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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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AIR LIQUIDE AMERICA)
CORPORATION, AIR PRODUCTS AND)

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

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EQUILON ENTERPRISES, LLC,) Pages 2013 to 2044
GEORGIA-PACIFIC WEST, INC.,)

6

AND TESORO NORTHWEST CO.,)
)

7

Complainants,)

8

vs.)

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PUGET SOUND ENERGY,)
)

10

Respondent.)

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In the Matter of)

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

13

Reallocating Lost Revenues) Pages 2013 to 2044
Related to any Reduction in)

14

the Schedule 48 or G-P)
Special Contract Rates,)

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A Hearing in the above matter was held on

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February 5, 2001, at 9:30 a.m., at 1300 South Evergreen

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Park Drive Southwest, Olympia, Washington, before

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Administrative Law Judge DENNIS MOSS and Chairwoman

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MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD.

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Joan E. Kinn, CCR, RPR

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Court Reporter

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The parties were present as follows:

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

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

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

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AIR LIQUIDE AMERICA CORPORATION, AIR PRODUCTS
AND CHEMICALS, INC., THE BOEING COMPANY, CNC CONTAINERS,
EQUILON ENTERPRISES, LLC, GEORGIA-PACIFIC WEST, INC.,
and TESORO NORTHWEST COMPANY, by MELINDA DAVISON AND
BRADLEY VAN CLEVE, Attorneys at Law, Davison Van Cleve,
P.C., 1300 Southwest Fifth Avenue, Suite 2915, Portland,
Oregon 97201.

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

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3	-----		
4	EXHIBIT:	MARKED:	ADMITTED:
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P R O C E E D I N G S

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JUDGE MOSS: Good morning, everyone, and welcome again to Phase II. We're convened in the Air Liquide America Corporation and others against Puget Sound Energy, Docket Number UE-001952. Although I do have an agenda for today including the taking of appearances and other matters, I understand that we have a preliminary matter that we should raise at the outset.

Why don't we quickly take appearances for the record, just a short form unless someone is entering an appearance for the first time, and we'll start with Complainants.

MS. DAVISON: Good morning, Your Honor. I'm Melinda Davison. I'm here on behalf of the Complainants, and also with me today is Brad Van Cleve.

JUDGE MOSS: Thank you.

Mr. Berman.

MR. BERMAN: Good morning, Your Honor, Stan Berman of the law firm Heller Ehrman White & McAuliffe on behalf of Puget Sound Energy, and with me today is Todd Glass of the same law firm.

JUDGE MOSS: Thank you. Do we have any interveners represented today who wish to enter an appearance?

All right, Staff.

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1 MR. CEDARBAUM: Rober Cedarbaum and Donald
2 Trotter, Assistant Attorneys General for Commission
3 Staff.

4 JUDGE MOSS: And for Public Counsel.

5 MR. FFITCH: Simon ffitch, Assistant Attorney
6 General.

7 JUDGE MOSS: All right, thank you.

8 With that, Mr. Cedarbaum, did you want to
9 introduce the topic that you and I discussed briefly off
10 the record and that I have given at least a heads up to
11 the commissioners.

12 MR. CEDARBAUM: Thank you, Your Honor. As I
13 indicated to you while we were off the record this
14 morning, one of the efforts that we have undertaken over
15 the past few days other than getting ready for
16 litigation is to try to approach the Company and the
17 Customers with a proposal for an amicable settlement of
18 this case. And the issue essentially revolves around
19 the notion that open access tariffs would be provided to
20 the Customers that are currently being served under
21 Schedule 48, other than the City of Anacortes, which I
22 will get to in a moment.

23 And so sort of the general outline of what we
24 discussed was open access tariffs for Schedule 48
25 customers or the option of Schedule 448, which has been

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1 filed with the Commission under suspension. And
2 certainly there are issues with respect to getting
3 tariffs for both of those options before the Commission
4 and resolved, but those were matters to be addressed.

5 There were other aspects of our discussions
6 with respect to distribution charges and backup service
7 charges, other matters that I don't know if it's worth
8 getting into the details of this morning, but there were
9 other issues that we discussed with the parties that
10 would also have to be resolved.

11 But we think that we got, if not a negative
12 feedback from the parties and certainly a positive
13 feedback from some, an indication from others that it
14 was worth pursuing further discussions on the open
15 access proposal.

16 With respect to the City of Anacortes, I
17 think there was general agreement that the City really
18 shouldn't be on Schedule 48, and that even absent
19 whatever else might happen in this case, we ought to
20 make an effort to revise Schedule 48 so that the City
21 could come off that schedule and be served under another
22 tariff that would be otherwise applicable.

23 And so our proposal today, because we haven't
24 had the time to really talk directly with the parties,
25 is to spend a part of this morning, perhaps about an

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1 hour, in negotiation just to try to break the ice on the
2 open access proposal, if the commissioners are amenable
3 to that. And then at that point, if progress is made,
4 we could make a decision whether to continue
5 negotiations just among ourselves or to ask Judge Wallis
6 to come back in as a mediator and bring him up to speed
7 on what we have been discussing and have him play the
8 mediator role again. And perhaps that might take more
9 time, perhaps the rest of the day.

10 But at least to begin with, we wanted to
11 spend some time with the parties this morning seeing
12 what progress we could make and then make a decision at
13 that point whether we just come back into hearing later
14 this morning or this afternoon or continue negotiations
15 or go into mediation. We hadn't really crossed that
16 bridge yet.

17 But we wanted to find out from the
18 commissioners whether the notion of open access, again,
19 just for these Schedule 48 customers, this is not a
20 company wide project, but just for these customers, is
21 something the commissioners are even receptive to.
22 Because if you are not, then we may just be spinning our
23 wheels spending time exploring that option and also
24 procedurally whether there is just time to do that. So
25 with that, and Mr. Trotter reminds me we're talking not

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1 about just Schedule 48, but the Special Contract
2 customers.

3 CHAIRWOMAN SHOWALTER: Clarification, when
4 you say just these 48 customers, do you mean just these
5 Complainants or all 48 customers?

6 MR. CEDARBAUM: All 48 customers. I guess I
7 just meant to say that this is not something to be
8 proposed for customers other than those receiving
9 service under Schedule 48, Special Contracts, similar
10 index, market index pricing.

11 JUDGE MOSS: Any questions or comments from
12 the Bench?

13 CHAIRWOMAN SHOWALTER: Well, I guess I don't
14 want to prejudge either way any proposal you might have,
15 but I think in general it's a good idea for parties to
16 get together and see if they can agree on something.
17 It's always going to be subject I guess to our review
18 for perhaps broader implications than the parties
19 present, but I think if you are also having those
20 broader implications in mind, that's a good idea. So
21 bottom line is I encourage you to discuss things this
22 morning.

23 A question that I have just listening to you
24 is if the options are open access or 448 and that's it
25 for all 48 customers, that seems to me different than

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1 open access or 448 or revert to a normal tariff subject
2 to, you know, some kind of cost incurred. And if it's
3 optional among those three, that puts it in a somewhat
4 different light for me than if it's just the option of
5 the two, particularly with respect to the 48 customers
6 who are not present here.

7 MR. CEDARBAUM: And that third option did
8 come up for some discussion at the end of the week and
9 over the weekend, and I think at this point I think all
10 I can really say is that we would like to discuss that.

11 CHAIRWOMAN SHOWALTER: Okay.

12 COMMISSIONER HEMSTAD: I don't have any
13 objections to the parties seeking to settle it, and if
14 open access is part of that, obviously we would have to
15 see the entire package to see what it looks like. But
16 at least philosophically or conceptually going in, I
17 don't have a problem with that.

18 JUDGE MOSS: Ms. Davison, did you have a
19 comment?

20 MS. DAVISON: Yes, thank you, Your Honor. I
21 wanted to just elaborate at least from our perspective
22 what we agreed to in terms of going forward this morning
23 and our view of this afternoon. We were approached with
24 this idea, and we said, sure, we would be happy to talk
25 about open access. And, of course, we are always

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1 pleased to look at a settlement offer as opposed to the
2 litigation option. But I had a couple of caveats around
3 that.

4 The first one is that I see open access as a
5 long-term solution to the problem that we're facing.
6 And even if we are able to quickly agree on the
7 parameters of open access, which is probably a big if
8 because it is somewhat complex given all that we have
9 been through in Oregon right now to implement open
10 access, we are still in a crisis. And, you know, the
11 prices for the non-firm index last week were \$488, \$460,
12 they were extremely high. So we do not want to see any
13 delay in moving forward with what we see as a temporary
14 solution to this problem that we're facing.

15 So what I agreed to over the weekend was that
16 we could take the morning and talk about this and see if
17 there's even any basis upon which we can move forward.
18 But even if we were making good progress, we still
19 wanted to come back and have a hearing this afternoon.
20 Because as I said, I see this as a long-term solution,
21 but we still have to address what happens in the short
22 term even if we all agree to open access. And for that
23 reason, we do not want to see any further delay of this
24 hearing.

25 JUDGE MOSS: Okay.

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1 Mr. Berman.

2 MR. BERMAN: Yes, I just wanted to note that
3 the Company is very supportive of the open access ideas
4 that the Staff is promoting. In fact, when and if we do
5 get back to the hearing process, I want to advise you
6 that we intend to offer an alternative to the soft cap
7 proposal that would be a framework for providing open
8 access to Schedule 48 and the Special Contract
9 customers. We believe that this alternative framework
10 meets and addresses the concerns that were raised in the
11 Sixth Supplemental Order of providing a mechanism for
12 price stability for the customers while at the same time
13 not hurting the bottom line of the Company. I hope that
14 we don't have to present that testimony because I'm
15 hopeful that the discussions this morning will get us
16 somewhere, but if they don't, you will be hearing this
17 as an alternative remedy that we will be proposing.

18 JUDGE MOSS: Okay.

19 Something else, Ms. Davison?

20 MS. DAVISON: I'm sorry, Your Honor, I can
21 defer discussion of this until this afternoon, but I
22 just wanted to let you know at this point since
23 Mr. Berman has raised it, I don't want silence to be
24 assent, we will oppose that effort. We believe that
25 that is outside the scope of this proceeding. We think

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1 it is way outside the scope of Phase II. And we would
2 be very pleased if Puget would make a separate filing, a
3 separate tariff, and have a separate proceeding to
4 pursue open access if that is what they would like to
5 do. But we do not believe that that falls within the
6 parameters of Phase II of this proceeding.

7 COMMISSIONER HEMSTAD: Well, I would just
8 make the comment, settlement discussions are about
9 settlement. I don't think we need to start hearing
10 about what will happen if you don't settle.

11 MS. DAVISON: Right.

12 CHAIRWOMAN SHOWALTER: And I would add that I
13 would guess it's unlikely you're going to reach any
14 settlement unless you can resolve both the short term
15 and the long term and at least the short term. So I
16 would encourage the parties to think of a way through
17 their difficulties that covers both, you know, next week
18 as well as next month as well as next year, because that
19 promises much better likelihood of a settlement than if
20 you're concentrating on one time period or the other.

21 MS. DAVISON: Right.

22 JUDGE MOSS: And I would encourage you too to
23 consider carefully the possibility of using Judge Wallis
24 to assist you in these discussions if they look at all
25 promising. Mediators are always looking for that

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1 expanding pie or that rising loaf, and I sense from some
2 of the comments that I hear that those elements may be
3 present. There may be some possibilities for you all to
4 see that it's not just a question of cutting up some
5 finite sized option here, but a possibility of expanding
6 the options and looking beyond the immediate concerns of
7 this one case and thereby finding some ground where you
8 can achieve good results, both short term and long term.
9 So I would certainly want to add my note of
10 encouragement to that, go down and prep Judge Wallis to
11 the extent of telling him to clear his calendar.

12 So is there anything else before we go off
13 the record, which is where we're headed very quickly
14 here.

15 MR. CEDARBAUM: I just want to propose that I
16 think our agreement was to spend about an hour seeing
17 what progress we could make, so perhaps if you could
18 check back with us around 11:00 or we will check with
19 you.

20 JUDGE MOSS: Yeah.

21 MR. CEDARBAUM: Whichever you prefer.

22 JUDGE MOSS: I will try to stay in my office
23 as much as I can, let people know where I am, so.

24 CHAIRWOMAN SHOWALTER: How about logistics,
25 do you have a room, do you need this room, do you need a

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1 private room?

2 MR. CEDARBAUM: I guess I was just assuming
3 we would stay here. We could make sure the bridge line
4 is off. That's fine with Staff, I believe.

5 JUDGE MOSS: Okay, and I can take care of
6 that on my way out.

7 Okay, great, we are in recess.

8 (Hearing recessed from 10:00 a.m. until 1:45
9 p.m.)

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

12 (1:45 p.m.)

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14 P R O C E E D I N G S

15 JUDGE MOSS: We're back on the record after a
16 morning recess during which the parties had an
17 opportunity to discuss matters among themselves, and
18 it's now after the lunch hour, and I understand from
19 informal discussions with the parties that there is some
20 inclination to continue those discussions perhaps this
21 afternoon and certainly Tuesday and Wednesday. And we
22 have checked the hearing schedules and so forth, and we
23 can do that.

24 So, Mr. Cedarbaum, why don't you fill us in
25 and give us a status report and that sort of thing.

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1 MR. CEDARBAUM: Thank you. We did talk this
2 morning for about two hours, and based on those
3 discussions, I think the parties are in agreement that
4 it's worthwhile to continue discussions with the
5 assistance of Mr. Wallis as a mediator, although we
6 understand his availability this afternoon is somewhat
7 limited, and that's fine, and we would have these
8 discussions through Wednesday of this week. We will
9 report back however you would like us to report back and
10 then be prepared, if necessary, to go into the hearing
11 phase on Thursday and Friday. So that was, I think, the
12 general consensus on how we will proceed.

13 JUDGE MOSS: Okay, and others may wish to
14 comment on this or not.

15 MS. DAVISON: Your Honor, this is Melinda
16 Davison, I would like to just briefly comment on a
17 couple of things. One is that we had prepared and sent
18 by E-mail to the parties the new exhibits of Don
19 Schoenbeck, and we would like to hand that out to
20 everyone here at the hearing so that during this interim
21 period people have a chance to look at Mr. Schoenbeck's
22 revised exhibits.

23 The other thing is that we remain very
24 committed to pursuing a settlement, but we are also very
25 mindful of the timing issues surrounding that, and so

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1 we're hopeful that we can work out some specific
2 objectives that we can try to achieve during this three
3 day period of time, and we're very appreciative that
4 Judge Wallis will be available this afternoon to help us
5 with that, and we also appreciate the accommodation of
6 the Commission to reschedule this on Thursday. And that
7 was another important criteria for us, that we did not
8 want to have an open ended delay, and we appreciate
9 that.

10 JUDGE MOSS: Okay.
11 Anyone else?

12 MR. BERMAN: Yes, Your Honor, we're very
13 supportive of the notion of going forward with the
14 settlement discussions. We think that the lines that
15 we're discussing or that the framework that we're
16 discussing is a framework that has real possibilities
17 for yielding a result that's consistent with the
18 Commission's goals and with maintaining the financial
19 integrity of the Company, and so we think that this is
20 an appropriate way for us to proceed.

21 With regard to the second matter that
22 Ms. Davison had raised, I would note that we were
23 circulated copies of the new Schoenbeck exhibits over
24 the weekend. We would ask just as a technical
25 conference and discovery as to work papers were provided

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1 concerning the materials we provided last week, we would
2 ask that the Complainants be required to produce the
3 supporting work papers for the Schoenbeck Exhibits to us
4 promptly and that they make Mr. Schoenbeck available for
5 a technical conference so we could discuss those
6 exhibits.

7 JUDGE MOSS: All right, well, let's take care
8 of that. I will put that in the category of
9 housekeeping matters, and there are a couple of others
10 having to do with some confidentiality discussions we
11 had last week off the record regarding confidentiality
12 and some proposed modifications to the protective order,
13 that sort of thing.

14 But first before we get to that, I would like
15 to give the commissioners an opportunity if they have
16 any comments they wish to make at this time, and then
17 they can elect whether to remain on the Bench for our
18 housekeeping matters or not.

19 CHAIRWOMAN SHOWALTER: Well, I will just say
20 that I'm encouraged that the parties do want to keep
21 talking. I know that it's very difficult when you're
22 both litigating and trying to reach settlement at the
23 same time, and I'm aware that everyone feels time
24 pressures and financial pressures, so it's encouraging
25 that you all feel at least optimistic enough to keep

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1 going, and I just encourage people to try to stay
2 dispassionate enough to see their way through to some
3 kind of solution that's livable for everybody.

4 COMMISSIONER HEMSTAD: I would like to make a
5 comment. This morning I didn't have any philosophical
6 or conceptual concern about the issue of open access,
7 but I do at least want to raise the cautionary flag that
8 if you are pursuing that seriously that you also think
9 about the implications of that in the context of federal
10 and state jurisdiction in an open access environment and
11 the implications that that presents.

12 JUDGE MOSS: Well, with that, we do have a
13 couple of housekeeping matters. One, with respect to
14 the work papers, can those be readily provided to Puget
15 or others who may be interested?

16 MS. DAVISON: Yes, Your Honor, they can be.
17 The only point that I would like to clarify from what
18 Mr. Berman said is that we still have not received all
19 the work papers for Mr. Holly, and we would hope that
20 those would still be forthcoming as well.

21 JUDGE MOSS: Mr. Berman, are those
22 forthcoming?

23 MR. BERMAN: Your Honor, I'm not certain
24 what, if anything, is missing. We produced what I
25 thought were all the work papers. But I will examine

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1 it, and if there are more, we will certainly make them
2 available.

3 JUDGE MOSS: Perhaps the parties can take
4 some time this afternoon to have some further technical
5 discussions on both sides and ascertain what information
6 is required and can be useful and can be readily
7 exchanged, and I'm sure the parties so far seem to have
8 been cooperating on that. I don't believe I have had to
9 resolve a discovery dispute in a week or more. So I
10 will trust you all to take care of that, and as usual, I
11 will remain available to help you if such help is
12 required.

13 Now I mentioned there was another matter with
14 respect to some conversations we had on the subject of
15 confidentiality last week and came up late in the week,
16 that the parties thought it might be most efficient to
17 simply modify the protective order, and I know the
18 Complainants have sent in a motion with some suggested
19 language. I have reviewed that this morning. I have
20 not had an opportunity to review that with the
21 commissioners, but I think it's fair to say that as a
22 means of allowing the various parties to participate and
23 listen in on portions of the confidential material as it
24 may be brought forth, you parties have reached an
25 accommodation that appears to me to be quite workable

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1 and that would allow non-expert non-attorney
2 representatives from the various companies to sit in the
3 hearing room and have access to that portion of the
4 record. And I will take that up with the commissioners
5 this afternoon, and we will get that taken care of in
6 terms of an amendment.

7 MR. BERMAN: Your Honor, I will just say for
8 the record that the Company is in accord with the motion
9 to amend the protective order. We think that that's a
10 good way to address the concerns that were raised last
11 week.

12 JUDGE MOSS: Okay, and that was my
13 understanding, that you all had agreed. So all right,
14 that's good, and that will take care of the problem of
15 the challenge to the confidentiality, so we just will --
16 that's moot, we won't take that motion up.

17 And I'm not sure we have made it of record,
18 and so I wanted to be sure that Exhibit 1304-HC was
19 going to be redesignated as 1304-C and the status of
20 that changed from highly confidential to confidential.
21 So those were the housekeeping matters that I had in
22 mind, and yes, that covers it.

23 So is there anything else we need to handle
24 on the record before we go into recess pending the
25 resumption of the proceedings on Thursday morning?

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1 Mr. ffitch.

2 MR. FFITCH: Your Honor, just another
3 housekeeping matter that has come to our attention, that
4 the Commission is receiving certain public comment on
5 this case through letters and E-mails and that sort of
6 thing, so as Public Counsel does in other proceedings,
7 we may wish to present a public exhibit of those
8 materials, and I just wanted to essentially note that
9 now so that the parties would be expecting that. We
10 will be taking a look at that in more detail, what kinds
11 of materials have been coming in, so that we can put
12 that exhibit together and let people have a look at it
13 before it comes in.

14 JUDGE MOSS: Yeah, I'm glad you mentioned
15 that. It did come to my attention that some of this
16 material had been received at the Commission, and the
17 Bench is being insulated from receipt of that material
18 under the abundancy of caution considering the ex parte
19 rule, and so if you wanted to bring that into the
20 record, you know the appropriate means by which to do
21 that, so that will be fine.

22 Are there any other housekeeping or other
23 related matters that we need to take up?

24 Well -- oh, there appears to be something
25 coming from the back.

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1 Oh, we do need to get those exhibits in too.

2 MR. BERMAN: Your Honor, one thing is that I
3 would like to have put into the record a new report that
4 was put out by the staff of the Federal Energy
5 Regulatory Commission that relates to their analysis
6 conducted concerning the Northwest power markets and how
7 they operated in November and December 2000. That
8 analysis was issued February 1st, 2001. I would offer
9 that just to put into the record as further evidence
10 concerning what was going on in the power markets over
11 the past several months. I would suggest that as a
12 document that need not be sponsored by any particular
13 witness. It's not something that was prepared by Puget
14 Sound Energy and instead represents the views of the
15 FERC staff.

16 JUDGE MOSS: All right. Is that something
17 other parties have copies of already, or why don't we
18 distribute that and see if it may be something that can
19 be admitted without objection, and we will see about
20 that. I will mark it as 1571 for identification.

21 MS. DAVISON: Your Honor, could we reserve,
22 it's a fairly lengthy report.

23 JUDGE MOSS: Sure.

24 MS. DAVISON: And I'm wondering if we could
25 reserve the issue of whether it should be admitted or

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1 not until we resume the hearing on Thursday.

2 JUDGE MOSS: Sure, I think we can do that.

3 MS. DAVISON: And if we could hand out our
4 exhibits and have those marked as well.

5 JUDGE MOSS: Yeah, let's mark the Schoenbeck
6 exhibits, and we will also reserve on those. I think
7 we've got several exhibit matters held in reservation at
8 the moment.

9 MS. DAVISON: There's three exhibits.

10 JUDGE MOSS: All right, so there's three
11 exhibits here. Okay, so the first exhibit is premarked,
12 well, actually, it doesn't have a premarked number on
13 it, but it's a single page exhibit; is that right?

14 MS. DAVISON: Yes.

15 JUDGE MOSS: And that we will mark as 625.
16 And then there is an exhibit of two pages which is a
17 table, and we will mark that as 626. And then the final
18 one is a three page exhibit, some charts, it's got Puget
19 Sound Energy at the top, and we will mark that as 627.

20 All right, do we have any other exhibits we
21 need to take up?

22 MR. BERMAN: Yes, Your Honor. We have
23 several additional exhibits that we were planning to put
24 into the record today, but given that we're not going
25 forward today, we feel it would be better to at least

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1 distribute them today so that people have an opportunity
2 to review them prior to the recommencement of
3 proceedings on Thursday.

4 First, we have a confidential exhibit that's
5 Exhibit 1704-C, it's actually revised 1704-C. This is
6 an attachment to the Don Gaines testimony, and this
7 exhibit had been a set of graphs showing interest
8 coverage ratios if the soft cap proposal was
9 implemented. And because of I guess I will call it a
10 typographical error or a mathematical error, one of the
11 numbers was reported wrong, and we have revised that in
12 this exhibit. And I think that rather than giving it a
13 new exhibit number, this could just replace Exhibit
14 1704-C that had been tendered previously, because there
15 has yet been no examination about the old version of
16 1704-C.

17 Also, we have a new exhibit which will also
18 be offered by Don Gaines, and I presume that this would
19 be labeled by you as Exhibit 1706.

20 JUDGE MOSS: Yes, that's the next number.

21 MR. BERMAN: And this exhibit is a set of
22 different materials that came out during the course of
23 the past week relating to Puget Sound Energy's financial
24 condition, reports by various bond rating agencies and
25 other financial analysts reviewing Puget Sound Energy's

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1 situation.

2 Additionally, I have two William Gaines
3 exhibits. The first is a revised water supply forecast.
4 This is the February early bird forecast, and this gives
5 a further update on the water supply situation in the
6 Northwest.

7 JUDGE MOSS: Did you want this to be a
8 separate exhibit?

9 MR. BERMAN: Yes, this would be supplementing
10 the materials that Mr. Gaines relied on in his prefiled
11 testimony, because it further updates the water
12 situation.

13 JUDGE MOSS: I believe that will be 1419. Is
14 that consistent with what you have, Mr. Berman?

15 MR. BERMAN: Yes.

16 JUDGE MOSS: All right, 1419 then for the
17 early bird February.

18 MR. BERMAN: And then additionally we have a
19 document that is another William Gaines exhibit which is
20 entitled alternative proposal, and this is the Company's
21 alternative proposal that is being offered to address
22 the issues that were raised in the Sixth Supplemental
23 Order as an alternative to the soft cap proposal. As
24 you understand, there are settlement discussions that
25 will be going on along the lines potentially of what's

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1 in this proposal, but we are offering that as an
2 alternative proposal for purposes of litigation as well,
3 and so this way everyone will have the proposal. I know
4 that parties -- we're not asking that any of these be
5 admitted just yet, but we're just circulating them so
6 people can see them.

7 JUDGE MOSS: Okay, and for the record, the
8 alternative proposal is marked as 1420.

9 MS. DAVISON: Your Honor, I oppose even
10 handing out this alternative proposal. This is
11 something that is being discussed in the context of
12 settlement, and it feels like I should bring out my
13 settlement proposal so that the Commission has the
14 benefit of seeing both proposals that are being
15 discussed in the context of settlement. Given the fact
16 that this is something that I believe is outside the
17 realm of Phase II and given the fact that it is the
18 subject of settlement, I don't think it's appropriate
19 for the Commission to have it at this time.

20 JUDGE MOSS: Do you think it impinges on your
21 rights in any way?

22 MS. DAVISON: Yes, I do. As I said, I think
23 that if you have one side's settlement proposal, that
24 would suggest that you would need to have all parties'
25 settlement proposals.

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1 MR. BERMAN: Your Honor, I would just offer
2 that our settlement discussions may go on and may
3 address issues that are inside this document or that are
4 outside this document. The document that we have handed
5 out is our litigation proposal. That is we understood
6 that in the Sixth Supplemental Order the Commission
7 concluded that it was appropriate to put in place a
8 price stability mechanism that would protect the
9 customers, yet would not damage the financial integrity
10 of the Company. And Mr. Gaines intends to testify that
11 this proposal, unlike other proposals that have been
12 recommended, could in fact address those dual goals.
13 And so that it's definitely a litigation proposal.
14 We're not revealing any settlement information. We're
15 not revealing settlement discussions. We're revealing
16 only what our litigation position is.

17 JUDGE MOSS: I guess I'm having a little
18 trouble seeing how it might compromise your rights in
19 any way.

20 CHAIRWOMAN SHOWALTER: Wait a minute, here's
21 the question I have. Since this is being distributed
22 for the benefit of the Complainants to get an early peek
23 at it, if the Complainants aren't objecting and won't
24 object to its admission on the grounds of they didn't
25 get it today or the next day, then we don't need to see

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1 this. In other words, if it will help settlement
2 discussions for us not to see it, the only people who
3 would object to it being offered two days from now as
4 opposed to today I think are the Complainants. So I
5 don't need to see this today if it would help settlement
6 purposes. I'm happy to see it in three days. That is
7 independent of whatever objections there may be to its
8 admission on other grounds.

9 MR. BERMAN: Your Honor, just one concern I
10 have about that is that if we do return to hearing, we
11 do intend to offer this, and we would prefer if you were
12 as educated as possible about this position so that you
13 could ask questions, as I'm sure you will. But if Your
14 Honor would prefer not reviewing it now, I don't think
15 that we're injured if you don't look at it.

16 JUDGE MOSS: I think the key here is that we
17 want to create the environment that best promotes what
18 you all are undertaking to do, and so what I was going
19 to suggest is I will simply take the copies that have
20 been handed up to the Bench, put them in an envelope,
21 and hold on to them. If it appears we're going back
22 into hearing, then I will open the envelope and
23 distribute them. And we treat a lot of things this way.
24 It's just a question of managing the flow of documents.

25 And would that be satisfactory if we simply

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1 kept them under seal as it were? Your concern was the
2 Bench seeing them.

3 MS. DAVISON: My concern is I have two
4 concerns with it. The first one, to address the issue
5 about the timing. We received a copy of this I can't
6 remember if it was Saturday or Sunday, but all of my
7 clients do have a copy of this, and we did discuss some
8 elements of it this morning. So we have it, and we're
9 not prejudiced in the sense of withholding it until
10 Thursday.

11 My concern is that it's just one side of the
12 negotiations, and so it feels like you would need to see
13 the other side.

14 JUDGE MOSS: We won't look at it.

15 MS. DAVISON: That's fine.

16 JUDGE MOSS: Unless we go back into hearing.

17 MS. DAVISON: And then if we go back into
18 hearing, I will raise an objection, because I do not
19 believe that an open access proposal has been developed
20 and there is any record in this proceeding to consider
21 an open access proposal in Phase II, and I will save
22 that until Thursday.

23 JUDGE MOSS: Sure, we can take our argument
24 up if we need to, and several more of these exhibits
25 promise to be matters of dispute based on what I have

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1 heard so far, so let's take that up in due course and
2 not spend our time on it today unnecessarily. I
3 wouldn't want to get you all back in an argumentative
4 mode here when you're trying to settle.

5 So are there any other papers to be handed
6 up?

7 All right, I will go forthwith to my office
8 for the magic envelope to take care of that problem.

9 Anything else we need to do on the record
10 today?

11 Well, then again, we commend the parties for
12 their efforts and hope they are successful, and I'm sure
13 you will all work very hard toward that end. I would
14 ask that you keep me posted, if you will. I will just
15 ask Mr. Cedarbaum or somebody can drop me an E-mail
16 informally. I don't need to know or want to know the
17 details, just the status, so that I can make appropriate
18 plans if we do end up coming back into a hearing session
19 on Thursday. And if we do that, we will start at 9:30
20 on Thursday, so until then.

21 Mr. Berman.

22 MR. BERMAN: Should we be expecting that
23 you're available all day on Thursday?

24 JUDGE MOSS: I will try to keep myself
25 available all through the week.

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1 CHAIRWOMAN SHOWALTER: He meant in the
2 hearing.

3 MR. BERMAN: My concern was just whether for
4 timing considerations just one issue is that we have
5 been bringing down a number of the senior officers of
6 our Company, who do have a company to run, it seems like
7 every day almost, and so we would like to just be sure
8 that there is going to be a sufficient block of time
9 that they can actually get on the stand and be done with
10 it if they have to come down here.

11 JUDGE MOSS: The plan would be to begin on
12 Thursday morning at 9:30 and continue, and we'll just
13 have to see the lay of the land in terms of how late in
14 the day we continue and what we need to do in terms of
15 Friday, but we will block out Thursday and Friday and
16 make that time available.

17 CHAIRWOMAN SHOWALTER: Probably should not
18 plan on Thursday evening.

19 JUDGE MOSS: In fact, that's a definite no,
20 isn't it?

21 CHAIRWOMAN SHOWALTER: Yes.

22 JUDGE MOSS: Yeah, Thursday, we will not be
23 going late on Thursday, we can guarantee that, so dinner
24 reservations can be made.

25 So then let's be off the record. Thank you

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1 very much.

2 (Hearing adjourned at 2:10 p.m.)

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