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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3
4 AIR LIQUIDE AMERICA) Docket No. UE-001952
CORPORATION, AIR PRODUCTS AND) Volume XII
5 CHEMICALS, INC., THE BOEING) Pages 2221-2362
COMPANY, CNC CONTAINERS,)
6 EQUILON ENTERPRISES, LLC,)
GEORGIA-PACIFIC WEST, INC.,)
7 TESORO NORTHWEST COMPANY, and)
THE CITY OF ANACORTES,)
8 Complainants,)
 v.)
9 PUGET SOUND ENERGY)
 Respondent.)

10 _____)
In re: Petition of Puget Sound) Docket No. UE-001959
11 Energy, Inc., for an Order) (Consolidated)
Reallocating Lost Revenues)
12 Related to any Reduction in)
the Schedule 48 or G-P Special)
13 Contract Rates.)
_____)

14
15 A hearing in the above matters was
16 held on March 22, 2001, at 9:10 a.m., at 1300
17 Evergreen Park Drive Southwest, Olympia, Washington,
18 before Administrative Law Judge DENNIS MOSS,
19 Chairwoman MARILYN SHOWALTER, and Commissioner
20 Richard Hemstad.

21
22 The parties were present as
follows:

23
24 BELLINGHAM COLD STORAGE COMPANY,
ATLANTIC RICHFIELD and OLYMPIC PIPELINE, by John A.
Cameron, Attorney at Law, 1300 S.W. Fifth Avenue,
25 Suite 2300, Portland, Oregon, 97201-5682.

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1 COMPLAINANTS, by Melinda Davison,
Attorney at Law, Davison VanCleve, 1300 S.W. Fifth
2 Avenue, Suite 2915, Portland, Oregon 97201.

3 PUGET SOUND ENERGY, by Stan Berman
and Todd Glass, Attorneys at Law, Heller, Ehrman,
4 White & McAuliffe, 701 Fifth Avenue, Suite 6100,
Seattle, Washington 98104-7098.

5
6 THE COMMISSION, by Robert
Cedarbaum and Donald Trotter, Assistant Attorneys
General, 1400 Evergreen Park Drive, S.W., P.O. Box
7 40128, Olympia, Washington 98504-0128.

8 PUBLIC COUNSEL, by Simon ffitich,
Assistant Attorney General, 900 Fourth Avenue, Suite
9 2000, Seattle, Washington 98164.

10 KING COUNTY, by Donald C. Woodworth,
Senior Deputy Prosecuting Attorney, E550 King County

11 Courthouse, Seattle, Washington 98104-2312.

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24 Barbara L. Nelson, CCR
25 Court Reporter

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JUDGE MOSS: All right. Why don't we be on the record. We are -- good morning, everyone, I should say. I've already said good morning individually to most of you. We're reconvened this morning in our proceedings, Air Liquide and others against PSE, Docket UE-001952 and 001959 consolidated, and also, of course, the dockets I mentioned on the record yesterday that are potentially affected by the outcome of this proceeding.

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When we broke off yesterday, we were still having some discussion in the area of tax impacts. I should mention, before we resume that discussion, that I was handed up this morning proposed substitute language for Section 2.17. The document bears a date

16 of March 22nd, 2001. I will make this an exhibit, I
17 think would be the most appropriate thing to do, and
18 I believe that will be 1803. It's just so brief I'll
19 just read it into the record.

20 The proposed substitute language for
21 Section 2.17 is: The Commission finds and concludes
22 that the act of selling power to a Schedule 449
23 customer will not, by itself, subject that seller to
24 the Commission's jurisdiction.

25 And so we have that before us and will
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1 consider that proposed substitution along with all
2 the other matters. And as a formality, I suppose
3 there is no objection to the admission of this
4 exhibit into the record, and that apparently being
5 the case, it will be admitted as marked.

6 MR. BERMAN: Your Honor, I would just note
7 that not only is there no objection, but we think
8 that this language is functionally the same as the
9 language that you put out yesterday. It eliminates a
10 few words, and I think makes it even that much
11 clearer.

12 JUDGE MOSS: Thank you.

13 CHAIRWOMAN SHOWALTER: Less is more.

14 JUDGE MOSS: All right. Do we have
15 additional questions from the bench on the tax issue
16 or shall I put it to the parties to ask whether they
17 have had some further opportunity to research the
18 issues that we left open yesterday?

19 CHAIRWOMAN SHOWALTER: Let's get the latter
20 first.

21 JUDGE MOSS: Okay. Let's hear from the
22 parties first, then. Anything to report?

23 MS. DAVISON: Yes. Why don't you guys get
24 started, and then I'll give the specifics.

25 MR. BERMAN: Certainly. We've had a number
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1 of discussions on the tax issue. I think that there
2 are a number of different ways to approach the
3 concerns that were raised. The way that I prefer to
4 approach it, and I think that you'll hear more from
5 the others and everyone has a slightly different take
6 on how to deal with this issue, but I think that the
7 way I prefer to approach it is to look at the example
8 that the Chairwoman gave us yesterday, but instead of
9 using the hundred dollars a megawatt hour that is
10 used there, to think about what the taxing
11 authorities would have reasonably expected as tax
12 revenues historically.

13 For instance, if we look at what they
14 received in 1999, prior to a time that power prices
15 started escalating -- year 2000 was a year that was
16 influenced by the power price increases, but if you
17 look at 1999, before the power prices started
18 escalating, and do the calculation of how many
19 dollars were at issue really in 1999, what did taxing
20 authorities rely on, what did they factor into their

21 analyses, you would modify the hundred dollars a
22 megawatt hour and put in something more in the nature
23 of 25 or \$30 a megawatt hour, and you would get a
24 total tax dollars at the maximum.

25 And I don't have an exact number, because
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1 of course each taxing authority doesn't necessarily
2 do six percent, but at the maximum, it would be in
3 the range of four to \$5 million.

4 CHAIRWOMAN SHOWALTER: For both parts or
5 municipal plus state?

6 MR. BERMAN: For both parts, because we
7 would basically do a quarter of the 20 million or so
8 that we developed in the analysis yesterday. So
9 historically, there would have been four or \$5
10 million at issue. The reality is that in the year
11 2000, the tax revenues that were collected were
12 considerably higher than that, and for year 2001,
13 again, is kind a windfall revenues to the taxing
14 authorities. If these entities continued on the
15 current schedules, they'd be paying something
16 considerably higher than the four or five million.

17 CHAIRWOMAN SHOWALTER: What would it -- oh,
18 it would have been -- let's see. Well, maybe this is
19 a better way to put it. What was this figure in
20 2000, approximately?

21 MR. BERMAN: I don't have that number. I
22 think that Mr. Schoenbeck may have more detailed
23 numbers to tell you that would be helpful, and if he
24 doesn't have numbers on that one, we can work on
25 developing that number for you.

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1 As we move forward to 2001, the reality is
2 that because of the high power prices in 2001 and the
3 fact that the tax relates to the level of the power
4 prices, which have been much higher even than the
5 hundred dollars in your example, the entities here
6 have already paid more or less the amount that was
7 paid in 1999. I think that the exact amount varies,
8 depending on the particular customer and their
9 particular usage issues, but -- I was shown, for
10 instance, that -- I don't think I'm revealing any
11 confidence by saying that Boeing has paid more in
12 2001 already than they paid in all of 1999.

13 So when you look at the big picture of
14 what's going on for taxing authorities and look at
15 historically what was paid in taxes and what the
16 taxing authorities would have factored into their
17 analysis, you see that the taxing authorities made a
18 whole lot more than they expected, by and large, in
19 2000, and already in 2001, they've made as much as
20 they would have expected on a historical basis.

21 And even if somehow everyone were to switch
22 to Schedule 449, and I don't think everyone will, but
23 even if everyone were and if everyone were to -- and
24 also, if the public utility tax didn't apply, and I
25 still think that's in question, they'd still have

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1 collected their historically-expected revenues for
2 this year, leaving the entirety of this year for each
3 of the taxing authorities to figure out whether they
4 want to do any modifications to the tax laws to
5 address on a going forward basis how taxes should
6 look and should be assessed for 2002 and going
7 forward.

8 CHAIRWOMAN SHOWALTER: Mr. Berman, I was
9 just going to interject. One is, since you aren't a
10 witness, I'd like to ask Mr. Gaines if he agrees with
11 everything Mr. Berman just said.

12 MR. WILLIAM GAINES: Well, I do.

13 CHAIRWOMAN SHOWALTER: Okay. In other
14 words, that was a long question by your attorney.

15 MR. WILLIAM GAINES: That's correct.

16 CHAIRWOMAN SHOWALTER: Well -- and second,
17 the analysis is interesting and insightful. If you
18 step back and look at an even bigger picture,
19 however, which I think is the picture the legislature
20 looks at, they're looking at the general fund. And
21 it's been pointed out many times that people are
22 going -- are, in fact, paying more for energy in the
23 year 2000 and the year 2001, and that does raise the
24 public utility tax unless it's evaded.

25 That can mean, and it probably does mean,

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1 that those same consumers are not spending on other
2 items that generate sales tax. And so the net to the
3 general fund is something that I'm not an expert in,
4 but I know that the legislature and the office of
5 financial management have looked at this question of
6 sort of the pluses and minuses of the energy crisis
7 as an influence on the general fund.

8 And so it doesn't entirely eliminate the
9 question, because it's still the case that the
10 mechanism that we are asked to prove here can have a
11 consequence to the general fund. But I do appreciate
12 the perspective.

13 MR. BERMAN: Well, I -- one thing I'd say
14 on whether it entirely eliminates the question is
15 that I guess what I heard you say yesterday was that
16 this was an incredibly serious question that made you
17 have questions about 449 in general.

18 If it's more a question where there are
19 some questions, but where also the
20 historically-collected revenues are being collected,
21 I think it has to be factored into -- again, this is
22 a public interest analysis. There are some who've
23 questioned whether this particular issue is part of
24 the public interest you're supposed to consider, but
25 let's say it is. There are a lot of other public

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1 interest considerations that all get weighed in the
2 balance. And if you're weighing a whole bunch of
3 considerations in the balance and if there are some
4 questions out there on this, but a lot of benefits to

5 this deal, and I believe there are a lot of benefits
6 to this deal and I also believe that if 449 goes,
7 even if you think that 448's just as good as 449, the
8 customers don't think so, and they say they're going
9 to walk from the deal.

10 I think that the public interest, when you
11 weigh all those considerations, supports dealing with
12 some potential questions on the tax, potential
13 questions that can be resolved over the course of the
14 coming year, so the questions are going to be limited
15 in any impact that they may have.

16 CHAIRWOMAN SHOWALTER: And I -- I think
17 there are many benefits to this package. The
18 discomfort I have is actually in weighing the tax
19 consequences. That is, I don't think it's our job.
20 And so if the magnitude is not large, then it's not a
21 terribly big issue. If the magnitude is large, it's
22 really not ours to weigh. That's my feeling.

23 Now, if you compare the magnitude to 1999,
24 you don't get a very big -- you don't get as big a
25 magnitude. That's one way to look at it. Again, I

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1 don't think we're the only players in town. In fact,
2 there's some very important players in town who are
3 very concerned about the general fund, and to them, I
4 don't know if they would look at '99, and say, Oh
5 well, okay, or if they're going to look at 2001 and
6 compare what they might get in 2001 under one
7 scenario and what they might get under another
8 scenario. So my discomfort is more that we're
9 dealing with an issue which isn't our issue, but
10 which is a very important one.

11 MR. WILLIAM GAINES: Let me -- I think Mr.
12 Schoenbeck has some numbers to show, but just quickly
13 before that, on the point that you made about
14 spillover effects into the sales tax, just at the top
15 level, thinking about the math of it, the sales tax
16 is about eight percent. The public utility tax is
17 about four percent. So there's a two-to-one
18 relationship there.

19 But power prices are up about ten times.
20 So even if there's a shift of expenditures from sales
21 taxable items to public utility taxable items, the
22 leverage on the pricing is huge.

23 CHAIRWOMAN SHOWALTER: Well, I'm not sure I
24 follow that. It seems that if you're spending a
25 hundred dollars on energy instead of a hundred

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1 dollars on a new typewriter, and you owe sales tax on
2 the one, that eight percent sales tax on a hundred
3 dollars is twice the four percent utility tax on a
4 hundred dollars. So I'm not sure --

5 MR. WILLIAM GAINES: If it's a pure dollar.

6 MR. BERMAN: Your Honor, I might note that
7 the notion of whether costs for energy replace sales
8 taxable costs, well, to me that makes some sense when
9 thinking about residential customers.

10 CHAIRWOMAN SHOWALTER: Right.
11 MR. BERMAN: I'm not sure that I see that
12 when it comes to this group of customers. I'm not
13 sure that -- Boeing is the example we use, because
14 it's the big guy, but I don't know that Boeing's
15 expenses for other things that may be subject to
16 sales tax or not are really influenced in any
17 significant way by their expenses for energy. And so
18 I'm not sure that there's even a relationship to
19 think about there.

20 CHAIRWOMAN SHOWALTER: Well, whether you're
21 an individual or business, you have so much revenue
22 to spend, and I gather -- I mean, I don't think we'd
23 be here if the increase in expenditures for energy
24 weren't having some effect on the abilities of the
25 industries to spend on other items. And most of

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1 those other items that industries spend on are taxed
2 in one form or another. And they may be different
3 rates, which is interesting, but again, I'm getting
4 back to the unusual quality here that taxes that are
5 otherwise, in our scheme of things, going to be paid
6 might be avoided.

7 MR. BERMAN: I think I've said my piece, so
8 --

9 CHAIRWOMAN SHOWALTER: Yeah, yeah.

10 JUDGE MOSS: Ms. Davison.

11 MS. DAVISON: Good morning, and thank you.
12 We very much appreciate the fact that this is a
13 serious matter and something that the Commission is
14 very concerned about, and we were slightly
15 uncomfortable yesterday not being able to give you
16 the precise answers to some very good questions that
17 you raised.

18 So we didn't have our tax lawyer working
19 around the clock, but we did have Mr. Schoenbeck, and
20 I'm not sure how much sleep he got last night, but he
21 did actually have in his possession all of the bills,
22 and so he was able to go through them and tell you --
23 and he will in just a moment, I will not testify for
24 him -- precisely what everyone is paying in terms of
25 municipal taxes, and he has also run some other

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1 calculations to give you better information about the
2 dollars.

3 And then, after he provides you with those
4 specific facts, unfortunately, I was the gatherer of
5 the information that I think was another very good
6 question the Commission posed yesterday, which are,
7 you know, what do these customers intend to do in the
8 future. Mr. Schoenbeck was busy running numbers, so
9 he was not able to talk to the clients directly on
10 that issue. I was, and so I will be able to tell you
11 what their plans are as of today.

12 MR. SCHOENBECK: Good morning. Trying to
13 stay within the hypothetical that was presented
14 yesterday when we came up with some rough

15 calculations, I looked at what is the amount of load
16 that is not subject to municipal tax, based on
17 historical demands prior to the change in the market
18 prices. So the months I was looking at was primarily
19 April, May and June of 2000.

20 Using that load, the load that is not
21 subject to municipal taxes should be 141 megawatts,
22 instead of the 140 we used. The tax rate that does
23 apply to the remaining megawatts, instead of being
24 six percent, should be 5.4 percent. But the critical
25 thing is where yesterday we made the assumption that

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1 there's a 300-megawatt load that was for all the
2 customers, in fact, under the agreements, there
3 should be about five loads excluded. So the amount
4 of potential Schedule 448 and 449 loads should be 144
5 megawatts.

6 MS. DAVISON: Add the two together.

7 MR. SCHOENBECK: The 144 megawatts has paid
8 both municipal taxes and state taxes, so when you add
9 the two together, you have a total of 285. So when
10 you look at the hypothetical numbers, you have, I've
11 yet to summarize, you have 141 megawatts that just
12 pay the state tax and you have 144 megawatts that pay
13 both the state and municipal taxes.

14 So when you use the assumption of a hundred
15 dollars a megawatt hour, the overall tax value's \$17
16 million.

17 CHAIRWOMAN SHOWALTER: Let's -- I just want
18 to break that down. You have 285 average megawatts
19 times 8,760 times \$100 a megawatt hour times the
20 state PUT of four percent.

21 MR. SCHOENBECK: Yes, I used the 3.872.

22 CHAIRWOMAN SHOWALTER: 3.872.

23 MR. SCHOENBECK: That's 9.7 million.

24 CHAIRWOMAN SHOWALTER: Okay.

25 MR. SCHOENBECK: Then the municipal

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1 revenue, using the specific loads and the specific
2 tax rates for each of the applicable sites is another
3 roughly 7.3, 7.4 million, so that gets you up to the
4 17.0 million in total.

5 CHAIRWOMAN SHOWALTER: Seventeen point
6 what?

7 MR. CAMERON: Zero.

8 MS. DAVISON: Zero.

9 CHAIRWOMAN SHOWALTER: Seventeen point
10 zero, all right. Now, that's a theoretical maximum.
11 And now we can talk about what's planned.

12 MR. SCHOENBECK: Right. I did not talk
13 with specific clients, but I did make assumptions
14 from my mind which would make sense for the ones to
15 go back to a general applicable schedule and which
16 ones may make sense if they have not declared already
17 the notion that they would self-generate.

18 The amount that would go back to the rate
19 schedules would be approximately \$3 million of the

20 \$17 million in taxes. So of the 17 maximum potential
21 would lose, in my analysis, I'd say three would be
22 recovered, because the customers would go back to the
23 otherwise applicable tariff.

24 For the remainder, the ones that could
25 self-generate, I guess I looked at three different

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1 possible taxes. I looked at the tax on the gas that
2 would be used just to generate their load, so in
3 other words, I did not assume any additional gas
4 purchases beyond their load for potential merchant or
5 market sales.

6 CHAIRWOMAN SHOWALTER: Let me just -- we're
7 down to 14 million, and now you're looking at that
8 group and you're asking, of that group, who plans to
9 self-generate; is that --

10 MR. SCHOENBECK: Under my assumption,
11 basically everyone else, by default, almost becomes a
12 self-generator, because I've already excluded the
13 other five customers that are the Internet access
14 providers, the City of Anacortes and Olympic Pipe.
15 The only one I'm not sure about, and I've made no
16 assumption on with respect to going back to rate
17 schedules or self-generation, is Bellingham Cold
18 Storage. That's the only customer I've kind of put
19 aside, because I have no idea what they might do.

20 CHAIRWOMAN SHOWALTER: So you're saying
21 that of the customers who will be going to 448 or
22 449, all will be self-generating except for possibly
23 Bellingham Cold Storage?

24 MR. SCHOENBECK: Virtually all would be
25 good candidates, in addition to Metro. Excuse me.

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1 Bellingham Cold Storage is primarily the only one I
2 did not look at.

3 MR. CAMERON: BCS is about 10 megawatts,
4 and I'll address it shortly, but BCS will be
5 self-generating, as well.

6 CHAIRWOMAN SHOWALTER: So Boeing is going
7 to be self-generating.

8 MR. SCHOENBECK: I've made that assumption.

9 CHAIRWOMAN SHOWALTER: Well, then, I guess
10 let me test the assumption. What is your assumption
11 based on? We have a Boeing witness here.

12 MR. SUMMERS: Dan Summers, for Boeing. We
13 are going to self-generate to the maximum extent we
14 can. I think in the short run, meaning for the rest
15 of this year, we are looking at actually two factors.

16 CHAIRWOMAN SHOWALTER: You can cake take a
17 seat, if you'd like.

18 MR. SUMMERS: That's all right. We're
19 looking at two factors. One is that we've already
20 cut our consumption by 14 percent, based on
21 conservation, with a hard target of 25 percent
22 reduction in load, and we're fairly confident we're
23 going to meet that.

24 And beyond that, we're going to be -- and

25 that would get -- I think the 25 percent target would
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1 bring our 85-megawatt load down to 64 megawatts. You
2 can do the math, but I think that's right. And that
3 we're going to bring in about 40 to a little over 42
4 megawatts of self-generation quickly, and that --
5 we're talking about the PSE system, on the PSE
6 system. And then eventually, we will go to virtually
7 all self-generation. I can't tell you, in all
8 honesty, that by the end of the year we're going to
9 be totally self-generation, but by the end of the
10 year, we're only going to have 22 megawatts, more or
11 less, that would not be self-generation on the PSE
12 system.

13 CHAIRWOMAN SHOWALTER: And what are you
14 planning to self-generate with?

15 MR. SUMMERS: Initially, diesel generators,
16 until we can get gas fired in place.

17 CHAIRWOMAN SHOWALTER: Well, this is
18 interesting, because this is putting a different cast
19 on 449. If it's true that most or nearly all of the
20 load of 449 customers is actually going to be
21 self-generation, then 449 becomes an adjunct to
22 self-generation, not a replacement for service under
23 448. That is, it's a smaller part of the picture,
24 not a larger part of the picture of a load.

25 So I think it would be relevant to hear

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1 directly, as much as we have in the room here, from
2 the other customers to see if it's the same, because
3 then that would allow us to make a judgment that the
4 relative use of 449 is smaller by a large measure
5 than the loads that are leaving 48.

6 MS. DAVISON: Yes, there are several people
7 here that I can bring up to talk to you directly
8 about what their intentions are, and then the people
9 that are not here, I can represent at least
10 conversations that I had. However, I don't want to
11 suggest that 449 is not important to us. 449, even
12 under a self-generation scenario, will be relied upon
13 in some aspects, so 449 is a material part of the
14 settlement arrangement that we reached with the
15 company.

16 But I have to say that it is somewhat
17 surprising to me, having done our research last
18 night, to figure out potentially what we see as -- at
19 least today, what we see as the load that would be
20 subject to power marketer purchases under 449 is
21 much, much smaller than I think any of us originally
22 envisioned.

23 CHAIRWOMAN SHOWALTER: Of course, I suppose
24 that's all going to depend on the relative price in
25 the out years on power purchased under 449 versus the

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1 price of natural gas or diesel or whatever is being
2 used.

3 MR. BUCKLEY: Could I add one small thing

4 to Mr. Schoenbeck's analysis? He mentioned some
5 customers that are eligible for 449 that would
6 probably not be taking it and would be going on the
7 path back to core service. I just wanted to point
8 out that, in the short term, at least, in the very
9 near short term, they'd be paying a rate of \$225,
10 significantly above the 100, and then also, until the
11 next rate case, be paying approximately \$110, which
12 again is above the hundred dollars that we're talking
13 about here. So there's an upside in revenue
14 collection from those customers.

15 CHAIRWOMAN SHOWALTER: Well, from a hundred
16 dollars.

17 MR. BUCKLEY: From a hundred dollars.

18 CHAIRWOMAN SHOWALTER: I wanted to comment
19 today that we not get too hung up on this hundred
20 dollars as producing actual figures. It's an
21 example. If the price is \$200, then the scenario is
22 off by half. On the other hand, if it's over what
23 would otherwise be spent, then it's producing too
24 much of a magnitude. But I think we do have to bear
25 in mind that this hundred dollars is simply a

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1 hypothetical figure that's easy to work with.

2 MS. DAVISON: Right. Also in the audience
3 is Suzanne Hahn from Equilon, and Suzanne, are you --

4 JUDGE MOSS: Let me interject here and just
5 ask, in terms of an orderly presentation and the best
6 possible evidence, I understand from the conversation
7 we've had thus far that you and Mr. Schoenbeck -- Ms.
8 Davison, you and Mr. Schoenbeck have not really had
9 an opportunity to talk very much in the 12 hours or
10 so between our last session and this one.

11 Would it be most useful to have the
12 individual company witnesses first and then perhaps
13 whatever filler you might provide with respect to
14 those not present, for Mr. Schoenbeck to have that
15 information now, before he proceeds with his
16 testimony, and then he might say how the more
17 concrete information might influence his assumptions.
18 Would that be the best way to proceed? And maybe
19 consult with Mr. Schoenbeck on that.

20 MS. DAVISON: I think it's whatever is the
21 bench's preference, we're happy to accommodate.

22 JUDGE MOSS: That sounds like a logical
23 order to me. Then Mr. Schoenbeck can have in mind
24 anything he learns during the course of the -- and
25 turning his computer back on. All right, fine.

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1 Thank you.

2 MS. HAHN: Good morning.

3 JUDGE MOSS: If you'd state your name for
4 the benefit of the reporter, please.

5 MS. HAHN: My name is Suzanne Hahn,
6 H-a-h-n, with Equilon at the Anacortes refinery. And
7 our plans, we are right now self-generating with
8 diesel generators on a temporary permit that expires

9 very soon, as I believe quite a few of us are on the
10 same system, anyway, with limited permits. So our
11 intention is to go rapidly to gas turbine generators,
12 small sized ones, but nevertheless, enough to meet
13 our whole load, which is 30 to 35 megawatts.

14 And so by June, at the latest, we will be
15 all self-generating with gas turbines, and of course
16 we're purchasing natural gas to run those turbines,
17 supplement on natural gas above our historic load,
18 and so we'll be paying tax on that.

19 Our long-term solution is the more relevant
20 question, because those gas turbines are not very
21 efficient compared to what a large merchant
22 generation plant would be generating
23 electricity-wise, to the tune of about 30 percent
24 more efficient if you're a good size, large size. So
25 our long-term solution is to build such a plant

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1 ourselves or get together with others and build such
2 a plant or go directly to a merchant power plant, who
3 already has those facilities that are much more
4 efficient, you know, saving gas, saving resources,
5 and also, you know, the absolute best you can do as
6 far as the environmental impact. So that's why we
7 feel that 449 is very important to us, in addition to
8 our backup source.

9 We will always need a backup source to take
10 care of down periods, unexpected down times,
11 maintenance work, et cetera, on those generators. Do
12 you have any other questions?

13 CHAIRWOMAN SHOWALTER: What's your total
14 load?

15 MS. HAHN: Thirty to 35 megawatts. It
16 varies depending on how many units we have operating
17 and how hard we're operating our refinery.

18 CHAIRWOMAN SHOWALTER: Okay. And you
19 mentioned that you will be paying taxes on the gas
20 you purchase. I want to emphasize again, I'm not
21 concerned if self-generators don't pay the public
22 utility tax, because they do pay other taxes, and the
23 legislature has in place a tax to take care of that
24 activity. And I also feel that self-generation is a
25 valuable part of the whole energy picture. The

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1 concern is the evasion of any taxes, so it doesn't
2 occur where you're self-generating.

3 MS. HAHN: I might also say that we don't
4 pay any municipal taxes. We're in the county, Skagit
5 County, outside of any city, so we don't pay any
6 municipal utility tax.

7 CHAIRWOMAN SHOWALTER: Okay.

8 MS. DAVISON: Also in the audience is Randy
9 Clancy, from Air Products.

10 MR. CLANCY: My name is Randy Clancy,
11 C-l-a-n-c-y. Thanks for the opportunity. Right now
12 Air Products is only a seven-meg load. We're located
13 within the city limits of Puyallup, and we pay

14 municipal tax and state tax, as well. With only a
15 seven-meg load, it doesn't make it real attractive to
16 do anything besides, right now, a small customer
17 agreement is probably where we would stay.

18 Later on, with energy being 65 percent of
19 our overall production costs, we definitely want to
20 do whatever we can do to stay as competitive as we
21 can stay with energy costs, but right now, the way it
22 looks, we'll probably stay with the small customer
23 agreement unless we can work something else out.

24 CHAIRWOMAN SHOWALTER: So that will keep
25 you paying to Puget?

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1 MR. CLANCY: That's correct.

2 CHAIRWOMAN SHOWALTER: Which will pay state
3 and local taxes?

4 Mr. Clancy: That's correct, ma'am.

5 JUDGE MOSS: Thank you, Mr. Clancy.

6 MR. CLANCY: Thank you.

7 CHAIRWOMAN SHOWALTER: You know, I should
8 have asked our representative from Boeing to say in
9 the record what city your load is in, not to bring up
10 a sore subject. Currently.

11 MR. SUMMERS: The headquarters building had
12 virtually no load. I have to get my cheat sheet.
13 Oh, this sheet doesn't have it.

14 MS. DAVISON: We have it.

15 MR. SUMMERS: Do you? Right there. Good,
16 good, good. We've got in Renton about a 17-megawatt
17 load, both state and local utility tax. Auburn is a
18 little -- is 30 or 31 megawatts, both tax
19 jurisdictions. At our Kent facility, we're almost 14
20 megawatts of state and local taxes paid.

21 CHAIRWOMAN SHOWALTER: How much was that
22 in megawatts?

23 MR. SUMMERS: Almost 14. At our Longacres
24 facility, it's three megawatts. That's also in
25 Renton. And at our Bellevue campus, we have six

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1 megawatts. We're paying both state and local. And
2 then at -- let me -- I'm missing one. Yeah,
3 Puyallup, which we call Frederickson, is almost 11
4 megawatts, but that we do not pay local utility tax
5 there. Basically, also, if you're interested, I can
6 give you the tax rates for each of those.

7 CHAIRWOMAN SHOWALTER: All right.

8 MR. SUMMERS: Combined state plus local.
9 Renton and Auburn are both 6.7 percent. Bellevue is
10 4.9 percent.

11 CHAIRWOMAN SHOWALTER: That must not be
12 state and local. Oh, just a .9 on the city part?

13 MR. SUMMERS: Well, actually, it's more
14 like 1.1 or 1.2 on the city part.

15 CHAIRWOMAN SHOWALTER: Right.

16 MR. SUMMERS: Kent, a combined five
17 percent, that's combined. And again, Puyallup, we
18 don't pay local. I think I hit all the

19 jurisdictions.

20 CHAIRWOMAN SHOWALTER: I'm trying to figure
21 out why you don't pay Puyallup, but Air Products
22 does.

23 MR. SUMMERS: It's a difference of where
24 you're located. I mean, we're -- I think the reason
25 we don't pay Puyallup utility tax is because we're

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1 outside the jurisdiction.

2 CHAIRWOMAN SHOWALTER: So it's not in
3 Puyallup, okay.

4 MR. SUMMERS: I say I think that's the
5 case.

6 CHAIRWOMAN SHOWALTER: All right.

7 MR. SUMMERS: One thing, by the way, on
8 these figures I gave you on loads, those are
9 pre-conservation loads. Again, you can, on that
10 total load, you can right off the top take off 14
11 percent, because we've already done that this year,
12 but you should really take off 25 percent, because
13 we're going to make that target. We've got a very
14 aggressive program.

15 JUDGE MOSS: Thank you very much.

16 MS. DAVISON: Also --

17 MR. SUMMERS: Let me make one other point.

18 In terms of the diesel generation, that's all going
19 to be controlled with catalytic controls, so most of
20 the negative in that diesel generation goes away.

21 JUDGE MOSS: Thank you.

22 MR. SUMMERS: And that's short term only.

23 JUDGE MOSS: Thank you.

24 CHAIRWOMAN SHOWALTER: Also, I want to just
25 qualify a statement I made previously. When I said I

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1 wasn't so concerned with the self-generation
2 situation because at least taxes were paid, but no
3 municipal utility tax is paid in that situation, but
4 my observation is that there isn't a difference
5 between 448 and 449 for the public utility tax for
6 self-generators. So I'm trying to get at the
7 differential effect of 448 and 449, and with respect
8 to self-generation, to the extent that there is
9 self-generation, there's no difference to the
10 municipal tax.

11 MR. CAMERON: There is a municipal tax on
12 natural gas consumed.

13 CHAIRWOMAN SHOWALTER: That's a good point.

14 MR. CAMERON: Regardless of utilization,
15 whether it be for process use or for generation. And
16 in the city of Bellingham, for example, the tax on
17 gas is six percent, whereas the gas on electricity is
18 only 5.7, so there are a number of different
19 variables that apply.

20 CHAIRWOMAN SHOWALTER: Actually, that's an
21 the interesting piece of evidence. Could we have
22 someone other than an attorney say it?

23 MR. CAMERON: I will -- I will be making a

24 few points on behalf of BCS and ARCO, and I will be
25 happy to follow up, since I don't have either of

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1 those folks in the audience today, follow up in
2 writing, either in affidavit form or whatever you
3 wish.

4 CHAIRWOMAN SHOWALTER: Okay. Let's do
5 that. Let's -- I think we're having a general
6 discussion here about all the different taxes and
7 loads, et cetera, and as much evidence that we can
8 get in today is a good idea if there's -- since this
9 is not really a contested issue among the parties, if
10 there is a follow-up exhibit.

11 JUDGE MOSS: Let me suggest that what we've
12 heard described as cheat sheets, to the extent those
13 can be turned into useful documents in the way of
14 exhibits, then we can certainly keep the record open
15 for the receipt of those documents as exhibits, and
16 that might be a helpful thing to have.

17 MR. CAMERON: What format would you wish,
18 just an exhibit or affidavit, or what would you like?

19 JUDGE MOSS: To the extent that the numbers
20 can be presented in the form of an exhibit, I think
21 that would be very helpful. Those might, in turn, be
22 supported by a brief affidavit that explains what
23 we're looking at.

24 MR. CAMERON: Yes, sir.

25 JUDGE MOSS: So that would be useful.

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1 MS. DAVISON: Next in the audience is Ed
2 Marlovits, from Air Liquide.

3 MR. MARLOVITS: Good morning. Name is
4 spelled M-a-r-l-o-v-i-t-s, first name is Edward. Air
5 Liquide has an air separation plant in Kent. We pay
6 five percent city tax on that. We plan to take the
7 small customer contract.

8 CHAIRWOMAN SHOWALTER: When you said five
9 percent, do you mean combined?

10 MR. MARLOVITS: Combined, yeah.

11 CHAIRWOMAN SHOWALTER: City and state.

12 MR. MARLOVITS: Pardon me.

13 MR. SCHOENBECK: No.

14 MR. MARLOVITS: He's debating my numbers,
15 but I've seen the bills.

16 CHAIRWOMAN SHOWALTER: It's consistent with
17 Boeing.

18 MR. MARLOVITS: Right, that's correct.

19 CHAIRWOMAN SHOWALTER: That it's combined.

20 MR. MARLOVITS: We may install -- we're
21 evaluating a project to put in self-generation now,
22 initially diesels, and whether there's a long-term
23 solution for combustion turbines is less likely,
24 because we are so small. The benefits of this deal
25 are basically lying in the small customer contract

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1 for us. And I think we'll probably conserve some,
2 you know, cut our load from, you know, six or seven

3 megawatts to four or five megawatts of load under
4 this.

5 We pay a five percent municipal tax. The
6 state PUT tax is 3.8 percent, but that's included in
7 the charges. I didn't add that back in. I would
8 assume that everybody's paying that.

9 MS. DAVISON: We're going to give you this.

10 CHAIRWOMAN SHOWALTER: What I'm assuming,
11 it is really interesting to hear from everybody this
12 morning, because it allows us to ask questions, but
13 if this were summarized in a document at some point
14 with the numbers checked, that's going to be great.

15 MR. MARLOVITS: That applies to Schedule
16 48; right?

17 MS. DAVISON: Right.

18 MR. MARLOVITS: That doesn't apply to small
19 customer contract?

20 JUDGE MOSS: Let me just caution everyone
21 that we are on the record, so everything you say is
22 becoming part of the record up here, so if you want
23 to have a private conversation and need to go off, do
24 let us know and I will.

25 MR. MARLOVITS: Well, I was just confirming
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1 with her that we pay about 3.8 percent tax on
2 Schedule 48 power that we purchase now, which I
3 didn't mention earlier. I was thinking in terms of
4 the schedule, the small customer contract going
5 forward, rather than looking backwards, but yeah, we
6 do pay a 3.8 percent tax on the Schedule 48 power.
7 Of course, with the diesel generation installed, we
8 wouldn't be buying that.

9 JUDGE MOSS: Thank you.

10 MS. DAVISON: We have Matt Franz, from CNC,
11 that's on his way. Perhaps by the time we get done
12 with our portion, hopefully he will be here. Oh,
13 okay. I'm sorry, I thought Matt Franz was five
14 minutes away, but apparently he's in Sacramento.
15 It's amazing how fast that happens. He says that
16 he's happy to call in on the bridge line and answer
17 any questions that you might have.

18 I did have a conversation with Matt Franz.
19 I'm happy to summarize that for the record, as well
20 as some of the other parties, some of which are en
21 route to the hearing right now, but I did have an
22 opportunity to talk to virtually everyone last night
23 and this morning.

24 JUDGE MOSS: Perhaps the most efficient way
25 to proceed, then, would be to have your summary, and
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1 we can supplement that with evidence in the form that
2 you've discussed, Mr. Cameron, a minute ago, a table,
3 perhaps supplemented by explaining what it is and
4 sponsoring it as an exhibit, and then, to the extent
5 others arrive at the hearing room, we can have the
6 live testimony. And we'll get the full record that
7 way, but without having to interrupt to arrange a

8 phone call.

9 MS. DAVISON: Okay. While we're on the
10 topic of CNC, they are currently not taking any power
11 from PSE. They are using diesel generators at the
12 moment to supply all of their electric needs. They
13 are in the process of looking at extending the use of
14 those generators. That is unclear at the moment.
15 But their plans are today, at the point that they're
16 no longer able to use their diesel generators, they
17 will simply take the small customer \$225 rate option,
18 and with the intention of going back to Schedule 49
19 at the point that the agreement allows them to do so.
20 Those are their plans as of today.

21 We heard from Equilon. Georgia-Pacific is
22 -- their situation continues to remain very grim, in
23 terms of the long-term operation of that mill. It
24 has not resumed operations, other than a very small
25 portion of the mill that produces pulp is running,

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1 and it's running on a minimum number of diesel
2 generators.

3 Georgia-Pacific is in the process of
4 looking at a variety of options, including
5 self-generation, including merchant plant. They are
6 actively pursuing bids on all the above, as well as
7 looking at potential purchases on the market. So I
8 would say that Georgia-Pacific's situation is very
9 unclear at the moment and it remains unclear what
10 will be in store for them in the long term. They've
11 been down quite a while now.

12 CHAIRWOMAN SHOWALTER: What city are they
13 in?

14 MS. DAVISON: They're in Bellingham, and
15 they do pay a municipal tax. And Mr. Cunningham
16 should be here shortly, and he will bring all the
17 precise numbers with him. He will have all the data
18 with him in terms of what he's paid in taxes.

19 CHAIRWOMAN SHOWALTER: If they're running
20 full up, what's the load?

21 MS. DAVISON: Just short of 40 megawatts
22 and they have a municipal tax rate of 5.7 percent.

23 CHAIRWOMAN SHOWALTER: That's municipal
24 only?

25 MS. DAVISON: Municipal only.

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1 CHAIRWOMAN SHOWALTER: And Mr. Buckley
2 mentioned yesterday that, in some instances, some
3 customers are on the edge, so it's -- am I right that
4 Georgia-Pacific falls more to that end of the line
5 that is less likely to produce taxes under the
6 ordinary scheme of things, because they're less
7 likely to be around than if they have some of these
8 flexible options?

9 MS. DAVISON: That's exactly right. Their
10 situation is -- given the industry that they're in,
11 there is a certain dollar-per-megawatt hour that they
12 just simply cannot purchase electricity at that point

13 and make their product and make a profit on their
14 product. That's the reason why they shut down their
15 operations in December and are only operating on a
16 very minimal basis at the moment.

17 So they're working very hard to try to come
18 up with some options that cause the mill to be
19 sustainable in the long term, but as I said, their
20 current situation is uncertain.

21 Let's see. We don't have anybody in the
22 audience from Tesoro, although Mr. Crawford is on his
23 way. Tesoro is currently utilizing diesel
24 generators. They, I understand, will be trading
25 those diesel generators out for the natural gas

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1 generators that Ms. Hahn spoke of earlier. They plan
2 to use those in the foreseeable future and, like
3 Equilon, they're looking at self-generation options.

4 CHAIRWOMAN SHOWALTER: Where are they and
5 what's their load?

6 MS. DAVISON: They are -- Tesoro is 20
7 megawatts, and they do not pay any municipal tax.

8 CHAIRWOMAN SHOWALTER: Because they aren't
9 in a city?

10 MS. DAVISON: They are not in a city. They
11 are neighbors with Equilon.

12 MS. HAHN: Just across the fence.

13 MS. DAVISON: Across the fence, so they're
14 in the same area. That takes care of the list,
15 because the other complainants are -- City of
16 Anacortes, of course, is going back to Schedule 49.

17 CHAIRWOMAN SHOWALTER: It's a very
18 interesting list. One thing, which would not be
19 required, but might be helpful, is any letters of
20 support for the scheme from those cities. We've
21 certainly heard from those cities earlier, when they
22 were worried about their situation. If this is, in
23 their view, an overall benefit to the city, I think
24 that would be helpful or comforting, anyway, to know.

25 JUDGE MOSS: And let me ask, in terms of

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1 your list, although they're not a complainant, do we
2 have any information on Intel?

3 MS. DAVISON: Oh, yes, I'm sorry. I did
4 mean to talk about Intel. Intel is located -- it
5 says the taxing entity is Dupont, and they have about
6 a three-megawatt load. And they pay both municipal
7 and state taxes, and their municipal tax rate is 6.7
8 percent. And their intention -- they are a small --

9 CHAIRWOMAN SHOWALTER: Was that combined?
10 That must be combined.

11 MS. DAVISON: No.

12 CHAIRWOMAN SHOWALTER: They have raised it
13 above six percent?

14 MS. DAVISON: Apparently. According to the
15 bills, they are paying that. And I think you'll find
16 this -- we will make copies of Mr. Schoenbeck's
17 charts and seek to admit them into the record. I

18 think they'll give you a very good chart to work from
19 in terms of the dollars.

20 CHAIRWOMAN SHOWALTER: Can the chart show
21 separately the state and the municipal?

22 MS. DAVISON: It does show that.

23 CHAIRWOMAN SHOWALTER: All right.

24 MS. DAVISON: You'll find -- I think it has
25 all the points or the basic points of information

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1 that you've been asking about this morning in a
2 summary format.

3 Intel, being a small customer, their
4 current plans are to stay on the \$225 small customer
5 rate and eventually go back to Schedule 49.

6 MR. CAMERON: Why don't I take a moment to
7 explain the situations of BCS, Bellingham Cold
8 Storage, that is, and ARCO. Both customers are in
9 Whatcom County. Bellingham Cold Storage is in the
10 city of Bellingham. They are currently in the
11 process of acquiring generation to cover as much of
12 their load as they can. This is not diesel; this is
13 a gas-fired reciprocating engine. For that, they
14 will consume gas from the local utility. As I said a
15 few moments ago, the municipal tax rate on natural
16 gas is six percent, in contrast to 5.7 percent for
17 electricity.

18 Their load is as high as ten megawatts.
19 Their average energy consumption is considerably
20 lower. You may recall from before that they are a
21 summer-intense load. Their loads coincide with the
22 processing seasons on fruits and vegetables and, to a
23 lesser extent, the fishing industry.

24 I think yesterday a hypothetical was posed
25 in terms of purchases from Canada. Maybe it was

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1 thought that proximity to Canada made that a
2 possibility, but self-generation is the way they are
3 going to proceed.

4 In the case of ARCO, a load of
5 approximately 80 megawatts peak in Whatcom County,
6 outside the city. They have been operating diesel
7 generation, approximately 26 megawatts under
8 short-term permit. They have already procured
9 natural gas turbines of approximately 73 megawatts to
10 cover just about all their load.

11 I think Ms. Hahn put it well a few moments
12 ago. Things are in flux. Prices, availabilities,
13 they're all variables right now, but the customers
14 seem very much to be proactive.

15 In the case of ARCO, the 73 megawatts worth
16 of turbines are relatively small machines with not
17 the greatest heat rates. The long-term prognosis for
18 the refinery is cogeneration, also fueled by natural
19 gas, much larger size units, 7-F type turbines,
20 which gets you in the range of 200 to 250 megawatts.
21 So we are anticipating a situation in which we will
22 have power in excess of the refinery load.

23 Our natural gas supplies come in through
24 our own pipeline. And even though we own it, we do
25 pay taxes on it. We pay taxes on all the commodity
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1 we purchase. We also pay a tax on -- well, I would
2 call it a proxy pipeline tax. It relates to our O&M
3 costs on the pipeline, also our costs of ownership.
4 So we are taxed on that.

5 Currently, the pipeline utilization, it is
6 under-utilized, in the range of 20 percent.
7 Obviously, as self-generation grows, that utilization
8 will increase, as will tax revenues.

9 CHAIRWOMAN SHOWALTER: And those are state
10 taxes, because you're not in a municipality.

11 MR. CAMERON: Yes, ma'am.

12 CHAIRWOMAN SHOWALTER: ARCO, that is.

13 MR. CAMERON: BCS pays both; ARCO, state.

14 I did want to make one additional point regarding the
15 continuing vitality of Schedule 449 in response to a
16 comment you made a moment ago, Madam Chair.

17 We are getting involved in the energy
18 business, obviously. But like a utility, I think
19 it's fair to say that no one necessarily wants to
20 operate in isolation. One thought that's come to
21 mind is that in this market the prices of firm power
22 are prohibitive to the point where everyone is
23 considering self-generation, but it is possible to
24 procure interruptible or curtailable power backed by
25 our resources on site. So there are economies

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1 available, if you will, operating like a mini system,
2 utilizing our own resources when necessary and then
3 longer term power supplies procured from a third
4 party.

5 Again, as I said yesterday, while there is
6 a symmetry between 448 and 449 in terms of the
7 literal language regarding self-generation, 449, in
8 the opinion of both my clients, is a far more
9 flexible device. It allows us to deal directly in
10 the market, it gets us assured privity of contract.
11 There are many benefits of 449 that would cause it to
12 still be utilized or still be a much more valuable
13 tool than 448, even in an era where people are using
14 self-generation. And again, I will back up these
15 statements with affidavits.

16 JUDGE MOSS: I think that would be useful,
17 and let me pose a follow-up question. You indicated
18 in part of your testimony there that there are
19 long-term plans that would involve using these
20 generators that would be producing power in the 200,
21 250 megawatt range or perhaps other arrangements that
22 would result in ARCO producing power net of its own
23 needs. And I was wondering if Schedule 449 is also
24 viewed by your client as a vehicle that will
25 facilitate the sale of that power in the market?

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1 MR. CAMERON: Certainly it is premature to

2 talk about specific plans, but 449 does provide for
3 resources to be utilized by other 449 customers.
4 Aggregation of supply, as well as aggregation of load
5 is permissible, and a resource like that would fit in
6 very nicely, yes, sir.

7 JUDGE MOSS: Okay, thank you.

8 CHAIRWOMAN SHOWALTER: What's the tax
9 consequence if ARCO sells electricity to BCS?

10 MR. CAMERON: Let's talk about the utility
11 consequences first, because we're certainly going to
12 be mindful of that. If the sale occurs as a utility,
13 we'll pay the utility tax. If the sale -- I think if
14 it's another sale that doesn't fit within the
15 definition of the utility tax, I believe the B&O tax
16 applies. And I suspect that would be true of anyone
17 with generation in excess to their own loads, that
18 is, if the sale's involved. I defer to Don Trotter
19 on that one.

20 MR. TROTTER: I agree. I would think if
21 they are operating the plant in the state of
22 Washington, there would be no question, in my mind,
23 they'd be subject to PUT.

24 CHAIRWOMAN SHOWALTER: And why is that, if
25 it's not -- because under the tax laws, that's power

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1 and light business, regardless of selling to the
2 public.

3 MR. CAMERON: It's plant.

4 CHAIRWOMAN SHOWALTER: A different analysis
5 than whether they're a regulatory entity under us.

6 MR. TROTTER: Exactly. And it could be --
7 frankly, the public utility tax was started in the
8 '30s, 1930s, in a completely different era, and it
9 was enacted in the context of what public utilities
10 were at that time. Certainly businesses have changed
11 dramatically and, to some degree, the PUT has
12 changed, and in many ways it has not.

13 So I would allow that it is possible that
14 the ultimate -- a court of last resort could conclude
15 that the PUT does not apply to them, in which case
16 the B&O tax would.

17 MR. CAMERON: We certainly have not done a
18 tax analysis on that hypothetical. I would say that
19 a significant issue that has to be addressed first
20 relates to the holding company act. To the extent
21 any company, any affiliate of a corporation gets
22 involved in the utility business, the holding company
23 act raises serious implications. So I suspect,
24 without regard to tax reasons, there would probably
25 be a wholesale intermediary involved, an exempt

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1 wholesale generator, which is an exemption from the
2 holding company act. Not to suggest that the taxes
3 would drive this, but the holding company act
4 regulation is not a friendly device.

5 CHAIRWOMAN SHOWALTER: So that you would
6 have to sell to somebody who would sell to a marketer

7 who would sell to, say, BCS. That is, as Mr. Berman
8 pointed out yesterday, the EWG cannot make a retail
9 sale.

10 MR. CAMERON: Right. I think it would be a
11 marketer. There may be several of the customers who
12 have marketing affiliates. ARCO has one. There are
13 a variety of different possibilities.

14 COMMISSIONER HEMSTAD: In this era of
15 uncertainty, the likelihood of the holding company
16 act being around is problematic.

17 MR. CAMERON: Every year they announce that
18 it's going to be repealed.

19 MR. BERMAN: While we're discussing the era
20 of uncertainty, I'd like to introduce a couple of
21 exhibits that are texts of HB 1207, a bill that's in
22 the state legislature right now, and a report on that
23 bill discussing public utility taxes and a proposed
24 reform of the public utility tax that's actually
25 under consideration now that revises public utility

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1 taxation.

2 CHAIRWOMAN SHOWALTER: It's my
3 understanding that bill has died, but also, we can
4 put it in the record, but really, until a bill is
5 law, it's just a bill. But I think that bill did not
6 make the cutoff.

7 MR. BERMAN: I think that you probably know
8 much more than me about the legislative process in
9 Washington State. For us, the point is that this is
10 something that has been under active consideration
11 repeatedly in the legislature, has been under --
12 reform has been under consideration in this session
13 in the legislature.

14 It's also my understanding, though I don't
15 claim to be an expert on the legislative process,
16 that even bills that are dead can become alive with
17 support. And Puget Sound Energy is certainly
18 supportive of the goals of the bill, though I won't
19 claim that every word of the proposed bill that was
20 out there has language that we would support.

21 CHAIRWOMAN SHOWALTER: Well, you know, I
22 think it's evidence that this is an issue that the
23 legislature is aware of, and it has been aware of it,
24 as has the whole energy community been aware of it
25 for at least five years, and there have been many

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1 reports talking about the differential effects of the
2 tax system and what would happen if we had
3 restructuring or wheeling, and it demonstrates to me
4 that it is a concern. It doesn't demonstrate, I
5 think, that there's a likelihood that it will pass.
6 That can only be judged when it passes.

7 JUDGE MOSS: It does strike me on the
8 question of evidence that this is a matter of which
9 the bench can take notice. It is aware of the
10 legislature's interest and activity in this area, and
11 it does not strike me that having the house bill in

12 the record would facilitate or advance the decision
13 process. So absent some argument to the contrary, of
14 course, I'm prepared to defer to my colleagues on the
15 bench here, but I don't see that we would need it as
16 part of the record.

17 Ms. Davison, did you have something on this
18 point?

19 MS. DAVISON: Not on this point. I just
20 wanted to offer, if it's fine with the bench, that
21 Mr. Schoenbeck does have a few more comments on the
22 tax issue, if that's fine with you.

23 JUDGE MOSS: Yeah, I felt that his
24 presentation was not complete. We sort of got
25 diverted there for some additional background that I

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1 think was a useful prelude, and so -- also, I'd just
2 note that it's approaching the point for the morning
3 break, and I wonder if this would be a convenient
4 time for us to take a recess.

5 CHAIRWOMAN SHOWALTER: Well, I think we're
6 in the same position as yesterday. We have a meeting
7 from 10:30 till 11:00, so maybe we should keep going.

8 JUDGE MOSS: Then let's do press ahead. I
9 wasn't aware of that.

10 CHAIRWOMAN SHOWALTER: I think -- let me
11 just -- I think that's true.

12 JUDGE MOSS: Give us a moment, Mr.
13 Schoenbeck.

14 CHAIRWOMAN SHOWALTER: Well, to tell you
15 the truth, I'm not sure what my schedule is.

16 JUDGE MOSS: Well, let's press ahead till
17 10:30, and we can break then and we can determine if
18 there's some need.

19 CHAIRWOMAN SHOWALTER: We can take a break
20 at 10:30, anyway.

21 JUDGE MOSS: Yes, let's do that. We'll
22 plan for that. Go ahead, Mr. Schoenbeck.

23 MR. SCHOENBECK: Maybe, just to start back
24 at the \$17 million figure, since -- to get a clean
25 start, based on the hypothetical assumptions

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1 yesterday, with a slightly more accurate load split
2 and effective tax rate.

3 Based on everything I've heard today, I
4 still have a two-and-a-half-million-dollar tax amount
5 coming from loads that would go back to rate
6 schedules. So you'd have 14.5 million potential at
7 risk with respect to self-generation entities.

8 I looked at two different ongoing taxes
9 that would be associated with the establishment of
10 self-generation, those being a use tax on the gas and
11 the property tax rate that would be ongoing tax
12 revenues for the state.

13 With respect to deriving a use tax figure,
14 I had to make three assumptions. I had to make an
15 assumption with respect to the heat rate, had to make
16 an assumption with respect to the gas price, and an

17 assumption with respect to the effective use tax rate
18 that would be applied to the gas.

19 Trying to be conservative, I used a heat
20 rate of 8,000 Btus per kilowatt-hour, recognizing
21 that there would be a potential range of heat rates
22 for the different units, given the size and the
23 technology that's available in the marketplace.

24 With respect to the gas price, again,
25 trying to be conservative, I used a price of \$3.50

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1 per million Btu.

2 And with respect to the use tax rate, I
3 actually used the same public utility tax rate of the
4 3.872 percent, recognizing, as Mr. Cameron stated,
5 sometimes the gas use rates are higher than the
6 electric rates.

7 Taking those three heroic assumptions
8 together, that would give you a credit on the gas of
9 two and a half million dollars a year, or \$2.4
10 million.

11 CHAIRWOMAN SHOWALTER: I'm not following
12 how to write that down.

13 MR. SCHOENBECK: I guess the way I did it,
14 I started with the \$17 million figure at the top.

15 CHAIRWOMAN SHOWALTER: And then we're at
16 14.5 million, and now you're going to bump it back.
17 Well, let's see. This 2.5 million will get to state
18 coffers somehow, is what you're saying.

19 MR. SCHOENBECK: Right, as opposed to the
20 14.5 that you're concerned about losing.

21 CHAIRWOMAN SHOWALTER: Right, right.

22 MR. SCHOENBECK: So you credit it back some
23 way. The second ongoing tax that would be associated
24 with the generation estimate, again, would be the
25 property taxes. Again, not having a precise figure,

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1 I had to make two assumptions. One would be what
2 would be the capital cost of the equipment put in, to
3 which I used \$600 a kilowatt, and the other was with
4 respect to property tax rate, which I used two
5 percent. Again, both those are assumptions. They
6 may be modestly off, but that would yield a property
7 tax revenue stream of \$3 million per year to the
8 state.

9 So now, from the 14.5, you're down to 9.1.
10 There are two additional tax revenues sources from
11 these customers back to Puget Sound Energy. One has
12 to do with the backup service tariff that some will
13 put in place. I just note that there would be some
14 money there. I made no attempt to estimate that,
15 because I have no idea what the charges would be, nor
16 the load that would be applied.

17 The second source, in my mind, it's a very
18 real source, but again, it's hard to quantify, and
19 that's with respect to the ancillary services that
20 could even be offered with respect to the tracking.
21 They kind of go hand in glove with the backup service

22 rate. It's to the extent that the backup service
23 rate handles the delivery, and the ancillary service
24 rate, in my mind, would be for the energy to the
25 extent the units go down.

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1 So those two taken together would be
2 another source of revenue. Again, I made no
3 assumption for it whatsoever, but I'd just note there
4 would be some presumably modest revenue associated
5 there, as well.

6 So basically, you're still looking at the
7 \$9.1 million. With respect to the capital
8 investment, though, the other thing that you have to
9 recognize is a good deal of that equipment, there
10 actually would be a sales tax. Again, not knowing
11 precisely what the sales tax rate would be, my
12 assumption there would be about three percent. So
13 that would effectively cut it in half. That would be
14 \$4.6 million in sales tax revenue.

15 CHAIRWOMAN SHOWALTER: Why is three percent
16 the tax rate that would be paid for something like
17 this? It sounds low, but --

18 MR. TROTTER: I haven't checked, but I
19 think the local option adder to the state rate of six
20 percent is capped at two, but it could be higher than
21 that now.

22 MR. SCHOENBECK: I'm willing to use any
23 number, but at 10:00 last night, I grabbed at any
24 number that sounded like it made sense. What number
25 would you like me to --

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1 CHAIRWOMAN SHOWALTER: No, no, that's fine.
2 I don't have a better number.

3 MR. SCHOENBECK: Throughout this
4 calculation, I must again say I was trying to be
5 conservative in a lot of these assumptions, so --

6 CHAIRWOMAN SHOWALTER: So that made how
7 much go?

8 MR. SCHOENBECK: 4.6 million.

9 CHAIRWOMAN SHOWALTER: We're down two 4.6
10 million.

11 MR. SCHOENBECK: No, 4.6, you're actually
12 down to 4.5, if all my revenue's right.

13 CHAIRWOMAN SHOWALTER: All right.

14 MR. SCHOENBECK: Yeah. And that's the only
15 thing I would note. Again, the sales tax issue is
16 kind of a one-shot infusion of revenue, obviously.

17 CHAIRWOMAN SHOWALTER: Right.

18 MR. SCHOENBECK: So on the ongoing basis,
19 given all these assumptions, it looks like there may
20 be exposure or risk of \$9 million, again, recognizing
21 that there be some credit for the transmission and
22 distribution charges for self-generation, as well as
23 the ancillary services.

24 CHAIRWOMAN SHOWALTER: Okay. And a
25 question. One, on the one-shot deal, is this kind of

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1 equipment subject to either ongoing excise tax or
2 inventory tax or anything like that, do you know, Mr.
3 Trotter? That would be the property tax, probably.

4 MR. TROTTER: Yeah, not that I'm familiar
5 with. Just the ongoing tax if it sticks to the
6 ground, or even if it's not, there could be a
7 property tax, depending on how it's classified. He's
8 accounted for that.

9 CHAIRWOMAN SHOWALTER: And then the second
10 question to you, Mr. Schoenbeck, I'm unclear. Is
11 this -- after listening to the witnesses this morning
12 and what their plans are, are you taking them all as
13 a whole and calculating the natural gas tax, et
14 cetera, for them?

15 MR. SCHOENBECK: Again, based on these --
16 now, based on the testimony I heard today, I did make
17 two changes, so now I've included every customer.
18 I've now included Bellingham Cold Storage and I've
19 made a modest adjustment based on Mr. Marlovits'
20 testimony. So this is my attempt, given these
21 assumptions.

22 Now, again, I suspect if I had an
23 opportunity to investigate it, I'd come up with a
24 whole host of range of use tax rates on the gas, for
25 example, versus me using a uniform 3.9 percent, so --

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1 but within all these assumptions we made with respect
2 to just \$100 a megawatt hour. I think they're all in
3 the ballpark.

4 CHAIRWOMAN SHOWALTER: But am I right that
5 the insight from your analysis is, generally
6 speaking, what happens if there is a lot of
7 self-generation of these customers; not particularly
8 what happens if they all went out and used 449, which
9 is the other insight of the day.

10 MR. SCHOENBECK: Right.

11 CHAIRWOMAN SHOWALTER: That this appears to
12 be the more likely scenario, a good dose of
13 self-generation.

14 MR. SCHOENBECK: Yes, that's certainly the
15 case. Given the size loads that I've assumed,
16 they're all potential self-generators, certainly.
17 What I've heard today, it just kind of confirmed that
18 they are at least exploring that possibility and
19 avenue of serving their future long-term needs.

20 JUDGE MOSS: Mr. Schoenbeck, I wanted to
21 follow up with you a little bit on the conservatism
22 of your assumptions. I noted that you assumed \$3.50
23 gas, and if I have it right, gas is trading at Sumas
24 today at about \$5; is that right?

25 MR. SCHOENBECK: Five to 5.50, I'd say,

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1 right.

2 JUDGE MOSS: So your assumptions are
3 roughly, what, 60 percent of what's actually
4 happening in the market today?

5 MR. SCHOENBECK: Right.

6 JUDGE MOSS: And then, in terms of your
7 heat rate, you assumed 8,000.
8 MR. SCHOENBECK: Yes, I did.
9 JUDGE MOSS: And again, for a combined
10 cycle turbine, we'd normally make an assumption in
11 the range of what, about twelve-five.
12 MR. SCHOENBECK: No, no, no. Again, if you
13 recognize what Mr. Cameron has alluded to with
14 respect to ARCO, those heat rates would be less than
15 7,000 Btu per kilowatt hour. So that's left with a
16 range, recognizing that ARCO could put in a machine
17 with that capability versus some of the diesels that
18 would be more in the ten range.
19 MR. CAMERON: But I think it's fair to say
20 that the gas-fired generation we're looking at now
21 and for the next year or two has heat rates in the
22 10,000 range, 10,000 Btu per kWh. These are simple
23 cycle machines, they're relatively small. They use a
24 lot of gas per kWh of output.
25 MR. SCHOENBECK: When I did this, I guess

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1 my perspective I was looking at was more of a longer
2 term type of a gas price I'd expect to see, and more
3 of a longer term heat rate.
4 JUDGE MOSS: Yeah.
5 MR. SCHOENBECK: If you want me to, we can
6 stick in --
7 JUDGE MOSS: No, I wasn't really asking you
8 to make any more calculations right now. I was
9 recalling earlier testimony in the case about a
10 twelve-five heat rate and that sort of thing. I just
11 wanted to make sure we have the basis for your
12 assumptions. As I understand what you've just said,
13 it was based on an assumption of a longer term that
14 would have a more efficient bit of plant in place.
15 MR. SCHOENBECK: Right. Doing realtime
16 calculations, you're putting a heat rate of 10,000
17 and gas price of 5.50 could be what could be
18 reflecting over this year, it took the use tax up to
19 \$4.7 million, as opposed to 2.4. So it added \$2.3
20 million to the calculation.
21 JUDGE MOSS: That would bring the, at the
22 bottom line, the at risk down by that amount, so we'd
23 be looking at 6.7 instead of nine.
24 MR. SCHOENBECK: Yeah, 6.8, the way it's
25 rounded on my computer screen.

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1 JUDGE MOSS: Okay, fine. Thank you.
2 CHAIRWOMAN SHOWALTER: This follow-up
3 question wasn't incorporating that one. But another
4 way to compare this is if the 449 customers install
5 self-generation, whether or not they use it all the
6 time, then the difference between electing 449 at any
7 point in time, that is electing purchases, as opposed
8 to self-generation under 449, that the difference
9 there, I think, is the 2.5 million. Am I right on
10 that?

11 In other words, if the customers do as they
12 say and they're going to install self-generation,
13 when they use that self-generation, they pay the
14 taxes on gas. When they don't, they don't pay that,
15 and they might buy from Canada, they might buy from
16 somewhere else, but in the meantime, they still pay
17 the property tax on the diesel or equipment that they
18 put in. So am I right or wrong that the effect of
19 449, and in particular, the potential -- well, let me
20 back up. That if the 449 customers use their
21 generation the way you have outlined at the 3.50,
22 they're going to pay 2.5 million in gas taxes. To
23 the extent they don't, they don't pay those taxes,
24 but the other elements remain in place.

25 I haven't said that very well, but I think
0060

1 what I'm getting to is that the outside purchases
2 enabled by 449 do not have a very big tax effect
3 relative to what the customers can do anyway under
4 self-generation, and are planning to do anyway under
5 self-generation; is that right?

6 MR. SCHOENBECK: I absolutely agree with
7 you.

8 CHAIRWOMAN SHOWALTER: Okay.

9 MR. SCHOENBECK: In my mind, there's a real
10 tension on this whole tax issue. One perspective is
11 very short term. And very short term, we have the
12 testimony of Mr. Berman saying that the taxes already
13 have greatly exceeded what you normally get in a
14 typical year. Long-term, with respect to
15 self-generation, that's an option that's on the table
16 already for these people. So there's no change
17 there, in my mind.

18 JUDGE MOSS: I think we have reached the
19 point, both timewise and in the testimony, that we
20 should take our morning recess for 15 minutes, and
21 I'd ask that you return at a quarter till 11:00 by
22 the wall clock. Thank you.

23 (Recess taken.)

24 JUDGE MOSS: All right. Let's be on the
25 record. During the recess, Ms. Davison has

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1 distributed, I believe to everyone in the room who
2 has an interest, and certainly to the bench, two
3 tables. One of these is entitled summary of Schedule
4 449 Sites With and Without Municipal Taxes, and I
5 have marked that for identification as 1804-C, and
6 then there is one entitled Summary of Schedule 449
7 Tax Revenue, which I have marked for identification
8 as 1805-C, the C in both instances notating the
9 confidential nature of the information, which I
10 understand is derived from billing data. And these
11 would be Mr. Schoenbeck's exhibits, would they, Ms.
12 Davison?

13 MS. DAVISON: I'm sorry.

14 JUDGE MOSS: These would be Mr.
15 Schoenbeck's exhibits. He's the sponsoring witness,

16 for purposes of the record?

17 MS. DAVISON: Yes, Your Honor, and if it's
18 all right with the bench, Mr. Schoenbeck has just a
19 couple of statements to explain his exhibits.

20 JUDGE MOSS: Okay, that's fine. Then we
21 can tender those for admission.

22 MR. SCHOENBECK: I just want to make clear
23 a couple things. The effective tax rates were
24 derived based upon the April 2000 billing, so it was
25 the taxes that were in effect at that point in time,

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1 April -- the month of April 2000.

2 The second thing is, just to make sure the
3 value I'm using, I've entitled it the effective tax
4 rate. It's not the statutory tax rate, which is
5 applied to gross revenues, so it's a tax on tax
6 issue. If you think in terms of if you have a \$100
7 utility bill and there's a ten percent statutory
8 rate, you pay \$10. The utility would be required to
9 pay that taxing authority \$10. Well, the effective
10 tax rate for the utility to gross up their bill to
11 get the \$10, then, is 11 percent, so these are the
12 effective tax rates, not the tax rates per the
13 ordinances which may be capped at, like, six percent
14 on a gross revenue basis and not on a net revenue
15 basis.

16 JUDGE MOSS: And with those explanations,
17 you would offer these exhibits for the record?

18 MS. DAVISON: Yes, I would, Your Honor.

19 JUDGE MOSS: Hearing no objection, they
20 will be admitted as marked. Let us proceed.

21 CHAIRWOMAN SHOWALTER: Well, I just want to
22 see if I have distilled what I think is the gist of
23 the morning, which is that self-generation does cause
24 a drop in the public utility tax, and these customers
25 are engaging in self-generation and plan to engage in

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1 self-generation, but that is the case today absent
2 any settlement that's approved, and it would be the
3 case under 448 or 449.

4 And that is a more significant phenomenon,
5 I think, than a particular use of Schedule 449 that
6 might be employed by some customer purchasing
7 out-of-country electricity that may or may not avoid
8 the public utility tax.

9 So putting it in perspective, I think that
10 from -- based on the evidence we heard this morning,
11 the net effect of the settlement on public utility
12 taxes is unknown, for one thing, but the magnitude is
13 likely much less than the scenario we were discussing
14 today as a result of the intention to self-generate
15 anyway. Does anyone want to react to that statement?
16 I'll pose it as a question. Is that a correct
17 perception?

18 MS. DAVISON: Madam Chair, I think that is
19 a very accurate and a good summary of what you heard
20 this morning.

21 MR. BERMAN: I would just reiterate the
22 points I made this morning, I know you don't need me
23 to repeat them all, but when we also take into
24 perspective that historic tax revenues that were
25 received from these entities and the taxing

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1 authorities may have come to expect or rely upon in
2 their budgeting, that that's also an important
3 consideration in assessing the magnitude of the
4 issue, that the dollars involved historically were
5 much, much less than what were discussed in your
6 scenario, and so the amounts that -- the amounts that
7 the taxing authorities might have expected are
8 different and the taxing authorities have already
9 this year received all the dollars that historically
10 they would have expected for an entire year.

11 MR. CAMERON: Let me just say I would
12 concur in your two statements. I believe they're
13 accurate.

14 MR. TROTTER: We would have nothing to add.

15 COMMISSIONER HEMSTAD: I guess I'd make the
16 comment that, as a result of what I heard this
17 morning, the apprehensions raised from the bench, I'm
18 now speaking for myself personally, of yesterday
19 afternoon have been largely answered. And I'm much
20 more comfortable with the tax issue than I was last
21 night.

22 JUDGE MOSS: In terms of our record, there
23 was some suggestion earlier that there might be an
24 effort undertaken to secure from perhaps mayors or
25 other politically responsible individuals in the

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1 various municipalities some sort of letters or other
2 evidence that would support some of the statements
3 that Mr. Berman has shared with us, which of course
4 are not evidence, and so to the extent that the
5 record might be enhanced, if you will, by that sort
6 of thing, then I think we'll, at the close of the
7 day, we'll leave the record open for the possible
8 receipt of that sort of thing for some reasonable
9 period of time.

10 And perhaps if there are other exhibits,
11 such as we've discussed through the course of today,
12 that would be an appropriate thing, as well.

13 And I wonder, too, in that connection, with
14 respect to the ARCO plans for self-generation, which
15 appear to be among the more significant ones, while
16 the bench can take administrative notice of other
17 public records that are on file, I'd just note that
18 there is a file by ARCO with the Energy Facility Site
19 Evaluation Council, whether you believe that would be
20 something we might want to just make of record to, if
21 you will, underscore the plans of some of these
22 companies in the direction of significant
23 self-generation.

24 MR. CAMERON: I will include reference to
25 that in the affidavit on the tax issues.

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1 JUDGE MOSS: All right. That would be
2 good.

3 MR. CAMERON: One question about letters
4 from the mayors. Should they take the form of a
5 letter addressed to the secretary, referencing this
6 docket?

7 JUDGE MOSS: I think that would be an
8 appropriate way to do that, yes. Of course, they'll
9 be made exhibits, and in that sense, they become part
10 of our record, too, but yes, probably addressed to
11 the secretary, and they could even be submitted
12 through the records center, if you choose, or
13 directly to the bench, where they'll be made exhibits
14 and go into the records center that way, so we can
15 accommodate it in that type of fashion.

16 MR. CAMERON: Thank you.

17 JUDGE MOSS: And I'll just assign numbers
18 as these -- since it's uncertain, I'll assign numbers
19 as these things come in. It's not unusual in
20 administrative proceedings, I've done it many times,
21 where we've reserved the opportunity for exhibits,
22 and as long as everyone feels comfortable with the
23 proposed exhibits, then they're admitted with the
24 idea that there won't be any objection.

25 So I'm just going to put out the question,

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1 if everyone's comfortable with that process, or if
2 there's some desire to reserve the opportunity to
3 object, then I should know that. So let me just ask
4 the question. Does anybody desire the opportunity to
5 have preserved the -- I said that backwards. Does
6 anybody wish me to preserve the opportunity for
7 objection to any of these late exhibits that might
8 come in, letters from mayors, affidavits concerning
9 the matters we've discussed, that sort of thing?

10 MR. BERMAN: I think so long as they're
11 supportive of the settlement, we're not going to have
12 a problem.

13 JUDGE MOSS: I was comfortable, under the
14 circumstances of having a settlement that's been
15 presented with uniform support, so I think you're
16 safe on that ground, Mr. Berman. So okay, I'll
17 proceed in that fashion.

18 MR. TROTTER: Your Honor, I guess, just to
19 preserve the point, we did mention yesterday that we
20 questioned the jurisdiction of the Commission to get
21 into that issue. We won't belabor that. But having
22 said that, we won't register any additional
23 objection.

24 JUDGE MOSS: Okay, thank you.

25 CHAIRWOMAN SHOWALTER: I was also going to

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1 say, this is a public hearing. If one of the cities
2 writes in something negative --

3 JUDGE MOSS: There it is.

4 CHAIRWOMAN SHOWALTER: -- we will take

5 that, too. It's possible.

6 JUDGE MOSS: All right. Do we have further
7 questions?

8 CHAIRWOMAN SHOWALTER: For my purposes, I
9 feel I'm done on the tax issue. Do you feel that
10 way? We have, at least I have, you know, a number of
11 little stickies that we could go straight through all
12 the documents, but there's a lot of them -- a lot of
13 documents, that is, and that's the way we often do
14 things. On the other hand, we could just go to the
15 pages that concern us.

16 JUDGE MOSS: I think it probably --
17 considering the volume that we're dealing with here,
18 rather than -- I have sometimes flipped through these
19 things a page at a time, and that could be a little
20 slow. So maybe we should just go through and, as
21 people identify pages where there are little concerns
22 -- and stickies, I think, refers to an office
23 product, as opposed to the nature of the issue, so
24 let's be clear.

25 Why don't we just, Madam Chair, if you

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1 would maybe start us off there, and Commissioner
2 Hemstad may have some points along the way, and I'll
3 flip through, as well.

4 CHAIRWOMAN SHOWALTER: All right. Well,
5 actually, though this seems out of order, I do want
6 to begin with one thing, and I see that the attorney
7 for King County is not here, but I'm just going to
8 refer anyway to page five of King County's petition,
9 and I understand they may not have a position.

10 This is a factual issue I just want to
11 clarify for the record, which is, it states at line
12 three that the Commission ordered that the rates
13 charged under Schedule 48 should be subject to,
14 quote, a soft cap of \$125 a megawatt hour unless PSE
15 demonstrates that the cost it actually incurred to
16 serve the customers exceed that amount.

17 I just want to point out we did not order
18 that. The reference here, which is to paragraph 83,
19 was a description of the Staff proposal to us. And I
20 think -- I point this out because there seems to have
21 been a misunderstanding of what we, in fact, ordered
22 in that order, and this is an example of it.

23 JUDGE MOSS: Let me interrupt for just half
24 a second, because Mr. Woodworth is no longer with us,
25 apparently, this morning, and I wanted to -- I meant

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1 to earlier ask if there had been any progress in the
2 discussions that were reported yesterday between --
3 or among the parties and King County.

4 MR. BERMAN: Those discussions have been
5 continuing, Your Honor. I think Mr. Woodworth is
6 with us somewhere in the building and is probably
7 communicating right now with his clients.

8 JUDGE MOSS: So we should take this up
9 later, then?

10 MR. BERMAN: I think that later on this
11 morning, or certainly by the end of the hearing, we
12 will be reporting to you on where those discussions
13 are, and I certainly hope those discussions are
14 wrapped up as we try to sort out what to do with King
15 County.

16 JUDGE MOSS: Okay. Thanks very much.
17 Sorry for the interruption.

18 CHAIRWOMAN SHOWALTER: No, that's all
19 right. Again, before I get to the actual settlement
20 documents, I want to ask another question to PSE.
21 And the reference, I'm looking at page 15 of your
22 comments in support of the settlement. And it talks
23 about the transmission distribution split. I'm just
24 wondering if you can remind me either -- where is
25 that docket, our approval of the transmission

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1 distribution split, or that issue, and how does it
2 integrate into this settlement? Page 15 of Puget's
3 comments.

4 MR. BERMAN: Your Honor, I believe where
5 that docket is procedurally is that the filing was
6 submitted to the Commission. I believe it came up at
7 a hearing a week or two ago. Some concerns had been
8 raised by some intervenors, who I think are not
9 intervenors to the docket, the primary docket we have
10 here, and to address the concerns of those
11 intervenors, who were primarily generator owners who
12 were concerned with interconnection policies and how
13 the split might relate to them, some agreed-upon
14 language was submitted by those intervenors and by
15 the company that, in their minds, addressed those
16 issues.

17 I know I've received some communications
18 from Staff relating to that language that have not
19 been fully finalized, those discussions, so in my
20 mind, procedurally, I think it's really something
21 where all the parties to that docket have more or
22 less worked out their differences, but there may be a
23 few more discussions to go. Assuming that all gets
24 worked out, I think it will be ripe for ruling by the
25 Commission.

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1 CHAIRWOMAN SHOWALTER: Actually, now I am
2 -- I do recall that now and I realize I was thinking
3 on the following Monday from whenever we had
4 discussed this, we were going to get in some
5 language. We probably did, but it sounds as if it's
6 still pending. I actually don't want to talk about
7 the merits of it any more, then, if the parties
8 aren't here. That's a good enough answer.

9 MR. BERMAN: I would note procedurally, how
10 it fits into this docket, and you asked that, that a
11 Commission approval of the application in that docket
12 is a condition precedent of this particular
13 stipulation. It's a necessary element of making this
14 particular stipulation work.

15 CHAIRWOMAN SHOWALTER: Okay. Then turning
16 to the stipulation itself, I'm on page 13, and I'm
17 looking at line 24, 7.2. The stipulation provides
18 that eligible customers are Schedule 48 customers
19 who've paid transition payments. It's also the case
20 that, it just so happens, that these are large
21 customers who are eligible for 448 or 449 who have
22 requested this treatment.

23 And I know that the parties are arguing
24 that this is a reasonable class because it's
25 different. It's old 48 customers who've paid

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1 transition charges. But am I right that, in effect,
2 the Commission hasn't faced the issue yet whether a
3 customer who comes along who wasn't a 48 customer who
4 paid transition charges, but is large and would like
5 to elect the same treatment, might or might not be
6 entitled to similar treatment as is being produced
7 here?

8 MR. BERMAN: I would agree, Your Honor,
9 that the Commission hasn't faced that issue and that
10 the stipulation doesn't necessarily resolve the issue
11 in the sense that if there's some other party out
12 there who's a large industrial, and I can think of at
13 least one, but I won't name them, but they're a large
14 industrial who's not in the whole Schedule 48 regime
15 and chose to go a different way, if they were to come
16 in, the Commission would have to consider whether
17 they'd made a good case or not, and everyone would
18 have to consider how they responded.

19 We really believe that this categorization
20 of parties who were on Schedule 48 and paid
21 transition payments is a significant and serious
22 distinction between this set of customers and, say,
23 other customers who chose not to go this way. These
24 are people who made a choice to go with the market.
25 They made the choice in a different time. They made

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1 a choice and agreed to be part of an arrangement that
2 contemplated eventually moving to retail access.
3 They agreed to pay a bunch of money associated with
4 this set of arrangements, and that's what the
5 transition payments are.

6 And being a part of that structure we think
7 is a significant and important distinction between
8 this group of customers and any other customer who
9 comes along. We think that other customers may be
10 able to argue that there's a reason why this would be
11 a good deal for them, and you'd have to evaluate that
12 on the merits. But we think that on the
13 discrimination point, that we tried to establish a
14 categorization that we thought would withstand
15 discrimination scrutiny. And we believe it does.

16 MR. BUCKLEY: From a Staff perspective on
17 this issue, we anticipate that the issue of how to
18 treat or the options that new large significant loads
19 or other customers might be treated is something that

20 will be handled in an upcoming future filing. So
21 we're not precluding anything by this settlement or
22 anything in these documents from other like services
23 at least being considered. It's just not being
24 addressed, but we are anticipating that issue would
25 be teed up.

0075

1 CHAIRWOMAN SHOWALTER: All right.

2 JUDGE MOSS: I wonder, Mr. Buckley or Mr.
3 William Gaines, if one of you has in mind an
4 aggregate figure on these transition charges that
5 were paid under Schedule 48 from 1996 forward?

6 MR. WILLIAM GAINES: I'm sorry, I don't.
7 We could certainly research that and provide it.

8 MR. BUCKLEY: I don't have a number with
9 me, either.

10 JUDGE MOSS: I think it would be useful to
11 have that in the record. I'd appreciate that, if you
12 could provide that figure.

13 MR. BUCKLEY: I'd also want to point out,
14 I think that Madam Chairwoman pointed out these were
15 large customers who paid transition. I believe that
16 there were some smaller customers that had paid
17 transition charges, too. It's not just the customers
18 who we've assumed will automatically go into 449.
19 It's also some of those customers that will be taking
20 service under the small customer arrangement.

21 JUDGE MOSS: Is it, in fact, all of the 48
22 customers except the three telecommunications
23 companies?

24 MR. BERMAN: The city and the pipeline.

25 MR. BUCKLEY: We believe -- I think the

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1 city, the pipeline, and those three IDCs have not
2 paid transition.

3 MR. BERMAN: In general --

4 MR. BUCKLEY: There may be one or two
5 others.

6 MR. BERMAN: In general, the way Schedule
7 48 worked was there was a phasing -- a phase down of
8 the transition payments, so in the early years of
9 Schedule 48, they were at one level and they went
10 down and now the transition payments are zero, I
11 believe.

12 JUDGE MOSS: Yes.

13 MR. BERMAN: And so recent entrants onto
14 Schedule 48 just haven't paid any and really weren't
15 a part of that structure.

16 JUDGE MOSS: Yeah, I understood the
17 structure. If you want to present the data with a
18 finer level of granularity than what I've asked for,
19 that's fine, too.

20 CHAIRWOMAN SHOWALTER: Well, and I'll just
21 observe that when you establish a class that is
22 characterized by four elements -- they were a 48
23 customer, they're large, they want to go on 449, 448,
24 and they paid transition charges -- it's hard to know

25 which of those factors weighs more heavily than

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1 another. And at a future date, when we get some
2 people in the door who don't have all four factors,
3 we may cross that bridge. And I don't want an answer
4 on it. Thank you. I want to move on.

5 MS. DAVISON: Madam Chair, could I add a
6 fifth factor, though, which is the non-core status.

7 CHAIRWOMAN SHOWALTER: Okay. All right.
8 That actually leads to page 36 of the stipulation,
9 and this refers to the IDC customers and states that
10 they shall be considered core customers. And I know
11 elsewhere there's the -- it's right here, the
12 reference that we're going to get a new docket on
13 them. It is a little odd to me, I guess, that
14 they're not a party. I gather they're aware of this
15 proceeding, but this is a settlement of these parties
16 here that makes a pronouncement about them, who are
17 not here.

18 Does anybody want to just provide a little
19 comfort that we are establishing their status for the
20 time being in this settlement?

21 MR. TROTTER: These are all customers that
22 came into Schedule 48, I believe in the last fall,
23 early winter, even, and we're not in this docket
24 attempting to do anything other than let them remain
25 on Schedule 48 and then tee up a docket to see how

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1 they fit in the Commission regulation of PSE.

2 It's our understanding that these customers
3 may not have been given a choice, that they were told
4 that they needed to be on Schedule 48 and that's
5 where they went, hence we're not presupposing that
6 they're non-core customers. We're not prejudicing
7 any future classification, so we're keeping them --
8 we're considering them as core customers for that
9 single purpose, I guess.

10 So I think the notion is that these are
11 different types of loads that -- the notion is that
12 they are types of loads that can increase
13 dramatically as these Internet data centers grow, and
14 they pose special load challenges to the company.

15 So a company has committed to file a new
16 Schedule 45 by April 16th to see what the public
17 policy will be to deal with those or similar loads.
18 So the IDCs were not asked to sign on to the
19 stipulation, and none of them intervened, so we're
20 just holding a place for them and I think they can be
21 dealt with under Schedule 45. And if it turns out in
22 that docket that they unanimously say we want 449 and
23 448, I think that can be considered at that time,
24 consistent with your prior question. And perhaps the
25 answer will be they should go back to core, depending

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1 on the circumstances.

2 CHAIRWOMAN SHOWALTER: So this is an
3 attempt to be nonprejudicial to that group?

4 MR. TROTTER: Exactly.

5 CHAIRWOMAN SHOWALTER: All right. Then
6 page 37, Section 12.1 is about the large customers
7 and when they elect 448 or 49, and what happens to
8 them in the meantime.

9 Now, other customers, I notice, get a
10 particular rate until they decide what to do, but am
11 I right or wrong that until a large customer selects
12 448 or 449, they are on Schedule 48 with the rates
13 that -- the Mid-C rates that apply?

14 MR. BERMAN: You're right.

15 MR. TROTTER: Or special contracts.

16 MR. CAMERON: Or special contracts.

17 MR. TROTTER: Or the special contract they
18 already have.

19 CHAIRWOMAN SHOWALTER: Or the special
20 contract. So that the parties are agreeing to stay
21 on the special contract, or 48, as it currently
22 exists until they make a selection, which I imagine
23 there will be a pressure to make a selection. All
24 right.

25 MR. BERMAN: That's correct.

0080

1 CHAIRWOMAN SHOWALTER: All right. My next
2 question is on page 43 of the stipulation, and it's
3 line 26. I'm not sure what the context is here, but
4 my question -- I just wanted an explanation. It says
5 that -- let's see, what is the context here? Could
6 just someone explain to me what it means, the bottom
7 line, the parties to such proceeding will have the
8 same burden of proof on such issues as in such
9 proceeding as they would have had in Docket 0046?

10 MR. TROTTER: I'll take a hack at that one.
11 I think we may have addressed this in our memorandum.
12 As you know, the 010046 docket is the refiling of
13 Schedule 48 that was required by the Commission
14 order. And parties differ, I think, on what they
15 think that docket is, but I think, from the Staff's
16 perspective, they viewed it as a Schedule 48 review
17 docket.

18 Because we're substantially dealing with
19 Schedule 48, we thought it would be appropriate to
20 effectively terminate that docket. But there is a
21 prospect, perhaps King County, perhaps the IDCs, that
22 there may be a need to review what should become of
23 Schedule 48 at some point in the future. But we
24 didn't want to change the burden of proof that would
25 have been in the -- give up the existing docket with

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1 all of its features, whatever they were, and no one's
2 committing to what they were, but in exchange for
3 giving that up, we wanted to make sure those
4 features, specifically the burden of proof, would be
5 maintained in any subsequent Schedule 48 review.

6 It's possible this will never happen, such
7 a docket will never need to be opened, but if it is,
8 we can use this language and say, for parties to

9 argue to you the burden on this issue is with this
10 party, because that's what it would have been in that
11 docket.

12 CHAIRWOMAN SHOWALTER: All right. And
13 supposing someone brought a complaint under Schedule
14 48, saying I'm being mistreated under Schedule 48.
15 Does the Complainant bear the burden of proof or does
16 Puget bear the burden of proof if that was the burden
17 of proof on the prior event?

18 MR. TROTTER: I think you'd have to -- I'll
19 go first, I guess. I think you'd have to go to see
20 what the issue is in the proceeding that's filed and
21 see if that same issue --

22 CHAIRWOMAN SHOWALTER: Could properly have
23 been raised.

24 MR. TROTTER: Could have been raised, yeah.

25 CHAIRWOMAN SHOWALTER: All right. I see

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1 that.

2 MR. TROTTER: That could be a very
3 substantial burden on the plaintiff to try to shift
4 its burden.

5 CHAIRWOMAN SHOWALTER: That was my
6 question.

7 MR. BERMAN: I concur with Mr. Trotter's
8 analysis of this. It was a way of addressing the
9 fact that we wanted to close that docket while not
10 prejudicing rights that may exist, and I think it
11 addresses those concerns.

12 CHAIRWOMAN SHOWALTER: All right.

13 JUDGE MOSS: While we're on this page, I
14 had a question in an earlier paragraph, 15.1. As
15 look toward the prospects of future employment, I'm
16 wondering about the parenthetical phrase there about
17 four lines up, it's line seven, what is being
18 contemplated there. It may be nothing specific, but
19 --

20 COMMISSIONER HEMSTAD: Where are you?

21 CHAIRWOMAN SHOWALTER: Where are you?

22 JUDGE MOSS: I'm on page 43, at line seven.

23 MR. TROTTER: What is anticipated here --

24 this is under the section for cancellation of
25 Schedule 48 special contracts. What was anticipated

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1 here deals with the customers -- yeah, if you look on
2 page 42, starting at line 22, any Schedule 48
3 customer that is not a small customer or a large
4 customer, so this would be King County and the IDCs
5 -- because the City of Anacortes and the Pipeline
6 are removed -- who remains on Schedule 48 until it
7 terminates. So those are the customers that really
8 could invoke this.

9 The idea is what would happen then. Well,
10 one, under Schedule 48 itself, there would be a
11 payment -- incremental cost payment under that
12 tariff, prior to returning to an applicable core
13 service. Another thing that could happen would be

14 for there to be another price stability contract
15 filed.

16 And the language in the parenthetical is
17 after the phrase that no such agreement may provide
18 for a return to core service, so that issue would
19 have to be addressed in a proper proceeding. So I
20 think what we had contemplated was a customer that
21 would have been on Schedule 48, and then it
22 terminates, they can't have another contract. But
23 they can't get back to core at the end of that terms
24 of that contract. They'd have to tee up a
25 proceeding, petition the Commission or something to

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1 enable them to do that. So it's a limited scope
2 provision, and that's the situation it was intended
3 to address.

4 JUDGE MOSS: So it doesn't necessarily
5 preclude the return to core service, but it just, as
6 a matter of contract, it forecloses that. It's
7 something the Commission would have to order.

8 MR. TROTTER: Yes.

9 JUDGE MOSS: That was where I was confused.
10 I wasn't sure. Thank you very much.

11 MR. BERMAN: I would again characterize it
12 as saying that folks who -- if there's someone who's
13 not within this rubric and if there's something they
14 could have sought before, they could keep trying to
15 seek it. It doesn't decide whether they're entitled
16 to get it, but they can keep trying to seek it.

17 CHAIRWOMAN SHOWALTER: Okay. My next
18 question comes at the small customer special
19 contract. And I'm looking at page two, and first of
20 all, this is just references, but it says in the
21 first paragraph there, unless and until customer
22 becomes a core customer, as provided in Sections 7
23 and 11 -- just a note. I think it's Section 10. And
24 it shows up later, but you might just check your
25 section references before executing one of the

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1 contracts.

2 But my question on this page is in the next
3 section, 3.2. I'm just trying to understand what it
4 does. It seems to me that it's allowing the sharing
5 of either the profit or the cost from either the
6 surplus or the deficit of self-generation. Am I
7 right on that, someone?

8 MR. BERMAN: Yes.

9 CHAIRWOMAN SHOWALTER: Okay. And does this
10 mean -- is there any obligation of these customers to
11 limit themselves to a load about equal to --
12 generating a load about equal to their own. If you
13 were self-generating three times as much as you need,
14 then is that just fine and the rest is surplus and
15 it's shared, the profit is shared with PSE?

16 MS. DAVISON: Yes.

17 CHAIRWOMAN SHOWALTER: So there are no
18 restrictions on the amount of self-generation that

19 one of these small customers can do?

20 MS. DAVISON: No.

21 MR. BERMAN: Your Honor, I would just note
22 that I can't think of any restrictions in here. It's
23 always the case for self-generation that any such
24 deal has to comport with whatever applicable or
25 regulatory and other environmental, statutory, other

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1 requirements that apply, and so some of my hesitancy
2 in responding was because I was trying to think
3 through what are those other requirements, and I'm
4 not sure what they are, but they would have to be
5 complied with.

6 CHAIRWOMAN SHOWALTER: But assuming they're
7 complied with, whatever they are, I'm reading this as
8 PSE has a standing offer to take and share the
9 proceeds of the excess generation of a small
10 customer.

11 MR. BERMAN: During the period of the small
12 customer's special contract. I think that this
13 arrangement is not an arrangement -- at some point,
14 these customers will either make an election or be
15 forced onto 448 or 449 or they'll transition to core
16 status, so this is -- in this temporary holding
17 place, that's the situation.

18 CHAIRWOMAN SHOWALTER: All right.

19 JUDGE MOSS: Before we move further into
20 this, there's one other subject. Page one of the
21 small customer special contract. This is probably in
22 the category of a nit, but I just wanted to tie it
23 up, if it is. In the last sentence there, under the
24 term provision, I noticed that the next general rate
25 case is considered completed when the Commission has

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1 -- we would say entered, I think, rather than issued,
2 but entered a final order to change its rates of
3 general applicability. I just made a note to myself,
4 and such order no longer is subject to judicial
5 review, or do the parties really intend that the
6 finality will be at the entry of the order, despite
7 the availability of the opportunity for further
8 process?

9 It's a small point, but I just want to make
10 sure the parties have done what they intended to do
11 here.

12 MS. DAVISON: That is an issue that we
13 discussed. And the answer of the intent is the
14 former, rather than the latter. So we actually do
15 have it written --

16 JUDGE MOSS: The way you want it.

17 MS. DAVISON: -- the way we want it. But
18 we do appreciate the more accurate language of
19 entered.

20 JUDGE MOSS: Again, a small point, but the
21 other point was really the focus of my question,
22 yeah.

23 COMMISSIONER HEMSTAD: Well, let's pursue

24 that a bit. Doesn't that present some problems on
25 appeal if there is a reversal or modification of an
0088

1 order that would affect the content that's in this
2 contract form?

3 MS. DAVISON: That doesn't come into play
4 with regard to this section, because it's merely a
5 timing triggering device.

6 CHAIRWOMAN SHOWALTER: My next question is
7 on page three of the small customer special contract.
8 About two-thirds of the way down, in paragraph four,
9 there's reference to the customer's noncoincident
10 aggregated peak. I just don't know what that term
11 means. What does noncoincident aggregated peak mean?

12 MR. BERMAN: Your Honor, the use of the
13 term noncoincident was -- sometimes when people refer
14 to the peak usage, they're referring -- there's a
15 question whether it's the customer's peak or is it
16 the peak that occurred at the time of the -- or was
17 it what their usage was at the time of the system
18 peak, and noncoincident peak means it doesn't matter
19 when the system peaked, it's whatever their peak was.

20 CHAIRWOMAN SHOWALTER: Okay.

21 MR. BERMAN: Whenever that may have
22 occurred.

23 CHAIRWOMAN SHOWALTER: Your personal peak.

24 MR. BERMAN: Your personal peak. And
25 aggregated is intended to indicate just that,

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1 aggregated. Several of these customers have a number
2 of locations, and this is intended to look at, in
3 evaluating whether someone is larger or small, it was
4 looking at the customer as a whole, not at particular
5 individual locations.

6 MS. DAVISON: Although I do need to clarify
7 that with regard to one of the small customers. They
8 have load that is not Schedule 48 load, and that is
9 not included in this aggregate.

10 CHAIRWOMAN SHOWALTER: Okay. My next
11 question is on page four of the small customer
12 special contract. In paragraph seven, again, you've
13 got a reference to Section 11, and I think it means
14 Section 10. Let's see.

15 MR. BERMAN: Just for explanation, I
16 believe that where it says termination of Schedule 48
17 service agreement in the middle of paragraph seven,
18 that was supposed to be a new paragraph.

19 CHAIRWOMAN SHOWALTER: Right.

20 MR. BERMAN: So the numbering was correct,
21 the section references were correct, but we lost a
22 return --

23 CHAIRWOMAN SHOWALTER: That's the problem.

24 MR. BERMAN: -- in the document.

25 CHAIRWOMAN SHOWALTER: So that's supposed

0090
1 to be Section 8 there.

2 MR. BERMAN: Yes.

3 CHAIRWOMAN SHOWALTER: And that's the
4 source of the problem.

5 MR. BERMAN: Yes.

6 CHAIRWOMAN SHOWALTER: Well, all right. I
7 have a question here. It's hard to remember what my
8 question was. It is in that termination of Schedule
9 48 service agreement. Well, all I can tell you, I
10 have circled the words "including power delivery,"
11 and say explain how this happens, so I'm wondering
12 what my question is.

13 MR. BERMAN: The notion here was simply
14 that once 48 ends, we end 48, but if there's still
15 some bills outstanding, that everyone deals with
16 those outstanding bills. It's just dealing with a
17 little transition issue.

18 CHAIRWOMAN SHOWALTER: Okay. I think I get
19 that. All right.

20 MR. BERMAN: And I would note that there
21 may be certain agreements related to specific
22 customer facilities and the like that complexify that
23 a little bit, if there's a leased facility or some
24 other customer-specific aspect of the arrangement.

25 CHAIRWOMAN SHOWALTER: All right. Then on
0091

1 page five, this is just another one of those section
2 references, which now I'm sure that some word
3 processor will fix, but in 8.7, there's a reference
4 to this Section 9, which I think it means this
5 Section 8. Or it's this section that they're in; is
6 that right?

7 MR. BERMAN: It is, and once we fix that
8 return that got lost, this will be Section 9 again.

9 CHAIRWOMAN SHOWALTER: Okay, all right.
10 And then page six has a couple of the same problems.
11 I don't need to raise those again. Unless you really
12 want a nit, and it's on page six, in paragraph 10,
13 the first line. You need a space between then and
14 on.

15 JUDGE MOSS: Since we're getting into this
16 fine level, a problem also occurs five lines up in
17 the preceding paragraph between become and a.

18 MR. BERMAN: Your Honor, as a --

19 CHAIRWOMAN SHOWALTER: We just want to show
20 you we read these things.

21 MS. DAVISON: We're impressed.

22 MR. BERMAN: As a procedural matter, it's,
23 in fact, correct that we intend to have executed
24 copies of these documents with all the details for
25 each customer, the customer-specific information, and
0092

1 submit those to you shortly. And so I'm thinking
2 we'd correct those issues in those documents --

3 CHAIRWOMAN SHOWALTER: Right.

4 MR. BERMAN: -- to address the matter.

5 CHAIRWOMAN SHOWALTER: This doesn't get at
6 whether we approve or don't approve the package.

7 JUDGE MOSS: Right.

8 CHAIRWOMAN SHOWALTER: Okay. On page
9 seven, on 13.1, metering, there will be meters
10 capable of measuring on a 15 or 30-minute integrated
11 basis. Is it either one or both? Is there any
12 intention here to bind anybody one way or the other?
13 Either one will do?

14 MR. BERMAN: I believe the intention was to
15 recognize that either would do.

16 CHAIRWOMAN SHOWALTER: Okay, all right.
17 Well, all right. My next question is Schedule 448,
18 and it's on 2.9 there. I'm sorry, yeah, it's --
19 these don't have page numbers.

20 JUDGE MOSS: The page numbers are in the
21 upper right, C, D, E, and so forth, tariff sheet
22 numbers.

23 CHAIRWOMAN SHOWALTER: Sheet number C.
24 Anyway, it says the charges to customer for supplied
25 power will be grossed up for applicable taxes. I'm

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1 just wondering if someone can explain what that
2 means. Maybe Mr. Trotter.

3 MR. TROTTER: Well, my understanding was
4 that under 448 -- well, if there were any applicable
5 taxes associated with the sale, that those would be
6 passed on to the customer.

7 MR. BERMAN: Your Honor, my explanation
8 would be that, in general, what happens with the
9 power under 448 is that Puget Sound Energy acts as a
10 pass-through. That is, the company buys from some
11 third party, resells it to the customer, and just
12 passes through the charges. And so, generally
13 speaking, there's no extra dollars involved, but
14 because I think everyone agrees that there is a
15 taxable event when the company resells that power to
16 the customer, we needed to be clear that there would
17 be some extra dollars added on to cover the taxes in
18 this instance.

19 CHAIRWOMAN SHOWALTER: Okay, all right.
20 Then the next question is two pages later, page --
21 no, it's, I guess, one page later, it's D, and it's
22 3.1. And it makes a reference to specifying the
23 nameplate rating. What is the nameplate rating?

24 MR. BERMAN: In general, the nameplate
25 rating is the -- I guess the official rating of a

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1 generating unit that's specified on the generating
2 unit on its nameplate. Sometimes a generating unit
3 may be operated at less or potentially more,
4 depending on the circumstances.

5 MR. BUCKLEY: It's typically at a capacity
6 at ambient temperatures and pressures.

7 CHAIRWOMAN SHOWALTER: All right. The next
8 question is page F, it's 6.1, estimated loads. This
9 appears to be an obligation of the customer to
10 provide an estimate to the company of its load.
11 There isn't any advance notice required. Does this
12 provide any problem to the company if a customer

13 should suddenly raise or lower its load?

14 MR. BERMAN: Well, one of the purposes of
15 this paragraph is because the company can look at --
16 can ask for an estimate of what's happening for some
17 period of time going out, the company can update
18 itself and get a sense of whether there are any
19 expected variations in load. So it can do its best
20 system planning to make sure that everything is
21 looking okay on an operational way in managing the
22 system, and that's a primary purpose of this, is
23 really operationally, to make sure that the people
24 who run the system know what's going on and can watch
25 out for what's going on and will have a sense of

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1 what's going on.

2 It's in fact the case that there are many
3 types of users of the system who may change their
4 demand in some period of time, and that's one of the
5 things that utilities deal with and usually hope that
6 when someone changes up, that there's someone else
7 who changes down, and that it will balance out.

8 CHAIRWOMAN SHOWALTER: All right. Next
9 question is on page G. 6.3 makes reference to
10 dynamic scheduling. Can you explain what dynamic
11 scheduling is?

12 MR. BERMAN: Your Honor, the basic notion
13 is that, generally speaking, the way a customer would
14 be served in the Puget Sound Energy area is that
15 Puget Sound Energy is responsible to the various
16 authorities for watching out and making sure that all
17 the loads and generation match within their area.
18 But by setting up a metering and telemetry equipment
19 so that a particular load has its needs wired to some
20 other utility, it may be possible to make it so that
21 some other utility is the utility that really watches
22 out for that load, makes sure that everything's
23 always in balance, and that generally looks out for
24 that load.

25 And so in theory, it could be that that

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1 other utility would be the one who raises and lowers
2 its generation automatically with variations in the
3 load, rather than Puget Sound Energy being the entity
4 that raises its generation automatically in response
5 to variations in the load.

6 CHAIRWOMAN SHOWALTER: Okay.

7 JUDGE MOSS: Let me just interrupt here for
8 half a second. While I find counsel's technical
9 expertise quite impressive, we do have Mr. William
10 Gaines sitting there, who's been nodding in the
11 affirmative, and I suppose is going to give you an A
12 at the end of the day. But I think some of this
13 technical perhaps would be better from the witness in
14 terms of our record, so that we do have it as
15 evidence.

16 CHAIRWOMAN SHOWALTER: Good point.

17 JUDGE MOSS: So Mr. Gaines, now I won't ask

18 you to repeat all that, assuming you agree with it,
19 but I will ask you if your counsel has been
20 adequately educated in these technical matters and
21 has done a great job of discourse here?

22 MR. WILLIAM GAINES: Well, I'm going to
23 paste a gold star to his forehead, because I think
24 he's done a fine job so far. But I'll be happy to
25 respond if you prefer it that way.

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1 JUDGE MOSS: I think that would be better
2 for our records.

3 CHAIRWOMAN SHOWALTER: My next question is
4 on page G. Oh, it's the same page, 7.1. The second
5 sentence says that the metering equipment will be
6 furnished and owned by the company, but the last
7 sentence says the customer may install a meter or
8 metering equipment at its own expense. Is that
9 intended to be instead of the company meter, or it's
10 a second meter for reading purposes to satisfy the
11 customer?

12 MR. WILLIAM GAINES: I think it's the
13 latter.

14 MS. DAVISON: Right.

15 CHAIRWOMAN SHOWALTER: Okay. Next
16 question's on page K. Above Section 9.2, there's a
17 little table about DSM charges. And this may or may
18 not be a relevant question, but if the law changes on
19 conservation requirements of a utility, would this
20 change accordingly, this obligation, or is this a
21 contractual obligation that is set between the
22 company and the customer and would not be subject to
23 alteration?

24 MR. BUCKLEY: I think if you look at the
25 subnote D below, it anticipates that there could be

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1 changes.

2 CHAIRWOMAN SHOWALTER: Ah, okay. So there
3 is an acknowledgement that this could change.

4 MR. BUCKLEY: Yes.

5 CHAIRWOMAN SHOWALTER: Thank you. All
6 right. My next question is the next page, 12.1, and
7 there's a term of five years that will then be
8 renewed for a minimum of five years after the initial
9 term, so long as customer remains attached to the
10 company's transmission or distribution system.

11 So my question is does this mean these
12 terms necessarily go in only five-year increments?
13 That is, if somebody wants to get off in the sixth
14 year, they can't do it? You sign up for five years
15 and then you must sign up for another five years.

16 MR. BUCKLEY: I think it was structured so
17 you could sign up -- the minimum was five years, and
18 you could sign up for more than that.

19 MR. CAMERON: You can terminate within a
20 term in the event self-generation is constructed.

21 CHAIRWOMAN SHOWALTER: But that's the only
22 reason you could terminate. Probably the only

23 reason.

24 MR. CAMERON: I believe that's right. Yes,
25 ma'am.

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1 MR. BUCKLEY: And our assumption under even
2 that scenario was then you'd be taking service under
3 one of the other tariffs that Puget would have
4 regarding backup service or ancillary services or
5 items like that, too.

6 CHAIRWOMAN SHOWALTER: But you would not
7 have the option -- the customer would not have the
8 option to say hook up with some other utility.

9 MR. BERMAN: The intention was to provide a
10 period of certainty for planning and other reasons
11 during a term, and then, because there are disputes
12 between parties as to what rights may be in general
13 under the law, it provides that parties can fight all
14 they please at the end of a term about such
15 alternative arrangements that might be set up.

16 And if someone wants to set up, as they
17 were saying, an initial six-year term or an initial
18 ten-year term, that can be arranged, as well. And
19 likewise, for follow-up terms, if it makes sense to
20 work with their power supply arrangements or for
21 other reasons to enter into a longer term follow-up
22 term, the customer can say I want a longer term
23 follow-up term, and that will be put in place.

24 CHAIRWOMAN SHOWALTER: All right. And
25 then, just below that, in 12.1.1, third line down,

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1 should there be a colon between company and metering?
2 And is the rest of that phrase beginning with
3 metering actually supposed to be a little separate
4 condition that's being followed, or is that -- I'm
5 having trouble reading the sentence, I guess.

6 MR. BERMAN: I believe that your edit is
7 correct.

8 CHAIRWOMAN SHOWALTER: Okay. I don't have
9 very many more. I have three more. And my next
10 question is the Schedule 448 service agreement, page
11 two, and I'm at the top of the page, but it's the
12 sentence beginning -- it's the first new sentence on
13 page two. Customer has had an opportunity, et
14 cetera.

15 I realize this is a small ambiguity, but as
16 we have seen, ambiguities with this collection of
17 customers have sometimes meant \$2 million, so
18 customer has had an opportunity to consult its own
19 counsel with experience in energy issues and energy
20 experts. Now, is the customer consulting with two
21 people, counsel and energy experts, or one person,
22 counsel, with experience in energy issues and energy
23 experts?

24 MR. BERMAN: I believe the intention was to
25 say that they had consulted with, one, counsel with

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1 experience in energy issues, and two, energy experts.

2 So they're consulting with two people.

3 CHAIRWOMAN SHOWALTER: Two people, okay.
4 Just as a suggestion, if I were to rewrite that, I
5 would put the end clause at the beginning and say, In
6 its evaluation of the risks associated with making
7 service under Schedule 48, customer has had an
8 opportunity, which it has exercised, to consult with
9 its own counsel with experience in energy issues and
10 to consult with energy experts.

11 This sounds like a nit, but actually, I
12 think it's very relevant that customers do consult
13 with both legal counsel and energy experts and that
14 they be required to say that they have done so.

15 MR. BERMAN: We agree, and we think that's
16 consistent with what we intended.

17 CHAIRWOMAN SHOWALTER: Okay. All right.
18 This sounds like another nit, but you've got the same
19 phrase written different ways. On page four of the
20 Schedule 448 service agreement, under 12, there's a
21 requirement for a separate prior written agreement.
22 And I take it it means that it's separate and prior
23 and written, in which case I'd put a comma after that
24 prior. And the reason I'm raising this is that over
25 in another tariff, 449, 3.1, you've got prior hyphen

0102

1 written. In other words, it's a separate agreement
2 that's prior written, but I don't think -- I think
3 the hyphen is wrong. You mean that the whole
4 agreement occurred prior to whatever condition we're
5 discussing. Am I right on that?

6 MR. BERMAN: Yes.

7 CHAIRWOMAN SHOWALTER: So I'd just suggest
8 here you put a comma after prior, and then over in
9 this -- in 3.1 -- in Schedule 449 of 3.1, do the
10 same, namely, take out that hyphen and put in a
11 prior, and that way it's clear. I realize these
12 things are small, but we have gotten hung up with big
13 bucks over smaller things. All right. That's the
14 last question I have. Thanks.

15 MR. BYERS: I'd like to take us all the way
16 back to page nine of the stipulation. At line nine,
17 there's reference made to ten megawatts. Line ten,
18 there's reference made to 2.4 average megawatts. In
19 both cases, these are measurements of historic and
20 projected load. Is the ten-megawatt number correct
21 or should it say average megawatts?

22 MR. BERMAN: It's correct.

23 MR. BYERS: Should there be a different
24 term, historic and projected loads, then? In other
25 words, I'm concerned about an ambiguity here. I

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1 mean, are we talking about loads or are we talking
2 about energy?

3 MR. BUCKLEY: You could replace loads with
4 demand, and that may accurately reflect the intent.

5 MR. BERMAN: I agree with that, that demand
6 would be an appropriate word to replace loads. I

7 would also --
8 MR. BUCKLEY: Well, only before the
9 ten-megawatt number.
10 MR. BERMAN: Yes.
11 MR. BYERS: Right.
12 MR. BERMAN: I would also note that to
13 clarify and be sure that there was no dispute about
14 who fit within what set of terms, we then spelled out
15 further in that definition exactly which customers
16 fit within each of those categories.
17 MR. BYERS: Well, that may actually
18 anticipate my second and last question, which brings
19 us back to page seven of the stipulation. On line
20 20, then, the ten-megawatt number is correct. In
21 other words, the intent was to refer to demand here?
22 MR. BERMAN: Yes.
23 MR. BYERS: Okay. Thank you.
24 JUDGE MOSS: All right. That would appear
25 to complete our line-by-line, and I'm anticipating

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1 that at some point the parties are going to submit a
2 clean set of documents with some of these matters
3 we've discussed corrected.
4 MR. BERMAN: Yes.
5 JUDGE MOSS: And we can simply, since these
6 do not contemplate, I don't believe, anything in the
7 way of a material change to what was filed and has
8 been considered, then that can simply become a
9 substitute Exhibit 1801. To the extent I neglected
10 to do so previously, I did want to admit 1804-C and
11 1805-C. I may have done that, but I may have
12 overlooked it, so -- I don't believe there's any
13 objection. Those will be admitted as marked.
14 Before I turn to Mr. Woodworth and ask
15 further about the status of matters with King County,
16 I'd just ask if there is anything else in connection
17 with the details of the various documents that have
18 been submitted that a party would wish to bring to
19 the attention of the bench and make part of the
20 record?
21 CHAIRWOMAN SHOWALTER: Actually, I have one
22 more detail. Just one of those other phrases, prior
23 written agreement, on Schedule 449 service agreement,
24 page three. So you'll want to correct that one, too.
25 JUDGE MOSS: Okay. Then, if there's

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1 nothing further from the bench or the parties on the
2 particulars of the documentation, it is the lunch
3 hour and we can maybe wrap this thing up if we press
4 ahead a little bit, but let's find out what the
5 status of things is with King County and see what we
6 might need to do in terms of planning for the
7 afternoon. Mr. Berman is leaning toward the mike.
8 Mr. Woodworth is also available to speak.
9 MR. BERMAN: Your Honor, what I would
10 suggest is that, unless it's been wrapped up in the
11 halls while we've been talking, I think we have not

12 wrapped up the issues. I could profitably use a
13 break to see if we can wrap up the issues relating to
14 King County during that break.

15 JUDGE MOSS: I think that is a good
16 suggestion. Mr. Woodworth, do you concur that this
17 would be worthwhile to take a break for lunch and
18 maybe give you all a chance to talk a little further?

19 MR. WOODWORTH: Yes, Your Honor. Actually,
20 I apologize for having missed an earlier inquiry. I
21 was trying to communicate some of the recent
22 developments in our discussions. I would note that
23 there are a variety of approaches being offered, and
24 it is not clear to me what direction this will take.
25 Once again, I would reserve my right to make an

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1 opening statement.

2 JUDGE MOSS: There was some prediction that
3 it might turn into the closing statement, but we
4 certainly are not going to foreclose your rights at
5 any point in time, and we also understand your need
6 to be out of the room at various points in time as
7 this has gone forward. So there's no problem in that
8 regard, as well. We just want to make sure we have
9 the fullest opportunity to get everything resolved in
10 whatever fashion it is ultimately resolved or not.

11 And so we'll -- Ms. Davison has something
12 to say before we go off the record, but we will take
13 a luncheon recess here in a few minutes and then
14 we'll come back after that and we'll be able to wrap
15 some things up. We were also anticipating, I think,
16 Mr. Cunningham and Mr. Crawford were on their way at
17 one point or another. We would perhaps want to hear
18 briefly from them, tying back to some of the things
19 we did earlier today, to take care of those pieces of
20 the record, as well. So Ms. Davison, is there
21 something else?

22 MS. DAVISON: With regard to Mr. Cunningham
23 and Mr. Crawford, I was afraid that we may actually
24 wrap up before they physically arrived, so I would
25 offer to submit an affidavit for the two of them, so

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1 I actually called them and said --

2 JUDGE MOSS: All right.

3 MS. DAVISON: -- I'm not sure we're still
4 going to be here by the time you arrive, so I'd be
5 happy to submit a written affidavit detailing the
6 situation that I generally talked about, and they can
7 provide more specific detail.

8 My other request is, since we are taking a
9 lunch break and it looks like we just have the one
10 matter to wrap up, is whether or not we can excuse
11 our witnesses.

12 CHAIRWOMAN SHOWALTER: Okay by me.

13 JUDGE MOSS: All right. The bench seems to
14 be in agreement that it would be all right to release
15 the witnesses and allow them to get back to their
16 main lines of productive activities, so the witnesses

17 are released. And we'll resume with counsel, at
18 least, after the luncheon recess. How long would you
19 prefer for lunch? Why don't -- is there anything
20 else before we break?

21 MS. DAVISON: Yes, Your Honor. Mr. Summers
22 wanted to make one clarifying remark regarding his
23 testimony.

24 JUDGE MOSS: All right.

25 MR. SUMMERS: After I had the chance to

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1 look at Exhibits 1804-C and 1805-C, I realized that I
2 had, in my testimony, I had given the Commission tax
3 rates that I was reading as combined state and local,
4 and instead they were only the local element. Now,
5 the Exhibit 1805-C makes clear what the municipal and
6 state tax is for each jurisdiction.

7 JUDGE MOSS: All right. We appreciate that
8 clarifying testimony. All right. Well, we'll take a
9 recess, then, until 1:30, and when we come back,
10 we'll take up the question of King County and perhaps
11 one or two other matters that we can handle while we
12 remain on the bench. And as I've previously
13 indicated, of course, we're going to leave the record
14 open for a period of time to consider supplemental
15 exhibits. So let's be in recess until 1:30.

16 (Lunch recess taken.)

17 JUDGE MOSS: Let's go back on the record.
18 We've had a recess this afternoon to permit the
19 parties an opportunity to continue to work on the
20 issues, the many issues that King County may have,
21 and so I would just turn to the parties, Mr.
22 Woodworth, and ask if you would care to report.

23 MR. WOODWORTH: Yes, Judge Moss, Chairwoman
24 Showalter and Commissioner Hemstad. I appreciate the
25 opportunity to appear before you today and yesterday

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1 and to participate in the Commission's approval -- or
2 consideration of the approval of this stipulation of
3 agreement.

4 Unfortunately, King County has yet to find
5 a workable remedy under the stipulation for the high
6 cost that it is experiencing under Schedule 48. The
7 county, however, continues its discussion with Puget
8 in hopes that a solution will soon be found.

9 For the reasons that were set out in our
10 response to the stipulation of settlement, the
11 response which was filed Monday, the county is unable
12 at this time to join in the settlement agreement and
13 at the same time wants to act to preserve its rights
14 to relief from the unfair rates that it is being
15 charged.

16 The county, however, does not wish to stand
17 in the way of the settlement agreement that the other
18 parties have negotiated. King County has been asked
19 by the other parties to withdraw its intervention in
20 this docket and to allow the settlement agreement to
21 go forward.

22 The county is willing to do this on
23 condition that the Commission states in its order, if
24 it approves the stipulation, that King County is not
25 bound by the stipulation of settlement; that the

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1 Commission states in its order that nothing herein
2 shall preclude King County from electing service
3 under Schedules 448 or 449 by October 31st, 2001;
4 and finally, that the Commission states in its order
5 that King County retains its right to file its own
6 complaint against Schedule 48. Thank you,
7 Commissioners.

8 JUDGE MOSS: Any other counsel wish to
9 comment on this before we see if there is inquiry
10 from the bench? Ms. Davison.

11 MS. DAVISON: Thank you, Your Honor. There
12 are a couple of provisions in the stipulation that I
13 wanted to bring to your attention. If you look at
14 page 38, 12.2, this provision is included in the
15 stipulation largely at the urging of King County.

16 While it's a very large paragraph, in
17 essence, this paragraph states that King County has
18 the option of being a large customer and going under
19 448 or 449, or they can deal with their peak issues
20 and go on to the small customer arrangement, or the
21 last sentence says that if they choose not to be a
22 small customer or a large customer, then they will
23 remain on Schedule 48.

24 It was our view that that provision laid
25 out the range of possibilities of what would be

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1 available to King County. And with that in mind, my
2 clients agreed to provision 6.7 on page 12, which in
3 essence says that any Schedule 48 customers who are
4 not parties to the stipulation, if they receive some
5 different rates or rate schedules, then, in essence,
6 we will not complain about that.

7 We agreed to that provision because it was
8 our understanding that the universe of entities other
9 than the Internet data centers had been dealt with in
10 the stipulation. So it is our view that this
11 provision still applies if it turns out that King
12 County ends up with one of the three options laid out
13 in 12.2. However, if a fourth option develops for
14 King County, then it is our view that provision 6.7
15 does not apply.

16 COMMISSIONER HEMSTAD: Sorry. Would you
17 say that again? What is the circumstance under which
18 it would be your position that 6.7 does not apply?

19 MS. DAVISON: If King County ends up with
20 an option that is not one of the three options set
21 forth in 12.2, but a fourth option is developed
22 specially for King County, then I believe my clients
23 still have the ability to look at the issue and make
24 a determination about discrimination issues.

25 JUDGE MOSS: And you would presumably raise

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1 those issues in a proceeding that would involve the
2 Commission's consideration of a new tariff that would
3 serve King County and perhaps be available to other
4 customers, as well. So in that sense, it would not
5 hamper forward movement with regard to the current
6 stipulation as proposed.

7 MS. DAVISON: That's correct, Your Honor.

8 COMMISSIONER HEMSTAD: Well, I assume all
9 of the other parties would have to agree to that.
10 That's not your unilateral ability to amend the
11 settlement agreement.

12 CHAIRWOMAN SHOWALTER: No, I think she's
13 saying that, in her view, the settlement agreement
14 does not preclude her from intervening or arguing --

15 COMMISSIONER HEMSTAD: I see.

16 CHAIRWOMAN SHOWALTER: -- in such a
17 proceeding, because it's outside the scope of the
18 settlement.

19 COMMISSIONER HEMSTAD: I see.

20 MS. DAVISON: That's precisely right, Madam
21 Chair, but I wanted to make it clear on the record
22 the context upon which we were making that agreement,
23 so if an issue should come up in the future, at least
24 we have stated our position of our interpretation of
25 that provision in the context of 12.2.

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1 JUDGE MOSS: I wish I had this thing
2 memorized, but I don't. Does that leave you in the
3 same position and others in the same position with
4 respect to the prospective filing of Schedule 45?
5 Are you all permitted to intervene, participate in
6 that proceeding as a party?

7 MS. DAVISON: We recognize that Schedule 45
8 customers will be dealt with differently, and we have
9 agreed that these complainants will not claim that
10 they're entitled to Schedule 45.

11 CHAIRWOMAN SHOWALTER: The complainants in
12 this proceeding.

13 MS. DAVISON: The complainants in this
14 proceeding. The parties -- the signatories to the
15 stipulation.

16 JUDGE MOSS: So they would not be
17 intervening in that proceeding for the purpose of
18 advancing an argument that it is unduly preferential
19 or creates discrimination?

20 MS. DAVISON: That's correct, Your Honor.

21 JUDGE MOSS: Okay. But you would reserve
22 that right with respect to any rate schedule that's
23 filed that's outside the contemplation of this
24 stipulation that's before the Commission now, such as
25 one that might be crafted to satisfy King County?

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1 MS. DAVISON: That's correct, Your Honor.
2 I think the universe of parties has been dealt with
3 in the stipulation, with the exception of King County
4 now, based on the statement you heard earlier from
5 Mr. Woodworth.

6 JUDGE MOSS: Okay. Any other counsel wish
7 to comment on this? We may have some more questions
8 from the bench.

9 MR. BERMAN: I would just clarify that
10 there is a signature block on the stipulation for
11 King County, and the stipulation states that King
12 County is one of the parties to the stipulation.
13 Obviously, they're not signing and they're not one of
14 the parties, and instead they're withdrawing from the
15 proceeding, and so we're in a slightly different
16 place than the stipulation suggested there.

17 It's Puget Sound Energy's intention to
18 comply with the stipulation and honor its obligations
19 to the other parties, but as counsel for King County
20 provided, King County is not going to be a part of it
21 now, and so as it relates to them, those terms that
22 bound King County don't bind King County now.

23 COMMISSIONER HEMSTAD: I take it that means
24 that Section 12.2 will be deleted or will be stricken
25 from the settlement agreement, which pertains only to

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1 King County.

2 MR. BERMAN: I guess the way I would prefer
3 to frame that is that -- to say that we've agreed now
4 that -- we've agreed with the other parties that
5 that's an appropriate way to treat King County, and
6 though I don't think King County has rights under the
7 stipulation, I think the fact that we've agreed with
8 other parties that that's a way to treat King County,
9 and not some other way, is a relevant consideration.

10 I wouldn't propose deleting that section
11 right now. I think that there should just be an
12 understanding that they're not signing, so to the
13 extent they appear to have been given rights under
14 the stipulation, that they don't get those rights
15 since they're not signing.

16 COMMISSIONER HEMSTAD: Well, so I can
17 understand this, I asked Mr. Woodworth, by not being
18 a party to the stipulation, you're put in the
19 position of any other Schedule 48 customer. As you
20 said, you reserved the right to file your own
21 complaint against the company. Spell out for me what
22 that does differently than what 12.2 would do.

23 MR. WOODWORTH: Mr. Commissioner, that's a
24 difficult question for me to answer. In my view, the
25 stipulation speaks for itself, and King County's

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1 decision not to sign the stipulation at this time is
2 not due to the provisions of 12.2. It is in fact due
3 to other provisions that are difficult, and I believe
4 that our response has outlined the problems that we
5 have with other provisions in the stipulation.

6 CHAIRWOMAN SHOWALTER: I'm a little
7 unclear. If we approve this settlement, including
8 12.2, and yet King County does not sign it, are we
9 approving the alternatives that are for King County
10 that are in 12.2 and making them available?

11 MS. DAVISON: Yes.

12 CHAIRWOMAN SHOWALTER: Is that your
13 impression, too, Mr. Berman?

14 MR. BERMAN: If you're saying can King
15 County, without signing the stipulation, walk up and
16 take advantage of the options in 12.2, my answer
17 would be no. I think that what you would be doing
18 would be approving that as a way of proceeding, but
19 only if King County were to sign on to the
20 stipulation.

21 CHAIRWOMAN SHOWALTER: Well, my confusion
22 is that the words say what the words say, and this
23 Commission would be approving them. Should it be
24 modified to say that the parties who are signatories
25 to the settlement agree that this is an appropriate
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1 way for King County to be treated at some future
2 date? I mean, if we approve these words, we do.

3 MR. BERMAN: I think that that's consistent
4 with what we're coming to. As I said, things are
5 different in that there was a signature block for
6 King County and it contemplated that they were a
7 party. They're not, and I would say that now the
8 agreement is that -- the agreement of the parties is
9 that this would be an appropriate way to treat King
10 County if they were part of the deal.

11 CHAIRWOMAN SHOWALTER: Okay. Then that
12 changes the effect of our approval, but if that's the
13 effect that we're approving -- if we approve a large
14 settlement and it includes the words the parties
15 agree this is appropriate for King County, but then I
16 heard King County saying they would withdraw, but on
17 condition that they are to be allowed, I think by
18 this Commission, to join 48 or 49, so --

19 MR. BERMAN: Well, I'll give you my view on
20 that, which is that they did not say that they have
21 the right to enjoy all the benefits of the
22 stipulation. As I've discussed earlier and as others
23 have discussed, Schedule 448 and 449, in their
24 eligibility criteria for those tariffs, have an
25 eligibility criteria that doesn't say signatory to
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1 the settlement. The eligibility criteria for those
2 two tariffs was drawn in a way that we thought was a
3 sensible nondiscriminatory defensible class, and that
4 class of customers was the special contract
5 customers, plus the Schedule 48 customers who had
6 paid transition payments.

7 Because King County is a Schedule 48
8 customer who has paid transition payments, we're
9 frankly concerned that if we were to not allow them
10 to get on 448 or 449, we would be creating a somewhat
11 discriminatory class of eligible customers for 448
12 and 449. And so rather than take that risk, we feel
13 it's appropriate to continue to make 448 and 449
14 available.

15 There are other terms of the stipulation,

16 and it's the other terms of the stipulation that King
17 County is choosing to not be a part of.

18 CHAIRWOMAN SHOWALTER: All right. But if
19 we approve the settlement, meaning we also approve
20 Schedules 448 and 449, and they say what they say,
21 then the day that they're effective, King County
22 could walk up and take service under it.

23 MR. BERMAN: That's right. And of course,
24 if King County walks up and takes service under 448
25 or 449, some of the terms of 448 and 449 include --
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1 I'll call them non-core customer releases. That is,
2 they acknowledge that they're non-core customers and
3 will be for -- and that they will be non-core
4 customers. So if King County decided to step up to
5 that, then they would be putting themselves under the
6 terms of 448 and the 449.

7 And the condition that counsel read to you
8 provided that they could elect that service by
9 October 31, 2001. Of course, after that date,
10 Schedule 48 terminates, and so if they haven't made
11 an election by then, presumably they'll be in some
12 sort of a proceeding that determines what happens at
13 the end of Schedule 48.

14 CHAIRWOMAN SHOWALTER: Okay.

15 COMMISSIONER HEMSTAD: I'd like to hear
16 from Staff.

17 MR. TROTTER: We agree that the eligibility
18 criteria would apply for 448 or 449, and King County
19 qualifies. So if the schedule's approved, they can
20 get on it. In terms of the 12.2 treatment, which is
21 more alternatives than that, that would require them
22 to be an intervenor and a signatory. And so Section
23 12.2 would not be invoked by them, unless at a later
24 date they sign the stipulation.

25 CHAIRWOMAN SHOWALTER: I see.

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1 JUDGE MOSS: So maybe I'm being a little
2 dense here, but there are provisions in 12.2, for
3 example, that say any dispute regarding King County's
4 election to become a small customer shall be subject
5 to the alternative dispute resolution procedures
6 consistent with WAC 480-09-465. And in that
7 connection, I will comment that there are a number of
8 provisions in the tariff and elsewhere that provide
9 for ADR, as opposed to some more traditional
10 approaches to dispute resolution.

11 Is it the intention -- anyone's intention
12 that King County be in some fashion bound here? It
13 seems like we're straddling the fence. They're both
14 in and they're out.

15 MR. BERMAN: The company's intention is
16 that if they -- that King County does not get the
17 rights under 12.2 to elect -- to make the elections
18 in 12.2 if they're not an intervenor in the
19 proceeding and a signatory to the settlement. If at
20 some point they decide they want to become a

21 signatory, the Commission would have to evaluate
22 whether that's appropriate. The parties would have
23 to figure out whether they support or not support
24 that or, you know, how to deal with that situation.
25 But assuming the Commission decided to let

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1 them become a signatory, then they would get the
2 rights that are spelled out in 12.2, and would follow
3 the procedures spelled out there.

4 CHAIRWOMAN SHOWALTER: Is this consistent
5 with the way that the IDC customers have been
6 treated? That is, they aren't signatories to this
7 agreement, either, but there's some stuff about them
8 in here.

9 MR. BERMAN: It is -- in general, it's
10 consistent with that way. That is, with respect to
11 the IDC customers, we state what our intentions are,
12 staff and public counsel state how they feel about
13 those intentions, but the IDC customers are pretty
14 much free to do anything they please.

15 I'd say one difference with King County is
16 that they fall within the eligibility criteria for
17 448 and 449, because they're within that class that
18 we concluded could reasonably -- it reasonably made
19 sense for them to be eligible for 448 and 449, and
20 because of that, even if they're not signatories, we
21 propose that they be qualified to take service under
22 448 or 449.

23 CHAIRWOMAN SHOWALTER: You know, I think
24 one of the problems is as you look at 12.2, you're
25 seeing it as a party, and PSE's free to say something

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1 like, prior to November 1, 2001, King County may
2 alternatively choose to be treated as a small
3 customer. That is, you're saying it's fine by you if
4 that happens at some future date. But when we
5 approve this language, we seem to be saying it's not
6 only fine by us, it's entitled to happen.

7 MR. BERMAN: Your Honor, what I would say
8 is we had discussed a minute ago or two the notion
9 that, really, given the situation that they're not
10 signatories now, that really a way to frame this
11 instead would be rather than saying that King County
12 is entitled to do X, it would be to say something
13 like if King County becomes a party to the settlement
14 --

15 MR. CAMERON: Yes.

16 MR. BERMAN: -- they would be entitled to
17 do X. And I think that all of the parties sitting
18 around the table would agree to that revision of the
19 stipulation to clarify that point.

20 CHAIRWOMAN SHOWALTER: All right. It might
21 be good to get that revision in, we can include it in
22 our order, but you might as well -- if you could just
23 have a little sentence at the beginning of 12.2, this
24 applies if King County becomes a signatory, or
25 something like that, or we could do it in an order.

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1 MS. DAVISON: The difficulty -- I just
2 realized another problem with the language in the
3 stipulation, is that the stipulation contemplated
4 that King County would be a party to the stipulation,
5 and it's written in that manner. I think as you're
6 noting, it's quite unusual to have provisions related
7 to someone who's not part of the stipulation. It
8 makes sense with regard to the data centers for some
9 logical reasons, but they're not bound to anything.

10 But one problem I see right off the bat is
11 on Section 4.1. It says that King County is a party
12 to the stipulation.

13 CHAIRWOMAN SHOWALTER: Yeah.

14 MS. DAVISON: And the more -- I've been
15 troubled by this kind of one foot in and one foot out
16 notion. My clients have agreed that the options set
17 forth in 12.2, that King County can have those
18 available to them if they choose to elect them at a
19 later date, but it strikes me that we do have some
20 cleanup matters in the stipulation if they are not
21 going to sign the stipulation. And it may be that
22 the simplest thing to do is to have an amendment to
23 the stipulation or something to that effect, so that
24 we have a cleaner record.

25 CHAIRWOMAN SHOWALTER: Well, we've probably

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1 discussed this enough for everyone to go home and
2 think about it, and the record's going to be left
3 open and there's time yet to try to finesse this
4 issue.

5 COMMISSIONER HEMSTAD: Well, I take it the
6 net result is that King County has more options than
7 it otherwise would have had without the wording of
8 the stipulation. It can either opt into the
9 stipulation and the options that are provided in 12.2
10 or it can elect to file its own complaint and pursue
11 its remedies, whatever they may be, in that
12 proceeding, which I suppose are more options than it
13 has if 12.2 is not present, too.

14 MR. BERMAN: I would just say in that
15 regard that I don't know that King County has the
16 right to just opt into the settlement at some later
17 date. I think that if they wanted to seek that
18 right, that it would require a Commission approval to
19 suddenly add a new party, given that they're removing
20 themselves as a party from the stipulation.

21 But assuming that were to happen and we
22 were to have that determination that it was
23 appropriate to have them opt in, then it would spell
24 out the way things would work for them.

25 COMMISSIONER HEMSTAD: What the stipulation

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1 is doing is binding all the parties here, in effect,
2 is providing a standing offer to King County to elect
3 to do so, and it would be without objection of any of
4 the parties signing the stipulation. Is that

5 correct?

6 MR. BERMAN: I'm not sure that I've heard
7 everyone around the table agree that if King County
8 wants to sign on at some later date, that that will
9 be okay with them, so --

10 COMMISSIONER HEMSTAD: Then I don't
11 understand why 12.2 is here. I mean --

12 MR. BERMAN: I think that Ms. Davison's
13 suggestion that we clarify a little bit amongst the
14 remaining parties exactly what we intend our
15 treatment of King County to be is a valid and fair
16 and good point, and we could do that and probably
17 answer some of these questions, as well.

18 I think it's appropriate to say that, at
19 this time, the parties all agree that this would be
20 an appropriate way to treat King County if they were
21 to join today, but I think that we have to make it
22 clear about what's there, since they haven't joined
23 today.

24 MR. CAMERON: Time's a wasting on this
25 stipulation, but I, for one, and perhaps I'm overly

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1 optimistic, still hope that King County might find a
2 way to sign the stipulation. There's been a lot of
3 discussion of their particular issues, I think the
4 company's offered to work with them. I would like to
5 give them a couple days to contemplate that. But
6 absent that, I think the clean-up amendment is
7 warranted here.

8 JUDGE MOSS: Yeah, I would encourage that
9 both courses of action be followed, and one reason
10 for that is while this is an agreement among parties,
11 a negotiated settlement agreement, the typical
12 Commission order approving such a thing, assuming
13 that is the Commission's decision in this case would
14 be one that would not only approve the stipulation,
15 but adopt it as part of the order. It then becomes
16 part of a Commission order, and it is the Commission
17 saying, prior to November 1st, 2001, King County may
18 choose et cetera and so forth, and that sort of takes
19 it out of the parties' hands at that point in time.
20 So you need to consider carefully the language that's
21 in the stipulation that effects King County's rights
22 for that reason, I believe.

23 I just have one final point, and that is
24 that I've been handed up a copy of a document that
25 has four points that are essentially the points Mr.

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1 Woodworth made orally. King County withdraws its
2 intervention, so on, so forth. I assume that's the
3 document that was being prepared at the last minute
4 before we resumed.

5 Is it somebody's intention to offer that as
6 an exhibit? I would like it to be made part of the
7 record if it's going to become or influence the final
8 drafting of an order, and it may, so could somebody
9 offer that up?

10 MR. WOODWORTH: Your Honor, assuming that
11 it's the same document that I was reading from, I'd
12 be glad to offer it.

13 JUDGE MOSS: Well, I'll take it from you,
14 so whatever it is, it is, but let's mark that as --

15 COMMISSIONER HEMSTAD: Well, I'd just pose
16 the issue. Do we want to offer -- should it be
17 offered, but not accepted at this point? From what I
18 hear being said here, you continue to have the
19 discussions with the hope that you might be able to
20 come to closure.

21 CHAIRWOMAN SHOWALTER: He already did read
22 into the record the very same words, so I don't know
23 that it adds to have the paper anyway.

24 JUDGE MOSS: That's a good point. I just
25 wanted a point of reference. And it will be part of

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1 the transcript, so I'll withdraw the suggestion.

2 COMMISSIONER HEMSTAD: My point is that --
3 then I guess we'd have to have a motion from King
4 County to reintervene again to become a party to the
5 proceeding.

6 CHAIRWOMAN SHOWALTER: Actually, the motion
7 to withdraw was conditioned on certain things that we
8 haven't done yet.

9 MR. CAMERON: Yes.

10 MR. WOODWORTH: That's right.

11 CHAIRWOMAN SHOWALTER: So you could
12 withdraw your motion, I guess, or we could deny your
13 motion if we approve the settlement and you were part
14 of it at that point.

15 MR. WOODWORTH: I think the timing of it,
16 we would prefer to remain in the proceeding until the
17 conditions are met and the stipulation is approved in
18 the eventual order, if that takes place.

19 CHAIRWOMAN SHOWALTER: So you're still an
20 intervenor until the end of the case, because your
21 conditions could not occur until the end of the case.

22 MR. WOODWORTH: I guess that's right.

23 JUDGE MOSS: We can certainly then just
24 carry the request for leave to withdraw from
25 intervenor status, which is the way the Commission

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1 typically treats parties. Once a party submits to
2 the jurisdiction of the Commission by filing a
3 petition to intervene or what have you, then it
4 requires leave of the Commission for that party to
5 withdraw, and so we would then just carry that
6 request for now and see how things develop over the
7 course of the next couple of days.

8 And I'm sure the parties will all stay in
9 close contact with the Commission, and particularly
10 keep me informed of any developments so that I can
11 make sure everybody's fully informed around here.
12 All right.

13 CHAIRWOMAN SHOWALTER: I want to raise one
14 thing with Mr. Woodworth that I raised when you were

15 out of the room earlier, but I think that it could be
16 relevant to your thinking here. And that is on page
17 five of your brief, on the stipulation of settlement,
18 your response, line three, you say that the
19 Commission ordered rates subject to a soft cap of
20 \$125, and you cite paragraph 83 of page 41 of the
21 Sixth Supplemental Order.

22 I want to point out that paragraph 83 of
23 our order was a description of the Staff proposal.
24 It was not our order. And we decidedly did not order
25 that proposal. Instead, we described that proposal,

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1 we said there were a number of questions yet to be
2 determined, and ordered further proceedings on a soft
3 cap proposal and ordered further that at least one
4 other option should also include a \$150 soft cap.

5 So I just want to clarify that there is no
6 existing order from this Commission that settled on
7 any value for the soft cap. It settled on going with
8 further proceedings to establish a soft cap, and
9 that, furthermore, that was to be a temporary remedy
10 while we figured out what to do with Schedule 48
11 generally. So I just want you to be aware of that in
12 case you're banking on a \$125 soft cap that wasn't
13 ordered.

14 MR. WOODWORTH: Thank you, Madam
15 Chairwoman. We are aware of that distinction. One
16 of the difficulties that King County has faced in
17 trying to become involved in this process is that I
18 believe the settlement discussions have evolved from
19 an effort to answer the many questions that the
20 Commission had about how to tailor and construct and
21 implement a soft cap proposal, and it has eventuated
22 in the settlement agreement, which is now presented,
23 which really bears very little relationship to what
24 the Commission was contemplating in the Sixth
25 Supplemental Order.

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1 We are aware of that, and we didn't, for a
2 period of time, understand that the result of these
3 discussions was going to become that which it has
4 become. And unfortunately, we find ourselves left
5 without a good way of plugging into the remedy that
6 has been negotiated for the most part without our
7 participation.

8 I'd also like to point out a typo. On page
9 two of our response, line 16, paragraph 17.9 I think
10 should be 18.1.

11 MR. BERMAN: Your Honor, I just want to
12 note that the company disagrees with many of the
13 characterizations that have been made by King County
14 in its pleading and some in the statement that was
15 just made, but rather than going into that, we think
16 that, given the resolution that was reached here,
17 that there's no need to go into that. But I just
18 don't want the record to suggest that we agree with
19 the characterizations of the settlement discussions

20 or the Sixth Supplemental Order that have been made.
21 JUDGE MOSS: Okay. And as I understand it,
22 the parties are going to continue to talk over the
23 course of the next couple of days and perhaps
24 everyone can bring that process to a conclusion
25 satisfied that there are adequate alternatives or at

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1 least clarify how things are. So we can look forward
2 to hearing something further from the parties on
3 that.

4 I don't know at this juncture -- I'm
5 getting to the point in my mind of saying we have a
6 little housekeeping to take care of, but perhaps I
7 need to turn to the bench, certainly, and see if
8 there's anything further from the bench that is
9 required of the parties, and then of course also
10 offer the parties an opportunity to suggest anything,
11 and then I do have a couple of matters that we need
12 to take up that are lingering housekeeping-type
13 matters that we need to finalize our open public
14 hearing session, at least. So anything further from
15 the bench in the way of inquiry?

16 CHAIRWOMAN SHOWALTER: Well, this might be
17 a housekeeping. It is a question about --

18 JUDGE MOSS: Oh, there was a question about
19 a further exhibit, yes. Actually, for Ms. Davison.

20 CHAIRWOMAN SHOWALTER: Okay. I think the
21 parties agreed that they're planning to turn in
22 various documents that confirm some of the discussion
23 today or affidavits, et cetera. And one, I wasn't
24 clear whether Mr. Schoenbeck plans to turn in a page
25 that puts on one page his testimony that he went

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1 through today with the 17 million and the 14 million
2 and the 2.5 million, et cetera. We have his
3 testimony, but I think it would be helpful, along
4 with the assumptions that he made, so that we have an
5 illustrative exhibit, I guess, of the effect, as I
6 think of it now, of self-generation on the public
7 utility tax, and we can make of it what we will on
8 the additional effect of 449 versus 448.

9 MS. DAVISON: We'd be happy to submit an
10 additional exhibit that provides you with a very
11 clear example of what he talked about earlier today,
12 and I did have an opportunity to confer further with
13 Mr. Cunningham, and he will be providing some
14 detailed information, as well, through an affidavit,
15 so --

16 JUDGE MOSS: Okay. We'll set a date here
17 in a moment for the receipt of all this. So we need
18 to wrap things up pretty quickly. Assuming that
19 we're still looking toward this April 9th date.

20 In terms of exhibits, one lingering matter
21 in the proceeding is the question of the accord and
22 satisfaction the parties tendered a few days ago for
23 in camera review, and the question is whether that
24 needs to be made part of our evidentiary record. WAC

25 480-09-750 provides that, quote, subject to the other
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1 provisions of this section, all relevant evidence is
2 admissible that, in the opinion of the presiding
3 officer, is the best evidence reasonably obtainable
4 having due regard to its necessity, availability, and
5 trustworthiness.

6 The threshold question, then, is one of
7 relevance. In that connection, WAC 480-09-750 goes
8 on to provide that in ruling upon the admissibility
9 of evidence, the presiding officer shall give
10 consideration to, but not be bound to follow the
11 rules of evidence governing general civil proceedings
12 in matters not involving trial by jury in the courts
13 of the state of Washington. And it is our practice
14 to be guided by, but not necessarily bound by those
15 rules.

16 Rule 401 of the Civil Rules of Evidence
17 defines relevant evidence as, quote, evidence having
18 any tendency to make the existence of any fact that
19 is of consequence to the determination of the action
20 more probable or less probable than it would be
21 without the evidence, close quote.

22 Based on the bench's in camera review of
23 the accord and satisfaction, it does not appear to
24 include any such evidence. The existence of the
25 accord and satisfaction is reflected in the documents

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1 included in Exhibit Number 1801. Moreover, the
2 principal stipulation included in Exhibit Number 1801
3 states in Section 14.1 that PSE will not seek to
4 recover from other ratepayers whatever sums are paid
5 in consideration of various parties' agreement to
6 support the stipulation to end and/or resolve the
7 various proceedings addressed in the stipulation.

8 The nature of the stipulation and its
9 essential terms, however, concern the prospective
10 relationship between PSE and the Schedule 48
11 customers. The Commission is asked to determine
12 whether the various arrangements proposed for new
13 tariffs and special contract arrangements by which
14 these customers may receive service effect results
15 that are fair, just and reasonable prospectively.
16 Neither the existence nor the amounts of the payments
17 provided by means of the accord and satisfaction will
18 assist the Commission to make that ultimate
19 determination.

20 In light of the bench's recognition that
21 the accord and satisfaction does not include evidence
22 that will aid in the determination of any fact that
23 is of consequence to the disposition of this
24 proceeding, we rule the accord and satisfaction
25 should not be made part of the record.

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1 So that takes care of that lingering
2 question. And of course, this was something the
3 bench took under its consideration, and no party had

4 urged this be made of record, in any event. So the
5 parties do not regard it as something that requires
6 the Commission's approval, and this appears to be the
7 case.

8 So are there any other housekeeping type
9 matters we need to take up in terms of our having a
10 complete record, evidentiary record?

11 MR. BERMAN: Your Honor, I would note that
12 we were given what I'll call a bench request to -- or
13 we interpreted it as being given to us to provide
14 information concerning the transition payments, the
15 amount of transition payments that were paid, and we
16 will gather that data and get that to you.

17 JUDGE MOSS: What's a reasonable time frame
18 for the receipt of these matters that we've left the
19 record open to receive? End of this week or are we
20 into next week before we can expect to have that?

21 MR. CAMERON: This morning I discovered
22 that ARCO's taxes are no longer done in Los Angeles;
23 they're done in Houston. I'd like until Monday to
24 corral the necessary people to get that information.

25 JUDGE MOSS: I have relatives in Houston.

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1 And given the way mail comes in from there, you might
2 want even more time. Perhaps you better use a
3 courier. Middle of next week?

4 MS. DAVISON: That will be fine, Your
5 Honor.

6 MR. CAMERON: Sure.

7 JUDGE MOSS: Shall we say Wednesday of next
8 week? All right. And I don't have a calendar in
9 front of me.

10 CHAIRWOMAN SHOWALTER: Twenty-eighth.

11 JUDGE MOSS: Thank you. That will be the
12 28th.

13 MR. WOODWORTH: Again, I'd just like to
14 mention that it's my understanding that the offer to
15 withdraw on the conditions stated does have the
16 support of parties to this docket. I don't know that
17 that was stated in my presentation, but that's my
18 understanding.

19 JUDGE MOSS: It's my understanding that
20 there's no objection to that, certainly, and that
21 amounts to the same thing.

22 MR. CAMERON: We support it.

23 JUDGE MOSS: Okay. I'm seeing nods of
24 support, so you are correct, Mr. Woodworth. This has
25 been such an intensive proceeding from the beginning

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1 that I almost hesitate to let it go. Nevertheless,
2 all good things must come to an end. And while we
3 are leaving the record open, as I've previously
4 mentioned several times, this does apparently bring
5 the need for our gathering here together to -- brings
6 it to a conclusion, so --

7 CHAIRWOMAN SHOWALTER: You are an optimist
8 to think this is actually the end of this

9 proceedings.

10 JUDGE MOSS: I'm trying to be careful in my
11 remarks and suggest only that this is the end of the
12 need for this phase, and of course, there's yet much
13 work to be done by the Commission and some additional
14 work by the parties, as well, but in terms of the
15 hearing that we scheduled by our prior notice, I
16 believe we are at the conclusion of the business that
17 was scheduled to occur during these two days of
18 hearing, so I'm limiting my remarks in that way, but
19 also trying to end on a positive note.

20 I would like to add my thanks, and of
21 course the Commissioners may have something to say
22 after I'm through, but I would like to just add my
23 thanks to those that have previously been expressed
24 by both the Commissioners in terms of the hard work
25 that the parties have put into this and the very high

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1 level of professionalism that's been exhibited
2 throughout. Mr. Berman, did you have something?

3 MR. BERMAN: I just wanted to confirm, Your
4 Honor, that the date we had discussed, March 28th,
5 would be a date not only that we would provide the
6 additional data by, but that that was also a date for
7 doing all the conforming changes and so forth that
8 have been discussed to the various documents. And
9 that's what we understood, but I just wanted to
10 confirm that.

11 JUDGE MOSS: Yeah, I would regard that
12 date, and I suppose we should say close of business
13 that day, 5:00 p.m. is our close of business here at
14 the Commission officially, and that would be the date
15 and time in which the record would be closed for the
16 Commission to thereafter deliberate and decide the
17 matter as presented.

18 Now, of course, if something should develop
19 after that date with respect to King County, then I
20 suppose it might need to accompany any further
21 submissions with a brief request to reopen the record
22 for purposes of receiving that, and I think that
23 probably is something that could be easily
24 accommodated.

25 MR. BERMAN: Given my recollection of past

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1 events, I'd like to confirm that there's no need for
2 us to gather original signatures for the revised
3 documents. I'd prefer if we could have all the
4 parties agree to make a new filing, that we not need
5 to also obtain the new signatures. There are people
6 out of town, and it just is cumbersome procedurally
7 to gather all that again and get it together in a
8 short period of time.

9 JUDGE MOSS: Yeah, I think I was still
10 getting signature pages as late as yesterday, so I
11 understand that. Is there any objection to
12 proceeding as Mr. Berman has suggested? Apparently
13 there is none.

14 CHAIRWOMAN SHOWALTER: I think Mr. Trotter
15 may have had something.

16 JUDGE MOSS: Mr. Trotter, did you have
17 something?

18 MR. TROTTER: I was simply going to add
19 that I would be remiss in not acknowledging the great
20 assistance that Mr. Wallis, of the Commission, gave
21 to us. I don't think this would have come together
22 at all but for him, so I just wanted to make that
23 comment on the record.

24 JUDGE MOSS: And we will convey your
25 comment, which I will regard as having been made on
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1 behalf of all the parties, to Judge Wallis, and I
2 know I have heard some nice things said to him in the
3 halls, so I'm sure it has not missed his attention
4 that his efforts are appreciated.

5 All right. Well, I can't say go hence
6 without they, but thank you all very much. I'm
7 sorry, I'm cutting off the bench here. Cutting off
8 the bench. I said something earlier about my job
9 prospects for the future. I may be affecting them
10 right now.

11 CHAIRWOMAN SHOWALTER: No, I already
12 expressed my appreciation for the work that went into
13 this, but I have to say, after these past two days,
14 my appreciation has only increased. It's just a
15 pleasure to sit on a hearing with the caliber of
16 attorneys and witnesses that are in this case. And
17 we gave you, I think, some pretty tough questions and
18 you came back with quick and relevant and incisive
19 answers, and I just really appreciate it.

20 COMMISSIONER HEMSTAD: All I can say is I
21 echo those remarks. It has been, well, an
22 extraordinary proceeding. In my tenure on the
23 Commission, I haven't participated in a proceeding
24 like this, and we're here because of the quality of
25 the participants.

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1 JUDGE MOSS: And with that, let's go off
2 the record.

3 (Proceedings adjourned at 3:50 p.m.)
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