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BEFORE THE WASHINGTON UTILITIES AND

2

TRANSPORTATION COMMISSION

3

AIR LIQUIDE AMERICA )  
CORPORATION, AIR PRODUCTS AND )

4

CHEMICALS, INC., THE BOEING ) Docket No. UE-001952  
COMPANY, CNC CONTAINERS, ) VOLUME IX

5

EQUILON ENTERPRISES, LLC, ) Pages 1856 to 2012  
GEORGIA-PACIFIC WEST, INC., )

6

AND TESORO NORTHWEST CO., )  
)

7

Complainants,)

8

vs. )

9

PUGET SOUND ENERGY, )  
)

10

Respondent. )

-----)

11

In the Matter of )

12

Petition of Puget Sound ) Docket No. UE-001959  
Energy, Inc., for an Order ) VOLUME IX

13

Reallocating Lost Revenues ) Pages 1856 to 2012  
Related to any Reduction in )

14

the Schedule 48 or G-P )

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Special Contract Rates, )  
\_\_\_\_\_)

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A Hearing in the above matter was held on

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January 29, 2001, at 1:40 p.m., at 1300 South Evergreen

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Park Drive Southwest, Olympia, Washington, before

20

Administrative Law Judge DENNIS MOSS and Chairwoman

21

MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD.

22

23

24

Joan E. Kinn, CCR, RPR

25

Court Reporter

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1           The parties were present as follows:

2

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

5

6           PUGET SOUND ENERGY, INC., by STAN BERMAN and  
7 TODD GLASS, Attorneys at Law, Heller Ehrman White &  
8 McAuliffe, LLP, 701 Fifth Avenue, Suite 6100, Seattle,  
9 Washington 98104.

8           THE PUBLIC, by SIMON J. FFITCH, Assistant  
9 Attorney General, 900 Fourth Avenue, Suite 2000,  
10 Seattle, Washington 98164-1012.

10

11           AIR LIQUIDE AMERICA CORPORATION, AIR PRODUCTS  
12 AND CHEMICALS, INC., THE BOEING COMPANY, CNC CONTAINERS,  
13 EQUILON ENTERPRISES, LLC, GEORGIA-PACIFIC WEST, INC.,  
14 and TESORO NORTHWEST COMPANY, by IRION SANGER, Attorney  
15 at Law, Davison Van Cleve, P.C., 1300 Southwest Fifth  
16 Avenue, Suite 2915, Portland, Oregon 97201 and by  
17 MICHAEL EARLY, Attorney at Law, 1300 Southwest Fifth  
18 Avenue, Suite 1750, Portland, OR 97201.

15

16           BELLINGHAM COLD STORAGE COMPANY, by JOHN  
17 CAMERON, Attorney at Law, Davis Wright Tremaine, 1300  
18 Southwest Fifth Avenue, Suite 2300, Portland, Oregon  
19 97201.

18

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

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01858

1 -----  
2 INDEX OF EXAMINATION  
3 -----

4  
5 Concurrent Testimony of  
6 ALAN BUCKLEY, DONALD SCHOENBECK, and WILLIAM GAINES  
7 In Response to Questions from the Bench  
8 Pages 1891 through 1986  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

01859

1	-----		
2	INDEX OF EXHIBITS		
3	-----		
4	EXHIBIT:	MARKED:	ADMITTED:
5	ALAN BUCKLEY		
6	1005	1890	
7	1006	1890	
8	1007	1890	
9	WILLIAM GAINES		
10	C-1415	1884	
11	1416	1884	
12	C-1417	1884	
13	C-1418	1884	
14	RICHARD HAWLEY		
15	C-1601	1884	
16	C-1602	1884	
17	DONALD GAINES		
18	C-1701	1885	
19	1702	1885	
20	1703	1885	
21	C-1704	1885	
22	1705	1885	
23			
24			
25			

01860

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P R O C E E D I N G S

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JUDGE MOSS: Good afternoon, everyone. We are convened in the matter styled Air Liquide America Corporation and others against Puget Sound Energy, Docket Number UE-001952, consolidated proceeding with a certain petition of Puget Sound Energy at Docket Number UE-001959. We are in what has been named Phase II of the 1952 docket, and our basic agenda today once we take appearances, we have a motion pending, one that I'm aware of at least, the Atlantic Richfield Company motion for late intervention. We will go off the record after hearing that very briefly and discuss our process for going forward today and how we think that might work best, and then we will indeed conduct our proceedings. Of course, finally we will take up any other business that may come before us.

17

Let's do the appearances.

18

(Discussion on the Bench.)

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JUDGE MOSS: All right, so we will take appearances, and why don't we start with the Complainants.

22

MR. SANGER: Irion Sanger, attorney with Davison Van Cleve.

24

JUDGE MOSS: Have you previously entered your appearance in the proceeding?

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01861

1 MR. SANGER: No, I have not.

2 JUDGE MOSS: Then you will need to give us  
3 your address, telephone number, facsimile number, and  
4 E-mail address.

5 MR. SANGER: 1300 Southwest Fifth Avenue,  
6 Suite 2915, Portland, Oregon, 97201, fax number (503)  
7 241-8160, telephone number (503) 241-7242.

8 JUDGE MOSS: And if you could furnish your  
9 business card to the reporter at the conclusion of the  
10 day, that would be helpful.

11 Anybody else for Complainants?

12 MR. EARLY: Yes, Your Honor, Michael Early  
13 for the Complainants, and I entered an appearance in  
14 Phase I.

15 CHAIRWOMAN SHOWALTER: Could you repeat your  
16 name again.

17 MR. SANGER: It's pronounced Irion, and it's  
18 spelled I-R-I-O-N.

19 CHAIRWOMAN SHOWALTER: Last name?

20 MR. SANGER: Sanger, S-A-N-G-E-R.

21 CHAIRWOMAN SHOWALTER: Thank you.

22 JUDGE MOSS: All right, and if that concludes  
23 the Complainants, then we will have PSE.

24 MR. BERMAN: Good morning, Your Honor. My  
25 name is Stan Berman of the law firm Heller Ehrman White

01862

1 & McAuliffe, here on behalf of Puget Sound Energy. I  
2 have previously entered my appearance in this  
3 proceeding. With me today at the table is Todd Glass,  
4 also from Heller Ehrman White & McAuliffe.

5 JUDGE MOSS: All right. I don't see any --  
6 Mr. Cameron, we do have one intervener sitting at the  
7 table.

8 MR. CAMERON: I'm John Cameron. I have  
9 previously entered an appearance for Bellingham Cold  
10 Storage Company.

11 Perhaps at this time I should enter the  
12 appearance of Michael Myers as well on behalf of  
13 Atlantic Richfield. Mr. Myers would be here, but he  
14 suffered a death in his immediate family on Friday, so  
15 I'm here pinch hitting for him.

16 On behalf of Atlantic Richfield Company,  
17 Michael Myers, the law firm of Davis Wright Tremaine,  
18 I'm struggling for his address here, let's see, I will  
19 use the Portland address, 1300 Southwest Fifth, Suite  
20 2300, Portland, Oregon, 97202, phone number (503)  
21 778-5300, E-mail address all one word  
22 michaelmyers@dwt.com.

23 JUDGE MOSS: And is Mr. Meyers actually in a  
24 different office?

25 MR. CAMERON: Yes, sir, he's in Los Angeles.

01863

1 JUDGE MOSS: If you could follow up --  
2 MR. CAMERON: I will do that.  
3 JUDGE MOSS: -- and give that to me, then we  
4 will have that for our records.  
5 MR. CAMERON: Yes, sir.  
6 JUDGE MOSS: Then we'll certainly have the  
7 correct communications.  
8 Do we have any other interveners present  
9 today who wish to enter an appearance?  
10 MR. WALTERS: Yes, Your Honor.  
11 JUDGE MOSS: Yes, sir, come forward.  
12 MR. WALTERS: Brian Walters here today  
13 representing Whatcom County PUD, and I previously  
14 entered an appearance.  
15 JUDGE MOSS: Any other interveners wish to  
16 enter an appearance today?  
17 I don't know, I frankly don't recall what  
18 arrangements we made for the conference bridge line, but  
19 I will ask if we have any interveners present through  
20 the conference bring line?  
21 Apparently not.  
22 Let's hear from Public Counsel.  
23 MR. FFITCH: Simon ffitch, Assistant Attorney  
24 General, appearing for Public Counsel, and I have  
25 previously entered an appearance.



01864

1 JUDGE MOSS: Thank you.

2 And for Staff.

3 MR. CEDARBAUM: Robert Cedarbaum and Donald  
4 Trotter, Assistant Attorneys General. Our appearance  
5 has also been noted of record.

6 JUDGE MOSS: Thank you very much.

7 I believe that concludes our appearances. I  
8 would like to take up quickly, we have one motion  
9 pending that I am aware of, and that is the motion by  
10 Atlantic Richfield Company for late intervention. And  
11 we, of course, have the written pleading. What I have  
12 is the Arco motion, and I believe Complainants filed a  
13 response to that. Were there any other responses filed?

14 All right. Do any other counsel have a  
15 desire to respond on the record today?

16 All right then --

17 MR. CEDARBAUM: I'm sorry, Your Honor, Staff  
18 does not oppose the intervention of Arco in this  
19 proceeding.

20 JUDGE MOSS: Okay, I don't know that we need  
21 to have any argument on it if there's no opposition to  
22 it, so I suppose we can momentarily take it under  
23 advisement and make a ruling.

24 (Discussion on the Bench.)

25 MR. SANGER: Judge Moss, did you want me to

01865

1 clarify anything in our motion that we made, in our  
2 answer?

3 JUDGE MOSS: No, the Bench doesn't have any  
4 questions about the written pleadings.

5 All right, the Commission's ruling on the  
6 motion by Arco is that the motion will be granted  
7 subject to the understanding that Arco takes the record  
8 as they find it. We will not expand back into Phase I,  
9 as it were, to take up any facts and circumstances  
10 peculiar to the Arco contract with PSE. We are in the  
11 remedy phase, and so that's what we're going to limit  
12 ourselves to in terms of what we do today will be to  
13 focus on the remedy phase only.

14 MR. CAMERON: Yes, sir, the contract is a  
15 matter of public record. We recited in the intervention  
16 the similarities between the Arco contract and the  
17 contracts previously at issue. During Phase I, Arco did  
18 not believe that an emergency existed, and hence it took  
19 the actions described in the intervention petition,  
20 working in cooperation with Puget and with others to try  
21 to solve the problem of the high energy crisis during  
22 that period.

23 JUDGE MOSS: Okay, thank you.

24 Mr. Berman, did you have something on this?

25 MR. BERMAN: Your Honor, it does not relate

01866

1 to the Arco intervention. We do not oppose that. But  
2 it relates to your comment that this is a remedy phase  
3 only. We have already expressed our opinion in the  
4 pleadings that were submitted last week that we believe  
5 that it's inappropriate to be moving to the issue of  
6 remedies before having a thorough, thoughtful  
7 consideration of whether the standards required for  
8 doing a rate adjustment have actually been met.

9         We believe that the requirements of the  
10 statute are that if there is going to be a fundamental  
11 change to rates that there should be a full and thorough  
12 analysis of whether the new rates that are implemented  
13 in fact will maintain the financial integrity of the  
14 Company, allow the Company to earn a reasonable return  
15 that will attract a sufficient investment to the  
16 Company, and that meet other standards that are  
17 necessary for commission rate making.

18         We have with us today several witnesses who  
19 are prepared to address the issue of whether the soft  
20 cap proposal that has been put forward in fact meets  
21 those requirements.

22         I would note that it continues to be our  
23 position that there's no legal ability for the  
24 Commission to render changes to the rates under Schedule  
25 48 or the Special Contracts given their contractual

01867

1 nature, arguments that have already been addressed and  
2 briefed and argued in front of the Commission. But in  
3 addition to all those other arguments, the witnesses  
4 that we have with us here today will address the issue  
5 of justness and reasonableness and sufficiency of the  
6 rates and the issue of whether Puget Sound Energy will  
7 be able to maintain its financial integrity if the rates  
8 are in fact implemented.

9           With us I should say are, one, we have Bill  
10 Gaines, who is the Vice President for Energy Supply of  
11 the Company. He will testify at the hearing as to the  
12 current power situation for Puget Sound Energy. Among  
13 other things, he will inform the Commission that the  
14 hydro forecasts are significantly worse than they were  
15 earlier this month. The current hydro forecast for the  
16 Mid-Columbia is 68% water levels. He has also done an  
17 updated resource stack analysis for the Company. Taking  
18 into account the updated resource stack analysis and the  
19 updated hydro levels, he has found that several hundred  
20 million dollars in excess power procurement costs, that  
21 Puget Sound Energy will be exposed to several hundred  
22 million dollars in excess power procurement costs that  
23 were not considered in the analyses that were presented  
24 in Phase I.

25           We also have with us Mr. Richard Hawley, who

01868

1 is the Chief Financial Officer of Puget Sound Energy,  
2 and Donald Gaines, who is the Treasurer of Puget Sound  
3 Energy. What we will learn from those two witnesses is  
4 that Puget Sound Energy isn't, in contrast to testimony  
5 that you heard during Phase I, you will learn that Puget  
6 Sound Energy needs access to the financial markets on a  
7 regular basis. In particular with the volatile power  
8 and gas prices that Puget Sound Energy has been exposed  
9 to, Puget Sound Energy needs access to the financial  
10 markets to obtain the cash to pay its bills, and that  
11 the issue of Puget Sound Energy's cash flow has been  
12 severely impacted in the past several weeks.

13           As a result of the California crisis, lenders  
14 who Puget used to rely on as part of -- for uncommitted  
15 financing, that is lenders who would lend to Puget Sound  
16 Energy time to time but who had no commitment to lend to  
17 Puget Sound Energy, we found that those uncommitted  
18 sources of financing have dried up entirely. That is  
19 because those lenders have determined that the utilities  
20 sector presents too great a risk at this time, and those  
21 lenders have concluded that their exposure to the  
22 utility sector and potential defaults in the utility  
23 sector is at such a level that they don't want to  
24 increase their exposure by doing additional lending.

25           You will also hear that Puget Sound Energy

01869

1 has essentially maxed out its committed credit lines,  
2 which means that Puget Sound Energy needs access to the  
3 bond markets in order to obtain necessary financing to  
4 raise cash to pay its bills. You will also learn that  
5 when you factor in the increased power procurement costs  
6 that Mr. Gaines has projected and then you take into  
7 account the revenue reduction that would occur as a  
8 result of the implementation of a soft cap, that the  
9 resulting reduction in earnings would put Puget Sound  
10 Energy in a position where its coverage ratios would not  
11 meet the standards for investment grade bond ratings  
12 with the ratings agencies. It would fall to below  
13 investment grade and thus would not be able to obtain  
14 cash on the credit markets. The net result is that  
15 Puget Sound Energy will lose access to the cash it needs  
16 to pay its bills, and there is the potential of dire and  
17 disastrous operational consequences.

18 We have these witnesses prepared and ready to  
19 present testimony today. We have also prepared written  
20 prefiled testimony, and we are prepared to present that  
21 written prefiled testimony. We're willing to pursue  
22 this in various ways. One way would be for us to  
23 present the prefiled testimony, give Your Honors an  
24 opportunity to read that, and then have the witnesses  
25 come to the stand and give any explanation that Your

01870

1 Honors might need of that testimony. Or we could just  
2 go straight to the oral presentation. But the fact is  
3 that we feel it's absolutely essential that our  
4 witnesses be able and allowed to present this  
5 information.

6           We would note that we would have presented a  
7 more fulsome analysis with more time. We had requested  
8 a continuance, and we feel that under WAC 480-09-700  
9 that we had a right to additional notice prior to the  
10 institution of Phase II hearings. But given that we  
11 have not been allowed more time, we have presented the  
12 best analysis that we can, and we think that that  
13 analysis, though not as fulsome and complete as we would  
14 like, nonetheless presents a compelling picture which  
15 should preclude entry of any soft cap proposal.

16           JUDGE MOSS: All right, thank you,  
17 Mr. Berman.

18           If you would give me a minute, please.  
19           (Discussion on the Bench.)

20           JUDGE MOSS: Before we hear from other  
21 parties, and I will give other parties an opportunity to  
22 speak to the points you have made, Mr. Berman, I will  
23 simply observe from the Bench's perspective that the  
24 matters you raise are matters that are contemplated as  
25 being within the scope of Phase II, and that has been

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1 the contemplation right along.

2           As the Commission's Sixth Supplemental Order  
3 points out, what we're looking at here is something both  
4 that will provide some stability in rates for the  
5 customers, but also keep PSE whole with respect to its  
6 costs, so certainly all of that subject matter is there  
7 and needs to be considered.

8           We will talk about how exactly we will  
9 proceed in terms of hearing witnesses and one thing and  
10 another in a minute, probably in fact take some of that  
11 up off the record, but I think we do want to hear from  
12 other counsel.

13           MR. BERMAN: I would note, Your Honor, that  
14 in that regard, the testimony that we have put together  
15 is in the form of describing the crisis that would be  
16 created by imposition of the soft cap rates as proposed  
17 or anything close to as proposed. We have not done what  
18 we would consider a rate case analysis that develops our  
19 own proposal. And so if we were put in a position of  
20 having to develop our own proposal, we would need  
21 additional time, time that we have not been given, to  
22 put together that proposal and that analysis. So this  
23 testimony that I have described is something that's  
24 responsive to the proposal that's out there now and that  
25 describes the impact of that proposal, without being



01872

1 something that we consider a true rate case presentation  
2 of our own.

3 JUDGE MOSS: Okay, well, one step at a time.

4 Mr. Cameron.

5 MR. CAMERON: Your Honor, if you would  
6 indulge me just a moment to go back to the intervention.  
7 When Mr. Berman spoke, I didn't realize he was going to  
8 go on to another topic, but I did want to go back just  
9 for purposes of clarification just for a moment. My  
10 understanding, of course, is that this is the remedial  
11 stage of the proceeding.

12 Just for clarification, it is Arco's position  
13 that its contract calls for it to pay a rate that the  
14 Commission has just declared unlawful, and as such, the  
15 remedial stage of this case has direct application to  
16 the rates paid at least prospectively by Arco. We can  
17 do that in either of two ways, pursue a remedy directly  
18 in this case with regard to the Arco special contract,  
19 or as we have discussed previously with Puget, invoke a  
20 provision of the contract, again, the public contract  
21 that calls for renegotiation of the price index in the  
22 situation that we think pertains here, leading to a  
23 filing of an amendment to the Special Contract at the  
24 appropriate time. We're prepared to go either way. And  
25 that's our understanding of the remedial stage of this

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1 proceeding as it relates to Arco.

2 JUDGE MOSS: Well, again, we're not taking up  
3 a special side proceeding, if you will, with respect to  
4 Arco. My understanding of your pleading was it included  
5 the concept that you and PSE were in agreement that  
6 whatever remedy is affected through this process would  
7 apply or somehow be applied to Arco.

8 MR. CAMERON: Yes, sir.

9 JUDGE MOSS: And if that is the agreement of  
10 the parties, then that does not appear to me to threaten  
11 a broadening of the issues. But if the suggestion is  
12 that as an alternative we should take up the Arco  
13 Special Contract separately and fashion some remedy,  
14 then I would view that, I think, or I don't want to get  
15 too far ahead of myself here, but that might be viewed  
16 as an effort to expand the scope of the proceeding, and  
17 I don't believe the Bench has an interest in doing that.

18 MR. CAMERON: We had no intention of so  
19 expanding the proceeding, Your Honor. It is our course  
20 of action is the former of the two that you just laid  
21 out.

22 JUDGE MOSS: Do other counsel wish to comment  
23 in response to Mr. Berman's comments, and then probably  
24 we will segue into an off-the-record session? We may  
25 take care of another preliminary matter first and talk a

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1 little bit about process.

2 Go ahead, Mr. Early.

3 MR. EARLY: Your Honor, I guess as distinct  
4 from Mr. Berman, we agree with your characterization and  
5 your responses to Mr. Cameron that this is limited to  
6 the remedy phase, and our understanding based upon the  
7 order was that, page 38, that Complainants have shown  
8 that they face urgent circumstances that requires us, us  
9 being the Commission, to act expeditiously on the basis  
10 of our record, and that's the Phase I record, which is  
11 over, developed -- to implement the details of the  
12 remedies proposed in Phase I.

13 And listening to Mr. Berman, I heard a number  
14 of things which I thought seemed to be revisiting issues  
15 that were addressed in Phase I that PSE had the  
16 opportunity, if it chose, at that time to present  
17 evidence on those issues raised in Phase I. And I would  
18 be, in view of the urgent need for relief to be  
19 available to the Complainants, I think I'm concerned  
20 that we spend a lot of time revisiting Phase I issues  
21 that have been decided under the guise of details of a  
22 remedy.

23 So our hope and expectation is that this  
24 proceeding today should be narrowly focused on the  
25 details of the remedies that have been proposed, and

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1 specifically on Staff's proposal. So I'm not prepared  
2 to pose an objection at this point given I don't know  
3 the details of what Mr. Berman is prepared to have his  
4 witnesses testify to. I do say we haven't obviously  
5 seen his prepared testimony. We're in the same position  
6 that you are in terms of his written testimony, and this  
7 is the first we have really heard as to what he intends  
8 to have these witnesses address today if we do indeed  
9 put them on. But we would just like to preserve our  
10 ability to make it clear that there is a line between  
11 Phase I and Phase II that it sounds like Puget intends  
12 to step over, in our view, and at that point we will be  
13 making objections.

14 JUDGE MOSS: Thank you for your perspective,  
15 Mr. Early.

16 Anybody else?

17 Mr. Trotter.

18 MR. TROTTER: Yes, for Commission Staff, the  
19 remarks of Mr. Berman are significant and we think ought  
20 to be considered at some point in this process. A price  
21 cap proposal I think first was filed with Public Counsel  
22 on December 14th, and certainly the financial  
23 implications of that could have been addressed in the  
24 prior hearings, and they were not, from PSE's witnesses  
25 anyway. And there was testimony on the financial

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1 impacts of the Staff proposal from Ms. Linnenbrink and  
2 others which were not challenged by a contrary witness,  
3 but they were addressed on cross-examination. So we are  
4 a little bit disappointed that we didn't have this  
5 evidence earlier.

6           We think it is important evidence,  
7 particularly if it is of the scope and scale as  
8 represented by counsel. Based on prior pleadings, we  
9 understand these are based on runs of the PCS model  
10 which staff has not reviewed or had the opportunity to  
11 review, and it will take some time in order to  
12 understand what the inputs were and the sensitivity of  
13 those inputs, so it will take staff some time to  
14 evaluate it.

15           We came here, of course, prepared for a  
16 technical conference to work out the details of a soft  
17 cap proposal along the lines the Commission discussed in  
18 its order. We're prepared to do that. Given these  
19 comments, I think it's in your discretion to figure out  
20 how you wish to proceed given this additional  
21 information, but we're certainly prepared to discuss the  
22 technical aspects of the proposal, and we're also -- I  
23 don't know how you want to take the evidence that has  
24 been alluded to, whether it's now or at some point in  
25 the near future, but we're flexible in that regard.

01877

1 We're obviously not in any position to cross-examine it  
2 effectively, but we are here -- but we are ready to  
3 proceed on some of the technical aspects. And we have  
4 -- did have a meeting, as you know, last week in which  
5 Puget personnel were invited and did attend, so some of  
6 that groundwork has been done.

7 MR. FFITCH: Thank you, Your Honor, Simon  
8 ffitch for Public Counsel, and I would agree with the  
9 comments of the two previous speakers for Complainants  
10 and for Staff. I guess I would just add that I don't  
11 think I have heard anything from Mr. Berman that sounds  
12 different than what was in the motion for continuance,  
13 which was denied by the Seventh Supplemental Order. My  
14 reading of that order told the parties to come here  
15 today for a technical conference on the soft cap  
16 proposal, that those other issues that were raised by  
17 PSE could be brought up by PSE in due course in an  
18 appropriate fashion, not as part of this technical  
19 conference. I thought it was quite a categorical denial  
20 of that approach to this phase of the proceeding.

21 The other observation I would make is that  
22 the, you know, just judging from Mr. Berman's  
23 characterization of the testimony, it seems to get  
24 pretty close to the interim rate relief kind of standard  
25 that is provided for in the rate plan and is generally

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1 available under statute. If it's, you know, PSE's  
2 intention to put on a case for interim rate relief,  
3 clearly it has the right and the opportunity to do that.  
4 I guess it doesn't seem like today is the appropriate  
5 day to take that and that this is really the appropriate  
6 procedural context for that to be raised given the  
7 Commission's prior rulings in this docket.

8           So, you know, I guess I would agree with  
9 Mr. Trotter that, you know, the Company has some  
10 procedural rights, and they have at least through  
11 counsel asserted some concerns here that could be  
12 addressed in an evidentiary fashion. But again, this  
13 seems to go well beyond the scope of what the Commission  
14 had really directed as the course of the proceeding  
15 right now.

16           JUDGE MOSS: Okay, well, let me just comment,  
17 words are important, and the comments I made earlier  
18 went to the scope. And the Bench's view is that the  
19 scope of the proceeding does encompass the impacts that  
20 the soft cap proposal in terms of its implementation may  
21 have on PSE, and the Commission wants to hear about  
22 that.

23           The other question is not scope, but process,  
24 what are we going to do today. And it's my intention  
25 that we will conduct the bulk of that conversation off

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1 the record here momentarily, decide exactly on the  
2 course of action that we're going to follow in terms of  
3 empanelling witnesses from the various parties to speak  
4 to the proposal and its technical attributes and one  
5 thing and another, and then it will remain to be seen  
6 then what additional process is required in terms of the  
7 impacts.

8           And whether that will be a question of  
9 receiving the written testimony today and conducting  
10 some cross-examination on it tomorrow or trying to do  
11 more today remains to be seen, and we will work that  
12 out. But be mindful of that, that the scope is as  
13 described, and the process for conducting that scope is  
14 something that we have not yet fully worked out.

15           All right.

16           MR. CAMERON: Your Honor, if I may be heard  
17 just for a moment. It seems to me that Puget's  
18 testimony at this point is premature. We're here  
19 principally in the first instance to review the soft cap  
20 proposal. I would suggest that not every soft cap  
21 proposal would have the same financial impact on Puget.  
22 The implementation issues it seems to me should be taken  
23 up first. The differences could be between daily versus  
24 monthly implementation, a question of what process Puget  
25 must follow to recover costs if in fact it incurs costs



01880

1 above \$125 per megawatt hour. A variety of different  
2 implementation issues could have different financial  
3 implications for Puget. So in the first instance, it  
4 seems appropriate to hold the technical conference on  
5 the soft cap, come up with something that seems  
6 reasonably workable, and then protect, perhaps critique  
7 it from the standpoint of financial impacts on Puget  
8 once the customers have some reasonable remedy at hand.

9 JUDGE MOSS: Thank you, Mr. Cameron.

10 There is another preliminary matter to be  
11 taken up, and then we're going to go off the record and  
12 discuss exactly how we will proceed today. And then  
13 once we have resolved that, we will go back on the  
14 record and do so.

15 CHAIRWOMAN SHOWALTER: I want to read into  
16 the record an account of what could be thought to be an  
17 ex parte contact in this proceeding.

18 Last Monday very shortly after we issued our  
19 Sixth Supplemental Order in this case, I received a call  
20 from Bill Weaver, CEO of Puget Sound Energy. He  
21 indicated that he was contemplating initiating a filing  
22 for immediate relief from the effects of our order on  
23 his company. He also stated that he had read our press  
24 release, but not the order itself.

25 I explained that our order was an

01881

1 interlocutory order, not a final one, and that it called  
2 for further proceedings for the purpose of considering  
3 the elements and operation of a temporary soft cap. I  
4 stated, and Mr. Weaver agreed, that we could not talk  
5 about the issues in the ongoing proceeding. In  
6 explaining the interlocutory nature of our order, I  
7 outlined briefly the procedure and dates established in  
8 the order and in a notice of hearing that followed the  
9 order.

10 I do not think Mr. Weaver was trying to  
11 affect this current proceeding in any inappropriate way,  
12 because I do not think he appreciated at the time he  
13 called that our order was not a final one and that there  
14 were more proceedings to be had before a temporary soft  
15 cap might be established. His call appeared to be a  
16 courtesy notice of other potential actions. But because  
17 the conversation did in part relate to this docket, I am  
18 placing these comments on the record in order to make  
19 sure that the Administrative Procedures Act is complied  
20 with regarding ex parte communications.

21 JUDGE MOSS: Thank you.

22 I think with that, what we should do is go  
23 off the record for a bit and discuss exactly how to  
24 proceed today. And the Bench will, of course,  
25 participate in that discussion and to some degree lead

01882

1 it. And then once we have made those determinations, we  
2 will go back on the record.

3 So let's be off the record for a few minutes.

4 (Discussion off the record.)

5 JUDGE MOSS: We have had some off-the-record  
6 discussions that have, while I intended to confine them  
7 to the question of some process issues with respect to  
8 exactly how we're going to proceed, those discussions  
9 took some other directions. So having brought the focus  
10 back to the question of how we're going to proceed, I  
11 want to focus first on that.

12 What we're going to do now is have our  
13 representatives from various parties that have  
14 previously been identified will come up to the vicinity  
15 of the witness table here. We will ask counsel to sort  
16 of squeeze themselves together or perhaps take a seat in  
17 the rear momentarily at least to make room for that.  
18 The way we will proceed is that the witnesses, all these  
19 individuals have previously been sworn as witnesses in  
20 the case, and they will be available to respond to  
21 questions from the Bench that may come from either of  
22 the commissioners, myself, or I will introduce on the  
23 record Mr. Byers, who is providing support to the  
24 Commission in this matter, and he may have questions for  
25 these witnesses as well. We will get through those

01883

1 questions and have our responses. Counsel will be given  
2 an opportunity to follow up with questions of their own  
3 with respect to the subject matter of the implementation  
4 of the soft cap proposal. And once we conclude that  
5 process, then we can consider what we're going to do  
6 next.

7 Now one of the areas that we drifted off into  
8 was the question of handling the prefiled testimony that  
9 Mr. Berman indicated he has available today with respect  
10 to the impacts the Company believes the proposal will  
11 have, and the agreement was that that prefiled testimony  
12 would be marked with exhibit numbers and that it would  
13 be distributed today, and we will see what we do in  
14 terms of any follow up on that once we get through our  
15 technical aspects.

16 So I don't have my exhibit list with me,  
17 Mr. Berman, so can you help me with numbers? I guess we  
18 have what, one witness who has appeared before, and that  
19 is Mr. Gaines, who was in the 1400 series, as I recall,  
20 but I don't remember what his last exhibit number was.

21 MR. BERMAN: Your Honor, we got up to 1414  
22 with Mr. Bill Gaines. And just to be clear, there are  
23 two Mr. Gaines now, so we will have to be careful with  
24 that one. But Bill Gaines, we got up to 1414, so I  
25 think the next one is 1415, and so we could designate

01884

1 his testimony as 1415. I would note that he has three  
2 supporting attachments. I don't know your preference as  
3 to whether those be given their own exhibit numbers. I  
4 think we have just designated them as attachments to the  
5 main exhibit, so perhaps they could all fit within the  
6 common exhibit.

7 JUDGE MOSS: I think for purposes of clarity  
8 in the record, it is best to give the attachments  
9 individual exhibit numbers. So there are three of them,  
10 you said?

11 MR. BERMAN: There are three attachments to  
12 the exhibit.

13 JUDGE MOSS: So those will be 1416, 17, and  
14 18.

15 And then your other witnesses, we will pick  
16 up with the 1600 series, so that 1601 will be, and I  
17 made notes on the previous page here, I guess that would  
18 be Mr. Hawley?

19 MR. BERMAN: Mr. Richard Hawley, H-A-W-L-E-Y,  
20 that's the CFO of the Company, and he has one attachment  
21 to his testimony.

22 JUDGE MOSS: All right, and that will be  
23 1602.

24 And then we have Mr. Donald Gaines.

25 MR. BERMAN: Donald Gaines, who is the

01885

1 Treasurer of the Company, and he has four attachments to  
2 his testimony.

3 JUDGE MOSS: All right, so Mr. Donald Gaines'  
4 prefiled testimony will be 1701. Did you say there were  
5 four attachments?

6 MR. BERMAN: Yes, Your Honor.

7 JUDGE MOSS: Okay, so those will be 1702  
8 through 1705.

9 MR. BERMAN: Your Honor, not to make it more  
10 confusing, but as I said off the record, a number of  
11 these exhibits are confidential.

12 JUDGE MOSS: Could you just go through the  
13 numbers I have assigned quickly and tell us which ones  
14 ought to bear the C designation.

15 MR. BERMAN: Okay, 1415 and 1417 and 1418 are  
16 all confidential. 1601 and 1602 are confidential. 1701  
17 is confidential, as is 1704 is confidential. 1704 is  
18 confidential.

19 JUDGE MOSS: All right, and parties should  
20 have made those notations for themselves and should  
21 treat the material as it has been designated.

22 MR. BERMAN: And we have pursuant to  
23 protective order written confidential on these exhibits,  
24 and they are copied on colored paper so that it will be  
25 easy to tell that these are confidential matters.

01886

1           Also, I think I should repeat what I said off  
2 the record with respect to the confidentiality, that is  
3 that a number of these exhibits include forward looking  
4 earnings estimates for the Company. Because they're  
5 forward looking earnings estimates for the Company, they  
6 constitute insider information pursuant to SEC  
7 regulations, and parties who review this information  
8 subject themselves to SEC insider criteria, because this  
9 has not been publicly released in an SEC approved format  
10 through a regular SEC filing.

11           Also, I had noted off the record that some of  
12 these exhibits refer to, relate to, or include  
13 information from Exhibit 1304, which had been introduced  
14 in the Phase I proceeding. Exhibit 1304 had been  
15 designated as highly confidential. Because of the  
16 extraordinary importance of allowing parties the  
17 opportunity to review this material, we have decided to  
18 reduce by one level the level of confidentiality of  
19 Exhibit 1304, so that rather than being highly  
20 confidential, it will be confidential. Likewise, the  
21 material in these exhibits we're only designating as  
22 confidential even though we feel it properly could be  
23 designated as highly confidential.

24           JUDGE MOSS: Tell me if you recall off the  
25 top of your head, Mr. Berman, whether Mr. Gaines'

01887

1 original deposition as part of our record now will  
2 remain confidential. I think it was 1414.

3 MR. BERMAN: Mr. Gaines' original deposition  
4 was not designated as confidential.

5 JUDGE MOSS: All right, thank you. That's  
6 consistent with my records, but the question came up  
7 today, and I said I wasn't positive.

8 MR. BERMAN: The deposition itself was not  
9 confidential. There were a number of exhibits to the  
10 deposition that may have been confidential exhibits, and  
11 that would take more thinking than I'm capable of right  
12 now.

13 JUDGE MOSS: Okay, thanks. Check with me  
14 later if some great thought comes to you.

15 All right, well, I think -- can you  
16 distribute that testimony now that we have marked it.

17 MR. BERMAN: Your Honor, I believe that we  
18 have just distributed the testimony both to the Bench  
19 and to the parties who are here who have signed the  
20 protective order. I would also, while we're here now, I  
21 understand there are some folks who will object, but I  
22 will offer these prefiled exhibits into the record as  
23 evidence of Puget Sound Energy.

24 JUDGE MOSS: All right, and I think  
25 consistent with our previous discussion and to avoid any



01888

1 prolonged discussion now, we will simply carry the  
2 offer, and we will take it up at the end of the  
3 cross-examination, so we don't need to really go into  
4 that now.

5 All right, why don't we have our witnesses  
6 move into this vicinity. I think we can accommodate two  
7 at the witness table, and, Mr. Gaines, you can stay  
8 where you are. Just stay where you are, that's fine.  
9 We don't have to have you all together over here.  
10 Somebody might fall off the ledge.

11 All right, well, why don't -- I think we're  
12 ready for our questions from the Bench then. Is there  
13 anything preliminary we need to do before that?

14 MR. TROTTER: We were going to mark for  
15 identification the answers to questions that were filed  
16 on Friday, the tariff advice and the tariff itself.

17 JUDGE MOSS: All right.

18 MR. TROTTER: To focus the questioning, and  
19 those copies should be coming into the hearing room in  
20 one minute. I'm going to go check.

21 JUDGE MOSS: All right, I suspect everybody  
22 has that already. This is the filing that Staff made on  
23 January 26, and it included Attachments A, B, and C to a  
24 letter bearing the date I indicated. Is that the  
25 information that was distributed on Friday, because I

01889

1 think we all have that?

2 CHAIRWOMAN SHOWALTER: I have a question.  
3 The copy that I received said draft, and it has some  
4 provisions that are blank. Is that still the latest  
5 version that you have?

6 MR. TROTTER: Yes, it is.

7 MR. BUCKLEY: It's typically not the --

8 CHAIRWOMAN SHOWALTER: No, I didn't mean the  
9 letter. I meant --

10 MR. BUCKLEY: The tariff.

11 CHAIRWOMAN SHOWALTER: I meant the  
12 explanation.

13 MR. BUCKLEY: The Staff does not normally  
14 file advice letters or tariffs, so in order to -- we  
15 left -- there's blanks there that need to be filled in,  
16 both in that and some other aspects.

17 JUDGE MOSS: Okay, well, we will just -- I  
18 will take up an extra copy, Mr. Trotter, at the end for  
19 the official record. And then in the meantime, we all  
20 have copies, and I will go ahead and mark those. Shall  
21 we make these Mr. Buckley's exhibits?

22 MR. TROTTER: That's acceptable.

23 JUDGE MOSS: Do you have the numbers for me?

24 MR. TROTTER: I do not, sorry.

25 JUDGE MOSS: All right, we'll have to do it

01890

1 later. I don't have my exhibit list with me, so I will  
2 give them numbers later. We will reserve placeholders,  
3 and they will be the next three --

4 MR. BERMAN: Your Honor, I believe we got up  
5 to 1004 with Mr. Buckley, so I think we would be  
6 starting with 1005.

7 JUDGE MOSS: Thank you, Mr. Berman. So 1005  
8 will be what was marked as Attachment A, Joint Answer of  
9 Commission Staff, Public Counsel, and Complainants.  
10 What will be marked as 1006 will be Attachment B, Draft  
11 Advice Letter re Optional Rate Cap Mechanism. And 1007  
12 will be the Attachment C, so-called Draft Tariff  
13 Amendment.

14 Anything else before we proceed with  
15 questions?

16 Okay.

17 MR. BERMAN: I'm sorry, Your Honor, if I  
18 could just clarify a point. I'm not sure if those  
19 exhibits were offered into evidence.

20 JUDGE MOSS: They were not.

21 MR. BERMAN: Then I will hold off.

22

23

24

25

01891

1 Whereupon,  
2 ALAN BUCKLEY, DONALD SCHOENBECK, and  
3 WILLIAM GAINES,  
4 having been previously duly sworn, were called as  
5 witnesses herein and were examined and testified as  
6 follows:

7  
8 EXAMINATION  
9

10 CHAIRWOMAN SHOWALTER: All right, I have many  
11 questions, and I'm not sure they're in a particular  
12 order, because I think the elements of the proposal are  
13 all intertwined. And I don't plan to dominate the whole  
14 afternoon, so maybe I can just begin with one topic, and  
15 if others have something on more or less that same  
16 topic, jump in.

17 I would like to begin by trying to understand  
18 how Puget's costs would be determined under your  
19 proposal. And I understand the visual stack, but I'm  
20 not sure I understand how the costs would be determined  
21 each day. The first question I have is, would Puget's  
22 costs be based on actual daily dispatch, or is it a  
23 theoretical dispatch?

24 MR. BUCKLEY: Actual, it would be based on  
25 their actual.

01892

1                   CHAIRWOMAN SHOWALTER: And I'm looking at  
2 Mr. Buckley, and that is appropriate.

3                   MR. BUCKLEY: In our proposal, it would be  
4 based on their actual generation, actual fuel cost.  
5 Everything would be actual.

6                   CHAIRWOMAN SHOWALTER: Okay, for example, if  
7 Puget chose not to run its combined turbines, maybe  
8 because it wanted to save them for later for air  
9 pollution credits, so it did not run them, so instead it  
10 decided to go and buy on the market, is the market cost  
11 the cost?

12                   MR. BUCKLEY: Initially it would be. The way  
13 that I envisioned it was that an action such as that  
14 would be looked at in the whatever auditing process we  
15 would have, and I think in our example, Staff would be  
16 able to look at this information at the end of the  
17 month. And if something like that happened, we would  
18 question it and try to find out why. For example, if  
19 market price was up high, and Verdonia or White Horn or  
20 some other resource was not operating, we would be able  
21 to look at the gas price and look at the availability,  
22 the maintenance requirements for that particular  
23 resource, just to confirm that there wasn't something  
24 else going on other than trying to meet the needs of the  
25 lowest cost possible.

01893

1                   CHAIRWOMAN SHOWALTER: Well, I guess your  
2 last, the lowest cost possible, if Puget makes a  
3 judgment that for its overall management of resources  
4 including core, it wants to keep its power drive on,  
5 running its CT's, I'm not sure what the reason is  
6 actually, but is there room for them to do that under  
7 your formula or not?

8                   MR. BUCKLEY: Yes, I think they have to  
9 justify it. I mean it would be similar to any other,  
10 you know, large prudent, you know, large -- the prudency  
11 kind of standard. The decision to do so, if questioned,  
12 would have to be backed up by some process of why they  
13 did that, why they chose to do that. We wouldn't be  
14 saying that that's not the right thing to do, but they  
15 do need to provide, you know, justification for taking  
16 that action.

17                   COMMISSIONER HEMSTAD: Well, when will you be  
18 doing this under the proposal, on a daily basis?

19                   MR. BUCKLEY: No, it would be on a monthly.

20                   COMMISSIONER HEMSTAD: So once a month, you  
21 will review the transactions for the prior month?

22                   MR. BUCKLEY: Right, and there will be, you  
23 know, it -- there would be some kind of -- the way I  
24 envision it is a practical standard. If you went to a  
25 certain month and this cap mechanism, let's say in a

01894

1 particular month it never -- nothing ever happened under  
2 it, obviously there wouldn't be anything reported. If  
3 there was major activity in a particular month, we would  
4 look at those documents, and hopefully problem areas  
5 would come out and would basically, I think, be easily  
6 seen, and then you could focus the investigation in on  
7 that particular aspect of the reporting.

8           You know, I don't picture it as being an  
9 onerous thing for Staff to do. We could basically tee  
10 up questions if we had questions regarding it. I don't  
11 know what a remedy would be if we found something that  
12 was unacceptable. We would have to go into that as  
13 another matter. But that's sort of how I envisioned it  
14 is once a month, similar to the way that we review their  
15 existing reports to us on a monthly basis of Schedule 48  
16 customers.

17           COMMISSIONER HEMSTAD: Well, to follow on  
18 that, what involvement would the Complainants have in  
19 that process?

20           MR. BUCKLEY: Well, we talked about that with  
21 the Complainants and the Company too, and the Company  
22 and us understand and -- that there is a certain amount  
23 of sensitivity in this information, and there is a  
24 recognition by the Complainants that even though it is  
25 perhaps you're looking back a month, but there's still

01895

1 sensitive pricing information, costing information  
2 that's in there. The Complainants have agreed that  
3 their auditing would be, I think, limited to kind of a  
4 one time auditing at the end of the -- of this proposal  
5 whenever it ended. And I think Mr. Schoenbeck can  
6 probably address that a little bit more.

7           As far as what Staff and Public Counsel would  
8 do, we just would keep on the way we do now where we  
9 basically have the right to audit these components. We  
10 also talked with the Company somewhat of limiting access  
11 perhaps, you know, our audits would be limited to going  
12 up to the Company and looking at documents there,  
13 anything that we can do to address the sensitive nature  
14 of the timely information.

15           CHAIRWOMAN SHOWALTER: Does anyone want to  
16 comment on this question that I asked, anyone else?

17           MR. GAINES: Well --

18           CHAIRWOMAN SHOWALTER: Mr. Gaines?

19           MR. GAINES: Yes, of course.

20           CHAIRWOMAN SHOWALTER: And I mean by this,  
21 the question I asked about that apparently Puget would  
22 not be held to a standard that the top of the stack is  
23 always or always must be used, it's whatever is used is  
24 your costs. That's my understanding of Mr. Buckley's  
25 answer.



01896

1                   MR. GAINES: Yes, that was the first part of  
2 the answer, and I liked that part. It was the following  
3 part that caused a lot of difficulty. And as I try to  
4 respond to your questions today, and I will probably  
5 have some questions of my own, I need to make clear that  
6 we have only had time to sort of identify what we think  
7 the issues will be in the implementation of a cap. We  
8 don't have proposals on all of these things yet.

9                   But on the question of using actuals and then  
10 some sort of an after the fact audit or almost a real  
11 time prudency determination, I think it puts the Company  
12 in an awfully awkward position. The operation of our  
13 portfolio of resources is pretty complex, and it changes  
14 from hour to hour. And to come in at the end of a month  
15 and make judgments about the dispatch decisions that the  
16 Company has made day by day during that month, I think  
17 in the first instance is going to be very complex and  
18 time consuming. And I think to the extent that there  
19 are some sort of prudency judgments that are made about  
20 that after the fact, it puts the Company in a terribly  
21 awkward position to recover its actual costs, which is  
22 what I understood at the outset was at least one of the  
23 objectives of the proposal.

24                   COMMISSIONER HEMSTAD: Why does that put you  
25 in an awkward position, your term, awkward?

01897

1                   MR. GAINES: The Company will have made  
2 decisions about how it's going to run its resources, and  
3 they will be subject to some later determination as to  
4 whether they were appropriate or prudent and whether the  
5 costs associated with those decisions can be recovered.

6                   CHAIRWOMAN SHOWALTER: Well, I guess, I was  
7 thinking about this, it seems to me that first of all  
8 Puget needs the flexibility to manage its resources, but  
9 that it has certain incentives that ought to incent it  
10 to do right by the customers. And by that I mean if the  
11 market index price were very high relative to Puget's  
12 real costs, then Puget has an incentive to run its  
13 highest stack and -- not the market index, if the cap is  
14 high relative to Puget's costs, to run the plants and  
15 collect the difference. I've got to get the right  
16 example in here.

17                   MR. GAINES: Actually --

18                   CHAIRWOMAN SHOWALTER: I guess what I'm  
19 trying to get at is, is there any particular incentive  
20 for Puget not to operate under this cap in the best way  
21 for everyone concerned, possibly with some judgment  
22 involved when expenses are very close to the cap and the  
23 index, when everything is hovering say around \$150.  
24 Then there's going to be a judgment involved. Do you  
25 run your plants and collect a dollar, or do you not run

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1 your plant and charge the Mid-C rate or the cap. And  
2 that's -- it's right there that I wanted to know,  
3 because it seems to me that Puget does need the  
4 flexibility to make that choice, and where all the  
5 prices are close, it's not going to make a lot of  
6 difference.

7 MR. BUCKLEY: That was our -- our assumption  
8 was that -- and, you know, again, I don't think it's  
9 burdensome. For example, if you showed that in a  
10 particular month that a particular resource, and we can  
11 just concentrate on the incremental ones, let's say  
12 Verdonia wasn't operating, and it wasn't included -- and  
13 it was zero, showing zero on the stack, and so we would  
14 say, well, that's interesting, you know, we will get  
15 Puget -- put a list of questioning about what's the  
16 reasoning, oh, it's out for maintenance, end of story if  
17 that's the --

18 CHAIRWOMAN SHOWALTER: What if wasn't out for  
19 maintenance?

20 MR. BUCKLEY: If it wasn't out for  
21 maintenance, it's hard for me to envision the Company  
22 being better off by having it not run and not serving  
23 either the market or somebody unless it's on maintenance  
24 unless there's some value, I guess, in reserve capacity  
25 at that particular month. I mean that would be the only

01899

1 situation I could envision.

2 CHAIRWOMAN SHOWALTER: Well, I think that was  
3 my question, because if every day were a new day and you  
4 made the decision each day what to do with your  
5 resources, that would be one thing. But it isn't.  
6 There are pro's and con's to running now or later or  
7 releasing hydro now or later. So the question I keep  
8 trying to get at is, does the Company have enough  
9 flexibility to do generally what it thinks it ought to  
10 be doing without being second guessed minutely?

11 MR. BUCKLEY: I think it does. I think that,  
12 you know, you're limited to -- first of all, on a  
13 monthly basis, I think you would be limited to looking  
14 at -- or not limited, but you would primarily look at  
15 the incremental thermal generating resources, the ones  
16 of variable cost. And I think it's pretty easy to tell  
17 on those. Either they operate or they don't. They sell  
18 into the market. Either they operate to meet load, or  
19 they operate to sell into the market, or they don't  
20 operate but they're in a kind of a spinning reserve  
21 situation, which has a certain amount of value to it.

22 And if that example, I'm just trying to think  
23 of examples, if the value of keeping it not operating  
24 but available for spinning reserves is necessary to  
25 serve its core load or any load, then that -- then it

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1 is, and that's a justifiable decision. I don't -- I  
2 think that there are some decisions that are made ahead  
3 of time, and it can move water around, but on a monthly  
4 basis, they get all averaged out.

5           And like I said, what we're looking for is  
6 it's a first glance audit to make sure there's not any  
7 glaring gaming, if you will, of movement or something to  
8 increase these costs. I still think the assumption  
9 would -- essentially we have is it's still under the  
10 Company's benefit to operate its system as it chooses  
11 to, hopefully with the idea of making it the least cost  
12 to meet its load. That's the assumption behind it.

13           MR. SCHOENBECK: If I may jump in just for a  
14 second, we have done audits of both the major utilities  
15 on the West Coast, both Southern California Edison as  
16 well as Pacific Gas and Electric. We also audit  
17 Allegheny Power on the East Coast. Our only problems  
18 with doing these audits with respect to how the  
19 utilities have run their resources has to do generally  
20 with their pump storage facilities, Helms on the West  
21 Coast, Bath on the East Coast.

22           Since Puget doesn't have a pump storage  
23 facility, I'm not so sure from our experience to date  
24 that there will be a challenge to how Puget operated  
25 their resources. I think the more critical thing will

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1 be with respect to, and what we found from our auditing  
2 experience, is the costs they allege for operating that  
3 resource when they take into account opportunity cost as  
4 opposed to real out-of-pocket cost. So I really think  
5 if you think in terms of the first step isn't so much  
6 identifying the cost, but identifying the resource  
7 that's used to serve the load, there really won't be a  
8 problem with respect to the reasonableness review.

9         Sure, you know, I think it's Mr. Buckley's  
10 obligation to do that every month, and we're basically  
11 requiring him to do that every month under our proposal,  
12 but the focus, the attention will be much more on the  
13 cost as opposed to what particular resource is. 99  
14 times out of 100, there will be no issue with respect to  
15 the resource that Puget will have identified with  
16 serving that load, because we accept it will be the  
17 incremental resource.

18         CHAIRWOMAN SHOWALTER: In other words, the  
19 highest cost resource?

20         MR. SCHOENBECK: Right.

21         CHAIRWOMAN SHOWALTER: And then what's the  
22 issue you are alluding to that will be difficult to  
23 determine?

24         MR. GAINES: We've got generally -- before we  
25 change the issues, I think we need to exhaust this one,

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1 if we could please, because I don't agree with either of  
2 these assertions yet, so -- and I actually think what  
3 Mr. Schoenbeck has to say about his audits of the  
4 California utilities and their pumped storage is  
5 particularly relevant here. I also think that the  
6 example that you laid out, Madam Chairwoman, is  
7 particularly relevant, because they both relate to the  
8 same situation. It's a situation where you have a  
9 generating resource that has a limited energy production  
10 capability.

11           You gave the example of an environmentally  
12 constrained combustion turbine. He gave the example of  
13 a hydro electric facility. We have both of those on our  
14 system, and as you know, we still are predominantly a  
15 hydro electric utility. The people who work for me have  
16 to make judgments every day about whether and to what  
17 degree they're going to dispatch these energy limited  
18 resources, and those decisions necessarily are made  
19 based on judgments of what the future value of power may  
20 be, because either I can run the water out now, or I can  
21 run it out some day in the future. I know the value of  
22 power today. I don't know it in the future. I need to  
23 make judgments about that.

24           And to subject the Company to some kind of a  
25 look back audit on those decisions I think is extremely

01903

1 unfair and doesn't lend itself to any kind of a logical  
2 ability to recover actual costs. This could get very  
3 complex. You could have -- you could have audits and  
4 whatnot every day looking backward at the Company's  
5 hydro dispatch decisions and challenging them about  
6 whether they were prudent or not in hindsight, and it  
7 could be a complete mess.

8           MR. BUCKLEY: Can I add something to that. I  
9 mean I didn't, again, did not picture it being that  
10 burdensome. If the Company has made a decision to  
11 operate resources based on whatever assumptions it made,  
12 presumably there's some decision process there. If we  
13 got to that point that we needed to look at it, it would  
14 be repeatable. That's nothing different than any other  
15 decision the Company makes. I'm assuming that decision  
16 is backed up with a note, a piece of paper, or  
17 something, again, if it gets to that point.

18           So I don't see that being inconsistent with  
19 what we're saying. We're not saying we're going to  
20 initiate a prudency case on every single action that the  
21 Company took on a daily or hourly basis. We're, you  
22 know, trying to minimize the administrative burdon here.

23           COMMISSIONER HEMSTAD: I assume that backward  
24 look would give at least some substantial deference to  
25 the decisions that the Company is making in the process,



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1 wouldn't it?

2 MR. BUCKLEY: Absolutely.

3 MR. SCHOENBECK: I agree with that as well.

4 You know, it would be easy to -- we could be here for  
5 hours debating what could happen, but I think as a  
6 practical point of view, the utility would be given  
7 large discretion, and again, 99 times out of 100, that  
8 discretion would not be questioned.

9 CHAIRWOMAN SHOWALTER: Well, could some of  
10 this be addressed in the language of an order. If the  
11 Commission expresses that sentiment just that way, then  
12 doesn't that mean that it would have to be fairly  
13 extraordinary for a decision of Puget to be upset? In  
14 other words, isn't the important principle to state that  
15 Puget would still have the ability to manage resources,  
16 and substantial deference would be given to those  
17 choices, and that those decisions are made on behalf of  
18 all the customers of the Company over time, not on a  
19 particular day?

20 MR. GAINES: Well, I think that that  
21 potentially could be helpful. I think the Company would  
22 be concerned that it is always being subject to some  
23 degree of risk, that its decisions will be second  
24 guessed, and that the question then goes to the degree.

25 Our expectation though under this, based on

01905

1 the experience that we have had with this particular set  
2 of customers over the last two years, is that we will be  
3 constantly scrutinized, because these customers have  
4 shown themselves to be very interested in the rates that  
5 they're paying for power. And to the extent that those  
6 rates now become based on the actual real time costs of  
7 the Company, we believe that they will take a  
8 substantial interest in that and in the audits that go  
9 on.

10 MR. BUCKLEY: Can I add something here? I  
11 just want to make it clear that I don't think under all  
12 circumstances that rates are dependent on the costs. I  
13 mean this would -- this idea of looking at the Company's  
14 costs that we would audit is only if the cap mechanism  
15 is in place and only if they have asked for an increase  
16 above the initial cap level. It's not a, you know,  
17 necessarily something that we're going to look at all  
18 the time, and hopefully it would be very limited.

19 MR. GAINES: The dispatch decisions that the  
20 Company makes will determine whether or not from day to  
21 day it is buying power to serve these customers, and  
22 because of that, I expect that there will be a high  
23 degree of interest from day to day in the Company's  
24 operations.

25 COMMISSIONER HEMSTAD: Well, but Mr. Buckley

01906

1 as describing the proposal, the companies won't be  
2 looking on a day-to-day basis at what is occurring. The  
3 proposal, as I understand it, is they would have the  
4 opportunity on a one time basis at the end of this  
5 temporary arrangement to have a look, so they're not  
6 going to be in your hair every day.

7           They're going to be potentially in your hair  
8 at the end, I suppose, but I suspect this Commission is  
9 going to give relatively short shrift to a lot of what I  
10 would call quibbling and second guessing of the  
11 management decisions that are being made on a daily  
12 basis. You're the real time operators, and you're  
13 entitled to substantial deference as you go about making  
14 those daily decisions.

15           MR. GAINES: Yes, I understand the proposal  
16 the same way, that the customers themselves would only  
17 have the one look at the end, and it would actually be  
18 the Staff that would be doing the I guess monthly look  
19 back.

20           COMMISSIONER HEMSTAD: And the Staff will be  
21 looking at it, as is the Staff's right for anything the  
22 Company is doing, on a continuing basis, and I suspect  
23 that the Complainants would be very hard pressed to say  
24 that the Staff is not doing its job.

25           MR. BUCKLEY: I think and I will say that our

01907

1 view is the way that we would look at, you know, I think  
2 issues like dispatching, we agree with Mr. Gaines that,  
3 you know, the Company dispatches on an hourly, daily,  
4 weekly basis to meet its load, and I think there was a  
5 data response early on in the case in Phase I where it  
6 was asked, how does the Company dispatch their  
7 resources, and it was to meet total system load,  
8 including these customers. So that would be the, you  
9 know, the standard we would look at is -- and again,  
10 we're not getting into a situation where hopefully we  
11 would be second guessing the Company's decisions on how  
12 to dispatch its resources to meet its total load.

13 JUDGE MOSS: I think Mr. Byers had a question  
14 on this audit.

15 MR. BYERS: Actually, it's a question that  
16 goes beyond the audit a little bit. This is to  
17 Mr. Schoenbeck and Mr. Buckley. Since the cost  
18 justification will essentially be done on a daily basis,  
19 is it your proposal that the cost or the rate that these  
20 customers pay would be observable by them on a daily  
21 basis?

22 MR. BUCKLEY: It would be -- no, it would be  
23 the same as now, that the rate that they would see --  
24 other than their own guessing of what the index would be  
25 and the effect of any index or any cap mechanism on

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1 their rate. The customers would not see the Company's  
2 costs. You know, the only thing that they would see is  
3 their -- the index and the cap, and it would be up to  
4 them to kind of make their own determination of where  
5 they thought rates were going to be that month, so the  
6 actual billing actuals wouldn't be determined until the  
7 end of the month, and that's the same way that the  
8 existing Schedule 48 is.

9 MR. SCHOENBECK: I would just like to say  
10 this exact same question was, in fact, raised by one of  
11 the Complainant companies, that under the cap proposal  
12 would they know going into the day what their rate could  
13 be. And I explained it would be nice if through this  
14 process, one of the issues we could talk about in a  
15 technical workshop such as this, if Puget could give  
16 some idea to the Complainants about what the price could  
17 be for that day. But I made it clear that you could not  
18 hold Puget's feet to the fire, that that would, in fact,  
19 be the cost for that day, that you would have to accept  
20 on faith the -- what the Mid-C Index had been the prior  
21 days coupled with that Puget was using its -- within its  
22 ability serving that load with the least cost resources  
23 available to it.

24 MR. BYERS: So what the customer would know  
25 then is that the rate could not go any higher than the

01909

1 Mid-C Index, that was the maximum, but that it could  
2 conceivably be lower, but they wouldn't know how much?

3 MR. SCHOENBECK: Exactly.

4 MR. GAINES: Which in our view leads to a  
5 couple of inefficiencies. You know, one is that the  
6 customer would be unable to make decisions about the  
7 curtailment of its consumption obviously. It would also  
8 be incapable of making rational economic decisions about  
9 the dispatch of the temporary diesel generation, which a  
10 number of the customers have installed, and thereby  
11 would essentially waste that investment because it  
12 couldn't be dispatched economically against the market,  
13 which is probably the best thing that could happen for  
14 the region.

15 CHAIRWOMAN SHOWALTER: Yeah, but this is an  
16 option, it's an optional stabilizing. And isn't it the  
17 case for anything that's a stable rate, when you buy  
18 into it, or a more stable rate than the index, when you  
19 sign up for it, you're getting more blunted signals than  
20 the market rate?

21 MR. GAINES: Yes, you are. However, I think  
22 here we have a situation where a customer can not know  
23 in advance what its rate will be. And under either a  
24 market index or a fixed rate or a traditional call  
25 option type cap, he could know that. Here, the

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1 customers' rate will be a function of the Company's  
2 resource operation for the day and really, you know,  
3 will not be knowable in advance.

4 CHAIRWOMAN SHOWALTER: Well, isn't it  
5 something like purchase gas adjustments, the customers  
6 don't know what they're going to pay, they just know  
7 they're going to pay costs and it gets chewed up at the  
8 end?

9 MR. GAINES: Something like that, probably a  
10 little different.

11 MR. BUCKLEY: It was not our intent to  
12 implement like a real time pricing mechanism through  
13 this. It was just simply -- I mean obviously the  
14 customers would have a little bit more information on  
15 the -- they would know that perhaps their rate might be  
16 lower than the Mid-C Index, but that's about it. That's  
17 a little bit more information than they have now. I  
18 don't know if it's enough that they would change any  
19 decision making process that they go through.

20 CHAIRWOMAN SHOWALTER: I would like to turn a  
21 little bit, if we can, to what goes into costs beginning  
22 with hedging costs. I thought I read in the proposal  
23 that those would be excluded, and I wondered why.  
24 Because isn't that similar to the management decisions  
25 that you make on dispatch, that you buy ahead, you buy

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1 an option, and decide whether or not to execute it?

2 MR. BUCKLEY: Right. The way we looked at it  
3 and -- was that it is something that the Company can do  
4 to try to manage the costs. But what we -- what we  
5 thought for purposes of this mechanism and trying to  
6 implement it and not getting into as much second  
7 guessing as what could obviously be possible for the  
8 reasons Mr. Gaines brought up, that for pure reasons of  
9 simplicity, we just said for purposes of determining  
10 costs in this mechanism that we wouldn't do -- wouldn't  
11 include hedging.

12 And what that means is the Company would  
13 essentially -- or not the Company, the Company should be  
14 indifferent, but the customers would then be subject to  
15 the Mid-C Index. So that's their -- that's their  
16 standard. If the -- if the Company is not out there  
17 hedging or buying, you know, too extensive of futures,  
18 then the Company -- then the customers' exposure is the  
19 Mid-C Index.

20 So from a standpoint of just coming up with  
21 costs and trying to estimate them, we talked about this  
22 with the Complainants, and I think we have agreed that  
23 we would just say -- essentially be the equivalent of  
24 saying, don't do that for us, don't try to hedge it for  
25 us. However, that would be only for the -- for



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1 determining the rate. If the Company chose to hedge for  
2 purposes of its managing its costs or its making its  
3 decisions, that they can do whatever they want to.

4 CHAIRWOMAN SHOWALTER: Well, then does it --  
5 let me give an example.

6 MR. BUCKLEY: But it would not pass through.

7 CHAIRWOMAN SHOWALTER: Well, why not?

8 Supposing Puget hedges in I guess February for the next  
9 March and April and locks in a price at \$250 and pays  
10 some money for that option. And then in March and  
11 April, the Mid-C is at \$400, and so they execute, and so  
12 their costs are \$250 plus the option price.

13 MR. BUCKLEY: Right.

14 CHAIRWOMAN SHOWALTER: Isn't that right?

15 MR. BUCKLEY: Right.

16 CHAIRWOMAN SHOWALTER: Well, that --

17 MR. BUCKLEY: In that example, we would be  
18 suggesting the Company for this purpose not do that and  
19 that the customers would be exposed to the higher price.

20 CHAIRWOMAN SHOWALTER: Is that evident, I  
21 mean so that the purchasers would pay \$400 instead of  
22 \$250 plus the option price, is that evident in the  
23 tariff?

24 MR. SCHOENBECK: In my mind, I think  
25 obviously this would be one of the good ones we need to

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1 discuss with Mr. Gaines, but unfortunately he wasn't at  
2 the last technical meeting last week.

3           The fundamental problem I have with the idea  
4 of hedging is that it could apply to any 200 or 300  
5 megawatt block of load. The other thing you have to  
6 remember, to the extent, we're talking about the highest  
7 incremental costs we're willing to take at all hours, is  
8 to the extent of your example, the price was at \$400,  
9 they were short, so they exercised, and they're getting  
10 the power at \$250. It could very well have been for  
11 below that top incremental block of load.

12           So in my mind, what Mr. Buckley has pointed  
13 out, it was the administrative difficulty of trying to  
14 track through that. Now I'm not saying that's  
15 impossible, but it was just looked at for assuming this  
16 is going to be in place for a very brief period of time,  
17 three months, six months, at most nine months, it seemed  
18 like the administrative difficulty of working through  
19 and identifying those transactions, if in fact the  
20 Company even does those for this particular 300 block of  
21 load, was not worth the effort.

22           CHAIRWOMAN SHOWALTER: Well, we have just  
23 made a distinction that I don't think I was making  
24 before, which is that Puget's managing for this load  
25 versus the rest of its load, and maybe it does, and

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1 maybe it should, I don't know, but I think in my mind, I  
2 was just assuming there's a hedge somewhere that Puget  
3 has done to avoid spikes, which in general it seems to  
4 me we all agree is a good thing to do, but it all  
5 depends on the price, et cetera.

6 MR. SCHOENBECK: If --

7 CHAIRWOMAN SHOWALTER: So if they have hedged  
8 for some reason and then they need to exercise it and  
9 you're the top of the stack, why isn't that part of the  
10 cost? I understand the simplicity, but it's simplicity  
11 at the expense of a cost.

12 MR. SCHOENBECK: Right, I think theoretically  
13 you're absolutely right, it should be part of the costs  
14 under the circumstances if you can show it that clearly.  
15 And we would not have a problem if Mr. Gaines can say,  
16 yes, they entered into those types of transactions and a  
17 path can be shown that clearly that that's the resource,  
18 that would obviously -- that could very well be part of  
19 the incremental costs of serving that load.

20 MR. BUCKLEY: We did discuss that in an  
21 option, I mean, you know, for example, you could make  
22 some assumptions. You could say that, you know, if the  
23 Company was out there and purchased a hedge for 200  
24 megawatts at \$10 that, you know, you could make -- you  
25 could assume that that hedge on the increment was for

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1 load to serve the customers, these customers. You could  
2 say that it was there to kind of -- as part of their  
3 whole system load management, and thus the customers'  
4 responsibility is a per rata percentage of the cost of  
5 the hedge.

6           When we started getting into these, we didn't  
7 have the Company participating in our answers at this  
8 point, and so we kind of came up with the simplest  
9 approach was to just don't do it from a standpoint of  
10 this, and that's where that came from. I don't think --  
11 this is an issue, like Mr. Schoenbeck said, that is  
12 still subject to some discussions with the Company that  
13 we haven't had.

14           MR. BYERS: Wouldn't there be a complication  
15 associated with identifying which purchases of power  
16 were the result of struck options as opposed to  
17 purchases of power that weren't associated with struck  
18 options so that there would actually be some  
19 administrative confusion introduced by trying to  
20 segregate those purchases?

21           MR. BUCKLEY: That was in part part of our  
22 logic to simplify this whole process. So I mean I  
23 think --

24           CHAIRWOMAN SHOWALTER: I think he was saying  
25 it would be more -- oh, I see, so you just don't even

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1 have that. But then are you precluding any hedges  
2 for --

3 MR. SCHOENBECK: No, no.

4 CHAIRWOMAN SHOWALTER: I see, you're just  
5 saying that --

6 MR. BUCKLEY: No, absolutely we're not  
7 precluding any hedges, and we're assuming that the  
8 Company would, you know, again as part of its overall  
9 management strategy, you know, do those. Now I -- I  
10 don't -- but there is a slight mismatch in the example  
11 between to the extent that customers would benefit from  
12 a successful hedge and the cost of that successful  
13 hedge, that there is a slight disconnection there.

14 CHAIRWOMAN SHOWALTER: But why isn't it just  
15 the same principle, Puget goes off, it manages its  
16 resource if it hedges, it does whatever, and on a given  
17 day, if its costs including those costs that cover that  
18 day are above the cap, then the highest part of that  
19 stack which includes those costs as attributable to the  
20 customers?

21 MR. BUCKLEY: It had to do in our mind again  
22 with simplifying, because the daily look that we're  
23 talking about is very resource specific, what the  
24 resource has generated, what contracts had in it. And,  
25 in fact, as we suggested in our response, you could even

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1 use the top down approach, simplify it to perhaps to a  
2 couple of resources to look at.

3           When you start getting into these  
4 complications, as Mr. Gaines has well pointed out, where  
5 we made a purchase two months ago that in effect affects  
6 Wednesdays, Thursdays, Sundays, and it's hedged and  
7 different time frames, it just gets into, you know, a  
8 little bit of trouble about, well, how do you spread  
9 those costs, what basis do you spread those costs. And  
10 so it was just, again, an attempt to sort of limit the  
11 cost estimation to just the operation of the incremental  
12 resources, not these other instruments that the Company  
13 uses to more sophisticatedly manage its resources.

14           CHAIRWOMAN SHOWALTER: Well, let me ask  
15 Mr. Gaines. If the Company buys a hedge and on a  
16 particular set of days strikes the option, if that's the  
17 phrase, and buys power, and that power happens to be the  
18 most expensive power of that day, why -- can you account  
19 for that being the top of the stack, the cost of that  
20 power plus a pro rata portion of the hedge for that day?

21           MR. GAINES: Well, I think the answer to that  
22 narrow question is yes. But this whole discussion  
23 actually is one that I was hoping that we would get into  
24 today, because as I was thinking about the issues around  
25 the implementation of a cap, this is one of the most

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1 problematic areas. And I think just the discussion that  
2 we have had so far illustrates that what we have before  
3 us so far is a concept for a cap but really not an  
4 implementable proposal. And if I could, I would like to  
5 talk a bit about this hedging area just a little bit and  
6 identify some of the issues.

7         First of all, there are a number of different  
8 kinds of hedges, and whether or not they should each  
9 receive the same treatment is something that would need  
10 to be dealt with in constructing an implementable  
11 proposal. There's a temporal aspect to this also. The  
12 Company has existing hedges, hedges that it has put on  
13 historically in reliance of one sort of rate treatment  
14 for these customers. There's the period going forward,  
15 which I think we began to get into just a minute ago in  
16 how the Company might or might not act in that going  
17 forward period with respect to hedging. But if you  
18 think about just for a moment the existing hedges that  
19 the Company has on, there are at least three or four  
20 different sorts.

21         There are call options, which have the effect  
22 of putting a cap on price. Those call options have  
23 premiums associated with them that the Company has paid,  
24 and then the Company would trigger those call options  
25 based on an economic dispatch decision just like any

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1 other resource. And so to your question, yes, that  
2 could wind up at the top of the dispatch stack on any  
3 particular day.

4           There are other sorts of hedges which are  
5 paired transactions. It goes to where I think Mr. Byers  
6 was headed a minute ago. The Company may have bought  
7 fuel in a prior period for a particular resource and  
8 then forward sold the power, the generation from that  
9 particular resource in the similar prior period. Those  
10 transactions, that's a type of hedge where the  
11 transactions are paired. In our view, they would need  
12 to continue to be paired for the purposes of  
13 implementation of any kind of a cap proposal and, in  
14 fact, probably should be removed from the resource stack  
15 for the determination of pricing under this kind of a  
16 proposal, because they are existing commitments that can  
17 not be undone.

18           CHAIRWOMAN SHOWALTER: Would they be removed  
19 from the stack or just stuck in under the customers?

20           MR. GAINES: That would be another way of  
21 doing it, yes.

22           Then there are other hedges which are just  
23 simply forward purchases of fuel or power at various  
24 fixed prices. And, you know, whether or not those  
25 transactions should be reflected in the pricing column



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1 that's contemplated by the Staff in the proposal is  
2 still an open question. And while I think that they  
3 probably should be, it makes a lot of difference how  
4 that decision is ultimately arrived at.

5           And we certainly would not want to get into a  
6 situation where we pick and choose from day to day  
7 whether particular hedges are included or not. This is  
8 a tremendously complex issue that has a huge bearing on  
9 the effect of the cap, both on the customers and the  
10 Company, and one that I think requires an awful lot of  
11 examination.

12           CHAIRWOMAN SHOWALTER: You said there were  
13 four. I just wrote down three, call options, paired  
14 transactions, and forward purchases.

15           MR. GAINES: We may also have existing hedges  
16 in the nature of put options, the right but not the  
17 obligation to sell power at known prices to counter  
18 parties in the future, so that would be a fourth  
19 category.

20           MR. BYERS: I would be interested to know  
21 what the difference is between these kinds of financial  
22 transactions and decisions that the Company would make  
23 with respect to the dispatch of its physical resources,  
24 that is the issue that we talked about earlier this  
25 afternoon whereby everyone seemed to agree that

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1 substantial deference might be appropriate to offer to  
2 the Company in those decisions.

3           MR. SCHOENBECK: If you're looking for  
4 someone to answer that, I will volunteer. I did not  
5 hear anything that Mr. Gaines said that I would object  
6 to. Again, I think the intent of this thing is to do  
7 exactly what you're saying, Mr. Byers, to give the  
8 Company deference, to try to serve their entire load at  
9 its lowest cost possible, and I think that is still  
10 there. That means to the extent you have to exercise  
11 all four different types of hedging strategies, you do  
12 that. You want to minimize your costs to all the  
13 customers.

14           What the soft cap proposal is, in my mind, is  
15 again trying to determine using Mr. Gaines' least cost  
16 stack, what are the highest cost resources that are  
17 serving this incremental load. So we want to be  
18 perfectly clear on the record. We want absolutely  
19 nothing done differently than Puget is doing today to  
20 minimize its cost of serving their entire native system  
21 load.

22           MR. BUCKLEY: I think that's true. I think  
23 the only added difficulty that was brought up by  
24 Mr. Gaines was perhaps actions that are out there that  
25 are for some future period that we're looking at now.

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1 If you take a look at all those different type hedges or  
2 calls, options, whatever you want to call them, and if  
3 you looked at the system on a year, a long-term basis,  
4 let's say a full year, I think in reality they would all  
5 wash out and be part of the overall strategy, and you  
6 would still look at the actual cost of the resource  
7 stack in any -- each month. And yes, there may be, you  
8 know, some periods where costs are up or down from some  
9 other alternative based on hedging actions or options  
10 actions that are taken.

11 But I agree with what Mr. Schoenbeck said.  
12 There's nothing that he said that I -- if we could get  
13 included into the plan to implement this, that we do.  
14 We just didn't do it under our proposal, because one,  
15 you know, we didn't have the information. The Company  
16 wasn't participating as an entity trying to come up with  
17 this implementation proposal, so we didn't have somebody  
18 saying, well, you know, we have this type hedge, this  
19 type hedge, this type hedge, how would we treat that.  
20 And so that's why, in large part, why it's left out  
21 here. We're not against putting something in.

22 MR. SCHOENBECK: The other thing we tried to  
23 do is to a certain extent grandfather certain  
24 arrangements by saying all the existing long-term  
25 contracts that it entered into were definitely below us

01923

1 as well, but to make it clear that any sort of a new  
2 long-term contract would be above us in resource stack.

3           So again, I keep on going back to my mind the  
4 first step is kind of determining what PSE's overall  
5 load resource balance is. Are they deficit. When  
6 they're in the market, then I think it becomes much more  
7 straightforward to determine the costs of serving these  
8 customers. And then to the extent they're surplus and  
9 they're selling into the market, then it becomes going  
10 through the procedures we have talked about to try to  
11 determine what specific resource is serving the block of  
12 load that we have selected for the pricing mechanism.

13           CHAIRWOMAN SHOWALTER: What's your definition  
14 of a long-term contract?

15           MR. SCHOENBECK: Generally in the electric  
16 business anything longer than a year. In my mind,  
17 again, if we keep on talking in terms of this mechanism  
18 should be in place no longer than the end of this  
19 calendar year, I would say it might be less than that.  
20 But it's any new contract. I don't know if Mr. Gaines  
21 is discussing with anyone in terms of a long-term power  
22 sale right now. It may not be an issue. I thought  
23 that's what Kimberly Harris said actually at our last  
24 meeting, that they were not entertaining such  
25 discussions right now.

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1                   MR. GAINES: I guess the way I would  
2 characterize it is the Company has a number of complex  
3 hedges on presently that go out at least through the end  
4 of this calendar year, and it is unclear to us under the  
5 proposal the way it has been expressed so far whether or  
6 not they're above or below in this context. But we have  
7 those issues to deal with. We have the pairing issue to  
8 deal with. We have the question of whether existing  
9 hedges are treated differently than any forward looking  
10 hedges that might be done in the future.

11                   We have some interesting and risky questions,  
12 I think, about going forward, particularly if the  
13 Company decides to execute a hedge to fix the costs for  
14 power that it might need to acquire to serve these  
15 customers and then the customers for whatever reason  
16 don't take the power, either because they curtail or  
17 because they operate some diesel generation. I mean do  
18 the companies want to stand tall for the cost of the  
19 hedge that Puget puts on, or what is it supposed to do  
20 with that power?

21                   CHAIRWOMAN SHOWALTER: Well, that actually,  
22 those lead into the next area of questioning that I  
23 have, and maybe we ought to take a break first, but it  
24 is, how does a customer buy into or opt into this  
25 option? Does it have to be for a set period of time,

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1 for a set amount of power, just because of these  
2 questions, and most options are some kind of obligation  
3 on the part of a customer as well.

4 MR. GAINES: These really are decisions that  
5 the customers should be making for themselves. And as I  
6 indicated in some of my testimony in the earlier  
7 proceeding, it actually is one of the beauties of the  
8 index pricing mechanism as it existed. You decouple the  
9 pricing from the supply, and you then enable customers  
10 to make their own independent hedging decisions rather  
11 than somehow having the Company do it on their behalf  
12 and running the risk that any particular customer might  
13 not agree with what's done by the Company.

14 MR. BUCKLEY: I don't see, you know, we're  
15 getting back to the comments that Mr. Gaines made right  
16 before that last one was that if there's anything  
17 different in remarks of what they could or should do  
18 now. I mean this rate cap, you know, really affects --  
19 is a rate -- should have a very limited effect. And to  
20 the extent that it has all those complex hedges and uses  
21 them and whatever their effects are, that's what they  
22 are now too. I don't see this proposal changing that.

23 CHAIRWOMAN SHOWALTER: Well, but you are not  
24 going to include them in the cost --

25 MR. BUCKLEY: Well, under our proposal --

01926

1 CHAIRWOMAN SHOWALTER: -- applied to the  
2 customers.

3 MR. BUCKLEY: Right, under our original  
4 draft. Again, this was without input from the Company.  
5 We just kind of chose to make it simple and keep them  
6 out. But what I'm saying is whatever is done, there  
7 should be nothing about this proposal, implementing it,  
8 that changes those issues that you have been bringing  
9 up.

10 CHAIRWOMAN SHOWALTER: Then one question  
11 before we break, a follow up. If Puget were to sell a  
12 month of power to a utility for some good price, is that  
13 part of their management of resources? Does that  
14 obligation get squeezed in under that's part of the  
15 netting operation?

16 MR. BUCKLEY: Under our proposal, the three  
17 parties are proposing that if it's not tied into an  
18 existing contract, that is if it's not an extension of  
19 an existing contract that's allowed under that contract,  
20 that that kind of a sale would be treated as a secondary  
21 transaction and put into that stack of sales that would  
22 affect whether the Company would be in a surplus or  
23 deficit. So it would in effect -- the Company's --  
24 these customers would be superior to that particular  
25 sale.

01927

1 CHAIRWOMAN SHOWALTER: So it would not be  
2 part of the netting?

3 MR. BUCKLEY: It would be part of the  
4 netting.

5 CHAIRWOMAN SHOWALTER: It would be part of  
6 the netting.

7 MR. SCHOENBECK: It would be part of the  
8 discretionary netting, so it would be above -- if you  
9 think of the load resource stack from the top down, it  
10 would be above these customers' loads. The contracts  
11 Mr. Buckley is referring to, we -- the contracts that  
12 would be below us were the contracts that were listed on  
13 Exhibit 605.

14 CHAIRWOMAN SHOWALTER: So such a contract  
15 would be viewed as one of these management tools --

16 MR. SCHOENBECK: It would --

17 CHAIRWOMAN SHOWALTER: -- that --  
18 Well, go ahead.

19 MR. SCHOENBECK: I was just going to say  
20 would be viewed as a discretionary decision, any  
21 discretionary decision of the Company with respect to a  
22 month's sale would be above the loads of these  
23 customers.

24 CHAIRWOMAN SHOWALTER: Mr. Gaines, just do  
25 you have any comment on that, how that --



01928

1           MR. GAINES: Probably not specifically. I  
2 think I have -- I think the Company has -- thinks about  
3 this in terms that are slightly different than the way  
4 that the Staff and the Complainants' consultants think  
5 about it, so we are having a little bit of a terminology  
6 problem, I think.

7           All I can say is that this whole area of  
8 hedging, both looking forward and looking backward, and  
9 how it's treated is very complex and one that would  
10 require, I think, a lot of consideration by all of the  
11 parties involved. Because the outcomes can be greatly  
12 affected by the mechanisms that are adopted here. And  
13 so I think it would serve everyone to think carefully  
14 about whether and how hedge transactions are included or  
15 excluded from the computation.

16          CHAIRWOMAN SHOWALTER: Well, are there any  
17 that you want excluded?

18          MR. GAINES: We really have not, you know,  
19 tried to develop a counter proposal or a proposal of our  
20 own for how the cap mechanism ought to work. But just  
21 my expectation is that at a minimum, the what I call the  
22 paired transactions should be excluded. Haven't fully  
23 thought through the other sorts of transactions.

24          JUDGE MOSS: Okay, I think this would be a  
25 good time to take our afternoon recess, so let's be off

01929

1 the record until 3:45 and then resume promptly using the  
2 wall clock.

3 (Brief recess.)

4 JUDGE MOSS: We will resume our questioning  
5 from the Bench.

6 CHAIRWOMAN SHOWALTER: Well, I think where we  
7 left off, my question on how customers sign up for this  
8 option and whether they should be obligated to stay on  
9 it a certain length of time or could get on and off. Do  
10 they sign up for a certain load thereby ensuring they  
11 will be taking the load? That is not addressed in the  
12 tariff. Or should there be a default position, for  
13 example?

14 MR. BUCKLEY: Well, yeah, I think you --  
15 obviously the decision obviously has been structured as  
16 an optional service under kind of an amendment to a  
17 price stability option under the contract, so it should  
18 be treated as that. I don't think all customers would  
19 have to take it. I think those that take it, it should  
20 be for their total load.

21 As far as the duration, I mean we had -- I  
22 had envisioned it as being for the term -- for the  
23 remaining term of the existing Schedule 48 tariff under  
24 which the option would be -- or under which the  
25 amendment would go in at. Now whether that ends next

01930

1 month or six months from now, I don't know.

2           We also envisioned that the -- perhaps these  
3 customers could take their load, their total load or --  
4 to a buy-sell type tariff, similar if not the one that  
5 Puget has filed. We don't have any -- I think the main  
6 thing about it was more the final term of the actual  
7 amendment itself, and the intent would be to not have  
8 this in any replacement Schedule 48 tariff, or if that  
9 happened -- or any other tariff the result of future  
10 proceeding in this case. So I think there's still some  
11 flexibility regarding, you know, how it would be  
12 implemented and whatever service agreements with changes  
13 would be necessary to do so, and the customers may have  
14 some additional comments on that.

15           MR. SCHOENBECK: Well, we're coming from the  
16 wording of the last paragraph of Exhibit I guess it's  
17 1005 that talks in terms you had -- you would have the  
18 ability to elect this option for either the duration of  
19 the rate or until an approved Schedule 48 was in place  
20 or Schedule, excuse me, Schedule 448 is in place or a  
21 redone Schedule 48 is replaced with alternative tariffs  
22 that may result from a Schedule 48 review process. So  
23 we basically for all practical purposes, I think, saw it  
24 being for the duration of the current Schedule 48 tariff  
25 term coupled with the ability to move on to a Commission

01931

1 approved buy-sell arrangement at our own election.

2 CHAIRWOMAN SHOWALTER: And what about the  
3 load, would you be guaranteeing a certain load, or do  
4 you think you should be able to go on and off as the day  
5 looks?

6 MR. SCHOENBECK: Well, what Mr. Buckley said  
7 with respect to total load, I assumed he was talking in  
8 terms of the currently eligible Schedule 48 load, and I  
9 guess I did not see this changing the customers' ability  
10 to put load on or off of that rate schedule than they  
11 currently have. So I guess stated another way, I did  
12 not see signing up for this price stability option, that  
13 it would effectively be a firm take or pay type of an  
14 arrangement for a specific load level. They would  
15 continue to have their current flexibility they have  
16 under the current Schedule 48.

17 CHAIRWOMAN SHOWALTER: How does the, if  
18 that's the case, how does that affect the risk of the  
19 Company in terms of managing for that load? Right now  
20 it doesn't really matter to them, because they get paid  
21 at the market index rate.

22 MR. SCHOENBECK: But the way I see it, the  
23 Phase I in this proceeding determined that the rate  
24 they're being charged under the current 48 is unjust and  
25 unreasonable and that we're trying to implement a rate

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1 that is just and reasonable, that it's not addressing  
2 the load eligibility requirements, nor is it addressing  
3 the ability of the customers to operate within that  
4 schedule with respect to their load levels.

5 MR. BUCKLEY: It doesn't change the Company's  
6 risk anything different than the existing Schedule 48 as  
7 it is either.

8 MR. GAINES: Well, it certainly does. I mean  
9 the Chairwoman is exactly right. I mean the duration of  
10 this, the optionality that's being suggested by  
11 Mr. Schoenbeck, that the customers can opt in and out of  
12 the schedule at will, makes it virtually impossible for  
13 the Company to plan its resources or to plan hedges  
14 around its resources to serve the customers, so it has a  
15 huge effect on the Company. And the standard, as I  
16 recall it, is not just justness and reasonableness, but  
17 also sufficiency. I think that does need to be taken  
18 into account as we try to design some cap.

19 CHAIRWOMAN SHOWALTER: Well, just -- I mean  
20 in other pricing options and hedges and things like  
21 that, usually there's some kind of understanding on both  
22 sides as to what load will be or won't be, or at least  
23 the price of the option is affected by uncertainty. And  
24 so to the extent that you are saying that you should  
25 have the flexibility to go off and on, doesn't that

01933

1 argue for a higher cap or price in that the greater the  
2 uncertainty on the one hand, the higher the price should  
3 be in some sense to offset that risk versus a more  
4 certain cap for a more certain load?

5 MR. BUCKLEY: Well, I get back to the point  
6 that, again, I don't feel like there's any different  
7 than now. The Company -- the Company -- the customers  
8 now can under the existing Schedule 48, I don't want to  
9 say necessarily go on and off, but reduce load, increase  
10 load within some limits, and they get billed the  
11 appropriate amounts to do so. It's not a take or pay  
12 type contract, and they can do that now. And to the  
13 extent that the Company has taken risk through any  
14 hedging instruments would be the same as it is now.

15 CHAIRWOMAN SHOWALTER: I guess the reason I'm  
16 not very interested in what is now is that we are  
17 changing the risks. We are proposing to amend the  
18 contract, so we have to look at it on its own terms and  
19 whether the balance of the risks and the benefits is  
20 fair, just, reasonable, and sufficient. So that to say  
21 that we have only changed one thing but the rest remains  
22 the same isn't a very satisfactory answer to me. I  
23 think we have to look at how we change the balance and  
24 how that dictates where the cap should be and what is a  
25 cost and what risk everyone is taking on and what

01934

1 certainties everyone is taking on.

2           MR. BUCKLEY: And I think that that's true,  
3 and also remember that these hedges that seem to be so  
4 prevalent here in the discussion I mean are things that  
5 are done for the total system load that are -- the  
6 Company certainly has existing risk with every other  
7 customer, every other weather condition, every other  
8 resource condition that is out there and that, you know,  
9 they're not doing these hedges specifically to serve the  
10 load of 300 megawatts of industrial customers which may  
11 turn to diesel generation next month.

12           I mean they're out there presumably in order  
13 to meet their own load and, you know, and in doing those  
14 hedges, they should have taken into consideration  
15 whether those customers are actually going to be on the  
16 system or not. To the extent that that is included in  
17 their decision making process, it would be included.

18           MR. GAINES: That's just wrong. Any proposal  
19 that puts a cap on the rate that these customers pay  
20 fundamentally changes the risks that the Company faces.  
21 And it's also not correct that the Company has  
22 necessarily put these hedges on in consideration of its  
23 total load. We haven't offered any testimony yet as to  
24 what considerations have gone into our hedging  
25 activities over the last couple of years. This is a

01935

1 fundamental change in the risks that the Company faces.  
2 The Company has put a number of hedges on over the last  
3 year, year and a half in reliance on this rate plan.  
4 Now we are going to fundamentally change it, not only  
5 frustrating existing hedges, but frustrating the  
6 Company's abilities and incentives to hedge going  
7 forward.

8 CHAIRWOMAN SHOWALTER: Well, you don't know  
9 that, because you don't know what we have ordered yet.

10 MR. GAINES: You're right, and even under the  
11 proposal as it has currently been incarnated, there's  
12 not enough detail for me to really know exactly what the  
13 impacts would be. I can only guess.

14 MR. SCHOENBECK: Well, we keep on creeping  
15 more and more back into the Phase I, I guess. But my  
16 understanding of the soft cap proposal is -- I'm having  
17 difficulty with the word or how Mr. Gaines is using the  
18 word risk. Because under the soft cap proposal the way  
19 it has been envisioned, their costs will be fully  
20 compensated, plus in addition to that, there will be a  
21 \$25 per megawatt hour margin contribution. They do not  
22 have a single tariffed rate where they have a \$25  
23 industrial tariff rate, where they have a \$25 per  
24 megawatt hour margin built in if you consider that  
25 operating income above, you know, gross margin above



01936

1 their current out of pocket costs that the soft cap  
2 proposal is offering to them.

3           So yes, they may be saying that it changes  
4 the risk, risk being revenue they were expecting from  
5 these customers. But when you talk in terms of the  
6 revenue they will be getting from them, fully  
7 compensating them, considering they are the highest  
8 incremental cost resources serving them coupled with in  
9 addition to that the \$25 margin on top of that, I have a  
10 tough time having it characterized the way he just did.  
11 Because in my mind, that fully compensates the Company  
12 for serving these customers.

13           CHAIRWOMAN SHOWALTER: Well, let me give you  
14 this example. If Puget does buy a hedge for this load  
15 so that it and the customers too would be insulated from  
16 the highest cost, the higher cost up to the market, and  
17 then some of the customers decide not to take from  
18 Puget, should the remaining costs be spread over the  
19 remaining customers who still are, or is that why a  
20 hedge shouldn't be applied to begin with?

21           MR. SCHOENBECK: Well, the first thing under  
22 the hypothetical, of course, is it's in the way that the  
23 situation Puget finds itself in today, they don't -- to  
24 the extent by these customers not taking load, they  
25 would have additional power they could sell out onto the

01937

1 market. There would actually be a financial gain for  
2 them to do that. That's really what you're seeing here.  
3 You're seeing a situation where the utility is making  
4 more money selling on the wholesale market than they  
5 would the retail market.

6 But having said that, to the extent there's  
7 some verifiable hedging expense associated with that  
8 option, we would be more than willing to consider that  
9 in defining the opportunity of variable costs under this  
10 proposal. Of Mr. Gaines four different examples of the  
11 hedges they have entered into on either a Company wide  
12 basis for their entire load or just for the load of  
13 these customers, it's still not clear to me which one of  
14 those loads were driving the Company's decisions, the  
15 only one I would be concerned about being included in  
16 this temporary mechanism would be a matched pair  
17 transaction if the Company entered into it after  
18 December 14th, after the date the Complaint was filed.

19 Because I can see the gaming opportunity  
20 arising where they could say, okay, since the rules have  
21 changed, I will sell forward 300 megawatts of power, my  
22 resources, on a matched pair transaction, and I don't  
23 want that to -- and I want that to be below the line, so  
24 to speak, so I no longer have resources available in my  
25 surplus months to use to serve these customers.

01938

1                   So that's the only concern I had with respect  
2 to his four hedging examples. As far as I am concerned,  
3 if it can be worked out, those transaction costs could  
4 be included in the pricing mechanism under this  
5 proposal.

6                   MR. GAINES: I'm still unclear myself, and if  
7 I could maybe, could I ask just a question or maybe  
8 provide a simple example of, there are a number of  
9 hedges, but if we can just take a simple example and  
10 test how that might work under the proposal.

11                   JUDGE MOSS: Sounds like a useful approach.

12                   MR. GAINES: Just take a simple forward  
13 purchase of power. Suppose that today I purchase for  
14 the month of February 100 megawatts of power at \$200 per  
15 megawatt hour, so I have that hedge now put on. We get  
16 into February, and I will -- there's two branches to  
17 this hypothetical. In one branch, the market price is  
18 \$250. Where does that hedge go in my stack? And I'm  
19 purchasing to serve customers. Where does that hedge go  
20 in the Company's resource stack for the purposes of  
21 computing the charge to customers?

22                   MR. SCHOENBECK: That would be -- Mr. Buckley  
23 and I can answer this. Hopefully you will get the same  
24 answer from both of us. But to the extent it was a  
25 discretionary transaction you entered into in January

01939

1 for the month of February, that would be in the netting  
2 process that's above the load as a starting point to  
3 determine if you were net long or net short. If you  
4 were net long, that block of power you procured was used  
5 to serve your other discretionary sales. If you were  
6 net short, so you purchased not only that power but more  
7 power to serve your load, then it would go in the  
8 incremental pricing stack. And depending upon where the  
9 \$200 fell, if it fell below your 300 megawatts of power,  
10 it would not be used to serve those customers. If it  
11 fell in the band of the 200 to 300 megawatts of vertical  
12 priced block, then it would be weighted into that cost  
13 calculation with the remaining 250 megawatts or \$250 you  
14 could buy in the open market.

15 MR. GAINES: Okay. So in that branch then,  
16 the customers, it's a beneficial transaction, so in that  
17 branch, the customers would get the benefit of the  
18 transaction?

19 MR. SCHOENBECK: It's either beneficial to  
20 the customers, or it's beneficial to you.

21 MR. GAINES: Right.

22 MR. SCHOENBECK: Because you guessed right,  
23 you marked -- by setting it being \$250, you didn't need  
24 it for any of these customers, so you sold on the -- oh,  
25 you sold the 250 power -- you sold the power at \$250,

01940

1 though you had procured it at \$200.

2 MR. GAINES: Right, I understand now that  
3 branch. Let's try the other branch. Let's try now the  
4 hypothetical on the hedge is the same, 100 megawatts of  
5 purchase at 200 mils, but now the market price for  
6 February has fallen to \$150. Where does the \$200  
7 purchase go in my dispatch stack?

8 MR. SCHOENBECK: Again, to the extent you  
9 were long, it would go in the top, and to the extent you  
10 were short, it would go in the bottom. But the  
11 customers' rate would be capped at the \$150 to the  
12 extent you did not have incremental resources between --  
13 if the two -- if the \$200 power is at the top of your  
14 resource stack, the overall cap of the \$125 plus the \$25  
15 margin would be the cap for the customers.

16 MR. GAINES: So in this example then, the  
17 \$200 purchase would be at the very top of my stack, and  
18 if I were long, it would be netted against my  
19 discretionary sales?

20 MR. SCHOENBECK: Right.

21 MR. GAINES: So the customers then would not  
22 bear the burden, if you will, of that decision that the  
23 Company made in the earlier month?

24 MR. SCHOENBECK: Right.

25 MR. GAINES: It sounds asymmetrical. The

01941

1 risks sound asymmetrical in that proposal.

2           MR. SCHOENBECK: I guess how is that  
3 different from the transactions you enter into today?  
4 How is it any different from what you do today? You  
5 either, like me when I invest in the stock market, I  
6 guess right or I guess wrong, and that's the same thing  
7 you're doing. You're making the transaction today  
8 hoping that the price of power you -- based on your  
9 assumption that the price of power is going above what  
10 you're willing to procure it at. Sometimes you guess  
11 right, and sometimes you guess wrong, and that's just  
12 part of life.

13           MR. GAINES: But in one case, the customer  
14 gets the benefit of the transaction, and in the other  
15 case, the Company bears the burdon. I don't see the  
16 symmetry in that.

17           MR. SCHOENBECK: Now on the branch where --  
18 we're on the top branch when you were to the extent  
19 you're long, I guess I -- you will have to go over the  
20 asymmetry of the proposal compared to where you are  
21 today.

22           MR. GAINES: This is only a simple example,  
23 and you can imagine as we get into more complex hedges,  
24 this asymmetry has the potential to get much more  
25 skewed.

01942

1           MR. BUCKLEY: I guess I would like to at this  
2 point ask Mr. Gaines something. Is this, you know, we  
3 have had this proposal out here, and we have heard about  
4 hedges, we heard about it in Phase I. I have not -- I  
5 would like to know just what are we talking about in  
6 magnitude here? I mean I have, you know, we talked  
7 about there's a \$300 -- 300 megawatt approximately  
8 customer load. When we're talking about these hedges,  
9 are we talking about 1 megawatt, 10 megawatts, 300, or  
10 just what are we talking about that seems to, you know,  
11 complicate the procedure so much?

12           MR. GAINES: We're talking about hundreds of  
13 megawatts of hedges that the Company has put on between  
14 now and the end of the year at prices that are much  
15 different and will be much different than the index  
16 prices going forward. And so the amount of value  
17 swinging around here is tens and hundreds of millions of  
18 dollars.

19           MR. BUCKLEY: And this was -- and these were  
20 hedges put on on a -- when did they come -- when did  
21 they get put on, if I can ask that, over the fall or --

22           MR. GAINES: Over the course of the past  
23 year, yeah.

24           MR. BUCKLEY: So it was -- these hedges were  
25 also done to -- as part of the overall management of the

01943

1 entire system?

2 MR. GAINES: Yes, they were done on the  
3 expectation that the Company would continue to receive  
4 the index price from these customers. And as I  
5 indicated in my testimony in the earlier phase of the  
6 proceeding, it tried to arrange its resources so that it  
7 would have fixed cost resources for its fixed cost loads  
8 and variable cost resources otherwise, recognizing of  
9 course that its position is changing constantly and it  
10 can never achieve that goal perfectly.

11 So now we have a situation where we're  
12 turning what were variable revenue loads into partially  
13 fixed revenue loads, and it fundamentally changes the  
14 balance of risks that the Company faces and upsets many  
15 of the hedges that it's already put on.

16 CHAIRWOMAN SHOWALTER: Let me ask this  
17 question. I understand your point about actions you  
18 have already taken prior to the effective date of the  
19 temporary cap, if we get there. And let's just suppose  
20 for purposes of discussion that all of those decisions  
21 are built in in such a way that those costs count, for  
22 lack of a better way. But let me be prospective.  
23 Supposing we set prospectively a cap at a certain  
24 amount. Then if you are allowed to in general include  
25 the cost of a hedge that's executed or that covers that



01944

1 day, isn't this general management ability of yours to  
2 decide to buy or not to buy, where to buy a hedge, isn't  
3 there some "asymmetry" that would be permitted or  
4 permissible or reasonable, on a going forward basis that  
5 is? Once you know what the ground rules are, you get to  
6 decide how to manage to that.

7 MR. GAINES: Well, it is very important to  
8 know what the ground rules are. But at the most  
9 abstract level, today we bear all the costs of hedges,  
10 and we enjoy all the benefits and burdens. Now going  
11 forward, at least as I understand it so far, we would  
12 have a situation where we may or may not bear the cost,  
13 and we may or may not enjoy the benefits and burdens,  
14 and so it's a fundamental risk shifting. And I don't  
15 know based on what's been laid out so far exactly how  
16 those risks would fall. I know right now that the  
17 Company is able to manage itself in a way that all of  
18 the risks and costs fall on it. But going forward, it  
19 is still very unclear how those things would fall  
20 against the Company and against the customers.

21 CHAIRWOMAN SHOWALTER: Well, I know, but it  
22 seems to me that's what we're here for. We're trying to  
23 figure that out, and we're trying to figure out a  
24 temporary stability cap that is reasonable and  
25 sufficient. And so what I'm trying to get at is on a

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1 going forward basis, we'll figure out how to take care  
2 of the prior decisions, on a going forward basis, can  
3 you see a way that would allow the Company to manage its  
4 resources and to make decisions and that would allow  
5 reasonable recovery for costs?

6 MR. GAINES: The thing that concerns me about  
7 it I think most is the discussion that we had at the  
8 very beginning today where there was a suggestion that  
9 there would be some retrospective investigation of the  
10 Company's resource management decisions, and hence some  
11 judgments made about the inclusion or exclusion of  
12 costs, the recoverability of costs. And the process of  
13 hedging just doesn't lend itself to that. And so I'm  
14 not sure whether or how the Company would be incented to  
15 do hedging going forward, particularly on behalf of this  
16 set of customers, when there's uncertainty about whether  
17 or not its decisions would be second guessed and its  
18 costs recovered.

19 CHAIRWOMAN SHOWALTER: Well, let me ask this  
20 question. Supposing we did no second guessing, we said  
21 the Company is going to manage its resources, the  
22 Company is going to hedge as it sees fit, the Company  
23 will manage to the tariffs that are before it and the  
24 options that people have selected, and so you go  
25 forward, you do your hedges, et cetera. How would you

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1 determine your costs under a cap? That is if let's just  
2 say the cap is at \$150 and the market price that day is  
3 at \$300, and for whatever reason your own costs are in  
4 your determination above \$150, how would you assess the  
5 costs of all of those hedges as applied to that day for  
6 the top of the stack?

7 MR. GAINES: I think it would vary based on  
8 the nature of the hedge. I think that the paired  
9 transactions would be paired against one another. And I  
10 think that prior forward purchases of fuel or power  
11 would be recovered -- the actual costs of those would be  
12 recovered against the customers in the rate. But it  
13 would depend on the nature of the hedge, and it would be  
14 very important to have the detailed rules set up in  
15 advance so that both the Company and the customer knew  
16 what would happen. We again have not completely thought  
17 through and are not prepared to propose today exactly  
18 how that would work.

19 MR. BUCKLEY: Can I also comment here is --  
20 because I'm getting a little confused. It seems like  
21 we're drifting into Phase I too. That the proposal that  
22 the three parties put on was meant to try to at least  
23 easily and without too much administrative burdon  
24 implement this rate cap proposal. We did not look at it  
25 from the context of rebalancing risk through the

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1 implementation of the rate cap. So I think that our  
2 focus was narrow in trying to come up with what we  
3 thought was a simple process that would provide  
4 reasonable results.

5           If things like this hedging, you know,  
6 creates such a significant problem that it makes, you  
7 know, other implementation issues moot, then, you know,  
8 maybe something like, you know, a hard cap or something  
9 is more appropriate than a soft cap and we avoid that  
10 issue.

11           But, you know, I just wanted to kind of  
12 emphasize here that we were simply trying to at least  
13 based on the information that we had come up with some  
14 kind of an implementation process and not rearguing or  
15 rebalancing risks that are out there. We realize those  
16 issues are out there, and some of them have been decided  
17 on, and some of them are still on the Schedule 48 review  
18 as we see it.

19           CHAIRWOMAN SHOWALTER: Well, in the example  
20 of your second branch, you bought a hedge for 100  
21 megawatts for \$200 for a month, pegged to a price of  
22 \$200, and the market price turned out to be \$150. All  
23 right, let's say that's also the cap. If your costs for  
24 that option were \$10, and that tipped you over up to  
25 \$160, if you were allowed to demonstrate that that hedge

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1 for that, that that got built into this, and it tipped  
2 you to \$160, therefore you should collect \$10, would  
3 that seem appropriate to you?

4 MR. GAINES: Well, I think broadly to the  
5 extent that the customers are going to benefit from the  
6 hedges that they should participate in the cost of the  
7 hedges, yes. As I indicated in my testimony in the  
8 earlier phase, that sort of hedge is one category, an  
9 option where you pay a premium in advance, and I do  
10 think that if under some cap proposal the customers are  
11 going to enjoy the benefit, they should participate in  
12 the costs.

13 CHAIRWOMAN SHOWALTER: But let me, I would  
14 like to give you another example though. Supposing your  
15 costs turned out to be \$120 and the additional \$10  
16 brought it to \$130, which is under the cap, so you would  
17 in that instance have made \$20 under our example. Now  
18 are you saying that somehow that \$10 should be paid for  
19 in addition?

20 MR. GAINES: We don't think about our hedges  
21 as wins or losses. We think of them as insurance  
22 policies, and we don't look backwards at the success or  
23 lack of success of a hedge, if you will. We think of  
24 them as insurance, and so you pay your premium, and  
25 whether or not the hedge turns out to be in the money,

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1 it's achieved its objective of limiting the variability  
2 of your costs.

3 CHAIRWOMAN SHOWALTER: But it --

4 MR. GAINES: So --

5 CHAIRWOMAN SHOWALTER: Wouldn't it just be  
6 part of your costs, and if your costs did not exceed the  
7 cap, then they didn't exceed the cap. If they did  
8 exceed the cap, then that would be part of what you  
9 would recover?

10 MR. GAINES: That's right, but in either  
11 case, the group that's benefiting from the hedge should  
12 pay the cost of the hedge, whether it winds up in the  
13 money or not.

14 MR. BYERS: Let me pursue that a little bit  
15 farther, if I could, Mr. Gaines. In the example that  
16 you used, it was not a hedge that was -- that involved  
17 some kind of an option premium. It was actually a  
18 future purchase.

19 MR. GAINES: That's correct.

20 MR. BYERS: And in that instance, I think the  
21 example that you used had the future purchase turning  
22 out to be more expensive than what power in the market  
23 would have cost.

24 MR. GAINES: That was the second branch, yes.

25 MR. BYERS: Right. It seems to me as though

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1 it might be useful to think of hedges as different  
2 categories of animal.

3 MR. GAINES: Yes.

4 MR. BYERS: And I think the questions that  
5 the Chairwoman has been pursuing have been along the  
6 lines of hedges that involve a premium on an option, a  
7 transaction cost, and being able to allocate the costs  
8 associated with holding onto that option and being able  
9 to benefit from that option in the future, which of  
10 course would not be struck if in fact the option was  
11 higher than the market in any event.

12 So I guess my question is, by posing your  
13 example, are you identifying a particular kind of  
14 hedging mechanism, i.e., a futures contract that would  
15 be particularly difficult to deal with in this  
16 environment as opposed to an options contract that might  
17 be easier to deal with in this kind of environment?

18 MR. GAINES: Well, the answer to your  
19 question is yes, and I agree with your observations that  
20 the different categories of hedges probably want to be  
21 considered individually in the construction of a cap.  
22 And you are right, that the type of futures contract  
23 hedge that I used in my illustration is different than  
24 an options type hedge where there are up front costs  
25 involved.

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1                   COMMISSIONER HEMSTAD: Well, I was going to,  
2 I don't know if we have exhausted that topic or not, but  
3 looking at hedges from a different perspective, in the  
4 Company's advice letter under eligible participants,  
5 they're suggesting the price cap mechanism is available  
6 in the schedule.

7                   CHAIRWOMAN SHOWALTER: Where are you?

8                   COMMISSIONER HEMSTAD: This is on the last  
9 page of the advice letter. That would be Exhibit 1006.

10                  MR. TROTTER: Commissioner Hemstad, this is a  
11 Staff draft.

12                  COMMISSIONER HEMSTAD: Yes, the draft says  
13 that:

14                   The rate cap mechanism is available to  
15                   Schedule 48 customers who can  
16                   demonstrate that they have not  
17                   previously obtained a hedge during the  
18                   applicable time of the amendment.

19                   I take it from that you would exclude from  
20 this price stability option any Schedule 48 or Contract  
21 customer who has hedged?

22                  MR. BUCKLEY: The intent here was to raise  
23 that issue as one we need to look at. I mean I think  
24 that that would be, looking at it very simplistically,  
25 probably the proper thing to do. If there was a



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1 customer that had already -- that has taken service  
2 under this that had already purchased ahead and is  
3 benefiting from that, then they should not be getting  
4 double counting of benefits by the ability to take  
5 service under this option. That was sort of the rough  
6 intent to tee up the issue.

7           COMMISSIONER HEMSTAD: Well, I suppose the  
8 issue of that customer, whether that customer is  
9 benefited, depends upon when they exercised a hedge and  
10 its duration.

11           MR. BUCKLEY: Yes.

12           COMMISSIONER HEMSTAD: If they did it when  
13 prices are low, it would be one result. If they did it  
14 when prices were high, then it could well be that they  
15 would be better off under the soft cap than under their  
16 hedge.

17           MR. BUCKLEY: That could be, and that could  
18 be a reason to revisit that item of the terms.

19 Presumably you could have a customer in that situation.

20           COMMISSIONER HEMSTAD: Okay, then how would  
21 we do that? Or maybe the Complainants have thought  
22 about that. What about the customers who have hedged?

23           MR. SCHOENBECK: Actually, I must confess I  
24 had not thought about that. I believe most of the  
25 Complainants, from what I have heard that I have been

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1 representing, have not hedged, so I have not thought  
2 about it.

3           MR. GAINES: I have thought about it enough  
4 to at least generate some questions about it. One is  
5 the way this is worded, it would appear that -- I guess  
6 I should frame it as a question. What happens if two  
7 days after the cap proposal is put into place one of the  
8 customers obtains a hedge? Is he included, excluded,  
9 how does that work? I would also wonder what is  
10 considered a hedge? Is it a financial transaction? Are  
11 the backup diesel generators that a number of the  
12 customers have obtained considered hedges which would  
13 render them ineligible? Unclear to me.

14           CHAIRWOMAN SHOWALTER: Well, I would say  
15 beyond that, there is just the question of, I don't  
16 know, discrimination or uniformity or consistency, but  
17 I'm not certain that it makes sense to pick and choose  
18 the customers who can get on. It seems that what we're  
19 proposing here is a short-term addition or amendment to  
20 Schedule 48 and the Contracts. But on Schedule 48, it  
21 just becomes something, it becomes another element that  
22 can be chosen for whatever reason.

23           MR. BUCKLEY: That's like I said the reason  
24 here was to tee it up, and I was hoping rather than to  
25 get questions from the Company, we would get

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1 suggestions, so I'm hoping. I mean as I say I mean this  
2 was a, you know, a draft advice letter of something we  
3 don't normally draft.

4 COMMISSIONER HEMSTAD: And, of course, we  
5 have Schedule 48 customers who are not Complainants.

6 MR. BUCKLEY: Right.

7 COMMISSIONER HEMSTAD: We don't know what  
8 their situation is, whether they're hedged or not.

9 MR. SCHOENBECK: Mr. Gaines actually raised a  
10 good point, because I certainly was thinking in terms of  
11 this actually being a financial hedge. That's why  
12 questions on how it can be implemented and even checked  
13 by the Company. I was certainly not thinking in terms  
14 of the temporary diesel fired generators being  
15 considered a hedge.

16 MR. GAINES: Why would it matter if they have  
17 the same effect?

18 MR. SCHOENBECK: In my mind, it's the timing  
19 issue. I was interpreting this as something new. I  
20 don't really see the need for this. I would just as  
21 soon that it be dropped as being an eligible participant  
22 myself.

23 COMMISSIONER HEMSTAD: What would be dropped?  
24 I'm sorry, I didn't understand what you were saying.

25 MR. SCHOENBECK: It would not be a

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1 requirement. You would just delete it.

2 COMMISSIONER HEMSTAD: I see.

3 CHAIRWOMAN SHOWALTER: Does Puget have a  
4 position about whether this should, whatever it is,  
5 should apply uniformly versus this customer or that  
6 customer?

7 MR. GAINES: I don't know that we do at this  
8 time. It I think goes more to the question of equity to  
9 the customers, and some customers, you know, will I  
10 guess get a double benefit if they're allowed to enjoy  
11 the benefit of a rate cap and an existing hedge. I  
12 don't know that we have a position at this time.

13 CHAIRWOMAN SHOWALTER: Before we move on to  
14 something, I just want to circle back to the question I  
15 had about whether customers should be required to sign  
16 up for a certain level. And I understand that it wasn't  
17 anticipated, but tell me what the problem would be if  
18 customers had to say, yes, I will guarantee you X number  
19 of megawatt hours.

20 MR. SCHOENBECK: I guess a couple of things.  
21 First of all, the original problem I saw is the nature  
22 of what you have right now where in this crazy energy  
23 market under the soft cap proposal, this is not a hard  
24 cap proposal, under the soft cap proposal, the customers  
25 may be facing just unbelievable energy power costs such

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1 that they would have to shut down their entire  
2 operation. It would just be uneconomic for them to  
3 operate.

4           On the other hand, there may be a solution to  
5 that to the extent you would want to make it take or  
6 pay, maybe one of the things that could be included then  
7 is a remarketing right. To the extent the customer  
8 would be curtailing its operation, then they would have  
9 the right to resell that power through an agent such as  
10 Puget into the open market to recoup some of their costs  
11 associated with signing up for a firm commitment such as  
12 that. I would see some equity in that regard.

13           But it basically boils down to right now  
14 under the existing tariff, if it becomes uneconomic for  
15 an industry to operate because of the price, they have  
16 the ability under the current schedule to shut down  
17 their operations. To the extent, to use one of  
18 Mr. Gaines' lines, to not have an asymmetrical balance,  
19 maybe if there was a take or pay commitment, then they  
20 should get a resell opportunity of that power to the  
21 extent they can not use it.

22           COMMISSIONER HEMSTAD: What is your reaction  
23 to that?

24           MR. GAINES: Well, my general reaction to  
25 that is that, you know, that is an element of the

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1 buy-sell arrangements that the Company has been  
2 proposing to these customers. And so to the extent we  
3 got into that kind of an arrangement and that they had a  
4 take or pay obligation, I think we contemplate  
5 remarketing, so that would be consistent in the context  
6 of the buy-sell, which as you know is where we think  
7 this all ought to go.

8 CHAIRWOMAN SHOWALTER: Well, I guess I have  
9 another area, but I think I may get us off, and I really  
10 would like to go at some point to a discussion of what  
11 it means to have a cap of \$125, \$150, or something else,  
12 but that starts to get away from how does this tariff  
13 option operate. So are there other operational  
14 questions?

15 MR. BYERS: I think I have a couple that  
16 probably won't engender large quantities of  
17 conversation.

18 Mr. Buckley, in Attachment C, which is the  
19 draft tariff itself.

20 CHAIRWOMAN SHOWALTER: That's Exhibit 107.

21 MR. BYERS: Right.

22 JUDGE MOSS: It's 1007 for the record.

23 CHAIRWOMAN SHOWALTER: 1007.

24 MR. BYERS: In part 2-A sub 2, 2-A sub 2,  
25 it's not clear to me in the language there what the word

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1 strictly adds to the word greater.

2 MR. BUCKLEY: It's more of a semantics that in  
3 examples in the past in engineering where you have a  
4 comparison that has greater or I guess less than or  
5 equal or equal to and greater than or strictly would  
6 mean that you're including 125 in with the amount so --  
7 well, no, that you're not, that you're not including, so  
8 this would have to be 125 and ten cents. It would have  
9 to go that far. So you're not including 125 in the  
10 formula.

11 CHAIRWOMAN SHOWALTER: Well, in the English  
12 language, I would think that greater means -- what you  
13 said is greater than or equal.

14 MR. BUCKLEY: Well, all I'm saying is that  
15 it's a matter of semantics, that in the past it's just,  
16 yeah. I mean it doesn't add much except for something  
17 that I'm used to putting in and that --

18 COMMISSIONER HEMSTAD: Perhaps it would be  
19 clearer if it were stricken.

20 JUDGE MOSS: Let me remind --

21 MR. BUCKLEY: Given that we're dealing with  
22 lawyers and not engineers, that's probably true.

23 JUDGE MOSS: Let me remind everybody that  
24 while our format is somewhat informal, the reporter can  
25 only record one person speaking at a time, so.

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1 CHAIRWOMAN SHOWALTER: Well, that got people  
2 quiet.

3 JUDGE MOSS: I have that effect on people.

4 CHAIRWOMAN SHOWALTER: Here's one that we  
5 didn't cover. Does anything about the peak period and  
6 off-peak period require clarification in the tariff?

7 MR. BUCKLEY: I believe that the further --  
8 elsewhere in the tariff that the definition of on peak  
9 and off peak is defined.

10 CHAIRWOMAN SHOWALTER: So that the optional  
11 rate cap mechanism doesn't need in anyone's opinion some  
12 clarification on that point, it would be --

13 MR. BUCKLEY: The language is meant to be,  
14 you know, that part of it would be consistent with the  
15 other part of the remaining part of the tariff.

16 MR. SCHOENBECK: I actually thought it was  
17 pretty clear in the advice letter filing, which is  
18 Exhibit 1006, I believe, if you look at the second page  
19 of that exhibit under the implementation issues, so  
20 Arabic 1, 2, so forth on that page. I thought if you  
21 read those, which the tariff in Exhibit 1007 references  
22 the advice letter filing, I thought that was relatively  
23 clear there.

24 MR. GAINES: The letter is probably clear.  
25 Whether or not the on peak/off peak differentiation



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1 should be done I think is another matter, and it's  
2 probably one that deserves some consideration.

3 MR. SCHOENBECK: Again, what we proposed is  
4 that it be done by period, trying to stay as consistent  
5 with the current billing mechanism that's currently in  
6 place. The bills are done on the two different periods,  
7 that we try to stay consistent within that.

8 Same with the floor rate proposal, which is  
9 another difference that's being implemented under this.  
10 We obviously agreed to use the delivered cost of  
11 Schedule 49 or the other applicable -- any otherwise  
12 applicable rate schedule as the floor in this too.

13 And we thought it made sense just to do that  
14 on a monthly basis since the Company currently does its  
15 comparison report at the end of the month on a monthly  
16 basis between what was billed under the current Schedule  
17 48 and what's billed under the otherwise applicable  
18 tariff as a deliver charge including the cost of  
19 distribution and transmission in that, that comparison.

20 CHAIRWOMAN SHOWALTER: So what is the issue  
21 as to whether the cap should or shouldn't be sensitive  
22 to peak and off-peak periods distinguished?

23 MR. GAINES: We haven't had a chance to do an  
24 evaluation of that, but I can tell you based on  
25 intuition that the outcome will be quite different

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1 depending on how that's done.

2 MR. BUCKLEY: The complexity that we saw in  
3 this was just basically on the cost side of it, that you  
4 would have to make certain assumptions in a given day  
5 that the resource was operating perhaps evenly  
6 throughout the day or -- and we based the cost based on  
7 some weighted number of hours. That's the kind of  
8 assumptions that we kind of thought might be worked  
9 through with the Company.

10 CHAIRWOMAN SHOWALTER: I'm having a hard time  
11 getting what the issue is.

12 MR. GAINES: Well, I think one issue is  
13 should the cap be differentiated as to the on-peak  
14 period and the off-peak period. That's one way to think  
15 about it.

16 CHAIRWOMAN SHOWALTER: Oh, the cap itself?

17 MR. GAINES: Yes.

18 CHAIRWOMAN SHOWALTER: I see.

19 MR. GAINES: It's just not something that we  
20 have had a chance to examine, but intuitively you would  
21 expect the outcome of those two applications to be  
22 different.

23 CHAIRWOMAN SHOWALTER: Okay. But just  
24 assuming let's say there's a flat, just a single cap,  
25 then aren't the costs determined hour by hour, or am I

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1 not getting that?

2 MR. GAINES: Well, I think the proposal as I  
3 understand it is that the costs would be determined on a  
4 daily time period, so you would look at a daily slice.

5 CHAIRWOMAN SHOWALTER: But isn't the day made  
6 up -- how is the day -- what's the day made up of?

7 MR. BUCKLEY: The assumption we have is to  
8 take, for example, on a particular day that Verdonia,  
9 which would be the incremental rate source let's say,  
10 was operating at such -- its usage was such that it  
11 produced X megawatts at X price, that that would be  
12 averaged over the day based on the number of hours for  
13 applying the cost calculation.

14 And it really ends up being somewhat  
15 irrelevant, because we're not looking at total cost.  
16 We're looking at the rate, incremental rate of that, so  
17 we would assume that the resource would have the same,  
18 in that example, the same incremental rate throughout  
19 the day and just simply apply that to both on and  
20 off-peak hours in the cost calculation. As  
21 Mr. Schoenbeck said, the remaining aspect of the billing  
22 is the same as it is under the present tariff. It's  
23 just the cost side of it which would need to be looked  
24 at and refined perhaps a little.

25 MR. SCHOENBECK: I think using -- that's a

01963

1 surplus illustration. Then under a deficit illustration  
2 when Puget's purchasing power each and every hour during  
3 the day, you would look at the 16 on-peak hours and  
4 aggregate all the purchases across those 16 on-peak  
5 hours, and that would be the incremental cost plus the  
6 \$25 margin that would be charged to the customers'  
7 on-peak usage. And then you would look at the 8  
8 remaining off-peak hours. You would do a weighted  
9 average price of those purchases in the off-peak hours  
10 to come up with an off-peak rate to which you would tack  
11 on the \$25 margin and then charge those customers using  
12 that rate for their off-peak usage.

13 MR. GAINES: I need a clarification then, I  
14 think, because I don't think that we understood that. I  
15 mean are we saying we're going to differentiate the  
16 costs between on and off peak, but we're not going to  
17 differentiate the cap between on and off peak? Is  
18 that --

19 MR. SCHOENBECK: No, we're differentiating  
20 the cap between on and off peak, so that's why I thought  
21 the --

22 CHAIRWOMAN SHOWALTER: How is that?

23 MR. SCHOENBECK: Well, the cap is \$125, but  
24 what you compare it to --

25 MR. GAINES: Is differentiated.

01964

1 MR. SCHOENBECK: -- is differentiated.

2 MR. GAINES: But why would that be?

3 MR. SCHOENBECK: It's a more truer tracking  
4 your costs, also the customers' usage and the customers'  
5 loads. You -- to the extent customers' load patterns  
6 vary and their costs vary, it's a more accurate tracking  
7 than if you would average the costs across the entire 24  
8 hours. It would be a problem if all of these customers  
9 were 100% of the load factor and their hourly usage was  
10 constant each of the 24 hours, but it's not the case.  
11 So it's a more accurate tracking of the costs that are  
12 incurred in the off-peak hours in assigning that to the  
13 loads, off-peak loads of those customers. Then you  
14 would track your on-peak costs, and you assign those  
15 costs to the customer loads that are in that on-peak  
16 period, so I think it's a more accurate tracking of your  
17 costs to the loads to the people that cause those costs  
18 to be incurred.

19 MR. GAINES: I would not have drawn that from  
20 the proposal as I read it, and so it certainly is  
21 different than the way we understood it. And I guess I  
22 don't see why you would differentiate the costs but not  
23 the cap. It just seems asymmetrical again. I just  
24 don't understand it at all.

25 CHAIRWOMAN SHOWALTER: Well --

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1           MR. BUCKLEY: The \$125 cap was based on,  
2 originally at least from Staff's standpoint, was based  
3 on looking at on-peak hours. So that it's presumably if  
4 you wanted a differentiation for off-peak hours, you  
5 would go for a lower number, which would be not as  
6 beneficial for the Company.

7           MR. GAINES: I don't think you need to draw  
8 that conclusion. I think you have a higher on peak and  
9 a lower off peak.

10          MR. BUCKLEY: The assumption is that staff  
11 used.

12          MR. GAINES: I'll bet.

13          CHAIRWOMAN SHOWALTER: But I guess aren't the  
14 questions, those questions, somewhat severable? That is  
15 we can look at where an absolute level, the peak or two  
16 peaks ought to be, but it's a different question as to  
17 how we would determine cost than --

18          MR. GAINES: They are severable, yes.

19          CHAIRWOMAN SHOWALTER: And on the costs side,  
20 from what I understand, if a customer decreased use  
21 during a peak period, for example, the hours that the  
22 customer decreased use would not be taken into account.  
23 However many hours or megawatt hours were used during  
24 that peak period would be calculated at the peak period  
25 cost, and whatever hours, megawatt hours, were used

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1 during an off peak would be calculated at that rate. Is  
2 that --

3 MR. SCHOENBECK: That's correct, that's what  
4 I was trying to say.

5 CHAIRWOMAN SHOWALTER: I didn't say it very  
6 well either.

7 MR. CAMERON: Can I ask a question of  
8 Mr. Schoenbeck, please.

9 In terms of settling the costs, are you  
10 looking at Puget's total resource inventory, or are you  
11 just looking at the highest incremental cost resources  
12 associated with that 300 megawatts plus or minus that we  
13 assigned to Special Contract and Schedule 48 customers?

14 MR. SCHOENBECK: Well, that's what we have  
15 proposed is what I'm calling the top down approach,  
16 where in a way it's looking at just the top slice, just  
17 the top incremental resources serving the load. But the  
18 critical thing is the first step is you first net out  
19 all the discretionary wholesale purchase and sales  
20 transactions, and then it's that next increment of  
21 highest cost resources that are on the system. So  
22 that's why in our view you're looking at, in the case  
23 with Puget's deficit, you're looking at the highest cost  
24 purchases for those hours. In the cases when there's  
25 surplus, you're looking at their highest resource

01967

1 running cost. And then to each of those costs, you're  
2 adding the \$25 per megawatt hour margin to determine the  
3 set -- to determine their rate.

4 MR. CAMERON: One additional question, I  
5 think you just said that the individual customer  
6 consumption hour by hour didn't matter in the  
7 calculation of the cost. Was that -- did I mishear  
8 that?

9 MR. SCHOENBECK: Maybe you did. I was trying  
10 to say why the costs should be differentiated by on and  
11 off -- why Puget's, in the case of a deficit situation  
12 where they're purchasing power and the prices vary  
13 between on-peak and off-peak periods, I'm saying you  
14 come up with those separate periods to more accurately  
15 assess that cost responsibility than you would -- that's  
16 why you need to determine an on-peak rate and an  
17 off-peak rate to then apply to the customers' on-peak  
18 and off-peak generation to get a better matching as  
19 opposed to just averaging across all the hours. Because  
20 then you would have inter customer subsidies going on is  
21 what I was trying to avoid by keeping the calculations  
22 separate between the on-peak period and the off-peak  
23 period.

24 MR. CAMERON: To differentiate the  
25 differences in load factor?



01968

1 MR. SCHOENBECK: Right.

2 Mr. CAMERON: Okay.

3 CHAIRWOMAN SHOWALTER: So the cost of every  
4 peak hour megawatt hour would cost the same on a given  
5 day that everybody had used, and the cost of all the  
6 non-peak use would also be the same?

7 MR. SCHOENBECK: Right, the rate would be the  
8 same. It would be applied to a different number of  
9 billing determinants.

10 CHAIRWOMAN SHOWALTER: Right.

11 MR. BYERS: I have one. This is a question  
12 to Mr. Buckley again, and it is related to Exhibit 1005,  
13 otherwise known as Attachment A, and it's at the bottom  
14 of the page that has question four at the top. A little  
15 bit difficult to refer to since there aren't any page  
16 numbers.

17 MR. BUCKLEY: I got that hint.

18 MR. BYERS: At the bottom of that page, the  
19 last sentence reads beginning with the word finally:

20 The assumptions regarding the status of  
21 long-term wholesale transactions in  
22 Schedule 48 and Special Contract  
23 customers only apply in the context of  
24 implementing this rate cap mechanism.

25 I guess I don't understand what that means.

01969

1           MR. BUCKLEY: Okay, what we're meaning to  
2 address is the information, the answer to the question  
3 above and what we have talked about here today is  
4 related to just implementing the rate cap, the temporary  
5 rate cap. And in that, we make certain assumptions  
6 about where these customers stand in relation to  
7 discretionary sales above existing wholesale  
8 transactions and other customers.

9           And what we were trying to point out here is  
10 those assumptions at least for now are valid to be made  
11 -- we only consider valid for purposes of implementing  
12 this rate cap, that perhaps and perhaps not that as the  
13 result of further review of Schedule 48 or whatever  
14 happens in buy-sell or any other action that the  
15 Commission may take may change those relationships and  
16 how we consider them. For example, whether these  
17 customers might be allowed to come back into core or  
18 however some outcome might be, so we just wanted to put  
19 a placeholder for that.

20           MR. BYERS: I understand.

21           MR. GAINES: That was our suspicion. Of  
22 course, you know, we don't agree, but that can happen.

23           CHAIRWOMAN SHOWALTER: I would like to move,  
24 well, I guess just a different area, and that is to  
25 parse the different components of the revenue that Puget

01970

1 would be receiving. So they would get market price or  
2 \$150, whichever is lower, if their costs were below  
3 \$150. Am I right on that?

4 MR. BUCKLEY: \$125.

5 CHAIRWOMAN SHOWALTER: Okay. I did ask for  
6 an option for \$150. It happens to be easier for me to  
7 think that way on a cap of \$150. But let's just for  
8 this purpose say it's \$150. Then there's up to \$25 in  
9 profit, and up to because if you're within \$25 below or  
10 above the cap on the market index; am I right?

11 MR. BUCKLEY: We called it, in the answer  
12 that we gave to the Commission, we called it the squeeze  
13 on the margin.

14 CHAIRWOMAN SHOWALTER: Right.

15 MR. BUCKLEY: And that would be -- I think  
16 the example would be if the Mid-C -- if you were in a  
17 cap situation and let's say the Mid-C Index was \$130  
18 that -- and Puget's cost could be demonstrated to be at  
19 \$125 let's say, then in that case, they would collect  
20 \$130, and the margin in that example would be only the  
21 \$5. So you're always maximized by the Mid-C Index.

22 CHAIRWOMAN SHOWALTER: Well, and then if the  
23 costs are --

24 MR. BUCKLEY: I'm assuming a \$125 cap in that  
25 example, initial cap. Well it doesn't matter what the

01971

1 -- what it would be in that case.

2 CHAIRWOMAN SHOWALTER: You were going above?

3 MR. BUCKLEY: Assuming to initiate the sort  
4 of recap mechanism you were above \$125 to even initiate  
5 it.

6 CHAIRWOMAN SHOWALTER: But if Puget's costs,  
7 its real costs are \$20 below the cap, and if the Mid-C  
8 is \$10 below the cap, then they will get \$10 in  
9 profit --

10 MR. BUCKLEY: In that situation.

11 CHAIRWOMAN SHOWALTER: -- in that situation.

12 MR. BUCKLEY: Well, they would get -- they  
13 would get whatever. I mean this mechanism doesn't even  
14 address that situation. It only comes into play when  
15 you're in a rate cap, what we call a rate cap period  
16 where the mechanism applies where by definition the  
17 Mid-C Index is over \$125.

18 CHAIRWOMAN SHOWALTER: All right. Well, I  
19 guess a general way to state this is that the profit  
20 that Puget gets is going to vary depending on the  
21 situation. One can't really tell until you're at the  
22 point that you're -- that the cap is \$25 above, excuse  
23 me, that the index is \$25 above the cap and \$25 above  
24 Puget's cost. At that point, you know there's \$25 in  
25 there. And so I guess I'm trying to get at sort of the

01972

1 judgment that you made that all in all this is a  
2 reasonable opportunity to make a profit. And when you  
3 answer it, can you also relate this, if it should be  
4 related, what the transition costs that customers paid.  
5 I'm thinking about return on and return of a plant. I'm  
6 trying to get a general sense of how this cap fits those  
7 concepts.

8 MR. BUCKLEY: The concept was somewhat  
9 subjective in its nature. It was an attempt to not put  
10 Puget in a situation where if they managed their  
11 resources in a least cost way and had cost pressures  
12 that would increase their costs to serve customers that  
13 they would under the mechanism or the rate cap mechanism  
14 still maintain the ability to make some revenue from the  
15 customers.

16 Some soft caps have simple comparisons that  
17 if your costs increase, the cap increases up to what the  
18 cost is and does not have this margin incorporated into  
19 it. It was -- it was simply an attempt to recognize  
20 that -- that you are using, at least at the lower levels  
21 of cost, we are effectively giving these customers  
22 benefits of some embedded resources that are out there  
23 and that the customers should pay for that.

24 The idea of it being squeezed by the  
25 comparison to the Mid-C Index and their actual cost was

01973

1 -- was again somewhat subjective in the thinking that as  
2 your costs ever -- if your costs ever increased to the  
3 Mid-C level, almost by definition your -- you were using  
4 the Mid-C to serve these customers so that you were no  
5 longer using your incremental resources, that those were  
6 being used elsewhere. So that if the customer -- if the  
7 Company was not utilizing existing resources but it was  
8 kind of beginning to use the market, then they shouldn't  
9 be getting the benefit of the cost recovery related to  
10 fixed cost of those resources.

11           So that's how we justified the squeeze, if  
12 you call it that, is the cost increase closer to the  
13 Mid-C Index, and Puget's costs or let's say Puget's  
14 costs start increasing to the Mid-C, as they're both  
15 rising, we just felt that that was a proper reflection  
16 of what would happen in reality if Puget went out and  
17 actually for every megawatt bought Mid-C Index energy  
18 and used that to serve the customers. They would not be  
19 receiving any margin on that. It would in effect be a  
20 pass through.

21           So that's what we tried to mimic somewhat is  
22 the lower levels still give them the benefit of using or  
23 having the customers pay for the benefit of using those  
24 embedded cost resources and the fixed cost associated  
25 with that, they get recovery with that. Well, at the

01974

1 higher end, the Company, just like it would under  
2 existing rates, not receive any additional top from  
3 that. It would just be essentially a pass through.

4 MR. SCHOENBECK: I would like to comment on  
5 the \$25 cap. It's obviously substantially higher than  
6 we thought was an appropriate level. We are willing to  
7 live with your decision and have it -- and have it be  
8 used, but I think a couple of things you need to bear in  
9 mind. Again, if you look at Rate Schedule 49, the  
10 unbundled generation cost in that rate is probably, 100%  
11 unbundled generation cost, is probably about \$25 a  
12 megawatt hour, and that includes fuel and purchase  
13 power. So the margin, the margin within 49 on a  
14 comparable basis is substantially below that.

15 The other thing, if you bench mark it to  
16 something else, if you look at the levelized fixed cost  
17 of a new combined cycle turbine with the typical 30/70%  
18 equity debt financing, 20/25% rate of return on equity,  
19 that level as costs would probably only be \$18 a  
20 megawatt hour.

21 So I must admit Jim Lazar and I don't agree  
22 on too many things, but during the hearing when he was  
23 on the stand and he said this was a very generous  
24 margin, that's one of the few things in my life I have  
25 agreed with Mr. Lazar on. The \$25 as a margin is

01975

1 extraordinarily generous. So to the extent the utility  
2 may be squeezed for some portion of the index, I think  
3 when it's all said and done, it's still a very generous  
4 markup above their incremental costs to serve to  
5 customers.

6 MR. GAINES: I need to comment on this too.  
7 I have no idea why Schedule 49 would be the appropriate  
8 bench mark. The power costs embedded in that rate,  
9 whatever they are, were set more than six years ago.  
10 They bear no resemblance to the Company's current power  
11 costs. I think the more proper way to look at this is  
12 that under this rate cap proposal, the Company's  
13 revenues will be affected, but its costs will not. Our  
14 costs will be the same in either case. So any reduction  
15 in revenue from this proposal is a direct reduction of  
16 the Company's margin, if you will. And I think that it  
17 will be shown with great clarity in the Company's  
18 testimony tomorrow that the proposal, at least as it's  
19 quantified by Mr. Lazar, has just a disastrous effect on  
20 the Company's margin and overall finances.

21 MR. SCHOENBECK: I guess all I was really  
22 trying to get at was the point that this will be, no  
23 matter what the factors show for all the customer  
24 classes, this will be the largest margin for any  
25 industrial class of customers going away. That's the



01976

1 simple point I was trying to make.

2 CHAIRWOMAN SHOWALTER: Mr. Gaines, do you or  
3 the Company cover in your testimony comments on the \$25  
4 or up to \$25?

5 MR. GAINES: No, we haven't. Our testimony  
6 that we have provided here in a written form today  
7 focuses primarily on the Company's overall financial  
8 situation, and we expected that the issues such as the  
9 \$25 margin would be dealt with in the technical  
10 conference, as it has been.

11 MR. BYERS: Is there anything in the  
12 discussion that we have had today regarding the details  
13 of the Staff and Complainants' proposed implementation  
14 that would affect or modify the calculations that you  
15 presented in your prefiled testimony?

16 MR. GAINES: We're relying on the  
17 quantification that was done by Mr. Lazar in our  
18 prefiled testimony, and I haven't heard -- I don't think  
19 I have heard any clarifications today that would cause  
20 me to want to recompute that. But my overall conclusion  
21 from the session today is that we have a concept, but  
22 we're an awfully long ways from an implementable  
23 proposal.

24 COMMISSIONER HEMSTAD: I would like a  
25 response to the question of whether a soft cap, if

01977

1 implemented, should be at \$125 or at \$150. And who  
2 would like to take a shot at that?

3 MR. BUCKLEY: For purposes of what we were  
4 going to do here on the implementation issue, there's a  
5 question that the Commission posed is to provide an  
6 example of what would happen if the cap was at \$150, and  
7 that's what we addressed. And although it's not in the  
8 questions, what I was going to say is in that case, you  
9 would just simply replace \$125 with \$150 in everything  
10 that's written here as far as the implementation goes.  
11 That's the only difference that we would have, and  
12 that's what we concentrated on in our answers to you,  
13 and the rest of us here did. So we don't have -- I  
14 don't have any comments right now on the effect of that  
15 \$150 other than how it would be implemented.

16 MR. SCHOENBECK: I guess we're -- my thought  
17 was, we discussed this a little bit at the technical  
18 conference when we were trying to work out all of these  
19 issues on how to actually implement these things, and we  
20 were hoping that Puget would be working with us, and  
21 obviously they have chosen still not to do a darn thing  
22 on it, but I think it's very important to stay at the  
23 \$125 cap simply because that is reflective of what the  
24 alternate diesel generation costs are. So if the intent  
25 of this proposal is to truly to try to displace those

01978

1 generators and to the extent it would create a cleaner  
2 environment and stop using uneconomic resources, I would  
3 suggest that it should be maintained at that level.

4 I think there was some suggestion of is there  
5 a difficulty with the notion of a \$125 soft cap here  
6 versus a possible -- the \$150 reporting cap in  
7 California, and I really don't think there is. I think  
8 they are totally severable issues. And obviously to the  
9 extent there has been a \$150 soft cap or reporting cap  
10 issue in California, it has really not come into play.  
11 If you have -- continue to look at the prices in  
12 California, they have been in excess of that level every  
13 day since that was imposed.

14 We're on the service list, so we're getting  
15 the confidential reports that are being filed at FERC,  
16 the weekly reports that are filed by the marketeers and  
17 brokers, and I don't see it having -- I don't see it  
18 creating a dysfunction, if you will, between the markets  
19 by having the \$150 cap in place within the California  
20 markets and the \$125 retail cap here with respect to  
21 Puget Sound. I think the emphasis is it's a -- it  
22 should be what does the cost need to be to displace the  
23 temporary diesel generators.

24 MR. GAINES: From the Company's perspective,  
25 all of that is just absolutely wrong handed. First of

01979

1 all, we will show in our testimony that neither a cap at  
2 \$125 or \$150 produces anything approaching acceptable  
3 financial results for the Company.

4           Second of all, the idea that the diesel  
5 generation is uneconomic and somehow should provide the  
6 basis of a cap is absolutely wrong. It is very economic  
7 in today's market, and diesel generation wherever  
8 available should be running.

9           Finally, as to the Company's participation in  
10 the technical conference, we would be very interested in  
11 trying to work in an informal setting with the Staff and  
12 the Complainants on the structure of the cap, and we  
13 actually were hopeful that that's what might occur  
14 today. I personally was not available earlier in the  
15 week, because I was out of town. But I have come back  
16 into town specifically so that I could be available to  
17 do that.

18           COMMISSIONER HEMSTAD: I'm interested in your  
19 comment that diesel generation should be running.

20           MR. GAINES: Mm-hm.

21           COMMISSIONER HEMSTAD: Well, there are other  
22 public policy factors that cut across that, aren't  
23 there, such as air pollution issues?

24           MR. GAINES: There are. But from an economic  
25 point of view, it certainly should be running. And my

01980

1 understanding is that the governor recently has  
2 determined that, for example, in the City of Tacoma  
3 generation just like this should run given the current  
4 energy environment. So it seems to me the best thing  
5 that could happen for the energy market and for the  
6 prices that these customers pay under the index is to  
7 put more generation into the area.

8 CHAIRWOMAN SHOWALTER: I don't regard \$125 or  
9 \$150 as the only two choices. I don't think we said  
10 that in our order. But regarding the \$150, there is it  
11 seems to me a legal presumption set by FERC that that's  
12 not an unfair rate, so it had nothing to do with cost of  
13 diesel or anything else, but FERC has determined that it  
14 will not look behind prices set at \$150 or lower. And  
15 so it seems that it's a factor to be considered, because  
16 remember the premise of this proceeding was that with  
17 prices as volatile and high as they are on the market,  
18 we were searching for a temporary stabilizing factor.  
19 And someone anyway, namely FERC, has found that's not  
20 really too high.

21 MR. BUCKLEY: I think to add on to that, I  
22 mean I'm not intimately familiar with the mathematics  
23 behind FERC, but I'm also guessing that it's tied into  
24 the cost in the California market, there's some tie in  
25 to cost. And if you look at the generation that's

01981

1 available in the Southwest perhaps, that there could be  
2 differences in vintages of resources, cost related to  
3 those particular resources that are more closer to the  
4 California market that might justify \$150. And perhaps  
5 if they looked up here at our vintages of our resources  
6 and what we have, it could be a different number. Maybe  
7 not. I'm just saying that -- see, what we tried to do  
8 was to base it more locally on what it was costing these  
9 customers to have diesel generation and also tie it in  
10 to -- a rough tie in to the incremental cost of PSE's  
11 generation.

12 CHAIRWOMAN SHOWALTER: Insofar as we had  
13 evidence that the wholesale markets here and in  
14 California generally are fairly closely tied and FERC  
15 has decided that it's okay to have a market price of  
16 \$150, I don't offer it as something definitive, it's  
17 something to be considered.

18 MR. SCHOENBECK: It does have to do with what  
19 Mr. Buckley said. There are some resources in  
20 California that are at 20,000 btu per kilowatt hour heat  
21 rate, if you can believe it or not. And so that was one  
22 of the things FERC was looking at is what is the  
23 incremental cost of generation in California. I know --  
24 and I don't want to bring up our gas proposal, but it  
25 was based on the 12,300 btu per kilowatt hour heat rate

01982

1 we had, and that that was -- that's about the weighted  
2 average value of Puget Sound's CT's. So there are some  
3 substantial difference in heat rates between the  
4 resources that are in California versus the vintage of  
5 the resources PSE has.

6 MR. GAINES: I would just suggest that, you  
7 know, we probably don't know what went into FERC's  
8 consideration of setting \$150. It may have been to some  
9 extent the cost of resources, at least at the time. But  
10 as we have all seen, those costs have shifted  
11 dramatically over the last several months, and a  
12 recomputation of California costs based on current heat  
13 rates and current gas costs I think would yield a very  
14 different number than \$150.

15 So I just wouldn't want to put too much  
16 weight on \$150 as being tied to costs, because even if  
17 it was at one time, it probably is no longer, and I  
18 think it probably explains to some degree why certain  
19 California generators are not presently operating.

20 JUDGE MOSS: Mr. Gaines, I wanted to follow  
21 up on a point you made a second ago. You described and  
22 you have referred several times to the fact that your  
23 position that a cap at \$125 or a cap at \$150 will have a  
24 devastating economic impact on the Company or financial  
25 impact. And I just wanted to ask you, does that suggest

01983

1 or imply that the Company's forward resource planning is  
2 such that if it doesn't collect more than \$125 or \$150  
3 per megawatt from these customers, it's going to have  
4 this experience, this devastating financial impact?

5 MR. GAINES: Yes, it does under current  
6 conditions, and I think we testified to that in the  
7 earlier proceeding, that we had let our power supply  
8 portfolio develop in a way over the last several years  
9 that relied on the fact that these customers would pay  
10 market.

11 JUDGE MOSS: Well, what happens if the Mid-C  
12 drops to \$125 tomorrow and stays there or lower for the  
13 next six months?

14 MR. GAINES: We will have a very different  
15 situation than the one that's forecast today.

16 JUDGE MOSS: But if you -- so your suggestion  
17 then that there is this devastating financial impact  
18 impending out there depends on assuming what, worse case  
19 scenario in terms of the future?

20 MR. GAINES: It depends on assuming our  
21 current best knowledge about the future, the current  
22 forward price curve and the current expectations for  
23 hydro electric generation. And yes, it's very dynamic  
24 and can change greatly with changed conditions.

25 COMMISSIONER HEMSTAD: Well --



01984

1                   CHAIRWOMAN SHOWALTER: Can I ask, I'm  
2 assuming this is what's covered in your testimony, and  
3 I'm thinking that before we venture too far in this  
4 direction, it would be better for us to adjourn, that is  
5 that we should get into this tomorrow when we have all  
6 had a chance to read it and maybe cover anything else  
7 before that.

8                   COMMISSIONER HEMSTAD: I don't disagree with  
9 that. I did want to pursue, however, one more point.  
10 PSE has taken a position in front of FERC that there  
11 should be a wholesale price cap of \$150. Just why?

12                   MR. GAINES: We took the position that if  
13 there is a price cap applied by FERC at any level, it  
14 should be broadly applied.

15                   COMMISSIONER HEMSTAD: I'm sorry, you better  
16 stated it than I just did. Now if FERC proceeds to  
17 apply a West wide price cap say of \$150, that, of  
18 course, would impact the price that Puget would have to  
19 pay if it has to buy on the open market, wouldn't it?

20                   MR. GAINES: Yes.

21                   COMMISSIONER HEMSTAD: And were that the  
22 case, wouldn't it, of course we'll get into this  
23 tomorrow, but that would surely affect the expectations  
24 of Puget as to the kinds of revenues it would be able to  
25 receive.

01985

1           MR. GAINES: Yes, both the revenues and the  
2 costs would be affected.

3           COMMISSIONER HEMSTAD: That's all I wanted to  
4 pursue with regard to that. I'm sure we will get into  
5 it more tomorrow.

6           MR. BYERS: With respect to the cap level,  
7 since that's the area of discussion right now, is it the  
8 case that it doesn't matter what the level of the cap  
9 is, in other words \$125, \$150, \$175, \$200, it's just the  
10 existence of a cap that would produce insufficiency  
11 problems?

12          MR. GAINES: No, it matters, the level of the  
13 cap goes to the -- goes to the degree of the impact on  
14 the Company.

15          MR. SCHOENBECK: I'm sorry, having snuck a  
16 peek at the testimony, it looks like PSE's suggesting  
17 that the cap needs to be \$245 a megawatt hour. And if  
18 we're going to get into this tomorrow in any detail, I  
19 think it would help all of us if PSE could E-mail to all  
20 of the parties here today all of their work papers and  
21 supporting documents to let us truly analyze what's  
22 behind the testimony in the exhibits. The testimony is  
23 very general in nature. The exhibits are very much of a  
24 summary basis.

25                 While they complained about us using --

01986

1 eyeballing off of stack bar charts, that's all their  
2 exhibits do is recreate stack bar charts. So I think it  
3 would be instructive for all of us to see the underlying  
4 electronic -- electronic copies of the work papers that  
5 produced this so we can really look at the assumptions.  
6 I know one of my first thoughts or areas of concern  
7 would be what variable price load has PSE assumed in  
8 these calculations with a cap of \$245 a megawatt hour  
9 for the year? You just have to wonder. Some elasticity  
10 may come into play, and some of these customers may  
11 simply not take power with that type of a charge.

12 JUDGE MOSS: Before we drift off too far in  
13 that direction, I think maybe we need to bring the focus  
14 back to finishing up with any remaining questions that  
15 the Bench has. And then I think when we have concluded  
16 that, we will need to talk a little bit about process  
17 and how we're going to go forward. And I will note that  
18 while we are scheduled, we have scheduled some resources  
19 for tomorrow for a hearing, those are actually from 1:30  
20 in the afternoon forward, and so we will have the  
21 morning hours, or I should say you all will have the  
22 morning hours, and there will be an opportunity then  
23 perhaps for some technical discussions among the  
24 parties. And you may consider something like that to  
25 help build a better record.

01987

1                   MR. BERMAN: Your Honor, I would note in that  
2 regard that as I understood our procedures, after the  
3 Bench was through with its questions, counsel for the  
4 parties would have opportunities to ask questions on  
5 these issues. I have zillions, so I just want you to be  
6 aware of that.

7                   JUDGE MOSS: I think you should probably work  
8 on honing that down to a few thousand perhaps.

9                   COMMISSIONER HEMSTAD: To at least trillions.

10                  JUDGE MOSS: All right, so let's resume with  
11 questions from the Bench if there are some remaining,  
12 and I don't know that there are.

13                  CHAIRWOMAN SHOWALTER: I think we should go  
14 off the record.

15                  (Discussion on the Bench.)

16                  JUDGE MOSS: There's a suggestion then that  
17 we will take an opportunity now to go off the record for  
18 a brief while and talk about process and where we're  
19 going to go from here and in what time frame we're going  
20 to do that, so let's go off the record.

21                  (Discussion off the record.)

22                  JUDGE MOSS: We took a little longer than  
23 anticipated on the break to hash through some of the  
24 procedural questions that are outstanding, and I think  
25 we have heard a lot from everybody. We probably don't

01988

1 need to hear any more in terms of making some decisions  
2 about how to best use the time that we have available  
3 tomorrow.

4           And I think, first of all, it appears that  
5 there are some practical difficulties in terms of  
6 exchanges of information, and that cuts in both  
7 directions. Mr. Berman has reported that he has  
8 approximately a zillion, 400,000 questions, and so we  
9 need to take that into account. Some other parties have  
10 indicated that they have needs in terms of having some  
11 more discovery in terms of information so that they can  
12 effectively cross-examine with respect to the prefiled  
13 testimony that PSE wishes to have made part of the  
14 record and which the Commission is certainly willing to  
15 have PSE make part of the record in its case.

16           And so I think given the availability, the  
17 Bench's availability only in the afternoon tomorrow, the  
18 requirement will be for the parties to take advantage of  
19 the morning hours. And I think a couple of things need  
20 to happen.

21           One is to the extent that PSE has available  
22 material that was used in support of the development of  
23 the witnesses' testimony and that can be furnished  
24 without you having to stay up all night and crank, make  
25 computers do things, then that should be furnished by

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1 the most expeditious means by which it can be  
2 transmitted, whether that be E-mail, facsimile,  
3 whatever. That should be done.

4           Then in the morning, I think to try to  
5 maximize the efficiency of the time, probably starting  
6 at 8:00 so that you have four hours between 8:00 and  
7 12:00 but can have a decent lunch break before we come  
8 back at 1:30 for these types of proceedings, give each  
9 side two hours to spend as it chooses.

10           Mr. Berman, if you want to build a record by  
11 the expedient of a deposition of Mr. Buckley or Mistern  
12 Buckley and Schoenbeck or whoever is sponsoring this  
13 thing that can answer your questions, then you can use  
14 the time of your two hours that way. We have had  
15 deposition transcripts made part of the record, and we  
16 can do that again. Depending on the nature of that, it  
17 may turn out to be something that's admitted into the  
18 record, or it may be allowed as an offer of proof  
19 depending on the arguments that we will no doubt hear  
20 about its relevance and other issues that I'm hearing  
21 being hinted at today.

22           Similarly then, the Staff, the Complainants,  
23 the interveners can cooperate together to the extent  
24 they are aligned, and they seem to be more or less  
25 aligned in this proceeding. They can conduct

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1 depositions of Puget's three witnesses or one of them or  
2 what have you or can otherwise devolve into a technical  
3 conference of some sort so they can better understand  
4 the underlying premises of the testimony.

5           The goal of allowing, or I will go farther  
6 than that and say requiring you all to spend some time  
7 on this tomorrow is to make our proceedings in the  
8 afternoon more efficient and more productive. And time  
9 is short. We don't expect you to stay up all night, but  
10 we do expect you to take advantage of the time available  
11 to help the Commission have a good record, as has been  
12 the goal uniformly throughout these proceedings, and  
13 also to give everybody an opportunity to have their best  
14 shot at developing those aspects of the record that they  
15 believe are important to their clients. So that is the  
16 basic plan.

17           Then tomorrow afternoon at 1:30, we will be  
18 reconvening on the Bench. The Bench will be present  
19 again, full Bench, and we will hear the  
20 cross-examination of Puget's witnesses first. We want  
21 to be sure to provide Puget with the opportunity to put  
22 on that piece of its case, and we will do that first.  
23 As there is time remaining and if there is time  
24 remaining after that, then we will consider what best  
25 advantage can be made of that time, whether it be some

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1 further technical discussions along the lines of what we  
2 did today, which I think the Bench has found very  
3 useful.

4 All of you, Mr. Gaines and Schoenbeck and  
5 Buckley, have been very helpful in terms of explaining  
6 various aspects of this and various positions and  
7 perspectives that you have on the facets and aspects of  
8 the soft cap proposal.

9 It's past the 6:00 hour now. I am not  
10 inviting any speeches from any counsel, but I would  
11 offer this opportunity if there is anybody who has a  
12 question or wants to make a point on this procedural  
13 plan that I have outlined.

14 Mr. Early.

15 MR. EARLY: After we cross-examine Puget's  
16 witnesses tomorrow, we may want the opportunity to put  
17 on our witnesses again for rebuttal testimony.

18 JUDGE MOSS: Well, we can consider that  
19 option and see whether we feel that that's something  
20 that's necessary.

21 Any other points or questions?

22 Mr. Trotter.

23 MR. TROTTER: Just one, Your Honor. We have  
24 taken a look at the testimony that's been prefiled by  
25 Puget, and there's an awful lot of information there



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1 that may be very difficult for us to cross-examine  
2 effectively completely tomorrow. Given the fact that  
3 there has been no finding of emergency here, although  
4 granted one of exigent circumstances, we were wondering  
5 whether it would be wiser to pause here and perhaps  
6 elongate the schedule somewhat for all parties to allow  
7 us to get the data and take a look at it in a more  
8 circumspect fashion.

9           We will obviously be at least as prepared as  
10 we can be tomorrow to depose witnesses, but without the  
11 underlying data and a chance to perhaps run the models  
12 ourselves, it's really very difficult to provide the  
13 Bench with as much perspective as we would like to on  
14 that data. If the decision has been made, then, you  
15 know, so be it.

16           JUDGE MOSS: Are you moving for a continuance  
17 now, or would you prefer to defer that motion until we  
18 see what tomorrow brings?

19           MR. TROTTER: If the vehicle of a motion is  
20 useful to you, I will make the motion.

21           JUDGE MOSS: We can take up an oral motion if  
22 that's something you want to do.

23           MR. TROTTER: Then I will move to continue  
24 the evidentiary hearings on Puget's testimony, and I  
25 don't want to say a date certain, but it will hinge on

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1 when we get there, when we get the model and the ability  
2 to run it. And with respect to the technical phase, I  
3 understand the Company's need to cross-examine, but I  
4 also think we can handle a lot of the implementation  
5 questions by either forced mediation, strongly  
6 encouraged mediation, or just a chance to talk. And if  
7 they can make their arguments, they're welcome to them.  
8 So I will make a motion to continue.

9 JUDGE MOSS: Well, all right, we have the  
10 motion. Let's hold that for just a minute, and let me  
11 make another observation. And that is that certainly  
12 among the options available to the parties beginning  
13 tonight, tomorrow morning, whenever, at any time, is to  
14 enter into facilitation or mediation or just plain old  
15 fashioned negotiation. Judge Wallis remains available  
16 as an option or as a person who is available to you to  
17 facilitate if that's something you would like to do.  
18 And so you can take advantage of the time in that  
19 fashion as well. As far as ordering that, well, we can  
20 take that under advisement, I suppose. I wouldn't want  
21 to speak to that at this juncture. It's something you  
22 all can certainly do voluntarily though in the next 24  
23 hours.

24 As far as the motion for continuance is  
25 concerned, do you all want to here argument on that?

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1 CHAIRWOMAN SHOWALTER: Might as well hear  
2 what the other parties' view is on it.

3 JUDGE MOSS: All right, well, let's go ahead  
4 and hear about that from the other parties.

5 Mr. Sanger.

6 MR. SANGER: Our arguments probably aren't  
7 any different from PSE argument for their request for a  
8 continuance affirmatively made earlier. We're very  
9 concerned about the time line, as you're aware. We're  
10 still paying these rates you have determined to be  
11 unjust and unreasonable. And we wouldn't oppose a  
12 continuance if there was a date certain time line that  
13 was established when you were going to give the soft  
14 cap. We thought we were coming today to potentially  
15 implement a soft cap today. We were hoping to get it  
16 today. It doesn't look like that's going to happen, and  
17 we're hoping that if you're going to grant a  
18 continuance, consider making it apply, the soft cap  
19 apply as of today.

20 CHAIRWOMAN SHOWALTER: What is your position  
21 on a continuance if we don't go with that condition?

22 MR. SANGER: We're not in favor of it. We  
23 understand that there's a lot of technical information  
24 that PSE can and should provide to us, but they have had  
25 this order that you gave out for a week now, and they

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1 said they were up until after 10:00 last night  
2 evaluating this information they have just provided to  
3 us this morning. Well, they have had over a week to  
4 provide this to us, over a week to develop the work  
5 papers, and over a week to answer the Commission  
6 questions that they were supposed to have answered by  
7 Friday, and we have not seen any of that information.  
8 So we don't understand the urgent need of PSE to take  
9 all its time in providing us with this information up  
10 until the last minute.

11 JUDGE MOSS: Well, the situation is what the  
12 situation is, and would have beens and should have beens  
13 and could have beens are really beside the point, so we  
14 don't really need -- I don't want to hear any long  
15 speeches about how who struck who. What we need to do  
16 is deal with the situation that confronts us, and that  
17 is that we have basically the next 24 hours or so to  
18 accomplish as much as we can accomplish.

19 Mr. Trotter has put on the table the  
20 suggestion that there be some sort of a continuance, and  
21 I would want to make it to a date certain if we ordered  
22 it. So let's just focus on that, and I understand your  
23 position to be that you would be opposed to that under  
24 the circumstances.

25 Mr. Early, did you --

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1 MR. EARLY: Captured our position, Your  
2 Honor.

3 JUDGE MOSS: Anybody else want to be heard on  
4 this?

5 Mr. Berman.

6 MR. BERMAN: Your Honor, the main concern I  
7 have related to your comments about the procedures would  
8 seem to suggest that our opportunity to cross-examine  
9 the witnesses for Staff concerning their proposal which  
10 just came out on Friday would be foreclosed to just  
11 perhaps a couple hour deposition tomorrow morning.  
12 You --

13 CHAIRWOMAN SHOWALTER: Wait, aren't we  
14 talking about a motion to continue? That's what I would  
15 like to hear about at the moment.

16 MR. BERMAN: Well, with respect to whether --  
17 I guess I'm not sure what's being continued to when and  
18 how. That is it seems that there's a question of  
19 continuing their examination of Puget's witnesses, and  
20 I'm saying that there's a need for us to have ample time  
21 to examine staff witnesses.

22 JUDGE MOSS: The continuance, Mr. Berman,  
23 would apply to everyone in the proceeding. The hand  
24 would be equally applied. So if there's a continuance,  
25 there's a continuance. It's just a break in the action.

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1 We won't do anything, if it's granted, we won't do  
2 anything more until the date to which we continue the  
3 hearing.

4 MR. BERMAN: Well, obviously we have always  
5 thought that your statement that time is short was  
6 incorrect, that is that there's no need to take action  
7 on an expedited or urgent basis, and that therefore if  
8 we were to continue this hearing to enable additional  
9 time, that that would be an appropriate way to proceed.  
10 And so it continues to be the case that we do not see a  
11 need to cramp everything into one day or two days and  
12 then render relief immediately thereafter. We don't see  
13 why that's important. We would note that what is  
14 important to get implemented is Schedule 448, because  
15 that gives customers real options.

16 JUDGE MOSS: Let's not go off there. We're  
17 not in that docket.

18 CHAIRWOMAN SHOWALTER: I would just like to  
19 ask the Complainants a question in light of their  
20 opposition to the continuance for this purpose. Who do  
21 you think has the burden of proof here in terms of  
22 persuading us that the remedy is fair, just, reasonable,  
23 and sufficient?

24 MR. EARLY: As I read the order, there's two  
25 findings. One, that the current rate is no longer just

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1 and reasonable. We had the burdon, and we carried the  
2 burden on that. Secondly, there was the question of  
3 having found that the rate, current rate is no longer  
4 just and reasonable, what happens in its stead. And as  
5 I read the order, there was a finding based upon the  
6 record in that case that the rate cap as proposed was  
7 just and reasonable and sufficient and that --

8 CHAIRWOMAN SHOWALTER: I'm sorry, but clearly  
9 we are here in order to entertain options for a rate  
10 cap. We haven't imposed one, so we wouldn't be here if  
11 we had concluded as you say we did.

12 MR. EARLY: Assuming that is --

13 CHAIRWOMAN SHOWALTER: And my question is,  
14 who do you think has the burdon to persuade us that a  
15 cap yet to be imposed or yet to be articulated  
16 completely is fair, just, reasonable, and sufficient?

17 MR. EARLY: I think the posture of the case  
18 is that there is a proposal, I think the burden is on  
19 Puget to show that the proposal is in itself not just  
20 and reasonable.

21 CHAIRWOMAN SHOWALTER: You do?

22 MR. EARLY: I do.

23 CHAIRWOMAN SHOWALTER: Okay.

24 MR. FFITCH: Your Honor and Commissioners,  
25 Public Counsel strongly supports the motion for a

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1 continuance essentially for the reasons outlined by  
2 Mr. Trotter.

3           Just to come to the defense of Mr. Early,  
4 Public Counsel also read the Sixth Supplemental Order in  
5 the same way with regard to the determination about the  
6 soft cap.

7           MR. BERMAN: Your Honor, Puget Sound Energy  
8 is shocked by the suggestion that the burden of proof  
9 would be on anyone other than the Complainants and Staff  
10 in putting forward their proposal. We're also dismayed  
11 by the fact that when it seemed to be in their benefit,  
12 they opposed a continuance. Then when they see some new  
13 information out there, they want the continuance. And  
14 it seems like we're being played tactically, we want a  
15 continuance, we don't, depending on their interest and  
16 not on what's the right way to do things.

17           MR. EARLY: I'm sorry, did Mr. Berman say we  
18 were supporting the continuance or -- we have uniformly  
19 opposed the continuance. Our concern is to get relief  
20 now.

21           JUDGE MOSS: I'm hesitating, because there is  
22 a part of me that is just tempted to say people should  
23 go back and spend a little more time reading the  
24 Commission's order very carefully in this proceeding,  
25 because I think there has been some occurrence of people



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1 perhaps seeing in this order and perhaps in some other  
2 things that have been said or done during the course of  
3 this proceeding what it is they want to see or hear or  
4 believe rather than what has actually been committed by  
5 pen to paper or by speech to transcript.

6           What the order says in the particular that we  
7 are focusing on here is that a soft rate cap proposal  
8 that accomplishes the dual goals of establishing some  
9 rate stability for the customers and that also ensures  
10 that Puget recovers its costs is something that looks  
11 like it would render this tariff fair, just, and  
12 reasonable. It was the tariff that was found to be not  
13 fair, just, and reasonable, not just the rate, but the  
14 rate coupled with the lack of a fully effective or  
15 adequately effective mechanism to ensure a more stable  
16 situation in the face of unanticipated volatility in the  
17 market. That's what the order says.

18           The purpose of Phase II is to implement a  
19 proposal that accomplishes what was said in Phase I it  
20 would accomplish. The Commission can not be assured of  
21 that until it develops adequate information on the  
22 record in Phase II, and that is why we are here, and  
23 that is why the Bench came prepared today with quite a  
24 few questions that were put to people and that were  
25 answered, I think, in order to give the Bench the

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1 information it needs to see that such a proposal can in  
2 fact be implemented in such a way as to accomplish the  
3 dual goals that were stated I thought with some clarity  
4 in the order.

5           So if there has been some misunderstanding  
6 about that, it is unfortunate, but I think it could be  
7 remedied by some closer study of what exactly the order  
8 says. So that's that point.

9           Now having said that, we do have a motion to  
10 continue pending.

11           COMMISSIONER HEMSTAD: I would like to  
12 address a question to Mr. Trotter.

13           It has been the Staff's position from the  
14 beginning that while there's not an emergency, that this  
15 matter is a need for urgent consideration. In asking  
16 for a continuance, the timing for our ability to make a  
17 decision, of course, will be delayed. I assume in your  
18 asking for a continuance, you're taking that into  
19 account.

20           MR. TROTTER: Yes, and it's the nature of  
21 this testimony that frankly has caused Staff to pause  
22 and need to evaluate carefully and just need more time  
23 to get behind these numbers and understand what they  
24 mean.

25           Ms. Linnenbrink's testimony before you in

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1 Phase I was based on information that she found reliable  
2 based on what she had available to her. The Company we  
3 thought could have produced this type of information  
4 then, and they did not, so we thought the evidence that  
5 we had was very reliable.

6 This is additional evidence, and it's of a  
7 serious magnitude frankly, and we think it would be good  
8 to stop and take a look at it. All we had before were  
9 broad statements, and now we have specifics, and we feel  
10 it's necessary and proper to request additional time to  
11 evaluate it and see what, after evaluating it, and see  
12 what it actually says or means.

13 JUDGE MOSS: Okay, thank you. We're going to  
14 take a few minutes recess to retire from the Bench and  
15 discuss this privately.

16 (Brief recess.)

17 JUDGE MOSS: The Commissioners have had an  
18 opportunity to deliberate fully on the question pending,  
19 which is the question of whether we should have some  
20 sort of a brief continuance to allow for a more full  
21 development of information by the parties prior to  
22 having the planned further examination of witnesses in  
23 our proceeding.

24 The tension is between proceeding  
25 expeditiously as the Commission has striven to do from

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1 the outset of this proceeding and has with the  
2 cooperation and hard work and efforts of the parties  
3 accomplished and continues to accomplish expeditious  
4 treatment of this particular matter. And the other side  
5 of that tension is the interest that everyone has in  
6 having a good record.

7         And considering the arguments that counsel  
8 have made with respect to their needs for further  
9 examination of the testimony that has been marked as an  
10 exhibit at least today and the other argument that we  
11 have heard, the decision is to have a one week  
12 continuance. One week from today, we will resume  
13 hearing in this place. We didn't actually discuss time,  
14 but I don't see why we shouldn't start in the morning at  
15 9:30 on the 5th.

16         In the meantime, it will be important that  
17 the parties continue to work very diligently and in good  
18 faith to ensure that there is an appropriate exchange of  
19 information so that we can accomplish the dual goals  
20 that I have mentioned. And so what I want to propose  
21 now is that the parties agree on a time to get together  
22 tomorrow to have something again in the nature of a  
23 technical exchange so they can discuss other among  
24 themselves what their respective needs are and what sort  
25 of turn around time can be accomplished in providing

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1 each side the information that it believes it needs to  
2 go forward.

3 I will make myself available as I did during  
4 the earlier phase of the proceedings when we were having  
5 depositions, so that if one party or another or several  
6 are concerned or upset about the prognostications, then  
7 I can come in and resolve it on the spot by order. And  
8 I don't want to have to do that, and I feel fairly  
9 confident it won't be necessary. You all never had to  
10 call me into the depositions, and I expect that you can  
11 work it out again in this case. But I will make myself  
12 available continuously tomorrow, and I will ask that  
13 somebody drop me an E-mail and tell me when you decide  
14 you're going to meet so I can be certain that I will eat  
15 a tuna sandwich at my desk if need be through the  
16 luncheon hour or whatever.

17 All right, I think that concludes the  
18 business from my perspective, and so I will give counsel  
19 an opportunity now to raise any closing business that we  
20 need to take up before we go off the record for the  
21 evening.

22 Mr. Sanger.

23 MR. SANGER: Your Honor, forgive me for maybe  
24 being presumptuous, but the order, the Sixth  
25 Supplemental Order, did determine that the current

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1 rates, Complainants' current rates are unjust and  
2 unreasonable, correct?

3 JUDGE MOSS: Well, I'm going to let the order  
4 speak for itself, Mr. Sanger. I think if you go back  
5 and read that carefully, it has its findings of fact, it  
6 has its conclusions of law, and I'm familiar with the  
7 underlying finding of fact that Staff referenced in some  
8 of its materials and what it said about that. I will  
9 note first of all it is an underlying finding of fact  
10 and not a conclusion as it was characterized.

11 People need to go back and read that order  
12 carefully and read exactly what it says and how it  
13 characterizes things, and that's how it should come back  
14 to us. When you're quoting our orders back to us, it's  
15 probably a good idea to be very careful about how you  
16 characterize what we said, because we have a pretty good  
17 idea about what we said. And I don't think we need to  
18 spend a lot of time on that. The order says what it  
19 says, and we have I think explained adequately this  
20 evening.

21 If there's any question that lingers in  
22 someone's mind about what we're about in this phase, I  
23 suppose we can take that up, but I hope we have been  
24 perfectly clear about what we're doing in this phase,  
25 which is trying to develop all the material necessary in

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1 the record so that the Commission can determine the  
2 workings of a soft cap mechanism that accomplishes the  
3 twin goals that were identified in the Commission's  
4 order, that is to say something that will allow for  
5 there to be some rate stability for the customers while  
6 at the same time ensuring that PSE recovers its costs.  
7 Those are the two goals. You can't have one without the  
8 other in this phase. And that's why at the outset today  
9 we said we would allow PSE to put on its testimony  
10 regarding its view of the impacts. So that's where  
11 we're going, that's the record we need.

12 Is there a further question, Mr. Sanger?

13 MR. SANGER: Is it PSE's total costs that  
14 we're looking at or PSE's costs per the Schedule 48  
15 customers?

16 JUDGE MOSS: What we're trying to work on  
17 here is the Schedule 48 and Georgia-Pacific Special  
18 Contract rates, and the finding that has been made and  
19 the related conclusion of law is that taken as a whole,  
20 Schedule 48, let's just focus on that, the tariff is not  
21 fair, just, and reasonable because it does not include  
22 an adequate price stability, optional stability, I  
23 forget now the term of art that's used in there,  
24 optional stability provision. And that's the finding,  
25 and there is a related conclusion almost in exactly the

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1 same words, although it's a conclusion of law and not a  
2 finding of fact. And so that is what we're focused on  
3 is ensuring that when we finish, the tariff will be in a  
4 form so that it is again fair, just, and reasonable in  
5 that regard but also sufficient.

6 MR. SANGER: The question I was leading  
7 toward was whether or not -- you granted the request for  
8 a continuance for one week, but whether the relief,  
9 since the rates that are currently being paid by the  
10 Complainants have been determined to be not fair, just,  
11 and reasonable --

12 CHAIRWOMAN SHOWALTER: The rates haven't been  
13 determined. The tariff has been.

14 MR. SANGER: The tariff, I apologize, the  
15 tariff has been determined to not be fair, just, and  
16 reasonable, that the relief go back to the date of the  
17 order of January 22nd.

18 JUDGE MOSS: I don't believe we're prepared  
19 to take that up this evening and give you a final answer  
20 on that subject.

21 Yes, Mr. Trotter.

22 MR. TROTTER: I just wanted to make sure on  
23 the record that the Company will be here tomorrow and  
24 bring with them their spreadsheet analysis and other  
25 underlying analysis with all the assumptions that we can



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1 discuss openly.

2           JUDGE MOSS: I think the Company will be  
3 prepared to bring what I suggested earlier, which is  
4 whatever can be produced tonight without them having to  
5 go back up there and stay up all night to produce  
6 something. But then the opportunity for tomorrow is  
7 indeed to identify what more you need and for Puget to  
8 tell you what will be required to produce that. And if  
9 they tell you it's going to take six months, then that's  
10 when you come down and knock on my door.

11           MR. TROTTER: I understand.

12           JUDGE MOSS: I'm hoping that something like  
13 that won't happen, and I'm not expecting it to happen,  
14 but that's basically what this session tomorrow is  
15 intended to make clear for everyone, who needs what and  
16 when can it be furnished basically.

17           Yes, Mr. Berman.

18           MR. BERMAN: I wanted to confirm for the  
19 record that Puget Sound Energy will, in fact, be  
20 present. We haven't discussed timing, and you said we  
21 would do that after we got off the record, when people  
22 show up tomorrow, et cetera.

23           JUDGE MOSS: Yeah, I don't think we need to  
24 prolong that. There may be some scheduling issues and  
25 so forth. You all can work those out among yourselves.

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1 I will stick around for a few minutes, and if you need  
2 somebody to focus the conversation on, I will be the  
3 guy. So we will work that out, and I just need to be  
4 informed, and you all, of course, need to know, but we  
5 can do that off the record.

6           Is there anything else we need to do on the  
7 record?

8           MR. BERMAN: I wanted to confirm that if we  
9 are continuing one week until next Monday, at that time  
10 will we be continuing with questioning by counsel of  
11 witnesses concerning the technical issues, or will we be  
12 turning directly to the Puget Sound Energy testimony, or  
13 where and how does that all fit in?

14           JUDGE MOSS: I think the next procedural step  
15 we had contemplated was you putting on your witnesses  
16 and having them cross-examined, so that certainly is  
17 where we would want to start.

18           In terms of any further technical development  
19 with respect to the rate proposal, I think there is an  
20 opportunity during this week and particularly starting  
21 tomorrow for you to perhaps get through a lot of the  
22 questions that you may have outstanding about how that  
23 thing operates and one thing or another. And it may be  
24 that you will choose to build some sort of a more formal  
25 record. You may want to depose a witness or something

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1 like that.

2           At this juncture, I would not want to think  
3 about us spending another several hours developing  
4 material that perhaps relates to matters that are not  
5 within the narrow scope of Phase II as I have described  
6 it in terms of trying to understand the workings of the  
7 soft cap proposal adequately and also hearing your  
8 position and, of course, other people's testimony and  
9 evidence regarding the sufficiency of the rate. That's  
10 basically what we're looking at.

11           MR. BERMAN: I think I understand that.  
12 There are, as I had said, and I can't remember now  
13 whether it was on or off the record, we have a number of  
14 significant questions that go directly to the heart of  
15 technical issues of how the cap are implemented, and I  
16 gave the example of the \$200 forward contract in  
17 February that Mr. Gaines had described as being just one  
18 simple example, and though there are many other sorts of  
19 examples we will want to work through, but a simple  
20 example of a situation where we don't think we have yet  
21 to have adequate answers. And so we are going to want  
22 to explore those difficult technical issues that relate  
23 to the implementation of the cap.

24           I will note for the record that as far as  
25 meeting and attaining the dual goals that you have

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1 described, it continues to be our view that the buy-sell  
2 option does that, and I would note that in the joint  
3 Staff/Public Counsel rate proposal that was submitted  
4 that Staff and Public Counsel as I understood it said  
5 that as well. And so as we understand it, that is  
6 another part of the alternatives that are out there.  
7 That is Staff and Public Counsel concluded that the  
8 buy-sell option would be a way to ensure price stability  
9 while ensuring that the costs are recovered.

10 CHAIRWOMAN SHOWALTER: On that note, I would  
11 just like to emphasize that what we are trying to do  
12 here is find a reasonable temporary revision to Schedule  
13 48 so that we can move on to the question of what should  
14 be the ultimate disposition of 48 or 448, and we are  
15 spending a lot of time trying to fashion this temporary  
16 remedy.

17 So I would just urge the parties to bear in  
18 mind what the purpose is and to do your very best to see  
19 the reservations that each side has and come up with  
20 something or narrow your own focus to what is a livable  
21 temporary option, and then we do need to get on to the  
22 more permanent issues.

23 MR. TROTTER: And, Your Honor, Staff will be  
24 available tomorrow to -- the technical conference can be  
25 on both subjects, how the tariff might be implemented

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1 and then the additional testimony issues.

2           JUDGE MOSS: And I want to add on the heels  
3 of Chairwoman Showalter's remarks, which I think are  
4 very well taken and the parties should listen carefully  
5 to, the opportunity for settlement remains, the  
6 opportunity for mediation remain, Judge Wallis remains  
7 available, we have erected the Chinese Wall or whatever  
8 it's called these days, so Judge Wallis remains  
9 untainted as it were and is available to you as a  
10 facilitator, or you may choose to go some other route.  
11 But that can be the best advantage that can be taken of  
12 the time available, so be mindful of those things.

13           Anything else that we must have on the record  
14 tonight?

15           There apparently being nothing, I thank you  
16 all for being here, and we look forward to seeing you a  
17 week from today in this room. And in the meantime, I  
18 probably will see some of you tomorrow, so thanks. We  
19 will be off the record.

20           (Hearing recessed at 7:05 p.m.)

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