

Docket No. PG-160924 - Vol. II

WUTC v. Puget Sound Energy

May 15, 2017



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Page 11

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1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION

4 WASHINGTON UTILITIES AND)
 TRANSPORTATION COMMISSION,)
 5 Complainant,) Docket No. PG-160924
 6 v.)
 7 PUGET SOUND ENERGY,)
 8 Respondent.)

11 EVIDENTIARY HEARING, VOLUME II
 12 Pages 11 - 180
 13 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

15 1:05 p.m.
 16 May 15, 2017

17 Washington Utilities and Transportation Commission
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19

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12

13 WITNESSES:

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 Duane A. Henderson, PSE
 15 Alan E. Rathbun, UTC
 Sebastian Coppola

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23 (Continued...)

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Page 14

14

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

9 ALAN E. RATHBUN

10 Cross-Examination by Mr. Bryant 54
 Redirect Examination by Mr. Beattie 86

11

12 DUANE A. HENDERSON

13 Cross-Examination by Ms. Gafken 90
 Redirect Examination by Mr. Williams 121

14

15 SEBASTIAN COPPOLA

16 Direct Examination by Mr. Bryant 124
 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

24 CAK-1T Response Testimony 39

25 CAK-2 Professional Qualifications 39

Page 15

15

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 No. 19 with Attachment A (Confidential) 39
8	AR-1T	Response Testimony 39
9	AR-2	Investigation Report, Greenwood Natural Gas Pipeline Explosion - March 9, 2016 39
10	SC-1T	Direct Testimony (Redacted per 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 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 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 Request No. 027 and Public Counsel Data Request No. 006 165
22	SC-9	PSE Response to Public Counsel Data Request No. 030 165
24	SC-10	PSE Response to Public Counsel Data Request No. 07 165

Page 16

16

1	EXHIBITS	
2	NO.	DESCRIPTION ADMITTED
3	SC-11	PSE Responses to Public Counsel Data Request Nos. 031-035 and Staff Data Request Nos. 019-023 165
5	SC-12	Pipeline Safety: Clarification of Terms Relating to Pipeline Operational Status (PFMSA Advisory Bulletin, Aug. 16, 2016) 165
8		*****

Page 17

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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

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18

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

Page 19

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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

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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

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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

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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.

<p>Page 23</p> <p>23</p> <p>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.</p>	<p>Page 25</p> <p>25</p> <p>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</p>
<p>Page 24</p> <p>24</p> <p>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</p>	<p>Page 26</p> <p>26</p> <p>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.</p>

Page 27

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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

Page 28

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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

Page 29

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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.

Page 30

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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.

Page 31

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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.

Page 32

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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.

Page 33

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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

Page 34

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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

Page 35

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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

Page 36

36

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

Page 37

37

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.

Page 38

38

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

Page 39

39

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

Page 40

40

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.

Page 41

41

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 ///

Page 42

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 42

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,

Page 43

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 43

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?

Page 44

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 44

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**

Page 45

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 45

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

Page 46

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 46

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?

Page 47

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 47

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?

Page 48

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 48

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?

Page 49

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 49

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?

Page 50

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 50

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

Page 51

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 51

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**

Page 52

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 52

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?

Page 53

CROSS-EXAMINATION BY MS. GAFKEN / KOCH 53

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

Page 54

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 54

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

Page 55

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 55

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

Page 56

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 56

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

Page 57

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 57

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**

Page 58

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 58

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**

Page 59

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 59

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.

Page 60

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 60

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.

Page 61

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 61

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.**

Page 62

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 62

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.**

Page 63

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 63

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?

Page 64

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 64

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

Page 65

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 65

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?

Page 66

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 66

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

Page 67

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 67

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

Page 68

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 68

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

Page 69

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 69

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

Page 70

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 70

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?

Page 71

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 71

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**

Page 72

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 72

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,

Page 73

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 73

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

Page 74

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 74

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,

Page 75

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 75

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

Page 76

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 76

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?

Page 77

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 77

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.**

Page 78

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 78

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.

Page 79

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 79

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.**

Page 80

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 80

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.

Page 81

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 81

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

Page 82

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 82

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?

Page 83

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 83

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**

Page 84

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 84

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

Page 85

CROSS-EXAMINATION BY MR. BRYANT / RATHBUN 85

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

Page 86

REDIRECT EXAMINATION BY MR. BEATTIE / RATHBUN 86

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?

Page 87

REDIRECT EXAMINATION BY MR. BEATTIE / RATHBUN 87

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.**

Page 88

REDIRECT EXAMINATION BY MR. BEATTIE / RATHBUN 88

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

Page 89

REDIRECT EXAMINATION BY MR. BEATTIE / RATHBUN 89

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 ///

Page 90

CROSS-EXAMINATION

1 BY MS. GAFKEN:
 2
 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?

Page 91

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**

Page 92

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

Page 93

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?

Page 94

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

Page 95

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?

Page 96

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

Page 97

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

Page 98

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?

Page 99

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.

Page 100

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?

Page 101

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

Page 102

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?

Page 103

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

Page 104

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**

Page 105

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**

Page 106

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?

Page 107

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

Page 108

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.**

Page 109

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.**

Page 110

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**

Page 111

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**

Page 112

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

Page 113

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**

Page 114

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?

Page 115

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.**

Page 116

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**

Page 117

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

Page 118

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?

Page 119

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.**

Page 120

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

REDIRECT EXAMINATION BY MR. WILLIAMS / HENDERSON121

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

Page 122

122

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 ///

Page 123

DIRECT EXAMINATION BY MR. BRYANT / COPPOLA 123

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

Page 124

DIRECT EXAMINATION BY MR. BRYANT / COPPOLA 124

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**

Page 125

DIRECT EXAMINATION BY MR. BRYANT / COPPOLA 125

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

Page 126

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 126

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

Page 127

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 127

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?**

Page 128

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 128

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?**

Page 129

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 129

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

Page 130

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 130

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.**

Page 131

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 131

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?

Page 132

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 132

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.**

Page 133

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 133

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.**

Page 134

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 134

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

Page 135

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 135

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 **///**

Page 136

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 136

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

Page 137

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 137

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

Page 138

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 138

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.**

Page 139

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 139

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.

Page 140

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 140

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?

Page 141

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 141

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

Page 142

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 142

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.

Page 143

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 143

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 ///

Page 144

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 144

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**

Page 145

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 145

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.**

Page 146

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 146

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.

Page 147

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 147

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**

Page 148

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 148

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**

Page 149

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 149

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.**

Page 150

CROSS-EXAMINATION BY MR. WILLIAMS / COPPOLA 150

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 ///

Page 151

REDIRECT EXAMINATION BY MS. GAFKEN / COPPOLA 151

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

Page 152

REDIRECT EXAMINATION BY MS. GAFKEN / COPPOLA 152

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

Page 153

REDIRECT EXAMINATION BY MS. GAFKEN / COPPOLA 153

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

Page 154

REDIRECT EXAMINATION BY MS. GAFKEN / COPPOLA 154

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

Page 155

REDIRECT EXAMINATION BY MS. GAFKEN / COPPOLA 155

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,**

Page 156

REDIRECT EXAMINATION BY MS. GAFKEN / COPPOLA 156

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**

Page 157

REDIRECT EXAMINATION BY MS. GAFKEN / COPPOLA 157

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

Page 158

REDIRECT EXAMINATION BY MS. GAFKEN / COPPOLA 158

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

<p>Page 159</p> <p>159</p> <p>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</p>	<p>Page 161</p> <p>161</p> <p>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</p>
<p>Page 160</p> <p>160</p> <p>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?</p>	<p>Page 162</p> <p>162</p> <p>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</p>

Page 163

163

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

Page 164

164

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

Page 165

165

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.

Page 166

166

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

Page 167

167

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

Page 168

168

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

Page 169

169

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

Page 170

170

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

Page 171

171

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

Page 172

172

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

Page 173

173

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

Page 174

174

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

<p>Page 175</p> <p>175</p> <p>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</p>	<p>Page 177</p> <p>177</p> <p>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</p>
<p>Page 176</p> <p>176</p> <p>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</p>	<p>Page 178</p> <p>178</p> <p>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.</p>

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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1 I, ANITA W. SELF, a Certified Shorthand Reporter
 2 in and for the State of Washington, do hereby certify
 3 that the foregoing transcript is true and accurate to
 4 the best of my knowledge, skill and ability.

5 IN WITNESS WHEREOF, I have hereunto set my hand
 6 and seal this 30th day of May, 2017.

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 18 ANITA W. SELF, RPR, CCR #3032
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