7 or FCC or whatever it is requirements.

8 JUDGE MOSS: Well, let's hear from PSE what
9 PSE's reasons are. I think that's the best way to
10 proceed at this point.

11 So Mr. Berman, please.
12 MS. DAVISON: And the by the way, I'm sorry
13 to interrupt, but the order does say that PSE has the
14 burden to demonstrate that it should have the highly
15 confidential designation as opposed to confidential.
16 JUDGE MOSS: Right.
17 All right, let's go, Mr. Berman.
18 MR. BERMAN: Your Honor, several points have
19 just been raised. First, with respect to the claim that
20 discovery was withheld, I note that this analysis was
21 premised on an analysis that was prepared for a January
22 8, 2001, PSE board meeting. It was prepared and was
23 produced on January 8th.
24 JUDGE MOSS: Okay, let's don't take a lot of
25 time with that. I want to focus on why PSE asserts this

01280

1 is highly confidential. Let's get to the heart of the
2 matter and not worry about the sidebar stuff.
3 MR. BERMAN: Your Honor, the issue is whether
4 earnings estimates, forward looking earnings estimates,
5 which are distinct from the type of backward looking
6 data that's in the November 30th, 2000, report that you
7 considered earlier, whether a forward looking earnings
8 estimate is the sort of information that should be held
9 highly confidential. We believe that that's -- that
10 goes to the very heart of the type of information that
11 is of the -- that deserves the highest level of
12 protection for a public company, for a private company,
13 for any sort of company that faces competitors and that
14 faces competitive concerns. It also goes to the very
15 heart of SEC insider regulations.
16 I would note that in the merger proceeding,
17 the exact same issue came up relating to earnings
18 estimates, and in that proceeding, there was an argument
19 before the Commission, and the Commission decided that
20 the earnings estimates deserved the designation which
21 was then not called highly confidential, but was instead
22 called top secret. So the Commission has already
23 considered whether forward looking earnings estimates
24 deserve the highest level of protection. We think they
25 do.

01281

1 JUDGE MOSS: Okay, well, I will remark with
2 respect to the arguments concerning the SEC insider
3 disclosure requirements that I did have an opportunity
4 to review those regulations in connection with the
5 previous dispute regarding the designation of documents
6 as highly confidential. And it was my belief then and
7 it is my belief now that among other things, the
8 confidential designation in our protective order is
9 adequate to meet the requirements that the SEC has
10 imposed through its rules, so I'm not particularly
11 concerned about that aspect of it.
12 I do think that the Bench will want an
13 opportunity to discuss the question of whether forward

14 earnings estimates generally are in that category of
15 information that should be afforded highly confidential,
16 so I want an opportunity for the Bench to take that into
17 account in chambers, and I guess we need to hear if
18 there is any further argument on the subject before we
19 do that.

20 Ms. Davison has risen to her feet.

21 MS. DAVISON: Thank you, Your Honor. I would
22 just like to point out that the language on page three
23 of the third supplemental order amending the protective
24 order limits the designation of highly confidential to
25 that information which imposes a significant risk of

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1 competitive harm on the party asserting.

2 JUDGE MOSS: And I think none of your
3 competitors are in this proceeding, Mr. Berman. And I
4 just want to note in that connection that the
5 confidential protection under the protective order not
6 only limits the distribution of material that has that
7 classification, but also limits its use. And so in
8 order for anybody to, even if your competitors were
9 present and privy to that under the confidential
10 designation, were they to use it in any context outside
11 of the context of this very proceeding, they would be in
12 violation of the protective order and subject to
13 whatever sanctions might be imposed as a consequence of
14 that.

15 Mr. Berman.

16 MR. BERMAN: Your Honor, with respect to
17 that, I would note that the reason why counsel has said
18 that her expert is unwilling to sign the affidavit is
19 that it requires the witness to say that he will not be
20 advising competitors of Puget Sound Energy, and that
21 brings up the very heart of this issue. The expert that
22 they wish to show this information to does advise
23 competitors of Puget Sound Energy. And presenting
24 forward looking earnings data does -- gives him
25 information that will be in his head and will be there

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1 when he advises competitors of Puget Sound Energy. And
2 the very fact that he is unwilling to sign an affidavit
3 that says he won't advise such competitors proves the
4 danger of competitive harm.

5 I would note that one other -- one other
6 issue that's out there is that there are serious
7 concerns about relevance and foundation. That is
8 neither witness up here can speak to how these earning
9 estimates were prepared, how they were developed, what
10 assumptions were made. Because they're forward looking,
11 they're necessarily based on numerous assumptions, but
12 there's no one who can talk to what they were. And I
13 guarantee you that Mr. Gaines can not do that. He's not
14 the person at Puget Sound Energy who developed the
15 assumption. So we will have no idea in this record
16 where those assumptions came from. Drawing conclusions

17 from those assumptions and those estimates is really a
18 -- such a speculative enterprise that it's inappropriate
19 in this proceeding. So perhaps we don't have to address
20 the highly confidential/confidential issue and could
21 just strike this exhibit from the proceeding.

22 JUDGE MOSS: Mr. ffitich.

23 MR. FFITCH: Well, Your Honor, I simply rose
24 to object to Mr. Berman transforming the confidentiality
25 discussion to an objection as to relevancy. And I think

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1 that we should take these matters one at a time. If you
2 would like to hear us address relevancy, then we will do
3 that.

4 CHAIRWOMAN SHOWALTER: I just wanted to be
5 clear, if it remains highly confidential, do you still
6 object to its admission nonetheless?

7 MR. BERMAN: Yes, Your Honor.

8 JUDGE MOSS: Well, we may as well have the
9 benefit of all the argument, I suppose, before we retire
10 to chambers to consider it as required under the terms
11 of the protective order for the Commission's
12 deliberations on challenges to highly confidential
13 documents.

14 COMMISSIONER HEMSTAD: Do we have the
15 relevancy objection in front of us?

16 JUDGE MOSS: I think we need to take it up
17 before we --

18 COMMISSIONER HEMSTAD: In one sense, that
19 seems to be the first one, because if we decide it's not
20 relevant, we don't get to the second one.

21 Mr. Berman, I guess I would like to hear a
22 bit more from you as to why you would consider this not
23 relevant.

24 MR. BERMAN: Your Honor, I would say that I
25 would mix relevance with foundation. That is there are

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1 a whole variety of assumptions built into such an
2 estimate, and no one in this room knows what those
3 assumptions are or were. So trying to relate some
4 estimate that's based on assumptions that no one in this
5 room knows or understands, it's hard to see how one can
6 relate it to this proceeding.

7 COMMISSIONER HEMSTAD: I understood your
8 argument about foundation, but the relevance is a
9 different issue, but they slop together in your --

10 MR. BERMAN: They go together in my mind,
11 because trying -- if the assumptions are based on some
12 different set of assumptions, they may not relate at all
13 to or consider at all or take into account at all the
14 types of issues that are being addressed by Mr. Lazar.
15 We don't know, because we don't know what assumptions
16 went into it. Of course, we throughout this proceeding
17 have argued that the issue of Puget Sound Energy's costs
18 and earnings are irrelevant under Schedule 48, but I
19 understand that we have moved past that specific

20 concern.

21 COMMISSIONER HEMSTAD: My second question as
22 a practical matter. I don't mean to minimize the issue
23 in this regard, but as a practical matter, is the only
24 additional person who would look at this material if the
25 highly confidential category were stricken and it

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1 becomes confidential is Mr. Schoenbeck?

2 MR. BERMAN: Well, I think if it was
3 stricken, there were many other people who would look at
4 it. And I would note that --

5 COMMISSIONER HEMSTAD: Let me pursue that in
6 order to precisely focus the issue on the issue that you
7 raised about Mr. Schoenbeck. If the confidential
8 category were then limited so that no one other than
9 Mr. Schoenbeck could see it, and that focuses on his,
10 whether that puts the Company at risk, but if it were so
11 limited, would that be a constraint that we could
12 address so that no one else could see it? I'm thinking
13 about who else among these parties has an interest in
14 this material, and I guess I don't see anyone other than
15 Mr. Schoenbeck.

16 MR. BERMAN: If you're asking whether it
17 would be a good compromise to show it just to
18 Mr. Schoenbeck rather than everyone else, I would say
19 that that's better.

20 I would note that the Complainants have
21 designated an expert, a Mr. Link Wolverton, for review
22 of highly confidential material, so they can show this
23 to Mr. Wolverton and get his analysis and review and
24 take into consideration whatever they wish to take into
25 consideration after they do that.

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1 And I would also note that we have been
2 limited as well by the terms of this very restrictive
3 protective order. Only one outside counsel can be named
4 as well, and that's been a hardship for our side having
5 to deal with that limitation that was put in the draft
6 that counsel for Complainants proposed.

7 COMMISSIONER HEMSTAD: Then I would ask the
8 question of Ms. Davison, if Mr. Schoenbeck is timid,
9 does that same issue of an unwillingness to sign the
10 affidavit apply to Mr. Wolverton?

11 MS. DAVISON: Commissioner Hemstad,
12 Mr. Wolverton did sign the affidavit. But just so that
13 we're clear, the problem that Mr. Schoenbeck had is as
14 it relates to Puget Sound Energy, the designation that
15 for five years he can not represent "potential
16 competitors" is very, very broad. It's not that, you
17 know, Mr. Schoenbeck has been doing this for a very long
18 time, and he is a man of very, very high integrity.
19 It's not a suggestion that he's going to go out and
20 represent competitors and reveal this information. He
21 absolutely will not do that. That is not the issue.
22 It's just given the breadth of this language and the

23 utility that's involved.
24 CHAIRWOMAN SHOWALTER: But wasn't the issue
25 not that somebody would go spill the beans, but that

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1 once the information is in your head, you can't get it
2 out of your head. So if you're serving a customer,
3 another client, it's impossible really to advise as if
4 you didn't know that information.

5 MS. DAVISON: Perhaps we could ask
6 Mr. Schoenbeck, but I'm certainly not aware at this
7 moment in time that he's representing any PSE
8 competitors that he would have this information in his
9 head.

10 CHAIRWOMAN SHOWALTER: In the future.

11 COMMISSIONER HEMSTAD: You yourself said it
12 was a five year concern.

13 MS. DAVISON: I mean I think the broadness I
14 think he's concerned about is the construction of the
15 word potential competitor and the ability of PSE to
16 basically take away his livelihood by asserting such a
17 claim. That's the concern. It's not that he's going to
18 somehow or another spill the beans or even have this
19 information in his head and use it to PSE's
20 disadvantage. That's not -- and he primarily represents
21 industrial customers on both the gas and electric sides.

22 JUDGE MOSS: I can confirm the genesis of the
23 condition, however, is as Chairwoman Showalter
24 indicated. That is why this applies the way it is, and
25 that's based on some prior cases, so that's why we have

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1 the limitation.

2 MR. FFITCH: Your Honor, may I be heard on
3 the relevance point?

4 JUDGE MOSS: I think you should be. I think
5 we should have all the fullness of the argument so that
6 we can figure out what to do with this particular -- and
7 let me ask rather pointedly too, Mr. ffitich, just how
8 important is this to your direct case. Is this
9 something that we really need given everything else we
10 have in the record concerning forecasted financial
11 consequences, results if you will. We have several
12 exhibits that demonstrate that that came in through
13 Mr. Schoenbeck, perhaps some other sources as well. So
14 I just want to just ask you to carefully consider
15 whether this is really worth spending the next 20 or 30
16 minutes on. We have already spent 20 minutes on it.

17 MR. FFITCH: May I have a moment to consult
18 with my witness.

19 JUDGE MOSS: I think that would be a moment
20 well spent.

21 We will be off the record for that moment.
22 (Discussion off the record.)

23 JUDGE MOSS: Mr. ffitich, I believe you said
24 you were ready to report.

25 MR. FFITCH: Yes, Your Honor, Public Counsel

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1 continues to wish to offer the exhibit and proceed with
2 the examination.

3 And if I may just address the point and
4 address relevancy. Your Honor, since December 28th, we
5 have been asking Puget through discovery for information
6 on earnings forecasts. The same type of information was
7 available to the Commission in the merger proceeding.
8 We after a number of requests and follow-up requests and
9 follow-up requests have finally received that
10 information. We believe that earnings forecasts are
11 highly relevant to the question that's been extensively
12 discussed here about specifically the impact of the
13 proposed soft cap on Puget's earnings. This exhibit
14 goes directly to that. And very specifically when
15 Ms. Linnenbrink was on the stand, she was asked what was
16 the worst case scenario, we believe this exhibit is
17 specifically responsive to that question.

18 I would also note that when Puget Sound
19 Energy responded to this data request, there was no
20 mention of any objection on the basis of relevance and
21 that our data requests have repeatedly asked for the
22 underlying assumptions, and ultimately we were provided
23 with some undying assumptions that we have employed in
24 the preparation of this exhibit.

25 Finally with regard to the ability to

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1 respond, Puget has known for quite a significant period
2 of time that earnings and impact of soft cap proposals
3 would be before the Commission at this hearing and could
4 have designated other witnesses who could address that.
5 And I believe they could still request the ability to do
6 that next Monday if they hear something now that they
7 need to respond to of a financial nature. They have an
8 ability to respond to that evidence.

9 JUDGE MOSS: And we also have the foundation
10 question, Mr. ffitch, in terms of the witness's ability
11 to express the source and reliability of the information
12 contained in the exhibit that you would have him
13 sponsor.

14 MR. FFITCH: These numbers either come from
15 responses to data requests provided to us by Puget,
16 which we have here in the hearing room. The only
17 exception to that is where Mr. Lazar has sort of done
18 his own run of these various factors, and he can explain
19 the genesis of his sort of comparative analysis if he is
20 given an opportunity to testify about the exhibit.

21 (Discussion on the Bench.)

22 COMMISSIONER HEMSTAD: I would ask counsel if
23 they have any comment on a related but different
24 objection of speculativeness of this information. It
25 doesn't go to relevancy, it goes to reliability, I

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1 guess.

2 MR. FFITCH: I guess, Your Honor, that would
3 go to the weight, not the admissibility, I think, Your
4 Honor. I think we would suggest that this is based on
5 information, albeit forward looking as all forecasts
6 are, that it was, according to Puget, presented to their
7 own board of directors, which we believe gives it a
8 level of weight even though it is a forecast that merits
9 your attention.

10 COMMISSIONER HEMSTAD: Mr. Berman.

11 MR. BERMAN: Your Honor, again, we do believe
12 that this information is incredibly speculative, amongst
13 other things. We don't have any information here about
14 what context was put on this information when it was
15 presented to the board of directors. I won't deny that
16 it was. It was, in fact, presented to the board of
17 directors.

18 I can tell you it's my understanding that
19 when it was presented to the board of directors, they
20 were informed that there was considerable doubt about
21 the numbers, and I informed Mr. ffitch about that, that
22 there was considerable doubt about the numbers, because
23 it did not consider amongst other things the critical
24 water conditions that were coming up. And so it's just
25 a very highly uncertain set of data.

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1 We don't understand how one could take this
2 forward looking analysis for which there is no
3 foundation and draw conclusions. We have already heard
4 that lots of other data in this case has been not of
5 rate case quality. We're now moving to new levels of
6 speculativeness.

7 JUDGE MOSS: Mr. ffitch.

8 MR. FFITCH: Your Honor, first of all, I
9 would like to have the testimony of counsel stricken
10 from the record. He's testifying to the Commission
11 about apparently the context in which these
12 recommendations or estimates were given to the board. I
13 don't think that's appropriate.

14 Secondly, if this kind of an objection
15 stands, I think virtually all the exhibits in these
16 proceedings will be inadmissible, because much of the
17 evidence that is presented to this Commission is
18 generated as a result of data requests. This exhibit is
19 generated directly from information provided to us by
20 the Company. If the Company is now allowed to object to
21 it on the basis that it is completely unreliable, then I
22 would suggest that they -- I would ask for a further
23 motion to compel so that we can get some reliable
24 information out of the Company. I just think that's a
25 catch 22 for us, Your Honor.

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1 JUDGE MOSS: Ms. Davison, you have another
2 comment on this?

3 MS. DAVISON: I would just like to add a
4 couple of things. Mr. ffitch covered much of what I was

5 planning on stating, that I would add further to that
6 that the nature of rate proceedings includes forecasted
7 data, and to say that because it's a forecast it somehow
8 or another goes to the foundation or the speculative
9 nature of that certainly would call into question the
10 entire rate making process.

11 I would also add that the --

12 CHAIRWOMAN SHOWALTER: Can I stop you on the
13 forecasted data. It's not so much a forecast, but we
14 have no way of knowing what went into the forecast.
15 Mr. Berman has just said, which is not evidence, it
16 doesn't take into account critical year. So that's been
17 an interesting question to me in general. So I have
18 asked on other exhibits, does this or doesn't this take
19 into account critical water year. There needs to be
20 somebody who can answer that kind of question.

21 MR. FFITCH: Your Honor, if I may respond,
22 first of all, we have repeatedly since December 28 been
23 asking for the underlying assumptions behind the
24 forecast, and we finally a couple of days ago on
25 Wednesday, I think, we finally got some assumptions.

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1 They have been incorporated. Mr. Lazar can testify as
2 to what those assumptions are that were received from
3 Puget and further as to his assumptions that go into
4 this document. If need be, we can further provide the
5 actual data requests, which are also marked highly
6 confidential, that we have been given.

7 MS. DAVISON: Your Honor, I would also in
8 response to the question from Chairwoman Showalter, I
9 would offer that I would support the motion to strike
10 the unsworn testimony of Mr. Berman on this subject.

11 JUDGE MOSS: We don't regard statements by
12 counsel as evidence in these proceedings, and I'm sure
13 the Bench has the sophistication to filter that out, so
14 you don't need to be worried about that. It's not
15 evidence, it's just a statement by counsel.

16 MS. DAVISON: Well, I guess my concern is
17 that Chairwoman Showalter just referenced the lack of
18 consideration of critical water in this document.

19 CHAIRWOMAN SHOWALTER: No, I didn't, I said
20 it would be a factor and I would need -- there needs to
21 be somebody who, if there's some evidence submitted, in
22 order to for it to be minimally reliable, you need to at
23 least have some idea of what went into it, and someone
24 who can testify as -- give evidence as opposed to
25 counsel needs to do that.

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1 MS. DAVISON: I would agree with that,
2 Chairwoman Showalter, I believe that's absolutely right,
3 but I don't believe that we should be limited to the
4 issues that we're considering in this case that have
5 been set forth in the issue list that came out of the
6 prehearing conference order because PSE has made a
7 conscious decision to only have one witness available in

8 this hearing.

9 I would certainly support Mr. ffitch's
10 suggestion. I would not oppose even at this late hour
11 if they believe that it's essential to bring in a
12 witness to address the financial issue, I mean the issue
13 list is filled with references about just and reasonable
14 rates. And I agree, Mr. Gaines is not the right witness
15 to testify about just and reasonable rates.

16 But I also think that there is absolutely
17 nothing that has been prejudicial to PSE in this
18 proceeding on this issue. This has been the issue list
19 from the beginning. But I don't believe that it now
20 becomes a basis for not allowing evidence into the
21 record because they have chosen not to make such a
22 witness available.

23 JUDGE MOSS: All right, the Commission will
24 retire to chambers to deliberate on these matters, and I
25 can't be certain how long that will take, so I'm going

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1 to ask everybody to stay in the vicinity so that they
2 can see us come down the hall and move back into the
3 room.

4 CHAIRWOMAN SHOWALTER: Dinner hour.
5 Typically when we go back, we take a lot longer than we
6 think we will, and I'm wondering if, you know, half an
7 hour, which gives people time to go over to Jack in the
8 Box and bring back a hamburger in the room if they want
9 to, because it's clear to me this is going to go well
10 beyond the dinner hour. Personally I have some food,
11 and I'm going to eat it.

12 MR. BERMAN: Your Honor, if I could just
13 suggest on that score, I estimated 45 minutes for my
14 cross, but given the density of the direct examination
15 of these two witnesses, I feel relatively certain it
16 will be longer than 45 minutes, and I think it might be
17 worth considering, and I don't know if we need to do
18 this on the record, but whether we want to continue to
19 hear the entirety of my cross tonight, and I don't know
20 whether people feel they would be prejudiced or not if
21 we continued my cross on Monday morning.

22 JUDGE MOSS: Let's be off the record to have
23 this discussion.

24 (Dinner recess taken at 6:00 p.m.)
25

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1 E V E N I N G S E S S I O N
2 (6:50 p.m.)
3

4 JUDGE MOSS: All right, we have had our
5 dinner break, during which time the Bench had an
6 opportunity to deliberate fully on some of the pending
7 matters. As far as the designation of the document, it
8 will retain its highly confidential designation. As far
9 as the relevance and foundation objections are
10 concerned, the exhibit has not yet been tendered for

11 admission, and so we will see what happens. But in the
12 meantime, Mr. ffitch will be allowed to inquire of his
13 witness with respect to the document.

14 And therefore, we will be moving into a
15 highly confidential session, which means counsel and
16 others who are not, consultants, whomever, who are not
17 signatories to the appropriate affidavit under the
18 protective order will have to clear the room, and I will
19 turn off the conference bridge line, and we will be in
20 that session until notice.

21 So let's be off the record for a minute.

22

23

24

25