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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 WASHINGTON UTILITIES AND )

TRANSPORTATION COMMISSION, )

5 )

Complainant, ) Docket No. PG-160924

6 )

v. )

7 )

PUGET SOUND ENERGY, )

8 )

Respondent. )

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11 EVIDENTIARY HEARING, VOLUME II

12 Pages 11 - 180

13 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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16 May 15, 2017

17 Washington Utilities and Transportation Commission

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14 Catherine A. Koch, PSE

Duane A. Henderson, PSE

15 Alan E. Rathbun, UTC

Sebastian Coppola

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0014

1 EVIDENTIARY HEARING

2 VOLUME II: INDEX

3 EXAMINATIONS

4

5 WITNESSES: PAGE

6 CATHERINE A. KOCH

7 Cross-Examination by Ms. Gafken 41

8

ALAN E. RATHBUN

9

Cross-Examination by Mr. Bryant 54

10 Redirect Examination by Mr. Beattie 86

11

DUANE A. HENDERSON

12

Cross-Examination by Ms. Gafken 90

13 Redirect Examination by Mr. Williams 121

14

SEBASTIAN COPPOLA

15

Direct Examination by Mr. Bryant 124

16 Cross-Examination by Mr. Williams 126

Redirect Examination by Ms. Gafken 151

17

18

19 EXHIBITS

20 NO. DESCRIPTION ADMITTED

21 SP-1 Settlement Agreement 39

22 SP-2 Narrative Supporting Settlement

Agreement 39

23

CAK-1T Response Testimony 39

24

CAK-2 Professional Qualifications 39

25

0015

1 EXHIBITS

2 NO. DESCRIPTION ADMITTED

3 CAK-3 Public Counsel Response to PSE

Data Request No. 002 39

4

DAH-1T Response Testimony 39

5

DAH-2 Professional Qualifications 39

6

DAH-5xC PSE Response to Staff Data Request

7 No. 19 with Attachment A

(Confidential) 39

8

AR-1T Response Testimony 39

9

AR-2 Investigation Report, Greenwood

10 Natural Gas Pipeline Explosion -

March 9, 2016 39

11

SC-1T Direct Testimony (Redacted per

12 Order 03) 165

13 SC-2 Qualifications 165

14 SC-3 Staff Investigation Report

Appendix A 165

15

SC-4 PSE Responses to Public Counsel

16 Data Request Nos. 014 and 029 165

17 SC-5 PSE Response to Staff Data Request

No. 06 165

18

SC-6 PSE Response to Public Counsel

19 Data Request No. 025 165

20 SC-7 PSE Response to Public Counsel

Data Request No. 028 165

21

SC-8 PSE Responses to Staff Data

22 Request No. 027 and Public Counsel

Data Request No. 006 165

23

SC-9 PSE Response to Public Counsel

24 Data Request No. 030 165

25 SC-10 PSE Response to Public Counsel 165

0016

1 EXHIBITS

2 NO. DESCRIPTION ADMITTED

3 SC-11 PSE Responses to Public Counsel

Data Request No. 031-035 and Staff

4 Data Request Nos. 019-023 165

5 SC-12 Pipeline Safety: Clarification of

Terms Relating to Pipeline

6 Operational Status (PHMSA Advisory

Bulletin, Aug. 16, 2016) 165

7

8

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0017

1 OLYMPIA, WASHINGTON, MAY 15, 2017

2 1:05 p.m.

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

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6 JUDGE KOPTA: All right. Let's be on the

7 record in Docket PG-160924, captioned Washington

8 Utilities and Transportation Commission versus Puget

9 Sound Energy.

10 We are here on May 15th, 2017, for a

11 settlement hearing, a hearing on the settlement that is

12 proposed between the Company and Commission staff.

13 And I believe we will start by taking

14 appearances. The commissioners are not here with me

15 yet. This is Gregory J. Kopta, the administrative law

16 judge who will be presiding with the commissioners.

17 We'll go ahead and take appearances now,

18 because we will be discussing matters on the record, and

19 we may do it again when the commissioners are here so

20 that they know who all the players are. But let's begin

21 with appearances from the Company.

22 MR. WILLIAMS: Good afternoon, your Honor.

23 This is James Williams from Perkins Coie on behalf of

24 Puget Sound Energy. I'm here with my colleague, David

25 Steele. Mr. Steele, actually, will be arguing the

0018

1 objections.

2 I'd also like to note that we are joined by

3 PSE witnesses Catherine Koch, who is the Director of

4 Planning for Puget Sound Energy, and Duane Henderson,

5 who is the Manager of Gas Systems Integrity, Puget Sound

6 Energy.

7 And in addition, we have General Counsel,

8 Mr. Secrist, Deputy General Counsel, Ms. Cammermeyer,

9 and my colleague -- or my partner, Donna Barnett.

10 JUDGE KOPTA: Thank you.

11 Commission staff?

12 MS. BROWN: Sally Brown, Senior Assistant

13 Attorney General appearing on behalf of Commission

14 staff.

15 MR. BEATTIE: Julian Beattie, Attorney

16 General's Office, also on behalf of Commission staff.

17 JUDGE KOPTA: And for Public Counsel?

18 MS. GAFKEN: Lisa Gafken, Assistant Attorney

19 General, appearing on behalf of Public Counsel.

20 MR. BRYANT: Armikka Bryant, Assistant

21 Attorney General, appearing on behalf of Public Counsel.

22 JUDGE KOPTA: All right. Thank you. There

23 are no other parties, so I assume no more appearances.

24 So we are here initially to address certain

25 procedural and evidentiary issues, the first being the

0019

1 exhibits that have been pre-filed by all parties in this

2 case. I have previously circulated an exhibit list, and

3 parties have gotten back to me with either no objections

4 or objections to particular exhibits, and we will take

5 up those objections now before I deal with admitting any

6 of the other exhibits. I guess we got to do the tough

7 one first.

8 Staff or the Company, do you want to make a

9 brief statement as to Exhibits AR-3 and DAH-4?

10 MS. BROWN: I would like to. Thank you,

11 your Honor.

12 Commission staff offers several arguments

13 for your consideration. First, consider ER 408, which

14 prohibits disclosure of the substance of settlement

15 negotiations. That evidence is not admissible with the

16 exception of the rarest of circumstances, not present in

17 this case.

18 As your Honor is aware, the success of

19 settlement negotiations requires strict confidentiality.

20 This is so -- in order to create a climate of trust and

21 good faith. Once negotiations become public, positions

22 may harden or settlement overtures may end all together.

23 Two, consider relevance. These confidential

24 proposed exhibits have no bearing on whether the

25 proposed Settlement Agreement before the Commission

0020

1 today is in the public interest. These exhibits are

2 objectionable for lack of relevance.

3 Consider also foundation, or lack thereof.

4 Proposed Exhibit AR-3 is directed to Alan Rathbun,

5 Commission staff, but he has no personal knowledge since

6 he authored none of the email messages in question.

7 To establish that counsel for PSE and Staff

8 engaged in any sort of objectionable behavior, Public

9 Counsel would have to call the lawyers as witnesses.

10 Ms. Gafken herself would be forced to testify. And as

11 we all know, a lawyer cannot be a witness in his or her

12 own case. This is objectionable for lack of foundation.

13 Third, consider privilege. Ms. Gafken is

14 not at liberty to ask Mr. Rathbun about conversations

15 with Staff counsel concerning our case strategy. This

16 is objectionable on grounds of attorney-client

17 privilege. My point being that, if the exhibit were to

18 be admitted, it would be admitted to what end?

19 I think that suffices for now, your Honor.

20 Thank you.

21 JUDGE KOPTA: Thank you, Ms. Brown.

22 Mr. Steele?

23 MR. STEELE: Yes. Thank you, your Honor.

24 You know, I would direct your Honor's

25 attention to WAC 480-07-700(4)(b), which says that "No

0021

1 statement, admission or offer of settlement made during

2 negotiations is admissible in evidence in any formal

3 hearing before the Commission without the consent of the

4 participants, or unless necessary to address the process

5 of negotiations."

6 And in this case, Public Counsel did not

7 seek the consent of any of the other parties in this

8 case. Public Counsel sought to file these documents

9 publicly with the Records Center two business days ago.

10 And unless Ms. Brown hadn't intervened quickly, they

11 would have been posted right away for public knowledge.

12 And so I think -- I think the parties have

13 significant concerns with so freely posting documents

14 that I think it's undisputed are protected under the

15 privilege. They are both labeled as such. It's

16 undisputed that they were -- are communications that

17 occurred during the course of negotiations between the

18 parties, and so the parties did not consent.

19 And the other exception as part of this

20 rule, unless necessary to address the process of the

21 negotiations, these are substantive communications

22 between the parties relating to settlement, and so

23 neither of the exceptions under that rule apply.

24 I also second Ms. Brown's comment about

25 relevance. Public Counsel has submitted these

0022

1 documents, and they're merely snapshots of the parties'

2 negotiations. One of them is a draft from February 6th

3 of the compliance plan, over six weeks before the final

4 version was completed. The other one is an email dating

5 back to early March between the parties, whereas there's

6 many other communications that have occurred as part of

7 settlement in this case.

8 So to offer these as evidence of the

9 parties' negotiations in this case is, I think, a

10 misrepresentation of the communications between the

11 parties, and would be, frankly, unfair to offer these as

12 the substantive proof of the negotiations and what the

13 parties engaged in.

14 You know, I think in any case, whenever

15 relevance is discussed, I think ER 403 also applies, and

16 I think it's important to balance, even if there is some

17 relevance to these documents, the prejudice that the

18 parties would experience through public disclosure of

19 this information. And the chilling effect of

20 settlement, I think, far outweighs any shred of

21 relevance that these documents might provide to the

22 Commission.

23 JUDGE KOPTA: All right. Thank you.

24 Ms. Gafken or Mr. Bryant, a response?

25 MR. BRYANT: Thank you, your Honor.

0023

1 I believe both parties are mistaken with

2 respect to the purpose of these, at least with respect

3 to AR-3 and possibly with respect also to DAH-4.

4 AR-3 was submitted merely to rebut the

5 presumption -- or I'm sorry -- the allegation that

6 Public Counsel was involved in all settlement

7 agreements -- all settlement conferences that occurred

8 between Staff and PSE, when this email communication

9 shows that that is clearly not the case.

10 The document is relevant to rebut that

11 allegation. It's not presented to assert any privilege

12 that may have been shared in the email communication.

13 It's certainly not admitted to upend the settlement

14 process. It's strictly being admitted -- I'm sorry --

15 being presented to the Court to show that settlement

16 negotiations occurred without Public Counsel's

17 knowledge.

18 JUDGE KOPTA: Well, that addresses what

19 you've marked as AR-3, so let's take that one first.

20 As I note in each of those email

21 correspondence, both you and Ms. Gafken were copied on

22 each of those emails. Is that not correct?

23 MR. BRYANT: That is correct, sir.

24 JUDGE KOPTA: Well, I fail to see how that

25 demonstrates that you weren't involved in the process.

0024

1 MR. BRYANT: Well, actually, a closer

2 reading of the -- I'm sorry -- a closer reading of the

3 email message, it specifically notes conversations that

4 Staff had with PSE without Public Counsel's presence.

5 It says, and I quote here, "Alan Rathbun's feedback from

6 yesterday."

7 JUDGE KOPTA: Well, let's not put that into

8 the record at the moment, please.

9 MR. BRYANT: Sure. Sure.

10 JUDGE KOPTA: But I will take your argument

11 and I will look at that language myself.

12 MR. BRYANT: Okay.

13 JUDGE KOPTA: And is there a reason that you

14 cannot explore with Mr. Rathbun his knowledge of the

15 extent to which there were discussions that did not

16 involve Public Counsel?

17 MR. BRYANT: Well, actually, in

18 Mr. Rathbun's testimony, he rebuts the presumption that

19 Public Counsel was present for all of the settlement

20 communications. He says, I believe, I am not aware of

21 any settlement conferences that occurred without Public

22 Counsel's knowledge.

23 JUDGE KOPTA: And you cannot explore that

24 with him without relying on these email communications?

25 MR. BRYANT: Well, if we do, your Honor, we

0025

1 need to have them admitted to refresh Mr. Rathbun's

2 recollection that these conversations occurred without

3 Public Counsel's knowledge.

4 JUDGE KOPTA: Except that, as Ms. Brown

5 points out, he's not copied on any of these

6 correspondence, is he?

7 MS. BROWN: He didn't offer --

8 MR. BRYANT: I don't believe so, your Honor,

9 but the communication between Mr. Williams and

10 Mr. Rathbun is referenced in the email.

11 JUDGE KOPTA: Ms. Brown?

12 MS. BROWN: Commission staff finds this

13 preposterous given the extensive participation in the

14 entire settlement process by Public Counsel. So if it

15 would make anyone happy, I'd be happy to stipulate on

16 behalf of my client that there may have been, what, one

17 conversation at which Public Counsel wasn't present?

18 JUDGE KOPTA: Okay.

19 Anything further on this particular

20 Exhibit AR-3? No? Then I will rule.

21 I will not admit it into the record. I

22 think our rule, as Mr. Steele quoted, at ER 408 pretty

23 clearly excludes this from admission into the record.

24 And even to the extent that there may be some attempts

25 to address a response to Mr. Rathbun's testimony, I

0026

1 think that any prejudice to the settlement process

2 outweighs any relevance or utility of this particular

3 document. That does not preclude Public Counsel from

4 exploring with Mr. Rathbun the basis of his statement.

5 I will entertain any objections if we go too

6 far into what settlement discussions occurred. But I

7 think, with respect to this exhibit, I will sustain the

8 objection and it will not be admitted.

9 Is there anything specific with respect to

10 DAH-4 that the parties wanted to address at this point?

11 Particularly from Public Counsel, what's the purpose of

12 this particular document?

13 MS. BROWN: Your Honor, this is Sally Brown

14 on behalf of Commission staff. I would just echo my

15 previous arguments. This document is clearly marked

16 Confidentially Submitted for Settlement Discussions

17 under ER 408, and so the idea that it's being proffered

18 as an exhibit is highly objectionable and offensive.

19 And I think, even inclusion in the exhibit

20 list will set a terrible precedent for both of these

21 exhibits. The proposed exhibits are flatly

22 objectionable. These are confidential exhibits. As

23 Mr. Steele pointed out, they should not have been -- or

24 they narrowly missed being posted publicly. Nor should

25 your Honor or the commissioners have access to them.

0027

1 They're simply off limits in the context of settlement

2 negotiations. That's all I have.

3 JUDGE KOPTA: All right. Thank you.

4 I'm wrestling here with a distinction

5 between admissibility and confidentiality. Do you see a

6 distinction between those two concepts?

7 MS. BROWN: Not with regard to these two

8 exhibits. These -- this is just flatly improper, both

9 of these. To even be offered as proposed, to be entered

10 on an exhibit list, they should be rejected. They came

11 dangerously close to being published online. So no, I'm

12 making every effort to contain my anger and outrage this

13 afternoon, so I do not want these exhibits to see the

14 light of day. That's the purpose of settlement

15 negotiations.

16 JUDGE KOPTA: All right. And I guess I'm

17 curious, ER 408 refers to admissibility, but it does not

18 say that information is necessarily confidential or

19 otherwise privileged.

20 Are you relying on some other legal

21 authority for that concept?

22 MS. BROWN: No.

23 JUDGE KOPTA: Mr. Steele, do you have

24 anything to add?

25 MR. STEELE: Well, I think, again, the rules

0028

1 cited previously, Public Counsel was required to request

2 the consent from the other parties before they used

3 these materials, and they did not ask consent of the

4 parties, and instead tried to post them publicly online.

5 And so I think the rule is clear that these

6 are clearly marked under 408. They were for settlement

7 discussions. They fall under this procedural rule here,

8 and there are no exceptions that Public Counsel cited

9 that apply that would pull these out of the rule.

10 JUDGE KOPTA: All right.

11 Counsel?

12 MS. GAFKEN: So Exhibit DAH-4x we intended

13 to use to cross Mr. Henderson with respect to his

14 contention that our five distinct modifications to the

15 plan are last minute. And as has been noted, the edits

16 shown in the document in that exhibit, proposed exhibit,

17 date back to February. And the concepts are in that

18 document, so that was the point behind it.

19 MS. BROWN: Well, your Honor, in response to

20 that, I would remind the bench that on April 12th in a

21 letter, Public Counsel indicated its intention to

22 support the compliance plan.

23 MS. GAFKEN: And in my mind, we are not

24 opposing the compliance plan. We're suggesting

25 modifications to the compliance plan, but we're not

0029

1 opposing the compliance plan.

2 JUDGE KOPTA: As I read Mr. Henderson's

3 testimony, I am -- I don't see it as him saying that

4 these are necessarily new things that Public Counsel has

5 come up with. Rather, his contention is that there was

6 a Settlement Agreement, that Public Counsel did not have

7 an objection at the time that the Settlement Agreement

8 was filed to the investigation and the remediation plan,

9 and that only thereafter, Public Counsel came in and

10 made some suggested modifications to the plan. So I'm

11 not sure how much at issue the timing of these

12 particular modifications is. Am I -- am I misconstruing

13 his testimony?

14 MS. GAFKEN: That's not how I interpreted

15 it. I'm happy to withdraw that exhibit and deal with

16 the issue in argument, and deal with -- I mean, there's

17 other -- in some ways, this is a little bit of a circus

18 issue, and I don't want to spend a ton of time on the

19 circus, right? And I can address the concerns with the

20 bench in closing, and deal with the substantive issues

21 with Mr. Henderson about each one of the five

22 modifications without that exhibit.

23 JUDGE KOPTA: That would be my preference.

24 If you're willing to withdraw it, that would make it a

25 lot easier for me.

0030

1 MS. GAFKEN: We can do that.

2 JUDGE KOPTA: All right. Then I will

3 consider that exhibit withdrawn. We have two additional

4 exhibits, I believe, Mr. Steele.

5 MR. STEELE: Thank you.

6 Public Counsel's offered as exhibits for the

7 record CAK-4 and DAH-3, and both of these are news

8 articles, and in our mind, your Honor, these documents

9 are both irrelevant for the purposes of this hearing

10 today. This is about -- this hearing today is about

11 whether or not the settlement proposal offered by the

12 parties is in the public interest.

13 And I think that there are some significant

14 concerns with these documents. Beginning, one, with

15 CAK-4, this involves an entirely different factual

16 situation in a different place from Greenwood. All of

17 the facts are completely different. There's no relation

18 to Greenwood as part of this article, and so it feels

19 like Public Counsel is using this hearing today as an

20 opportunity to introduce questions it might have about

21 PSE gas systems that far exceed the scope of the

22 Greenwood matter. This case is about whether or not the

23 settlement proposal is appropriate for the Greenwood

24 case, not another gas situation that might exist in some

25 other place.

0031

1 I think there's also authentication

2 questions with this article. PSE is not in a position

3 today to verify the factual statements made throughout

4 this article. The PSE witness that is quoted here, he's

5 not here today, he's not been called as a witness, and

6 Public Counsel has had months, frankly, to ask the

7 Company about these questions. They could have

8 conducted discovery on these issues and they haven't.

9 It's unclear to me as well how this will be

10 used to cross-examine Ms. Koch when -- and I'd be

11 curious what Public Counsel says about how they'll use

12 it to cross-examine, because what it looks like to me is

13 another opportunity by Public Counsel to challenge the

14 compliance plan, and another sort of bite at the apple,

15 as Ms. Gafken said, an evolving position where they have

16 additional concerns with the compliance plan that didn't

17 appear in Mr. Coppola's testimony. And now it's another

18 opportunity by them to challenge the compliance plan

19 based on a totally different natural gas situation in

20 PSE's service territory.

21 JUDGE KOPTA: And while we're at it, the

22 Seattle Times article?

23 MR. STEELE: Yeah. I mean, I see this as

24 very similar issues here. This is a January 25th

25 article talking about PSE's deactivated gas lines.

0032

1 Again, there are factual questions here. The witness --

2 the witnesses cited are not in the room today to be

3 asked about [sic]. PSE, again, is not in a position to

4 verify the accuracy of the statements made in this

5 article.

6 And so I think there's authentication

7 questions, I think there's relevance issues. And as I

8 stated previously, there's a real ER 403 question as to

9 whether there is a benefit to these articles when I see

10 waste of time, confusion of the issues, especially with

11 regards to the first article, the Tehaleh article, we're

12 talking about confusing issues that aren't really before

13 the Commission today. And I think we're concerned about

14 Public Counsel broadening the issues beyond why we're

15 here.

16 JUDGE KOPTA: Do you know whether

17 Mr. Henderson or Ms. Koch have any personal knowledge of

18 any of the facts that are alleged in these articles?

19 MR. STEELE: They -- I know that they have

20 some -- for the Tehaleh issue, they have sort of

21 tangential knowledge of what's happening there, but this

22 is not within their supervision. And Mr. Henderson, I

23 believe, could speak to some of the issues regarding the

24 deactivation, but there are significant factual

25 statements made in this article that are not correct.

0033

1 And so there's also, in my view, reading

2 through them, hearsay questions about statements made by

3 other witnesses that are not before the Commission

4 today, and so unless Public Counsel's in a position to

5 authenticate these documents and the facts made, I think

6 there are concerns with the evidence contained within

7 the documents.

8 JUDGE KOPTA: All right.

9 Ms. Gafken?

10 MS. GAFKEN: I'm going to take the

11 exhibit -- the Seattle Times article first, and I think

12 that one's probably the easier one.

13 I think Mr. Henderson does have the

14 knowledge that I wanted to point at in that article, and

15 I was using the article essentially to confirm that

16 knowledge. I think there's a lot of other things in

17 that article that I wasn't going to point to. That may

18 be the source of Mr. Steele's concern.

19 What I wanted to ask Mr. Henderson about was

20 the inventorying of the abandoned pipe. But be that as

21 it may, I think he probably has knowledge about that.

22 JUDGE KOPTA: Is this document necessary to

23 explore his knowledge on that subject?

24 MS. GAFKEN: Well, quite frankly, when I was

25 writing out my questions, I didn't -- I don't have a

0034

1 line in my questions that says, and move for the

2 admission of that exhibit. So after I found it and

3 thought, oh, I should use this, I ended up not using it.

4 JUDGE KOPTA: Is that one you would be

5 willing to withdraw as well?

6 MS. GAFKEN: If it's causing great angst, I

7 can withdraw that one.

8 JUDGE KOPTA: Well, again, I think that

9 would make everyone's life easy if you don't mind

10 withdrawing it.

11 MS. GAFKEN: I would be happy to withdraw

12 that one.

13 JUDGE KOPTA: All right. And that is

14 DAH-3x, that is withdrawn. And with respect to CAK-4x,

15 the News Tribune article?

16 MS. GAFKEN: That one is a little more

17 tricky. I'm not trying to broaden the issues in this

18 case, but I think that there is a point to be made with

19 respect to the narrowness of the plan. I understand

20 that that's going to be heard as a criticism, and I

21 don't mean it to be a criticism in the sense that the

22 plan should be rejected or anything like that. That's

23 not the argument that I'm making.

24 The plan does what it does. It's not

25 designed to find other types of problems, and this is

0035

1 another type of problem, and so I just wanted to explore

2 that with the witness. I'm not planning on spending a

3 ton of time on that, but I think it's a -- it is a valid

4 point to consider and to understand just to understand

5 the scope of the program.

6 JUDGE KOPTA: Is this any part of

7 Mr. Coppola's testimony?

8 MS. GAFKEN: No, not the Bonney Lake issue.

9 JUDGE KOPTA: Mr. Steele?

10 MR. STEELE: I mean, I -- I'm standing by my

11 objection. Again, it sounds like Public Counsel would

12 like to use this as an opportunity to further criticize

13 the compliance plan, which I understand is in their

14 purview, but I don't -- I don't believe that the PSE

15 witnesses are in a position to testify and respond to

16 questions about this today, so they're very general

17 sense [sic].

18 Again, this is an entirely different factual

19 scenario with different -- possibly different causes.

20 As it says here, the Company's still investigating, and

21 so I -- I think that there are serious questions about

22 the value of bringing in a different factual case in

23 PSE's territory that will distract from the Greenwood

24 case, what happened in the Greenwood incident, and

25 whether or not the proposal before the Commission today

0036

1 is in the public interest.

2 Because I believe that's why we're here

3 today, not asking questions about PSE's natural gas

4 issues in other parts of the service territory -- excuse

5 me -- and so I -- I believe it really would broaden the

6 issues beyond why we're here today and it should not be

7 admitted.

8 MS. GAFKEN: The issue is, I don't want the

9 Company to wait for another catastrophic event in order

10 to inspect another type of pipe. So the plea is for the

11 Company to be proactive in its maintenance of its

12 pipelines. That's the point.

13 MR. STEELE: Your Honor, if I may -- I mean,

14 I guess one question I have for Ms. Gafken is, this

15 article dates back to February 10th. You know, this --

16 these questions could have been raised months ago.

17 MS. GAFKEN: We did raise them.

18 JUDGE KOPTA: Let's not get into that for

19 right now.

20 Ms. Gafken, I think you can certainly

21 explore those issues. I am troubled any time there's a

22 news article that's obviously of questionable

23 evidentiary value. Let's put it that way. And I don't

24 see any of the witnesses that are testifying here quoted

25 or otherwise referred to in this article, so I'm just

0037

1 concerned that it's a little too far afield.

2 MS. GAFKEN: Okay.

3 JUDGE KOPTA: So I will not allow that one

4 into the record, but I will allow you to explore that

5 particular issue that you've raised in whatever form you

6 choose, and obviously subject to objection from counsel.

7 MS. GAFKEN: Okay.

8 JUDGE KOPTA: All right.

9 Does that cover our exhibit list issues?

10 MR. STEELE: It does for PSE. Thank you,

11 your Honor.

12 MS. BROWN: Thank you.

13 JUDGE KOPTA: All right.

14 Are there any other objections to any of the

15 exhibits that are listed on the exhibit list as I

16 circulated it?

17 MR. BEATTIE: May we have ten seconds?

18 JUDGE KOPTA: Yes, you may.

19 MS. GAFKEN: Your Honor, I did inquire

20 whether parties would be willing to stipulate to

21 Mr. Coppola's other exhibits other than his testimony.

22 I understand that there's still motions pending with

23 respect to his testimony. I did hear from both Staff

24 and PSE that they would not object, or that they would

25 stipulate to entry to Exhibits SC-2 through SC-12.

0038

1 JUDGE KOPTA: Mr. Beattie, did you have

2 something as a result of your conference?

3 MR. BEATTIE: I do not. And Staff indicated

4 its stipulation to the exhibits to which Ms. Gafken

5 refers about an hour ago by email.

6 JUDGE KOPTA: Yes, I received that. Thank

7 you.

8 I'm in a little bit of a quandary, because

9 if we, the Commission, were to decide to strike portions

10 of Mr. Coppola's testimony, there is responsive

11 testimony that goes to that testimony. And I am not

12 sure whether it makes more sense to admit everything now

13 subject to revision later, or to withhold admitting it

14 until that has been decided and then making changes to

15 the testimony and then admitting it.

16 I'm inclined toward to former, so I will ask

17 the parties if they have any objection to admitting

18 those exhibits subject to later revision as a result of

19 the pending motion that was held in abeyance as to

20 Mr. Coppola's recommendations for modifications to the

21 inspection mediation program.

22 MR. WILLIAMS: Your Honor, this is James

23 Williams of behalf of Puget Sound Energy. We're still

24 objecting to Mr. Coppola and all of his testimony. We

25 will reassert our motion to strike at the end of his

0039

1 examination, and ask the Court then to decide whether or

2 not any of it should be allowed in.

3 JUDGE KOPTA: All right.

4 And that includes all of his exhibits, I'm

5 assuming, as well?

6 MR. WILLIAMS: Correct, your Honor.

7 JUDGE KOPTA: Okay. Well, we're not going

8 to be able to be quite as efficient as I had hoped, but

9 sometimes we have to go down that road.

10 Then with respect to the other exhibits, I

11 will admit into the record Exhibits SP-1, SP-2, CAK-1T,

12 through CAK-3, DAH-1T, DAH-2, and DAH-5xC, and

13 Exhibit AR-1T and AR-2.

14 (Exhibit Nos. SP-1, SP-2, CAK-1T,

15 CAK-2, CAK-3, DAH-1T, DAH-2,

16 DAH-5xC, AR-1T & AR-2 were

17 admitted.)

18 JUDGE KOPTA: The remaining exhibits will be

19 subject to a ruling later, and I will note that it may

20 be necessary to strike some or all of those exhibits

21 depending on the Commission's ruling with respect to

22 Mr. Coppola's testimony, since some of these exhibits

23 address his testimony and, therefore, wouldn't make any

24 sense to have it in the record without his testimony.

25 So I'm doing a little bit of both with my

0040

1 proposals. So I'm going to admit some of them for now

2 subject to revision, and some of them are not admitted

3 subject to pending objection.

4 Anything further before I have the

5 commissioners join us? All right. Then let's be off

6 the record and I will be back.

7 (Brief pause in the proceedings.)

8 JUDGE KOPTA: Let's be back on the record.

9 I am joined on the bench by Chairman Danner and

10 Commissioners Rendahl and Balasbas. And we will once

11 again take appearances for the benefit of the

12 commissioners, beginning with the Company.

13 MR. WILLIAMS: Thank you, your Honor.

14 Good afternoon. My name is James Williams.

15 I'm with the Perkins Coie firm in Seattle on behalf of

16 Puget Sound Energy, and I'm here with my co-counsel,

17 Mr. Steele.

18 We're also joined by PSE witnesses Catherine

19 Koch, who is Director of Planning for Puget Sound

20 Energy, Duane Henderson, who is the manager for Gas

21 Systems Integrity for Puget Sound Energy. And we also

22 have General Counsel, Mr. Steve Secrist, Deputy General

23 Counsel, Ms. Kendall Cammermeyer, and my law partner,

24 Donna Barnett.

25 JUDGE KOPTA: Thank you, Mr. Williams.

0041

1 For Commission staff?

2 MS. BROWN: Sally Brown, Senior Assistant

3 Attorney General.

4 MR. BEATTIE: Julian Beattie, Assistant

5 Attorney General.

6 JUDGE KOPTA: For Public Counsel?

7 MR. BRYANT: Armikka Bryant, Assistant

8 Attorney General.

9 MS. GAFKEN: Lisa Gafken, Assistant Attorney

10 General appearing on behalf of Public Counsel. And our

11 witness today is Sebastian Coppola.

12 JUDGE KOPTA: Okay. Thank you. We have the

13 three witnesses from the Company and Staff that are

14 supporting the settlement agreement. If I could ask you

15 to rise, please, raise your right hand.

16 (Catherine Koch, Duane Henderson

17 and Alan Rathbun sworn.)

18 JUDGE KOPTA: You may be seated. We have

19 previously admitted the testimony of and exhibits

20 sponsored by these witnesses, and, therefore, they are

21 subject to cross-examination by Public Counsel,

22 Ms. Gafken.

23 / / /

24 / / /

25 / / /

0042

1 CATHERINE A. KOCH, witness herein, having been

2 first duly sworn on oath,

3 was examined and testified

4 as follows:

5

6 CROSS-EXAMINATION

7 BY MS. GAFKEN:

8 Q. Good afternoon, Ms. Koch. I'm sorry for

9 mispronouncing your name earlier.

10 Would you please turn to your testimony, which

11 is Exhibit No. CAK-1T, page 1, lines 14 and 15? There

12 you testified that Mr. Coppola recommends that the

13 Commission reject the Settlement Agreement as filed by

14 Staff and PSE, correct?

15 A. Yes.

16 Q. The two main components of the settlement are

17 penalties and the inspection and remediation plan; is

18 that correct?

19 A. Yes.

20 Q. With respect to penalties, Mr. Coppola testifies

21 that the penalty amount should be increased to the

22 maximum penalty, correct?

23 A. Yes.

24 Q. We can agree that Public Counsel's position on

25 penalties is that the agreement should be rejected,

0043

1 correct?

2 A. Can you restate the question?

3 Q. Sure.

4 We can agree that Public Counsel's position on

5 penalties is that the Settlement Agreement should be

6 rejected, correct?

7 MR. WILLIAMS: Objection. Vague. Unclear.

8 JUDGE KOPTA: Would you turn the microphone

9 on? And Ms. Koch, I believe you need to, too, and make

10 sure the red light is on.

11 MS. KOCH: I believe it is. I'll speak up.

12 MR. WILLIAMS: I'm sorry, your Honor. I

13 would object to the question being vague. It was

14 unclear for me to understand it.

15 JUDGE KOPTA: Can you clarify that a bit,

16 Ms. Gafken?

17 MS. GAFKEN: Sure.

18 BY MS. GAFKEN:

19 Q. You understand that Public Counsel's position is

20 that the Settlement Agreement should be objected -- or

21 should be rejected with respect to penalties, right?

22 A. Yes.

23 Q. With respect to the inspection and remediation

24 plan, Mr. Coppola does not recommend that the Commission

25 reject the plan, does he?

0044

1 A. He suggests modifications to the plan.

2 Q. Modifications?

3 A. In essence, not accepting the plan as is.

4 Q. But modification is not the same as rejection,

5 is it?

6 MR. WILLIAMS: Objection. Argumentative.

7 JUDGE KOPTA: Overruled.

8 / / /

9 BY MS. GAFKEN:

10 Q. Rejection is not the same as -- I'm sorry.

11 Modification is not the same as rejection, is it?

12 A. Not -- no.

13 Q. Do you understand that Public Counsel's position

14 is that the Commission should approve the program and

15 that it should also approve the modifications proposed

16 by Mr. Coppola?

17 A. Can you restate that? I feel like I'm a bit in

18 a -- in a semantics game here, so can you restate the

19 question?

20 Q. Sure.

21 Do you understand that Public Counsel's position

22 is that the Commission should approve the program and

23 that it should also approve the modifications proposed

24 by Mr. Coppola?

25 A. I'd have to pull up the plan again, or the

0045

1 statement from Mr. Coppola.

2 Q. And I'm only asking for your understanding.

3 A. My understanding was that the Public Counsel was

4 suggesting that the plan not be approved as is.

5 Q. Would you turn to your testimony, Exhibit

6 CAK-1T, page 2, line 17 to 19?

7 A. Okay.

8 Q. There you testify that Mr. Coppola's conclusions

9 are not based on independent analysis and are the result

10 of reviewing documents, correct?

11 A. They're not based on independent analysis and

12 are a result of reviewing documents.

13 Q. Do you have a copy of Mr. Coppola's testimony

14 handy?

15 A. I do. One minute, please. Okay.

16 Q. Would you please turn to Mr. Coppola's

17 testimony, which is Exhibit SC-1T and go to page 6 and

18 7?

19 A. Okay.

20 Q. Beginning at line 23 on page 6, and continue

21 through line 14 on page 7, Mr. Coppola summarizes the

22 documents and materials he reviewed, correct?

23 A. He does.

24 Q. Is this what you were referring to when you

25 testified that Mr. Coppola's conclusions were based on

0046

1 several documents?

2 A. Yes, with the emphasis of these are just several

3 documents, yes.

4 Q. Are you familiar with the discovery in this

5 case?

6 A. Some of it. Can you address your question or

7 ask it with more specificity?

8 Q. Did you review the discovery that was propounded

9 in this case?

10 A. I reviewed some of it. Duane has reviewed and

11 responded to most of it. Mr. Henderson, excuse me.

12 Q. Are you familiar with the public records request

13 made by PSE to the Commission regarding the Greenwood

14 neighborhood explosion investigation?

15 A. I'm not familiar.

16 Q. Are you familiar with Staff's responses to PSE

17 Data Requests 1 through 17?

18 A. With Staff's responses to Data Requests 1

19 through 17?

20 Q. So PSE requested data requests to Commission

21 staff. Are you familiar with those?

22 A. I don't have those in front of me.

23 Q. I realize that you don't have them in front of

24 you, but during the course of the case, were you

25 familiar with that discovery?

0047

1 A. I reviewed most everything, but I don't have it

2 by memory.

3 Q. Okay.

4 Do you recall whether the Commission's response

5 to PSE's public records request was contained in Staff's

6 responses to PSE -- PSE's Data Requests 1 through 17?

7 MR. WILLIAMS: Objection to the form of the

8 question. It's vague.

9 JUDGE KOPTA: I'm also wondering where

10 you're going with this, Ms. Gafken. I don't really want

11 to have a litany of all of the documents that are in the

12 case.

13 Is there a point to your line of questions?

14 MS. GAFKEN: I'm trying to figure out what

15 her knowledge base is before I ask the question, whether

16 I have a foundation to ask a question.

17 JUDGE KOPTA: I think you have a good

18 foundation at this point.

19 MS. GAFKEN: Okay. Fair enough.

20 BY MS. GAFKEN:

21 Q. Through discovery in this case, which included

22 the Commission's response to PSE's public records

23 requests, Mr. Coppola had available to him all the

24 information from the investigation and from this docket,

25 didn't he?

0048

1 MR. WILLIAMS: Objection. Calls for

2 speculation.

3 A. Yeah, I can't speak to what he -- what was

4 available to him. I'm sure you could have made it

5 available to him, but I don't know what he --

6 BY MS. GAFKEN:

7 Q. Well, did Puget Sound Energy not provide

8 something?

9 MR. WILLIAMS: Objection to the form of the

10 question. It's vague and it's unanswerable.

11 A. Yeah, I don't -- I can't speak to what he looked

12 at short of what he's listed here.

13 BY MS. GAFKEN:

14 Q. Do you understand what's listed there?

15 A. The complaint, the investigation, the UTC form

16 prepared by Staff, the answers to the complaint,

17 responses to several data requests. They were over

18 100-plus data requests. Various PSE standards and

19 operating practices, the federal rules and the

20 settlement and the narrative, yes.

21 Q. As you noted, there were several data requests,

22 correct?

23 A. Um-hmm, yes.

24 Q. Would you describe the discovery in this case

25 extensive?

0049

1 MR. WILLIAMS: Objection, your Honor. It's

2 vague and it's not relevant.

3 JUDGE KOPTA: I will sustain that.

4 Ms. Gafken, I think we catch your point.

5 BY MS. GAFKEN:

6 Q. Please turn to page 3 of your testimony, Exhibit

7 CAK-1T, and please go to lines 6 through 10. There you

8 criticize Mr. Coppola for not having work papers,

9 correct?

10 A. Correct.

11 Q. What work papers were you anticipating that

12 Mr. Coppola would have?

13 A. I would expect, with his expertise that he

14 described, that he would have other industry examples

15 that he'd be thinking about and analysis to contribute

16 to what he was seen and given.

17 Q. Is this a rate case?

18 MR. WILLIAMS: Objection. Relevance.

19 JUDGE KOPTA: Overruled.

20 A. No, it's not. It's an enforcement -- compliance

21 enforcement case.

22 BY MS. GAFKEN:

23 Q. Please turn to page 3 of your testimony, again

24 Exhibit CAK-1T. And at lines 12 through 21, you

25 criticize Mr. Coppola's expertise, correct?

0050

1 A. Yes.

2 Q. Did you review the declaration that Mr. Coppola

3 submitted in response to Staff and PSE's motions to

4 strike in which he further detailed his experience over

5 his 37-year career with the utility industry?

6 A. I did review that.

7 Q. Mr. Coppola's former schooling is in finance,

8 but he describes that he also gained natural gas

9 operations experience during his 26-year career with two

10 utilities and his subsequent consulting career, correct?

11 A. That's what his declaration said.

12 Q. Do you doubt that?

13 A. I doubt his expertise relative to this

14 enforcement action and the in-depth knowledge needed for

15 understanding the gas operations and the plan details.

16 Q. How long have you worked with the utilities

17 industry?

18 A. Twenty-six years.

19 Q. Would you please turn to your testimony, Exhibit

20 CAK-1T, page 5, and go to lines 3 to 4? There you

21 characterize the primary objective of the inspection and

22 remediation program as preventing another Greenwood,

23 correct?

24 A. Yes.

25 Q. By this, you mean another explosion similar to

0051

1 the Greenwood explosion, correct?

2 A. Preventing another Greenwood explosion.

3 Q. The inspection and remediation program does not

4 address -- or let me phrase it this way. The inspection

5 and remediation program addresses the specific threats

6 uncovered by the Greenwood explosion; namely, abandoned

7 pipes that may still be active and vulnerable

8 above-ground facilities, correct?

9 A. Yes.

10 Q. But the inspection and remediation program is

11 not designed to address other potential threats to PSE's

12 system; is that correct?

13 MR. WILLIAMS: Objection. Vague.

14 JUDGE KOPTA: Overruled.

15 A. The Green- -- the inspection plan is -- was

16 designed to address the factors that were learned in

17 Greenwood specifically, and address the compliance, yes.

18 BY MS. GAFKEN:

19 Q. Is the inspection and remediation program

20 designed to address any other potential threat to PSE's

21 system?

22 MR. WILLIAMS: Objection.

23 A. It was designed --

24 JUDGE KOPTA: Overruled.

25 A. -- to address the factors found in the Greenwood

0052

1 explosion and the lessons learned in that.

2 BY MS. GAFKEN:

3 Q. But the inspection and remediation program is

4 not designed to address any other potential threats to

5 PSE's natural gas system, is it?

6 MR. WILLIAMS: Objection. Asked and

7 answered.

8 JUDGE KOPTA: Sustained.

9 MS. GAFKEN: It was not asked and answered.

10 JUDGE KOPTA: It was. She did answer it.

11 BY MS. GAFKEN:

12 Q. Do you have a copy of the Settlement Agreement?

13 A. I do.

14 Q. Would you please turn to paragraph 17?

15 A. One minute.

16 JUDGE KOPTA: And for the record, that is

17 Exhibit SP-1.

18 A. Okay.

19 BY MS. GAFKEN:

20 Q. In Exhibit SP-1, paragraph 17, PSE states that,

21 for settlement purposes, it will not contest the

22 violations alleged in the complaint; is that correct?

23 A. That's what it says.

24 Q. Is not contesting the equivalent to admitting

25 violations?

0053

1 A. I believe in the narrative supporting the

2 settlement, there was a statement that says PSE concurs

3 the violations were incurred [sic].

4 Q. And by concurring, is that the same as

5 admitting?

6 A. We're -- we're in lawyer-speak. It sounds like

7 we concurred that violations were incurred. We

8 concurred and agreed.

9 Q. Okay.

10 The number of violations are not set out in the

11 Settlement Agreement, but paragraph 17 refers to the

12 complaint, and in the complaint -- or the complaint

13 lists 17 violations. So is PSE admitting or not

14 contesting all 17 violations that are alleged in the

15 complaint?

16 A. I think that the violations that are mentioned

17 here, there's -- the numbers are multiple for some of

18 these codes, so I would suspect that the statement that

19 PSE concurs that the violations occurred is addressing

20 all 17.

21 MS. GAFKEN: Okay. I have no further

22 questions.

23 JUDGE KOPTA: All right.

24 Then your next witness -- or do you want

25 to -- the Commission intends to ask questions of the

0054

1 entire panel, so we won't have individual witness

2 questions from the commissioners. You may take the

3 opportunity now to do your direct if you like, or you

4 may wait until after.

5 MR. WILLIAMS: We have no direct.

6 JUDGE KOPTA: All right. Then that makes it

7 simple. Then you may proceed with the next witness.

8

9 ALAN E. RATHBUN, witness herein, having been

10 first duly sworn on oath,

11 was examined and testified

12 as follows:

13

14 CROSS-EXAMINATION

15 BY MR. BRYANT:

16 Q. Good morning, Mr. Rathbun. Am I pronouncing

17 your name correctly?

18 A. Yes, it's Rathbun, yes.

19 Q. Thank you.

20 You're the Director of Pipeline Safety for the

21 UTC; is that correct?

22 A. That's right.

23 Q. Okay.

24 And in that role, you're responsible for

25 overseeing gas safety programs and gas utilities

0055

1 compliance within the state of Washington; is that

2 correct?

3 A. That, in addition to other -- other safety

4 responsibilities, yes.

5 Q. Okay.

6 Have you worked for gas utilities in the past,

7 and if so -- I'm sorry, this is a compound question, I

8 understand that -- and if so, what roles and when?

9 A. I have not worked for a gas utility in the past.

10 Q. Okay. Okay.

11 So can you please turn to page 1 of your

12 testimony? And so on lines 1 through 23, you state that

13 you supervised Staff's investigation and coauthored the

14 Staff Investigation Report; is that correct?

15 A. Yes, it is.

16 Q. Okay.

17 Did you personally visit the site of the

18 explosion the morning it occurred?

19 A. No, I did not.

20 Q. Okay.

21 Did you visit the explosion site after it

22 happened or at any time after?

23 A. No, I did not.

24 Q. No? Okay.

25 So in coauthoring the investigation report, did

0056

1 you rely almost entirely on the investigation prepared

2 by your staff and data request responses from PSE?

3 A. That's a fair statement. I -- and questioned --

4 and questioned the staff that were involved in -- in --

5 in that report, yes.

6 Q. Okay. Okay.

7 So in your response testimony, you object to

8 Public Counsel's proposed enhancements to the inspection

9 program and our proposed increase to the penalty amount

10 PSE will be assessed; isn't that right?

11 A. Yeah. We -- my testimony says that we did not

12 feel that an enhanced sampling program was necessary.

13 Q. Okay. Okay.

14 So I'm going to focus primarily on those two

15 aspects of your testimony, first with the inspection

16 program, second with the penalty amount, and just kind

17 of take some time and ask you some questions.

18 And we'll begin with the inspection program, so

19 can you please turn to page 3 of your testimony?

20 A. (Witness complies.)

21 Q. On lines 8 and 9, you state that Staff became

22 aware of Mr. Coppola's involvement during the settlement

23 discussions.

24 Are you aware that Mr. Coppola joined the Public

25 Counsel team as an expert witness in December of 2016

0057

1 and prepared multiple rounds of data requests after

2 performing a comprehensive review of the information

3 that Staff had gathered and the investigation report

4 that you authored?

5 A. I was not aware of his involvement at that

6 point, no.

7 Q. Okay.

8 So still on page 3, move down to line 16 through

9 17, if you could. Here you state that you are not aware

10 of any settlement conferences that took place without

11 Public Counsel being present or being involved; is that

12 correct?

13 A. Excuse me. You're talking lines 16 and 17 on

14 page 3?

15 Q. Yes.

16 A. I was not aware of -- we -- every settlement

17 conference that I was involved in, Public Counsel was

18 available and present.

19 Q. So then isn't it true that, if there were

20 conferences where you were not involved, you would not

21 be aware of those, right?

22 A. I'm not sure I understand the question.

23 Q. How can you be aware of something -- how can you

24 have knowledge of something that you aren't aware of?

25 A. As I stated, I was -- every settlement

0058

1 conference -- I attended all the settlement conferences

2 that were scheduled, I was there at each one, and Public

3 Counsel was present during those.

4 Q. Okay.

5 Do you know if you had any discussions to which

6 Public Counsel was not present with PSE?

7 A. I had a -- what I recall is a phone conversation

8 with Mr. Henderson sometime during the process, and I

9 remember one telephone conversation, yes.

10 Q. Okay.

11 And you are aware that a telephone conversation

12 about a proceeding that's before the Commission is

13 technically a settlement conference?

14 MR. BEATTIE: Objection. Argumentative.

15 JUDGE KOPTA: Sustained. We take your

16 point, Mr. Bryant.

17 BY MR. BRYANT:

18 Q. Okay. Thank you.

19 Can you please turn to page 4 of your testimony?

20 A. Excuse me, page --

21 Q. Four. On line 3 through 5, you state that

22 Mr. Coppola did not participate in any aspect of Staff's

23 investigation and that he prepared no work papers.

24 Do intervenors normally prepare work papers?

25 A. My testimony only regards the fact that -- you

0059

1 know, that it was Mr. Coppola's response to PSE's data

2 request. I didn't address issues relative to whether

3 or -- whether or not he did not commit -- you know,

4 prepare work papers. I was simply -- you know, I was --

5 I was simply quoting his response to the PSE data

6 request.

7 Q. Right.

8 So he may have performed other research or

9 analysis not in the form of a work paper; is that

10 correct?

11 A. I have no idea.

12 Q. Okay. Okay.

13 On line -- let's see. So on line -- we're still

14 on page 4, line 6 through 7 of -- no, I'm sorry.

15 That's -- I'm sorry.

16 Do you have Mr. Coppola's testimony in front of

17 you, SC-1T?

18 A. Yes, I do.

19 Q. Okay.

20 So at the bottom of page 6, line 21 through line

21 14 of page 7, do you see that, where it's --

22 A. Yes. This pertained to the question, What

23 documents did you review in preparation for this

24 testimony, that --

25 Q. Right, yes.

0060

1 A. Yes.

2 Q. So would I be correct to assume that, other than

3 the site visits by your staff -- by your staff, you used

4 the same sources of information to prepare the

5 investigation report?

6 A. We had -- you know, our staff conducted, you

7 know, many, many interviews in addition to simply

8 looking at the paper documents related to interviews of

9 first responders, of witnesses. There's considerably

10 more information than just these exhibits.

11 Q. Okay.

12 Was -- was all of that information discoverable?

13 A. To my knowledge, yes.

14 Q. Okay. Thank you.

15 So if you could turn back to your testimony,

16 please.

17 JUDGE KOPTA: And just as a reminder, for

18 the record, it's convenient to say the exhibit number

19 when you're referring to different exhibits.

20 MR. BRYANT: Oh, sorry. It's AR-1T.

21 BY MR. BRYANT:

22 Q. So we're on line 21 through 23. Do you see

23 that?

24 A. Excuse me, page --

25 Q. Page -- I'm sorry -- page 4 -- page 4 of AR-1T.

0061

1 In this section of your testimony, and going into the

2 next on page 5, you disagree with Mr. Coppola's

3 conclusion that the failures to have a robust inspection

4 program and a failure to deactivate the gas lines rise

5 to the level of a responsibility that approaches an

6 intentional act; is that correct?

7 A. That's correct.

8 Q. Specifically, on lines 22 through 23 of page 4,

9 you state that the failure to remove the inactive

10 service -- above-ground service line was not in clear

11 violation of the Company's procedures at that time; is

12 that correct?

13 A. Well, what I said in that testimony was the

14 failure to remove the entire inactive service line,

15 which was above grade or above ground, in Staff's

16 opinion, was not a clear violation of their procedures.

17 Q. Okay. Thank you for that clarification.

18 Would you mind turning to Exhibit SC-9, right

19 along with Mr. Coppola's testimony, and I'll do the

20 same.

21 Are you there, Mr. Rathbun?

22 A. What page again?

23 Q. I'm sorry, the first page, page 1. All right.

24 Exhibit SC-9, page 1.

25 A. I'm not sure I have SC-9. I'm sorry.

0062

1 Q. Okay.

2 MR. BRYANT: Does UTC counsel have a copy of

3 the Exhibit SC-9 for Mr. Rathbun?

4 MR. BEATTIE: No, but with Commission

5 permission, I'll stand there next to him with it.

6 JUDGE KOPTA: Yes.

7 BY MR. BRYANT:

8 Q. Okay. You got it?

9 A. Yes.

10 Q. Okay.

11 So this exhibit includes PSE's response to

12 Public Counsel's DR 30 and makes reference to a prior

13 Staff DR 22; is that correct?

14 A. Yes, that's what it says.

15 Q. Okay.

16 So down at the bottom of the page at A6, I

17 believe -- yes, A6 -- asks PSE to explain if leaving an

18 above-ground -- an abandoned service line with a stub

19 above ground was an acceptable operating procedure in

20 September of 2004, and to explain how long that practice

21 has lasted and if it continues today.

22 Do you see that?

23 A. Yes, I do.

24 Q. Please turn to page 3 of Exhibit SC-9.

25 A. Yes.

0063

1 Q. And if we look at letter 6 [sic], PSE answered

2 that question by stating, PSE operating standard

3 procedure -- operating standard 2525.2100, section 6,

4 Service Deactivation, requires that exposed service

5 piping be removed at the building.

6 Do you see that?

7 A. Yes.

8 Q. Do you have any reason to believe PSE was being

9 less than truthful in answering that question?

10 A. I assume they were truthful in response to the

11 DR.

12 Q. Okay. Thank you.

13 Turning back to your testimony, Exhibit AR-1T

14 on -- I am now on page 5, on lines 6 and 7, you state,

15 There's no basis on which to describe the error in 2014

16 as an intentional act. Am I right?

17 A. That's correct.

18 Q. Well, which error are you referring to

19 Mr. Rathbun, the failure to perform the cut and cap, or

20 the failure of not removing the above-ground service

21 pipe as described by PSE operating standard procedure

22 [sic] 2525.2100?

23 A. We're describing that the whole element was not

24 an -- was an intentional [sic] act in Staff's opinion.

25 Q. So the cut and cap?

0064

1 A. Cut and cap. We talked about in the testimony,

2 it was a failure to deactivate the service. That's what

3 my testimony talks about.

4 Q. Okay.

5 So on -- now we're still on line 7 of your

6 testimony, SC -- I'm sorry -- AR-1T, you say that the

7 error was unintentional. Can you please tell me how PSE

8 or Pilchuck would intentionally cut and cap -- I'm

9 sorry -- unintentionally cut and cap a service line in

10 error?

11 A. I can't speak to what PSE or Pilchuck --

12 contractor Pilchuck did at that particular time. You

13 know, my -- I stand by my testimony that their failure

14 to conduct the proper cut and cap in 2004 was not an

15 intentional act.

16 Q. Okay.

17 How do you -- in your years of experience,

18 Mr. Rathbun, how would a utility intentionally cut and

19 cap the wrong line? Have you ever seen this in your

20 experience?

21 A. I've not seen any particular experience like

22 this.

23 Q. Okay. Okay.

24 We're still on page 5 of your testimony. Can

25 you please go to line 13 and 14? Here you state that

0065

1 Staff identified all past enforcement actions taken

2 against PSE by the Commission. Are you referring -- in

3 what document did you -- did Staff --

4 A. I'm talking about in the complaint document, we

5 did reference those.

6 Q. Okay.

7 Did you also reference those -- those prior

8 enforcement actions in the investigation report,

9 Exhibit AR-2?

10 A. Likely. I don't have that right in front of me,

11 but likely, yes.

12 MR. BRYANT: Will UTC staff please provide

13 Mr. Rathbun --

14 BY MR. BRYANT:

15 Q. Oh, you do have it. Okay.

16 A. Are we -- this document, the investigation

17 report, March 9, 2016?

18 Q. Yes. We won't need that right at this time, but

19 we'll be referring to it later.

20 We're still on page 5 of your testimony, lines

21 20 through 23. In this section of your testimony, and

22 going onto the next page, you state that the proposed

23 changes by Public Counsel to the inspection remediation

24 program were last minute and unnecessary; is that

25 correct?

0066

1 A. Yes.

2 Q. Are you aware that Public Counsel made many of

3 the same proposed changes in prior negotiations and

4 those changes were not adopted until the final

5 inspection report -- written inspection program?

6 A. The only change that I'm aware of that was made

7 prior to the filing of the Settlement Agreement

8 pertained to the sampling of Population 4, as I recall,

9 which was a conversation for which I was not privy.

10 Q. Okay.

11 Did Staff or PSE provide any reason for

12 rejecting Public Counsel proposal -- Public Counsel's

13 proposal for Populations 3 and 4 to have the same one

14 percent confidence interval as Population 1 instead of

15 the two percent confidence interval?

16 A. I'm sorry. Could you repeat the question, first

17 part of that question?

18 Q. Sure. No problem.

19 Did Staff or PSE provide any reasons for

20 rejecting Public Counsel's proposals for Populations 3

21 and 4 to have the -- to have a one percent confidence

22 interval?

23 MR. BEATTIE: Objection. Judge Kopta, I

24 would object on grounds of ER 408, relevance and

25 foundation. We're being asked to explore settlement

0067

1 discussions at this point, and I'm not -- really not

2 sure what the relevance is, and it's also not

3 admissible.

4 JUDGE KOPTA: Mr. Bryant?

5 MR. BRYANT: Yes, your Honor. On line 22 of

6 page 5 of AR-1T, Mr. Rathbun raises settlement -- the

7 settlement discussions in his testimony. He opened the

8 door.

9 JUDGE KOPTA: I don't see that. As I

10 construe the testimony at this point, it refers to

11 Public Counsel's last-minute change of position, which,

12 as I understand the background, is that Public Counsel

13 at first was okay with the program and then later

14 proposed modifications. I don't believe this portion of

15 his testimony opens up settlement discussions, so I will

16 sustain the objection.

17 You may explore why Staff takes the position

18 it does now, that those modifications should not be made

19 to the settlement as it is today, but not what the

20 discussions were during the settlement.

21 MR. BRYANT: I believe that will be

22 addressed in cross-examination of Mr. Henderson.

23 BY MR. BRYANT:

24 Q. So we're now on page 6 of your testimony,

25 Mr. Rathbun, Exhibit AR-1T. At line 5, you state you

0068

1 believe the plan is -- let's see, is it 5? Yes -- more

2 than adequate, but nowhere in your testimony do you

3 explain why Public Counsel's recommendations do not

4 improve the plan; is that correct?

5 A. That's correct.

6 Q. Okay. That's all I have with respect to the

7 inspection program. I'd like to move now to the second

8 part, which is the penalties.

9 So if you wouldn't mind turning back to page 1

10 of your testimony, at lines 22 and 23, and through page

11 2, lines 1 and 2, you state that you authored the

12 investigation report, identified the causes of the

13 explosion and recommended appropriate penalties; is that

14 correct?

15 A. Yes, it is.

16 Q. The amount referenced there as an appropriate

17 penalty was $3.2 million; is that correct?

18 A. $3.2 million was that amount stated in the

19 complaint document, yes.

20 Q. Mr. Rathbun, could you please open AR-2, Exhibit

21 AR-2, page 8, please? If we're working with the same

22 PDF, it should be page 8. I'm sorry. It's not page 8,

23 it's page 10. Page 10.

24 Do you see right above Conclusion, there's a

25 long sentence that says, Staff recommends that the

0069

1 Commission impose a maximum penalty of $3,200,000?

2 A. Yes, I do.

3 Q. Okay. Thank you. Okay.

4 Now, please turn to page 8, and I'm in sub 5

5 under Penalty Recommendation. Here and through page 9,

6 you apply the Commission's enforcement policy; is

7 that -- is that true?

8 A. That is correct.

9 Q. And still on page 8, back to page 8, at number

10 2, you state that Staff does not contend that PSE -- or

11 I'm sorry. I'm assume that this is your -- this is your

12 work, correct?

13 A. Coauthored, yes.

14 Q. Here you state that Staff does not contend that

15 PSE intentionally violated the law.

16 A. That's what it says.

17 Q. And yet, on page 10, you do recommend the

18 maximum penalty of $3.2 million.

19 A. Yes.

20 Q. Okay.

21 So let's go back to page 2 of your testimony,

22 AR-2. And we're almost done, we don't have that much

23 longer. At lines 15 through 19, you state that the

24 total assessed penalty under the Settlement Agreement,

25 the proposed Settlement Agreement, would be $2,750,000

0070

1 with $1,250,000 being suspended on the condition that

2 PSE completes the compliance program; am I right?

3 A. That's correct.

4 Q. So just doing the math, and I was never good at

5 that, if PSE satisfactory -- satisfactorily completes

6 the program, the penalty that will be paid and assessed,

7 I guess not in that word [sic], would be $1.5 million,

8 right?

9 A. That's correct.

10 Q. Okay.

11 So I'm curious to know, Mr. Rathbun, did you

12 know if Pilchuck or Pilchuck's insurer would indemnify

13 PSE for any penalties PSE is imposed -- assessed for

14 violations related to Pilchuck's work?

15 MR. BEATTIE: Objection. Relevance.

16 MR. WILLIAMS: Join.

17 JUDGE KOPTA: Mr. Bryant?

18 MR. BRYANT: I think Mr. Rathbun testifies

19 that he believes the penalty is appropriate and that

20 it's appropriately punitive, I think, is the language

21 for PS -- to PSE. But if PSE doesn't actually pay the

22 penalty, it's not punitive at all. They're reimbursed

23 for it.

24 JUDGE KOPTA: I'll allow the question. Do

25 you want to repeat it, Mr. Bryant?

0071

1 MR. RATHBUN: Repeat the question, please.

2 MR. BRYANT: Sure. Absolutely.

3 BY MR. BRYANT:

4 Q. Do you know if Pilchuck or Pilchuck's insurer

5 will indemnify PSE for any penalties PSE is assessed for

6 violations related to work Pilchuck performed?

7 A. I have no idea.

8 Q. Then how do you know that PSE will ultimately be

9 responsible for the penalty that you assessed?

10 A. So a penalty enforced by the Commission, I --

11 how they pay it is not my -- you know, my issue, really.

12 Q. Okay. Thank you.

13 Do you have any doubts that PSE will implement

14 and complete the compliance program?

15 A. We -- Staff assumes that they are going to do --

16 you know, they will implement the compliance plan, yes.

17 But that does not mean that it's not appropriate to have

18 a suspended penalty to assure that they do complete it.

19 Q. What's the purpose of the suspended penalty?

20 A. I'm sorry?

21 Q. What is the purpose of suspending a portion of

22 the penalty?

23 A. As I said, the portion -- to suspend a portion

24 of the penalty is to assure that -- as I said, that

25 there is a hammer, that there is something that if

0072

1 they -- you know, to make sure that they have added

2 incentive to not only get done with the program, but get

3 done with it on time, and they apply the appropriate

4 resources to get it done on time.

5 Q. I agree, Mr. Rathbun, but doesn't the Commission

6 have other hammers or enforcement tools they can use

7 other than suspending a penalty?

8 A. My estimation -- and again, the Commission's

9 enforcement policy really addresses the elements that

10 should be considered in suspending a portion of the

11 penalty, and I think this is consistent with that.

12 Q. Okay. We'll get to that later as well.

13 So could you please turn to page 3 of your

14 testimony? Okay. So, yeah, here we say -- I'm sorry --

15 you say that the penalty amount is appropriately

16 punitive. Are you referring to the $1.5 million

17 penalty?

18 A. It's the entire penalty. A portion was

19 suspended, but the entire penalty is potentially

20 punitive.

21 Q. Okay.

22 Mr. Rathbun, I think you just testified that you

23 don't -- I'm pretty sure -- we can have the record read

24 back, of course -- that you said you don't have any

25 doubts that PSE will implement the compliance program,

0073

1 so -- is that -- is that correct?

2 A. I expect them to, but there still is a total

3 penalty that is $2.75 million. It's just 1.25 is

4 withheld to assure that they're compliant.

5 Q. Okay.

6 So then the $1.5 million is appropriately

7 punitive, not the $2.75?

8 A. Well, I disagree.

9 Q. That's what you testified to, sir.

10 A. I disagree that it's -- I disagree that it's a

11 $2.75 million penalty [sic], that's what I'm saying.

12 Q. What's the penalty amount, sir?

13 A. The penalty amount is 2.75 million.

14 Q. Okay. I'll just move on.

15 We're still on page 3 -- let's see, hmm -- well,

16 actually, let's dive into it still and go back up.

17 So on lines 2 and 3, you say you don't think the

18 public is served by further litigation over what is, in

19 effect, a small difference in the total penalty. What's

20 the small difference you're referring to?

21 A. The small difference is the difference between

22 3.2 million and 2.75 million.

23 Q. So -- but it's likely that PSE will -- they have

24 no reason to not implement the program, so the penalty

25 will be 1.5. So the difference -- so if they implement

0074

1 the program -- and I know it's asked and answered -- the

2 penalty will be 1.5, correct?

3 A. The immediate payment of the penalty is 1.5,

4 yes, but Staff still considers the total penalty to be

5 2.75 million.

6 Q. Of the 3.2 possible?

7 A. Of the 3.2 possible, that's correct.

8 Q. Right.

9 So if they implement the program and complete it

10 on time with no -- with no issues, that small amount

11 becomes 1.75; is that -- I'm sorry -- $1.7 [sic]

12 million; is that correct?

13 A. The -- so, basically, yeah, if they implement --

14 if they implement the compliance plan on schedule, on

15 time and to its completion, the total amount of penalty

16 due would be 1.5, that's correct.

17 Q. Okay.

18 Is that a small amount, Mr. Rathbun? Is that

19 the small amount that you're referring to in your

20 testimony, I guess, is my --

21 A. Again, as I said previously, the small amount

22 that I would -- that was put in testimony was the

23 difference between 2.75 and 3.2.

24 Q. Okay.

25 Now, on page 5 of your testimony, Mr. Rathbun,

0075

1 on lines 13 and 14, where you state you identified all

2 past enforcement actions against PSE -- am I right?

3 A. Yes.

4 Q. And those past enforcement actions are

5 reported -- are detailed -- or they're in the

6 investigation report, right?

7 A. I'm sorry. In the investigation report?

8 Q. Yes, yes, yes.

9 Could you please turn to the investigation

10 report, Exhibit AR-2 -- Exhibit AR-2 -- I'm on page 9.

11 In number 9 there, the report states in paragraph --

12 paragraph 9 is just what we want to call it -- that

13 PSE's been the subject of 10 enforcement actions related

14 to pipeline safety since 1992. Am I right?

15 A. Yes.

16 Q. And in footnote 6 down at the bottom of the page

17 is where you list those enforcement actions, correct?

18 A. Yes.

19 Q. Is Docket PG-111723 listed among those 10?

20 A. Yes, it is.

21 Q. Okay.

22 Can you please turn to page 7 of your testimony?

23 A. I'm sorry?

24 Q. Page 7 of AR-1T, of your testimony.

25 So on page 7, on lines 5 through 8, you address

0076

1 whether this is a first-time penalty of this or similar

2 violation, and your conclusion is that it's a first-time

3 penalty and the facts of this case appear unique; is

4 that correct?

5 A. I said this is a first-time penalty for this

6 particular -- for this particular violation, yes.

7 Q. Right. Okay.

8 And just to refresh my recollection, how many

9 categories of violations were there alleged?

10 A. There were four categories of violations,

11 several of which had multiple -- you know, multiple

12 days, which reached the maximum for a related series of

13 violations, and accumulated the 3.2.

14 Q. Okay.

15 I'm not trying to be argumentative, but were

16 there four categories or five categories?

17 A. As I recall, four.

18 Q. I believe on page 9 of the inspection report --

19 A. I take that back. Five. I'm sorry.

20 Q. Okay. Thank you.

21 So in listing the prior 10 violations --

22 violation dockets filed against PSE since 1992 -- let me

23 see here, were any -- did any of those dockets contain

24 violations identical to the violations alleged in this

25 current docket?

0077

1 A. I'm not aware of any specific ones. There may

2 have been at certain -- there may have been a particular

3 violation, but certainly nothing that -- that pertained

4 to, in this particular circumstance, the deactivation --

5 inadequate deactivation of a service line. That was the

6 primary, you know, cause of action here.

7 Q. Okay. Great.

8 So am I correct in that you just said that the

9 deactivation of the line was the primary cause of the --

10 A. It was a primary -- it was a -- it was a primary

11 cause, yes.

12 Q. Okay.

13 A. The primary cause of the failure -- one of the

14 causes of the failure, yes.

15 Q. Okay.

16 So you spent a lot of time in your testimony

17 talking about intent, is that right, and -- I'm sorry --

18 whether or not PSE intentionally violated the law?

19 A. I won't say I spent a lot of time. I said

20 that -- you know, my testimony was that Staff does not

21 feel that this was an intentional violation on the part

22 of PSE.

23 Q. Are you aware that in your testimony you stated

24 that roughly 11 times?

25 A. I never counted.

0078

1 Q. Okay.

2 Of the five categories of violations that PSE is

3 alleged to have committed, is intent an element of any

4 of those violations?

5 A. I'm not aware of intent being an element of the

6 violations, no.

7 Q. So Mr. Rathbun, if the primary cause of the

8 explosion was the improper abandonment of the pipeline,

9 do the other five categories of violations, do -- did

10 your -- I'm sorry. Let me rephrase the question.

11 Did your analysis revolving [sic] intent focus

12 on the four other causes -- the four other violations or

13 the one violation for improper abandonment? Which of

14 those five categories of violations did you apply your

15 intent analysis?

16 MR. BEATTIE: Objection. Foundation.

17 MR. WILLIAMS: Compound.

18 MR. BEATTIE: And compound.

19 MR. WILLIAMS: Join.

20 MR. BRYANT: I'll restate.

21 BY MR. BRYANT:

22 Q. Did you apply an intent analysis in determining

23 whether or not PSE improperly abandoned the pipeline?

24 A. Repeat that, please. I'm sorry.

25 Q. Okay. Let me back up from this a bit.

0079

1 Where does the intent analysis that you applied

2 originate?

3 A. The intent analysis was that we could find no

4 evidence that PSE intentionally failed to -- PSE and/or

5 their contractor, under their direction, intentionally

6 did not abandon a line correctly.

7 Q. Okay.

8 Does the -- what's the importance of intent,

9 sir?

10 A. Well, one of the importances of the intent is

11 determining, you know, when we look at the ultimate

12 penalty, as to whether or not the ultimate penalty

13 should be the maximum or not.

14 Q. Does the intent analysis originate in the from

15 the Commission's enforcement policy?

16 A. It is -- it is one of the elements that is

17 considered in the Commission's enforcement policy, that

18 is correct.

19 Q. Okay.

20 Does that test, the test of intent, does it

21 apply to suspended penalties or to whether or not the

22 Commission will impose penalties at all? I can ask

23 it --

24 A. I'd have to go back and read it more closely.

25 I've never looked at it from that perspective.

0080

1 Q. Okay.

2 It applies to the former, whether or not the --

3 I'm sorry -- the latter, whether or not the Commission

4 will impose penalties at all. It does not -- it is not

5 an element of suspended penalties.

6 MR. BEATTIE: Objection.

7 JUDGE KOPTA: Well --

8 MR. BEATTIE: That's not a question.

9 JUDGE KOPTA: No, that's --

10 BY MR. BRYANT:

11 Q. Is that correct?

12 MR. BEATTIE: Objection. Calls for a legal

13 conclusion. Calls for speculation. Foundation.

14 MR. WILLIAMS: Join. Counsel's testifying.

15 JUDGE KOPTA: I will sustain that. The

16 policy says what it says, Mr. Bryant.

17 MR. BRYANT: Right. Right. Okay. Thank

18 you.

19 BY MR. BRYANT:

20 Q. Will you please turn to page 9 of your

21 testimony? I'm on lines 1 through 3.

22 A. Excuse me, lines --

23 Q. 1 through 3. It begins, obviously, on page 8.

24 A. Page 9 of my testimony?

25 Q. Yes, yes, yes, yes.

0081

1 A. Okay.

2 Q. What are these four -- what does these four

3 factors listed in lines 1 through 2 address?

4 A. Again, this is -- this is a -- you know, out of

5 the Commission's enforcement policy, that pertains to a

6 suggestion that maximum penalties should be reserved to

7 instances in which these factors occur.

8 Q. Okay.

9 And in 2 there, does that say "commits repeat

10 violations"?

11 A. Understood.

12 Q. Is that -- is that a yes?

13 A. Yes. Number 2 is yes.

14 Q. Okay.

15 So this is going to get a little bit hairy. So

16 back to AR-2, the investigation report, page 9, I'm on

17 footnote 6, that includes Docket PG-117 -- I'm sorry --

18 111723.

19 Do you see that?

20 A. Yes, I do.

21 Q. Are you aware that -- do you recall the

22 violations from that docket?

23 A. Not right offhand, no.

24 Q. Would you accept that the violations are of

25 Washington Administrative Code 480-07-180 and 480-07-188

0082

1 [sic]?

2 A. I don't have the document in front of me, so I

3 don't think I can testify to that.

4 Q. You can trust me --

5 MR. WILLIAMS: Objection. Lacks foundation.

6 BY MR. BRYANT:

7 Q. -- subject to check.

8 JUDGE KOPTA: Overruled.

9 A. Subject to confirmation.

10 BY MR. BRYANT:

11 Q. Okay. Thank you, sir.

12 MR. BRYANT: Thank you, your Honor.

13 / / /

14 BY MR. BRYANT:

15 Q. Do you recall what Washington Administrative

16 Code sections PSE is alleged to have violated in this

17 current matter before the Commission?

18 A. Well, I assume that -- excuse me. Would you

19 repeat the question?

20 Q. Do you recall what subjects of the Washington

21 Administrative Code PSE is alleged to have committed in

22 this docket currently before the Commission?

23 A. Yes. Yes.

24 Q. Are those the ones that I just cited that were

25 also in -- that were also violated in Docket 111723?

0083

1 A. And for my -- for my short-term memory issues,

2 were you speaking of 480-93-180 and 188, or just

3 480-193 [sic] --

4 Q. Oh, yes. I'm sorry.

5 A. -- 93-180.

6 Q. Actually, both. I'm sorry. I think I said

7 480 -- 480-07. It's 480-93 -- thank you for correcting

8 me -- 180, and they're actually at the bottom of page 9

9 here --

10 A. Yes.

11 Q. -- in 2 and 3. Those are the same violations

12 that occurred in Docket 111723, but in your testimony,

13 you state that this was a first-time violation for PSE

14 in this current docket.

15 A. In Staff's position for this particular, you

16 know, type of event and the circumstances involved, it

17 was a first-time violation. Now, the fact that plans

18 and procedures and gas leak surveys are very broad

19 applications of standards, I suppose it's possible that

20 violations occurred at else time [sic].

21 Q. And you present those facts and you present that

22 testimony to mitigate the damages in this case now,

23 right, the penalty?

24 A. I'm not presenting any testimony to mitigate. I

25 simply -- I simply stated in my testimony, and I stand

0084

1 by that testimony, that I -- again, I didn't -- I

2 thought the penalty was warranted given the facts of the

3 case, and -- you know, and that it wasn't, in Staff's

4 position, necessary in the settlement to the maximum

5 penalty.

6 Q. Okay.

7 So back on page 9 of your testimony, on line 5,

8 you state that, In hindsight, the Greenwood explosion

9 was preventable, and then you discuss the

10 telecommunications case as an example; is that right?

11 A. Yes, I did.

12 Q. Do you recall the facts of the

13 telecommunications case?

14 A. I have read through -- I've read through the

15 testimony of Staff's response in that particular issue,

16 but I don't have all the facts at hand on it. But I did

17 read through the testimony.

18 Q. Would you agree that it was essentially a

19 software glitch?

20 A. Essentially a what?

21 Q. A software glitch that caused the --

22 A. I don't think I could -- I don't think I'm in a

23 position to judge that.

24 Q. Okay.

25 Do you agree that a gas utility's failure to

0085

1 properly deactivate a gas line and perform safety

2 inspections that result in an explosion is not the same

3 as a software glitch?

4 A. I don't think it's necessarily correct that we

5 can equate the two.

6 Q. I don't, sir. You do, in your testimony here.

7 Do you see that on page 9?

8 A. Yes, I agree that what I was speaking to was the

9 intent. But I -- what I heard your question ask is to

10 whether or not there's a difference between the

11 violations, and, you know, I think both -- both present

12 risks.

13 Q. Okay.

14 On page 9 of your testimony, Mr. Rathbun -- and

15 this will be my last question, actually -- will you

16 please read beginning on line 21 with "Under"?

17 A. Okay. I have to go back just a minute.

18 Q. Lines 21 through 24, starting with the word

19 "Under."

20 JUDGE KOPTA: We have it in his testimony.

21 I don't know that it's necessary for him to read it.

22 Mr. Bryant, do you have a question?

23 MR. BRYANT: Yes, your Honor.

24 BY MR. BRYANT:

25 Q. Do you agree that the quotation from the

0086

1 telecommunications case that you cite states that intent

2 should not be a mitigating factor in the assessment of a

3 penalty?

4 A. Are you asking me about lines 26 and 27 of my

5 testimony?

6 Q. No, actually lines 23 through 24.

7 A. That's -- that's a -- that's a -- so that's a

8 quote, so, yes, I believe that those lines -- yes, it's

9 a quote.

10 MR. BRYANT. Okay. Thank you. That's all I

11 have, your Honor.

12 JUDGE KOPTA: Thank you, Mr. Bryant.

13 Mr. Beattie, do you have anything at this

14 point?

15 MR. BEATTIE: Yes, Judge.

16 REDIRECT EXAMINATION

17 BY MR. BEATTIE:

18 Q. Mr. Rathbun, you were asked by Mr. Bryant

19 whether you personally visited the explosion site, and

20 you answered that you did not?

21 A. That's correct.

22 Q. Did anybody on your staff visit the explosion

23 site?

24 A. Yes.

25 Q. And who were those individuals?

0087

1 A. The individuals that were directly responsible

2 for the investi-- or the investigation of the incident

3 were Dave Cullom, Dennis Ritter, Derek Norwood. We did

4 have other Commission staff that did make appearances,

5 but those three individuals were primarily there for

6 quite a long period of time.

7 Q. Can you tell us about how long? Can you give us

8 a sense of what the initial investigation looked like?

9 A. It was a -- it was a very arduous, long

10 investigation. While PSE and first responders reacted

11 to the incident, I know that they were there -- I'm

12 struggling to remember the day of the week that the

13 incident happened, which was on March 9th. That I

14 recall, that was a Thursday -- I'm trying to remember --

15 but they were there through the weekend. They were

16 there to recover records, to interview -- interview

17 witnesses. They interviewed, you know, PSE personnel,

18 interviewed first responders, gathered what records we

19 could, and also observe and witness the recovery of

20 evidence, you know, appurtenances from the explosion

21 site.

22 Q. Thank you.

23 Would you please turn to page 10 of the Staff

24 Investigation Report? It's AR-2.

25 A. Yes.

0088

1 Q. You were asked by Mr. Bryant about Staff's

2 recommendation that, quote, the Commission impose a

3 maximum penalty of $3,200,000.

4 Do you remember that question?

5 A. Yes.

6 Q. I notice in the next paragraph, the report

7 states that the recommendation is that the Commission,

8 quote, "issue a formal complaint against PSE and impose

9 a penalty of up to $3,200,000."

10 Is there anything you can tell me about which

11 one of these recommendations you think -- you think was

12 the official or correct recommendation?

13 A. I think Staff is always, you know, aware of

14 the -- you know, the Commission makes the ultimate

15 decision, that the -- our job, you know, or part of

16 Staff's job is to identify violations. It's also to

17 identify the total amount of penalties that could be

18 due, subject -- if found guilty of all those -- all

19 those violations.

20 But obviously, we also understand that it's

21 totally in the Commission's discretion as to, you know,

22 how, in fact, those penalties should be -- should be

23 ultimately issued.

24 Q. Okay.

25 Mr. Bryant tried to commit you to testimony that

0089

1 $1.5 million is, quote, small. Do you remember that?

2 A. I remember the conversation, yes.

3 Q. Does Staff -- does the Pipeline Safety Program

4 consider 1.5 upfront -- excuse me -- $1.5 million

5 upfront penalty to be small?

6 A. No. In fact, that's the largest penalty that

7 we -- that Pipeline Safety -- that the Commission has

8 ever -- if it were to come out that way, that would be

9 the largest penalty that the Pipeline Safety staff has

10 ever administered on a pipeline safety-related matter.

11 MR. BEATTIE: No further questions.

12 JUDGE KOPTA: Thank you, Mr. Beattie.

13 MR. WILLIAMS: Your Honor, I have a

14 question.

15 JUDGE KOPTA: That's in the nature of

16 friendly cross and we're not going to allow that.

17 Public Counsel, I believe Mr. Henderson is

18 up next.

19

20 DUANE A. HENDERSON, witness herein, having been

21 first duly sworn on oath,

22 was examined and testified

23 as follows:

24 / / /

25 / / /

0090

1 CROSS-EXAMINATION

2 BY MS. GAFKEN:

3 Q. Good afternoon, Mr. Henderson.

4 A. Good afternoon.

5 Q. Before the Greenwood explosion, PSE did not keep

6 an inventory of its abandoned lines because it assumed

7 the pipe no longer contained natural gas; is that

8 correct?

9 A. It's correct that, once a pipeline is no longer

10 active, it's been deactivated, there's no need to

11 continue to keep records of it or continue to maintain

12 that.

13 Q. Is that still PSE's practice?

14 A. It's still PSE's practice not to continue to

15 maintain those facilities. But with the implementation

16 of our new geographic information system approximately

17 three years ago, those records do remain within that

18 database, only with a status of deactivated, or

19 inactive, I think, is the actual status.

20 Q. One of the criticisms you make regarding

21 Ms. Coppola is a lack of familiarity with PSE's system,

22 correct?

23 A. That's correct.

24 Q. But PSE had to research and understand its own

25 system with respect to the abandoned lines, didn't it?

0091

1 A. As a matter of course, since our -- our maps --

2 up until about three years ago, if a facility was

3 deactivated, it was removed from that map. It required

4 extensive other research to determine the locations of

5 where service lines had been deactivated.

6 Q. Would you please turn to your testimony, which

7 is Exhibit DAH-1T, and go to pages 3 and 4, and

8 beginning on page 3, line 12, and continuing on page 4

9 going to line 5, you described PSE's opposition to

10 removing the term Pilchuck from the description of

11 Population 2, correct?

12 A. Correct.

13 Q. Is it accurate to say that PSE's opposition is

14 essentially that removing the term Pilchuck does not

15 create a benefit?

16 A. That is correct.

17 Q. But it's also true that having the term Pilchuck

18 in the description of Population 2 also doesn't add a

19 benefit, does it?

20 A. As the Settlement Agreement evolved over the

21 many months of our negotiations, the population -- the

22 concept of the populations evolved as well. And on the

23 onset, including Pilchuck did describe accurately the

24 populations that we're considering to inspect. But as

25 that concept evolved, in the entire population, all

0092

1 nearly 41,000 locations are all included in our

2 inspection plan. So whether Pilchuck -- the word

3 Pilchuck stays in or is removed does not materially

4 change the substance of that inspection plan.

5 Q. On -- excuse me. On page 3 of your testimony,

6 lines 20 to 21, you testified that Pilchuck performed

7 virtually all gas service retirements.

8 Were there gas service retirements during the

9 time period 2000 to 2010 that were performed by somebody

10 other than Pilchuck?

11 A. There may have been other -- other service

12 retirements or deactivations performed by either company

13 personnel or another contractor.

14 Q. So having the term Pilchuck in the description

15 of Population 2 is potentially inaccurate, correct?

16 A. It -- it is inaccurate in the sense that it

17 doesn't accurately describe what makes that population.

18 But if -- when deriving that population, we considered

19 all service deactivations. We did not distinguish

20 between who performed them, so it does not materially

21 change that number.

22 Q. Would you please turn to your testimony, DAH-1T,

23 page 3? So stay on page 3 and go to lines 9 through 11,

24 and there you state that even a minor modification to

25 the inspection and remediation program could cause PSE

0093

1 to reject the Settlement Agreement, correct?

2 A. That's correct.

3 Q. Would removing the term Pilchuck from the

4 description of Population 2 cause PSE to consider

5 rejecting the Settlement Agreement?

6 A. That would be a question that we would need to

7 take back to our counsel and discuss in context of the

8 entirety of the Settlement Agreement.

9 Q. If I asked you the same question for the

10 remaining five proposed modifications, would you have

11 the same answer?

12 A. I think that, as the negotiations unfold -- the

13 manner in which the negotiations unfolded, it was -- it

14 was essentially a team effort to arrive at that

15 settlement, so I would need to confer with others.

16 Q. Okay.

17 I didn't quite understand the first part of your

18 question [sic], but I think I understand, so I just want

19 to clarify. I think I understand that, if I were to ask

20 you whether each one of the five modifications that

21 Public Counsel is proposing to the plan were

22 implemented, that you would have to take that back in

23 terms of whether that would -- whether each modification

24 would cause PSE to reject the Settlement Agreement; is

25 that correct?

0094

1 A. That is correct. Some of the five could be

2 considered minors, others have substantial impacts to

3 the number of locations that would be inspected.

4 Q. Okay.

5 Would you please turn to your testimony, Exhibit

6 DAH-1T, and go to page 4, beginning at line 6? You

7 explained PSE's opposition to including businesses in

8 the term high-occupancy structures, correct?

9 A. Correct.

10 Q. Business districts and high-occupancy structures

11 are two distinct terms under the WAC; is that correct?

12 A. That is correct.

13 Q. Did the businesses that were destroyed or

14 damaged in the Greenwood explosion satisfy the occupancy

15 threshold to be classified as high-occupancy structures?

16 A. I'm not familiar with the details of each of

17 those businesses to be able to answer that.

18 Q. Do you know whether those businesses would have

19 met the threshold to be classified as a business

20 district under the WAC?

21 A. That -- that area of the Greenwood neighborhood

22 would have been classified as a business district.

23 Q. Given the impact on -- that the Greenwood

24 explosion had on local businesses, wouldn't it be

25 reasonable to include all business buildings in the

0095

1 inspection and remediation program?

2 A. Again, as I stated earlier, the inspection and

3 remediation program is intended to address all of the

4 locations where a service deactivation has occurred, so

5 whether it's in Population 1, which are those locations

6 that are most similar to Greenwood, Population 2, which

7 is all of the other work that Pilchuck had performed

8 during that period of 2000 to 2010, Population 3, which

9 was work done prior to 2000, or work since Pilchuck has

10 been on the property in 2011, all locations are going to

11 be looked at, whether it's in a business -- a business,

12 a high-occupancy structure, a residential or a business

13 district.

14 Q. Could you turn to the Settlement Agreement,

15 which has been marked as Exhibit SP-1? And if you could

16 turn to Appendix A, page 3 of Appendix A, and I'd like

17 you to look at Population 4. And I just want to ask

18 whether -- so you have just testified that all locations

19 would be included in all the populations.

20 A. All -- all 40,789 locations are accounted for in

21 the four populations.

22 Q. Okay. Okay.

23 PSE also objects to modifying the confidence

24 levels for Populations 3 and 4 from two percent to

25 one percent, correct?

0096

1 A. That's correct.

2 Q. And you characterize Public Counsel's

3 recommendation regarding the confidence level to be

4 based on consistency; is that correct?

5 A. That is as Mr. Coppola had described it in his

6 testimony, yes.

7 Q. You must be reading my mind. So I'm going to --

8 I was going to ask you to turn to Mr. Coppola's

9 testimony. Do you have Mr. Coppola's testimony handy?

10 A. I do.

11 Q. Would you please turn to Mr. Coppola's

12 testimony, which is Exhibit SC-1T, and go to page 34?

13 And if you would refer to lines 19 to 20, there

14 Mr. Coppola testifies that gas services retired before

15 2000 and after 2010 are no less risky than those retired

16 between 2000 and 2010; is that correct? Do you see

17 that?

18 A. That is correct.

19 Q. Focusing on the risk profile of the population

20 is different than basing a recommendation on using the

21 same confidence level across populations just for the

22 sake of consistency, correct?

23 MR. WILLIAMS: Objection. Misstates -- the

24 question is vague in that she's asking him to confirm

25 the testimony as opposed to whether or not that's what

0097

1 the testimony says.

2 MS. GAFKEN: I just asked the witness about

3 his testimony interpreting Mr. Coppola's testimony, and

4 the witness testified that he was testifying based on my

5 witness's testimony.

6 JUDGE KOPTA: I think you have to explore

7 what his understanding is of Mr. Coppola's testimony.

8 MS. GAFKEN: Which is what I think I'm

9 doing.

10 JUDGE KOPTA: I think you are, too. If you

11 can repeat the question, it would be helpful.

12 MS. GAFKEN: Thank you.

13 BY MS. GAFKEN:

14 Q. Mr. Henderson, focusing on the risk profile of a

15 population is different than basing a recommendation on

16 using the same confidence level across population just

17 for the sake of consistency, isn't it?

18 A. Yes.

19 Q. Increasing the confidence level from one percent

20 to two percent reduces the number of locations inspected

21 under the plan by approximately half; is that correct?

22 A. Subject to check, I'd have to run those numbers

23 to see what the effect is on the sample size.

24 Q. Would you please turn back to your testimony,

25 which is Exhibit DAH-1T, and go to page 6. And once

0098

1 you're there, please turn to lines 3 through 7.

2 COMMISSIONER RENDAHL: Are we on page 6?

3 MS. GAFKEN: Yes.

4 BY MS. GAFKEN:

5 Q. Among other things, you state that the

6 confidence modification would remove any prioritization

7 among the population; is that correct?

8 A. That would -- that's correct.

9 Q. Public Counsel is not recommending to alter the

10 sequence or timeframe under which each population is to

11 be inspected under the plan, is it?

12 A. The timing or sequence, no. But I believe that

13 they're failing to recognize that the risk profile, as

14 you -- the term you had used earlier, risk is a function

15 of likelihood and consequence. And through the

16 settlement discussion and discovery, we've -- we

17 believe, and the plan bears this out, that the

18 likelihood that an improperly deactivated service in

19 those periods prior to 2000 and after 2010 is different

20 than the risk profile, if you will, the likelihood,

21 during 2000 to 2010, and thus it warranted a different

22 sampling and confidence interval.

23 Q. So in your mind, prioritization also includes

24 the number of lines to be inspected; am I understanding

25 that correctly?

0099

1 A. Prioritization, as it's used here, is both

2 timing -- the risk to the public, and so the timing --

3 the timeframe that we have to complete those

4 inspections. And remember that Populations 1, 2 and 3

5 are going on concurrently. They are not sequential.

6 Q. That's true.

7 And they're also to be completed quicker

8 depending on which population we're talking about,

9 correct?

10 A. Correct.

11 Q. And modifying the confidence levels of

12 Populations 3 and 4 doesn't alter the timeframes, does

13 it --

14 A. It --

15 Q. -- necessarily?

16 A. As written, no, but if -- the impact on that

17 population, the sample size, this is one case where we,

18 as a company, might want to talk about the timeframes

19 that we had agreed to with the sample sizes that we had

20 previously agreed to.

21 MS. BROWN: Your Honor, I'm sorry to

22 interrupt. May I just pose a question now that I've

23 already posed one?

24 JUDGE KOPTA: To whom?

25 MS. BROWN: To you.

0100

1 JUDGE KOPTA: Yes, you may.

2 MS. BROWN: Okay. I just want to understand

3 what it is we're doing in terms of the testimony and its

4 admissibility into the record. I mean, are you

5 reserving judgment until the conclusion of the

6 testimony? Because Ms. Gafken is inquiring as to the

7 potential modifications to the compliance plan, and I

8 still am hung up on the fact that, in its letter to the

9 Commission, dated April 12th, Public Counsel stated it

10 will -- quote, "will support the inspection and

11 remediation plan." And so I'd like to know what we're

12 doing here.

13 JUDGE KOPTA: Well, the portion of the

14 motion that was held in abeyance is whether Mr. Coppola

15 has sufficient qualifications to make the

16 recommendations that he makes, not whether Public

17 Counsel has been inconsistent in taking its position

18 that was ruled on in the motion itself.

19 So at this point, Public Counsel is

20 permitted to explore the recommendations that

21 Mr. Coppola made, subject, of course, to any later

22 determination by the Commission that Mr. Coppola's not

23 qualified to make those recommendations.

24 MS. BROWN: And then we could argue our

25 estoppel argument in closing then?

0101

1 JUDGE KOPTA: You may.

2 MS. BROWN: Thank you.

3 JUDGE KOPTA: Ms. Gafken?

4 MS. GAFKEN: Thank you.

5 BY MS. GAFKEN:

6 Q. Mr. Henderson, would you please turn to page 7

7 of your testimony, Exhibit DAH-1T, and turn your

8 attention to line -- or well, beginning at line 5, you

9 testified about why PSE opposes Public Counsel's

10 recommendation to require additional documentation; is

11 that correct?

12 A. That is correct.

13 Q. And am I correct in understanding that the

14 opposition is essentially that the documentation is

15 unnecessary or that the request is unclear?

16 A. There are questions around both of those, yes.

17 Q. Would you please return to Mr. Coppola's

18 testimony, which is Exhibit SC-1T, and go to page 35?

19 At lines 3 to 5, Mr. Coppola identifies items that

20 should be documented, including who performs each -- or

21 I'm sorry -- who performs each inspection, and a

22 checklist of verification steps undertaken, correct?

23 Those are the items that he talks about?

24 A. That is correct, yes.

25 Q. With respect to the cut and cap work that was

0102

1 supposed to be done on the service line in Greenwood,

2 PSE does not have a record of an inspection done by

3 Pilchuck who conducted an inspection, if one was done,

4 or what was checked; is that correct?

5 A. What's contained in the job folder is a

6 signed-off as-built from the foreman who was responsible

7 for that work that that work was completed. We did not

8 have a specific checklist for that particular task.

9 That was part of a larger, more comprehensive project.

10 Q. Would you turn to Cross-Exhibit DAH-5C [sic]?

11 This is a confidential exhibit. I don't believe that I

12 need to ask confidential questions.

13 MS. GAFKEN: You'll let me know, Counsel, if

14 you think I do.

15 BY MS. GAFKEN:

16 Q. Mr. Henderson, in your answers if you have to

17 refer to a confidential piece of information, you can

18 point us to where in the page. I'm actually not sure

19 exactly what pieces are confidential, but, again, I

20 don't think I need to point to the confidential

21 information, so I don't think we need to go into a

22 closed session.

23 Do you recognize the document contained in

24 Cross-Exhibit DAH-5 to be PSE's response to Staff in

25 formal Data Request 19?

0103

1 A. Yes.

2 Q. Are these the documents that you were referring

3 to in the -- I forget the term that you just used, but

4 the --

5 A. Job packet?

6 Q. -- job packet?

7 So Exhibit DAH-5C contains all the records

8 relating to the cut and cap work that was to be done to

9 the Greenwood service line; is that correct?

10 A. That's correct. Can I modify that a little bit?

11 There are certain documents that are completed -- that

12 were completed at the time this work was done that do

13 not reside within the job folder. They are sent off and

14 entered into other databases. So they're completed at

15 the same time, but aren't part of this complete package.

16 Q. Okay.

17 Cross-Exhibit DAH-5C does not contain an

18 inspection report that was completed by either Pilchuck

19 or PSE, correct?

20 A. There is not a separate report, although the job

21 drawing does contain a sign-off box. It's labeled the

22 fitter box, or known as the fitter box that is signed by

23 the foreman indicating that the work was completed as

24 designed.

25 Q. If a proper inspection had been done, would it

0104

1 have been discovered that the service line was still

2 connected to the main and the service line had not been

3 purged?

4 A. It certainly stands a good chance that would

5 have been discovered at that time if a complete

6 inspection -- the work that was performed there that was

7 reported by the fitter was an error.

8 Q. Would you please turn back to your testimony,

9 which is Exhibit DAH-1T, page 8, lines 3 to 11? There

10 you testify regarding Public Counsel's recommendation to

11 remove above-ground facilities that have been inactive

12 for more than 12 months with no customer commitment to

13 take gas service, correct?

14 A. That's correct.

15 Q. And PSE estimates that there are 4,381 unmetered

16 services, correct?

17 A. That's correct.

18 Q. Of the 4,381 estimated unmetered services, how

19 many of those services have been inactive for more than

20 12 months with no customer commitment to take gas

21 service?

22 A. I do not know that answer.

23 Q. Is it safe to say that it's a smaller amount

24 than 4,381?

25 A. I could not hazard a guess as to whether it's a

0105

1 large portion or small portion of that number.

2 Q. Do you think each one of those -- so let me ask

3 it a different way.

4 Do you think the entire lot of estimated

5 unmetered services have been in that status for more

6 than 12 months? And if you don't know, just say so.

7 A. Yeah, I do not know that --

8 Q. Okay.

9 A. -- that number or the timeframe for those.

10 Q. Okay.

11 Comparing the above-ground facilities that

12 existed at the Greenwood location, are they similar to

13 the above-ground, unmetered and pressurized service

14 lines that have been inactive for more than 12 months

15 with no customer commitment to take gas service?

16 A. Similar in what sense?

17 Q. Are they similar in nature?

18 A. If you're asking if they are in similar

19 locations, I cannot answer without going through and

20 looking at all 4,381 to determine what similarities they

21 may or may not have with Greenwood. I think it's also

22 important to note that all of these service are

23 considered to still be active, even though they no

24 longer -- currently don't have a meter, and so are

25 continuing to be maintained, whether it's cathodic

0106

1 protection or atmospheric corrosion surveys.

2 Q. That would have been true for the facilities at

3 the Greenwood location if Puget had known that the line

4 hadn't been abandoned?

5 A. Had we known it had not been deactivated, those

6 maintenance activities would have continued to have been

7 performed.

8 JUDGE KOPTA: Excuse me. If you're on the

9 bridge line, please mute your phone so that we cannot

10 hear you.

11 BY MR. BEATTIE:

12 Q. Does the Greenwood explosion suggest that

13 unmetered, above-ground service lines have a higher risk

14 profile with respect to outside force damage?

15 MR. WILLIAMS: Objection. Calls for

16 speculation. Also not relevant.

17 MS. GAFKEN: Isn't that the point of the

18 inspection plan?

19 JUDGE KOPTA: Overruled. You can ask the

20 question.

21 A. Can you repeat the question?

22 BY MS. GAFKEN:

23 Q. Does the Greenwood explosion suggest that

24 unmetered, above-ground service lines have a higher risk

25 profile with respect to outside force damage?

0107

1 A. That was one of the -- one of the primary causes

2 of the damage to the pipe in Greenwood, and so we want

3 to apply similar filters in our evaluation of those

4 other above-ground lines, unmetered lines, to make sure

5 that they aren't in locations that have similar

6 activities going on around them.

7 Q. And would an unmetered, above-ground service

8 line that has been in that status for 12 months or

9 longer have a higher risk profile for outside force

10 damage due to the length of time in that status?

11 A. I don't know that time is necessarily an

12 indicating factor in the risk profile. It depends on

13 the location and what activities are going on around

14 that.

15 Q. Would you please turn back to page 9 of your

16 testimony, Exhibit DAH-1T? And beginning at line 9, and

17 going onto the next page, you testify about

18 Mr. Coppola's issues with the documentation of the work

19 done on the Greenwood service line; is that correct?

20 A. That's correct.

21 Q. Just to clarify, a D-4 form is a form that

22 documents what work was done; is that correct?

23 A. The D-4, yeah, the work that was performed for a

24 service line, specifically to a service line.

25 Q. Is the D-4 form used only with contractors, or

0108

1 is that form used also with work that's completed by PSE

2 workers?

3 A. It's a universal form for documenting all work,

4 regardless of who performs the work.

5 Q. And the fitter conducting the work is to be

6 identified on that form; is that correct?

7 A. That is correct.

8 JUDGE KOPTA: Those of you on the bridge

9 line, please do not talk, or mute your phone, please.

10 BY MS. GAFKEN:

11 Q. Mr. Coppola criticizes the process that was used

12 to complete the D-4 form for the work done on the

13 Greenwood line because the job foreman completed it

14 rather than the crewman; is that correct?

15 A. I believe that's what he states, although it's

16 not clear whether the foreman filled out the D-4 card or

17 the fitter filled it out or somebody else.

18 Q. The form that you mentioned earlier in response

19 to my earlier question, I believe you called it an

20 as-built form, is that a different form than the D-4?

21 A. That is.

22 Q. You take issue with Mr. Coppola's criticism with

23 respect to the D-4 form saying that it should be

24 ignored; is that correct?

25 A. That is correct.

0109

1 Q. The person who filled out the D-4 form was not

2 the person who completed the work in this case -- well,

3 with respect to the Greenwood service line; is that

4 correct?

5 A. I don't know for certain who completed the form.

6 The form does indicate who -- who performed the work,

7 but I don't know who filled the form out, whether it was

8 the same person or not.

9 Q. So you don't know whether the foreman wrote in

10 the name of the Pilchuck employee who did the work as

11 well as completed the details of the work that was

12 supposed to have been done?

13 A. That is correct.

14 Q. Is the foreman the person who would have been

15 most likely to be responsible for inspecting the work?

16 A. The foreman has that responsibility, yes.

17 Q. Are you familiar with the concept of separation

18 of duties?

19 A. I'm familiar with it, yes.

20 Q. Okay.

21 Is your understanding of separation of duties

22 that more than one person is required to complete a

23 task, and that having more than one person provides

24 internal control to prevent error?

25 A. I'm familiar with that, yes.

0110

1 Q. Is there a problem with separation of duties

2 when an individual tasked with inspecting the work also

3 completes the form that says the work was completed?

4 A. I don't believe that that's necessarily always

5 the conclusion to arrive at. And in this case, we also

6 had a Contractor's Quality Control Program in place

7 where they did have other -- other set of eyes that

8 occasionally went around and looked at the work. PSE

9 also had a Quality Assurance Program where we would

10 sample work that was being performed, put a different

11 set of eyes on it to make sure it was done in accordance

12 with our standards.

13 Q. With respect to the work done for the Greenwood

14 service line, evidence indicates that the -- that

15 Pilchuck failed to inspect the work performed and PSE

16 did not select this project to audit, though, right?

17 A. This was not selected for an audit, that's

18 correct.

19 Q. And the evidence indicates that Pilchuck failed

20 to inspect the work performed, correct?

21 A. It would appear so, yes.

22 Q. You testified that PSE audits work done by

23 contractors by inspecting a sampling of projects. What

24 percentage of projects does PSE inspect in its sampling?

25 A. The Quality Management Program that we have in

0111

1 place today has a -- I would call it a complex

2 algorithm, a sampling plan, if you will, that they

3 utilize to determine what and how much work they should

4 view based on the work that's being performed and the

5 complexity of that work.

6 Q. On page 10 of your testimony, Exhibit DAH-1T, at

7 lines 15 and 16, you testify about a 90 to 95 percent

8 satisfaction with Pilchuck's work, and you're referring

9 to the sampling there. And so I'm trying to get an idea

10 of what percentage of Pilchuck's work does the 90 to

11 95 percent satisfaction rate apply to, do you have an

12 idea?

13 A. I don't know the exact number of jobs or the --

14 the exact number of jobs performed and the exact number

15 that were visited to be able to arrive at that. It's

16 not half of them, I know that. It's a smaller number

17 than that.

18 Q. Would you please turn to page 11 of your

19 testimony, Exhibit DAH-1T, at lines 4 to 5? You state

20 that PSE has changed its audit program to strengthen the

21 quality assurance process in verifying work performed by

22 contractors, correct?

23 A. That's correct.

24 Q. Does PSE verify that inspections were performed?

25 A. The process is in place, and as I described, the

0112

1 foreman responsible for the work is responsible for the

2 initial inspections. The quality -- the Contractor's

3 Quality Control Program provides another layer of

4 inspection, and then PSE's Quality Assurance Program

5 provides a third level of protection or oversight of the

6 work being performed. And it's in the entirety that we

7 assess whether we are evaluating an appropriate level of

8 work or not.

9 Q. So in those three levels, it sounds like two of

10 the levels come from the contractor; is that correct?

11 A. That is correct.

12 Q. And then the third level originates from Puget?

13 A. Correct.

14 Q. At the Puget level, does Puget verify the lower

15 two levels?

16 A. Yes. We are meeting regularly with the

17 contractors, reviewing the work that's being performed

18 as reported in the job folders, and then on a regular

19 basis reviewing the results of the contractor's quality

20 control efforts.

21 Q. Does Puget verify who performed the inspection

22 and compare that against who completed the paperwork?

23 A. I cannot speak to whether that's one of the

24 items that's considered.

25 Q. And does Puget verify what the inspector did to

0113

1 verify that the work was done? So in other words, in

2 looking at the lower two inspection levels, does Puget

3 verify what the foreman did in order to complete his

4 inspection? I'll stop there, and I'll ask the second

5 question at the other level.

6 A. Yeah. Can you repeat that question?

7 Q. Sure. And I can see Mr. Williams reaching for

8 his microphone. That was a complicated question. Let

9 me rephrase that.

10 MR. WILLIAMS: Yes, it was. It was very

11 convoluted.

12 BY MS. GAFKEN:

13 Q. So let me ask it in a couple of steps.

14 First, does PSE verify what verification steps

15 were taken by the contractor?

16 A. So as part of our job acceptance package, we

17 make sure that the as-built records are completed in its

18 entirety, and that is, in part, looking at that fitter's

19 box that I referred to previously to make sure that that

20 foreman has put his name to that record, that it has

21 been performed per our standards.

22 Q. Does PSE check to see what the foreman verified

23 in checking to ensure that the work was done?

24 A. We do not have detail of all of the aspects that

25 the foreman considered when evaluating the job he was

0114

1 responsible for.

2 Q. And in reviewing the contractor's quality

3 control measures, what does PSE look at there?

4 A. Well, the contractors will provide an accounting

5 of all of the different job tasks that were reviewed

6 over the previous time period, and they have a fairly

7 exhaustive list of different tasks that they will be

8 reviewing, the number that they found acceptable and

9 then the number that required correction.

10 Q. Okay.

11 If you would turn your attention back to page 11

12 of your testimony, Exhibit DAH-1T, and go to lines 9

13 through 16, there you testify that the Greenwood main

14 was active until the explosion and that it was

15 deactivated after the explosion; is that correct?

16 A. That is correct.

17 Q. Do you have Mr. Coppola's Exhibit SC-8 handy?

18 A. Yes.

19 Q. Exhibit SC-8 contains PSE's responses to Staff's

20 informal Data Request 27, an excerpt of PSE's response

21 to Public Counsel's Data Request 6.

22 Would you please turn to page 5 of that exhibit?

23 A. Yes.

24 Q. There's a shaded line labeled 597. Do you see

25 that line?

0115

1 A. Yes. It's not shaded on my copy, but I see the

2 line now.

3 Q. Oh, okay.

4 A. Yeah.

5 Q. For some reason it is shaded on mine, but that

6 line shows that the Greenwood location -- well, let me

7 back this up.

8 The address listed on that line is 8410

9 Greenwood. That is the Greenwood location that we've

10 been discussing today, correct?

11 A. That refers to the same uncapped location, yes.

12 Q. And it shows that the service was deactivated in

13 September of 2004, correct?

14 A. What the table reflects is that the service line

15 was abandoned on September 1st, 2004, and that the

16 status as of the time that this query was run was

17 deactivated. This query was run, I believe, in the fall

18 of 2016.

19 Q. So the words on this table does not mean that

20 the service was deactivated as of September 2004?

21 A. That's correct.

22 Q. That's not apparently on the table, is it?

23 A. Um, to somebody who is involved in running the

24 query and how it was structured, it is to me, but I can

25 see how somebody might not make that connection.

0116

1 Q. Could you turn to page 2 of Exhibit SC-8? And

2 looking at the data request, Puget was asked to provide,

3 under subsection A, the location of the pipe and, B, the

4 date the pipe was abandoned, correct?

5 A. Correct.

6 Q. You've mentioned earlier that the cut and cap

7 work that was done at the Greenwood location was part of

8 a larger project, right?

9 A. Yes.

10 Q. And that larger project was to move the service

11 line from the street back to the alley, is that correct,

12 or a correct characterization of that work?

13 A. Correct characterization, yes.

14 Q. I'm going to use the term "old main," if you

15 would bear with me, so "old main" for the main that the

16 service line was being moved from.

17 In 2004, were there other service lines that

18 were being served off of the old main that required it

19 to remain active after the services were transferred to

20 the back alley?

21 A. The work that was performed in 2004 removed --

22 or provided new services in from -- service from the

23 alleyways on both the west and east side. Once that

24 work was done, the old main was not providing gas

25 service directly to any -- or was not intended to

0117

1 provide service directly to any services off of that

2 particular block. However, that main was still a part

3 of the gridded network that provided overall gas service

4 to the Greenwood area.

5 Q. So was the main being used to provide service

6 then?

7 A. Indirectly to the broader area of the Greenwood

8 neighborhood, yes.

9 Q. Why wasn't the old main retired and deactivated

10 sooner?

11 A. Sooner than what?

12 Q. Than after the Greenwood explosion.

13 A. Again, the -- the gas network in that particular

14 area was highly gridded. It was -- it had multiple

15 feeds, a lot of redundancies, which is desirable in

16 providing gas service to an area. It makes for a more

17 robust gas supply to that -- that area. And so there

18 was no desire to lose another feed by eliminating or

19 deactivating the gas main in Greenwood, in that block.

20 Q. Would you turn to page 13 of your testimony,

21 Exhibit DAH-1T, and go to lines 14 to 21?

22 A. Page 13, did you say?

23 Q. Yes. Page 13, lines 14 to 21.

24 A. Right.

25 Q. There you testify that one of the valves has an

0118

1 operating mechanism -- or I'm sorry. There you testify

2 that one of the valves had an operating mechanism that

3 was not operating properly, and that was the reason

4 closing the valve was delayed.

5 Do you see that?

6 A. For that particular valve, yes.

7 Q. The valve with the malfunctioning operating

8 mechanism was the valve that ultimately stopped the flow

9 of gas, correct?

10 A. The closure of that final valve allowed -- or

11 isolated that particular segment of main from gas feed.

12 As I mentioned earlier, it was a multi-feed network in

13 the area, and so there wasn't a single valve that would

14 have stopped the flow of gas. All six valves were

15 required to be closed before flow would stop. It just

16 so happened that was the last valve to be operated, and

17 upon closure of that, the gas flow stopped.

18 Q. Would you please turn to Mr. Coppola's Exhibit

19 SC-10, which contains PSE's response to Public Counsel

20 Data Request 7? The narrative provided regarding the

21 sequence of events the night of the explosion does not

22 include a description of a malfunctioning operating

23 mechanism, does it?

24 A. It does not make mention of that, no.

25 Q. Do you know what made the valve inoperable?

0119

1 A. It was reported to me that the operating head

2 had become dislodged or was not present on top of the

3 valve.

4 Q. Before the March 9th, 2016, explosion, when was

5 the valve last inspected, maintained and checked to be

6 in operating condition?

7 A. I do not know when the last time it was

8 inspected --

9 Q. Are you familiar with the requirements of 49 CFR

10 Section 192.747?

11 A. Recite a little bit of it. I'm probably pretty

12 familiar with it.

13 Q. That's the section that talks about how often

14 such valves are to be inspected.

15 A. It speaks to the identification of key valves

16 and how frequently they need to be inspected, correct.

17 Q. Do you know if this valve would have been a key

18 valve that would have been inspected under 49 CFR

19 Section 192.747?

20 A. This valve had not been identified as a key

21 valve.

22 Q. So key valves are to be inspected at intervals

23 not exceeding 15 months, but at least once every

24 calendar year. Does Puget inspect non-key valves?

25 A. We do not.

0120

1 Q. I only have two more questions for you, so we're

2 almost done.

3 Would you please turn to your testimony, Exhibit

4 DAH-1T, pages 14 to 15? And beginning at page 14 on

5 line 19, and going to page 15, line two, you disagree

6 with Mr. Coppola's statement that the primary cause of

7 the explosion was PSE's improper abandonment of the

8 Greenwood service line, correct?

9 A. Specifically, where are you referring?

10 Q. Sure. It's pages 14 and 15, so the bottom of

11 page 14, beginning at line 19, and the top of page 15,

12 ending at line 2. And there you disagree with

13 Mr. Coppola's characterization that the primary cause of

14 the explosion was PSE's improper abandonment of the

15 service line?

16 A. Yes. And as Mr. Rathbun had previously

17 testified, this was just one cause of the explosion, the

18 other cause being the activities -- outside force

19 activities occurring around the pipeline.

20 Q. Do you have the Staff Investigation Report,

21 which has been designated as Exhibit AR-2?

22 A. I do.

23 Q. Would you please turn to page 2 of Exhibit AR-2?

24 A. Yes.

25 Q. The first sentence of the second paragraph

0121

1 reads, Staff finds that the leak and explosion would not

2 have occurred but for PSE's improper abandonment of the

3 service line in September 2004, correct?

4 A. That's what it says, yes.

5 Q. So Mr. Coppola's statement isn't inconsistent

6 with that statement, is it?

7 A. It's not inconsistent with that one, but the

8 report also says that the immediate structural cause of

9 the failure was due to external damage to the service

10 line by people -- unauthorized people accessing that

11 area.

12 MS. GAFKEN: Thank you. I have no further

13 questions.

14 JUDGE KOPTA: Thank you, Ms. Gafken.

15 Mr. Williams, do you have any redirect?

16 MR. WILLIAMS: I do have a little redirect.

17 REDIRECT EXAMINATION

18 BY MR. WILLIAMS:

19 Q. Mr. Henderson, earlier you were asked questions

20 about who was at the Greenwood site, the scene of the

21 explosion. Can you tell the commissioners whether

22 anyone from Public Counsel was ever at the Greenwood

23 site during the investigation?

24 A. I was not on site, so I cannot speak to that.

25 Q. Do you have any knowledge about anyone from

0122

1 Public Counsel actually being there?

2 A. I am not aware that anybody from Public Counsel

3 was on site.

4 MR. WILLIAMS: May I have a minute,

5 your Honor?

6 JUDGE KOPTA: Yes.

7 MR. WILLIAMS: No further questions for this

8 witness.

9 JUDGE KOPTA: All right. Thank you. We are

10 past our time to take a break. We will resume at five

11 minutes after 4:00. Thank you.

12 (A break was taken from

13 3:52 p.m. to 4:06 p.m.)

14 JUDGE KOPTA: Let's be back on the record

15 after our break. The commissioners have conferred and

16 at this point do not have questions for the panel. We

17 appreciate your testimony, and you're excused.

18 Public Counsel, you may call your witness.

19 MR. BRYANT: Public Counsel calls Sebastian

20 Coppola.

21 JUDGE KOPTA: Might as well stay standing

22 Mr. Coppola.

23 / / /

24 / / /

25 / / /

0123

1 SEBASTIAN COPPOLA, witness herein, having been

2 first duly sworn on oath,

3 was examined and testified

4 as follows:

5

6 JUDGE KOPTA: Ms. Gafken, I believe you had

7 some questions for Mr. Coppola in terms of revisions to

8 his testimony; is that correct?

9 MS. GAFKEN: Yes. And Mr. Bryant will be

10 conducting --

11 JUDGE KOPTA: Mr. Bryant then.

12 MS. GAFKEN: -- the investigation or the

13 questioning.

14 DIRECT EXAMINATION

15 BY MR. BRYANT:

16 Q. Good afternoon. Welcome back, everyone. Please

17 state your name for the record and spell your last name,

18 sir.

19 A. Sebastian Coppola, C-O-P-P-O-L-A.

20 Q. Thank you.

21 Who is your employer?

22 A. Corporate Analytics, Inc.

23 Q. Okay.

24 And what is your occupation?

25 JUDGE KOPTA: We don't need to have the

0124

1 foundation. All we need is corrections at this point,

2 because we have his testimony.

3 MR. BRYANT: Okay.

4 BY MR. BRYANT:

5 Q. Mr. Coppola, please state any corrections to

6 your testimony for the record.

7 A. Sure. On page 15 --

8 Q. Of S --

9 A. -- of SC-1 --

10 Q. 1T?

11 A. -- 1T, on line 10 and 11, there is a stray

12 sentence there that should be removed. It begins with

13 "When PSE" and ends with "riser." So that sentence

14 should be stricken.

15 On page 17, going down to line 21, the third --

16 excuse me, fourth word "signed" should be changed to

17 "prepared."

18 On line 27, the third word "signed" also should

19 be changed to "prepared."

20 The next change is on page 22. It's a minor

21 change on line 18, where it begins with paragraph C, the

22 word "closing" on that line should be a plural,

23 "closings."

24 On page 27 on line 10, the word "two," T-W-O,

25 should be changed to "one." And "violations" should be

0125

1 changed to a singular "violation."

2 On the next line, line 11, the second word -- or

3 third word "correctly" and then continuing to "device,"

4 should be changed to say "follow a corrosion inspection

5 procedure and a pipeline coating gap."

6 And then on page --

7 MS. BROWN: I didn't get that. I'm sorry.

8 MR. COPPOLA: You want me to repeat that?

9 JUDGE KOPTA: Yes, please repeat it.

10 MR. COPPOLA: On line 11, insert -- strike

11 "correctly configure a corrosion prevention device" and

12 then insert "follow a corrosion inspection procedure and

13 a pipeline coating gap."

14 JUDGE KOPTA: Coating as in C-O-A-T-I-N-G?

15 MR. COPPOLA: C-O-A-T-I-N-G, coating.

16 JUDGE KOPTA: And gap, G-A-P?

17 MR. COPPOLA: G-A-P.

18 And then on page 30, on line 12, near the

19 end of that line, after the word "done," insert "it,"

20 and the word "right," like your right hand. And that is

21 it.

22 JUDGE KOPTA: All right. Staff or the

23 Company, have you decided who's going to go first on

24 cross?

25 MS. BROWN: We have no cross for this

0126

1 witness, your Honor.

2 JUDGE KOPTA: Mr. Williams?

3 MR. WILLIAMS: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MR. WILLIAMS:

6 Q. Mr. Coppola, you do not have an engineering

7 degree of any kind, do you?

8 A. No engineering, no.

9 Q. You never studied engineering in college?

10 A. No.

11 Q. You were never trained on any engineering

12 subjects, correct?

13 A. Correct.

14 Q. Your educational background is in accounting and

15 business administration, right?

16 A. Finance, too, yep.

17 Q. You would agree that engineering is a science?

18 A. Engineering, yeah, it can be a science, yes.

19 Q. Would you agree that engineering is not the same

20 as accounting?

21 A. It's not the same as accounting?

22 Q. Correct.

23 A. They're two different disciplines, yes.

24 Q. You would agree that someone who was educated

25 and trained in engineering would know more about

0127

1 engineering issues than someone who's educated and

2 trained as an accountant?

3 A. Well, in a narrow sense, that would be correct,

4 but there's no engineering issues here in the

5 recommendations that I'm making. It's common sense

6 items.

7 Q. You would agree that someone who's trained as an

8 engineer would have superior knowledge on an engineering

9 issue?

10 A. I'm not sure which engineering issues you're

11 talking about.

12 Q. Let's assume in the abstract we're talking about

13 any engineering issues. Someone who is trained as an

14 engineer you would expect to have superior knowledge on

15 engineering-related issues?

16 A. I can't speculate on any theoretical. Give me

17 an example.

18 Q. On an engineering question, would you agree with

19 me that someone who is trained as an engineer is more

20 qualified --

21 A. What question?

22 Q. Let me finish the question.

23 A. What engineering question? You have a specific?

24 Q. Let me finish the question, Mr. Coppola.

25 A. Pardon me?

0128

1 Q. Let me finish the question.

2 Would you agree with me that someone who is

3 trained as an engineer would have greater knowledge

4 about how to address an engineering question than

5 someone who is trained in a separate discipline such as

6 accounting?

7 A. Again, you know, you're raising a theoretical on

8 something that, you know, it's difficult to answer. I

9 mean abstract, yes, but not in practical necessarily.

10 Q. Let's talk about your work experience.

11 During your career, you have never worked as an

12 engineer, correct?

13 A. Correct.

14 Q. And no one has ever hired you as an engineer,

15 correct?

16 A. (No audible response.)

17 Q. And you've never tried to be hired as an

18 engineer, correct?

19 A. Correct.

20 Q. Nowhere in your resume is there any mention of a

21 position where you served as an engineer, correct?

22 A. Correct.

23 Q. On page 1 of your list of qualifications, you

24 mentioned -- if you could look at your testimony.

25 A. Page what?

0129

1 Q. Page 1, I think, of your qualifications, SC-2.

2 A. My testimony begins on page 4.

3 JUDGE KOPTA: Are you referring to Exhibit

4 SC-1T or SC-2?

5 MR. WILLIAMS: SC -- SC-2.

6 A. I'm there.

7 BY MR. WILLIAMS:

8 Q. Okay.

9 You mentioned serving as a president and chief

10 operating officer of SEMCO Energy, is that correct?

11 A. Correct.

12 Q. And that was the last energy company job you had

13 before becoming a consultant, correct?

14 A. Correct, yes. I've also served, if you go down

15 the line, as president and COO of SEMCO Energy Ventures,

16 which was responsible for storage assets and pipeline

17 companies.

18 Q. Right.

19 But you didn't mention that, after you were

20 appointed as president and chief operating officer of

21 SEMCO Energy, that you abruptly left that job after five

22 months of working? That's not in your qualifications?

23 A. I left five months after what?

24 Q. I believe, according to the press release we

25 found, SEMCO appointed you as president and chief

0130

1 operating officer on May 8, 2001; is that right?

2 MR. BRYANT: Objection. Hearsay. Press

3 release?

4 JUDGE KOPTA: He can ask. Overruled.

5 A. No. I started employment with SEMCO Energy in

6 January of 1999 and left in September 2001.

7 BY MR. WILLIAMS:

8 Q. Well, according to the press release we saw, you

9 were -- you had two -- it says, "Two out at SEMCO." It

10 says that you and vice president of finance, Samuel

11 Dallas, have abruptly left SEMCO Engineering [sic] as of

12 October 2001. Is that true?

13 A. I don't know. I mean, I have to look at the

14 press release. I don't know what you're referring to.

15 MR. WILLIAMS: May I, your Honor?

16 JUDGE KOPTA: No. No. We didn't put in the

17 newspaper articles over your objection. I'm not going

18 to let you go that way on this one.

19 MR. WILLIAMS: Yes, your Honor.

20 BY MR. WILLIAMS:

21 Q. You would agree with me that you left abruptly

22 from SEMCO?

23 A. No.

24 Q. You were in a position for five months, correct?

25 A. No, I was in a position for -- since 1999.

0131

1 Q. The position that you left SEMCO in in

2 October 2001 was what? What position was it?

3 A. I was both -- at the time, I was chief -- senior

4 vice president, chief financial officer, and also

5 president and COO of SEMCO Energy Ventures.

6 Q. Let me read this to you and see if it sounds

7 familiar. Chief financial --

8 MR. BRYANT: Objection, your Honor.

9 JUDGE KOPTA: Yeah. Sustained. You're not

10 going to get around this, Mr. Williams.

11 MR. WILLIAMS: Yes, your Honor.

12 BY MR. WILLIAMS:

13 Q. Let's talk about the science of gas operations.

14 You would agree that operating a gas pipeline involves

15 engineering skills?

16 A. Not necessarily.

17 Q. You would agree that gas line operations

18 requires a knowledge of engineering principles?

19 A. Depending which positions you're looking at and

20 what jobs they're doing.

21 Q. You would agree that you never worked as an

22 engineer on a gas pipeline?

23 A. I never said I did, no.

24 Q. And you've never personally created any plan or

25 strategy involving the operation of a gas pipeline?

0132

1 A. Not true.

2 Q. You have created as an engineer --

3 A. Not --

4 Q. -- a plan or a strategy?

5 A. That wasn't your question.

6 Q. I'll rephrase the question.

7 Have you ever personally created a plan or

8 strategy requiring engineering skills that involves the

9 operation of a gas line?

10 A. No. I never represented that either.

11 Q. You would agree that gas operations and the

12 engineering related to that subject is a science?

13 A. I'm sorry. Say that again.

14 Q. Yes.

15 MR. BRYANT: Objection. Asked and answered.

16 JUDGE KOPTA: Overruled. You can ask the

17 question.

18 BY MR. WILLIAMS:

19 Q. You would agree that gas line operations and the

20 engineering related to that subject is a science?

21 A. I'm not clear what you're trying to say. Ask it

22 again maybe.

23 Q. I think earlier you testified that engineering

24 is a science. You agreed with that, correct?

25 A. In a strictly [sic] sense, yes.

0133

1 Q. So that would mean that gas pipeline operations

2 that involved engineering is a science. Would you agree

3 with that?

4 A. No.

5 Q. I want to ask you about Puget Sound Energy's gas

6 pipeline.

7 You've never personally inspected Puget Sound

8 Energy's pipeline, have you?

9 A. Nope.

10 Q. You've never personally been involved with

11 quality assurance efforts on a Puget Sound Energy gas

12 line, have you?

13 A. No.

14 Q. You've never worked with the WC [sic] staff on a

15 PSE gas line inspection program, have you?

16 A. No. Nope.

17 Q. And you never worked with PSE on a gas line

18 inspection program ever, have you?

19 A. Yes.

20 Q. When was that?

21 A. In relation to this case.

22 Q. So in this case, this is when you worked with

23 PSE on an inspection program?

24 A. Yeah. We talked through a number of sessions

25 trying to define this plan.

0134

1 Q. So you agree that you were materially involved

2 in developing the remediation plan?

3 A. Sure, yeah. Nobody's denying that. We're just

4 trying to make it better, you know. Some common sense

5 changes, that's all.

6 Q. Let's talk about the Greenwood gas line

7 investigation.

8 You never visited the Greenwood explosion site,

9 did you?

10 A. No, never had a chance to.

11 Q. You never participated in the Greenwood

12 explosion investigation, did you?

13 A. I read all the investigation reports that were

14 available, yes.

15 Q. I'll restate the question.

16 You never participated in the Greenwood

17 explosion investigation, did you?

18 A. What does that entail? I'm not sure.

19 Q. It entails being at the site, taking samples,

20 talking to -- you never did any of that, did you?

21 A. It was not necessary. It would be redundant to

22 do that. Why should I do that and get in the way of

23 Staff and the Company? You can read their report. I

24 mean, they didn't hide anything, did they?

25 Q. You never met with or talked to the experts who

0135

1 were actually at the site, did you?

2 A. What experts are you talking about?

3 Q. The experts who authored the report that you

4 relied upon.

5 A. I had a conversation with Staff who did the

6 analysis, yes.

7 Q. I'm talking about the experts who were actually

8 at the site.

9 A. Again, what experts are you talking about? Who

10 are these experts?

11 Q. You never talked to Mr. Liem?

12 A. Who is he?

13 Q. He's the person who authored the forensic report

14 that was relied upon by Staff in reaching its

15 conclusions in this case.

16 A. Was he the lab individual that did the lab

17 study?

18 Q. No, he's the forensic expert who was on site.

19 A. And what did he come up with? I mean, was that

20 information I wasn't provided in response to discovery?

21 Q. No, you were provided it.

22 A. Okay. If it was provided, I read it.

23 JUDGE KOPTA: Gentlemen, this is not a

24 conversation.

25 / / /

0136

1 BY MR. WILLIAMS:

2 Q. My question is, you never met or talked with any

3 of the others that were on the site? That was my

4 question.

5 A. No. No. I said no.

6 Q. Okay.

7 And you played no role in interviewing any of

8 the witnesses on the site, correct?

9 A. I just read every one of those interviews.

10 Q. Right.

11 But you didn't interview any of the witnesses?

12 A. I didn't have to.

13 Q. You played no role in inspecting the specimens

14 that were taken from the incident site, did you?

15 A. I reviewed the reports from the lab.

16 Q. Right.

17 But my question is, you weren't there checking

18 the specimens for purposes of that evaluation?

19 A. There was no need to. Again, it would be

20 redundant to do that.

21 Q. You didn't develop or create any work papers of

22 your own for any of the opinions you've offered in this

23 case, correct?

24 A. What do you mean by "work papers"?

25 Q. So we could see the math, how you got to the

0137

1 conclusions you reached. You don't have any work papers

2 that illustrate for us the methodology or the technique

3 or the basis for your conclusions, do you?

4 A. That was -- in this case, there's no need for

5 work papers, you know. There's basically testimony --

6 excuse me -- there's evidence that's presented through a

7 report that Staff prepared. There is discovery

8 responses. It's a matter of analyzing the information

9 provided and reaching a conclusion. You know, there's

10 no calculations to be done. There's no need for work

11 papers.

12 Q. I'm gonna change the subject. I want to ask you

13 about your general knowledge of discovery in this case.

14 You were aware that Puget Sound Energy took the

15 depositions of the WUTC staff involved with the

16 investigation of this matter, correct?

17 A. Yes.

18 Q. You did not attend or listen to any of the

19 depositions that were taken in this case, did you?

20 A. I read the depositions.

21 Q. You did not provide Public Counsel with any

22 questions to ask during those depositions, did you?

23 A. I was not at the depositions. I read the

24 depositions.

25 Q. My point is, you didn't provide input to Public

0138

1 Counsel with questions that could be asked at those

2 depositions, did you?

3 A. My involvement with the case was subsequent to

4 the depositions.

5 Q. If you had been involved in the discovery

6 process in this case, you could have raised all of the

7 issues in your testimony during the depositions that

8 were taken of staff, correct?

9 A. What issues?

10 Q. The issues that you identify in your report.

11 A. My testimony?

12 Q. In your testimony, yes.

13 A. In terms of modifications to the plan?

14 Q. Yes.

15 A. Those things were discussed in developing the

16 plan and had nothing to do with deposition. The

17 deposition was more in terms of what happened with the

18 explosion.

19 Q. So why don't we shift gears and talk a little

20 bit about some factual differences of opinion we have.

21 I want to first start by talking about the

22 question of what caused the explosion. You say improper

23 abandonment was the primary cause of the explosion,

24 correct?

25 A. Correct.

0139

1 Q. But Staff's report says repeatedly that there

2 were two causes of the explosion: The outside

3 structural force caused by human activity and PSE's

4 improper abandonment; is that right?

5 MR. BRYANT: Your Honor, what documents is

6 Mr. Williams reading from?

7 MR. WILLIAMS: We're reading from his

8 testimony.

9 MR. BRYANT: Do you have a page and a line

10 cite?

11 MR. WILLIAMS: Yes.

12 BY MR. WILLIAMS:

13 Q. Page 11 -- excuse me -- SC-1T at 11, lines 15

14 through 16.

15 A. Which line on page 11?

16 Q. 11, 15 through 16.

17 A. Yep, I see that.

18 Q. You say it's the improper abandonment.

19 And my question to you is this. You recognize

20 that Staff reached the conclusion that there were two

21 separate causes, one being improper abandonment and the

22 other being human activity essentially causing a

23 breaking of the pipe?

24 A. Where are you reading that, in Staff's --

25 Q. No. I'm asking you the question.

0140

1 Do you realize that?

2 A. What I realize is what Mr. Bryant asked

3 Mr. Rathbun in his report, the cause being the lack

4 of -- if the line had not been properly abandoned, that

5 the explosion would not have occurred.

6 Q. Okay.

7 Your report doesn't mention anything about human

8 activity, does it?

9 A. No, because it was secondary, you know. If you

10 don't have a primary problem, you don't have a secondary

11 problem.

12 Q. Nowhere in your testimony do you once mention

13 the outside force of human activity, correct?

14 A. Didn't have to. Again, the primary purpose is

15 what matters.

16 Q. And when -- would you agree, though, that the

17 fact that human activity was involved with breaking the

18 gas line is a relevant fact for an expert to consider?

19 A. Again, if the primary problem didn't exist,

20 there would be no secondary issue.

21 Q. You also mentioned that Puget Sound Energy acted

22 intentionally. You suggested that an unintentional act

23 is really intentional. Here I'm looking at SC-1T at

24 page 31, lines 3 through 20.

25 CHAIRMAN DANNER: What is that cite?

0141

1 JUDGE KOPTA: What -- where are we

2 referring?

3 MR. WILLIAMS: Page 31, lines 3 through 20.

4 A. What I said is the sequence of events and the

5 number of events, in effect, could be interpreted as

6 such.

7 BY MR. WILLIAMS:

8 Q. Right.

9 A. And the fact that the line didn't get cut and

10 capped, the fact that there was no inspection, the fact

11 that there was no purging of the line, the fact that the

12 active gas line didn't get removed, even though the

13 procedures of the company say they should be removed,

14 all those things add together that could be -- could

15 rise to the level of being, in effect, an intentional

16 act, or comparable to that.

17 Q. You're not aware of anything in Staff's

18 investigation or any other written reports in this case

19 suggesting that PSE intended for the Greenwood incident

20 to occur, are you?

21 A. I don't know how you can intentionally not do

22 something, or intentionally not cut and cap.

23 Q. My question's a little different.

24 I want to know whether you -- as you sit here

25 now, are you aware of any evidence that you've seen from

0142

1 the investigation that says that Puget Sound Energy

2 intended the incident at Greenwood to occur?

3 A. That would be criminal.

4 Q. So you're not aware of any evidence?

5 A. No evidence of any -- no claim of any criminal

6 intent has been put forth here.

7 Q. And you heard Mr. -- and you heard Mr. Rathbun

8 say that Staff concluded that there was nothing

9 intentional done by Puget Sound Energy in this case.

10 Do you recall that?

11 A. That's his opinion, yeah.

12 Q. Did you know Mr. Rathbun is an engineer?

13 A. Yes.

14 Q. Do you know he's been an engineer for maybe 30,

15 40 years?

16 A. Sure. That doesn't mean that he isn't fallible.

17 Q. Did you know that Mr. Henderson is an engineer?

18 A. Yes.

19 Q. And you know he's been doing gas line

20 engineering for in excess of 25 years?

21 A. Yep. There are no engineering issues here with

22 the --

23 Q. Did you know Ms. Koch was an engineer?

24 A. Who is Mr. Koch?

25 Q. Ms. Koch.

0143

1 A. Ms. Koch, yes.

2 Q. Yes.

3 You know she's been an engineer for almost

4 30 years?

5 A. Sure. Again, no engineering issues are being

6 raised here. We're not arguing engineering.

7 Q. In your testimony justifying your position, you

8 mentioned -- you suggested PSE's failure to deactivate

9 the service line rises to the level of irresponsibility

10 and imprudence that approximates an intentional act.

11 And as authority for that, you cite to this thing called

12 a PHMSA bulletin.

13 Do you remember that?

14 A. Where are you at, what page and line?

15 Q. Page 31, line 8 of your testimony, you reference

16 the PHMSA bulletin.

17 Do you see that?

18 A. Yeah, August 16th -- August 16, 2016, advisory

19 bulletin --

20 Q. Yes, that's the one.

21 A. -- by the PHMSA?

22 Q. Yes.

23 JUDGE KOPTA: The acronym is PHMSA.

24 MR. WILLIAMS: PHMSA. Thank you.

25 / / /

0144

1 BY MR. WILLIAMS:

2 Q. Do you remember that?

3 A. Yes.

4 Q. Do you have any other authority other than this

5 bulletin for the position you take here about this

6 irresponsibility and imprudence?

7 A. As I said, there are a number of events that

8 occurred that lead me to that conclusion. One is that

9 the cut and cap was not completed. Secondly, that the

10 line was not purged when it should have been purged.

11 And thirdly, it was not inspected -- that the work was

12 inspected by Pilchuck that the job was completed. And

13 fourth, that the abandoned gas line was not removed

14 according to the Company procedure.

15 So those four things that were not done, plus

16 obviously the supporting evidence by PHMSA, I think it's

17 pretty clearcut.

18 Q. Okay.

19 I'm looking at page 31 of your testimony.

20 A. Um-hmm.

21 Q. Line 15, you refer also to the Wilmington case?

22 A. That's the same one.

23 Q. Okay.

24 Have you actually read that case?

25 A. No. I scanned through it. I did not read it

0145

1 completely.

2 Q. You didn't read it completely, but you referred

3 the commissioners to it?

4 A. Right, yeah. And if you look at the bulletin,

5 it's part of the Exhibit SC-12. It's all there.

6 Q. Did you know that case was a case about crude

7 oil, and a crude oil pipeline operator believed that the

8 pipeline it owned had been abandoned, that was a case --

9 that's what that case is about?

10 A. It was similar case to this where the Company

11 believed that the line was abandoned so they stopped

12 monitoring it, and then actually it was still live, like

13 in this case, and it blew up.

14 Q. Well, actually, in that case, are you aware that

15 the pipeline ruptured, spilling crude oil into a

16 California neighborhood?

17 A. Yep.

18 Q. Did you know that?

19 A. Yep.

20 Q. Did you also know that the civil penalty that

21 was issued against the pipeline company by the State of

22 California for their failure to properly abandon the

23 service line and for the resulting spill was a total of

24 $78,000?

25 A. Yeah. Nobody died, no business were destroyed.

0146

1 Q. Now I want to ask you some questions about your

2 bases for your opinions, Mr. Coppola.

3 A. Sure.

4 Q. You made a number of findings and offered a

5 number of opinions in your testimony for the Commission

6 to consider. I want to first start by talking about the

7 opinions that you offered on the deactivated gas line

8 and remediation program, which is Appendix A to the

9 settlement. You might want to have the Settlement

10 Agreement.

11 A. What page?

12 Q. Just the first page of the Settlement Agreement.

13 A. First page of the Settlement --

14 Q. Yes.

15 A. I'm there.

16 Q. And actually, I want to ask you about the

17 opinions that you reached about the Settlement

18 Agreement, in particular the remediation program, which

19 is Exhibit A -- Appendix A, I'm sorry.

20 A. You want me to go to Exhibit A?

21 Q. To Appendix A, yes.

22 A. Appendix A?

23 Q. Yes.

24 A. Okay.

25 Q. So you offered some opinions about Appendix A.

0147

1 And my first question to you is this.

2 Can you tell us what science or technical

3 principles you used to base your opinions on when you

4 gave your findings and opinions on this remediation

5 plan?

6 A. There's no science involved in this. There is

7 just simply experience and common sense.

8 Q. Can you tell us what kind of gas pipeline

9 methodology or school of thought your opinions are based

10 upon?

11 A. For what?

12 Q. Your opinions about this remediation plan.

13 A. In total or any specific ones you're concerned

14 about?

15 Q. Any of then.

16 A. Any of them?

17 Q. Yes.

18 A. As I said, there is no science involved in this

19 at all. It's a matter of experience and common sense.

20 Q. Okay.

21 My question's slightly different. Can you tell

22 us what kind of gas pipeline methodology or school of

23 thought you based your opinions on?

24 A. I based it on a couple different things. One is

25 the federal rules and regulations under CFR 49 of the

0148

1 State -- the State of Washington rules and regulations,

2 and my experience and, again, common sense.

3 Q. Is there any working group of scientists or gas

4 pipeline experts who you base your opinions on?

5 A. Again, the subjects that were raised don't

6 require science or research. Very straightforward. And

7 I'll be happy to go into those in detail with you.

8 Q. Are there any gas pipeline operations, textbooks

9 or treatises you can cite to as the basis for any of

10 your opinions?

11 A. Again, that's not applicable in this case.

12 Q. Other than you, is there anyone or anything

13 within your profession who shares your opinions about

14 the remediation program in this case?

15 A. Again, there's no issues. I didn't even get

16 anybody else involved. This is confidential

17 information.

18 Q. As I understand it, your testimony is that you

19 expect the commissioners to accept your opinions over

20 the opinions of the three engineers who collectively

21 have spent more than 60 years actually working on the

22 gas pipeline operations for PSE?

23 A. Again, these are common sense items. They're

24 just -- for whatever reason, they decide not to include

25 them. But I'll be happy to go into them with you and

0149

1 explain why they make sense.

2 Q. Let me ask you some questions about your opinion

3 on the penalty amount in this case.

4 Can you tell us whether your opinions about the

5 penalty amount are based on any scientific or technical

6 principles?

7 A. No. They're no different than, you know, what

8 the final recommendations came [sic]. There was no

9 science in coming up with a million-five of firm

10 penalties. There's no science to that. There's no

11 science in this. I mean, it's the rules. The rules say

12 that this is what the penalties are, and Staff

13 identified $3.2 million. Nothing was introduced after

14 the Complaint to indicate that any of those violations

15 were any less than what they initially were identified.

16 So what -- what basis -- do you want me to come up with

17 science to something that was not scientifically done?

18 Q. Can you tell us what kind of gas pipeline

19 methodology or school of thought your opinions about the

20 penalty amount are based on?

21 A. Same answer.

22 Q. Is there any working group of scientists or gas

23 pipeline experts who you based your opinion about the

24 penalty on?

25 A. Same answer.

0150

1 Q. Are there any gas pipeline operations, textbooks

2 or treatises you can cite to as a basis for your opinion

3 about the penalty amount?

4 A. Not relevant.

5 Q. Other than you, is there anyone else within your

6 profession who shares your opinions about the penalty

7 amount in this case?

8 MR. BRYANT: Asked and answered, your Honor.

9 JUDGE KOPTA: I'll allow it.

10 A. Again, no basis. No relevance.

11 BY MR. WILLIAMS:

12 Q. And again, you expect the Commission to accept

13 your opinions about the penalty over the opinions of

14 three engineers who have collectively spent more than

15 60 years actually working on gas pipeline engineering

16 questions?

17 A. I haven't seen any engineering analysis done by

18 Staff or the Company to arrive at a million-five, or a

19 million-two suspended on top of that. There's no

20 engineering analysis done in that. No analysis

21 whatsoever.

22 MR. WILLIAMS: No further questions.

23 JUDGE KOPTA: Thank you.

24 Other counsel, any redirect?

25 / / /

0151

1 REDIRECT EXAMINATION

2 BY MS. GAFKEN:

3 Q. Mr. Coppola, you were asked a number of

4 questions about what you reviewed in this case.

5 Do you recall that line of questioning?

6 A. Yes.

7 Q. Would you describe briefly, but with sufficient

8 detail, what you reviewed?

9 A. Sure. If I can take you to I believe it's page

10 6 of my testimony.

11 MR. BEATTIE: Judge Kopta, I have to

12 interject. We've had a lot of testimony on what

13 Mr. Coppola reviewed. I think this is cumulative by

14 now. I mean, how many times are we going to go over the

15 list of the items he reviewed?

16 MS. GAFKEN: Well, you know, I think it's a

17 little funny, because the parties have indicated that

18 Mr. Coppola didn't review anything, or not enough

19 sufficient data, but really, he reviewed hundreds of

20 photographs and the Staff reports and lots of data.

21 JUDGE KOPTA: We have a list of what he

22 reviewed in his testimony. And are you trying to

23 embellish that list? Is that what I'm hearing you say?

24 MS. GAFKEN: No, the list is accurate.

25 JUDGE KOPTA: Then I think we already have a

0152

1 record of what he's reviewed, so I don't think we need

2 to go into that.

3 Sustained.

4 BY MS. GAFKEN:

5 Q. Mr. Coppola, you were asked questions about your

6 formal education and your work experience.

7 Do you recall those questions?

8 A. Yes.

9 Q. Do you have any experience with natural gas

10 safety regulations?

11 A. Yes.

12 Q. Do you have any experience with natural gas

13 safety operations?

14 A. Yes.

15 Q. Would you please explain to the Commission what

16 your experience with those two items is?

17 A. Sure. During my time at Michigan Consolidated

18 Gas Company, in my responsibilities as manager of

19 inventory control and warehousing management, I had the

20 opportunity to work on a task force -- the state of

21 Michigan, like most other states, has a gas safety code,

22 and that gas safety code was being revamped by the

23 state, and we were asked to participate in that effort.

24 And I was a member of that task group looking at changes

25 in that gas safety code, particularly with respect to

0153

1 inspecting pipe when pipe was bought.

2 I had the responsibility, obviously, to make

3 sure that pipe and valves and other fittings met

4 specifications that -- to provide a safe system. And we

5 developed a number of internal procedures on how pipes

6 should be inspected before it's taken to a job site, and

7 then what happens at the job site to make sure that pipe

8 is installed correctly. And also whenever a pipe is

9 replaced, how that pipe needs to be tested to make sure

10 that there's no gas left in the pipe. That's, you know,

11 one part of it.

12 And the -- later in my career, I had the

13 opportunity to lead the task of acquiring -- we had a

14 strategy at SEMCO Energy of acquiring pipeline

15 construction companies, similar to Pilchuck Contractors,

16 and build a network of companies that would supplement

17 our utility business. And part of that effort was to go

18 and do due diligence on those contractors to see what

19 type of inspection programs they had in place. And so I

20 spent quite a bit of time reviewing their inspection

21 programs.

22 And on top of that, once we got to a certain

23 number of acquisitions, we revamped their inspection

24 programs to make sure they were more uniform, could be

25 well documented and provide information to utility

0154

1 companies either in paper form or in electronic form so

2 that they had a record of what inspections had been

3 done.

4 More recently, working in the city of Chicago

5 for the Michigan -- or for the -- excuse me -- Illinois

6 Attorney General with respect to People's Gas and Coke

7 [sic] Main Replacement Program. They have still miles

8 and miles of cast iron and ductal iron, as well as

9 uncoated steel pipes that they're replacing. This is a

10 program that is about a 20- to 30-year program to

11 replace all that pipe.

12 I've been involved in assessing that program and

13 determining why there were cost overruns. One of the

14 things I found in that analysis was that the contractor

15 would complete a replacement work order or a job and

16 then cover the pipe that had been replaced, and then the

17 company inspector will be going in to inspect that pipe

18 and require that the pipe be -- you know, the hole be

19 re-dug, and, in fact, the pipe exposed in order to make

20 sure that, you know, he was satisfied the job had been

21 done completely.

22 Again, it created enormous cost overruns and, as

23 a result, the cost of the program has escalated from

24 about two-and-a-half billion dollars when first

25 announced to about ten billion dollars now. That's one

0155

1 aspect of it. There are other things, obviously, that

2 are causing that cost overrun, but in that process, I've

3 done quite a bit to, you know, understand inspection

4 programs.

5 Q. Were you retained as an engineering expert?

6 A. No.

7 Q. Did you draw on your experience with safety

8 regulations and safety operations in your evaluation of

9 the inspection and remediation program in this case?

10 A. Well, I was retained to make a determination and

11 assessment of the Complaint that was filed by the

12 Commission, or issued at the Commission, and determine

13 what had occurred and whether or not the penalties, you

14 know, were properly assessed.

15 I was also then assigned the responsibility to

16 determine whether or not the proposed inspection program

17 made sense, and that was basically, you know, the task

18 here, and reviewing all the information that was

19 available that had been already discovered and compiled.

20 Q. The type of information that you reviewed in

21 coming to your conclusions and developing your

22 testimony, is that the typical type of materials that

23 you usually review in your consulting work?

24 A. Exactly. Typically, there's no need to go to an

25 explosion site. You know, those situations occur,

0156

1 they're quick. You have, you know, a staff person, they

2 have company employees, they go on site, they gather a

3 lot of information. All that information is preserved,

4 as in this case. It was provided, as far as I know, all

5 of it. We asked for all of it. I've reviewed all that

6 information, photographs.

7 In addition to that, we -- I mean Public Counsel

8 issued over 200 discovery questions, if we include all

9 the subparts to it. Most of that information was

10 provided. As we were going through the negotiations,

11 the Company refused to provide some of that information

12 and provided some answers orally, but I think I'm

13 satisfied that I have all that I need in order to reach

14 an assessment in this case and conclusion.

15 Q. You were asked a lot of questions about

16 scientific basis for your evaluation of the plan and

17 also scientific basis for the penalty.

18 Do you recall those two lines of questioning?

19 A. Yes.

20 Q. Were you basing your analysis on industry best

21 practices and your experience?

22 A. Exactly. When you look at the modifications

23 they're recommending, and there are only five of them,

24 and they're, I think, relatively innocuous, I think they

25 improve the plan, and in many cases they're just

0157

1 nonsensical.

2 For instance, why have a -- defining a

3 population with Pilchuck when others -- other

4 contractors, and even as Mr. Henderson said, Company

5 employees may have, you know, completed that.

6 Whether it's that, whether it's retaining a

7 record of what the contractor has done in terms of

8 inspections, that's simple common sense. You need this

9 information. You need to capture it and know who did

10 the inspection, what was inspected. Without that

11 information, you just can't do a good job of determining

12 whether or not an inspection has been done and what was

13 inspected.

14 And you know, as we found in this case,

15 inspection was not completed, and the Company didn't

16 keep track. If the Company had the right systems, they

17 would have gotten that report and they would have

18 verified that the job had been done correctly.

19 Apparently, those procedures don't exist. And

20 so what I'm asking for is simply, you know, make part of

21 the inspection program a change to the -- to the

22 procedures the Company should have in order to capture

23 very straightforward and simple information. I mean,

24 you don't need to have an engineering degree or science

25 degree to make this kind of determination that it makes

0158

1 sense.

2 You know, with regard to removing active

3 above-ground lines that have been inactive for 12 months

4 or longer, again, that's very common sense. Why do you

5 want to take the risk of having a line like in this case

6 for 12 years that is, you know, full of gas, pressurized

7 natural gas, and take the risk of somebody coming by

8 and -- whether it's hit by truck or a car, and have the

9 line -- or a person, and create an incident.

10 Again, it's very common sense. And based on,

11 you know, my 26 years of experience in the industry, I

12 don't know of any company that leaves abandoned

13 above-ground gas lines for longer than 12 months, or

14 even that long. That just makes no sense. Unless

15 you're waiting for a meter to be installed, and there's

16 an agreement of some sort or an understanding with the

17 customer the gas will be taken shortly, those lines

18 should be removed.

19 MS. BROWN: Your Honor, I'd just request

20 that you instruct the witness to answer the question

21 rather than deliver a speech in the narrative form. I

22 lost track of the question pending. Thank you.

23 JUDGE KOPTA: Anything further?

24 MS. GAFKEN: Your Honor, I don't have

25 anything further, but I would move for Mr. Coppola's

0159

1 testimony and his Exhibits 2 through 12 -- so Exhibit

2 SC-1T and Exhibits SC-2 through SC-12 to be admitted

3 into the record.

4 I think it's -- well, I think it's

5 established that Mr. Coppola has the sufficient

6 knowledge and experience to testify on the matters that

7 he testifies on in his testimony with respect to the

8 five modifications that he proposes. I understand that

9 the Company may have additional objections to his

10 qualifications on a broader scope, but those were the

11 items that were held in abeyance from the order.

12 So I would move at this time for his

13 testimony and exhibits to be admitted into the record.

14 JUDGE KOPTA: Mr. Williams?

15 MR. WILLIAMS: Your Honor, at this point we

16 want to reiterate the motion to strike PSE filed in this

17 case. We still believe that that motion is viable and

18 we should be granted it for the following reasons.

19 Under Evidence Rule 702, which dictates in

20 the state of Washington when expert testimony can come

21 in, it says, If scientific, technical or other

22 specialized knowledge will assist the trier of fact to

23 understand the evidence or to determine a fact in issue,

24 a witness qualified as an expert by knowledge, skill,

25 experience, training or education may testify thereto in

0160

1 the form of an opinion or otherwise.

2 Mr. Coppola's already told this panel and

3 yourself that what he's talking about is common sense.

4 He said that there's nothing special about it, it's not

5 scientific at all, this is stuff that ordinary people

6 would understand. Well, if that's the case, he, by

7 definition, does not meet the requirement under 702 to

8 be a qualified expert, because the whole point of being

9 an expert is that you have something of value that the

10 average person doesn't.

11 And if he's saying his principles are based

12 on common sense, then the commissioners can reach their

13 own conclusions as to whether or not common sense

14 prevails based on the testimony here. They don't need

15 him as an expert witness to assist them in making any

16 kind of conclusion.

17 So we submit to the judge, to your Honor,

18 that our motion to strike is still viable, and we ask

19 that you find in our favor to strike his testimony.

20 JUDGE KOPTA: All of his testimony or just

21 the portions that were held in abeyance?

22 MR. WILLIAMS: The portions held in

23 abeyance, your Honor.

24 JUDGE KOPTA: Staff, do you have any

25 opinion? Do you wish to contribute to this discussion?

0161

1 MS. BROWN: No, we have nothing further to

2 add. We agreed to the admissibility of the exhibits.

3 CHAIRMAN DANNER: I'm sorry. What was that?

4 MS. BROWN: I'm sorry. We agreed earlier to

5 the admissibility and admission of the exhibits.

6 MS. GAFKEN: Your Honor --

7 (Brief discussion off the record.)

8 JUDGE KOPTA: Did you want to add something

9 more, Ms. Gafken?

10 MS. GAFKEN: Yes. 703 does not -- it's not

11 limited to scientific knowledge. It's also other

12 technical and other specialized experience. Mr. Coppola

13 certainly falls within that experience. He has also

14 appeared before this Commission in other cases as an

15 expert witness. He is certainly an expert within the

16 type that appears before the UTC.

17 CHAIRMAN DANNER: Can I ask a clarifying

18 question on that? I was looking at the cases that he's

19 been involved in in front of the UTC, and I saw -- it

20 looks to me that it's basically power cost adjustment

21 mechanisms, power cost adjustment mechanisms, hedging

22 strategies and board of director's compensation.

23 Can you tell me if any of that is relevant

24 to what we're talking about today?

25 MS. GAFKEN: He also appeared as my general

0162

1 revenue requirement witness in the PacifiCorp general

2 rate case. I have found that Mr. Coppola has a broad

3 base of utility regulatory knowledge, and a lot of

4 times, if I have a specialized issue, I will call him to

5 see if he has the requisite knowledge that I might need

6 to present before you.

7 CHAIRMAN DANNER: And that included safety

8 and compliance?

9 MS. GAFKEN: Yes. I knew that Mr. Coppola

10 had natural gas utility experience, being a natural gas

11 executive and having spent his entire career prior to

12 being a consultant witness at two natural gas companies,

13 so I called him and asked if he knew enough about

14 natural gas safety -- he is not an engineer, and I knew

15 that going into this, and I knew that we were not going

16 to present engineering testimony. That's not why we

17 hired Mr. Coppola.

18 CHAIRMAN DANNER: So --

19 MS. GAFKEN: But he does know about safety

20 regulation and has worked with safety compliance plans

21 and has developed those plans before, so I felt that he

22 did know enough about this.

23 CHAIRMAN DANNER: So he has developed safety

24 compliance plans?

25 MS. GAFKEN: Yes, and he did testify about

0163

1 that earlier.

2 CHAIRMAN DANNER: So I'm hearing basically

3 he said, it's the rules. And rules, to me, is

4 compliance with law. He's not a lawyer. Common sense

5 is something I think everybody in this room has, to some

6 degree. It's not necessarily an expertise factor.

7 So it's basically down to his work

8 experience. And that's what I'm not seeing in what he's

9 provided in his work experience is relevant to what

10 we're doing here, so I'm trying to figure out if his

11 background does, in fact, inform his common sense, or if

12 he's just a lay witness, and we have to treat it

13 accordingly, and that's the question.

14 MS. GAFKEN: I don't -- excuse me, Chairman

15 Danner. I don't believe that Mr. Coppola's a lay

16 witness. Just as we look at our utility witnesses as

17 experts, I look at Mr. Coppola as an expert.

18 He spent his entire career prior to becoming

19 a consultant as a utility man. So I see Mr. Coppola in

20 much the same vein as we see a Puget Sound Energy

21 witness, an Avista Corporation witness. Now, he is a

22 consulting witness and is available for me to hire to

23 bring before you, so I don't see Mr. Coppola as a lay

24 witness in any stretch.

25 JUDGE KOPTA: All right. We will take a

0164

1 brief recess to consult. And so I would ask the parties

2 to stay here, I'm not sure how long, but we should be

3 brief. And when we come back, we want to try and

4 obviously finish up shortly. We're off the record.

5 (A break was taken from

6 5:02 p.m. to 5:11 p.m.)

7 JUDGE KOPTA: All right. Let's be back on

8 the record after our brief recess. The commissioners

9 have determined that they have no questions for

10 Mr. Coppola, so we excuse you. You may return to your

11 seat.

12 As far as admitting Mr. Coppola's testimony

13 and exhibits, the Commission will reluctantly admit them

14 into the record. I say reluctantly because we agree in

15 many ways with what Mr. Williams said in terms of the

16 need for an expert witness to have expertise and

17 relevant experience.

18 And while Mr. Coppola has experience in the

19 utility industry, that experience is marginally relevant

20 to the issues that we're deciding today. We expect

21 witnesses to have a little bit more relevant experience

22 or training if they're going to be providing expert

23 testimony, and we did not find that Mr. Coppola has very

24 much. And we will consider the testimony under those

25 circumstances, give it the weight that it deserves, and

0165

1 we'll determine the extent to which it is -- it informs

2 our decision in this matter.

3 So with that, I admit Exhibits SC-1T through

4 SC-12 into the record.

5 (Exhibit Nos. SC-1T through SC-12

6 were admitted.)

7 JUDGE KOPTA: As I told counsel before, they

8 will have a brief opportunity to make closing

9 statements. Given the lateness of the hour, they're

10 limited to five minutes each, and I will start with the

11 settlement proponents, Mr. Williams or --

12 MR. WILLIAMS: Actually, I promised

13 Mr. Beattie that I'd let him go first.

14 JUDGE KOPTA: Then that's fine with us.

15 Mr. Beattie?

16 MR. BEATTIE: Thank you, Commissioners.

17 It's been a long afternoon, and let's just be honest, a

18 lot of what the parties go into is possibly not helpful

19 to you, and you've been in the weeds, and so I'll do my

20 best to try to bring us up to the surface.

21 So what do we know? What did we learn? And

22 what are we going to do about it? After the Greenwood

23 explosions, these are the questions that need to be

24 answered, and the proposed settlement answers all three

25 questions; therefore, it should be approved.

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1 So first, what do we know? Again, at a high

2 level, the settlement does reflect consensus that, in

3 September 2004, the crew working for PSE made a serious

4 error when it attempted to cut and cap the Greenwood

5 service line, but, for reasons we do not know, botched

6 the job. Let's just be direct about it. We know that

7 the line remained active for more than a decade until it

8 was damaged by outside force, most likely, though not

9 definitely, at the hands of trespassers. We know that

10 gas escaped, we know that it migrated under a structure

11 and ignited, and we know that buildings were literally

12 blown to smithereens.

13 Next, what did we learn? We learned that

14 one deactivated service line in PSE's system was, in

15 fact, active unbeknownst to PSE. One service line.

16 Now, could there be others? Yes. Maybe. It is

17 imperative that we find out, right?

18 So that brings us to the final question,

19 what should we do? What should the state of Washington,

20 through the Washington Utilities and Transportation

21 Commission do with what we know and what we learned?

22 First, the Commission should require the

23 Company to acknowledge its error. Okay? Check that

24 off. The settlement accomplishes this objective. PSE

25 acknowledges that it is responsible for its contractor's

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1 mistake. They are not trying to blame this on Pilchuck.

2 And PSE recognizes, as it must, that the explosion would

3 not have occurred but for the improper abandonment of

4 the service line.

5 Second, the Commission should demand that

6 the Company implement safety improvements that are

7 designed to reduce the risk of recurrence. The

8 settlement accomplishes this objective as well and

9 requires the Company to test thousands of service lines,

10 prioritizing those that are thought to be most at risk.

11 PSE must allow Staff to observe its

12 inspections, and it must keep the Commission informed of

13 its progress. If PSE finds a single improperly

14 abandoned pipeline within any inspection population, it

15 must inspect all lines within that population. Okay?

16 So the inspection plan is very robust.

17 Finally, the Commission should punish the

18 Company for its error by imposing a monetary penalty.

19 The settlement's 1.5 upfront -- or excuse me,

20 $1.5 million upfront penalty would be the largest ever

21 imposed in a Commission pipeline safety case. So that

22 alone should tell you something about the gravity of the

23 offense and PSE's acknowledgement of the gravity of the

24 offense.

25 And the $1.25 million suspended penalty is

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1 also very useful, because it provides the Commission

2 with a hammer to enforce what is a multiyear complex

3 compliance plan. The Commission needs this hammer to

4 ensure that it remains in a position of control. And as

5 Mr. Rathbun testified, the suspended penalty is to

6 ensure, quote, not only that they get it done, but that

7 they get it done on time, right?

8 So now I'll address Public Counsel's

9 recommendation that the Commission impose the maximum

10 statutory penalty without suspending any portion.

11 Should the Commission adopt this proposal? No, for two

12 reasons.

13 First, because eliminating the suspended

14 penalty would deprive the Commission of that hammer I

15 spoke about. The Commission should not simply entrust

16 proper execution of the plan to PSE's self-interest.

17 Presumably, it's always in PSE's self-interest not to

18 commit any violations. The Commission needs a hammer to

19 ensure compliance.

20 Second, Public Counsel's proposal is

21 unreasonable because the Commission should impose the

22 maximum penalty only for intentional violations. Now,

23 as I said, what Staff characterizes this incident as is

24 a serious error. It's a serious error because the pipe

25 should have been cut and capped and it was not. I said

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1 it was botched, and that's just being direct, but it

2 wasn't intentional misconduct.

3 And Mr. Coppola says something along the

4 lines of, these actions approximate intentional

5 conduct -- intentional acts. Approximate. So it's not

6 intentional, but it's approximately intentional?

7 Nonsense.

8 As this Commission recently recognized in

9 its order approving the 911 settlement in the Century

10 Link case, a Company's misconduct is not intentional

11 merely because, in hindsight, it seems like it could

12 have been prevented. Under any rational assessment, PSE

13 did not purposefully botch the 2004 cut and cap, and

14 there's no disagreement about that among any of the

15 experts.

16 Lastly, I have to address the notion that

17 Public Counsel can seek modifications to the plan

18 without objecting to it. Sorry. No. You either accept

19 the plan or you reject it. And this semantic game that

20 Public Counsel is playing about, well, we don't object

21 to it, but we have some modifications, it just doesn't

22 work that way. Because, as PSE said, if you modify the

23 plan, we have to go back and talk about it.

24 And this brings me to the sort of broader

25 point about settlements in general. They're very

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1 carefully constructed, and this one certainly was. It

2 took months to complete. We'd like to think that, you

3 know, you push on one part of the settlement and it

4 affects another part. So the idea that you can simply

5 add to it at the very end, you know, does not sit well

6 when we were all in the room together and believed that

7 we were on the same page.

8 I also have to address this notion that

9 Staff is somehow abdicating its role or going easy on

10 the Company, throwing in the towel because it is not

11 sticking firm to its -- you know, the maximum penalty.

12 Again, that's what a settlement is. You come down off

13 the maximum penalty because it helped Staff get a

14 compliance plan that we think is a very good one. If we

15 were here to extract the maximum out of the Company, the

16 Company would never settle. A settlement is, by

17 definition, a compromise of positions.

18 I want to conclude by saying that the

19 settlement is in the public interest. It brings to a

20 close a difficult, time-consuming investigation. And

21 you heard Mr. Rathbun talk about how his guys were out

22 in the field, literally it was pouring rain, they had to

23 stay in hotels overnight, blood, sweat and tears. And

24 it also resolves a hard-fought settlement negotiation.

25 I mean, this has been ongoing, active negotiations for

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1 quite some time now.

2 And most importantly, it answers those three

3 fundamental questions I addressed in beginning: What do

4 we know? What did we learn? And most importantly, what

5 are we going to do about it? The plan's in the public

6 interest, and the Commission should approve it without

7 modification. Thank you.

8 JUDGE KOPTA: Thank you, Mr. Beattie.

9 Mr. Williams?

10 MR. WILLIAMS: Thank you, your Honor.

11 On behalf of Puget Sound Energy, we thank

12 the commissioners and your Honor for giving us this

13 opportunity to share with you some thoughts on why we

14 agree with Staff -- or counsel for the Staff on why this

15 settlement should be accepted without any modification,

16 and it really comes down to three basic reasons.

17 The first is this. There literally is no

18 dispute between the parties about any material fact that

19 matters in this case. We know that because, for the

20 last ten months, we've been doing investigations, we've

21 been talking to expert witnesses. I think our witnesses

22 talked about the hundreds of data requests that Puget

23 Sound Energy has responded to, not only for counsel for

24 Staff, but also to Public Counsel.

25 This case has literally been investigated

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1 and litigated such that there are no other facts that

2 you will be finding that would be relevant to your

3 decision making. It is ripe for your consideration and

4 closure in the Settlement Agreement that we proposed

5 with counsel for Staff.

6 The second reason why we think you ought to

7 agree with us on this is that that Settlement Agreement

8 that you have before you was reached in good faith. And

9 I know it was reached in good faith because, as my

10 colleague told you, we met three times over three

11 months, between December 2016 and March 2017, and during

12 those three months, hundreds of engineering hours went

13 into creating that remediation plan.

14 I'll say it again, engineering hours on both

15 sides, not just Puget Sound Energy's engineers, but the

16 engineers from Staff, Mr. Subsits, Mr. Rathbun, and the

17 other folks who are experts on gas pipeline operations,

18 put their blood, sweat and tears into creating that

19 remediation plan that you have before you. They know

20 what they're doing. That's their point of expertise.

21 So we submit to you that the settlement

22 itself reflects good faith negotiations between the

23 parties. We knew that the remediation plan would be the

24 thing you were most concerned about because, like you,

25 we're concerned about the public. We want the public to

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1 believe that we have done what we're supposed to do to

2 ensure that we avoid another Greenwood situation, and

3 that's exactly why we spent the time to get it right

4 from an engineering perspective, from a scientific

5 perspective, and that's what you have reflected there in

6 that remediation statement.

7 The other part of the settlement, when it

8 comes to money, we had a robust debate about this, and

9 it makes sense, because there are two fundamental

10 questions and facts that neither party could get around,

11 but they are here. Facts are stubborn things.

12 The first fact is that, yes, the Pilchuck

13 person didn't do the thing that they were instructed to

14 do. They did not follow PSE's instructions to cut and

15 cap that line. They should have.

16 But the second, equally compelling issue is

17 that that explosion would not have happened if those

18 transient people had not trespassed on that property and

19 broken that pipe. Those are two very different facts

20 that were critical, and they were instrumental in the

21 settlement itself. That's why this compromise.

22 The last point I'll make is this. We think

23 Public Counsel's position is baseless. That's the third

24 reason why the settlement, as proposed, should be

25 adopted by the commissioners. It's baseless because

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1 they admit there's nothing scientific about what

2 Mr. Coppola is saying. He bases none of his opinions

3 upon anything related to engineering and gas operations.

4 He is putting his personal views, which he says is

5 common sense, against more than 60 years of engineering

6 expertise with people who actually work on gas

7 operations and pipelines.

8 We submit to the commissioners that that

9 doesn't make any sense from a legal perspective or

10 factual perspective, and for that reason, and these

11 reasons, we ask that you accept the proposal that we

12 presented as settlement.

13 JUDGE KOPTA: Thank you, Mr. Williams.

14 Ms. Gafken?

15 MS. GAFKEN: Good evening. I will keep this

16 brief because the hour is drawing late, and I know we

17 want to draw this to an end, so I'm the last thing

18 standing between us and that.

19 PSE failed to comply with its own procedures

20 in performing the cut and cap of the service lines,

21 failed to perform a proper onsite investigation, failed

22 to remove the abandoned above-ground service line, and

23 then failed to conduct the required periodic safety

24 inspections under state and federal regulations. These

25 failures led to terrible consequences. As a result, the

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1 Commission should hold PSE accountable by imposing the

2 maximum penalty.

3 Additionally, the Commission should approve

4 the inspection and remediation plan, and also approve

5 the five modifications proposed by Public Counsel to the

6 plan.

7 I mentioned before the hearing that I would

8 spend just a moment addressing the circus, and I'll do

9 that now. I know that there are some questions about

10 what you've heard, what you've seen, perhaps some emails

11 and whatnot, so I will take a little bit of time to

12 address that, and then dive into our recommendations in

13 the case.

14 It was clear in my mind that we weren't

15 opposing the plan because, in my mind, opposing the plan

16 meant telling the Commission not to -- not to adopt the

17 plan, and that's not what Public Counsel is saying. The

18 plan is a necessary component.

19 There is a threat to Puget's system. The

20 Greenwood explosion exposed that threat. Puget has to

21 go through its system and inspect it to make sure that

22 the work that they thought was done was actually done.

23 It needs to ensure that there's no other pipe that's out

24 there that they think is abandoned that's actually out

25 there that's live. That's necessary work. And this

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1 inspection remediation plan does that.

2 But we also see a couple of holes or

3 weaknesses in the plan, and so we're telling the

4 commissioners and the ALJ about that. I didn't see a

5 problem with that. Obviously, the parties reacted

6 differently. Lesson learned. But we're not saying,

7 don't do the plan, but I also think it's important for

8 the Commission to understand the limitations of the

9 plan, and to decide whether it wants to address those

10 shortcomings.

11 I think the five modifications are discrete.

12 As you heard today, for example, removing Pilchuck from

13 the description of number 2 -- Population 2 is probably

14 fairly benign. Some of the other modifications might be

15 a little bit more tricky. But it's within the

16 Commission's discretion to consider those shortcomings

17 and to modify the plan if it feels that it's within the

18 public interest.

19 One thing that it is important to note, I

20 said it during the proceeding, but it's worth saying

21 again, and it's not a criticism of the plan, but the

22 plan is narrowly focused, right? So we're talking about

23 preventing another Greenwood.

24 So Puget had a catastrophic event on its

25 system and, by golly, we're going to prevent another one

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1 of those. But there could be other events, other

2 threats on the system that we don't know about, and this

3 plan doesn't address that.

4 And so I just want to encourage Puget to be

5 proactive about finding those threats. I want to

6 encourage the Commission and its staff to be proactive

7 in assisting the Company in doing that, because we don't

8 want another catastrophic-type event.

9 We saw that with the Bellevue case, right?

10 So there was a catastrophic event, and then they had an

11 inspection plan and a report to the Commission.

12 We see that here with Greenwood. They had a

13 catastrophic event. Now they're going to have an

14 inspection plan, and they're going to look at all the

15 types of pipes that were like that. That's great,

16 because we're going to address the type of problem that

17 gave rise to that catastrophic event, but there's other

18 issues that are out there that the Company should be

19 vigilant about.

20 With respect to the penalty, as you know,

21 Public Counsel's position is that the Commission should

22 reject the settlement proposal of the $1.5 million firm

23 penalty and the $1.25 million suspended penalty.

24 We've heard a lot about this hammer that the

25 suspended penalty provides. The Commission has a lot of

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1 hammers, and the suspended penalty isn't necessarily the

2 only hammer that it has available.

3 There's also been a lot of talk about

4 reserving the maximum penalty for an intentional act.

5 Let's think about that, though. If there was an

6 intentional act in this case, that would have been

7 criminal, right? Somebody would have intended to blow

8 up Greenwood, which would have been a criminal act.

9 Obviously, that's not what happened.

10 But a very serious thing happened, and we

11 think that it was a failing that happened in a broader

12 context. We've seen several failings with this company

13 over the course of many years, and each time there's a

14 penalty imposed, perhaps there's some suspended portion

15 of that penalty, so there's a hammer involved. But then

16 something else happens, and so we keep seeing this

17 pattern.

18 Mr. Coppola goes through it in his

19 testimony, I'm not going to rehash it here, but we do

20 see this as another piece in a broader web of instances.

21 We don't see this as an isolated event. If you look at

22 it as, is this the first time that this neighborhood had

23 an incident? Sure. It's the first time that this

24 neighborhood had this type of an incident, but it's a

25 broader issue.

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1 And so we believe that the Commission should

2 impose the maximum penalty and provide a stiff penalty

3 in response to the very serious failing. And I will

4 stop there so we can bring this to a close. Thank you.

5 JUDGE KOPTA: All right. Thank you,

6 Ms. Gafken.

7 That concludes our proceedings for this

8 evening. The Commission will take this matter under

9 advisement and issue an order in due course.

10 We are off the record. Thank you.

11 (Hearing concluded at 5:33 p.m.)

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3 STATE OF WASHINGTON )

) ss.

4 COUNTY OF KING )

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7 I, ANITA W. SELF, a Certified Shorthand Reporter

8 in and for the State of Washington, do hereby certify

9 that the foregoing transcript is true and accurate to

10 the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 and seal this 30th day of May, 2017.

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17 ANITA W. SELF, RPR, CCR #3032

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