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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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RULEMAKING ADOPTION HEARING)

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Rulemaking to Review Rules) Docket UE-112133

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for Interconnection with)

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Electric Generators.)

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CHAIRMAN DAVID DANNER

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1:30 p.m. - 4:15 p.m.

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June 13, 2013

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Washington Utilities and Transportation

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Commission

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1300 South Evergreen Park Drive SW

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Room 206

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Olympia, Washington

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Mary M. Paradise, CSR 2469

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A P P E A R A N C E S

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COMMISSIONERS:

David Danner, Chairman

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Philip B. Jones, Commissioner

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Jeffrey Goltz, Commissioner

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1300 S. Evergreen Park Drive SW

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Also Present:

Ann E. Rendahl, Director Policy

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and Legislation, UTC

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Yochanan Z. Zakai, Policy

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Advisor, Policy and

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Legislation, UTC

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David Nightingale, CEM, Senior

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Regulatory Engineering

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Specialist, UTC

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Robert Cedarbaum, Attorney

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General's Office

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1 OLYMPIA, WASHINGTON; JUNE 13, 2013

2 1:30 p.m.

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5 P R O C E E D I N G

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7 CHAIRMAN DANNER: Okay. Good afternoon.

8 It is June 13th, 2013, and we are here today for an
9 adoption hearing on a rulemaking to consider
10 standards for interconnection with electric
11 generators in Washington Administrative Code
12 480-108, and this is Docket UE-112133.

13 I'm David Danner, chair of the
14 Commission. With me are Commissioners Philip Jones
15 and Jeffrey Goltz. So why don't we just get right
16 into it. Yochanan Zakai from Commission staff.

17 MR. ZAKAI: Good afternoon, Chairman and
18 Commissioners. My name is Yochanan Zakai, and I'm
19 a policy advisor with the Commission. We're here
20 today regarding the adoption of rules on
21 interconnection to the electric system. By way of
22 background, the Commission started this whole
23 discussion on distributed electric generation with
24 a study that was requested by the House Technology,
25 Energy & Communications Committee.

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1 This study was completed in October 2011,
2 and one of the recommendations in the study was
3 that we launch this rulemaking to consider
4 revisions to the interconnection rules. The
5 Commission initiated this rulemaking in December of
6 2011, and a work group was formed to recommend
7 changes to the rule.

8 I'd like to take a moment right now to
9 acknowledge and thank all of the hard work that
10 members of that work group put in creating a set of
11 model rules. These model rules were distributed in
12 July 2012, and we received comments on these model
13 rules, as well as three separate set of comments on
14 proposed rules that we distributed for feedback.

15 Based upon these comments, these model
16 rules and these drafts you have before you, a CR
17 102 version, as well as several minor modifications
18 which have been proposed to that, as indicated in
19 the strike-through in attachment A. Overall, the
20 goal of these rules is to simplify and streamline
21 the application process for interconnecting
22 distributed generation with the electrical system.

23 The way that the model rules do that and
24 the way that our rules incorporate the model rules
25 suggestions are to establish a three tier procedure

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1 for connecting to the electric system.
2 Applications fall into the first tier if their
3 inverter based system is under 25 kilowatts, and
4 that is the quickest form of approval available in
5 the rules.

6 Under the second tier, projects up to 500
7 kilowatts are eligible, and this form of approval is
8 available without costly or time-consuming system
9 impact studies. The third tier, for projects up to
10 5 megawatts, provides procedures for the timing and
11 cost allocation of system impact studies for large
12 systems, as well as for systems which are proposed
13 to connect to circuits, which have already achieved
14 their capacity for distributed generation.

15 All the stakeholders agree that the rules
16 before you today represent an improvement, a
17 simplification and a streamlining of the
18 Commission's procedures. I expect the stakeholders
19 here today will focus their comments on three
20 distinct issues. The first will be the use of a
21 disconnect switch on inverter-based systems. The
22 second is the rule's clarification of the
23 definition of interconnection customer, that an
24 interconnection customer may lease or purchase
25 power from a third-party owner of a net metered

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1 system.

2 And finally, I expect stakeholders here
3 today will comment on the Commission's jurisdiction
4 to regulate third-party owners as public service
5 companies. I'd like to point out that we have a
6 court reporter here with us today, so when we have
7 a discussion of the Commission's jurisdiction, we
8 will have a transcript that we're able to cite to.
9 Accordingly, I'd like to remind all the parties to
10 please state their name at the beginning of their
11 presentations, as well as to speak slowly and
12 explain all acronyms.

13 I hope I have modeled this. I ask each
14 company to provide the capacity of net-metered
15 systems connected to their electrical system right
16 now, and what the statutory -- what percentage of
17 the statutory cap that interconnection represents.

18 RCW 80.60 provides that this cap will
19 double on January 1st, 2014. I have been informed
20 that representatives from PacifiCorp are available
21 on the bridge line to provide a response to the
22 information that I've requested, as well as to
23 answer any questions that you may have. We also
24 have stakeholders who are signed up to make
25 comments as well. I'm available to answer any

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1 questions you may have. Thank you.

2 CHAIRMAN DANNER: All right. Are there
3 any questions for Mr. Zakai at this time?

4 COMMISSIONER GOLTZ: No.

5 COMMISSIONER JONES: No.

6 CHAIRMAN DANNER: Okay. Commissioners,
7 what is your preference on this? We've basically
8 divided -- people have had signed in with regard
9 three issues. First, the disconnect switch, the
10 clarification of the definition of interconnection
11 customer and how it applies to third-party
12 ownership, and then the third issue is the
13 jurisdictional question, does the Commission have
14 jurisdiction to regulate third-party owners.

15 We could break it down so we ask people to
16 come up and speak only to the disconnect switch
17 first, and then the other issues? Is that okay, or
18 would you rather have people come up and speak to
19 all three? It's okay either way?

20 COMMISSIONER GOLTZ: Either one is fine.

21 CHAIRMAN DANNER: I think my preference
22 would be, let's trifurcate this, so --

23 COMMISSIONER GOLTZ: Is that a word?

24 CHAIRMAN DANNER: Commissioner Goltz has a
25 dictionary. So I think I would like to take it, if

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1 folks don't mind, let's start just -- let's break
2 it down issue by issue. So we'll start with the
3 matter of the disconnect switch requirement, and
4 then if there are other issues besides the
5 disconnect switch and the third-party ownership and
6 the jurisdictional questions, we'll just sort of
7 save them until the end, and we'll have a wrap-up
8 on other issues that may arise.

9 So let's start. David Meyer from Avista,
10 do you want to go first and talk about the
11 disconnect switch requirements? Good afternoon.

12 MR. MEYER: Good afternoon.

13 Commissioners, Mr. Chairman, my name is David
14 Meyer, and I am a vice president and chief counsel
15 for regulatory affairs for Avista Corporation. And
16 as we work through this afternoon, we may need to
17 call on others that we've brought from Avista.

18 We have Linda Gervais here. She is
19 manager of regulatory policy. We have Patrick
20 Ehrbar, who is a manager of rates and tariffs;
21 Shawn Bonfield, a regulatory analyst, and John
22 Rothlin, who is a manager of Washington
23 governmental relations. So to the extent we get
24 into legislative versus commission issues, or we
25 get into technical cost shifting issues, we're

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1 happy to volunteer what we know and speak to your
2 concerns.

3 CHAIRMAN DANNER: Very good. Thank you
4 very much.

5 MR. MEYER: You bet. So you'll see me
6 three times today, and this is the first, and
7 you'll --

8 COMMISSIONER GOLTZ: Can we consider that
9 allocation?

10 MR. MEYER: Last offer. The first two
11 issues, I'll be very brief on, because there really
12 doesn't remain controversy with respect to Avista's
13 position on the first two issues. Although -- and
14 I do wish to express my appreciation for the
15 workmanlike job that the Commission and the parties
16 have done in this rulemaking process. It's been
17 quite a -- quite a process. As I've acquainted
18 myself with it more so in the last few weeks, I've
19 come to realize a lot of work, good work has been
20 done.

21 So with respect to the external disconnect
22 switch, after further discussions within the
23 company, we've determined that the Commission
24 should not require such a switch for the tier 1
25 customers. We believe we can -- and we understand,

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1 in the process, of course, that rule, as written,
2 provides for the Washington Department of Labor &
3 Industries to also assess the situation, and so
4 there is that -- that measure of reassurance or
5 comfort that they will step in, if need be.

6 We think we can manage our way through it
7 either by doing work at the transformer or by
8 pulling the meter, but we can make this work. And
9 enough said, I suppose, on that first issue. Thank
10 you.

11 CHAIRMAN DANNER: All right. Well, thank
12 you. Any questions for Mr. Meyer? Okay. Bob -- I
13 can't read your last name -- Guenther?

14 MR. GUENTHER: Guenther.

15 CHAIRMAN DANNER: Guenther.

16 MR. GUENTHER: And I'm going to defer to
17 Lou, all right? Lou Walters.

18 CHAIRMAN DANNER: Okay.

19 MR. GUENTHER: Thank you.

20 CHAIRMAN DANNER: Thank you. Mr. Walter?

21 MR. WALTER: Thank you.

22 CHAIRMAN DANNER: Mr. Walters, or is it --

23 MR. WALTER: No, it's Walter. German, not
24 French -- or English, I should say. I hope that
25 hasn't dissuaded or caused me any difficulty.

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1 Thank you, Commissioners. I appreciate the
2 opportunity to come down here and give testimony on
3 this. I represent the International Brotherhood of
4 Electrical Workers, Local Union 77. We represent
5 approximately 7,000 utility workers in the state of
6 Washington, Northern Idaho and Northwest Montana.

7 This is a very important issue to us, and
8 what we want to state is that, you know, in
9 electrical work, what we're seeing, that if we do
10 not have a disconnect switch, we're actually
11 allowing safety of the workers, or the people that
12 are determined to do the work, to be subordinate to
13 the technology.

14 And I know that the industry will come in
15 and talk about the ability of this, to isolate and
16 to read and to understand when the energy from the
17 utility is somehow interrupted, that this will
18 isolate the generation facility so that it will not
19 be what we call backfeed onto the system. Which
20 means they can provide -- if -- if the inverter
21 fails, it can provide electrical potential on the
22 system and while workers are working on it.

23 Avista is correct when they talk about one
24 thing, and that is that if it's a primary system,
25 we can isolate through the transformers, the

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1 cutouts, those kind of things, if we have to do
2 work. What we're interested in is on the secondary
3 surface between the transformer and the customer.
4 The Avista comment was that you can use the
5 disconnect as -- the meter is a disconnect.

6 Unfortunately, even though that does --
7 those practices are out there, the industry, the
8 meter manufacturers are not going to say that's
9 okay, because they're going to say their meters are
10 not made to be able to pick up or interrupt load.
11 And if they do fail, it can be quite catastrophic.

12 Again, in every situation we talk about
13 within the state of Washington where we have
14 workers who work on electrical systems or other
15 systems which have sources of energy which could
16 cause them injury or harm, there is a way to either
17 lock out, tag out, open disconnect, where we have
18 assurance that there is no way for that backfeed
19 situation to come in and cause injury or fatality
20 to one of our members or the utility's employees.

21 The other factor, when I'm taking a look,
22 is that we want to make sure that, you know, none
23 of this stops or alleviates the employers to meet
24 their general duty and responsibility under
25 OSHA/WISHA rules to provide a safe workplace from

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1 all known hazards. And everybody would admit the
2 possibility of backfeed is a known hazard. The
3 standard performance from Labor & Industries, as
4 far as I'm aware of, has been open disconnect in
5 some procedure or policy to be able to assure that
6 the energy has been disconnected, and no way can
7 provide a hazard to the people who need to work on
8 it is -- has always been the standard of an open
9 disconnect where you can take a look and visibly
10 see that the system is disconnected.

11 Inverters are usually -- you know,
12 depending on the particular installation, they're
13 -- they're inside the residence or the customer's
14 property, and that makes it very difficult. And in
15 any case, about all you're going to get is maybe a
16 light indicator, but you're not going to be able to
17 see if the system is actually physically
18 disconnected.

19 In looking at that, you know, there's two
20 things. It's a new technology. It relies on
21 microprocessing to be able to separate the
22 circuit. It's, again, something that we don't --
23 at least our performance standard has been that
24 does not satisfy our need to have a safe
25 workplace. So we would really urgently or ask

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1 indulgence on the part of the Commission that they
2 do include that -- that performance standard with
3 regard to disconnect.

4 The other thing is those disconnects, when
5 you take a look at putting a solar project on to
6 your house, you're taking a look at maybe a
7 significant amount of capital to be invested in
8 that, but yet, when you -- you know, the disconnect
9 switch is very inexpensive compared to that. It's
10 maybe a 3 or \$400 piece of hardware to apply to the
11 system. When we get into the larger ones, most of
12 these utilities already ask for that, 10 KW and
13 above or 5 KW and above in larger services, they
14 already provide those disconnects.

15 The potential is exactly -- the hazard is
16 the same regardless if you're talking about the
17 size, because you're talking about the exposure to
18 the hazard of electricity or voltage. I'd just be
19 repeating myself after this.

20 CHAIRMAN DANNER: And the court reporter
21 was able to get that all down? Great.

22 MR. WALTER: Thank you very much.

23 CHAIRMAN DANNER: Thank you. Are there
24 questions for Mr. Walter?

25 COMMISSIONER GOLTZ: No.

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1 CHAIRMAN DANNER: Okay. Actually, I did
2 have a question, Mr. Walter.

3 MR. WALTER: Yes.

4 CHAIRMAN DANNER: In California, they do
5 not -- have not required disconnect switches, and
6 that's been for some time. Have they been having
7 problems down there, that you're aware of, or how
8 do they deal with it?

9 MR. WALTER: I don't know, unless it's
10 anecdotal. But I'm going to say this about other
11 jurisdictions. I think at the time that we were in
12 the stakeholders workshop, I was told from the
13 industry, we've got about 160,000 of these
14 installations in the country throughout the United
15 States.

16 CHAIRMAN DANNER: Installations?

17 MR. WALTER: Installations of the
18 inverters, and so on. There's -- you know, there
19 is no ability to be able to -- at this point,
20 they're brand new. The issue is going to be -- I'm
21 sure the technology, you know, has some ability to
22 work. So we don't have any data, but what we're
23 saying is from the standard of exposure to the
24 hazard, and not that we hurt anybody yet, but the
25 exposure to the hazard, we say that we want the 100

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1 percent fail-safe, and that's the disconnect.

2 If you take a look at those instances, we
3 don't -- the other thing is there's no requirement
4 for the customer, when he installs these, to
5 maintain. There's no testing requirement that I'm
6 aware of. You know, so if you said -- and the box
7 sits there and it doesn't have to activate for five
8 or ten years, doesn't mean that it's going to be
9 like it was the day they took it out of the box --
10 you know, installed it and tested it at that
11 point.

12 So there's a lot of criteria on this that
13 is not in place or not going to be required, and I
14 don't think the industry is proposing that they
15 should have these testing standards out there and
16 maintenance standards. So we just say, we don't --
17 let the customer do what they want, give us the
18 disconnect, and we can go to work and repair
19 whatever we need to do.

20 CHAIRMAN DANNER: Thank you. Commissioner
21 Goltz.

22 COMMISSIONER GOLTZ: Yes. Thank you. So
23 regarding the Washington Department of Labor &
24 Industries, as I understand your testimony, this
25 could become a requirement -- there could be a

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1 requirement from L&I, either through a specific
2 requirement for an external disconnect switch or
3 through application of the general duty clause?

4 MR. WALTER: Yes. It would be the general
5 duty clause, which doesn't alleviate the employer
6 the responsibility for a safe workplace.

7 COMMISSIONER GOLTZ: Right. So my -- but
8 it also could be a specific thing? There could be
9 a specific requirement from L&I as well, correct?

10 MR. WALTER: Yes. What -- what they would
11 do in that -- and I don't want to speak for L&I.

12 COMMISSIONER GOLTZ: Right.

13 MR. WALTER: Okay. If -- if you're
14 looking at that, what they would say is there's
15 certain ways to -- the safe workplace is more of a
16 performance standard, and there's many ways that
17 you can achieve that. In these kind of cases, it's
18 usually a disconnect point, an open disconnect that
19 provides that. I can't speak for what L&I -- what
20 kind of ruling they would have on that.

21 COMMISSIONER GOLTZ: I guess what I'm
22 wondering is, has your organization been in contact
23 with L&I about this issue in this context?

24 MR. WALTER: I think everybody has, and
25 good luck with that, but that's fine.

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1 COMMISSIONER GOLTZ: Okay. And one more
2 question.

3 MR. WALTER: I know that's going to cost
4 me dearly.

5 COMMISSIONER GOLTZ: We do have a court
6 reporter here, you understand. We used to use a
7 tape recorder. But to implement the general duty
8 clause, is there a process at L&I, that you're
9 aware of, where you would go to L&I and say, hey,
10 look -- assuming we don't require an external
11 disconnect switch for the lower -- the first
12 tier --

13 MR. WALTER: No.

14 COMMISSIONER GOLTZ: -- is there a process
15 for which you would go to L&I and say, hey, wait a
16 second, these are unsafe, take some action?

17 MR. WALTER: What we would do is we would
18 demand from the employers that they make their duty
19 -- their general duty clause one -- see, here's one
20 of the problems. We know that we have these out
21 there. I go talk to servicemen, you know, the
22 utility workers. They have no idea where these
23 locations are. Some -- some -- I'm being told
24 that, yes, they have that.

25 The first thing is that, you know, if I'm

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1 an employee out there, I think the employer has the
2 responsibility to tell me where these are. And
3 then, you know, the second piece, whether there's a
4 disconnect or not a disconnect, they have to come
5 up with a policy and procedure that provides myself
6 with a safe workplace. And they have to train me
7 to that. You know, these are things are out there
8 already, and none of that, that I'm aware of, has
9 happened.

10 COMMISSIONER GOLTZ: Thank you.

11 MR. WALTER: And I don't know if that
12 answers your question or not. Thank you.

13 CHAIRMAN DANNER: All right. Any
14 questions? All right. Thank you, very much,
15 Mr. Walter. All right. Dave Warren from
16 Washington PUD Association.

17 MR. WARREN: Thank you, Mr. Chairman. I
18 am Dave Warren, director of energy services for the
19 Washington PUD Association. And for the record, I
20 must state I'm very reluctant to come to the podium
21 in front of you. I've resisted this for ten years,
22 and --

23 CHAIRMAN DANNER: Is that part of the UTC
24 doesn't regulate public power thing?

25 MR. WARREN: Something along those lines.

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1 COMMISSIONER GOLTZ: That's the only
2 reason we have the court reporter here today.

3 MR. WARREN: Well, I've fallen, and my
4 record is no longer pure. Thank you, Mr. Chairman
5 and members of the Commission. We -- I also appear
6 here today as one of the four co-chairs of the
7 interconnection standards work group. You're aware
8 of this, we -- we did this procedure five, six,
9 seven years ago. We submitted comments to you in
10 this docket to re-create what we did. I look
11 around the room and notice I'm only the only
12 co-chair here in attendance. So I might have
13 something to the other four or other three --

14 CHAIRMAN DANNER: Who were the other
15 co-chairs?

16 MR. WARREN: Pardon?

17 CHAIRMAN DANNER: Who were the other
18 co-chairs?

19 MR. WARREN: Richard Damiano, who is the
20 chief engineer from Inland Power & Light; Tom
21 DeBoer from Puget Sound Energy, and Jason Keyes,
22 from Interstate Renewable Energy Council.

23 CHAIRMAN DANNER: Thank you.

24 MR. WARRNE: And we wrestled with this
25 issue. As you know now, both public power and your

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1 rules require that disconnect switch. We
2 specifically formed a technical subcommittee to
3 look at this. We got all the utility engineers in
4 the room, and advocates, and -- and skeptics, and
5 they spent a lot of time on this issue. We really
6 looked hard.

7 As one of my managers said, when I brought
8 up to our membership, he said, remember, the reason
9 these are required in the first place is because
10 lives were lost before they were required. And
11 after a lot of deliberation, and hearing about the
12 California experience, we asked and looked for
13 studies on these to see if the data was out there
14 on the failure rates of these inverters. We were
15 not -- nobody was able to produce any.

16 We acknowledge, however, that this is a
17 coming technology, and it is being deployed, and
18 there are performance data out there on these, and
19 as we begin to collect them, we'll get a better
20 idea of it. And we also realize that we're going
21 to have to deal with these protective devices as we
22 electrify.

23 So the consensus -- not unanimous, but the
24 consensus was that we would recommend in the model
25 rule that the utility have the option to require

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1 this. And the reason for that is, as Mr. Walter
2 said, we have staff protection and safety. We also
3 have a lot of very smart engineers that are looking
4 at this. And as the utilities become more familiar
5 with the actual performance, as we see failure
6 rates, or not, of the inverters over the long term,
7 then we'll begin to get more comfortable with its
8 technology.

9 And as we do so, some utilities who have
10 more solar and have more of these on their system
11 may get more familiar more quickly and get to trust
12 these, and then -- and then agree. And they will
13 also know their customers better and know which
14 ones are going to inspect and test their inverters
15 on an annual basis, versus the ones, that as
16 Mr. Walter said, might ignore them for ten years
17 and then they're going to be expected to perform.

18 The other consideration we have is that
19 often, in these circumstances, these line crews are
20 out there in very extreme weather conditions, and I
21 can't imagine what it's like being out there
22 working around electricity, but we certainly
23 respect the people that do, and to add this
24 question and a hazard to them, we thought it was
25 just premature at this time to completely remove

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1 it.

2 So we thought it was a good first step
3 forward to go from requiring it in all
4 circumstances to utility option, as we get familiar
5 with the technology, as we start to see some
6 studies on failure rates and long term performance,
7 we could ease back more and more. And so that's
8 where the work group came down, and that's where we
9 came up with the utility option.

10 I know a lot of my members are reluctant
11 right now to adopt a rule, and as you know, we will
12 take your deliberations and your final product,
13 incorporate it into the model rule, and then send
14 it out to the public power governing boards. They
15 will probably be reluctant to release all
16 requirements for it, but I think they will want to
17 look at it case by case. So in the name of sort of
18 standardization, we would ask that you put the
19 utility option back in, but we realize that you're
20 going to -- going to --

21 CHAIRMAN DANNER: Put it in all three
22 tiers?

23 MR. WARREN: Well, no, put the utility
24 option in tier 1. Don't remove the requirement
25 entirely, but put it optional, so as we become

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1 familiar with these inverters and their
2 performance, we're going to pull back more and more
3 on the requirement to have the disconnect as we we
4 get to rely on these inverters and know they're
5 going to perform over the long term as well as over
6 the short term. And that's it. And know the
7 customers who are installing them as well.

8 So I can see gradually, the disconnect
9 will become rarer and rarer for tier 1, but we
10 didn't want to remove the requirement entirely
11 right now, or the option for the utility to require
12 it.

13 CHAIRMAN DANNER: Thank you. Are there
14 questions for Mr. Warren?

15 COMMISSIONER JONES: Yes. Yes, just a
16 couple. Dave, I find it a little hard to believe
17 that you couldn't find any studies with -- on this
18 issue of failure of inverters. You know, these are
19 UL 1741 certified systems, so UL or one of the
20 engineering bodies or IEEE, or certainly, some of
21 the utilities in California, I would think, would
22 have some sort of data on failure rates and how
23 deployment has been.

24 MR. WARREN: And we requested that the
25 proponents of removing the requirement on tier 1

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1 projects produce some of these studies. They
2 weren't able to, as I recall. Now, I may be
3 corrected, and there may have been some references
4 to studies, but our engineers, at least, were not
5 comfortable that there was a body of data yet, that
6 we would want to risk the safety of the line crews
7 that are out there. So -- but we acknowledge it's
8 coming and that those studies will -- will be out
9 there, will be produced, and this technology will
10 become more and more reliable.

11 COMMISSIONER JONES: And that at least for
12 tier 1, you do recognize the substantial advances
13 in technology that's been made in the last four,
14 six, eight years.

15 MR. WARREN: They have been made. They
16 are -- they are progressing along. We've also got
17 utilities -- among my members, for instance,
18 Klickitat PUD is almost at a half percent net
19 meter. They have a lot of these systems deployed.
20 I have other members with one, maybe two
21 net-metered facilities. So there is different
22 levels of comfort, as well as long term actual
23 performance data within their -- within their
24 utility.

25 So each utility, I think, becomes familiar

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1 with the technology and is able to rely on it, and
2 their -- the staff, the line crews as well, as they
3 learn to trust the technology as the performance
4 comes. I think we'll -- we'll ease into it. We
5 just didn't feel it was time yet to completely rely
6 and trust inverters yet, when our people's safety
7 is at stake.

8 COMMISSIONER JONES: Okay.

9 CHAIRMAN DANNER: Any other questions for
10 Mr. Warren?

11 COMMISSIONER GOLTZ: No.

12 CHAIRMAN DANNER: Okay. So that was the
13 first step on the slippery slope towards full UTC
14 regulation of the PUDs.

15 MR. WARRNE: Was that the form of a
16 question?

17 CHAIRMAN DANNER: It was a joke. It was a
18 joke.

19 COMMISSIONER JONES: I would like to hear
20 from those experiences of Klickitat County PUD, for
21 the record. No, that's a joke.

22 CHAIRMAN DANNER: All right. Moving on.
23 Tim Stearns from Commerce. Good afternoon.

24 MR. STEARNS: Commerce would like to be
25 regulated by the UTC, and I'm happy to say that.

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1 CHAIRMAN DANNER: I'll discuss it with
2 Mr. Bon later tomorrow.

3 MR. STEARNS: We're sending him to Paris
4 Friday. You would have to talk to him then.
5 Chairman Danner, Past Chair Goltz -- I don't
6 remember what your title is now, Mr. Jones.

7 COMMISSIONER JONES: President. Just call
8 me president.

9 MR. STEARNS: I've been running a project
10 for the last -- the past year called the Evergreen
11 State Solar Partnership, and it's one of 22
12 projects around the country trying to move towards
13 standardizing and streamlining four areas;
14 permitting, interconnection, planning, zoning,
15 signing and financing.

16 And part of the goal is to see if the
17 United States can accelerate deployment of solar in
18 this country, but also dramatically reduce the
19 costs, about three-quarters is the goal. And we've
20 seen evidence from Germany and others that by
21 standardizing the streamlining, it's possible. But
22 we all recognize we're a different democracy than
23 Germany, Spain, Japan, that is much more kind of
24 top down, and these 22 projects, I think, represent
25 trying to do it from the grassroots up.

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1 And I will say that DOE listened to that.
2 So what's the question here? Commerce isn't going
3 to tell you to require a disconnect switch or not,
4 but I'd more ask a question of how do we develop
5 good policy in this safety area? We all agree our
6 linemen, line people ought to be safe, and I know
7 when they're out in terrible weather, we want them
8 to be safe.

9 But the real question is, what's the best
10 way in time to intervene? Is it a policy? Is it
11 at training? Is it at rules that require labeling,
12 mapping, equipment? Is it that emergency procedure
13 level? And I have to tell you that, you know,
14 Commerce -- I've been dealing with electric cars,
15 bio fuels, I must admit that the largest group of
16 complaints I've ever dealt with are generators.

17 Any time there's that power outage, a
18 bunch of nitwits go out and buy a generator, and
19 they put them in their garage, they hook them up
20 with jumper cables, they do crazy things. So I
21 guess I would try to put out or ask the question to
22 the Commission, as we go through this -- I mean, I
23 don't have any problem or any question about
24 whether we all ought to wear a belt, suspenders,
25 coveralls and be in the dark so that we don't have

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1 any excess exposure, but to suggest that no --
2 there have been no studies of this or no other
3 states -- California has done an extensive list of
4 what inverters and their performance levels.

5 You know, we mention that in the
6 proceeding, and I -- I must admit, I did not
7 provide the internet links. I must admit that,
8 also, when we talked with California utilities to
9 ask them about their experience, they said it was
10 really not that big a deal, that they had worked it
11 through with their -- with their crews. And
12 recognize, all these inverters are UL approved.

13 So one of the questions I guess I'd like
14 to submit with -- with the Commission to think
15 about is, where in the supply chain or value chain
16 are we smartest to intervene? And as much as I
17 understand the utility option notion, it continues
18 to create a fragmented marketplace. So over time,
19 I think it's an issue, you know, we're going to be
20 back on talking about distributed generation, I'm
21 hoping, about every three years, about every time
22 we deal with building codes, and the technology is
23 going to change.

24 But one of the questions I would ask you
25 about, in regards to this issue, is the dialogue we

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1 had was really too anecdotal. There was no data
2 gathered of historical experience in Washington,
3 and if we're going to have the conversation again
4 in three years, let's have some requirements for
5 gathering data so that we can make decisions that
6 are informed.

7 Thank you, and good luck, and I guess I
8 would finally just praise that I do think the rules
9 are a good step forward. Do they go as far -- far
10 enough, fast enough? Probably not, but I think the
11 dialogue we had was quite valuable. But I think it
12 was also a little bit loose, and I will tell you
13 that last summer, getting installers to participate
14 did not happen.

15 It's the peak of their season. You know,
16 the sales tax was coming to expire, so it really
17 wasn't as representative of a body as I would like
18 to have that dialogue. So just think of that as
19 food for thought as we set up informal work groups
20 in the future. Thank you.

21 CHAIRMAN DANNER: Thank you. So
22 Mr. Stearns, are you asking for reporting
23 requirements to be included in the rules?

24 MR. STEARNS: We urge two -- two things in
25 our previous comments. One was setting up some

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1 type of reporting or data structure. I must admit
2 that with our budget and the agency, we didn't
3 volunteer to be that repository. You know, we
4 would like to see the Commission think about
5 setting up a common structure and have utilities
6 provide it, and then we could certainly play a role
7 in aggregating and analyzing it at the end.

8 And I will say that even what we do under
9 the production incentive system right now provides
10 us a lot of data. How much -- how many -- how many
11 things were -- how many systems were installed,
12 generally by county or utility, but to protect
13 private -- privacy, we mostly do that on
14 aggregation, but we don't get down to the specific
15 widget.

16 And I will also say, one of the other odd
17 things is if we've had inverter problems, I will
18 say the largest inverter problems we continue to
19 have have been communication ones, where these are
20 supposed to be able to provide you information over
21 another system, part of which you regulate and part
22 of which you don't. So part of it is I just -- you
23 know, we do need quality control across the board.

24 And let me just say that linemen are --
25 line people are important. I don't know what our

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1 right term is, but line people, but we need safety
2 and quality across the whole value chain. I mean,
3 I don't really want to have a shut-off to protect
4 one group of people and then have people install
5 junk in their houses that creates other problems.
6 So we just need to figure out how to have that
7 quality and safety across the whole value chain.

8 CHAIRMAN DANNER: All right. Thank you.

9 MR. STEARNS: Thank you.

10 CHAIRMAN DANNER: Are there questions for
11 Mr. Stearns?

12 COMMISSIONER JONES: No.

13 CHAIRMAN DANNER: All right. Thank you
14 very much. So that is the comments on incorrect.
15 Oh, PacifiCorp is on the bridge line. Is there
16 anything that you would like to add to this
17 discussion?

18 MS. WINKE: Yes. Hi, this is Mary Winke
19 for PacifiCorp. We don't have anything specific to
20 add with respect to the disconnect switch. We have
21 been pleased with our --

22 (Interruption by the court reporter.)

23 CHAIRMAN DANNER: Let me be the go-between
24 here. Can you pick it up after "we have been
25 pleased"?

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1 MS. WINKE: I'm sorry, can you repeat
2 that?

3 CHAIRMAN DANNER: Yes, the court reporter
4 asked if you could -- if you could resume after you
5 said "we have been pleased."

6 MS. WINKE: We have been pleased with
7 working with staff on developing these rules, and
8 we are comfortable with how they are developed and
9 how they are being proposed, and so we don't have
10 any specific comments at this time on the
11 disconnect switch issue.

12 CHAIRMAN DANNER: All right. Thank you
13 very much. Before we leave this issue, I would
14 like to give an opportunity for folks to respond to
15 other -- other comments they have heard. So
16 Mr. Meyer, is there anything you want to respond?

17 MR. MEYER: Nothing further.

18 CHAIRMAN DANNER: Mr. Walter?

19 MR. WALTER: Yes, I do have one comment.
20 Lou Walter, IBEW Local 77. I do agree that when
21 we've participated in the stakeholder, it was -- it
22 was a good -- it was a good opportunity, and we
23 talked about these issues. A lot of things -- we
24 don't have skin in the game, obviously, but this
25 disconnect, we do. One of the things that brought

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1 up, you know, that we talked about was that -- two
2 things.

3 When the customer puts the inverter in,
4 and I'm a worker working for the utility, and the
5 inverter fails and I'm harmed at some point, does
6 that create a break in the covenant with regards to
7 third-party suits? Does that -- is the person who
8 has the converter that failed and caused the injury
9 to the utility worker then subject to potential
10 litigation by the worker?

11 And if you look at the cost ratio and what
12 it can prevent, I've just got to insist that I
13 think the disconnect, if you talk to a customer and
14 you're selling the customer on a 25,000, \$30,000
15 installation, that when they see a 3 or \$400
16 disconnect can alleviate of that lot of that
17 exposure, I think that's a good investment.

18 Again, Dave talked about from the PUDs,
19 they're looking at the optional system. We're just
20 saying we want to make sure we have a safe
21 workplace for the people that I represent. And I
22 do agree with Commerce, that you can take a look at
23 the total aspect of the industry, you will -- I
24 mean, whether communications and the -- the thing
25 that I know the Commission should be familiar with

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1 is another technology, the automated meter reader.

2 Okay. And we have a tremendous amount of
3 failures, of actual physical failure of those
4 meters that some of the utilities that I represent,
5 and also, their failure to be able to even
6 communicate or to be properly interrogated.
7 Technology is a wonderful thing, but at some point
8 in time, you need to have some sort of physical
9 disconnect so we do not expose that energy source.

10 Thank you for the opportunity to get up
11 here and talk to you again.

12 CHAIRMAN DANNER: Any questions for
13 Mr. Walter? All right. All right. Is there
14 anyone else who wants to speak on this subject?
15 All right. Then we are going to move on to the
16 next question, should the Commission clarify the
17 definition of interconnection customer -- should
18 the Commission clarify that the definition of
19 interconnection customer does not include a third-
20 party owner of a net-metered system.

21 So once again, Mr. Meyer for Avista.
22 Welcome back.

23 MR. MEYER: Glad to be back for round
24 two. Thank you. My comments here, as well, will
25 be brief, but before I answer that question, let me

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1 furnish the information that Yochi had asked for
2 and the Commission had asked for, in terms of the
3 number of net-metered interconnections we have on
4 our system. And these were -- thank you, Linda,
5 for supplying this. This is not just lawyer math
6 at work here.

7 System-wide, Washington and Idaho, we have
8 196, 80 percent of which, approximately, are
9 solar. The balance consists of wind, or some
10 combination of solar and wind. In the state of
11 Washington, of that 196, we have 159
12 installations. Of the 159 installations, tier 1
13 installations are 113.

14 Let me translate all of this into the cap
15 and the megawatts. The current statutory cap,
16 until the changes come January '14, is .25 percent
17 of our peak demand in 1996. That is 3.8 megawatts
18 for Avista. The installed capacity, based on the
19 number of installations I gave you, is .786
20 megawatts, meaning that we have used approximately
21 21 percent of the cap. Understand, the cap is
22 going to double come January 1 of '14. So
23 hopefully, that gives you some perspective on this.

24 CHAIRMAN DANNER: Thank you.

25 MR. MEYER: Now, to answer your -- your

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1 question, should the -- should the Commission
2 address ownership of net-metered systems in this
3 docket? Yes, it -- it should. And I want to
4 reiterate at the outset, Avista does not oppose
5 third-party ownership of facilities.

6 Now, we do, of course -- the hope is that
7 as we promote this technology, there's a level
8 playing field, and that at some point, the
9 utilities themselves, in some fashion, may be able
10 to participate on an even footing, but we do not
11 oppose third-party ownership.

12 And to -- to remove confusion, I agree
13 with the comments expressed in the -- the matrix
14 that the rulemaking -- this rulemaking is the
15 appropriate place to address third-party ownership,
16 essentially, because there are no other net
17 metering rules in which to do it.

18 We're comfortable that the added
19 definition of third-party owner, as well as the
20 definition proposed in the rules of interconnection
21 customer, will get the job done. So with that, we
22 are in agreement with the proposed rules.

23 COMMISSIONER JONES: Mr. Meyer.

24 CHAIRMAN DANNER: Thank you, Mr. Meyer.

25 Okay. Mr. Jones.

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1 COMMISSIONER JONES: I think the second
2 question was the definition of interconnection
3 customer and third-party owner in the definitional
4 section.

5 MR. MEYER: Yes.

6 COMMISSIONER JONES: So are you -- are you
7 comfortable with both those definitions?

8 MR. MEYER: We are.

9 COMMISSIONER JONES: And under third-party
10 owner, there is a prohibition, as I read it, on
11 retail wheeling, is there not?

12 MR. MEYER: Yes, it -- words to the effect
13 of "shall not resell."

14 COMMISSIONER JONES: And I would assume
15 that you would support that?

16 MR. MEYER: We would, most certainly.

17 COMMISSIONER JONES: Yes. And on
18 interconnection customer, there is some red-lined
19 version from the previous version, but I think the
20 last sentence says, a net-metered interconnection
21 customer may lease a generating facility, that's
22 new, from or purchase power from a third-party
23 owner of an on-site generating facility. So that
24 would encompass both a lease arrangement or a PPA
25 arrangement.

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1 MR. MEYER: And we understand that to be
2 the case, and we are comfortable with that. I will
3 address that distinction, to the extent it exists,
4 when we talk about the regulatory authority of this
5 Commission.

6 COMMISSIONER JONES: Okay. Thank you.

7 CHAIRMAN DANNER: Thank you. Any
8 questions?

9 COMMISSIONER GOLTZ: No.

10 CHAIRMAN DANNER: All right. Thank you
11 very much. I am again challenged here. Thad
12 Culley from the Interstate Renewable Energy
13 Council. Good afternoon.

14 MR. CULLEY: Good afternoon, Mr. Chairman
15 and commissioners. My name is Thad Culley. I
16 apologize for my bad handwriting. It runs in my
17 family.

18 CHAIRMAN DANNER: Actually, it's
19 relatively good.

20 MR. CULLEY: Thank you. I'm here on
21 behalf of Interstate Renewable Energy Council, and
22 at Jason Keyes' request, who said I might be able
23 to pass for him if I got a haircut and acted
24 charming.

25 IREC supports the clarification of

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1 interconnection customer and would urge the
2 Commission to take this opportunity to connect the
3 dots with the net metering statute and the order.
4 IREC participates with the Vote Solar Initiative,
5 the Network For New Energy Choices in publishing
6 each year a grade of net metering and
7 interconnection standards for all 50 states.

8 Now, currently, there's a point added for
9 states that allow third-party ownership, or as we
10 stated, are presumed to allow. Washington, with
11 its current net metering language, gets that point
12 for the word user of a net metering system. So
13 IREC suggests this is an opportunity to connect the
14 dots and to clarify within the -- the definition of
15 interconnection customer, that the reference to RCW
16 80.60.010 to clarify that user also explicitly
17 includes third-party owned systems. So that --
18 that is IREC's only -- only request on this point.

19 CHAIRMAN DANNER: Okay. Are there
20 questions for Mr. Culley?

21 COMMISSIONER JONES: Which -- which part
22 of the rule are you referring to? Which
23 definition?

24 MR. CULLEY: All right. I seem to have
25 pulled the wrong -- here we are. So -- so this

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1 would be interconnection customer definition.

2 COMMISSIONER JONES: Yes.

3 MR. CULLEY: Subpart B.

4 COMMISSIONER JONES: Okay.

5 MR. CULLEY: And instead of changing any
6 language in the rule itself, we would just ask to
7 have a clarifying -- maybe a conclusion of law that
8 what is referred to in 80.60.010 is consistent with
9 the definition here.

10 COMMISSIONER JONES: I see. Okay. Okay.

11 Thank you.

12 MR. CULLEY: Okay. Thank you.

13 CHAIRMAN DANNER: Okay. So let me ask
14 you, when you're talking about a point -- my wife
15 is a community college teacher, so when she talks
16 about points and grades, they're often different.
17 Is a point a grade, or does a point move us from a
18 D to a D plus? I mean, what is a point?

19 MR. CULLEY: The latter is the case. It
20 -- it can play a part in moving the state from a C
21 to a B, which of course, there's -- there's grief
22 to be had if -- if we're on the wrong side of that
23 and we've made the wrong call. So we're happy to
24 report there's a plus one for Washington.

25 CHAIRMAN DANNER: Thank you very much.

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1 MR. CULLEY: Thank you.

2 CHAIRMAN DANNER: Okay. Michael O'Brien
3 from RNP.

4 MR. O'BRIEN: Good afternoon, Chairman,
5 Commissioners. My name is Michael O'Brien, and I
6 work for Renewable Northwest Project. I hope you
7 can understand my accent. We support the proposed
8 inclusion of the rules of the various definitions
9 of third-party ownership. We feel that they
10 complement the existing statutes to say the net
11 metering customer is the user rather than the owner
12 of a facility. And all parties that I have heard
13 agree on it, that the net metering relationship is
14 between the utility and the customer generator, not
15 necessarily a third-party owner who either leases
16 the system or provides a PPA.

17 Now, as you have heard, Washington
18 currently has a cap of .25 percent of the 1996 peak
19 demand available for that metering. After hearing
20 from the utilities, they're only reaching a
21 fraction of that so far. Now, this is already
22 quite a low cap compared to other states, if
23 they're not managing to reach. And as net metering
24 expands, many of the issues that you'll hear
25 throughout the state, we'll call on and will get a

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1 grip on them and discuss them.

2 In mature solar markets, where there is
3 the clarification that the third-party does not
4 fall under the jurisdiction of the state's
5 Commission, in terms of setting rates, et cetera,
6 third-party ownership counts for 80 to 90 percent
7 of the solar installations, and that idea we
8 figured. So you can see how we're talking about 10
9 percent taking up the opportunity now, and so you
10 can see that there's a big gap.

11 And the data suggests that those people
12 who are taking up third-party ownerships, in terms
13 of PPAs, power purchase agreements, or leases,
14 they're from medium to lower income households. So
15 this is part of making solar and the benefits of
16 net metering more accessible to the -- to everyone
17 in the community.

18 I'd like to point out that I'm very glad
19 that the Washington PUD Association is here,
20 because they have a solar system on top of their
21 headquarters here in Olympia, and they have a net
22 metering relationship that they enjoy with PSC.

23 Not everyone is fortunate enough to have
24 their solar panels donated to them by the industry
25 for -- so my colleagues will speak to community

0044

1 organizations and not-for-profits, and these people
2 on lower incomes who also want to be able to take
3 advantage of this.

4 Therefore, as I said, we agree with the
5 definitions, the proposed definitions and the
6 rulemaking, but we'd like to add that as you define
7 what a third -- an interconnection customer is, and
8 bring in the definition of third-party, that a
9 further clarification is needed over whether they
10 are a public service company and fall underneath
11 your jurisdiction.

12 As without that clarification, which my
13 legal colleagues will speak to, these companies
14 can't enter this state in any great level, as the
15 risk that regulation by you -- regulating a private
16 company is too great for them.

17 Thank you. And I'm available to answer
18 any questions on the third-party ownership model or
19 any concerns on consumer protection that other
20 people might bring up, or existing contracts that
21 have been offered in other states.

22 CHAIRMAN DANNER: I appreciate that.
23 Questions?

24 COMMISSIONER GOLTZ: Yes. Thank you. So
25 of the third-party owners that you say constitute

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1 80 to 90 percent of the distributed generation
2 market --

3 MR. O'BRIEN: In mature solar markets.

4 COMMISSIONER GOLTZ: So I read that to be
5 California.

6 MR. O'BRIEN: It's not just California.
7 It's also Massachusetts, Colorado and Arizona.

8 COMMISSIONER GOLTZ: And what's the
9 business model in those states, those 80 to 90
10 percent? How many are the -- is the equipment
11 leased by the third-party or to the property owner,
12 and how many is, in effect, purchased?

13 MR. O'BRIEN: I don't know the exact
14 figures, but my intuition would tell me that it's
15 mostly power purchase agreements. And that's
16 because with a power purchase agreement, it means
17 that if you were a customer generator, say, you
18 might be a not-for-profit, you might be retired and
19 have a low income, or you might just be on a low
20 income, therefore, you can't monetize sufficiently
21 the federal investment tax credit of 30 percent.

22 So the third-party company comes in, and
23 comes along, takes the money, and that means -- I
24 mean, takes the tax credit -- sorry. And that
25 means it can offer a lower PPA, which means the

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1 market opens up to more people. But in terms of a
2 lease or PPA or buying outright, ultimately, we're
3 all talking about net metering systems, and it
4 depends on the individual circumstances.

5 COMMISSIONER GOLTZ: So as I understand
6 what you're saying, that the choice -- actually,
7 some that are just leasing equipment and some that
8 enter into a PPA?

9 MR. O'BRIEN: Some offer both.

10 COMMISSIONER GOLTZ: Right. Or both.

11 MR. O'BRIEN: One or the other.

12 COMMISSIONER GOLTZ: One or the other.

13 Okay. Is it possible -- but are you saying that
14 the choice there is driven, in part, by federal tax
15 policy?

16 MR. O'BRIEN: And your own personal
17 financial circumstances. You may want to take
18 advantage of the investment tax credit yourself.
19 So with a PPA, you -- the -- the third-party owner
20 often provides a guarantee of the amount of
21 generation you'll get over a year, which gives them
22 an incentive to give you good equipment, and you
23 pay for the kilowatt hours that are produced. Some
24 people like -- might enjoy that model. Other
25 people might prefer to lease the equipment, and

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1 therefore, pay a fixed amount every month.

2 COMMISSIONER GOLTZ: So this is another
3 question, if you know this. I know that in some
4 lease arrangements just for property, sometimes the
5 least amount, in a general commercial lease, can be
6 a flat amount per month, or it can be a variable
7 amount, depending on how profitable the business
8 is.

9 So by that analogy, are there arrangements
10 whereby the homeowner or the business owner leases
11 the property, but the lease rate is determined, in
12 some part, by the amount of electricity it
13 produces?

14 MR. O'BRIEN: That may be the case with
15 some companies, but for the companies that I can
16 speak to, I -- they -- it's a fixed, as far as I'm
17 aware, lease for the length of the contract, that
18 being 15 or 20 years, depending on what they want
19 to enter into.

20 COMMISSIONER GOLTZ: Okay. Thank you

21 CHAIRMAN DANNER: Any other questions?

22 COMMISSIONER JONES: No questions.

23 MR. O'BRIEN: Thank you, Commissioners.

24 CHAIRMAN DANNER: Mr. O'Brien, thank you
25 very much. Lynne Dial from the Northwest Energy

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1 Coalition. Good afternoon.

2 MS. DIAL: Good afternoon. My name is
3 Lynne Dial, and I'm a policy associate with the
4 Northwest Energy Coalition. I'm going to try to
5 keep my comments brief, because I think it's going
6 to be pretty similar to a bunch of other
7 stakeholders that you're going to hear today.

8 We support the clarification of an
9 interconnection customer definition to include
10 third-party ownership. We do think it drives and
11 democratizes a lot of solar ownership -- sorry,
12 solar use in mature markets. And we think that
13 there's precedent for this in the intent section of
14 the net metering statute, which states that it is
15 in the public interest to encourage private
16 investment in renewable energy sources.

17 And we would just like to provide more
18 choices for customers, since it does seem to
19 provide access for more people. And in particular,
20 community solar groups are having a really
21 difficult time right now with the lack of clarity,
22 because they're technically third-party owners
23 themselves, and if they can't sell the power back
24 to their host on government sites, they can't take
25 advantage of these tax credits, and it makes things

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1 more difficult for them.

2 We would just like to see the rules work
3 better, and this is a very limited and good first
4 step. It doesn't address production incentives,
5 which most of these don't qualify for anyway. The
6 net metering caps are still in place, but we feel
7 that this could really drive investment and growth
8 in our state, and we would like to see it.

9 CHAIRMAN DANNER: Questions for Ms. Dial?

10 All right. Thank you very much. And Linda Irvine
11 from Northwest SEED.

12 MS. IRVINE: Good afternoon, Chairman and
13 Commissioners. My name is Linda Irvine. I am a
14 project manager at Northwest Sustainable Energy for
15 Economic Development, and I have a sense of deja
16 vu, because I think it was two years ago, I spoke
17 at a UTC hearing about the very issue of third-
18 party ownership as it relates to community solar in
19 the state of Washington.

20 And in preface, I'd just like to say that
21 Northwest SEED supports the rules as they are
22 proposed, especially the clarification on the
23 definition of an interconnection customer, because
24 this affirms what's already in the law, that an
25 interconnection customer is a user of a net metered

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1 system.

2 And I'd like to give you just one example
3 of how this clarification could help further
4 community solar in Washington. Northwest SEED
5 provides technical assistance to groups that like
6 -- would like to develop community solar, and the
7 legislature acknowledged the value -- or endorsed a
8 form of third-party ownership when it created the
9 Community Solar Incentive that allows customers to
10 band together, fund installations on local
11 government property and collect a production
12 incentive.

13 So Northwest SEED was involved with a
14 group on Whidbey Island. 36 people pooled their
15 money, went to the bank to say, can we get a loan
16 to build a bigger system on the Port of
17 Coupeville. And the bank said, well, what's your
18 income? They said, we've got this great production
19 incentive. It's really great. And they were,
20 like, yes, but that's not guaranteed. You're
21 relying on Olympia to make sure you have that every
22 year. So it wasn't bankable.

23 So we couldn't get a loan. And then we
24 said, hey, but we could sell the power to the -- to
25 the port, and then we would have a bankable stream

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1 of income. We were told that if we sold power to
2 the host, we could be subject to regulation by the
3 UTC as a utility, as a public service company. And
4 so not wanting to take that risk, we ended up
5 building exactly what we could afford with our own
6 funds.

7 But that's just one example of how a
8 clarification would help community solar groups to
9 find a bankable source of income, and thereby,
10 increase their financing and build larger
11 projects. Of course, we would ask that you take
12 the further step of clarifying that these third-
13 party owners are not subject to UTC regulation as a
14 utility.

15 And I would like to point out that under
16 current law, community solar is the only third-
17 party model in Washington that is eligible for
18 state incentives. So other residential third-party
19 systems would not be eligible for state incentives,
20 so a clarification would not drastically change the
21 market right away. It would, instead, move us
22 incrementally toward a regulatory environment where
23 customers have more options for financing
24 distributed generation. So thank you.

25 CHAIRMAN DANNER: All right. Are there

0052

1 questions for Ms. Irvine?

2 COMMISSIONER JONES: No.

3 CHAIRMAN DANNER: All right. Thank you
4 very much. Okay. Mr. Warren. I took to heart
5 Mr. O'Brien's comments and just know that as soon
6 as we start regulating you, we will ask you to put
7 a solar panel up.

8 MR. WARREN: Thank you, Mr. Chairman. I
9 appreciate that. For the record --

10 CHAIRMAN DANNER: And again, for the
11 record, I'm joking.

12 MR. WARREN: And for the record, I know
13 he's joking. And for the record, at the time we
14 installed that 34 kilowatt system on top of our
15 headquarters, it was the third largest solar
16 project in the state, and with that, we are very
17 proud. And yes, it was donated, but no, it did not
18 buy any influence.

19 So I'm not sure where to start here, but I
20 guess I'll start with the Chair's question about
21 the original definition. And when I first read the
22 interpretation that the definition of customer
23 generator in the net metering statute refers to the
24 user of the net-metered system, and I think the
25 Commission's approach was to parse that to say that

0053

1 doesn't say it's the owner.

2 And then I got to thinking back -- and for
3 a little bit of a caveat, in the '90s, I was
4 executive director of another state's commission,
5 and was an advocate of the net metering rule at the
6 time we adopted net metering by rule. So I'm
7 somewhat familiar with the development of the whole
8 concept, and I supported it at the time, and our
9 membership is not opposed to it.

10 But when you look at the statute, which
11 was passed in 1998, the term that is being defined
12 is customer, hyphen, generator. Now, maybe people
13 with more of an English background than this
14 engineer could parse that, but to me, a hyphenated
15 noun is a single entity. And by re-interpreting
16 user, rather than looking at the -- the purpose of
17 the term being defined, customer-generator, it
18 doesn't say customer or generator. It says
19 customer-generator. They're one and the same.

20 The net metering was always proposed as a
21 little more than a hobby, that an owner of a
22 premises putting a facility on their premises to
23 offset their load. It was never about a business
24 model for somebody to come in as a third-party
25 owner to sell electricity to that person. So I --

0054

1 I would -- I guess I would ask maybe some
2 consideration about the term customer-generator.
3 That's a single entity. It's not two.

4 And by re-interpreting user to say it
5 doesn't have to be the owner, you have now -- there
6 are now two entities on the other side of the
7 meter. The customer, which is both the
8 interconnection customer and the utility customer,
9 and the generator, who is now a separate entity,
10 and who sells power to the utility customer.

11 And to me, that's where the whole issue
12 revolves around in this interpretation, and by --
13 by interpreting that definition the way the
14 proposed rules do, that opens up the whole third-
15 party issue. If you go back to the customer-
16 generator as a single entity that owns their
17 facility, they are the generator and the utility
18 customer, then this whole issue really should not
19 be dealt with, independent of whether or not -- and
20 we don't think this issue should be dealt with in
21 these rules, because these are technical rules.

22 And we had this discussion, again, in the
23 work group, and we decided, because third-party
24 ownership was a policy issue, not a technical
25 issue, that that was not appropriate to deal with

0055

1 them in these rules. But fast forward, if -- if
2 the Commission does intend to go forward with this
3 definition -- and I'm not sure which is question
4 two and three, and which I'm supposed to address on
5 the trifurcated time I come up here -- did I get
6 that right, Mr. Chairman?

7 CHAIRMAN DANNER: You'll be up again.

8 MR. WARREN: Okay. But we now, because if
9 the Commission goes forward with this and opens the
10 door to third-party ownership in these
11 interconnection rules, and then further, I think,
12 the rules propose that the utility police the
13 resale of electricity, or prohibit the resale,
14 well, I would ask you to consider, these third-
15 party owners will be serving our customers as
16 well. You don't have the jurisdiction over us to
17 force us to police -- or prohibit the resale of
18 electricity.

19 So in essence, you're turning 55 percent
20 of the customers and 60 percent of the load in the
21 state out there for third-party owners to not be
22 policed on resale. I would ask you to consider
23 that as well. We now have -- in addition, this is
24 a new business model, that we'll be using subsidies
25 from our ratepayers, because it's only in net

0056

1 metering that this is addressed, not in all
2 instances in these rules.

3 Net metering takes subsidies from our
4 other customers. So this is now a new business
5 model under a net metering statute that I don't
6 believe was ever written to include this, but that
7 now uses subsidies from our customers to make their
8 business plan whole. And the rest of this tax
9 issue, I know somebody earlier dealt with, it's not
10 only investment tax credit, which a homeowner can
11 take advantage of, it's also accelerated
12 depreciation, which a homeowner cannot take
13 advantage of.

14 So those are sort of the boundaries around
15 this. We do think, if you are going to move
16 forward, as we put in our written comments, and I
17 would ask you to look back at those, that you
18 consider the other consumer protection issues that
19 you normally regulate as an electric company,
20 because it's not just rates.

21 And I think -- but if you do that in this
22 rule, we would ask that you expand it to include
23 those issues as well, without just opening the
24 door. We would prefer, if you're going to go
25 forward in this, to open a net metering rule. I

0057

1 notice your staff comments in the matrix, so this
2 is the right rulemaking. Because we don't have a
3 net metering rule, we would suggest this is complex
4 enough and multi-layered enough that we would
5 request you open a net metering rule and deal with
6 it there, and let's have a debate about what that
7 definition means and what level of regulation is
8 appropriate.

9 We're not necessarily saying they need to
10 be regulated as a full electric utility, but the
11 way I read the statute -- and remember, it's an
12 engineer, not an attorney reading it, but with 20
13 plus years in the legislative and regulatory
14 arenas, it seems to me we're trying to fit a square
15 peg in a round hole by -- by only interpreting user
16 as not meaning owner, and yet, not looking at
17 customer-generator. And that opens the door.

18 So I don't know if I got to question two
19 that you wanted answered, and I have a chance at
20 question three, or if I should keep going, or -- or
21 where do you want to parse this, Mr. Chairman?

22 CHAIRMAN DANNER: Well, I'll leave it to
23 you. The question about the Commission's
24 jurisdiction to regulate third-party owners as
25 public service companies is going to be the next

0058

1 one, so I'll leave that one subject.

2 MR. WARREN: So did I cover, then, this
3 question that I think the definition in whether or
4 not it should be dealt with in this rule?

5 CHAIRMAN DANNER: I think -- I think so.
6 Any other questions?

7 COMMISSIONER GOLTZ: Well, so you say,
8 let's have a debate and different rulemaking. What
9 facts, what arguments haven't we heard yet?

10 MR. WARREN: Well, kind of --

11 COMMISSIONER GOLTZ: It seems to me that
12 the -- this issue has been debated all along in
13 this rulemaking. It's covered within the scope of
14 this, in -- in general terms. So -- so what
15 besides delay would punting this to a new
16 rulemaking accomplish, when my reading of state
17 law, in general terms, is the legislature has
18 always wanted agencies to clarify things.

19 MR. WARREN: Right.

20 COMMISSIONER GOLTZ: And clarify things
21 somewhat promptly. So I kind of am reluctant to
22 say we'll do that later, when it's obvious -- it
23 seems to me, one way or the other, there is a need
24 for some sort of interpretation of this statute.

25 MR. WARREN: Well, in going back to -- you

0059

1 said this has been fully deliberated in this
2 proceeding. The work group decided not to deal
3 with it. We did not deliberate it. Public power
4 did not deliberate it, the public power members of
5 that, and its impacts on public power.

6 You know, Klickitat, who co-signed our
7 comments on this, who has the highest percentage
8 penetration in the metered facilities in the state,
9 I think, and they're almost at a half percent
10 already. They're very open to it. They have very
11 strong concerns about third-party ownership and
12 what it -- what it will do.

13 So I don't think, from the public power
14 perspective and its impact on our customers and the
15 subsidies that would come from our customers in
16 that business model have really been fully
17 deliberated. And I think it does now have an
18 impact. Your actions have an impact on our
19 customers, and so I -- I -- I mean, we -- we're
20 going to have a discussion on it, my energy
21 committee, in two weeks about these impacts.

22 So I don't agree that it's been fully
23 vetted, and I think if you're going to go forward
24 with this -- and as you know, there was a bill to
25 remove third-party ownership from UTC

0060

1 jurisdiction. So I do believe you have
2 jurisdiction, and I think it -- it's -- it's very
3 incomplete the way it's treated here.

4 And if you're going to go forward in this
5 rulemaking, which I acknowledge you may, then we
6 would request -- and maybe that's question three,
7 and we can deal with it, that you deal with the
8 rest of the issues that are out there in the
9 regulatory structure that's around this.

10 COMMISSIONER GOLTZ: So your argument is
11 basically that the term customer-generator
12 implicitly means owner of equipment?

13 MR. WARRNE: My argument was that
14 customer-generator, as a definition, is a -- is a
15 single term and refers to a single entity. By --
16 by -- by looking at the word user, by saying that
17 the word user does not say owner, the customer-
18 generator, it's a hyphenated term. It's one entity.
19 It's not two.

20 The customer is the utility customer, and
21 in development of this law and the rules in the
22 '90s around these issues, and as you know, it was
23 in front of a lot of commissions and legislatures,
24 it was always looked at as the utility customer was
25 going to install rooftop solar -- that was

0061

1 typically what it was -- on their rooftop.

2 This new business model of third-party
3 owners is only coming in -- I guess another
4 question I would ask of all the 22 states, or
5 however many that are referred to that have this,
6 how many of those took legislative changes to open
7 the door. That hasn't been discussed, and we think
8 -- we think you have the ability, if not the
9 obligation to regulate them at this point.

10 And in our comments, we put the rates,
11 terms, conditions of service, facilities,
12 properties, those sorts of things. These are very
13 complex. They're putting, in essence, a lien on a
14 homeowner's house, and we think those sorts of
15 issues, and consumer protection issues, need to be
16 dealt with, if you're going to do it in this rule.

17 COMMISSIONER GOLTZ: But if I -- if I
18 wanted to put solar on my rooftop and be a net
19 metering customer, you're saying it's just fine if
20 I go out and I buy the equipment and install it?

21 MR. WARRNE: I believe that was the intent
22 of the original --

23 COMMISSIONER GOLTZ: What happens if I --
24 what happens if I say, oh, wow, this is expensive,
25 I can't afford to buy it, I'll lease it. Does that

0062

1 -- does that make any difference?

2 MR. WARREN: Well, I noticed in the
3 definition of electric company in 80.01 or 80.04,
4 it says, anybody that sells electricity or their
5 lessee, so I'm thinking -- and I have that in my
6 comments, and I thought that was question three,
7 but that -- that actually, in a lease arrangement
8 under my strict reading of the statute -- and I
9 have deliberately stayed away from interpreting the
10 statutes, but in the strict reading of that, does
11 that bring homeowner in as an electric company,
12 because they're the lessee of a seller of
13 electricity.

14 COMMISSIONER GOLTZ: My question, though,
15 is, is that if you're saying that -- that the
16 customer-generator has to own the equipment, are
17 you, therefore, saying that the homeowner, like me
18 or you, wants to go out and lease the equipment,
19 that you can't -- then you aren't eligible for net
20 metering?

21 MR. WARREN: It seems to me that the value
22 of the transaction to the lessor, in that case, is
23 the sale of electricity. The generation and
24 production and sale of electricity when cash
25 changes hands, whether it's on a per kilowatt hour

0063

1 basis or on leased equipment. It's the generation
2 of electricity which is covered in your statute.

3 COMMISSIONER GOLTZ: So if the -- instead
4 of the people that donated and gave you the solar
5 panels just said here, why don't you just use them,
6 and we'll take them back after 20 years, you
7 wouldn't be eligible for net metering then?

8 MR. WARREN: No cash changed hands. The
9 donation -- we took ownership immediately.

10 COMMISSIONER GOLTZ: I know that. I'm
11 just --

12 MR. WARREN: We may have even given them a
13 dollar. I don't know.

14 COMMISSIOER GOLTZ: It's a new
15 hypothetical. I'm just saying, what if the solar
16 manufacturer said, instead of giving you the
17 property outright, they said, we'll give you --
18 almost as good, we'll give it to you for 20 years,
19 we'll loan it to you for 20 years at no charge,
20 we're giving it to you for 20 years, at the end of
21 that, we'll take it back. So you would not own
22 those solar panels. You're saying that you're not
23 eligible for net metering?

24 MR. WARREN: Under your scenerio, I
25 believe we would own the -- the homeowner would own

0064

1 the solar panels, right, because you gave it to
2 them?

3 COMMISSIONER GOLTZ: No, I'm saying all
4 the -- Washington PUD Association, whoever gave you
5 those solar panels, instead of giving them to you,
6 they said, we'll loan them to you. They're still
7 ours.

8 MR. WARREN: Right.

9 COMMISSIONER GOLTZ: The solar
10 manufacturers say they're still ours, but we're
11 going to loan them to you, or maybe charge you
12 rent, for a penny a year for 20 years, and now, you
13 aren't the owner.

14 MR. WARREN: Well, in that case -- again,
15 interpreting your statute, but also, the underlying
16 premise of that metering is once -- if cash didn't
17 change hands, that triggers a different regulatory
18 scheme than if it does. Similar to net metering.
19 If -- and this was -- I think it went to FERC in a
20 couple of court cases, and it's a declaratory order
21 -- I've got it in here. I can give you the
22 reference, but net metering was given to the states
23 -- FERC tested this, but was given to the states to
24 regulate, because they are a seller of electricity,
25 but no cash changed hands at the end of the billing

0065

1 cycle.

2 If cash changes hands, that generator is a
3 seller of electricity, and they sold to the
4 utility, and therefore, they're a reseller of
5 electricity, subject to FERC jurisdiction. As long
6 as cash did not change hands, then the states had
7 jurisdiction. And in your scenario, I believe,
8 under your statutes, it says generation for hire.
9 So once -- once --

10 COMMISSIONER GOLTZ: I'm not talking about
11 jurisdiction. I'm just saying, are you -- can you
12 be a customer-generator if you don't -- if you
13 lease the panels, or they're loaned to you, or --
14 as opposed to just buying them? So you don't --
15 PUD Association, assume you don't own those
16 panels. They're owned by someone else, but you --
17 they just loaned them to you. Okay?

18 MR. WARREN: Okay.

19 COMMISSIONER GOLTZ: Or you leased them
20 for 20 years.

21 MR. WARREN: Okay.

22 COMMISSIONER GOLTZ: Can be a customer-
23 generator, even though you aren't the owner of the
24 plant.

25 MR. WARREN: I think, if I understand your

0066

1 scenario correctly, it would revolve around a for
2 hire in the definition of electric company. If
3 there was no cash changed hands, it would not be
4 for hire. If it was just loaned and then given
5 back. If it was cash changed hands, then it would
6 be for hire, and I -- I think that's where it would
7 revolve around.

8 COMMISSIONER GOLTZ: On the jurisdictional
9 question?

10 MR. WARREN: Right. And then that
11 triggers the electric company, because they were
12 generating for our own generating plants for hire.

13 COMMISSIONER GOLTZ: I may take this up
14 later. Go ahead. I'm done.

15 CHAIRMAN DANNER: Mr. Jones, do you have
16 any questions?

17 COMMISSIONER JONES: No.

18 CHAIRMAN DANNER: Nor do I.

19 MR. WARREN: Thank you, Mr. Chairman.
20 It's tough debating with a well seasoned attorney.

21 CHAIRMAN DANNER: Okay. Mr. Stearns.

22 MR. STEARNS: Hello again. I'm Tim
23 Stearns, senior policy specialist with Washington
24 Department of Commerce. Your job, why are we
25 giving you these august positions is to

0067

1 periodically make us all unhappy, and that's a good
2 thing. I think markets work better when they're
3 structured and when you -- when presidential
4 candidate Mitt Romney stated that regulation was
5 good for business, it was necessary, I think he --
6 he made me smile.

7 And being a bureaucrat, that normally
8 we're pilloried for being in the way, I think
9 creating clarity is one of the best things that we
10 can do. Now, I will say I'm not a lawyer or an
11 engineer, and certainly not a strict
12 constructionist. What I think the Commission can
13 do is help make -- bring maturity to this
14 situation.

15 Now, Congress unintentionally kind of
16 forced a business model change on you, to an
17 interesting degree, that -- I mean, never before
18 have I really seen other than with cars, but in
19 this the market, it introduced the notion of
20 depreciation. Most of the installers that we have
21 don't own them, they don't get to accelerate
22 depreciation. Only businesses. So that began to
23 attract investors, and I think the worst thing you
24 could do is to punt, because ambiguity does create
25 problems.

0068

1 You didn't create this game board, but I
2 think you can bring some maturity to it. Because
3 it's at least four-sided, and frankly, I think it's
4 foolish for us to forum shop, whether we hope that
5 FERC will rescue us or that we can start another
6 rulemaking, or the legislature. I would call on
7 the Commission to provide that clarity, and if the
8 legislature wants to clarify it again, they can.

9 But I think you're the technology
10 specialists and -- you know, my -- my fear is that
11 we'll -- we have a cart with all our -- there's a
12 driver, milk that's going to spoil, a map, and the
13 longer we wait, we don't solve anything, we just
14 create ambiguity. So this is about -- and I -- I
15 would be the first to go and say that one of the
16 most challenging issues of this whole distributed
17 generation question, all the way up to 20
18 megawatts, is you're being asked to rethink the
19 business model based on technological capabilities.

20 I mean, we recognize the discomfort of the
21 utility being the generator, transmitter,
22 distributor up to the meter and, you know, how do
23 we cross information and power. I think the
24 biggest thing that the Commission can do is to
25 provide clarity.

0069

1 The last thing I will say is I wouldn't
2 have, a year ago, said I thought this was a great
3 idea, because I don't like Wall Street coming in to
4 solve problems. I don't think they solve
5 problems. I think they pick my pocket. But in
6 this case, we have seen that it has so
7 substantially changed the market, and I think, to a
8 degree, for the good.

9 I mean, I'm not going to pledge and say
10 that I think SolarCity or SunRun are angels. What
11 I do think they do is they provide an aggregation
12 that we've never had that creates enough systems
13 that can be maintained, that can bring costs down,
14 and can provide aggregation that utilities can plan
15 around.

16 Because I think the worst thing that
17 you're going to have is -- I would hate to be a
18 utility that would have every one of my customers
19 put on some different generator and not be able to
20 plan around it. So then I'm expected to be able to
21 back it up or to provide service, because I can't
22 rely on these, and I certainly can't keep track of
23 all of them. So I would urge you to continue with
24 clarity.

25 And one thing that I would say that came

0070

1 out of our discussions last summer was, as I
2 pondered the agony of Pacific Power, I would like
3 to ask them, well, which jurisdiction did it
4 right? And they kind of said, well, that's the
5 last thing we're going to say, but I just wish they
6 would do it all right the same. And so I would
7 urge you, and since we have President Jones here,
8 we could do it all right together. Thank you.

9 CHAIRMAN DANNER: All right. Wait,
10 Mr. Stearns. Are there any questions for
11 Mr. Stearns?

12 MR. STEARNS: I ought to run before any
13 questions.

14 CHAIRMAN DANNER: Mr. Jones.

15 COMMISSIONER JONES: Just on the
16 definition, Mr. Stearns, of interconnection
17 customer and third-party owner. So you agree with
18 these definitions?

19 MR. STEARNS: I think it's a good step
20 forward.

21 COMMISSIONER JONES: Good step forward.
22 Okay.

23 MR. STEARNS: Are they perfect? We aren't
24 here to tell you what's perfect. I don't want the
25 perfect to get in the way of the good or better.

0071

1 And frankly, I have a new administration that I
2 work for, and they haven't totally thought through
3 all these issues as well. So it would be premature
4 for me to tell you what's perfect.

5 COMMISSIONER JONES: I'm not asking for
6 the perfect. I'm just saying, for this step, is it
7 adequate? I mean, interconnection customer.

8 MR. STEARNS: No, I -- I would say that --
9 you know, I'd quote what philosopher Garrison
10 Keillor, and I would say it's above average. It's
11 what we all want. No, it's a good step forward.
12 Thank you.

13 COMMISSIONER JONES: Any comment on third-
14 party owners? Do you think this is -- since we're
15 talking kind of at a higher level now, at this
16 wonderful policy level, if we do allow these rules
17 to go forward and third-party companies come into
18 the state, do you think -- I think it was the
19 person from RNP said that, probably, the
20 predominant business model would be a power
21 purchase agreement and not a lease arrangement.
22 Would that be your view, that PPA's would kind of
23 be the lead?

24 MR. STEARNS: I think they would -- I
25 think that would probably be the most common, but

0072

1 -- you know, my -- my view of public policy, or the
2 reason I like public policy, and when I watch
3 those -- you know, the foolish lemmings that went
4 first, I always like to look and see what they did
5 and see, how do we catch the benefits and avoid the
6 problems?

7 I can assure you that some of our in-state
8 manufacturers and in-state installers are
9 uncomfortable with the large third-party players.
10 So with the Evergreen State solar partnership, we
11 convened a session to talk about third-party, as
12 much as anything, to go and say, okay, that's a
13 model we can adopt that others have done, or we can
14 build our own better model.

15 And that's part of what I want to provoke,
16 is let's do what keeps the benefits. One of the
17 things that makes me the most uncomfortable about
18 what I've seen in Arizona, Colorado, California is
19 full disclosure. It's, I don't know what -- if the
20 customer really knows what the choices are.

21 I will say Snohomish PUD, which is one of
22 our best solar programs, they offer both a low
23 interest loan and a rebate. Most of their
24 customers, when given the choice, say, gee, I'll
25 take the rebate, because that lowers the cost of

0073

1 the overall system, and I'll find the other
2 financing. But if you're low income or you're, you
3 know, less income -- and I don't know that
4 everybody is low income, but I think, you know,
5 people that have kids that are saving for college
6 or health care or other stuff, they're just not in
7 a position to do that.

8 So -- so I think that's where the -- the
9 work is. My hope is that over the next year, the
10 administration will put forward a better production
11 incentive program or other way to fix that side of
12 the equation, but I think you guys would do us all
13 a great service by clarifying this one. So make us
14 all mad and do that periodically, about every three
15 years. Thank you.

16 CHAIRMAN DANNER: Thank you. No
17 questions? All right. We're going to go onto the
18 third question now. Excuse me. PacifiCorp, or
19 anyone else on the bridge line have comments on the
20 question of third-party ownership?

21 MR. ANDERSON: No specific comments on
22 third-party ownership. We do agree that there
23 should be some thought put into oversight. We're
24 not sure that that's necessarily your
25 responsibility, but that it's -- you know, some

0074

1 consumer protection oversight, just to make sure
2 that there is no shady dealings, if this becomes a
3 large model in Washington, it would be appropriate,
4 but we don't have an opinion on where that's
5 properly housed.

6 CHAIRMAN DANNER: Okay. Could you
7 identify yourself, please?

8 MR. ANDERSON: I'm sorry, Eric Anderson
9 with PacifiCorp.

10 MR. ZAKAI: And their capacity, for the
11 record?

12 CHAIRMAN DANNER: Mr. Anderson, what is
13 your position with PacifiCorp?

14 MR. ANDERSON: I'm the customer generation
15 manager.

16 COMMISSIONER GOLTZ: This is Commissioner
17 Goltz, and I think that question we got from our
18 staff is sort of -- we got it from Avista already,
19 but we wanted to hear the -- how you're going in
20 approaching your cap. What is your current cap,
21 and where are you now in approaching that cap?

22 MR. ANDERSON: Yes, this is Eric Anderson
23 again. And in Washington, we currently have 110
24 systems installed for a total capacity of 785
25 kilowatts. Under the cap, our cap would be 2.275

0075

1 megawatts, so we're at approximately 35 percent of
2 our cap currently.

3 COMMISSIONER GOLTZ: Of the 110 systems,
4 do you have a breakdown as to -- are they all
5 solar, or whether they're tier 1? Can you tell the
6 tier 1s on that?

7 MR. ANDERSON: They are 99 percent solar.
8 We have one wind, small wind system.

9 COMMISSIONER GOLTZ: Okay. I think that's
10 all we need. Thank you.

11 CHAIRMAN DANNER: All right. Is there
12 anyone else on the bridge line who wants to talk
13 about third-party ownership? Okay. Then we're
14 going to move on to the third of our subjects,
15 then. Does the Commission have jurisdiction to
16 regulate third-party owners as public service
17 companies? Mr. Meyer. Mr. Meyer, you're up
18 again. You're not going to read that whole pile,
19 are you?

20 MR. MEYER: I was hoping if I stall long
21 enough, you would exercise your jurisdiction to
22 call a break.

23 CHAIRMAN DANNER: Actually, that was a
24 discussion we had. We were supposed to break at
25 3:00 -- we were supposed to be done at 3:00

0076

1 o'clock, but --

2 COMMISSIONER GOLTZ: A break will be fine.

3 CHAIRMAN DANNER: Do you want to take a
4 break?

5 COMMISSIONER GOLTZ: Yes, five minutes.

6 CHAIRMAN DANNER: Five minutes. And then
7 you can decide what in that pile you want to talk
8 about.

9 (A short recess was then taken.)

10 CHAIRMAN DANNER: All right. We are
11 back. It is 10 after 3:00. We were supposed to
12 end at 3:00, and we are now getting to the third
13 and final issue. We will go as long as we need to,
14 but I ask that you try and get out of here by 4:00
15 o'clock, if we can. So Mr. Meyer.

16 MR. MEYER: Thank you, and thank you for
17 the break.

18 CHAIRMAN DANNER: Thank you.

19 MR. MEYER: We are making progress here.
20 This is, from a lawyer's perspective, of course,
21 the more interesting question to debate or discuss,
22 and I'll save you the suspense. I'm going to give
23 you the short answer, and then I'm going to circle
24 back to the longer answer.

25 The short answer is that, in my view, in

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1 the view of Avista, this Commission does not have
2 the authority to regulate whether it's structured
3 as a lease or as a PPA. And I'll explain myself in
4 a minute.

5 I want to reiterate, though, at the
6 outset, as I did before, we are not opposed to
7 third-party development of solar. We agree with
8 the proposed rules. We're in favor of renewables,
9 but we are also stewards of our customers. And I
10 understand this rulemaking is not about cost
11 shifting or cross-subsidization, but that is going
12 to be an important element to consider so we send
13 the right, accurate and fair price signals to
14 customers who either lease or acquire through a
15 PPA.

16 And I would urge the Commission that when
17 it completes this step, and I think it needs to get
18 on this with step, that it, in some fashion through
19 some proceeding, address the -- the entire issue in
20 the basket of issues that surround cost shifting.
21 Because we don't want our customers to be
22 surprised, disappointed, upset, angry. We want
23 them to be informed, and they can make a rational
24 decision.

25 So the -- and just as a further

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1 digression, I noticed just the other day the
2 critical consumer issues form issued a set of broad
3 principles for distributed energy resources. They
4 did that a few days ago, on June 11th, and they
5 raised a whole host of issues for policymakers and
6 other stakeholders, everything from consumer
7 information to reliability, and these rules, in
8 part, do take a step forward in addressing
9 reliability, but they also surface the issue of
10 cost shifting. An important issue, and I know
11 you're aware of that, but I -- please don't lose
12 sight of that, and that is a particular concern for
13 Avista as it watches out for its customers.

14 The Commission only has -- I'll state the
15 obvious -- jurisdiction over third-party providers
16 if they are deemed a public service provider. And
17 under RCW 80.04.015, that is ultimately a question
18 of fact for this Commission to decide within the
19 framework of existing law. Now, if the legislature
20 chooses to add further clarification or to
21 definitively answer this, so be it, but your task
22 is under existing law, how do you interpret whether
23 an entity is a public service provider or not, and
24 that is a question of fact.

25 And for a variety of reasons, I do not

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1 believe the Commission has jurisdiction to regulate
2 these providers. And this answer would be easiest
3 to arrive at in a -- in a lease setting. It's a
4 somewhat closer call with respect to a PPA, but the
5 answer, in my estimation, is still the same. You
6 don't have authority to regulate.

7 As I said, we begin with the proposition
8 that the Commission regulates public service
9 companies, and that includes electrical companies,
10 by definition, and those, in turn, are defined as
11 entities that operate or maintain or own electrical
12 plant for hire. And for hire, has been construed
13 to mean dedicated to public use.

14 In a string of cases, I've reviewed with
15 interest the briefing that was done by IREC, I
16 believe it was September of 2011. I thought it was
17 particularly well reasoned, and IREC is -- I
18 believe it's International Renewable Energy
19 Council, is that right?

20 MR. ZAKAI: Interstate.

21 CHAIRMAN DANNER: Interstate.

22 MR. MEYER: Interstate. I broadened their
23 authority. Now, they're international. They're
24 just that good.

25 I have also gone through and reviewed

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1 cases, and the cases still seem to come back to the
2 same basic distinction. Through time, the basic
3 principle is enunciated; does the entity hold
4 itself out to serve the public or some portion of
5 it as a class, or is it only serving particular
6 individuals of its own choosing?

7 And here, when we're dealing with a third-
8 party provider, that provider has no obligation to
9 serve any portion of the public. It picks and
10 chooses if it will, when it will, how it will serve
11 the customer based on the particular circumstances
12 of the customer, what is the -- what type of
13 shading is involved, what's the orientation of the
14 house, is there structural support. There are so
15 many particular circumstances that go into the
16 equation before you have a willing seller of the
17 service, the provider, and a willing purchaser of
18 the host, before they come together contractually.

19 Ultimately, it is a two-party contractual
20 transaction that is negotiated. More
21 importantly -- more importantly, that customer --
22 this goes to the heart of regulation -- that
23 customer has other choices to receive its basic
24 service. It's already connected to the utility.
25 That utility will be there. It is providing an

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1 essential service that is and should be regulated.
2 We stand by to serve whenever and however much the
3 customer requires.

4 So there is adequate protection. There
5 are adequate safeguards to assure that the public
6 interest is still being protected, if we get the
7 pricing signals right, as part of your regulation
8 of the utility. Some analysis looks to whether or
9 not the provider intends to dedicate his property
10 to the public use. Does the provider hold itself
11 out to the world with his property meant for public
12 use?

13 Here, a third-party is not intending --
14 the provider is not intending to serve the entire
15 public or even a recognizable portion of it. It
16 simply will pick those customers that it can deal
17 with, that it transacts with. So it's a much more
18 limited set of customers that will be involved in
19 the transaction. There is not -- at the core of
20 this, there is not an overriding public interest to
21 even imply a public dedication. As I said, that
22 customer has other avenues for getting basic
23 service. We, the utilities, are there to serve
24 them. They are not in need of further protection.
25 That is the key distinction. The third-party

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1 distributed generator does not provide an essential
2 service for which there is no available
3 alternative.

4 So the -- the argument might be made,
5 well, should this, though, be deemed a common
6 carrier of sorts. And as you go through the -- the
7 case law on this, you know, whether it's Nob Hill
8 or State v. Olson, you still get back to the basic
9 discussion -- it's a question of fact -- is, are
10 they holding themselves out to provide an essential
11 service, not just to a particular customer, but to
12 a class of customers? That's not the situation
13 here.

14 So in the final analysis, what they're
15 getting is intermittent, as-available service.
16 That's what they're getting here, which is not
17 essential, not essential in this sense. The
18 utility is there to backstop. And that's where the
19 regulation -- the point of regulation should be.

20 So no, the Commission doesn't regulate,
21 shouldn't regulate, but it should very much
22 exercise its authority over getting the pricing
23 right on what that stand-by service is, and making
24 sure -- making sure that there are adequate
25 customer protections, the information flow is

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1 there, so the right decisions are made for the
2 right reasons. So thank you.

3 CHAIRMAN DANNER: All right. Thank you.
4 Could you discuss a little bit the -- you made a
5 distinction between the lease arrangement and the
6 PPA.

7 MR. MEYER: Yes.

8 CHAIRMAN DANNER: And you said one was a
9 closer call than the other. I'd like you -- could
10 you discuss it?

11 MR. MEYER: Sure. A lease -- I mean, that
12 should, I think, be a fairly straightforward
13 analysis. In a lease situation, the customer has
14 the -- has the facility, if you will, has the
15 generating unit. They're probably responsible for
16 maintaining it, for operating it. It's a piece of
17 equipment. That is -- that's the essence of the
18 deal, is they are leasing equipment. And the
19 provider of that equipment, the lessor, is out of
20 it.

21 When it turns into a PPA, the onus of
22 maintaining it and owning the equipment is on the
23 third-party provider. They, in turn, are then
24 selling a commodity, if you will, a kilowatt hour.
25 And once we talk in terms of selling kilowatt

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1 hours, and we think of electricity or therms for
2 gas, we all should pay closer attention. I mean,
3 this starts to sound, starts to smell a little bit
4 more like something that ought to be regulated, but
5 in the final analysis, it shouldn't, for the
6 reasons I've explained.

7 Lease is an easy question. PPA is the
8 closer question, but it's still not something you
9 should regulate.

10 CHAIRMAN DANNER: So it gets down to,
11 again, the obligation to serve and the fact that
12 there's a utility backstop?

13 MR. MEYER: Yes.

14 CHAIRMAN DANNER: Okay. Other questions?

15 COMMISSIONER GOLTZ: So is the -- one of
16 the consequences of them not being third-party
17 owners, not being subject to our jurisdiction, is
18 that the provision in the state Consumer Protection
19 Act that allow that -- exempts entities otherwise
20 covered by the Consumer Protection Act, exempts
21 them if they're regulated by the Commission.

22 So Avista Corporation, for example, Avista
23 Utilities is not subject --

24 MR. MEYER: Right.

25 COMMISSIONER GOLTZ: -- to the Consumer

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1 Protection Act, but is subject to our consumer
2 protection folks.

3 MR. MEYER: Sure.

4 COMMISSIONER GOLTZ: If you're not -- if
5 you're a third-party owner not subject to our
6 jurisdiction, you don't deal with our consumer
7 protection folks, but you deal with the Attorney
8 General's Office and the civil liability that goes
9 along with it, in case you engage in unfair trade
10 practices. So am I correct on that?

11 MR. MEYER: You are.

12 COMMISSIONER GOLTZ: And that may be a
13 stronger or lesser consumer protection issue,
14 depending, I guess, on how you view the Commission
15 and how you Attorney General's Office in that
16 regard.

17 MR. MEYER: Sure.

18 COMMISSIONER GOLTZ: Are there any other
19 differences here that if -- consequences of them --
20 if they were subject to our jurisdiction, they
21 would have to file a tariff, I presume?

22 MR. MEYER: Yes. And you would
23 essentially be -- they would submit to price
24 regulation. They would no longer --

25 COMMISSIONER GOLTZ: Even that could be

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1 flexible price regulation.

2 MR. MEYER: It could be, as it is on the
3 telecom side. But you would eliminate some of the
4 flexibility they would have to strike the kind of
5 deal that would make this -- this happen. I mean,
6 truly, if we are proponents of encouraging
7 renewable energy in this state, we ought to
8 encourage each avenue without putting too many
9 obstacles in the way, mindful of the need -- not so
10 fast, but mindful of the need to also protect --
11 you know, consumer protection information.

12 The question, I think you raise, is an
13 interesting one. Well, if you don't regulate, who
14 does? Who regulates their -- their practices? And
15 that may be the subject for further discussion at
16 the legislature. You do not want a hole in that
17 process.

18 COMMISSIONER GOLTZ: And in a lease
19 arrangement -- and I asked this earlier, a lease
20 arrangement between a third-party owner could be
21 for a fixed per month rate, or it could be
22 dependent upon how much is generated, couldn't it?
23 Couldn't you have a lease arrangement that's --
24 that's part monthly fee and part depending on the
25 output of the facility?

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1 MR. MEYER: Yes.

2 COMMISSIONER GOLTZ: In that case, under
3 your view, that would be more clearly not subject
4 to our jurisdiction.

5 MR. MEYER: Yes.

6 COMMISSIONER GOLTZ: Okay. That's all.

7 MR. MEYER: Okay.

8 CHAIRMAN DANNER: Okay. Mr. Jones?

9 COMMISSIONER JONES: Well, this is not so
10 much a question as a comment. But I read this
11 Keyes & Fox memo as well. It was actually to NRAL,
12 and I think we have one of the authors in the room
13 today, Mr. Kelley. It was an excellent piece, I
14 thought, but the conclusion that I came from these
15 various precedents and court tests is it takes us
16 all the way back to the 1910s, 20s and 30s.

17 MR. MEYER: It does.

18 COMMISSIONER JONES: And looking at towing
19 boat, logging companies, street car companies, and
20 takes us all the way back to the Munn test, which
21 is a grain elevator.

22 MR. MEYER: Yes.

23 COMMISSIONER JONES: So it's interesting
24 legal stuff and analysis --

25 MR. MEYER: Yes.

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1 COMMISSIONER JONES: -- but I just wonder
2 how relevant those cases are. I mean, they are
3 precedents, obviously, that our state Supreme Court
4 has put down, but how -- how should we kind of tee
5 up these issues in the future for this particular
6 innovative form of technology? Should we -- I -- I
7 guess what you're advocating is that we put some
8 language in the order to clarify this issue.

9 MR. MEYER: Yes.

10 COMMISSIONER JONES: And then maybe have
11 further process in the future to engage these legal
12 arguments that are over, you know, 80, 90, 100
13 years old.

14 MR. MEYER: Well, two comments. Yes, the
15 -- the -- the origins -- the cause law, there's a
16 string of cases that goes back to 1911, carries all
17 the way through every 20 years or so. There's
18 another reiteration of the same principle. I think
19 one of the more recent iterations of that was in
20 the Nob Hill case, which was a water case that was
21 in 1986, so we are getting closer to today. And
22 there was, you know, a more recent case, too, that
23 enunciated the same principle.

24 The bigger point being I think you're
25 making is that how will you declare yourself one

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1 way or the other on this jurisdictional question in
2 the context of this rulemaking? And clearly, you
3 don't write this into a rule, but I would suggest
4 that in the order itself that approves the rules,
5 in whatever form you approve them, speak to this
6 issue, and here's why. Because there has been
7 enough uncertainty around this, and until or unless
8 the legislature acts on this issue, I think it's
9 important for there to be some level of certainty
10 out there. I think you have first crack at it, and
11 we -- we need to move onto next steps in this
12 process.

13 COMMISSIONER JONES: And so a corollary of
14 what you're saying, Mr. Meyer, is if we get it
15 wrong or the legislature or the powers that be
16 think we get it wrong, then they could take another
17 crack at it and another shot at it in the next
18 legislature and modify or overturn our decision.

19 MR. MEYER: That follows, but my -- my
20 counsel to you, to the extent that I can or should
21 give you counsel, is to -- is to address this
22 issue, and that's let's -- let's move on.

23 COMMISSIONER JONES: Under the principle
24 of business certainty?

25 MR. MEYER: Yes.

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1 COMMISSIONER JONES: Okay.

2 CHAIRMAN DANNER: Any other questions?

3 Thank you very much.

4 MR. MEYER: Thank you.

5 CHAIRMAN DANNER: Okay. Mr. Culley, from
6 the intergalactic renewable energy --

7 MR. CULLEY: So long as it's only our
8 jurisdiction that's expanding that's -- I'm Thad
9 Culley with Interstate Renewable Energy Council. I
10 had to catch myself. I almost went there.

11 I think my comments are going to be
12 significantly shorter. I appreciate Mr. Meyer's
13 very thorough laying out of the case, and agree
14 with his conclusions on the law, and would only
15 take -- actually, I would not take issue with his
16 parsing in seeing that it's a separate issue, any
17 -- any potential cost shift is a separate issue,
18 than this kind of clean legal issue before the
19 Commission.

20 And addressing the stale -- I don't think
21 it's stale law, necessarily. It's a little
22 vintage. IREC has had the opportunity to engage in
23 this kind of analysis with stakeholders and
24 regulators in many other states, including Arizona,
25 Utah, Illinois, Iowa, for example, at least working

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1 in doing some of the background research. And
2 there's amazing commonalities between these
3 statutes, and each state has a little bit of a
4 different permutation.

5 And I think what makes Washington unique
6 among these other states is the focus on -- for the
7 definition of electrical company, the focus on
8 owning, operating or managing -- I'm going off the
9 top of my head here. I'll have to verify that is
10 it what it says. Owning, operating or managing any
11 electric plant for hire. And as distinguished,
12 some states where it is providing the commodity
13 itself to afford the public for compensation.

14 So the significance of that is that you
15 look to the facility itself. Is that facility
16 dedicated to public use? Is that facility serving
17 a sufficient amount of the public to raise the
18 public interest? Rather than, is it a commodity-
19 based analysis. I -- I think that understanding or
20 that take on kind of framing the issue addresses
21 the lease question, where whether it's a lease or
22 not would not be the determinative fact.

23 If it's a lease and a person does not use
24 that electric plant for generating electricity and
25 puts it in their garage and lets it collect dust,

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1 they still have kind of done the same transaction
2 with a third-party owner, but they haven't
3 triggered anything significant.

4 Let's see. And as Mr. Meyer discussed,
5 this Inland -- Inland Empire case, which for the
6 record, the citation is 199 Washington 527. And
7 again, my handwriting, I can't tell if that's a
8 1934 or '39. Indeed, 1939 -- clarified that for
9 hire is not a literal meaning that cash has changed
10 hands. Therefore, the statute is triggered, and
11 the entity that is engaged in the activity is
12 automatically electrical company. Indeed, Inland
13 Empire went on to say that there must first be a
14 public dedication or a dedication to a public use.

15 I would reach back, since we've already
16 covered much of this case law, and bring out a case
17 that we've -- we've found to be the basis for the
18 public dedication test that most states use, and
19 that is -- I'll give you the citation for you.
20 This is Thayer v. California Development Company.
21 Of course, it's a California Supreme Court case
22 from 1912. The citation is 164 California 117.

23 And in that case, the -- the standard
24 test -- and I'm sorry, I'm doing some shuffling
25 around here. I wanted to get this -- this on the

0093

1 record. The standard test that the case that was
2 mentioned before, Clark, brings out -- I think, as
3 a source, and this case, Thayer.

4 So the test to be applied is whether or
5 not the petitioner held himself out, expressly or
6 impliedly, engaged the business of supplying water
7 to the public as a class, not necessarily to all of
8 the public, but any limited portion of it. Such
9 portion, for example, has to be served by a system
10 as contradistinguished from holding himself out as
11 serving or ready to serve only particular
12 individuals, either as a matter of accommodation or
13 for other reasons peculiar and particular to them.

14 Now, turning to the Thayer California
15 Supreme Court case, which involved the use of, I
16 think, irrigation ditches, making the distinction
17 between a water utility and irrigation ditch, which
18 being an old case, this may have some relevance and
19 analogy to the current situation. So I'll read
20 from that case.

21 In the case of the use of water in
22 villages, towns and cities, the right to use
23 usually extends to every inhabitant within the
24 range of its distributing system, or who can get
25 access thereto. In the case of water for

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1 irrigation, the class is necessarily more select
2 and does not include the general public within the
3 area served. This is because it is not every
4 inhabitant that can make use of that water. Only
5 those occupying land can do so. And for this
6 reason, it is held that while there may be a public
7 use for the benefit of landowners, the use of water
8 for irrigation is not public unless the water
9 itself is available as a right upon equal terms to
10 all landowners for the class and within the area to
11 be benefited.

12 COMMISSIONER GOLTZ: Mr. Culley, excuse
13 me, but the distinction you're making, that if a
14 third-party owner puts solar panels on my house and
15 has the transaction with me, and that same third-
16 party owner has solar panels on Commissioner Jones'
17 house and has a transaction with him, and the same
18 one at Chairman Danner's house and has a
19 transaction with him, that is not for hire? Each
20 of those -- each of those bits of electric plant
21 are -- are not for hire? They're dedicated to the
22 use of a single customer?

23 Whereas, if that same third-party owner
24 had a big vacant lot and put up solar -- a large
25 solar structure and offered for sale to the whole

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1 neighborhood, that might be jurisdiction -- or that
2 would be jurisdiction?

3 MR. CULLEY: I -- I -- I would say that
4 analysis wouldn't end there. I think that brings
5 in the other aspects of the law; is it sufficient
6 to cloak that operation with the public interest?
7 So then we really get back to the old Munn test and
8 all of those cases.

9 COMMISSIONER GOLTZ: At the very least,
10 the fact pattern of -- of separate bits of -- bits
11 isn't the right word, but pieces of electric plant
12 on each rooftop serving only individual customers,
13 is that kind of what you're saying? That's clearly
14 on the side of no jurisdiction?

15 MR. CULLEY: I would -- I would say yes.

16 COMMISSIONER GOLTZ: Thank you.

17 CHAIRMAN DANNER: Questions? All right.
18 Do you have more?

19 MR. CULLEY: I do not. Any further
20 questions?

21 CHAIRMAN DANNER: No, apparently not. All
22 right. Thank you.

23 MR. CULLEY: Thank you.

24 CHAIRMAN DANNER: Megan Decker from
25 Renewable Northwest Project. Good afternoon.

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1 MS. DECKER: Good afternoon, Chairman
2 Danner and commissioners. I'm Megan Decker with
3 Renewable Northwest Project. I'm here to address
4 question three, and I really couldn't do it as
5 eloquently as Mr. Meyer did, so I'm in the same
6 position as Mr. Culley of -- of trying to find the
7 elements of my remarks that are most significant to
8 the conversation without keeping us here any longer
9 than we need to be.

10 And so I'll say just a few things. One is
11 that the opportunity the Commission has here in the
12 rule adoption order is to focus the conversation
13 and explain to the interested parties to the
14 legislature what the significance of this vintage
15 case law is to the modern generic circumstances
16 that have been presented to the Commission. That's
17 something that is the Commission's job to do, and
18 will be a service to advancing the conversation.

19 So we urge the Commission to speak to the
20 question of jurisdiction in its rule adoption
21 order. You may not reach every question, like
22 every factual scenario, but you will do a service
23 by speaking to those old cases.

24 The second thing I want to reiterate is
25 that it's a big deal to assert jurisdiction to

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1 regulate rates. Tariff rates are for services that
2 the public is entitled to demand as -- as a right
3 on consistent terms with every other member of the
4 public, and I think there are probably
5 Constitutional dimensions to the question of
6 whether a private company can be regulated as a
7 public service company. I'll just leave it there.

8 The -- the principles of the analysis, I
9 agree with Mr. Meyer and Mr. Culley, basically on
10 the principles that the Commission should draw from
11 the historic cases. We need to see an applied
12 public dedication, an offer to serve the entire
13 public, insofar as the -- the service can be
14 provided to a portion of the public.

15 Even more importantly than -- or as
16 important as the principles that the Commission
17 will follow to -- to reach a conclusion in this
18 kind of case is -- is to speak to what does not
19 necessarily create a Public Service Commission -- a
20 public service company. And I think it would be
21 helpful for the Commission to state that selling
22 kilowatt hours does not automatically make a
23 company a public service company.

24 There are examples in the vintage case law
25 of companies selling kilowatt hours, such as Inland

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1 Power & Light Company, Spokane -- the Spokane
2 Railway case. Selling kilowatt hours doesn't
3 answer the question. What answers the question is
4 whether there's been an implied dedication of
5 private property to public use and whether the --
6 that service is being offered to the public as a
7 whole.

8 Finally, I want to touch on the question
9 of lease versus PPA arrangement that a -- a net
10 metering customer might have with a third-party
11 owner. I don't think it's relevant to the
12 Commission's jurisdiction to regulate the
13 companies. One point -- one reason for that that
14 hasn't been necessarily discussed so far is that in
15 either situation, the customer owns the output of
16 the generator. And it's the customer that has the
17 relationship with -- the net metering relationship
18 with the utility.

19 FERC has been very clear that a net
20 metering arrangement, so long as as there is a
21 netting over the relevant time period, is not a
22 sale, and that -- and that it doesn't matter
23 whether the customer engaged in net metering owns
24 the system or owns the generation through a lease
25 or a power purchase agreement with a third-party

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1 owner.

2 One final point. I don't think you need
3 to see each system, each solar system on each
4 customer's home or business as a distinct piece of
5 electrical plant to reach the conclusion that the
6 three of us have been advocating. It's an elegant
7 way to think about some situations, but I think
8 even in -- in a situation where you thought of a
9 company or a business model or a community solar
10 project that -- that was serving more -- more
11 customers, application of that applied public
12 dedication and offering service to the public as a
13 whole tests would lead you to the same conclusion.
14 So with that, I'm ready to address any questions,
15 and I'll stop and answer questions.

16 COMMISSIONER GOLTZ: In that regard,
17 there's some -- obviously, some -- at some point,
18 you -- your community solar project becomes so big
19 that it's a utility, or I mean, at some point, if
20 it's serving, you know, a million people.

21 MS. DECKER: I guess we'd have to go a
22 little bit deeper into the hypothetical, because I
23 start thinking about a Nob Hill. That's not
24 jurisdictional to the UTC, even though it's selling
25 water to most of the people in a certain area.

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1 COMMISSIONER GOLTZ: Yes.

2 MS. DECKER: And Inland -- Inland Empire,
3 that is not jurisdictional, because its membership
4 is not the public as a whole.

5 COMMISSIONER GOLTZ: Right.

6 MS. DECKER: There might be points where
7 we cross the line to what you're describing, but --

8 COMMISSIONER GOLTZ: Members are all
9 Washingtonians.

10 MS. DECKER: Right. Exactly. I think
11 that -- I think that a community solar project that
12 had transmission to every household in the state
13 and offered to serve every household in the state
14 would be a utility. Let's put it that way.

15 COMMISSIONER GOLTZ: I know that you
16 appreciate the vintage cases. I'm not sure
17 Commissioner Jones does, but I was thinking of the,
18 sort of, grain elevator situation. The grain
19 elevator holds its storage services open to the
20 public, but if someone called, you know, Silo City
21 decided to put little, tiny silos in each little
22 farm, and offered to store grain for each farm,
23 that would not be a public utility, right?

24 MS. DECKER: I think that's right. And I
25 think that's -- that's, like I said, one way of --

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1 an elegant way of getting to one scenario. It's
2 hard for me to imagine a world where a grain
3 storage is an essential public service, but --

4 COMMISSIONER GOLTZ: It's because you
5 didn't grow up in the Midwest, probably.

6 MS. DECKER: Yes. You know, timber
7 towing, maybe I can get there, but, you know, I'm
8 from Aberdeen.

9 CHAIRMAN DANNER: Actually, we were
10 talking about asserting jurisdiction over the cell
11 phone charging stations at the airport.

12 MS. DECKER: I wouldn't want your job.

13 COMMISSIONER GOLTZ: I just wanted to get
14 the vintage cases back into the discussion, and
15 into our order, adopting order, so Commissioner
16 Jones can sign it.

17 COMMISSIONER JONES: Wait a minute.
18 Commissioner Goltz, I grew up in Eastern
19 Washington right next to a bunch of grain
20 elevators.

21 MS. DECKER: I think the thing that's
22 interesting to me about the grain elevator, the
23 sort of essential public service question is that,
24 you know, from my perspective, maybe rooftop solar
25 should be an essential public service, right? I

0102

1 mean, I wouldn't be opposed to you folks requiring
2 that every utility offer rooftop solar as a -- as a
3 public right that anyone can demand. Then maybe we
4 have a different conversation, but that's not where
5 we are. We are at .25 percent. We're at -- we're
6 in a different place.

7 One final thing I'll say about the vintage
8 cases is that I hope that -- that interest of these
9 vintage cases to the lawyers among us is evident,
10 and it just -- it just -- this kind of thing gets
11 people excited. I'm hoping that's why Mr. Meyer
12 was so excited. I'm not sure, though.

13 COMMISSIONER JONES: Ms. Decker, I'm not
14 an attorney, but I can sense the enthusiasm in the
15 room. It's palpable. No, but Commissioner Goltz
16 kind of anticipated my question, should we -- I
17 mean, how far back should we go? And I'm not
18 opposed to putting things in the order, you know,
19 if -- if we go that route. But that's all the way
20 back to 1876, and it's a four-part test.

21 Do we want to go back all the way to Munn
22 and put these cases in? I mean, some of the -- I
23 mean, there are four parts to the test, and one of
24 them is the question of transportation. Well, we
25 aren't talking about transporting KWH from --

0103

1 intergalactically from Washington. I mean, some of
2 these may be outdated, right?

3 But your point is that maybe we should go
4 back to Munn and Simpson and Clark and explain in
5 lay terms, or because the audience may be the
6 legislature, and it may be lay people, to try to
7 explain the importance of these historical cases
8 for the public dedication, the use to public
9 dedication and try to do that, is that your point?

10 MS. DECKER: That is my point.

11 CHAIRMAN DANNER: Okay. So cases may be
12 old, but they're often very much alive in this
13 stare decisis world we live in.

14 MS. DECKER: The principles are pretty
15 robust, and actually, the fact patterns are
16 interesting and more relevant to -- to this
17 situation than you might think.

18 CHAIRMAN DANNER: Okay. Thank you. Any
19 other questions?

20 COMMISSIONER GOLTZ: No.

21 CHAIRMAN DANNER: All right. Thank you
22 very much. Lynn Logen from PSE. You thought I
23 wasn't going to get to you.

24 MR. LOGEN: Yes, I was hoping. Good
25 afternoon, Chairman Danner, Commissioners Jones and

0104

1 Goltz Dan depend. My name is Lynn Logen. I'm with
2 PSE. First off, I wanted to include PSE's
3 currently installed net metering capacity in my
4 comments. These figures were pulled together by
5 Jake Wade, who is here in the audience today. We
6 have 1,573 net metering installations to date, with
7 an installed capacity of 8,572 kilowatts, which is
8 77 percent of the cap, and our cap is 11.2
9 megawatts.

10 My comments aren't specifically about the
11 Commission's regulation of the third-party, but it
12 was the closest issue that I could come up on the
13 three that were on the sign-in there. The issue
14 that I want to talk about is the last sentence of
15 the definition of third-party owner, and that
16 sentence is, the electrical company shall not allow
17 a third-party owner to resell the electricity
18 produced from a net metered generating facility.

19 This is problematic, I believe, for
20 several reasons. One is that the utility is not a
21 party to the contract between the third-party and
22 the interconnection customer. Therefore, we have
23 no way of knowing what the business arrangements is
24 there and whether or not there's any reselling.

25 Also, there's not any definition of what

0105

1 it means to resell in this rule or any of the WAC
2 rules. And also, I'd like to point out that the
3 third-party owner may also be a customer of the
4 utility, because they will be receiving service at
5 some time from the -- from the utility. Either
6 that, or the receiving service from the utility's
7 customer, and the utility's customer is reselling,
8 which is prohibited by WAC 480-100-103. So there's
9 some interplay there that I think needs to be
10 resolved.

11 CHAIRMAN DANNER: Do you have -- is it
12 your preference that the sentence just come out, or
13 do you have some alternate language?

14 MR. LOGEN: That would be my preference,
15 that that sentence be removed. And it's -- and
16 it's, in effect, asking utilities to regulate this
17 third-party, with the Commission is saying, you
18 have no jurisdiction -- or the comments here, which
19 I don't disagree with. My experience in resales of
20 electricity in situations --

21 COMMISSIONER GOLTZ: How could a third-
22 party owner sell the production from the net
23 metered generating facility without Puget knowing
24 about it? Because that's going back into Puget's
25 system, right? So who would buy it?

0106

1 MR. LOGEN: The interconnection customer
2 is the first customer that's buying it. The excess
3 flows out back through the meter, and we know it
4 after the fact, that there has been electrons that
5 have flowed onto our system. Beyond that, it goes
6 to somewhere, and somebody uses it. It's not --
7 it's not sold, as far as we know, unless there is
8 some other deal, that they put a large solar ray on
9 somebody's house and they sell some to the
10 neighbor. We don't know.

11 COMMISSIONER GOLTZ: What I mean is that
12 if -- I mean, are you saying that the only way they
13 could sell it would be going through you system,
14 isn't it?

15 MR. LOGEN: Yes.

16 COMMISSIONER GOLTZ: How could they sell
17 it without your knowledge? Because you've got the
18 power, then, in your system.

19 MR. LOGEN: Someone that wanted to buy,
20 basically, the green attributes of that power, I
21 would guess. I mean, they -- the actual
22 electricity is going onto our system. It's going
23 to go somewhere, and if the neighbor wants to think
24 they're buying that electricity, it's probably
25 likely they're getting it, because it's going to

0107

1 flow the shortest path.

2 COMMISSIONER GOLTZ: Unless it's going to
3 go through -- unless they put it through a line,
4 it's going to go through your system and through
5 your meter into the neighbor --

6 MR. LOGEN: -- and we're going to sell it.
7 So I'm going to sell it there as well. So in
8 effect, they're just getting the green attributes.

9 COMMISSIONER GOLTZ: I'm not sure -- we'll
10 think about that.

11 CHAIRMAN DANNER: You could also simply
12 clarify that the third-party owner would have to
13 sell the --

14 MR. LOGEN: Again, you take out the
15 sentence.

16 COMMISSIONER GOLTZ: Oh, sure.

17 COMMISSIONER JONES: Yes, that would be
18 fine.

19 CHAIRMAN DANNER: Okay. Anything else.

20 MR. LOGEN: That's it. Do you have any
21 questions?

22 CHAIRMAN DANNER: A question? Okay.

23 MR. LOGEN: Thank you.

24 CHAIRMAN DANNER: So far, the three
25 lawyers who have provided legal analysis, do you

0108

1 have an opinion you want to share on that, or is
2 that --

3 MR. LOGEN: From my limited knowledge in
4 dealing with commissioned staff, both in informal
5 and formal complaints, I agree with the comments.
6 They're consistent with the Commission's most
7 recent orders, for example, orders for formal
8 complaint.

9 CHAIRMAN DANNER: Well, thank you. Dave
10 Warren, PUD Association. Three times in ten years.

11 MR. WARREN: Thank you, Mr. Chairman.
12 Again, Dave Warren, and trying to come up with
13 something clever, thinking that if engineers relied
14 on vintage precedent, we would still be in horse
15 and buggies and other similar ancient technology.
16 So just to compare and contrast.

17 Another thing I wanted to get into the
18 record, somebody earlier had mentioned a FERC
19 order, and I did, too. And just for the record, in
20 case you guys want to refer to it, it's a
21 declaratory order issued November 19th, 2009, in
22 docket number EL09-31-000. It is good reading for
23 all of us, I think. I parsed some of those issues,
24 federal versus state jurisdiction, net metering,
25 and some others.

0109

1 So in my sort of non-lawyerly common sense
2 thinking, I would like to -- Commissioner Goltz,
3 when you asked the question about putting the solar
4 panels in the field, and I was thinking along the
5 same line. So I want to kind of give an example
6 and see where the boundaries are drawn.

7 As you know, in 1992, the Energy Policy
8 Act in 1992 opened up the grid to retail wheeling.
9 And states -- many states considered what that
10 meant, how do you open the markets to retail -- to
11 providers of electricity for retail sales. And so
12 in the '90s, at the time I was a staff member of
13 NARUC, Mr. President, and there was a commissioner
14 named Brent Alderford from Colorado. And after he
15 left the Colorado commission, he formed a company
16 named Community Wind Energy.

17 And he went back east, and he started
18 selling a wind product in states that had opened
19 their markets to the retail wheeling or retail
20 providers, non-utility retail providers. He did
21 not offer service to the general public. He had no
22 obligation to serve, the company didn't. They were
23 for hire, in a common sense way. They needed
24 utility backup. And to me, the comparisons are the
25 same. This is a non-regulated seller of

0110

1 electricity at the retail level. So where do you
2 stop the boundary?

3 And Commissioner Goltz, in your example,
4 let's say you put the solar panel in the field and
5 decided to sell to all the neighboring property
6 owners, ran your own little wire just across to
7 their houses. Is that regulatable? They are not
8 offering service to the general public. They have
9 no obligation to serve. They have a very limited
10 customer offering. They can check their credit
11 scores. They may be able to even tie up their
12 property saying you can't sell your property
13 because they have a distribution wire running on it
14 until you pay me off or I agree to who your buyer
15 is, which is what some of these contracts do.

16 Where do you draw the line? What about a
17 centralized solar conciliate that uses the
18 utilities distribution grid to sell to customers?
19 Retail wheeling. They're still not holding
20 themselves out to the general public. They have no
21 obligation to serve. They have a limited customer
22 class, and they're using the utility distribution
23 wires. Why is that similar or different?

24 Third-party owners of net metered
25 facilities are reliant on the utilities'

0111

1 distribution system as well, because as somebody
2 pointed out, they provide intermittent service.
3 They do not provide full time service. The utility
4 has to be there. The distribution system has to be
5 there. The ratepayer subsidy is there. Nobody has
6 offered to give back the non-power portion of the
7 bill on a net metering system in these business
8 models, so the utility ratepayer is integral to the
9 provider of electricity to this retail customer.

10 I'm not sure, from a common sense point,
11 how you can parse those, to say some subset of this
12 group is immune from regulation, and at some
13 critical mass of customers, of holding out to the
14 general public, of -- no obligation to serve. I
15 mean, do they have an obligation to serve? What if
16 this solar goes down and they don't serve? Are the
17 utilities there to serve? What does the contract
18 say? Does the contracts say I have performance? I
19 have an obligation to provide this many kilowatt
20 hours, is that an obligation to serve?

21 And I understand some of the parsing of
22 these terms and vintage legal precedent, but you
23 know, we're in the present day, and where do you
24 draw the line? Could I come in as Dave's Wind
25 Service and offer to sell energy -- electricity to

0112

1 5 percent of the customers retail? Get a wheeling
2 tariff distribution and not be regulated by you?
3 Then did not we not need the legislature to act on
4 retail wheel?

5 Then I guess the question is, where does
6 it stop? Or are we sort of hiding behind the net
7 metered facility, because that's exempt from FERC
8 jurisdiction and sales, and because, presumably,
9 we're not using the utilities distribution grid?
10 We are. These -- these projects do.

11 So the next logical question, perhaps, is
12 what about a non-grid connected house? And they're
13 -- or Commissioner Goltz, I think your example may
14 be on point about the lease versus power purchase
15 agreement. If -- if it's just a facility, if
16 they're leasing out, non-grid connected, somebody
17 is buying equipment, it's like a mini generator,
18 and that may be independent. I think there, you
19 can probably clearly draw the line.

20 But when it's grid connected, I have to
21 ask the question, where does it stop? Where do you
22 draw the line? Number of customers? Type of
23 electricity? Where do you draw the line to say
24 they're no longer regulated?

25 And I would also, in response to your

0113

1 question with the previous speaker, to Lynn Logen,
2 what about if I was a third-party owner and I built
3 a 100 kilowatt system, and the customer there, the
4 -- the utility customer that I was selling to only
5 needed 5 kilowatts, and we net metered that. And
6 then could I not offer for sale the other 95, get a
7 wheeling tariff from the utility, and by them
8 saying -- or them being required to not -- to
9 police the resale, which of course, my members you
10 can't say that, so they -- they may or may not do
11 that, but are we violating some non-discriminatory
12 open access provisions?

13 In other words, could that owner say, give
14 me a wheeling tariff over your distribution system,
15 because I want to sell the other 95 kilowatts. I
16 guess there is a -- there is layers of questions
17 and complexities here that I'm not sure yet that --
18 I think you have an obligation to regulate, rather
19 than an exemption to regulate.

20 And I want to draw the comparison, I
21 guess, to the electric vehicle recharging bill,
22 house bill 1571 from 2011. And I told her I was
23 going to do this, but your own leg. liaison
24 testified in that bill in a hearing, and she did
25 testify that this clarified the regulatory scheme

0114

1 around these. These are -- these are retail sales,
2 and there was a lot of discussion in many -- I
3 think all three of you probably participated in
4 that -- about sellers of electricity, the end
5 users, and there was a lot of gray area, very
6 similar to this.

7 She said this clarified our involvement in
8 it. She did say that it left some downstream
9 issues open regarding consumer protection, and
10 you've asked that question as well. I think there
11 are huge consumer protection issues here. Our
12 consumers own us, so therefore, we do have skin in
13 this. And remember, electrical vehicle charging
14 stations, you can always take your Leaf to another
15 charging station or take it home.

16 Once you sign a contract with these third-
17 party providers, your real estate is tied up in
18 these contracts. You can't often sell to a
19 different buyer unless the leaseholder agrees to
20 who your buyer is, or you buy it off. And then you
21 don't get, necessarily, the -- the ownership of the
22 facility after it's done. So what -- what if they
23 don't want to take it off your roof? Or what if
24 they do and they leave big holes?

25 There is so many of these consumer

0115

1 protection issues that we would ask the Commission
2 take a look at this, and we think it could probably
3 be done fairly quickly, if you want to do it in
4 this the docket, to add some of those protections,
5 including ideas like market base rate versus cost
6 base rates.

7 You could give a company, just like FERC
8 does, market base rate authority. And they could
9 go in, and there's a laudible presumption that it's
10 fair, just and reasonable, unless and until you get
11 a complaint that it's not, and then you could look
12 into it. You could draw up some of these other
13 protections and facility regulations and other
14 things that you normally regulate, I think, fairly
15 quickly, if you're going to go that route, and that
16 would -- that would -- that would -- that would
17 close the vacuum that -- that's going to be around
18 regulation when these companies rush in.

19 And there will be a rush, because the
20 investment tax credit expires in 2016. And I think
21 generally, you do have an obligation to regulate
22 unless and until the legislature acts, like they
23 did with charging stations, to exempt them from
24 this retail -- this particular specific retail sale
25 of electricity from jurisdiction. Did I get

0116

1 question three?

2 CHAIRMAN DANNER: Any other questions?

3 COMMISSIONER JONES: So are you advocating
4 -- so what is your position here, Mr. Warren? Are
5 you saying we should -- we should put some -- I
6 guess you're not saying that we should put
7 something in the order, because you seem to be
8 advocating for more process here, right? You want
9 to either delay this rulemaking or put in further
10 process to look at the issues of market-based
11 rates, consumer protections, tax incentives and the
12 whole gamut of issues that I think Mr. Meyer was
13 trying to tee up?

14 MR. WARREN: I think, Commissioner, I
15 would ask -- well, originally, we were suggesting
16 that the legislature really should act first.
17 Absent that, if the Commission goes forward, we --
18 we do request that you would open a separate net
19 metering rulemaking, that would be plan B.

20 Plan C would be if you go forward in this
21 docket, it has been open a year and a half already,
22 to give it a little more time, convene some
23 stakeholders, and maybe draw up a body of -- of
24 perhaps streamlined regulation. You don't need a
25 full, perhaps, electric utility regulation on an

0117

1 Avista Pacific, or something like that, but there
2 might be some streamline processes that could get a
3 lot of the parties what they need and still provide
4 the protections necessary.

5 Frankly, I think it could be done fairly
6 quickly. I think a lot of us know what the issues
7 are, and you guys and your staff have experience in
8 regulating these on many different levels. So that
9 -- that would be -- it's not an attempt to delay or
10 a request -- we're not trying to delay this thing
11 forever, but to ask that you consider this avenue,
12 if you want to go there and open this door.

13 COMMISSIONER JONES: I'm going say this
14 for the record. This has taken two years, this
15 rulemaking. It hasn't been easy and it hasn't been
16 quick. It was supposed to focus on technical
17 issues, and I agree, it's morphed. But I don't
18 understand what gives you confidence that getting
19 into these more policy-charged issues that I think
20 the CCIF and various national groups are teeing up
21 on, market based rates, incentives, I don't
22 understand what gives you confidence that we could
23 do that quickly.

24 MR. WARREN: I guess, Commissioner, if
25 you're going to open the door, that part of the

0118

1 process hasn't taken two years. And I think you
2 actually opened this in December '11, this
3 particular rulemaking, and part of it was you
4 accommodated public power and put us all together
5 in a room for a while. We appreciate that. So
6 that took some time. We did get that out in July.

7 This issue has just been raised relatively
8 recently in a rulemaking, and we would ask, if
9 you're going to go forward with it in this
10 rulemaking, that you give it a little more time and
11 perhaps convene. Maybe you have a first work group
12 and realize you can't get there, and then you move
13 forward. Or maybe you've seen enough progress that
14 you say, this is worth an extra month. Remember,
15 these contracts go for 5, 10, 15, 20 years. These
16 have great impacts. They're long term impacts.

17 COMMISSIONER JONES: We're coming close to
18 4:30.

19 CHAIRMAN DANNER: I understand. I
20 understand. Commissioner Goltz?

21 COMMISSIONER GOLTZ: Yes, because I'm a
22 lawyer, so I'm more interested in this than you
23 think it should be, but it teams to me, though,
24 that what you're suggesting is a rule that would
25 allow -- accomodate the tariff requirement that

0119

1 these companies, the third-party owners who are
2 jurisdictional, to simply file a tariff adopting a
3 market-based rate, and it would be kind of an easy
4 way around more onerous tariff requirements?

5 MR. WARREN: Correct, Commissioner. I
6 assume that's one of their concerns, is that they
7 would have to file a tariff or a rate for every
8 single --

9 COMMISSIONER GOLTZ: So then the
10 consequences of that, as near as I can think of,
11 off the top of my head, would be two. They would
12 have to file a piece of paper that would just be a
13 tariff market base rate, assuming we could do it
14 under our existing statutes, I don't know that, but
15 assuming we could.

16 MR. WARREN: Right.

17 COMMISSIONER GOLTZ: And then that would
18 keep them under our consumer protection umbrella,
19 as opposed to the Attorney General's Office
20 consumer protection umbrella, and I don't know if
21 that's better for the public or not.

22 I mean, I know that the Consumer
23 Protection Act has some tools, if you're worried
24 about misleading -- unfair or deceptive trade
25 practices, they may have more tools than we have.

0120

1 Now, on the other hand, the other thing
2 that it might do is it might require the payment of
3 some regulatory fees to -- to us by these people,
4 which then, in turn, would -- would have, I
5 suppose, help fund consumer protection, but also
6 act as another barrier, another modest barrier to
7 -- to more deployment of distributed generation.

8 Other than that, what's the -- I mean, I
9 -- in one sense, there's not that big of a
10 difference. If they're just going to do market
11 based rates, you know, they're going to file a
12 tariff. You know, they probably can do it
13 electronically, and you're in business. What other
14 consequences are there of this jurisdiction, and
15 what's the big deal, then?

16 MR. WARREN: Well, for instance, there was
17 an article, I think, in the New York Times the
18 other day about 10 to 15 percent of the panels that
19 have flooded the market from the Chinese
20 manufacturers are defective. In this case, you
21 would also have over -- oversight authority on the
22 facilities.

23 So that if a consumer gets a defective
24 panel, and I don't -- some of you look around my
25 age. You might remember in the 1980s when the old

0121

1 federal investment tax credit was around solar, a
2 lot of bad equipment went out, and then installers
3 disappeared. I'm not saying everybody is going to
4 disappear. I'm not suggesting that, but a lot of
5 bad equipment went out.

6 There is apparently quite a bit of bad
7 equipment out there right now from the Chinese
8 market that was built up in response to this --
9 this Spanish and German feed-in tariffs. When they
10 shut those down, there were a lot of panels out
11 there. There's a lot of cheap panels, and that's
12 one of the reasons --

13 It's also regulating the facilities and
14 making sure that the consumer is protected from bad
15 equipment. Perhaps they have a maintenance
16 agreement that says the homeowner can't touch it,
17 and yet, in the interconnection standards, we hold
18 the utility customer liable. But if the utility
19 customer has something in their contract that says
20 they can't touch the facility, we, the utility, has
21 a question about it or we want it inspected or an
22 inverter changed out, or something, how do we get
23 to the third-party owner?

24 COMMISSIONER GOLTZ: Isn't that right in
25 the wheelhouse of the Attorney General's Office?

0122

1 The Attorney General's Office applies the Consumer
2 Protection Act to used car salesmen, to new car
3 salespeople, to all sorts of businesses that have
4 -- that may put on the market -- and I'm just
5 hypothetical, but just put it on the market,
6 defective equipment, and they can bring class
7 actions and get refunds for the customers and get
8 -- and get damages and penalties, and their tools,
9 in that sort of a violation is, I think, greater
10 than what we can do.

11 You know, we have -- we resolve billing
12 disputes, you know, and we make things right, and
13 maybe there will be some civil penalties, but boy,
14 the Attorney General's Office, under the Consumer
15 Protection Act, seems to me as sort of, you know,
16 the possible sins you're describing, that's right
17 in their -- it's more in their wheelhouse than it
18 is in ours.

19 If the concern is consumers getting ripped
20 off, boy, I -- I might want to -- you know, the
21 AG's office ought to be -- might be better able to
22 effect some broad-based protections than we are.

23 MR. WARREN: That, I'm obviously not
24 qualified to debate with you, Commissioner, as
25 you've lived in both worlds. I'm highly

0123

1 knowledgeable in both. I'm obviously familiar with
2 the world of utility regulation. What I'm trying
3 to, I suppose, forestall is these folks would come
4 to our customers is what Commissioner Jones
5 actually asked about, which was, let's let them go
6 and then the legislature can always pull it back
7 in.

8 Well, that leaves that window open, and in
9 that window could be many long term contracts that
10 impact the consumer needlessly, and I would -- I
11 guess I would advocate to maybe keep ahold on it
12 right now until the legislature can look at this
13 thing and come up. And maybe that avenue is a
14 better avenue. I'm just not familiar enough with
15 those processes, Commissioner.

16 CHAIRMAN DANNER: Questions?

17 COMMISSIONER JONES: No.

18 CHAIRMAN DANNER: All right. Thank you
19 very much.

20 MR. WARREN: Thank you.

21 CHAIRMAN DANNER: And finally, Mr. Stearns
22 from Commerce.

23 MR. STEARNS: Gentlemen, I think I would
24 do us all a grave disservice if I masqueraded as a
25 lawyer, so all I'm going to suggest is just because

0124

1 it's -- something is vintage just doesn't mean it's
2 wrong. I try to remind my son that all the time.

3 I think all Commerce would suggest here is
4 we need a place to structure the marketplace for
5 quality and safety. I'm not sure you're it, and I
6 would agree with Commissioner Goltz, that the
7 Attorney General may be better suited to do it. I
8 think the biggest thing that you can do is to help
9 convene the different parties, and let's figure out
10 what's the right place to structure this
11 marketplace.

12 I'm dubious that you can extend your reach
13 to the Chinese panels. I mean, I think we've got
14 to be -- figure out, okay, what are the tension
15 points? What are the places that we actually can
16 play a role and do it productively? So I just urge
17 you to be thoughtful and don't punt it. And not
18 punting it may be -- I consider most of my career
19 has all been about cat herding, and I think maybe
20 that's what you need to do in this case.

21 Because, I think, clearly, technology is
22 overwhelming our common understanding of what the
23 utility industry was, the obligation to serve,
24 service territory, many of those notions that those
25 of us have spent 30 years in this, are becoming a

0125

1 bit obsolete, and we don't have control over it.

2 But I think that we need some responsible adults to

3 come in and say, hey, let's structure this

4 marketplace as it's transitioning. Thank you.

5 CHAIRMAN DANNER: All right. Is there any

6 questions for Mr. Stearns? All right. Thank you.

7 Is there anyone on the bridge line who wishes to

8 comment? All right. Then, I think we have -- I

9 think we have concluded for the day.

10 Is there anything further that's to come

11 before the Commission this afternoon? At the

12 beginning, I said that if there were any other

13 issues besides the three that we identified that

14 anyone wanted to bring forward, this would be a

15 good time to do so.

16 Okay. Hearing none, then without further

17 adieu, we are adjourned.

18 (The proceedings concluded at 4:23 p.m.)

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C E R T I F I C A T E

3

4 STATE OF WASHINGTON

5 COUNTY OF KING

6

7

I, Mary M. Paradise, a Certified Shorthand

8

Reporter in and for the State of Washington, do

9

hereby certify that the foregoing transcript of the

10

Rulemaking Adoption Hearing on June 13, 2013, is

11

true and accurate to the best of my knowledge,

12

skill and ability.

13

14

IN WITNESS WHEREOF, I have hereunto set my

15

hand this 17th day of June, 2013.

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MARY M. PARADISE, CSR

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