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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

IN THE MATTER OF THE COMMISSION'S)
INVESTIGATION ON ITS OWN MOTION)
OF IMPLEMENTATION OF STANDARDS) HEARING NO. UE-930537
PURSUANT TO SECTION 712 OF THE)
NATIONAL ENERGY POLICY ACT OF 1992)
_____)

A hearing in the above matter was held on July
30, 1993, at 9:50 a.m., at 1300 South Evergreen Park
Drive Southwest, Olympia, Washington, before
Administrative Law Judge ROSEMARY FOSTER.

The parties were present as follows:

PUGET SOUND POWER & LIGHT COMPANY, by STEVEN
C. MARSHALL, Attorney at Law, 411-108th Avenue
Northeast, Suite 1800, Bellevue, Washington 98004.

THE WASHINGTON WATER POWER COMPANY, by R.
BLAIR STRONG, Attorney at Law, 717 West Sprague, Suite
1200, Spokane, Washington 99204.

PACIFICORP, by GEORGE GALLOWAY, Attorney at
Law, 900 Southwest Fifth Avenue, Portland, Oregon 97204.

NORTHWEST COGENERATION AND INDUSTRIAL POWER
COALITION, by PAUL J. KAUFMAN, Attorney at Law, 222
Southwest Columbia, Suite 1800, Portland, Oregon 97201.

WASHINGTON INDUSTRIAL COMMITTEE FOR FAIR
UTILITY RATES, by MARK TRINCHERO, Attorney at Law, 1300
Southwest Fifth Avenue, Suite 2300, Portland, Oregon
97201.

PUBLIC by ROBERT F. MANIFOLD, Assistant
Attorney General, 900 Fourth Avenue, Suite 200, Seattle,
Washington 98164.

WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION STAFF, by DONALD T. TROTTER, Assistant
Attorney General, 1400 South Evergreen Park Drive
Southwest, Olympia, Washington 98504.

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I N D E X
July 30, 1993

WITNESS:	D	C	RD
— — —			
J. R. LAUCKHART	13		
JOHN BUERGEL	24		
RODGER WEAVER & JOHN STAGEBERG	26		
BARRY M. P. HUDDLESTON	29	34	
JIM LAZAR	58	63	85

EXHIBIT	MARKED	ADMITTED
— — —		
T-1	13	17
T-2	13	17
T-3	24	25
T-4	26	27
T-5	26	27
T-6	28	33
T-7	58	62
T-8	58	62
9	89	90
10	92	

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P R O C E E D I N G S

JUDGE FOSTER: The hearing will please come to order. The Washington Utilities and Transportation Commission has set for hearing at this time and place Docket Number UE-930537, which is captioned In the Matter of the Commission's Investigation on its Own Motion of Implementation of Standards Pursuant to Section 712 of the National Energy Policy Act of 1992. We're convened in the Commission's hearing room in Olympia, Washington. My name is Rosemary Foster, and I'm the Administrative Law Judge presiding. Also present today is Judy Lambson, who is with the Commission's policy planning staff. Today's date is July 30, 1993.

The purpose of this session is to take up a rather narrow issue, and that is whether Section 712 of the National Energy Policy Act requires the Commission to adopt generic standards in several areas. The parties have been advised of this proceeding by an order initiating Commission investigation that was entered June tenth of 1993, and then the notice of hearing and also a subsequent letter indiccated that the issue that is going to be taken up today is a very narrow one. That, again, is whether the Commission should proceed to develop and implement standards pursuant to Section 712

1 of the Act.

2 At this time I'll ask the parties to make
3 their appearances, beginning with Mr. Trotter.

4 MR. TROTTER: For the Commission, Donald T.
5 Trotter, Assistant Attorney General.

6 JUDGE FOSTER: Thank you. Mr. Manifold?

7 MR. MANIFOLD: For public counsel, Robert F.
8 Manifold, Assistant Attorney General.

9 JUDGE FOSTER: Mr. Trincherero?

10 MR. TRINCHERO: On behalf of the Washington
11 Industrial Committee for Fair Utility Rates, Mark P.
12 Trincherero.

13 MR. KAUFMAN: Your Honor, my name is Paul J.
14 Kaufman. I'm appearing on behalf of the Northwest
15 Cogeneration and Industrial Power Coalition.

16 MR. GALLOWAY: My name is George Galloway.
17 I'm appearing on behalf of PacifiCorp.

18 MR. STRONG: Your Honor, my name is R. Blair
19 Strong. I'm appearing on behalf of the Washington Water
20 Power Company.

21 MR. MARSHALL: I'm Steven C. Marshall. I'm
22 appearing on behalf of Puget Sound Power and Light
23 Company.

24 JUDGE FOSTER: Thank you. As I indicated
25 during our prehearing conference before we went on the

1 record, I have been advised that this is not an
2 administratie hearing being conducted under the State
3 Administrative Procedures Act. My understanding is what
4 the Commission contemplates in this proceeding is
5 prefiling of testimony stating the parties' positions on
6 these issues, and then after this hearing is -- the
7 testimony included in the record and the hearing is
8 adjourned, the Commission would submit an order to the
9 parties. They would then have an opportunity to file
10 responses to this order, and then by October 22 of 1993,
11 the Commission would enter a final determination of this
12 question of need for generic standards.

13 Before we get to that, I'll ask if there are
14 any persons or concerns that wish to intervene in this
15 matter. Mr. Trinchero?

16 MR. TRINCHERO: Yes, Your Honor. On behalf of
17 WICFUR, I would like to petition to intervene in this
18 matter. We have not submitted testimony or rebuttal
19 testimony given the narrow scope of this proceeding and
20 considerable confusion as to the manner in which
21 proceedings will be handled. We decided that we would
22 simply monitor and reserve the right to cross-examine
23 witnesses and provide any further comment that the
24 Commission may determine is appropriate.

25 JUDGE FOSTER: Okay. For the benefit of the

1 record, would you just briefly describe for us what
2 WICFUR is and who its members are in Washington?

3 MR. TRINCHERO: I do not have a list of the
4 members with me. I would gladly submit that by separate
5 letter. WICFUR is an association of large industrial
6 customers of both Puget Sound Power and Light Company
7 and Washington Water Power Company. We intervene in
8 proceedings before this Commission which affect the
9 rates, terms and conditions upon which electric service
10 is provided by the industrial-owned utilities in this
11 state.

12 JUDGE FOSTER: Okay. Do you have a position?
13 I'm assuming you've looked at the notice of hearing in
14 this matter. Do you have a position to kind of
15 summarize for us?

16 MR. TRINCHERO: Yes, Your Honor. We could
17 summarize our position. On the first question regarding
18 the effect of purchases of long-term wholesale power
19 supplies on utility cost of capital, our position is
20 that there is no effect on the utility's cost of
21 capital. In another pending proceeding before this
22 Commission, Puget Sound Power and Light Company general
23 rate case, that issue has been taken up and there is
24 some testimony from all parties in that proceeding on
25 that issue, including WICFUR, and therefore we did not

1 resubmit it in this proceeding, especially given the
2 narrow scope of the proceeding.

3 On issue number B, whether the use of
4 leveraged capital structures by wholesale power sellers
5 threatens reliability or provides an unfair advantage
6 for EWGs over utilities, it is our position that neither
7 of those are true. Reliability is not threatened, nor
8 is there an unfair advantage for EWGs.

9 On the question of preapproval, we take no
10 position on whether or not the informal or formal
11 commission review of contracts which are to be entered
12 into is appropriate. However, we would object to any
13 ratemaking treatment that would be given to those
14 contracts that would bind future commissions. We do not
15 believe that under the statutory structure in this
16 state, that that is within the Commission's authority or
17 jurisdiction.

18 And on the last issue of reliability of gas
19 contracts, we do not believe that it's appropriate.

20 MR. MARSHALL: Your Honor, I would object to
21 the statement by WICFUR. The proceeding, I believe, was
22 narrowed to go just to the procedural issue as to
23 whether standards should be adopted. Mr. Trincherro
24 instead has given his position on the underlying
25 substantive issues, number one. Second basis for my

1 objection is that the parties were directed by order of
2 the Commission and by the notice of hearing to present
3 prefiled testimony on this and be subject to cross-
4 examination, neither of which Mr. Trincherro has done in
5 this regard. But again, the basic objection is that
6 he's gone into substantive areas and that there's
7 trouble with doing a little bit of that and not being
8 able to subject that to cross-examination, either
9 procedural or substantive.

10 JUDGE FOSTER: Mr. Marshall, I unfortunately
11 probably opened this can of worms. I asked him to state
12 what WICFUR's position was, because I didn't believe
13 that anything had been articulated for the record.
14 Actually what we're taking up is the intervention, so I
15 sort of got the cart before the horse.

16 MR. TRINCHERO: Your Honor, in response to Mr.
17 Marshall's objection, I understand his concern. We do
18 not have a witness here that is prepared to respond to
19 cross-examination. I was simply trying to respond to
20 your question on the narrow issue of whether or not
21 generic standards should be adopted. On any of the four
22 issues, WICFUR's position is that they would be
23 inappropriate.

24 JUDGE FOSTER: Okay. With respect to the
25 petition to intervene, then, I would grant the petition

1 to intervene, find that there's sufficient interest by
2 this organization in the Commission's rules. Are there
3 any other interventions? Just one question before we go
4 ahead. I had a question about the Northwest
5 Cogeneration and Industrial Power Coalition. At the
6 risk of --

7 MR. KAUFMAN: Your Honor, I hope the question
8 isn't who made up the acronym. I take no responsibility
9 for that.

10 JUDGE FOSTER: Could you describe for us a
11 little bit more what their organization does and where
12 the members are located, just a little more general
13 background?

14 MR. KAUFMAN: Yes, Your Honor. I'd be happy
15 to do that. NCIPC is an unincorporated trade
16 association that represents a combination of industrial
17 thermal hosts to cogeneration as well as cogeneration
18 and energy developers generally. Their interests reside
19 in the state of Washington and in Oregon as well.
20 Representative members include Texaco Cogeneration and
21 Production Company, which developed and operates the
22 March Point cogeneration facility, which is located at
23 Texaco's March Point refinery. Members include Destech,
24 and one of Destech's personnel, Mr. Huddleston, is here
25 today as a witness. A representative member is Domtar

1 Gypsum, which owns a construction building material
2 facility located in the Tacoma area. There are other
3 members, and I think I did submit a list to Ms. Lambson
4 in response to a question, I believe, by one of the
5 commissioners, and that list is a complete list. I
6 don't have that in front of me right now, however. Does
7 that answer your question, or do you need more? I could
8 probably actually later in the hearing present that. I
9 just don't have a list written down in front of me right
10 now.

11 JUDGE FOSTER: Fine. You're all familiar then
12 with the order initiating Commission investigation in
13 this document that was issued June tenth? And that
14 order is rather detailed, and I won't take the time to
15 go into it at this point. Suffice it to say, as I
16 indicated before we went on the record, this is a
17 proceeding that is being held pursuant to the National
18 Energy Policy Act, which was passed by Congress and
19 signed into law October 24th of 1992. Among its various
20 provisions, it requires that the Commission consider and
21 make a determination about whether statutory standards
22 relating to wholesale electric power appropriate to the
23 purposes of the PURPA, the Public Regulatory Policy Act,
24 and in any event, the purpose of all this here today is
25 simply to decide whether the Commission should

1 promulgate those generic standards in these areas.

2 A number of you have prefiled testimony, and
3 what I'll go ahead and do is, if we want to start with
4 Puget, you can have your witness take the stand. I'll
5 swear the witness in, number the exhibits that we have
6 thus far, ask your foundation questions and see if
7 there's any cross-examination.

8 MR. KAUFMAN: Your Honor, before Puget's
9 witness takes the stand, I just need a matter of
10 clarification.

11 JUDGE FOSTER: All right.

12 MR. KAUFMAN: The coalition or NCIPC filed
13 testimony in this proceeding, and I assume by filing
14 testimony that we are a party to this proceeding. In
15 other words, we don't need to file a separate
16 intervention; is that correct?

17 JUDGE FOSTER: That's a good point.

18 MR. KAUFMAN: It would be unfortunate to find
19 out after having filed testimony that we were not a
20 party. In order to avoid that eventuality, I thought I
21 would ask the question.

22 JUDGE FOSTER: It certainly would. I was not
23 able to find the list of those who had been considered a
24 party in this matter. If somebody has one --

25 MR. MARSHALL: There's a master service list

1 attached to the letter by Paul Curl dated July 14, 1993.

2 MR. KAUFMAN: I think there's an implicit
3 assumption that we were parties.

4 MR. TROTTER: Your Honor, this does raise the
5 question of what is this proceeding. The Commission
6 does have rules on intervention and who are parties, who
7 are not parties. Perhaps we could cut to the chase.
8 We're not objecting to any person who has appeared today
9 to have party status. I don't know what we're going to
10 do about the parties that didn't appear today, but I
11 guess for starters, I don't object to any party who has
12 appeared and made an appearance here today. Normally
13 party status is conferred by either being a respondent
14 or being a complainant or being an intervenor. We don't
15 have really -- all we have here are parties to whom a
16 notice was sent, and so maybe just to cut to the chase,
17 just ask if any party here has any objection to any
18 other party being a party. Maybe that's the simplest
19 way.

20 JUDGE FOSTER: I'll take you up on your
21 suggestion. Does any individual here have any objection
22 to any of the other parties that have made appearances
23 here being deemed as parties in this proceeding? That
24 would include Puget, Washington Water Power, PacifiCorp,
25 NCIPC, and WICFUR, public counsel and Commission staff.

1 All right. The record should indicate that there is no
2 objection to this procedure, and all of those referred
3 to will be considered parties in this matter, and we'll
4 treat WICFUR as the intervenor, since I believe that was
5 already presented as a petition to intervene. Now that
6 we've gotten that out of the way, let's move along to
7 Puget's testimony. Do you want to put Mr. Lauckhart on
8 the stand?

9 MR. MARSHALL: Yes, thank you.

10 JUDGE FOSTER: There was testimony from one
11 witness, J. R. Lauckhart. I'll identify that as Exhibit
12 T-1, and I believe that testimony has 21 pages. Then
13 Exhibit T-2 is the rebuttal testimony of Mr. Lauckhart,
14 and that has five pages. That's all I have that's been
15 filed by Puget; is that correct, Counsel?

16 MR. MARSHALL: That's correct.

17 (Exhibits T-1 and T-2 were marked for
18 identification.)

19 Whereupon,

20 J. R. LAUCKHART

21 having been first duly sworn, was called as a witness
22 herein and was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MARSHALL:

25 Q Mr. Lauckhart, do you have before you what has

1 been marked for identification as Exhibits T-1 and T-2?

2 A Yes.

3 Q Do you recognize that as your prefiled direct
4 testimony and rebuttal testimony in this case?

5 A Yes.

6 Q Do you have any corrections to make to Exhibit
7 T-1 or T-2 at this time?

8 A Yes. I have three spelling corrections in
9 Exhibit T-2. On line 11 of page four of T-2 -- this is
10 attachment A -- the word "reemphasize" is spelled wrong,
11 and I believe it should be spelled r-e-e-m-p-h-a-s-i-z-
12 e. Line 19 of that same page, I would add the letter
13 "s" to the word "require", so that it is "requires".
14 And finally, on line 21 of page 4, line 21 of the same
15 page, the word "agencies" has been spelled wrong. This
16 should be a-g-e-n-c-i-e-s.

17 Q As corrected, if I asked you the questions set
18 forth in Exhibits T-1 and 2 today, would you give the
19 answers as set forth in those exhibits?

20 A Yes.

21 MR. MARSHALL: We move the admission of
22 Exhibits T-1 and T-2, and Mr. Lauckhart is available for
23 cross-examination.

24 MR. KAUFMAN: Your Honor, I would prefer that
25 we wait for the admission of the testimony until after

1 we complete cross-examination. There are a couple of
2 questions that I need to ask in clarification before I
3 can determine whether or not there's an objection here
4 or not.

5 JUDGE FOSTER: Anyone else have any comments
6 about this witness's testimony?

7 MR. KAUFMAN: Your Honor, maybe I can cut to
8 the chase as well here. Mr. Lauckhart's direct
9 testimony T-1 goes on at length summarizing testimony
10 which was presented in Puget's general rate case. The
11 question I have, and Puget's counsel can perhaps
12 respond, is whether they are requesting that in this
13 proceeding the proposals that are being considered in
14 the general rate case be adopted or considered.

15 MR. MARSHALL: No. Our point by this
16 testimony was to illustrate why those things for which
17 we have testified should not be done in a generic
18 proceeding, but should instead be done in a general rate
19 case setting, and what we have done is address both the
20 procedural question and also some of the underlying
21 substantive issues. As clarified by order by Mr. Curl,
22 of course, we're not only to address the substantive
23 underlying issues here, but to address whether it's
24 proper to have those addressed in a generic proceeding,
25 general rate case, or some other forum. It is helpful,

1 however, to have some background on why it would be
2 appropriate to have these issues addressed in a
3 particular forum. I think that demonstrates why it was
4 appropriate to have the issues of the nature of the
5 imputed debt addressed in the Puget general rate case,
6 so that testimony is in furtherance of that. We're not
7 asking for those things to be adopted here. In fact,
8 they could not be adopted. The request we're making in
9 the general rate case, which is to raise our common
10 equity ratio, couldn't be granted in this type of
11 proceeding.

12 MR. KAUFMAN: Your Honor, the only reason I
13 ask this question is that I think Mr. Curl's letter does
14 clarify the scope of this. The testimony here is very
15 specific. NCIPC is not a party to Puget's general rate
16 case, but does understand there's quite a bit of
17 testimony in that case concerning this very issue. As
18 long as we are staying within the limited scope of this
19 proceeding, I have no objection to the admission of this
20 testimony. But if we are going to go beyond that, I do
21 have a problem here.

22 JUDGE FOSTER: Let's be off the record.

23 (A discussion was had off the record.)

24 JUDGE FOSTER: Let's be back on the record.

25 Before we went off the record, the exhibit of Mr.

1 Lauckhart had been admitted, and there was some comment
2 on it from Mr. Kaufman. I'll go ahead and admit
3 Exhibits T-1 and T-2, but I want to make it very clear
4 for the record that it is only for the purpose of
5 considering the statements in that testimony in
6 connection with the issues in this proceeding, and that
7 is whether the Commission should proceed to develop and
8 implement standards pursuant to Section 712 of the
9 National Energy Policy Act. In looking at Mr.
10 Lauckhart's testimony, I notice that pages 4 through 18
11 are not particularly on point with the issues in this
12 proceeding. I want to make it very clear that that
13 testimony will not be considered by the Commission.
14 We're strictly looking at this generic standards
15 question, and that is the restricted purpose for which
16 this testimony would be admitted.

17 MR. MARSHALL: Thank you, Your Honor.

18 (Admitted Exhibits T-1 and T-2.)

19 JUDGE FOSTER: With that, are there any
20 questions on cross-examination from Washington Water
21 Power?

22 MR. STRONG: No, Your Honor.

23 JUDGE FOSTER: Mr. Galloway?

24 MR. GALLOWAY: I have no questions.

25 JUDGE FOSTER: Mr. Kaufman?

1 MR. KAUFMAN: Your Honor, no questions.

2 JUDGE FOSTER: Mr. Trincherro?

3 MR. TRINCHERO: No questions, Your Honor.

4 JUDGE FOSTER: Mr. Manifold?

5 MR. MANIFOLD: No questions.

6 JUDGE FOSTER: Mr. Trotter?

7 MR. TROTTER: No.

8 JUDGE FOSTER: Okay. There have been some
9 questions distributed on a single sheet, I believe,
10 before we went on the record that were going to be posed
11 on behalf of the Commission to all of the witnesses.
12 Mr. Lauckhart, do you have a copy of that before you?

13 THE WITNESS: No.

14 JUDGE FOSTER: Let me give you one. Let me
15 just ask you to address those questions, and we'll be
16 asking the witnesses to do pretty much the same thing,
17 so that we get each of you on record as to your position
18 with respect to those individual questions.

19 MR. MARSHALL: May I get a copy of those
20 questions, too?

21 JUDGE FOSTER: Off the record.

22 (A brief recess was taken.)

23 JUDGE FOSTER: Back on the record after our
24 morning break. While we were off the record, we had a
25 discussion concerning the questions that have been posed

1 by the bench for the witnesses, and consensus is that
2 what we'll do is rather than have each witness take up
3 time answering these questions, we'll have an off-record
4 discussion which will be summarized by going back on the
5 record after we get through the witnesses. Mr.
6 Lauckhart, unless Mr. Marshall has anything else --

7 MR. MARSHALL: What if we don't have a
8 consensus on how to respond to these questions? Then do
9 we have to call individual witnesses back? I'm curious
10 about the procedure.

11 JUDGE FOSTER: Mr. Marshall, what I would
12 suggest is if there's a difference, we'll say the
13 majority, the following parties, believe in this
14 position, but Puget believes this, blank, and Water
15 Power believes in blank, and WICFUR has a third
16 position. Whatever. So I think it's fair to note the
17 differences.

18 MR. MANIFOLD: Which could be statements of
19 counsel as well as the witnesses.

20 JUDGE FOSTER: We could do that, too. That
21 would be fine. If it gets to be too involved, I think I
22 would prefer to have statements of counsel rather than
23 try to summarize by witnesses.

24 MR. MARSHALL: That would be fine. I did have
25 a question clarifying the admission of Exhibits T-1 and

1 T-2. You referred to pages 4 to 17, indicating that the
2 Commission would not take those into consideration.
3 However, page 4, we address the main question, beginning
4 of line 5, which is what is the appropriate forum in
5 which to act to address the purposes of PURPA under
6 long-term contract on our cost of capital. That's still
7 within the question given as clarified for this
8 proceeding. Our position was stated at page 4 in
9 response to that. So I guess I was curious as to why
10 page 4 would be included in the pages that wouldn't be
11 considered.

12 JUDGE FOSTER: It may have been page 5, and
13 you may be correct, Counsel. I'll stand corrected that
14 it's pages 5 through 17. And again, the exhibit is
15 admitted with the restriction and the understanding the
16 only thing we're taking up is the need for generic
17 standards under Section 712.

18 MR. MARSHALL: And even the beginning of page
19 5 to 17, there are some generic issues that are
20 addressed, much as the other parties addressed the
21 generic issues, too. My question on clarification goes
22 to whether other parties' testimony would be similarly
23 dealt with.

24 JUDGE FOSTER: I guess we'll take that up as
25 we go along.

1 MR. KAUFMAN: Your Honor, maybe the easiest
2 way to deal with this is while we're off the record,
3 maybe counsel for Puget could identify those sections of
4 the identified pages that he views are generic and those
5 which are more specific and have summarized testimony in
6 the Puget general rate case, and we could just state
7 that for the record. I would certainly have no
8 objection to that approach, and I understand counsel's
9 concerns. There's generic and then there's specific.
10 Puget intermingled them.

11 JUDGE FOSTER: Mr. Kaufman, in response to
12 what you're stating, I would try and clarify the ruling,
13 and that is that anything that deals with the current
14 Puget rate case will not be considered in this
15 proceeding, and it will not be considered by the
16 Commission because it's beyond the scope of what was
17 asked for in the notice of hearing; that is, whether
18 generic standards need to be adopted under Section 712
19 of the Act. I'm not sure we would be helped by having
20 to go through each page and decide whether it's generic
21 or specific, but I guess that's up to Mr. Marshall if he
22 wants to take that approach. I feel like I pretty much
23 explained the restrictions under which the exhibits have
24 been admitted. Have to break it down any more than
25 that?

1 MR. MARSHALL: For example, I believe Mr.
2 Kaufman's client refers to Moody's, to Fitch, to
3 Standard and Poor's, testimony about how they approach
4 what they do in terms of credit rating agencies. We've
5 done the same things in the generic sense by referring
6 to Mr. Abrams, Phelps and other witnesses. Same effect.
7 It is a mixture of both generic approaches on how to
8 purchase power, and also because, of course, we're
9 interested in the issue of which is the appropriate
10 forum directing why it should be considered for Puget in
11 a specific general rate case. But if this testimony is
12 deleted, then I would want to delete much of the
13 testimony made in off-the-record statements in Mr.
14 Kaufman's client's submissions, because then they
15 wouldn't be balanced.

16 MR. TROTTER: Your Honor, could I just
17 comment? Seems to me your ruling is that the testimony
18 will be admitted to the extent that it deals with the
19 generic standards issue from the latest Paul Curl letter
20 of July 22. I think we should all keep in mind the
21 Commission will be producing an initial order in
22 response to this federal legislation, and parties have a
23 chance to respond. They will have their evidence in the
24 record, be able to respond as they see fit. This is
25 their last bite at the apple, and if the Commission

1 should, contrary to what all indications are, should
2 rely on some of the specific statements in reaching
3 their decisions, the parties can deal with that. I
4 think I understand the concern, but I think, given the
5 very clear statements by the Commission during the scope
6 of this proceeding, I think the ruling is reasonable and
7 gives parties the necessary flexibility.

8 JUDGE FOSTER: I guess I would concur with Mr.
9 Trotter's statement. Mr. Marshall, does that clarify?

10 MR. MARSHALL: Surely. If the other testimony
11 is treated in like fashion, that's fine.

12 JUDGE FOSTER: I guess we'll address that when
13 it comes up. All I can do is say everybody's testimony,
14 whether it's yours or the other parties, if we have a
15 restricted view of what we're looking at here, and
16 that's the need for adopting generic standards, that
17 there will be the same consideration looking at every
18 party's testimony, not just Puget's or not just Mr.
19 Kaufman's client. Anything else on that?

20 MR. MARSHALL: No, nothing further.

21 JUDGE FOSTER: Have we concluded then with Mr.
22 Lauckhart?

23 MR. MARSHALL: Yes.

24 JUDGE FOSTER: All right. Mr. Lauckhart, you
25 may be excused. Thank you.

1 (Witness excused.)

2 JUDGE FOSTER: Are we ready to go ahead with
3 Washington Water Power?

4 MR. STRONG: We are, Your Honor.

5 JUDGE FOSTER: All right. I'll give numbers
6 to the next exhibit in order. Identified as Exhibit T-3
7 is the testimony of John Buergel, and that testimony has
8 11 pages.

9 (Exhibit T-3 was marked for identification.)

10 JUDGE FOSTER: Was there any rebuttal filed?

11 MR. STRONG: No, Your Honor, we have not.

12 Whereupon,

13 JOHN BUERGEL

14 having been first duly sworn, was called as a witness
15 herein and was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. STRONG:

18 Q Would you please state for the record your
19 name and business address.

20 A My name is John Buergel, and my business
21 address is East 1411 Mission Avenue, Spokane,
22 Washington.

23 Q And, Mr. Buergel, do you have before you
24 what's been marked for identification as Exhibit T-3?

25 A Yes, I do.

1 Q And did you cause to have this exhibit
2 prepared and prefiled in this proceeding?

3 A Yes.

4 Q Were I to ask you the questions contained in
5 that exhibit, would your answers be the same as are in
6 the exhibit?

7 A That's correct.

8 Q And do you have any corrections or additions
9 to the testimony contained in the exhibit?

10 A No, I do not.

11 MR. STRONG: Your Honor, I move the admission
12 of what's been marked as Exhibit T-3, and Mr. Buergel is
13 available for cross-examination.

14 JUDGE FOSTER: Any objections to the admission
15 of Exhibit T-3?

16 MR. GALLOWAY: No, Objection.

17 MR. KAUFMAN: No, Your Honor.

18 MR. TRINCHERO: No objection.

19 JUDGE FOSTER: Mr. Manifold?

20 MR. MANIFOLD: No objection.

21 JUDGE FOSTER: Mr. Trotter? Mr. Marshall?

22 MR. MARSHALL: No objection.

23 JUDGE FOSTER: Exhibit T-3 will be admitted.

24 (Admitted Exhibit No. T-3.)

25 JUDGE FOSTER: Are there any questions for

1 this witness? Mr. Marshall? Mr. Galloway? Mr.
2 Kaufman? Mr. Trincherro? Mr. Manifold? Mr. Trotter?
3 All right. If there are no questions for this witness,
4 then the witness may be excused.

5 (Witness excused.)

6 MR. GALLOWAY: Your Honor, we will further
7 accommodate matters by calling a panel who will try and
8 fit into the chair. PacifiCorp's witnesses are Mr.
9 Stageberg and Mr. Weaver. I'd ask that they come
10 forward at this time.

11 JUDGE FOSTER: Identified as Exhibit T-4 is
12 the joint testimony of Rodger Weaver and John Stageberg.
13 Identified as Exhibit T-5 is the rebuttal testimony of
14 these two witnesses.

15 (Exhibits T-4 and T-5 were marked for
16 identification.)

17 Whereupon,

18 RODGER WEAVER and JOHN STAGEBERG
19 having been first duly sworn, were called as witnesses
20 herein and were examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GALLOWAY:

23 Q Gentlemen, are you aware of the prefilled
24 testimony that's been previously marked as Exhibits T-4
25 and T-5 in this proceeding?

1 MR. WEAVER: Yes.

2 MR. STAGEBERG: Yes.

3 Q If I were to ask you the quesitons set forth
4 in that testimony, would your answers be the same as set
5 forth therein?

6 MR. WEAVER: Yes.

7 MR. STAGEBERG: Yes.

8 Q Mr. Weaver, are there any corrections you
9 would like to make to any portion of the testimony,
10 notwithstanding your prior answer?

11 MR. WEAVER: Yes. Notwithstanding my prior
12 answer, my title is misstated. Like to correct that.

13 MR. TROTTER: Page one of which exhibit?

14 MR. WEAVER: Page one of T-4, line 7. It
15 reads, "I am the regulatory power planning manager." It
16 should read, "I am the power systems regulation
17 manager."

18 MR. GALLOWAY: Your Honor, with that
19 correction, at this time Pacific Corp would offer
20 Exhibits T-4 and T-5.

21 JUDGE FOSTER: Any objection to admission of
22 Exhibits T-4 and T-5?

23 MR. MARSHALL: No objection.

24 JUDGE FOSTER: Exhibits T-4 and T-5 will be
25 admitted.

1 (Admitted Exhibits T-4 and T-5.)

2 JUDGE FOSTER: Are there questions for these
3 witnesses from counsel? All right, then. Hearing no
4 response, since there's no cross-examination, the
5 witnesses may be excused. Thank you for your testimony.

6 (Witnesses excused.)

7 JUDGE FOSTER: Next we'll go to Mr.
8 Huddleston.

9 MR. KAUFMAN: Yes, Your Honor. For the
10 Northwest Cogeneration and Industrial Power Coalition,
11 we will call Barry M. P. Huddleston to the stand.

12 JUDGE FOSTER: Mr. Kaufman, do you want me to
13 give separate numbers to each one of his attached
14 exhibits, or can I just refer to all of them as Exhibit
15 T-6?

16 MR. KAUFMAN: Your Honor, if all the attached
17 exhibits are incorporated in that exhibit number, that's
18 certainly fine with me.

19 JUDGE FOSTER: Let's identify as Exhibit T-6
20 the testimony of Barry M. P. Huddleston. That testimony
21 has 23 pages, and it is accompanied by seven
22 attachments, and they're designated as BMPH-1 through 7.
23 We'll treat that all as Exhibit T-6.

24 (Exhibit T-6 was marked for identification.)
25 Whereupon,

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BARRY M. P. HUDDLESTON

having been first duly sworn, was called as a witness
herein and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Huddleston, do you have before you what
has been marked as Exhibit T-6, including exhibits?

A I do.

Q And would you state your name and address for
the record, please?

A Yes. My name is Barry Huddleston. My
business address is 2500 City West Boulevard, Suite 150,
Houston, Texas 77042.

Q On whose behalf are you testifying in this
proceeding?

A I'm testifying in this proceeding for the
Northwest Cogeneration and Industrial Power Coalition.

Q And was the testimony that has been marked as
Exhibit T-6 prepared by you or under your direction?

A Yes, it was.

Q And do you have any corrections to that
testimony?

A I believe we in our initial filing omitted
Exhibit Number 4. I believe that was subsequently
provided. Other than that addition, no changes.

1 Q And if asked the questions contained in
2 Exhibit T-6 today, would you answer them in the same
3 manner as that set forth in your prefiled?

4 A Yes, I would.

5 MR. KAUFMAN: Thank you, Your Honor. We would
6 move the admission of Exhibit T-6 and the exhibits
7 attached thereto.

8 JUDGE FOSTER: Any objections?

9 MR. MARSHALL: Yes, Your Honor. We would
10 object on the same basis as your prior ruling with
11 regard to Mr. Lauckhart, particularly referring to page
12 2 as to the effects of utility purchases on cost of
13 capital. Going over to page 3, the answer says, "No
14 generic standards are necessary at this time.
15 Individual contracts vary." After those first two
16 sentences, we would propose that the following would be
17 inappropriate for the Commission to consider, including
18 the exhibits that are referred to therein. Those
19 exhibits refer to much the same kind of testimony that
20 Mr. Lauckhart's pages refer to, and they do not address
21 the scope as narrowed by the Commission in its follow-up
22 letter. They go well beyond that. Also, I am troubled
23 because some of the exhibits and some of the testimony
24 refer to conversations that are clearly hearsay. For
25 example, at page 13 there's a statement at line 21 and

1 22 about Virginia Power CEO Thomas Kapp speaking out on
2 this very topic. We have no idea where Mr. Kapp spoke,
3 what he said, anything about it. There are also
4 letters. Exhibit 7 is some letter that was directed to
5 this witness's public relations person. There's an
6 article from some journal dated 1992. For all those
7 reasons, we don't believe that that testimony should be
8 entered into the record. First, it's unnecessary.
9 Second, it would be improper.

10 JUDGE FOSTER: Mr. Kaufman?

11 MR. KAUFMAN: Are you finished, Counsel?

12 MR. MARSHALL: Yes.

13 MR. KAUFMAN: Your Honor, we would offer this
14 testimony in the same spirit and under the same
15 restrictions that you have placed on Puget's testimony,
16 with one difference. The concerns that I expressed
17 earlier with respect to Puget's testimony were focused
18 on those portions of the testimony which addressed the
19 matters that are before this Commission in Puget's
20 general rate case. Now, the distinction here is that
21 the matters before the Commission in Puget's general
22 rate case deal with Puget's request, deal with Puget's
23 concerns about their cost of capital or their debt
24 equity ratio, deal with Puget's concerns with their rate
25 of return. Nowhere in this testimony do we address

1 Puget's request in their general rate case. Nowhere in
2 this testimony do we address Puget's concerns or request
3 with regard to specific rate of return or change their
4 equity ratio. That's the distinction. The specific
5 objections that Counsel has made, I can address
6 individually, but I think given the limited scope of
7 this proceeding as Your Honor has set it, clearly I
8 don't think we need to really go into those. But I'll
9 be happy to address them.

10 JUDGE FOSTER: Well, Counsel, my ruling would
11 be the same as it was with Puget's testimony, and that
12 is that the exhibit will be considered by the Commission
13 in addressing the narrow issue of whether there should
14 be standards pursuant to Section 712 of the National
15 Energy Policy Act. Mr. Marshall, does that take care of
16 your concern?

17 MR. MARSHALL: Well, it does on that one
18 level. Of course, there are also exhibits which are
19 clearly hearsay and references in testimony that are
20 troublesome. We stand by our objection.

21 MR. KAUFMAN: Your Honor, Mr. Huddleston will
22 testify as to his understanding of the statement. He's
23 not testifying on any other basis. And we can probe
24 them through cross-examination, see the extent of his
25 understanding. But this isn't a classic hearsay

1 problem.

2 JUDGE FOSTER: I would agree with Mr. Kaufman
3 in the statement that this kind of proceeding doesn't
4 present the classic hearsay problem. In any event,
5 we're not considering those statements for the truth of
6 the matter asserted where I think again, I keep coming
7 back to the ultimate issue in this proceeding, and
8 that's whether there should be standards. Some of the
9 testimony may be given more weight than others. As
10 you're familiar, Mr. Marshall, the Administrative
11 Procedures Act does allow admission of hearsay. It's a
12 question of what's done with it after it's there. So
13 rather than carve up a witness's testimony, treat it as
14 a weight matter and go ahead and admit the exhibit with
15 the restrictions that have been previously noted.
16 Anything else for this witness? All right. Then the
17 witness may be excused. Thank you for your testimony.

18 MR. GALLOWAY: Sorry. I had cross-examination
19 for this witness.

20 MR. KAUFMAN: Your Honor, if there is cross-
21 examination, we will submit Mr. Huddleston for cross-
22 examination.

23 JUDGE FOSTER: All right. Mr. Marshall, do
24 you want to go ahead?

25 MR. MARSHALL: Yes.

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CROSS-EXAMINATION

BY MR. MARSHALL:

Q Mr. Huddleston, you did attach as Exhibit Number 1 to your testimony credit comments by Standard and Poor's; is that correct?

A Yes, I did.

Q That you understood was prepared by Mr. Curtis Molton; is that correct?

A Under his supervision at the very least.

Q Have you spoken to him about this particular exhibit in any detail?

A Yes, I have.

Q On page 1 of his exhibit, he indicates on the portion referred to as buy or build --

A Yes.

Q Do you see where he makes a statement, "But the risks will always be expected, since S and P believes that utilities are absorbing significant marketing, operating, regulatory and financial risks when they enter into long-term purchase power contracts with nonutility generators"? Do you see that?

A Yes, I do.

Q Do you disagree that there are risks that utilities do absorb with respect to regulatory, financial, marketing and operating risks when they enter

1 into long-term purchase power contracts?

2 A No. I believe my testimony says that we do
3 not imply that utilities have no risk.

4 Q So you believe that there are some risks
5 associated with these long-term purchase power
6 contracts; is that correct?

7 A I believe that there are risks. The risk must
8 be evaluated relative to alternatives, however, and also
9 evaluated as to whether or not the utility should be
10 assuming those risks, whether or not they should be
11 assumed by someone else.

12 Q With respect to market risks, on page 2 of
13 this same exhibit that you have before you, do you see
14 in the middle of the page the reference, market risks?

15 A Yes.

16 Q Do you see where it says, "To the extent that
17 there are risks, any risks with purchase power,
18 bondholders are directly threatened because there is no
19 equity cushion to insulate them"?

20 A Yes.

21 Q Have you spoken to the rating agencies about
22 the common equity ratios that they expect various
23 utilities to have to account for purchase power risks?

24 A Not specifically with regard to specific
25 utilities, no, but the general issue, yes.

1 MR. TROTTER: Your Honor, if I could raise an
2 objection at this point, these questions do not appear
3 to be going to the issue of whether there ought to be
4 generic standards or not. Again, that bags the
5 question. The evidence is in. But it's unclear to me
6 how this evidence bears directly on the issue of generic
7 standards.

8 MR. KAUFMAN: Your Honor, I appreciate staff's
9 objection, would join in it. Trying to see where these
10 questions were going. They don't seem to be going
11 anywhere.

12 JUDGE FOSTER: Mr. Marshall?

13 MR. MARSHALL: Well, they do, because, of
14 course, the next question is that the rating agencies
15 would like each individual utility to evaluate what
16 percent of nonequity ratio is appropriate for their
17 specific conditions; is that correct?

18 THE WITNESS: That's true.

19 MR. KAUFMAN: Your Honor, hold on. There's an
20 objection.

21 JUDGE FOSTER: There's an objection pending,
22 so the witness is directed not to respond until we get
23 this sorted out. Mr. Marshall, what I was asking you to
24 do was not ask the witness another question, but instead
25 to respond to Mr. Trotter and Mr. Kaufman's comments

1 about what your questions are having to do with the
2 narrow issues that are presented by the proceeding here
3 today.

4 MR. MARSHALL: Correct. My questions were in
5 furtherance of that to illustrate that you do have to
6 take these individual risks into account in an
7 individual setting and not generically. And the witness
8 by the last question and answer that he gave indicated
9 just that fact.

10 JUDGE FOSTER: Mr. Trincherro?

11 MR. TRINCHERO: Your Honor, if I might simply
12 add a comment, while that question would tie the earlier
13 line of questioning back into the narrow issues in this
14 proceeding, I do not believe any of the parties are
15 contesting the issues of whether or not there should be
16 specific standards on the issue of the impact on a
17 utility's cost of capital. So I don't quite understand
18 why we're focusing on questions where there's an
19 uncontested issue.

20 JUDGE FOSTER: I will sustain the objection to
21 Mr. Marshall's question. Do you have anything else for
22 this witness?

23 MR. MARSHALL: I suppose in light of that,
24 then, I don't see the relevance for any of the
25 attachments to the witness's testimony.

1 JUDGE FOSTER: I've already admitted the
2 attachments and the testimony.

3 Q With regard generically to what credit rating
4 agencies do in evaluating credit risk, are they
5 independent of the utility companies for whom they give
6 credit ratings?

7 MR. TRINCHERO: Objection, Your Honor.

8 MR. KAUFMAN: Objection, Your Honor. I
9 certainly have no problem with counsel questioning the
10 witness as to whether these issues should be evaluated
11 or whether there should be a generic standard, but we're
12 getting into the specific process that's involved here
13 that we've already limited the scope of this proceeding.
14 We've already seen the admission of Puget's testimony on
15 the basis of a limited scope, and to be candid, the
16 admission of this testimony on the basis of that same
17 limited scope. I'd like to suggest we move on to
18 something else and maintain an objection that the
19 question's beyond the scope of the proceeding.

20 JUDGE FOSTER: Mr. Trincherro, do you have
21 something to add?

22 MR. TRINCHERO: I'd concur in that objection
23 for the reasons stated.

24 JUDGE FOSTER: I'll sustain the objection.

25 MR. MARSHALL: I guess I would just observe

1 that because the parties don't disagree with each other
2 as to whether this should be done in a generic
3 proceeding or specific, I think it is important to have
4 a record for the Commissioners so that they could
5 observe for themselves whether this should be done in a
6 specific proceeding with regard to a rate case, with
7 regard to some other larger generic proceeding. This is
8 in furtherance of that.

9 JUDGE FOSTER: Okay. Your comments are noted
10 for the record. Do you have other questions for this
11 witness?

12 Q With regard to the comments you made on the
13 preapproval process, do you have any specific process
14 that you have recommended for preapproval in this
15 jurisdiction?

16 A For the purposes of this proceeding, the
17 answer would be no. In terms of whether or not advance
18 approval should be given or whether or not there should
19 be generic standards, I think we would favor advance
20 approval for the reasons stated in our testimony.
21 However, we did not provide any specific guidance. I
22 think that would be the appropriate -- appropriately
23 evaluated outside of this proceeding.

24 Q Have you given testimony in other cases under
25 Section 712?

1 A Yes, I have.

2 Q And have you provided any specific preapproval
3 process at any of those other proceedings?

4 A In the majority of those other proceedings,
5 they already have processes in place.

6 Q Is the answer no, that you have not provided
7 any specific --

8 A The answer is no, because they already had
9 processes in place.

10 Q Which jurisdictions had processes in place for
11 preapproval?

12 A Off the top of my head, Florida, Michigan,
13 West Virginia, Ohio. In fact, the only state that did
14 not was Missouri.

15 Q What is your understanding of what Washington
16 State does?

17 A As I understand it, the contracts are reviewed
18 for consistency with the Commission's rules, but not
19 approved for purposes of rate recovery.

20 Q In Missouri, did you make a specific proposal?

21 MR. KAUFMAN: Asked and answered, Your Honor.

22 JUDGE FOSTER: I believe it was, Mr. Marshall.

23 Q Did you make a specific proposal in Missouri?

24 MR. KAUFMAN: Your Honor?

25 JUDGE FOSTER: I think the question was asked

1 and answered, and there was an objection. I wanted you
2 to respond to the objection, not ask the question again.

3 MR. MARSHALL: Again, I was referring him to a
4 specific state for which he says there are no standards.
5 If he has, he has. If he hasn't, then that's fine. It
6 would be easier just to obtain that answer from the
7 witness.

8 MR. KAUFMAN: Your Honor, I'll withdraw the
9 objection. That's fine.

10 JUDGE FOSTER: Go ahead and rephrase the
11 question, then, if you would for the witness.

12 Q Have you submitted any specific proposals in
13 Missouri?

14 A No, we did not.

15 MR. MARSHALL: I don't have any further
16 questions of this witness.

17 JUDGE FOSTER: Mr. Galloway, did you have
18 something for this witness?

19 MR. GALLOWAY: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GALLOWAY:

22 Q I'd like to follow up a little bit more with
23 you on this notion of preapproval. You describe in your
24 testimony fairly generally. Would you be more specific
25 as to what you would expect preapproval would entail in

1 terms of what the Commission would be finding and what
2 the consensus of that finding would be?

3 A Well, in the jurisdictions that I'm most
4 familiar with, the evaluation process of the contract as
5 signed and submitted to the regulatory agencies involves
6 a determination of least cost, in essence, so that the
7 utility and the independent and all other interested
8 parties have some assurance that at the time the
9 contract was entered into and submitted for review, that
10 the contract was in fact the choice that the utility
11 should have made. Then following that decision, there
12 are a range of ways to deal with any future uncertainty.
13 Would you like me to --

14 Q I guess I'm not so much interested in other
15 places, but what you're recommending for the State of
16 Washington and what recommendations you would wish this
17 Commission to make to utilities and power purchasers as
18 a result of this preapproval process.

19 A I'm not sure that I can choose the optimal
20 approach.

21 Q One would be fine.

22 A There's a full range. Well, as an example, I
23 can tell you what they did in Michigan.

24 Q No, sir. I'm asking you what you believe
25 ought to be done in the state of Washington, not for you

1 to tell me what is done in other states. You've
2 recommended preapproval for Washington, and I want to
3 know what you believe should be entailed in that concept
4 in the state of Washington.

5 A Again, I answered --

6 JUDGE FOSTER: Wait a minute. There's a
7 pending objection. Mr. Kaufman?

8 MR. KAUFMAN: Your Honor, I would like to make
9 an objection that we've had the witness testify already
10 that the Coalition has not made a formal proposal as to
11 what the specifics of the preapproval process would be
12 here in this proceeding, in that Mr. Galloway's
13 questions are going into that area when there hasn't
14 been a formal proposal presented here, and the witness
15 has already answered the question which should have
16 underlined Mr. Galloway's questions.

17 JUDGE FOSTER: Mr. Galloway?

18 MR. GALLOWAY: Let me pursue this in another
19 way, if I could.

20 Q Is it your recommendation that as a result of
21 the preapproval process, this Commission should
22 guarantee that a utility be able to collect in rates the
23 prices charged under preapproved contracts?

24 A In absolute terms, the answer is no. I
25 believe that there are any number of qualifications that

1 would need to be evaluated to that quote unquote
2 guarantee going forward. And as I said earlier, many
3 jurisdictions have a full range of mechanisms for
4 evaluating that, for assigning risk, for assigning the
5 uncertainties and insuring that all parties are
6 subsequently protected. As a blanket statement in the
7 form that you made it, the answer is no.

8 Q So it's in some way or another a partial
9 guarantee of recovery?

10 A Well, the word "guarantee" seems to imply that
11 there's something that's gone wrong later, and I think
12 that's an assumption that I don't want to accept. But
13 basically, if in fact at the time entered into, the
14 contract was prudently entered into, then the utility
15 and all parties should have assurances that there will
16 not be 20-20 hindsight applied to that agreement.

17 Q Do these assurances have legal force?

18 MR. KAUFMAN: Objection, Your Honor. Calling
19 for a legal conclusion. If he could restate the
20 question in some other manner --

21 JUDGE FOSTER: Can you restate it, please?

22 MR. KAUFMAN: Maybe clarify what the term
23 "legal force" is intended to mean so the witness can
24 understand the question.

25 Q Are you suggesting that preapproval be such,

1 understanding you're not an attorney, that would bind
2 future commissions in setting rates for a utility that
3 has a contract of this sort?

4 A I'm not certain that statutes in Washington
5 allow commissions to bind future commissions, but given
6 that assumption, I guess my answer would be yes.

7 Q That if it were permissible, you think that
8 would be desirable?

9 A Yes.

10 Q But you don't know whether it is permissible?

11 A That's right.

12 Q Have you ever seen the documentation for a
13 major purchase power arrangement?

14 A Yes.

15 Q Can you show me in inches how big that
16 documentation is?

17 A Well, I suppose it can range from a box to
18 many boxes.

19 Q Very complicated arrangements, are they not?

20 A That's true.

21 Q Would you expect in the course of this
22 preapproval arrangement that the Commission would review
23 that box or many boxes to determine whether the terms
24 set forth in those box or boxes are prudent?

25 A Yes.

1 Q So, for example, if contained in one of the
2 boxes is a provision that O and M expense is to be
3 escalated at CPI plus six percent and the utility comes
4 in, "here are the boxes, approve this," and if nobody
5 finds that provision, knows to question it, that
6 nonetheless the utility in your view should be permitted
7 in future rate cases to collect a pass-through of CPI
8 plus six percent?

9 MR. KAUFMAN: Are we speaking hypothetically?

10 MR. GALLOWAY: Yes, Your Honor.

11 A I was going to ask for that contract. The
12 answer is yes.

13 Q So who in this proceeding would have the duty
14 to ferret through these boxes and evaluate all of the
15 terms and conditions of the contracts between the
16 parties?

17 A Well, in the initial stages, the utility has
18 the responsibility to sign a contract that protects its
19 consumers. The utility would hopefully do that and
20 submit a contract that it believed in to the Commission,
21 and then the Commission would oversee the utility's
22 operations, just as they do in a normal situation.

23 Q So in your view, it's the Commission staff
24 that would read through this box or boxes and determine
25 whether there was something in there that was imprudent?

1 A Doing its duty as the oversight body, yes.

2 Q And if they miss something, that's life in the
3 big city?

4 A Assuming that they missed something and it
5 came to light later and did not fall into certain
6 categories, for example, fraud or misrepresentation,
7 then the answer would be yes. The next question,
8 however, would be who bears the brunt of that, and I
9 believe that in many circumstances it would be the
10 utility.

11 Q Why? Aren't they in your view assured of
12 recovery of payments under the contract?

13 A If in fact the Commission decided not to allow
14 something that the utility had prudently incurred, then
15 it would be the utility's responsibility.

16 Q Well, if the Commission retains that
17 prerogative, what good is this preapproval process?

18 A There is none. That's why we're discussing
19 preapproval.

20 Q I guess I misunderstood. If a utility comes
21 in with a deal, just says, "Here it is, look it over,"
22 your suggestion is that as long as somebody doesn't find
23 anything wrong with it, the utility should be permitted
24 to recover the costs of that?

25 MR. KAUFMAN: I'm going to ask counsel to

1 clarify what process he's talking about.

2 MR. GALLOWAY: The preapproval process.

3 Q I assume that you would expect as a
4 representative of the independent power business that
5 the utility in seeking preapproval would support the
6 contract with the Commission?

7 A Yes.

8 Q Because it would have negotiated the contract
9 in good faith and it in your view, I assume, would be
10 inappropriate to negotiate that contract and come in and
11 tell the Commission it's a bad deal?

12 A It happens, but it would be inappropriate.

13 Q It would be inappropriate, so the utility is
14 not going to come forward and point out problems with
15 the contract, is it?

16 A No.

17 Q And the seller of power is not going to come
18 forward and point out problems with the contract?

19 A No.

20 Q Okay. So if anybody finds problems with the
21 contract, it's going to be somebody who was a stranger
22 to the negotiations and who can figure out what's wrong
23 from the boxes of documents; right?

24 A That's true.

25 Q And you look to the staff or the consumer

1 counsel to do that?

2 A Yes.

3 Q Suppose it turns out that the utility fails in
4 these contracts to obtain a warranty that the power
5 seller owns the property on which the plant is located.
6 In the prereview process, the absence of that warranty
7 isn't noted, and it turns out ten years down the line
8 that the power seller doesn't own the property and is
9 unable to provide power under the contract. Should the
10 utility be able to recover replacement power costs to
11 fill in the gap left by the failure of performance under
12 that contract?

13 MR. KAUFMAN: Your Honor, I'm going to -- I'm
14 trying to figure out if counsel is asking this question
15 to determine -- scratch that. Let me just make an
16 objection as beyond the scope of the inquiry here.
17 We're asking whether or not there should be a
18 preapproval process. Counsel's question was inquiring
19 on some other matters that would possibly be raised in
20 some other process, and we're going beyond the question.

21 MR. GALLOWAY: The question -- if there's any
22 substance left of these proceedings, it's the question
23 of whether preapproval is a good idea. It seems to be
24 fair game to ask the witness what he thinks is entailed
25 in preapproval because it's fairly hard for the

1 Commission to evaluate the concept without knowing what
2 the witness has in mind.

3 JUDGE FOSTER: Why don't you ask him that
4 then?

5 Q You have a contract that's preapproved in
6 which everybody misses the fact that nobody has made
7 sure that the seller owns the plant. Okay? You
8 understand that?

9 A Yes.

10 Q Okay. And ten years later you've got that
11 preapproval in hand. The power's no longer delivered.
12 Are you with me that far?

13 A Yes.

14 Q So the utility has to go out and buy then much
15 more expensive power to replace what it was supposed to
16 have gotten from this contract.

17 A Yes.

18 Q In your view, should it be able to recover the
19 cost of that replacement power by virtue of the
20 preapproval of the contract that has failed to deliver?

21 A Yes.

22 Q And they should be able to do that whether or
23 not they were prudent in ascertaining whether the IPP
24 owned the real property on which the plant was located?

25 A The prudence was already determined.

1 Q In that hearing?

2 A In the initial hearing. And I find it unusual
3 that they would sign a contract without site agreement.
4 But assuming that up front --

5 Q And does it also follow that preapproval would
6 assure the recovery of the power cost, regardless of
7 what the utility's loads and resources were during the
8 20-year term of the contract?

9 A Yes.

10 Q So if, for example, federal law were changed
11 and retail wheeling were permitted nationally causing
12 the purchasing utility to lose a lot of its business,
13 that nonetheless the preapproval would permit it to
14 recover those costs from its remaining customers?

15 A Yes. Again, all of those terms and
16 conditions, taking into account any future uncertainty,
17 should be negotiated in the initial agreement, just as
18 when the utility constructs a plant, it subjects itself
19 to future regulatory and statutory changes.

20 Q But if it doesn't, there are no -- under your
21 notion of preapproval, if it gets away with it, there
22 are no adverse consequences for that?

23 A Well, there are adverse consequences
24 certainly, but not necessarily to the receiver of the
25 payments.

1 Q And the utility continues to recover the costs
2 of that contract?

3 A In the ideal circumstances, yes.

4 Q Do you consider that an ideal circumstance?

5 A I do. Ideal in the sense that if in fact the
6 utility had been given the stamp of approval where the
7 contract was fully evaluated and it was determined that
8 the terms and conditions balance risk and uncertainty
9 between all parties in a fair and reasonable way and
10 that contract was approved for cost recovery in that
11 form, then going forward, the answer's yes. The utility
12 should continue to receive cost recovery.

13 MR. GALLOWAY: Thank you. I have nothing
14 further.

15 JUDGE FOSTER: Any other questions for this
16 witness?

17 MR. TRINCHERO: Yes. Just a few, Your Honor.

18 JUDGE FOSTER: Mr. Trincherero?

19 CROSS-EXAMINATION

20 BY MR. TRINCHERO:

21 Q I also have a couple of questions about the
22 recommendation on preapproval, Mr. Huddleston. Isn't it
23 true that frequently these contracts will have
24 provisions which allow for amendments if mutually agreed
25 on by the parties?

1 A Yes.

2 Q And if such contract had been preapproved and
3 the utility is therefore assured of recovery of its
4 expenditures under the contract, would the utility be
5 assured recovery of amounts that are different due to an
6 amendment of the contract than was preapproved in the
7 original filing?

8 A No. In my opinion, amendments that
9 substantially change the balance between the parties
10 would have to be reevaluated.

11 Q And what sort of standards would you set out
12 in order to determine whether or not an amendment
13 substantially changed the balance between the parties?

14 A I think the party that we are attempting to
15 protect is the ratepayer, and if the amendment has no
16 significant impact on the ratepayer, then the
17 amendment's approvable. However, if the amendment
18 causes the ratepayer to assume a larger burden than in
19 the initial contract, then that burden has to be
20 evaluated given current circumstances. For example, if
21 you went ten years out into the future and the
22 alternative to amending the contract was 10 cents per
23 kilowatt hour power, but the amendment was going to cost
24 four cents, then the amendment would be a good deal,
25 despite the fact that perhaps the initial contract cost

1 three cents. So I think that if you amend a contract,
2 at the point in time that the amendment is entered into,
3 you have to evaluate that amendment in the going forward
4 payment stream with the current conditions.

5 Q If during the life of one of these contracts
6 changed circumstances would justify an amendment to the
7 contract the result of which would be to actually lower
8 the amounts paid by the utility to the IPP, would the
9 utility have a duty to seek such an amendment?

10 A In theory, yes.

11 Q Just one last follow-up on that. If the
12 utility failed to seek such an amendment, would the
13 consumers that this preapproval process is intended to
14 protect be somehow empowered to come before this
15 Commission and seek such an amendment or seek some
16 change to the rates that would reflect an amendment,
17 even though it had not been entered into?

18 MR. KAUFMAN: Your Honor, I'm going to object
19 to that question on the ground that it's beyond the
20 scope of this proceeding. Mr. Huddleston already
21 testified that we don't have a specific proposal in
22 front of the Commission. Counsel for WICFUR's question
23 goes to a specific proposal, but also goes into what
24 rights or obligations a ratepayer group or some other
25 entity would have in the future. It's not related to

1 the preapproval issue, and it's certainly not related to
2 any mechanism, specific mechanism which we have proposed
3 here.

4 MR. TRINCHERO: Your Honor, if I might
5 respond, counsel for PacifiCorp actually raised a good
6 point in response to an earlier objection on the same
7 grounds. If we're trying to determine in this case
8 whether or not preapproval is something that the
9 Commission should implement, regardless of how it
10 implements it, there are practical problems which may be
11 associated with preapproval, and we need to flesh that
12 out on this record. In this case the witness answered
13 in response to a previous question that the intended
14 beneficiary, at least one of the intended third party
15 beneficiaries to this entire preapproval process, would
16 be the utility's ratepayers, and I believe therefore the
17 question is appropriate.

18 JUDGE FOSTER: Any other comments on this?

19 MR. KAUFMAN: Your Honor, I'll withdraw the
20 objection if counsel can restate the question. My
21 understanding of the question, he was trying to get into
22 the intent of a ratepayer group and the interests of a
23 ratepayer group. If counsel wants to ask the witness
24 should ratepayer groups be able to do that, that might
25 be an easier way to handle that.

1 MR. TRINCHERO: You'd like me to restate the
2 question?

3 JUDGE FOSTER: You can restate the question,
4 if you would.

5 MR. TRINCHERO: Thank you, Your Honor.

6 Q Do you have in mind my last question?

7 A Yes, I do.

8 Q And the assumptions that underlie that
9 question?

10 A Yes.

11 Q Should a ratepayer group be presented with
12 some mechanism for bringing that issue to the
13 Commission?

14 A Assuming that the utility -- that a prudent
15 utility would seek the amendment, then not seeking the
16 amendment would be imprudent, and I would assume that
17 ratepayer groups could in fact appeal to the Commission
18 on that basis.

19 MR. TRINCHERO: Thank you, Mr. Huddleston. I
20 have no further questions, Your Honor.

21 JUDGE FOSTER: Any other questions for this
22 witness? I guess I have one question for the witness
23 about clarifying what your recommendation is for
24 preapproval. Could you just restate it for us?

25 THE WITNESS: Essentially our coalition

1 believes that preapproval is a useful policy tool.
2 However, the proceeding that we're in now is limited in
3 scope, and I believe that as a part of this proceeding,
4 we can flesh out all of the issues related to
5 preapproval, and therefore, if a determination is made
6 that the Commission wants to go in that policy
7 direction, I think a subsequent proceeding to flesh out
8 those issues would be required.

9 JUDGE FOSTER: So are you or are you not
10 recommending the adoption of generic standards?

11 THE WITNESS: In this proceeding, no.

12 JUDGE FOSTER: Anything else for this witness?
13 All right, then. The witness may be excused. Thank you
14 for your testimony.

15 (Witness excused.)

16 JUDGE FOSTER: Let's move on to public
17 counsel.

18 MR. MANIFOLD: Public counsel would call Jim
19 Lazar.

20 JUDGE FOSTER: Okay. I'll go ahead and
21 identify as Exhibit T-7 the testimony of Mr. Lazar, Glen
22 Blackman and Ken Winter. I assume that Mr. Lazar is
23 speaking for those two other people?

24 MR. MANIFOLD: Yes, Your Honor. We decided to
25 simplify the proceeding and not have a panel.

1 JUDGE FOSTER: Mr. Lazar's or the panel's
2 testimony consists of 13 pages. Also, there was a
3 letter from public counsel regarding rebuttal testimony,
4 and I'll identify that as Exhibit T-8. The letter is
5 dated July 23, 1993.

6 (Marked Exhibits T-7 and T-8.)

7 Whereupon,

8 JIM LAZAR,
9 having been first duly sworn, was called as a witness
10 herein and was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MANIFOLD:

13 Q Mr. Lazar, would you please state your name
14 and address.

15 A Jim Lazar, L-a-z-a-r.

16 Q And address?

17 A My business address is 1063 Capitol Way, Suite
18 202, Olympia, Washington 98501.

19 Q And how are you employed?

20 A I am a consulting economist. My firm is named
21 Micro Design Northwest. I'm appearing as a consultant
22 to public counsel in this proceeding.

23 Q Do you have in front of you what's been marked
24 as Exhibit T-7 and T-8?

25 A I have T-7. I do not have a copy of Exhibit 8

1 before me.

2 Q Have you seen a copy of T-8?

3 A Yes, I have.

4 Q Do you have any changes to make to what's been
5 marked as Exhibit T-7?

6 A Yes. First, with regard to formatting, the
7 second line under the document number should be
8 corrected to read "Testimony of Jim Lazar on behalf of
9 public counsel." The footer on each page should,
10 instead of reading "Testimony of public counsel panel",
11 should be "Testimony of Jim Lazar." And I have a
12 substantive change on page 8 of the testimony.

13 Q Please go ahead.

14 A The answer that is contained in lines 10
15 through 24 of page 8 was accurate as of the time this
16 testimony was prepared, but no longer reflects how I
17 would answer that question were it put to me today in
18 light of the other evidence in this proceeding, so I
19 propose that that answer be stricken and that the
20 following answer be inserted on line 10. "Electric
21 generators and rating agencies apparently believe there
22 are some benefits associated with contract preapproval.
23 Utilities have expressed some concerns about preapproval
24 resulting in delays in contract negotiations. Public
25 counsel has some concerns about preapproval,

1 particularly regarding incentives for use of generated
2 power where demand site management might also meet
3 customer needs. With preapproval generators and
4 utilities may be able to move more confidently, obtain
5 better financing terms and ultimately better prices for
6 power. In the absence of preapproval, they may be able
7 to move more expeditiously, possibly providing similar
8 savings. It may be appropriate for the Commission to
9 examine the possibility of preapproval in a generic form
10 such as amendment of the Commission's least cost
11 planning and competitive bidding rules." That is the
12 end of my changes. There are also some minor
13 typographical errors in the testimony which should
14 confuse no one, and I won't bother to correct them.

15 Q Did you participate in the creation of what's
16 been marked as Exhibit 8?

17 A Yes, I did.

18 Q Would you be prepared to adopt that as your
19 testimony?

20 A Yes, I can.

21 MR. MANIFOLD: Your Honor, with those
22 additions and modifications, I'd move for the admission
23 of Exhibits T-7 and Exhibit 8.

24 JUDGE FOSTER: Any objections?

25 MR. MARSHALL: Yes, Your Honor. With respect

1 to Exhibit T-7, we have the same objections we made
2 earlier to the extent that this goes beyond the narrow
3 confines. But in addition, we also have a further
4 objection because, for example, on page two it singles
5 out the Puget rate case, beginning at lines 19 through
6 26, referring to the evidence, making argument about
7 that. On page 5, also, lines 5 through 13, refers to
8 the current Puget Power rate case provides a striking
9 example, et cetera, making considerable argument about
10 specific matters with respect to Puget's pending rate
11 case. With respect to Exhibit T-8, that also at
12 paragraph 4 responds specifically to proceedings in the
13 Puget Power rate case. I believe paragraph 4 of T-8
14 should be stricken specifically, and also all other
15 references in their Exhibit T-7. The other thing I'd
16 note, at least on my copy, the footnotes are Greek to
17 me. I was wondering whether the witness, if he had some
18 corrections, wouldn't mind elucidating what those
19 footnotes really mean.

20 THE WITNESS: Yes. The footnote on page 2 of
21 -- that should be lower case. Other than that, Greek is
22 accurate.

23 MR. MANIFOLD: Footnotes are our summary of
24 the current Puget case, actually. The footnotes are
25 attempted to -- they're mistakes, obviously.

1 JUDGE FOSTER: Do you have any comments with
2 respect to the objection Mr. Marshall raises, Mr.
3 Manifold?

4 MR. MANIFOLD: Yeah. I'm happy to have those
5 exhibits submitted on the same basis that Puget's
6 testimony was accepted and that other testimony has been
7 accepted, that those parts of it that get into any
8 specifics regarding the currently pending Puget case
9 will be not considered as part of this proceeding
10 because they go beyond the scope.

11 JUDGE FOSTER: I'll go ahead and admit
12 Exhibits T-7 and T-8 subject to the same restriction
13 that the testimony only be considered with respect to
14 the issue presented here in this proceeding, and that's
15 the need to develop and implement standards pursuant to
16 Section 712 of the National Energy Policy Act. With
17 respect to Puget's motion to strike paragraph 4 of
18 Exhibit T-8, I'll grant that. It does specifically
19 refer to another proceeding. So that will be
20 disregarded, specifically disregarded.

21 MR. MARSHALL: Thank you, Your Honor.

22 (Admitted Exhibits T-7 and T-8.)

23 JUDGE FOSTER: Okay. Do you want to correct
24 the footnotes, Mr. Manifold?

25 MR. MANIFOLD: Mr. Lazar, are you in a

1 position to correct the footnote?

2 THE WITNESS: The footnote can simply be
3 deleted.

4 JUDGE FOSTER: All right. We'll ignore those.
5 Are there any questions for this witness?

6 MR. GALLOWAY: Yes. I have questions.

7 JUDGE FOSTER: Mr. Marshall?

8 MR. MARSHALL: I'll go ahead and follow Mr.
9 Galloway.

10 JUDGE FOSTER: Mr. Galloway?

11 CROSS-EXAMINATION

12 BY MR. GALLOWAY:

13 Q Mr. Lazar, just very briefly, you heard
14 there's been some change, I gather, in public counsel's
15 position on this preapproval, and like Mr. Huddleston
16 described it very generally as a concept -- is your
17 concept of preapproval and what it would entail the same
18 as Mr. Huddleston described in his response to my
19 questions?

20 A Generally, yes. There's a couple of important
21 differences. One is I've been involved in preapproval
22 proceedings in other jurisdictions, and what is normally
23 preapproved is the contract itself. There may be boxes
24 of papers which relate to the contract, just as there
25 are boxes of paper in the form of responses to

1 information requests of any rate proceeding. But
2 ultimately it's the contract itself, which is seldom
3 over 100 pages long, that is preapproved, so I wouldn't
4 view it as the boxes of paper that's before the
5 Commission for approval, but rather the contract itself.
6 The other difference is that Mr. Huddleston believes
7 that preapproval would be a good thing, and I believe
8 that preapproval may have some benefits and ought to be
9 expected, but I've expressed some of our concerns that
10 preapproval would make a purchase power resource
11 relatively risk-free for a utility while leaving
12 investments in conservation subject to the current
13 regulatory scheme and might bias a utility in favor of a
14 more expensive purchase power resource rather than a
15 less costly conservation resource as part of a risk
16 mitigation scheme.

17 Q Getting back to your earlier comments, you
18 understand that the rest of the papers in the box or
19 boxes that Mr. Huddleston and I were talking about are
20 contracts in many instances?

21 A That hasn't been my experience.

22 Q There are contracts, are there not, concerning
23 the financing of a project?

24 A There would be contracts regarding financing
25 of a project. There would be contracts regarding

1 construction of a project between the developer and
2 general contractor and subcontractors. But what would
3 be before the Commission is the price for the power and
4 the terms of delivery for the power, the ability of the
5 utility to dispatch the power. That's the power sales
6 contract, and that's what I assume would be the subject
7 of a preapproval process were the Commission to initiate
8 one.

9 Q Do you believe a utility in the course of
10 pursuing a purchase power contract has an obligation to
11 itself look at those other contractual arrangements that
12 underlie the purchase power contract?

13 A If there are some that would affect the
14 ability of the developer to deliver the product, I
15 believe there may be cause to do so, but if other means
16 can be provided to assure that the developer will
17 deliver in accordance with the contract, it may be
18 completely unnecessary.

19 Q But you would expect a utility to at least
20 apprise itself of what those other agreements did to
21 make sure that they would not undermine the purpose of
22 the power sales contract, would you not?

23 A Not necessarily.

24 Q Suppose there was a provision in a financing
25 agreement that if a payment by a project is a day late,

1 that the bank gets to foreclose on the project. Is that
2 something that a utility ought not concern itself about?

3 A Not necessarily. If the contract is
4 structured so there is not front loading of costs and
5 the payment terms are, say, established according to a
6 form based on the then-current cost of nonofficial power
7 throughout the term of the contract, the utility would
8 have no need to have that sort of assurance. On the
9 other hand, if the contract had a levelized capacity
10 payment, the utility might have a considerable need to
11 be familiar with the underlying contract.

12 Q And correspondingly, in the course of the
13 preapproval process, wouldn't the public counsel or
14 staff also want to analyze in the latter context you
15 mentioned the risks in these ancillary documents that
16 might exist in regard to a contract that may be front
17 loaded in its payments?

18 A Yes. I think where a front loaded contract is
19 involved, people would want to look at a lot of
20 underlying documentation, just as in a rating
21 proceeding, we look at thousands or even tens of
22 thousands of pages of documents, but ultimately, the
23 record before the Commission is much smaller, and
24 ultimately the Commission's order initiating maybe
25 approval of a contract is ultimately just a small

1 document.

2 Q But isn't there a critical difference here, at
3 least as I understood Mr. Huddleston's testimony, that
4 he said that if public counsel on staff missed something
5 in those underlying documents, that the Commission
6 should nonetheless be bound to honor that contract,
7 whereas in the case of a rate case, if a massive filing
8 is made, which they are, and you miss something, nothing
9 prevents you from filing it the next time, does it?

10 A I have to agree with you, Mr. Galloway. That
11 is the big down side of preapproval from my perspective
12 and I think from public counsel's perspective, and the
13 question we would expect the Commission to examine if it
14 chose to examine generically whether some form of
15 preapproval was desirable, whether the benefits in terms
16 of lower financing costs to the developer and lower
17 costs to the utility and its billpayers justified giving
18 up a certain amount of flexibility. I don't have a
19 conclusion on whether it's a good idea or not.

20 Q Wearing your public counsel hat, doesn't it
21 put you in a tough position to be presented with this
22 contract and the documents and have to figure out the
23 underlying economics, knowing that if you miss something
24 or you misunderstand something, that ratepayers are
25 going to be stuck with it for the life of the contract?

1 A Yes. But it may be the alternatives are
2 worse.

3 Q Doesn't it make you uncomfortable to create a
4 situation where a utility can be careless in reviewing
5 or negotiating these various contractual documents, and
6 as long as that carelessness isn't caught in a very
7 complex arrangement, that ratepayers are nonetheless
8 bound?

9 A Yes, it makes me uncomfortable that billpayers
10 might be bound in some way, and I think Mr. Huddleston
11 mentioned fraud and deception as exceptions. I think
12 those would be examples of things that the Commission
13 could come back to. But an honest mistake or a
14 misjudgment of the market is something we're paying for
15 now.

16 Q There's a range between fraud and an honest
17 mistake which may be best described as dumb, isn't
18 there?

19 A Yes, and we're paying for lots of dumb
20 mistakes right now. We're paying for the Coalstrip coal
21 plant. It seemed like a great idea at the time,
22 perhaps. It turned out in the greater context of things
23 with what's happened in the market since then to have
24 been a dumb mistake. So far, no one's proposed in any
25 of the rate proceedings I've been involved in

1 disallowing the costs of Coalstrip because it's proven
2 to have been more expensive than alternatives that would
3 have become available had it not been acquired. That's
4 an example of a dumb mistake, and we're living with it.
5 Preapproval would create the opportunity to live with
6 another type of dumb mistake, and that opportunity does
7 make me uncomfortable.

8 Q But -- I'm sorry. Go ahead.

9 A Go ahead.

10 Q Isn't again there a critical distinction that
11 in the case of Coalstrip, you as public counsel or
12 representing public counsel were never legally precluded
13 from coming in either the first time it was proposed
14 that any utility's share of Coalstrip should be included
15 in rate base or any future proceeding from making an
16 argument that it was imprudent and ought to be
17 disallowed, were you?

18 A No. But I'm not sure that's a difference,
19 because having that not describe the type of preapproval
20 that I think appropriate, I wouldn't foreclose
21 necessarily some type of preapproval that would allow
22 reexamination under certain circumstances. I haven't
23 laid out what preapproval consists of, and I think that
24 there is a spectrum of preapproval approaches that the
25 Commission could consider.

1 Q But if there's the possibility of reassessment
2 down the road, doesn't that undermine the purported
3 value of preapproval, giving lending institutions
4 comfort that this revenue stream is secure?

5 A The lending institutions, I believe, would be
6 concerned about the stability of of the payment from the
7 utility to the developer. The Commission would be
8 concerned about the stability of the payment from the
9 billpayers to the utility. They may not necessarily be
10 related. For example, earlier this year the Coalstrip
11 project was down, and under the terms of Puget's
12 periodic rate adjustment mechanism, the billpayers don't
13 pay for that. We fixed the availability in the
14 mechanism. Puget absorbed that cost. Doesn't mean that
15 the people who worked at Coalstrip didn't get paid or
16 the bondholders, equityholders who financed Coalstrip
17 didn't receive their interest payments and even their
18 preferred and common dividends. But it does mean that
19 the billpayers may not pay for it. Similarly, I think
20 that what the financial community is looking for is
21 assurance that the developer will be paid by the
22 utility, not necessarily that the utility will be paid
23 by the billpayers.

24 Q We may have skipped over too quickly what you
25 perceive as the potential benefit for preapproval. Is

1 it because it brings comfort to the developer's lenders
2 or that it brings confidence to the utility's lenders?

3 A Depending on the form of preapproval, it could
4 be either or both. As I say, there's a spectrum of
5 types of preapproval. Some would just give confidence
6 to the developer's lender. Some would give confidence
7 to the utility's lenders as well.

8 Q Give me an example of a preapproval scheme
9 that would give confidence to the developer's lenders
10 but not to the utility's lenders.

11 A A preapproval that would authorize the utility
12 to execute the contract but would not bind the
13 Commission, future commissions, to allow the expenses
14 under that contract into rates under all circumstances.

15 Q And you think that would bring confidence to
16 the project lenders?

17 A I have limited experience working with a
18 couple developers, and I think yes, it would.

19 Q You perceive the project lenders are concerned
20 that utilities may not be legally authorized to enter
21 into contracts, and that's a significant factor in
22 financing costs?

23 A Yes. And there are also a number of contracts
24 that -- probably the ones that scare the developer's
25 lenders the most, which are those that have regulatory

1 out clauses, which some utilities have insisted on. A
2 contract with a regulatory out says the contract itself
3 evaporates if at any point in time the Commission
4 doesn't allow the expenses. That type of a contract
5 would make a developer's lender very uncomfortable, and
6 we as billpayers would pay a premium for the power. May
7 be a good deal to do so, maybe not.

8 Q And whose cost of capital do you think
9 preapproval might reduce?

10 A Again, depending upon the type of preapproval,
11 it could reduce that of the developer or that of the
12 developer and the utility both.

13 Q And if the utility knows that it will be able
14 to collect the money that it does pay out under the
15 contract provided that the developer does deliver the
16 power that the contract calls for, then everyone has a
17 great deal of assurance. The developer knows that if
18 they build a project that works, they will be able to
19 sell the power and get paid. The utility knows that if
20 it pays the developer for power that it does receive, it
21 will be able to recover that money from the consumers.
22 And as Standard and Poor's I think has made very clear,
23 that kind of an arrangement provides tremendous benefit
24 to the utility's cost of capital because it reduces the
25 amount of the utility's capital that is at risk for

1 generation, which is the riskiest part of the utility,
2 thereby increases the portion of the utility's capital
3 which is tied up in distribution, which is the least
4 risky part of the business. That kind of an
5 arrangement, if that's what the Commission decided
6 preapproval meant, would provide tremendous benefits
7 both to the developers and to the utility. But the down
8 side is the ratepayer is on the hook for a dumb mistake.

9 Q So as a general proposition, where you talk
10 about someone's cost of capital being reduced, at least
11 in the context we have been talking about as a result of
12 their risk being reduced?

13 A Yes.

14 Q And the risk doesn't go away, does it, from a
15 global standpoint?

16 A The risk of the project not operating or the
17 costs being higher than forecast -- no, that risk
18 doesn't go away.

19 Q The risk of loads going away, for example, so
20 there's a mismatch between generation and load -- that
21 is present?

22 A Well, I think a contracted power can have a
23 stabilizing effect on that, because larger customers can
24 have more confidence in the stability of the utility's
25 costs, and that may be desirable to the customers in the

1 service territory. But generally, I would agree with
2 you.

3 Q And to the extent one person in the case of a
4 developer or utility's risk is reduced, what preapproval
5 is in effect doing is shifting those risks to the
6 utility customers?

7 A Yes. That's exactly the concern that I
8 expressed is that we absorb the risk, and if there's a
9 corresponding benefit, that may be desirable, and if
10 there's not, it's not.

11 Q And do you think utility customers are, as a
12 group, a good set of people to absorb risks associated
13 with construction of power plants, as opposed to bankers
14 or utilities?

15 MR. MANIFOLD: Excuse me, Your Honor. I'm
16 going to object here. Seems like we've gotten pretty
17 far afield from the direct testimony and the purposes of
18 this hearing. I haven't objected before because I think
19 it is useful to have some fleshing out in this record of
20 what preapproval might look like. But since the purpose
21 of this hearing is not to determine whether or not there
22 should be preapproval or what preapproval should look
23 like, but rather simply whether or not there is
24 sufficient reason for the Commission to look at that
25 issue, I think that we've gotten too far afield from

1 this witness's direct testimony.

2 MR. GALLOWAY: I'm sorry, Your Honor. I
3 understood your comments at the beginning of the hearing
4 to say that the issue of whether there should be
5 approval was at issue. If everybody agrees it's not, I
6 would happily stop asking any questions about it.

7 JUDGE FOSTER: I think we're just talking
8 about generic standards, and if we got past the generic
9 standards question, then the next question would be
10 whether there should be various kinds of preapproval.

11 MR. GALLOWAY: Well, Mr. Manifold said we were
12 not even considering the issue of whether or not there
13 ought to be preapproval in this proceeding.

14 MR. MANIFOLD: My understanding of the
15 questions that are before us this morning is that the
16 Commission is interested both in answering the 712
17 questions as to whether or not there should be generic
18 standards, and also depending upon the answers to those
19 questions, determining whether there should be something
20 else that should take place. And I think that's what
21 makes this hearing rather awkward. There's sort of a
22 sliding scale of relevancy.

23 JUDGE FOSTER: Mr. Galloway, do you have any
24 response to Mr. Manifold's comments about the scope of
25 your questions?

1 MR. GALLOWAY: Well, as I understand Mr.
2 Manifold's objection, it was that this proceeding is not
3 for the purpose of determining whether there ought to be
4 preapproval of contracts, and on that basis my testimony
5 or my questions went beyond the scope of the proceeding.
6 If Mr. Manifold is correct in his assertion that it is
7 not the purpose of these proceedings to determine
8 whether there ought to be preapproval of contracts, I
9 would agree with his objection. If he is wrong and he's
10 misled --

11 JUDGE FOSTER: Mr. Trincherro?

12 MR. TRINCHERO: Your Honor, if I might seek
13 some clarification, it seems here we've had two
14 different parties sponsor witnesses that have actually
15 differing recommendations in this proceeding as to the
16 preapproval request. I believe the NCIPC in this
17 proceeding is recommending that the Commission in
18 response to the Section 712 questions should say yes,
19 there should be preapproval of contracts, and we will
20 deal with the implementation of that in a subsequent
21 proceeding. And maybe I should ask counsel for NCIPC if
22 that is the position. What I'm hearing public counsel -
23 - Mr. Lazar testifying to is that public counsel thinks
24 that the Commission's answer to the question posed by
25 Section 712 should be maybe, and we will review it in a

1 subsequent proceeding, and that subsequent proceeding
2 will still ask the question whether or not preapproval
3 should be adopted at all, and in addition to that, what
4 kind of implementation standards, if it is adopted. So
5 as to the objections to questioning, I think we need to
6 have some clarification of whether or not the witnesses
7 are making certain proposals or not making certain
8 proposals.

9 MR. MANIFOLD: I would adopt that
10 characterization, for my part, anyway.

11 MR. KAUFMAN: Your Honor, there's really two
12 questions. The question as to the scope of Mr.
13 Galloway's question and whether or not that's beyond the
14 scope of this proceeding asks the question: What is the
15 scope of this proceeding? There's a different question,
16 which is: What is the scope of the witness's testimony?
17 And I think Mr. Trincherro did not fairly characterize
18 the scope of NCIPC's testimony, and I can in my view
19 fairly characterize that if you would like. But I still
20 think we probably need a ruling as to what the scope of
21 this proceeding is.

22 JUDGE FOSTER: Counsel, it's my understanding
23 that the purpose of this proceeding is to determine
24 whether or not there should be any subsequent
25 proceedings. I go back to the notice of hearing, which

1 is stating that in this proceeding the ultimate issue is
2 whether the Commission should proceed to develop and
3 implement standards pursuant to Section 712 of the NEPA.
4 My understanding is that if it's possible that all these
5 questions might be answered that there should be no
6 standards adopted because everything that exists is
7 adequate, so if the answer is no, then none of this will
8 ever go any further. But my understanding is that
9 there's a separate proceeding contemplated by the
10 Commission if the answer is yes to any part of this
11 issue. Does that answer your question?

12 MR. GALLOWAY: Well, my dilemma is that one of
13 the standards is: Should there be preapproval? Our
14 view is there should not be preapproval because it's a
15 dumb idea. The only way I can carry forward our
16 position in this matter to demonstrate that there should
17 be no further consideration of preapproval is by
18 demonstrating as best as I can through cross-examination
19 and direct testimony that it's a dumb idea, and that is
20 the thrust of my questioning. Seems to me the analysis
21 the Commission has to undertake is to decide whether
22 there should be another step, whether it agrees that
23 preapproval is a dumb idea.

24 JUDGE FOSTER: How much further do you have
25 for this witness?

1 MR. GALLOWAY: None.

2 JUDGE FOSTER: That takes care of Mr.
3 Manifold's objection. We'll press on. Does anyone else
4 have questions for Mr. Lazar?

5 MR. GALLOWAY: But there's a question
6 outstanding, which is: Do you think customers are well
7 equipped to deal with risks associated with power
8 plants, as opposed to banks and utilities?

9 A My answer is at some point it's probably cost
10 effective for the billpayers to self-insure against
11 failed projects, rather than pay exorbitant premiums in
12 their bills in the form of excessive equity
13 capitalization ratios or excessive returns on equity to
14 pay the utility shareholders to absorb those risks, or
15 in the form of an exorbitant rate for purchased power to
16 independent developers to compensate the developers for
17 absorbing those risks. I can't tell you where we cross
18 that line, but that line exists out there somewhere.

19 MR. GALLOWAY: Thank you.

20 JUDGE FOSTER: Mr. Marshall?

21 MR. MARSHALL: Yes.

22 CROSS-EXAMINATION

23 BY MR. MARSHALL:

24 Q With regard to the first sentence in your
25 substitute answer on preapproval of purchase power

1 contracts, you said something to the effect about
2 electric generators and rating agencies have --- could
3 you read that sentence?

4 A Yes. Electric generators and rating agencies
5 apparently believe there are benefits associated with
6 preapproval.

7 Q With respect to the rating agencies in that
8 sentence that you referred to, which rating agencies are
9 they?

10 A Altogether or --

11 Q That you're referring to in that sentence of
12 your testimony.

13 A Specifically referring to Standard and Poor's
14 and Fitch as agencies that I have seen information from
15 that led me to believe that they viewed preapproval as
16 potentially beneficial.

17 Q You see nothing from Moody's or Duffin Phelps
18 on this?

19 A Not that I can -- I've seen nothing from
20 Moody's or Duffin Phelps that I have reviewed in the
21 context of this proceeding, and therefore, I didn't have
22 my eyes open to this issue.

23 Q With regard to the S and P and Fitch, can you
24 cite any particular recommendations where they made a
25 specific outline of what type of preapproval they're

1 speaking of?

2 A I think if you would refer to one of the
3 attachments to Mr. Huddleston's testimony, as
4 preprinted, in November, S and P Current Comment, on
5 page 3 of that, it says, "One of the ways to mitigate
6 this allowance risk is through a comprehensive
7 integrated resource planning process hosted by the state
8 regulator." Then it goes on, "Certain states like
9 Nevada have instituted preapproval programs for resource
10 planning that alleviate the risk of regulatory scrutiny
11 after the fact." With regard to S and P, that was the
12 specific passage that I had in mind, although I also --

13 Q Before we leave that, doesn't that same
14 passage you quoted go on to say, "Legislation in Nevada
15 precludes disallowance of future capacity once the
16 resource plan has been approved by the commission"?

17 A Yes, it does.

18 Q Would that be necessary in your view in
19 Washington state, that is, that there be legislation on
20 this in order to provide against the risk of regulatory
21 scrutiny after the fact?

22 MR. MANIFOLD: Are you finished? Objection.
23 Calling for a legal conclusion.

24 JUDGE FOSTER: I'm sorry. Would you repeat
25 the question?

1 MR. GALLOWAY: Sure.

2 Q With regard to your understanding of this
3 recommendation, apparently the Legislature is required
4 in Nevada to preclude disallowance of these contracts
5 once approved by the commission. In your view, is
6 legislation required in Washington state to alleviate
7 the risk of regulatory scrutiny after the fact in these
8 purchase power contracts?

9 JUDGE FOSTER: Before you answer, let me just
10 respond to the objection. We understand Mr. Lazar's not
11 a lawyer. This would be asking for his lay opinion as
12 to whether legislation would be required. With that
13 qualification, the witness is asked to go ahead and
14 respond.

15 A My opinion, just looking at that, is that
16 legislation might provide a greater level of certainty,
17 but that the regulatory preapproval mechanism adopted by
18 the Commission under its rulemaking power, if in fact
19 the Commission has the authority to adopt such rules,
20 the Commission rules have the force of law. So perhaps
21 it wouldn't be any greater assurance at all.

22 Q Are you familiar with the Nevada legislation?

23 A No, I'm not.

24 Q And are you familiar, other than what you
25 referred to here in this one S and P publication about

1 the Nevada legislation, with any specific proposal by a
2 rating agency on the type of preapproval tht they would
3 find useful? I'm looking for specific proposals.

4 A It's going to take me a minute. The
5 attachment of Mr. Huddleston from Fitch dated March 8,
6 1993, makes some general comments as to regulatory risk
7 and regulatory approval, but does not make a specific
8 proposal. Also reviewed very briefly Moody's corporate
9 credit report on Puget dated May 1993 in which Moody's
10 specifically found that Puget's purchase power strategy
11 precluded the need for more risky base load construction
12 and moderates capital spending as positive, but Moody's
13 did not suggest a specific mechanism in Washington for
14 prior approval. They did note a risk associated with
15 the lack of regulatory recognition of those contracts.

16 MR. GALLOWAY: No further questions.

17 JUDGE FOSTER: Anything further for this
18 witness?

19 MR. TRINCHERO: Yes. Just one set of
20 questions.

21 CROSS-EXAMINATION

22 BY MR. TRINCHERO:

23 Q Good afternoon, Mr. Lazar. In response to a
24 question posed to you earlier, you stated that the
25 question of preapproval requires the expectation of a

1 balance between the risks to ratepayers and the benefits
2 to ratepayers in the form of some kind of reduction to
3 the utility's cost of capital; is that correct?

4 A Reduction in the ultimate cost of the
5 utility's service to billpayers. Simply stated, if I
6 have a choice between a contract at 20 mills with
7 preapproval or 50 mills without preapproval and the
8 developer is Mission Energy and I have a fair amount of
9 confidence that they're going to be there, as a
10 representative of the billpayers, I might say, "Let's
11 take the preapproval at 20 mills rather than the risk at
12 50." On the other hand, if it's 49 versus 50, that
13 becomes a very different question.

14 Q Have you done any analysis to determine
15 whether overall ratepayers would be benefited by a
16 preapproval process, taking that balancing approach into
17 account?

18 A No. I'm suggesting that the Commission may
19 want to consider doing that.

20 MR. TRINCHERO: Thank you. No further
21 questions.

22 JUDGE FOSTER: Anything further for this
23 witness?

24 MR. MANIFOLD: Yes.

25 REDIRECT EXAMINATION

1 BY MR. MANIFOLD:

2 Q Are you recommending any particular
3 preapproval mechanism?

4 A No, I'm not.

5 JUDGE FOSTER: Okay. Anything else? All
6 right. Then the witness may be excused.

7 (Witness excused.)

8 JUDGE FOSTER: Your exhibits have been
9 admitted. We have one more piece of business before we
10 break for lunch, and that's the comments of the Electric
11 Generation Association. They were submitted, but as Mr.
12 Galloway noted before we went on the record, there's no
13 witness or counsel here to sponsor them. I'd like to
14 have them in the record, and I guess what I would do in
15 lieu of that would be to perhaps ask other counsel to
16 offer them.

17 MR. GALLOWAY: Could I be heard on this
18 matter?

19 JUDGE FOSTER: Go ahead.

20 MR. GALLOWAY: Mine is not a technical
21 objection because there's no lawyer here to offer as an
22 exhibit. My objection, I think, is substantially
23 broader than that. First and foremost, we have a
24 prehearing order which you referred to in a number of
25 cases today, prehearing order indicating that the

1 hearing will be held, people will submit prefiled
2 testimony and make themselves available for cross-
3 examination, and that the parties will have an
4 opportunity to cross-examine. What we have here is the
5 situation which is somebody purporting to be a party in
6 the face of that order mailing in testimony and
7 expecting somehow that testimony, unlike anybody else's
8 testimony, not to be subject to the procedural rules.
9 Secondly, perhaps, this is a statement sent in by a
10 national trade group. It reflects no information
11 whatsoever on the witness's qualifications, although it
12 makes statements about all manners of things. It makes
13 no statement as to what this trade group does, and it
14 gives no indication of whether this trade group or its
15 members have any interest in matters in the state of
16 Washington. So there's not even a foundation that
17 either the witness is qualified or that this is a party
18 that is properly party to these proceedings. Lastly, I
19 think it's important to note that Section 712 of the
20 Energy Act is not in and of itself a body of
21 legislation, but rather an amendment to PURPA, 1978
22 legislation which required commissions to consider a
23 number of standards that were then relevant to
24 regulatory matters. All 712 does is add to a number, I
25 think, 16 existing PURPA standards that were supposed to

1 be considered. These additional standards to be
2 considered by the Commission and as part of that
3 amendment is what one has to look back at, what Congress
4 required in PURPA for this consideration process. And
5 what is required is a hearing, testimony and opportunity
6 for cross-examination, and I think most importantly for
7 purposes of these proceedings, PURPA requires that the
8 Commission's order be based upon the hearings. I
9 therefore submit that were you to admit this evidence in
10 the record without it being subject to cross-
11 examination, it would violate the standards of PURPA.
12 And were the Commission to rely on that testimony in any
13 fashion in fashioning its ultimate order, it would have
14 violated PURPA and not satisfied the federal
15 requirements.

16 MR. TROTTER: Can I respond?

17 JUDGE FOSTER: Yes, Mr. Trotter.

18 MR. TROTTER: With respect to PURPA, my
19 reading of the specific legislation setting up this
20 particular cause -- caused this particular document to
21 be set up only referred to the hearing, did not say
22 specifically what types of processes had to be
23 encompassed in that hearing. I think counsel may be
24 correct, but I think he also may be wrong in that it
25 requires cross-examination. I'm not convinced it does.

1 However, he is correct that the notices of hearing
2 clearly contemplate that the witnesses be present and
3 that the parties were required to notify each other
4 whether they would -- that they would require cross-
5 examination of particular witnesses. I know PacifiCorp
6 was one that did notify the parties that they intended
7 to engage in cross-examination of Electric Generation
8 Association witnesses, and so I think they have
9 protected themselves, unlike other parties who may not
10 have made such a statement, which the Commission clearly
11 called for. So I think the objection is well taken for
12 that reason. The other parties were on notice that they
13 had to present their witnesses here, and they did show
14 up. I think the objection is well taken under the
15 notices of hearing and the processes by the Commission
16 pursuant thereto.

17 JUDGE FOSTER: Do I understand your position
18 to be then that the comments of the Electric Generation
19 Association should not be included in the record because
20 they don't comply with what was expected in the notice
21 of hearing?

22 MR. TROTTER: Yes.

23 JUDGE FOSTER: Mr. Manifold, do you have a
24 position on this?

25 MR. MANIFOLD: I think Mr. Trotter's correct

1 as to the notice that was given to this organization and
2 direction to have a witness here to put this in as
3 evidence. I think the larger question is whether or not
4 the views of this organization as a matter of briefing
5 or something other than as evidence are matters which we
6 should include in the record in some manner so that they
7 may come to the attention of the decisionmakers in this
8 case, and I think that they are. They ought, I suspect,
9 not to come in as evidence by the objections as stated
10 by PacifiCorp and staff. I would be happy to sponsor
11 them as the typical public testimony, illustrative
12 exhibits, if that would meet with your approval.

13 JUDGE FOSTER: All right. Let's identify
14 these exhibits of the Electric Generation Association as
15 Exhibit 9, and I would be prepared to accept Mr.
16 Manifold's proposal that we treat this like illustrative
17 exhibits, that is, material submitted at public hearing
18 to be admitted not necessarily for the truth of this
19 content.

20 (Exhibit 9 was marked for identification.)

21 MR. GALLOWAY: My understanding, Your Honor,
22 is that when matters are accepted on that basis, it's
23 with the explicit understanding they are not part of the
24 record in the proceeding.

25 MR. TROTTER: They are literally part of the

1 record, but do not constitute substantive evidence.

2 MR. GALLOWAY: And they are not to be relied
3 upon by the Commission, as I understand it?

4 MR. TROTTER: As substantive evidence, yes.

5 JUDGE FOSTER: I believe that's true, counsel.
6 That would be its status. Mr. Manifold, any comments on
7 that?

8 MR. MANIFOLD: No.

9 JUDGE FOSTER: All right. I'll go ahead and
10 admit Exhibit 9 as an illustrative exhibit with the
11 qualifications as referred to by counsel. Is there
12 anything else we need to address on the record before we
13 go to lunch? All right.

14 (A brief recess was taken.)

15 JUDGE FOSTER: Let's be back on the record
16 after a break. While we were off the record, parties
17 were to look over the questions that have been
18 submitted, and I believe while we were off the record
19 there was an agreement that counsel would go over these
20 and sort of indicate their responses and a brief
21 description of the answers, if necessary. So, Mr.
22 Marshall, do you want to start and go through these
23 questions?

24 MR. MARSHALL: Sure. I think most of these
25 have been addressed by Mr. Lauckhart's testimony, but

1 I'll go through them briefly.

2 I think with regard to question 1, which asks
3 about whether the parties agree that generic standards
4 are not appropriate with regard to effective purchases
5 of long-term wholesale power supplies on leveraged
6 capital, I do not disagree with that characterization.
7 In other words, it seems that the parties do agree that
8 generic standards are not appropriate to those two
9 issues.

10 With regard to question two, the answer is
11 yes.

12 With regard to question three, the answer is
13 we don't have enough experience to be able to say yes or
14 no. I didn't go into debate. That's why I hesitated.
15 That's the only honest response we could give.

16 Question four, these issues need to be
17 discussed with regard to each utility individually, and
18 they can be done in rate cases, least cost planning,
19 competitive bidding, all of the above.

20 Question five, how important do we consider
21 these issues to be? Very important, particularly with
22 respect to the effect of purchases on our cost of
23 capital.

24 Question six, the comment on whether
25 preapproval is appropriate, we have indicated that we

1 think that what preapproval is is defined -- sort of
2 like saying are you in favor of taxes. Depends on whom
3 they're imposed and a whole host of details. But we
4 don't believe that it's appropriate for this Commission
5 in this proceeding to adopt preapproval process, so I
6 think the parties have indicated why in general. They
7 have some concerns about just what it is that
8 preapproval would entail and would it be more
9 administrative effort than potential benefit.

10 MR. TROTTER: Your Honor, could we have the
11 question sheet marked as an exhibit?

12 JUDGE FOSTER: Yes. Let's identify the
13 exhibit next in order, which is Exhibit 10, the question
14 sheet, single-page document. The caption at the top is
15 "Questions for EPACT Section 712 hearing, July 30,
16 1993."

17 (Exhibit 10 was marked for identification.)

18 MR. MARSHALL: I did not try to repeat each
19 question because I assumed that in the question.

20 JUDGE FOSTER: Thank you. Does that conclude
21 your response?

22 MR. MARSHALL: Yes, unless there's any cross-
23 examination, in which case I'll defer to Mr. Lauckhart.

24 JUDGE FOSTER: Mr. Strong, do you want to go
25 ahead for Washington Water Power?

1 MR. STRONG: Thank you, Your Honor.

2 With respect to question one, we do not
3 disagree with the characterization, or we agree with the
4 Commission's characterization.

5 With respect to question two, our answer is
6 yes.

7 With respect to question three, once again,
8 we're going to say possibly or maybe with a couple of
9 sentences of explanation. Each individual project we
10 believe has to be examined in the context of the unique
11 features of that project and the unique circumstances of
12 the utility, and depending on the particular project,
13 particular circumstances of the utility, it may be that
14 under some circumstances exempt wholesale generators
15 would enjoy an unfair advantage, and by an unfair
16 advantage, I'm assuming that's one which works to the
17 ultimate detriment of the customers. But that has to be
18 looked at on a project-specific basis in the light of
19 the particular utility's circumstances.

20 With respect to question four, we strongly
21 believe that generic standards which try to apply
22 uniform rules to all utilities probably are not
23 workable.

24 MR. TROTTER: Your Honor, if I could
25 interrupt, the question assumes that they are not

1 necessary, so if we're going to limit the lengthy
2 response, maybe we should just limit to the questions
3 being asked. I'll object.

4 MR. STRONG: Fine. I'll try to more
5 succinctly state my response there. Utility-specific
6 venues which exist now, rate cases, least cost planning,
7 competitive bidding processes, we believe are the better
8 venues in which these particular issues should be
9 discussed, not in generic proceedings. There's been
10 reference in informal discussions to using a cookie-
11 cutter approach which tries to deal with all of these
12 issues in a manner which would uniformly apply to
13 utilities. To the sense these issues are important,
14 they're appropriately discussed in individual utility
15 form as applied to the individual circumstances of that
16 utility.

17 With respect to question five, it's our
18 position that these issues could be important, but once
19 again, you have to look at the particular circumstances
20 of the project and the utility to determine their
21 relative importance, and additionally in our point of
22 view, there are mechanisms for addressing these issues
23 in place now, and there's no need to create additional
24 mechanisms or adopt generic standards.

25 With respect to question six, it's Washington

1 Water Power's view that the process which exists
2 currently for reviewing contracts and ultimately
3 reviewing them in a rate case context as well is
4 sufficient and that there is no need to look at a change
5 in procedures for dealing with particular kinds of
6 purchase contracts.

7 JUDGE FOSTER: All right. Thank you. Mr.
8 Galloway?

9 MR. GALLOWAY: In regard to question one,
10 PacifiCorp does not disagree with the characterization.

11 With regard to question two, PacifiCorp's
12 answer would be yes.

13 In regard to question three, we would propose
14 to separate this into two questions so it can be
15 answered yes or no, which is to say PacifiCorp believes
16 that there are circumstances that highly leveraged debt
17 structures could threaten reliability. PacifiCorp does
18 not believe as a general proposition that highly
19 leveraged debt structures create an unfair advantage.

20 In regard to question four, PacifiCorp
21 believes that just as no substantive standards are
22 appropriate to all utilities, it would not be
23 appropriate to use the same procedural mechanisms to
24 address these issues for all jurisdictional utilities in
25 Washington because of the very different circumstances

1 and policies of those utilities. I think that the
2 PacifiCorp testimony probably inadvertently overuses the
3 words "rate case" for resolving these issues, and I
4 think we recognize that if the issues are to be resolved
5 specific to PacifiCorp as we believe they should be,
6 that under some circumstances it may well be appropriate
7 to take up these issues either in competitive bidding
8 process or least cost planning process as well as rate
9 cases, although I expect we continue to believe that the
10 rate cases are the most important forum for ultimately
11 deciding prudence.

12 As to question five, PacifiCorp considers
13 these issues important, but neither more important nor
14 more complex than the company and the Commission have
15 dealt with over the last ten or twenty years, and
16 general perspective is that the existing procedural
17 mechanisms are adequate to resolve these issues in a
18 fair way and that there isn't a pressing need for the
19 Commission to take some extraordinary procedural
20 measures to find a way to deal with these issues.

21 As to question six, it's evident from my
22 cross-examination PacifiCorp does not believe that
23 advance approval of purchase power contracts would be
24 appropriate. It believes that such a mechanism would
25 inappropriately shift risks to customers, that the

1 specter of Commission review would undermine
2 PacifiCorp's ability to negotiate the best possible
3 contract. And we believe that as a practical matter
4 when one got around to designing a preapproval
5 mechanism, there will always be a necessary regulatory
6 out in that preapproval mechanism such that there would
7 be enough remaining uncertainty that the whole process
8 wouldn't accomplish its stated goals.

9 JUDGE FOSTER: Thank you. Mr. Kaufman?

10 MR. KAUFMAN: Your Honor, on behalf of the
11 NCIPC, the Coalition would agree with the
12 characterization in question one.

13 Question two, my interpretation of that is
14 replacing the entirety of construction with purchases
15 would possibly have an impact on utility cost of
16 capital, but that the replacement in its entirety of
17 generation construction by power purchases is not the
18 rule, and that there's a continuum in most cases that
19 you have to look at on a case-by-case basis.

20 In question three, the Coalition neither --
21 believes that there's neither a competitive advantage or
22 impact on reliability resulting from debt leveraging.

23 Question number four, the question more
24 properly is whether there should be a utility-by-utility
25 examination or whether there should be some broad

1 application of whatever rules are adopted, and the
2 Coalition believes that it should be utility-by-utility.
3 In other words, the forum isn't as important as the
4 application.

5 Question five, these issues are important, but
6 they certainly fall within a range of other important
7 issues that focus on -- cost of capital, for example,
8 shouldn't be overemphasized.

9 On question number six, I probably should take
10 this opportunity to clarify what has been perhaps a
11 hard-to-get-hold-of position for the NCIPC with respect
12 to preapproval. If you read our testimony, we are not
13 advocating in this proceeding that a standard be
14 adopted. However, there should be some examination on a
15 case-by-case basis of preapproval where it's necessary
16 to remove a barrier to market entry or where it's
17 necessary or deemed appropriate by both the UTC and
18 utility to have preapproval to remove some concerns
19 about regulatory risk.

20 JUDGE FOSTER: Okay. Mr. Trincherero?

21 MR. TRINCHERO: Thank you, Your Honor. I
22 think I actually went through these on the record
23 earlier today in response to your question on our
24 petition to intervene, but I'll gladly go through it
25 again.

1 With respect to question number one, yes, we
2 agree with that characterization.

3 With respect to question number two, no, we do
4 not believe that generally that is the case, but perhaps
5 in certain extreme cases.

6 With regard to question number three, once
7 again, the answer is no, we do not believe that that is
8 the case.

9 In response to question number four, we also
10 believe that these issues should be addressed on a
11 utility-specific basis. Generally each utility's
12 general rate case would be the appropriate proceeding in
13 which to deal with certainly the effect of purchases of
14 long-term wholesale power, and also most likely the
15 question of whether or not leveraged capital structures
16 either threaten reliability or unfairly advantage
17 utilities. However, with regard to the latter, perhaps
18 it would be appropriate to also look at these issues in
19 both least cost planning and competitive bidding
20 processes.

21 In response to question five, to the extent
22 that certain utilities may argue for increases in rates
23 in order to mitigate the perceived impact on cost of
24 capital due to relying on long-term wholesale power
25 supplies, we do consider this an important issue. To

1 the extent that we do not believe that such rate
2 increases are necessary or justified, we consider it a
3 nonissue.

4 In response to question number six, while we
5 do not oppose advance approval for limited purchases, we
6 do oppose advance approval to the extent that such
7 approval would bind future commissions as to ratemaking
8 treatment of expenditures under these purchase power
9 contracts.

10 JUDGE FOSTER: Thank you. Mr. Manifold?

11 MR. MANIFOLD: Public counsel's answer to the
12 first question would be yes, we agree.

13 The answer to the second question would be
14 yes, we think they may be lower.

15 Question number three, PacifiCorp needs to be
16 bifurcated. We would say maybe for the threatens
17 reliability; could be. An unfair advantage? We would
18 say no.

19 As to question number four, there are some
20 issues that should be resolved in each of those various
21 settings. We think that some of these issues together
22 with ones that are not a part of this may make it
23 reasonable to revisit the least cost planning and
24 competitive bidding process, and in that context it
25 might be useful to have some general proceeding.

1 Question number five, again, one would really
2 have to go back and answer that as to each of the
3 issues. Some of the issues -- none of the issues are
4 unimportant. Some of them are, you know, fair and
5 important questions within the context of particular
6 rate proceedings for utilities which have rate
7 proceedings, and others of them would be important to be
8 considered, for instance, in the IRP.

9 And number six, the literal answer is yes, we
10 have a comment on that, and the comment would be that we
11 think that this idea merits some further examination.

12 JUDGE FOSTER: Thank you. Mr. Trotter?

13 MR. TROTTER: Yes. With respect to question
14 one, our answer is staff does not disagree.

15 With respect to question two, assuming that
16 the word "impact" means higher, the question cannot be
17 answered generically. It may or may not.

18 With respect to question three, again, it's
19 difficult to answer generically, but we have -- with
20 respect to threatens reliability, we see no evidence of
21 that.

22 Question four, if generic standards are not
23 necessary, then they should be discussed individually.
24 It's our understanding that with respect to if these
25 issues have a cost impact, they must be considered in

1 the least cost planning and competitive bidding process
2 under current rules, and certainly rate impact would
3 have to be done in the rate case. NOI proceeding can be
4 helpful because of its relative informality. So that's
5 always available.

6 Question five, compared to other regions of
7 the country, we think this issue objectively is not as
8 important, but it certainly has been getting much of the
9 attention through words and piles of documentation.

10 With respect to question six, staff opposes
11 preapproval at this time absent a showing of a true
12 benefit to ratepayers, and we also would caution that we
13 believe that there may need to be statutory changes in
14 order to accomplish it. That's not a firm position, but
15 it certainly is one that we are concerned about.

16 JUDGE FOSTER: With respect to question three,
17 did you address the unfair advantage?

18 MR. TROTTER: I would say we don't have any
19 evidence, but it is possible.

20 JUDGE FOSTER: Okay. Thank you. All right.
21 I believe that concludes all of the comments on the
22 questions that were posed to the parties by the chair
23 here. Are there any other matters that we need to
24 address today?

25 The order of investigation indicates that

1 there will be an order that comes out of this
2 proceeding. We will have an opportunity to comment on
3 that order, and then I believe the final determination
4 in this proceeding is entered October 22 of 1993. The
5 schedule for all this is on page 5 of the order
6 initiating Commission investigation.

7 So, there being nothing further to come before
8 us, we'll stand adjourned.

9 (Proceedings adjourned at 1:10 p.m.)

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C E R T I F I C A T E

As Court Reporter, I hereby certify that the foregoing transcript is true and accurate and contains all the facts, matters and proceedings of the hearing held on July 30, 1993.

Tami Kern