

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In the Matter of the Petition of)
))
4 CITY OF KENT,) DOCKET NO. UE-010778
) Volume I
5 for Declaratory Relief) Pages 1 - 71
Interpreting Schedule 71 of)
6 Electric Tariff G.)

7))
8 CITY OF SEATAC,))
))
9 Complainant and Petitioner,) DOCKET NO. UE-010891
) Volume I
 v.) Pages 1 - 71
10)
11 PUGET SOUND ENERGY, INC.,)
)
12 Respondent.)

13 CITY OF AUBURN, CITY OF)
BREMERTON, CITY OF DES MOINES,)
14 CITY OF FEDERAL WAY, CITY OF)
LAKEWOOD, CITY OF RENTON, CITY)
15 OF SEATAC, CITY OF TUKWILA,)
))
16 Complainants,) DOCKET NO. UE-010911
) Volume I
17 v.) Pages 1 - 71
))
18 PUGET SOUND ENERGY, INC.,)
)
19 Respondent.)

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21 A prehearing conference in the above matter
22 was held on July 10, 2001, at 9:34 a.m., at 1300 South
23 Evergreen Park Drive Southwest, Olympia, Washington,
24 before Administrative Law Judge DENNIS J. MOSS.

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1 The parties were present as follows:

2 THE WASHINGTON UTILITIES AND TRANSPORTATION
3 COMMISSION, by MARY M. TENNYSON, Senior Assistant
4 Attorney General, 1400 South Evergreen Park Drive
5 Southwest, Post Office Box 40128, Olympia, Washington
6 98504.

7 PUGET SOUND ENERGY, INC., by KIRSTIN S.
8 DODGE, Attorney at Law, Perkins Coie, 411 108th Avenue
9 Northeast, Suite 1800, Bellevue, Washington 98004.

10 CITY OF KENT, by MICHAEL L. CHARNESKI,
11 Attorney at Law, 19812 194th Avenue Northeast,
12 Woodinville, Washington 98072.

13 CITY OF CLYDE HILL, by JOHN D. WALLACE,
14 Attorney at Law, 9605 Northeast 24th Street, Clyde
15 Hill, Washington 98004.

16 CITIES OF AUBURN, BREMERTON, DES MOINES,
17 FEDERAL WAY, LAKEWOOD, RENTON, SEATAC, TUKWILA, by
18 CAROL S. ARNOLD and LAURA K. CLINTON, Attorneys at Law,
19 Preston Gates Ellis, 701 Fifth Avenue, Suite 5000,
20 Seattle, Washington 98104.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

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P R O C E E D I N G S

JUDGE MOSS: Let's go on the record. Good morning, everyone. My name is Dennis Moss. I'm an administrative law judge at the Washington Utilities and Transportation Commission. I've been assigned to these various matters that are before us today. We are convened in a joint prehearing conference in three dockets. In the order of their docketing, they are the City of Kent against Puget Sound Energy, Docket UE-010778. The matter has been brought forward as a petition for declaratory relief.

The next docket is City of SeaTac against Puget Sound Energy. That's Docket UE-010891, and that matter is brought forward on a pleading styled Complaint and Petition for Declaratory Relief, and the third matter is styled Cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Renton, SeaTac, and Tukwila against Puget Sound Energy, and that docket number is UE-010911, styled as Complaint and Petition for Declaratory Relief.

Our basic agenda today will be to take the appearances of counsel of the parties in the various proceedings, and as we do that, I'll ask you to indicate which dockets you are representing your

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1 clients in. I will ask, since this is our first
2 prehearing conference, that counsel give their first
3 appearance; that is to say, name, who they represent,
4 their business address, telephone, facsimile, and
5 e-mail numbers. In the future, we will use an
6 abbreviated appearance format. Once we have taken up
7 the appearances, we will consider any petitions to
8 intervene. I have received one from the City of Clyde
9 Hill in No. UE-010891, and we'll see if there are any
10 others.

11 Then I want to turn to the question of how we
12 are going to process these cases, and that will include
13 the question of whether we will consolidate some or all
14 of them and what other process issues we need to
15 determine in light of that initial consideration.
16 We'll have to talk about the manner in which we
17 proceed; that is to say, the rules governing
18 declaratory order proceedings are somewhat different
19 than those governing a complaint proceeding, and there
20 are some implications as between the two in terms of
21 burden of proof.

22 There is a suggestion in one of the cases --
23 I believe it's the City of SeaTac matter -- that we
24 proceed as a brief adjudicative proceeding on a
25 separate track. We will take up the question of

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1 whether or not there are disputed facts in these cases
2 or whether they can be handled through some summary
3 determination mechanism, and I already have a motion
4 for summary determination in one of the dockets. I
5 believe that's the City of Kent matter, and that sort
6 of thing. We will discuss the issues related both to
7 the process and to the substance of the cases.

8 Depending on our process determinations, we
9 will take up matters such as whether or not to invoke
10 the discovery rule, whether there is a need for a
11 protective order in the proceeding, and we'll touch
12 briefly on the fact that we do have a pending motion
13 for summary determination in the one case. I suspect
14 that may become central to our process and procedural
15 schedule, but we shall see how things unfold. We will
16 talk about our procedural schedule and establish dates
17 for whatever process we determine is appropriate for
18 the cases, whether consolidated or individually, and
19 we'll take up any other business that the parties wish
20 to bring before us today that's appropriate to the
21 notice for the prehearing conference.

22 There was one suggestion in something I
23 received that we would take up the question of
24 determining stipulated facts today. I don't believe we
25 will be able to do that. I don't think our notice is

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1 adequately broad for that, but we can discuss it and
2 establish a mechanism by which that might be
3 accomplished expeditiously, so that is my plan in that
4 regard. Any questions about what we are going to do
5 today? Then let us commence with the appearances, and
6 I think the simplest thing will be to start at one end
7 of the room and move around.

8 MS. TENNYSON: Thank you. My name is Mary M.
9 Tennyson. I'm a senior assistant attorney general.
10 I'm representing Commission staff in all three of the
11 proceedings. My business address is 1400 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 98504. My telephone is (360) 664-1220. My fax number
14 is (360) 586-5522. My e-mail is mtennyso@wutc.wa.gov.

15 MS. DODGE: Kirsten Dodge with the law firm
16 Perkins Coie representing Puget Sound Energy -- I
17 should say that with me is Bill Bue who also will be
18 appearing for Puget Sound Energy -- One Bellevue
19 Center, Suite 1800, 411 108th Avenue Northeast,
20 Bellevue, Washington, 98004. My telephone is (425)
21 453-7326. Fax is (425) 453-7350. E-mail is
22 dodgi@perkinscoie.com.

23 JUDGE MOSS: And I had Mr. Quehrn down as
24 counsel for record on some of the filings. Is he not
25 going to participate in this case?

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1 MS. DODGE: That is correct, Your Honor.
2 He's appeared for a number of matters. It's much
3 better if things go through me.

4 JUDGE MOSS: So you will be the designated
5 lead?

6 MS. DODGE: Correct.

7 MS. CLINTON: Good morning, Your Honor. My
8 name is Laura Clinton. I'm with the law firm of
9 Preston Gates and Ellis. I represent the City of
10 SeaTac in the SeaTac complaint, and in the consolidated
11 cities complaint, I represent the cities of Auburn,
12 Bremerton, Des Moines, Federal Way, Lakewood, Renton,
13 SeaTac, and Tukwila. My business address is 701 Fifth
14 Avenue, Suite 5000, Seattle, Washington, 98104. My
15 telephone number is (206) 623-7580. My fax number is
16 (206) 623-7022. My e-mail is
17 lclinton@prestongates.com.

18 MS. ARNOLD: Carol Arnold, Preston Gates and
19 Ellis, 701 Fifth Avenue, Seattle, 98105; telephone,
20 (206) 623-7580; fax, (206) 623-7022; e-mail,
21 carnold@prestongates.com, and with us today is the city
22 attorney for Federal Way, Mr. Bob Sterbank; city
23 attorney for SeaTac, Mary Mirante, and we also have
24 representatives of the City of Auburn, other
25 representatives of Federal Way, other representatives

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1 of the City of SeaTac, representatives of the City of
2 Tukwila, representatives of the City of Des Moines. I
3 hope I've shown that the cities are taking the
4 Complaint seriously.

5 I represent the City of SeaTac in UE-010891,
6 and the combined cities in UE-010911, and I forgot to
7 add that we will be filing an amended complaint and
8 petition adding the City of Redmond, and we have a
9 representative of the City of Redmond with us today.

10 JUDGE MOSS: Will that be the only change in
11 the Complaint?

12 MS. ARNOLD: There might be one other city,
13 but that's the only one for now.

14 JUDGE MOSS: There might be two. There might
15 be a motion to intervene momentarily.

16 MR. CHARNESKI: Michael L. Charneski,
17 C-h-a-r-n-e-s-k-i, attorney at law representing the
18 City of Kent in Docket No. UE-010778. My address is
19 19812 194th Avenue Northeast, Woodinville, Washington,
20 98072. Phone is (425) 788-2630. Fax is (425)
21 788-2861. My e-mail is charneskim@aol.com. Also here
22 for the City of Kent today is our project manager for
23 the Pacific Highway project, Mark Hawlett.

24 MR. WALLACE: My name is John Wallace,
25 attorney for the City of Clyde Hill. We are

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1 petitioning to intervene in Docket No. UE-010891, the
2 SeaTac versus PSE matter. My address is City of Clyde
3 Hill, 9605 Northeast 24th Street, Clyde Hill,
4 Washington, 98004. Phone number is (425) 453-7800.
5 Fax is (425) 462-1936. E-mail is
6 jdwallace@compuserve.com, and with us today is Mitch
7 Wasserman, who is the city administrator of the City of
8 Clyde Hill.

9 JUDGE MOSS: Do we have other appearances?
10 Apparently not. No representative from Public Counsel.
11 Have you had any contact from Mr. ffitich?

12 MS. TENNYSON: I have not. I have not heard
13 from him at all.

14 JUDGE MOSS: The Public Counsel is a
15 statutory party to the proceeding, and if they choose
16 to participate, I'm sure they will let us know at the
17 appropriate time; although, I suspect their absence
18 today suggests they do not intend to participate
19 actively in this proceeding.

20 Let's take up the petition to intervene by
21 the City of Clyde Hill as our next matter of business,
22 and one thing that strikes me about this set of matters
23 is that the implications of any order the Commission
24 may enter in this proceeding clearly may have impact on
25 any customer subject to either Schedule 70 or Schedule

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1 71. Mr. Wallace, you are seeking to intervene in the
2 City of SeaTac petition. As I recall these matters,
3 and you all will straighten me out if I confuse issues
4 from one case to those of another, but as I recall the
5 pleading, the City of SeaTac matter is the one that
6 concerns the issue of whether Tariff Schedule 70 or
7 Tariff Schedule 71 applies to a specific project
8 involving 170th Street and PSE's facilities that run
9 down 170th Street between International Way and
10 Military Road. How are the interests of the City of
11 Clyde Hill directly implicated by that matter, if at
12 all?

13 MR. WALLACE: Your Honor, we are facing --
14 and actually, if you took the City of SeaTac's
15 petition, you could substitute, literally, Clyde Hill
16 for SeaTac. What SeaTac has asked for in their
17 Paragraphs 3 through 9 in their requested relief are
18 identical to the City of Clyde Hill's situation. We
19 have an LID solely for the purpose of undergrounding
20 overhead wires. It has been ordered to go forward by
21 ordinance of the city counsel. It is ready to go
22 forward. It involves approximately 100 homes in a
23 totally zoned and utilized area that is residential
24 totally within the city.

25 We are ready to proceed. PSE has given

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1 notification that Tariff 71 applies because there are
2 three-phase wires involved in at least a portion of the
3 project. Our position is we fall rather clearly under
4 the total definition of residential. We are sized big
5 enough to qualify for this, and we are under 15,000
6 volts, so we are identical to the SeaTac issue. The
7 only thing that's different is this is an
8 undergrounding project only. It's not an additional
9 street improvement, and it's a smaller project, but
10 factually, and I don't think there is any dispute in
11 terms of the facts that it's totally residential and
12 that it's zoned residential and it's under the 15,000
13 volts, meets the size criteria in all other respects.

14 It's our position that Tariff 70 should
15 apply, not Tariff 71, so I have anticipation, because
16 of the discussion I had with counsel for PSE,
17 anticipation that they are going to argue that we are
18 somehow expanding the issues, but again, if you take
19 SeaTac's petition and you walk through Paragraphs 3
20 through 9, they are identical, so it's not expansion of
21 the issues at all.

22 JUDGE MOSS: That is my concern. It does
23 appear to me there are facts in dispute in connection
24 with the SeaTac-PSE matter. The essential fact being,
25 does this meet the definitions for exclusive

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1 residential use, and as I understand the issues as
2 presented by the parties, the City of SeaTac in its
3 complaint is contending that this 170th Street corridor
4 is a residential within the meaning of Tariff Schedule
5 70. PSE is apparently contesting that and says it's
6 not exclusively residential as required under the terms
7 of that tariff and is asserting as an underlying basis
8 for that that the presence of the three-phase system
9 versus a one-phase system means that it is not within
10 the definition of Schedule 70.

11 Now, there may be other factual issues that
12 bear on that. Some of the papers I've read talk in
13 terms of there being commercial enterprises located on
14 170th Street, which may be a factor we will have to
15 consider. People are shaking their heads, and again,
16 it's a fact question. Whether there are other factors
17 that will help us determine in the matter of SeaTac
18 against Puget Sound Energy whether this qualifies as a
19 residential area falls within the definitions of the
20 one schedule versus the other schedule or whether there
21 is some option in the discretion of PSE, and my concern
22 in connection with the City of Clyde Hill participating
23 as an intervenor is that there would be no real
24 opportunity for you to develop the facts that may be
25 unique to your project configuration.

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1 While they may be in some ways essentially
2 parallel to the facts in the SeaTac petition or
3 Complaint, the determination of the one would not
4 necessarily be the determination of the other to the
5 extent it turned on a question of fact and not a
6 question of law, and so I think what I would propose
7 that we do at this time -- Ms. Dodge, are you going to
8 propose a motion to intervene?

9 MS. DODGE: Yes, Your Honor.

10 JUDGE MOSS: I'm going to carry the motion
11 for the duration of the morning, and we will take a
12 break at some point, and I want you to consider and
13 discuss -- Ms. Arnold, I take it you are lead counsel
14 in this?

15 MS. ARNOLD: Yes.

16 JUDGE MOSS: -- discuss with Ms. Arnold
17 whether it would be more appropriate to amend the
18 SeaTac Complaint to include the City of Clyde Hill as a
19 complaining party or petitioning party, as the case may
20 be, or whether you should consider filing your own
21 complaint that might be consolidated with these
22 matters.

23 MR. WALLACE: That's what I was going to ask
24 the Court. Should we simply treat this as a separate
25 petition and then a motion to consolidate?

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1 JUDGE MOSS: I don't know that I would be
2 prepared to treat this as a separate petition this
3 morning, but I think as a matter of judicial economy,
4 were you to file a separate complaint, we would
5 probably want to try to accommodate that in such a way
6 that we could think about consolidating that with the
7 existing Complaint.

8 What I'm suggesting at this point in time is
9 simply that you give some thought to these
10 possibilities as we move through this morning, and
11 we'll take it up again towards the end of the day, and
12 if that somehow slips my mind, I will count on you to
13 bring it back to my attention, and we will discuss it
14 further at that point.

15 Ms. Dodge, I didn't mean to cut you off
16 rudely there. I just don't need to hear your argument
17 at this point. It may be unnecessary for you to make
18 the argument, so we'll take it up as we need to at the
19 end, and, of course, I will be willing to hear from
20 others as well on the subject. Satisfactory for now?
21 Good.

22 Now, how are we going to process these
23 matters? Let's first take up the question of
24 consolidation. As I read the various papers that have
25 been filed, and I should back up and fill the record

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1 with the full background of the case with the caveat
2 that I have been away, and things took place in my
3 absence, but I have managed by dint of my early-rising
4 habits to get through everything this morning before
5 coming in here. I did get through the responses to the
6 questions that somebody posed to you. I guess I should
7 say the Commission posed them to you, so I was able to
8 get through those, and as I understand, it seemed to me
9 my recollection is that everyone who responded to those
10 questions is of the opinion that we should consolidate
11 the City of Kent against PSE matter with the, I'll call
12 it the multicities Complaint.

13 MS. DODGE: Your Honor, there may have been
14 some change in that. It may call for some discussion.

15 JUDGE MOSS: The essential question to
16 consider in that regard, and let's take that question
17 up first and then we will consider the other petition.
18 The essential question is whether there are issues of
19 fact and law in common as between the two proceedings
20 so as to make it a matter of judicial economy and
21 preservation of the parties' resources to consolidate
22 the matters, treat them as one procedurally. So,
23 Ms. Dodge, what has changed that might cause us not to
24 do that?

25 MS. DODGE: In reviewing the City of Kent's

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1 amended motion for summary determination and in
2 speaking with the attorney for City of Kent, Puget is
3 not clear how the City of Kent would like to proceed,
4 but it may be that they do not wish to consolidate. It
5 also appears that they have teed up a very streamlined
6 set of facts and issues that may be much simpler,
7 quicker to get through and so on than if they were to
8 be brought into the multicity Complaint.

9 So Puget is wanting to back off and say they
10 ought to consolidate and say let's see more what Kent
11 wants to do and see how much there really is in common
12 within these two petitions, and obviously, we would
13 support consolidation if appropriate, but it's not
14 clear anymore that that's appropriate.

15 MR. CHARNESKI: For the City of Kent, perhaps
16 I should jump in at this point. It's true that we have
17 done what we can to streamline things to get a quick
18 result, and that's why we filed our motion for summary
19 determination, but the issues, as Kent sees them, are
20 primarily legal issues that would be in common, we
21 think, with the other cities; namely, either Schedule
22 71 does or does not require the municipalities to pay
23 for PSE's private easements and their costs related to
24 the acquisition of those easements separate and apart
25 from compensation for market value, and I'll just work

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1 through these complexities, because the discussion of
2 these complexities, I think, will help us to determine
3 whether consolidation is appropriate.

4 The City of Kent does not believe that, in
5 Kent at least, that PSE has some obligation by
6 franchise or tariff to locate all of its facilities
7 within public right-of-way. PSE obviously wants to
8 locate a number of facilities out of right-of-way and
9 on private property, which is why we have this issue.
10 We don't believe they have a franchise obligation to
11 stay within right-of-way, but we do believe that if
12 they go outside of right-of-way, they have to pay for
13 their easements and all of the attended costs in
14 getting those easements, but here's where a possible
15 distinction may arise. If there were a ruling to the
16 effect that somehow the tariff does require a
17 municipality to pay easement costs, then there would be
18 an issue as to whether a particular easement is
19 necessary or not, and I say there would be an issue
20 because I don't think the Commission could ever have
21 intended to enact a tariff that would allow PSE to go
22 out and get easements willy-nilly that aren't necessary
23 and make the municipalities pay for those.

24 But on the threshold issue, either the tariff
25 does or does not say that municipalities have to pay

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1 for these easements. That's the threshold question.
2 That's what we have attempted to streamline, and if
3 there is a yes no ruling on that, it would seem to me
4 if the answer is no, as far as Kent is concerned, case
5 closed. We move on with the project and get it done.
6 If the answer is yes, there is an obligation by the
7 municipality to pay for the private easements, I think
8 things get much, much stickier, and I say that because
9 we believe there is a fundamental constitutional issue
10 involved about whether a municipality should be
11 spending tax dollars to acquire private easements for a
12 profit-making company.

13 I'm not suggesting that the UTC should be
14 making a determination on that issue, but in terms of
15 deciding what the tariff requires, I think, is a
16 relevant inquiry because the City of Kent doesn't
17 believe that the Commission would ever have intended an
18 outcome that would be unconstitutional, and as a matter
19 of interpretation, if you've got a choice between an
20 interpretation that would be unconstitutional and one
21 that would be constitutional, then the interpretation
22 that allows the tariff to have effect would be the
23 proper interpretation. But if there were a ruling that
24 the tariff does require municipalities to pay for PSE's
25 private easements costs, then I can see the City of

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1 Kent winding up in Superior Court on probably some sort
2 of action to invalidate the tariff as unconstitutional.
3 Now, the City didn't take that approach at this point
4 because that's not what the tariff says until someone
5 interprets it that way. So we've tried to streamline
6 by identifying the core issue so that it can be
7 resolved quickly.

8 I will say that there is a
9 two-and-a-half-page Schedule 71 that controls all of
10 this. There is a roughly 13-page, at least,
11 underground conversion agreement draft that PSE wants
12 the City to sign. It's a very, very detailed
13 underground conversion agreement, so to mesh these two
14 documents -- one is the controlling tariff with force
15 of law, and the other is -- you could call it a PSE
16 wish list that's much more elaborate. To mesh those is
17 a very, very complicated process to be worked out
18 between parties, but we trust that if we get a legal
19 interpretation on the core issue that the parties can
20 responsibly get together and wade through the rest of
21 it to get the project going.

22 But getting back to consolidation, I think
23 some input from the other cities would be useful on the
24 issue of whether or not there is a contention that PSE
25 must be located within right-of-way as opposed to

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1 outside of right-of-way. That would be a different
2 legal issue. As to necessity of particular easements
3 on other cities' projects, those are unique factual
4 circumstances that may or may not be relevant, and I
5 can't address any of that, but those could be
6 distinction between the Kent case at this point and the
7 other cities' case.

8 JUDGE MOSS: Ms. Arnold?

9 MS. ARNOLD: The cities agree that the
10 factual circumstances need to be streamlined. Either
11 the facts can be stipulated, hopefully, or the facts
12 can be presented in some kind of a record with
13 declarations and documents. I don't think that there
14 are material factual differences in any of these
15 circumstances, but I do think that the legal issues
16 have more complicated permutations than they might at
17 first blush present.

18 Certainly, legal issue number one is, does
19 Schedule 71 require Puget to underground when so
20 directed by cities? Puget's position, I understand
21 now, is that it doesn't. Unless they are satisfied
22 with the terms and conditions, they don't have to, and
23 we read Schedule 71 as mandatory. It says, The Company
24 will place its facilities underground. So that's one
25 legal issue that Kent and all of the cities have in

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1 common.

2 MR. CHARNESKI: Could I jump in with a
3 footnote to that, and that is how the legal issue has
4 changed. It's presented that way in our amended motion
5 for summary determination, assuming that it's mandatory
6 under Section 2 of Schedule 17, who pays, but it is now
7 that threshold question of whether it can be required
8 without or not, we are in total agreement on that.

9 MS. ARNOLD: The second issue that all the
10 cities have in common again is a legal issue, and I
11 think any material facts pertinent to this issue can
12 either be stipulated or be presented on a written
13 record, is whether or not Schedule 71 requires cities
14 to purchase easements for Puget's exclusive use. And I
15 think that's an issue in the Kent case, and it's
16 certainly an issue in all of the other cities' case,
17 the multicounty case.

18 The third issue that's kind of a permutation
19 of this, and I don't know if this is an issue in the
20 Kent case or not, is an issue for Federal Way, and it's
21 an issue that really came to our attention within the
22 last two weeks, but it's a Schedule 71 issue, and the
23 issue is if Puget's facilities currently are aerial
24 facilities and they are located on a private easement
25 that Puget procured rather than in the public

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1 right-of-way, does Schedule 71 apply in that situation?

2 As I say, this is a situation that's going on
3 in Federal Way, and there is an ongoing project to
4 which this issue has a bearing. I don't know if this
5 is an issue for Kent, and at this point, I don't know
6 if it's an issue for the other cities, but it is a
7 Schedule 71 issue. Again, it's a legal issue, and I
8 think there would be no problem with stipulating or
9 setting out the facts in a written record.

10 So to that extent, I think there is one legal
11 issue with different permutation, and that is how does
12 Schedule 71 apply. There are a lot of different fact
13 situations, different streets. Is Puget in the
14 right-of-way or out of the right-of-way? Is there room
15 in the right-of-way, and if not, who is to decide
16 whether there is room in the right-of-way? There are a
17 lot of factual issues, but I think these overriding
18 legal issues can be decided by the Commission in a
19 fairly streamlined fashion. So I don't want to go so
20 far as to say I don't care if they are streamlined or
21 not, but I think that as a matter of judicial economy,
22 it might be wise to consolidate them.

23 JUDGE MOSS: This last issue that you've
24 raised, do you believe it's properly cued up by your
25 petition?

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1 MS. ARNOLD: I think it is, and if not, we'll
2 amend the Petition. It's certainly a Schedule 71
3 issue. As we read Schedule 71, it says, When
4 undergrounding is requested or when conversion from
5 aerial to underground is requested, these are the terms
6 and conditions we will do it under, and it doesn't say,
7 If our aerial facilities are located in public
8 right-of-way and undergrounding is requested. It just
9 says, When undergrounding is requested, this is what
10 applies.

11 So I think it is teed up. It's part of the
12 general interpretation of Schedule 71, and I think it
13 is teed up. If not, we will certainly amend to bring
14 it in, because it's not a different issue.

15 JUDGE MOSS: What's PSE's view on that, the
16 question of this issue?

17 MS. DODGE: We believe it's absolutely a new
18 issue that is not teed up by the Complaint or Petition.
19 I'd ask where it's teed up in the Complaint or Petition
20 currently. It's something that came out of a
21 conference call on a completely separate project that
22 has nothing to do with International Boulevard last
23 week, and it's just come out of the thin blue sky --
24 that's their prerogative, I suppose. One of the things
25 we are quite concerned about with these three

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1 proceedings is that we not have a moving target where
2 every week, there is a new issue that's kind of tossed
3 into the mix. I think we need to get clear what is in
4 the proceeding, the scope of each proceeding, and how
5 are we going to proceed and not have new issues brought
6 in.

7 JUDGE MOSS: That is certainly one of the
8 reasons we are here today, and we will accomplish that
9 today, but it does strike me that to the extent we are
10 going to be focused on this schedule and what it does
11 and does not require and provide, it would be most
12 efficient for everyone, including PSE, to have the full
13 panoply of issues dealt with at once, and in light of
14 that, it would be my inclination to allow the Complaint
15 to be amended to clearly encompass this issue.

16 Beyond that, I'm going to be far more
17 reluctant to allow in the amendments to complaints
18 because Ms. Dodge does make a good observation that we
19 do have to at some time cease the shifting of sands
20 that so typically occurs early in the proceeding and
21 let everybody know what they are dealing with.

22 MR. CHARNESKI: May I make a comment, Your
23 Honor?

24 JUDGE MOSS: Yes.

25 MR. CHARNESKI: Our petition raised one other

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1 discreet but relatively minor issue that arose from the
2 draft underground conversion agreement. It's addressed
3 in our petition and it's addressed in our amended
4 motion, and that has to do with whether we can be
5 required under Schedule 71, the City of Kent, to agree
6 to pay 100 percent of future costs of relocation in the
7 project area. That's an example of just one matter
8 that's presented in the underground conversion
9 agreement draft that's prepared by PSE. I expect
10 that's in the agreements given to all of the other
11 cities, and one of the difficulties here, because of
12 the potential complexity of issues, is that if we
13 really wanted to address every issue under Schedule 71,
14 every issue that arises from the underground conversion
15 agreement, I don't think there is any way we would ever
16 get through it.

17 I almost wonder whether there should be any
18 time -- well, strike that. I was going to suggest
19 maybe parties be given a few days to brainstorm and
20 think whether there is anything else compelling under
21 71, like this one that's just been mentioned, that we
22 haven't fully thought out that should be thrown into
23 the mix before it's too late, because what we don't
24 want to do is ever come back here on a Schedule 71
25 issue. I guess we would hope that there would be a new

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1 Schedule 71 similar to -- not the same substance, but
2 similar in scope and detail to the one that was
3 proposed in February, because at least then everybody
4 would know what's going on. It's part of the mischief
5 of having a two-and-a-half-page tariff and a 13-page
6 agreement, but just to be clear, there is that other
7 that's clearly presented in the City's petition and the
8 amended motion, and that has to do with costs of future
9 relocation. So I'll just state that on the record so
10 it doesn't get washed away somehow.

11 JUDGE MOSS: I didn't mean to suggest that we
12 should take up a comprehensive review and
13 interpretation of every word and period and comma of
14 Schedule 71. I don't think the Commission particularly
15 wants to do that and certainly doesn't want to do it
16 unnecessarily. My point simply being that we do need
17 to have a fixed target as to the issues, and my
18 inclination is to include in our process requirements
19 that the parties endeavor through good faith
20 discussions to develop a comprehensive issues list as
21 to facts and as to law. That as to the facts they
22 identify as pertinent, they again in good faith attempt
23 to stipulate as many, if not all, of the necessary
24 facts.

25 The case does not strike me, by and large, as

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1 being particularly fact intensive. I'm not sure that
2 what you all have presented thus far through your
3 papers is adequate to meet all of my questions in that
4 regard, and I may come back to you with Bench requests
5 where there are points I do not understand, factual
6 points that I do not understand. Again, those can
7 become part of the record, and if there is some dispute
8 among the parties in terms of their responses to the
9 Bench requests, and all parties will have the
10 opportunity to respond to any Bench request I issue,
11 even if they are directed to a specific party, if some
12 dispute emerges at that point, then we'll have to
13 consider perhaps some other process.

14 But I am optimistic sitting here now, until
15 somebody tells me that I am just seriously mistaken,
16 that you will all be able to accomplish what I'm
17 suggesting, which is the development of a
18 comprehensive issues list on facts and law and
19 stipulation as to most, if not all the facts that are
20 necessary to make a determination. Does anyone not
21 share my optimism and enthusiasm?

22 MS. DODGE: Your Honor, I think it depends
23 upon the scope of issues that are addressed, because
24 the more issues that are thrown in the mix, the more
25 difficult it may be to reach stipulation as to facts.

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1 You will have different facts that apply for different
2 situations. So certainly to the agree anyone wants to
3 amend their complaints to add issues, it would be good
4 to do it now and bring those in, and that's fine. It
5 may be that we want to look more closely at phasing the
6 proceeding because it sounds like Kent in particular,
7 and it sounds like the other cities as well, may hope
8 for a favorable ruling on a set of hypothetical facts
9 on a certain look at the tariff, but that if it's
10 adverse to them, they may want to dig more deeply into
11 specific situations, so we may want to think about
12 phasing, because otherwise, we may run into factual
13 disputes.

14 JUDGE MOSS: We are not going to do
15 hypotheticals in this case. My inclination at this
16 juncture is that these are probably matters that are
17 best handled to the declaratory judgment mechanism, and
18 we'll hear some discussion about that. That's not a
19 ruling. That's just my current thinking.

20 That being the case, what that provides is
21 that the Commission may issue a declaratory order
22 stating what the law is applied to a specific set of
23 facts, an actual case of controversy. So I'm not going
24 to slip into the posture of having the Commission enter
25 an advisory opinion based on all the permutations and

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1 scenarios that the fertile minds of lawyers can
2 conceive. I don't have the time for that, and I don't
3 think it does anybody any good. The Commission does
4 not do that. We want the facts that are pertinent
5 here, and it does strike me that they will by and large
6 be uncontroversial. There are essentially many of them
7 engineering facts. In all of these dockets I think
8 that is true.

9 MS. DODGE: Your Honor, I didn't mean to
10 suggest out-of-the-air hypotheticals, but just as an
11 example, there may be specific easement situations
12 where there is a factual dispute about is there space
13 in the right-of-way or not space in the right-of-way,
14 and we could spend a lot of time whether or not it is
15 in the space, what other utilities are there -- and I'm
16 wondering if we need to drill down to that level of
17 detail or if we can't be looking at a more generalized
18 set of facts as to an easement situation, and maybe we
19 just need to pick our project carefully or our facts
20 carefully, because there are probably a lot of
21 situations on the ground that could serve and provide
22 facts needed for a decision.

23 JUDGE MOSS: We are jumping around a little
24 bit here this morning, but something you said triggered
25 in mind another point that I wanted to discuss with the

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1 parties, and that is the question of settlement
2 prospects. Certainly to the extent you all decide to
3 attempt some negotiation towards a settlement agreement
4 in this case or undertake some form of alternative
5 dispute resolution, perhaps with the assistance of a
6 Commission designated mediator, then you would get into
7 these very specific points.

8 It does strike me that one reason you all are
9 here is that perhaps not taking those detailed
10 discussions as far as you might, it could be that the
11 theoretical points in controversy, the conceivable
12 range of permutations appears overwhelmingly large, and
13 therefore, you could use the adjudicatory processes of
14 the Commission to achieve some determination of those.

15 Often, it strikes me that it is often that
16 parties, once they commence a proceeding such as this,
17 can sit down and have their engineers sit down and go
18 into some of these details and find out things are not
19 quite as dark as they appeared at the outset and that
20 perhaps things are merely gray and can be all but
21 resolved or even fully resolved through the negotiation
22 process, through the assisted negotiation process or in
23 some other fashion, and so I don't think we want to
24 take the step at this juncture of saying, Yes, we are
25 going to go into the question of looking at each

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1 individual easement and whether it is something that
2 can fit into the right-of-way or not fit into the
3 right-of-way and so forth.

4 I've prefaced my remarks by saying I was
5 jumping around a little bit, and I did jump to the
6 question of settlement, which I normally mention at the
7 end, almost in passing. I'm being a little more
8 assertive about that today because the nature of this
9 case is such that it does strike me as one where those
10 types of discussions might be fruitful, and I will go
11 ahead and finish this point by reiterating the
12 suggestion that if the parties wish, the Commission
13 probably will be able to make someone available to you
14 who both has expertise in this subject area and has
15 training and experience in alternative dispute
16 resolution. It might be able to assist you to come to
17 some resolution. I'm not ordering that. I'm merely
18 suggesting it, and when we take a break here in a
19 little bit, perhaps you will all wish to discuss that
20 possibility amongst yourselves.

21 Meanwhile, we will proceed on a parallel
22 track, if you do decide to go that route, with the
23 adjudication, because I don't want to slow this case
24 down, and I will slow it down if you ask me to, but in
25 the meantime, I'm just back from vacation, and I'm

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1 fresh and I'm ready to go, so you all will have to
2 suffer the consequences.

3 MR. CHARNESKI: May I make a follow-up
4 comment to Ms. Dodge and to your concern about having
5 to look at each piece of equipment and does it or does
6 it not fit in the right-of-way? The way that Kent's
7 amended motion for summary determination is framed, I
8 don't think any of that is really relevant. What's
9 relevant is you've got a project. A municipality asks
10 for undergrounding, so I think that it's a simple
11 question. Either the undergrounding is required, it's
12 mandatory under Section 2 of Schedule 71 in the first
13 instance, or it isn't, regardless of specifics of the
14 piece of equipment here or there, and then secondarily,
15 if it is required, who pays, and I think that we can
16 get to those issues without looking at the necessity
17 with regard to a piece of equipment at Block 2 energy
18 station whatever. Although, we would need to hear from
19 the other cities on that point, but I don't think that
20 is crucial to the legal determination.

21 JUDGE MOSS: I agree, and that's consistent
22 with your earlier remarks. Depending on which way the
23 principle issues or underlying issues are determined,
24 then these may become pertinent, and that may be the
25 subject of a subsequent complaint proceeding in which

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1 you ask the Commission to essentially police the
2 details of one of these agreements.

3 MR. CHARNESKI: Which would be unfortunate.

4 JUDGE MOSS: I think that's a fairly
5 conservative....

6 MS. ARNOLD: I think we are in essential
7 agreement here that the basic issues need to be
8 resolved at a pretty high level by the Commission. The
9 subject of settlement -- this case actually comes to
10 the Commission in an odd posture. I've never been here
11 with 10, 8, engineers chomping at the bit, because
12 these discussions have actually been going on since the
13 beginning of this year between Puget's engineering
14 group and the city engineers, and there has been lots
15 and lots of attempts to settle it and can't we do this
16 and can't we do that on a very specific level, and the
17 cities are coming to the Commission because we need a
18 high-level decision on really those two issues. Does
19 Schedule 71 require Puget to underground when they are
20 told to do so, and if there is no room on the
21 right-of-way or Puget doesn't want to be on the
22 right-of-way, who has to pay for the easement at their
23 facilities?

24 Those are really the two issues that need to
25 be decided, and one of my horror scenarios is that we

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1 get bogged down in endless data requests about 170th
2 Street and what's going on on 32nd Street Southwest and
3 the specifics of it, because we will never get it
4 resolved then. But I think the high-level issue -- I
5 don't think there can be settlement without a
6 resolution of the high-level issues, and I think the
7 high-level issues can be decided in a pretty
8 streamlined fashion.

9 JUDGE MOSS: I don't necessarily share your
10 pessimism, because to put one of my favorite quotes on
11 the record from Boswell, I do find that the prospect of
12 the hangman's noose does wonderfully concentrate the
13 mind, and often times, the prospect of facing an
14 uncertain decision from the Commission on such a
15 high-order issue is sufficient to perhaps spur the
16 parties to consider if there is not some practical
17 means of satisfying the needs without resolving their
18 positions, and so we shall see, and I don't mean to
19 suggest that it won't be necessary. It may very well
20 be necessary for the Commission ultimately to, as I
21 described it, decide these high-level legal issues, but
22 I'm feeling optimistic, and so I'm going to go with
23 that flow.

24 Ms. Tennyson, I wanted to ask you a question,
25 jumping around again. If we, indeed, treat these under

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1 our declaratory judgment or declaratory order, I think
2 we call it, rules, and I guess we have to look both at
3 the Administrative Procedure Act and the Commission's
4 rule on that to have a full understanding of how that
5 works, are we going to need to notify every Schedule 70
6 and Schedule 71 customer and seek their approval or
7 permission or whatnot as parties who might be affected
8 by the outcome of this proceeding?

9 MS. TENNYSON: We do not need to seek their
10 permission, but it would be under the Administrative
11 Procedure Act would call for notification to potential
12 customers under those schedules so they would have the
13 option to participate.

14 JUDGE MOSS: Is it 34.05.230?

15 MS. TENNYSON: That sounds correct.
16 Normally, that calls for --

17 JUDGE MOSS: 240.

18 MS. TENNYSON: -- the petition to be filed,
19 for the Commission to notify those potentially
20 interested and allow them to participate. It doesn't
21 specify how they are allowed to participate in other
22 agencies that I've advised, but it's normally been just
23 a call for written comments that goes out, and it's not
24 usually a brief and response type thing but just, Here
25 are our thoughts, and the agency would take in that

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1 information and issue its decision, so we wouldn't have
2 a proceeding with opposing parties in other cases that
3 I've been involved in.

4 JUDGE MOSS: The source of my question, RCW
5 34.05.240, Sub 7, An agency may not enter a declaratory
6 order that would substantially prejudice the rights of
7 a person who would be a necessary party, and it does
8 not consent in writing to the determination of the
9 matter by a declaratory order proceeding, and my
10 concern is that any customer under Schedule 70 or 71,
11 assuming, for example, that the Commission were
12 ultimately to decide this matter consistent with PSE's
13 advocacy, might not that be viewed as something that
14 would substantially prejudice the rights of other
15 customers under Schedule 70?

16 MS. TENNYSON: Absolutely, but in this
17 instance, because we have the effect under law that
18 tariffs as adopted and that are on file with the
19 Commission and in place have force and effect of law
20 that because essentially, I think any issue of whether
21 parties might be bound by a declaratory order could be
22 resolved by filing of the tariff by PSE, approved by
23 the Commission that met the terms of the Commission's
24 order.

25 We do have a somewhat unusual situation here

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1 of companies filing tariffs. For example, if some
2 someone were to petition the Department of Social and
3 Health Services for interpretation of one of its rules,
4 there might not be a situation where those subject to
5 the rules would be aware of that interpretation or
6 change, and here, I think it's because we do have
7 tariffs that are filed and published that it's a
8 different situation. It wouldn't be so much the rule
9 or ruling that became binding on individual customers
10 but the tariff itself, and a way to resolve that issue
11 might be in the declaratory order to direct Puget to
12 file a tariff that clearly set out and incorporated the
13 rules of the ruling.

14 MS. DODGE: One thing that I might bring out,
15 Schedule 70 and 71 are voluntary schedules. People are
16 not constantly being served under Schedule 70 and 71
17 where you might have ongoing -- specific project to be
18 done, and they fall into the tariff at that time. So
19 in a sense, there is a much more limited group of
20 customers under Schedule 71 right now. It's whoever
21 has a project going on right now that they have
22 requested concerns under the tariff.

23 JUDGE MOSS: Any municipality in your service
24 territory is conceivably a customer taking service
25 under 70 or 70, aren't they?

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1 MS. DODGE: They are conceivably a potential
2 customer.

3 JUDGE MOSS: Or even private parties who
4 decide to group together and ask or require or whatever
5 the tariff ultimately says must be done in connection
6 with undergrounding, private property owners along a
7 right-of-way can make this request. As I understand
8 the tariff, it's the availability of service provision
9 provides for two types of things, as I read it. One
10 being that municipalities can request this. The other
11 being that private property owners can request it or
12 demand it depending on who is making the argument.

13 MS. TENNYSON: In that respect, to determine
14 who might potentially be affected by it would be --

15 JUDGE MOSS: A daunting task.

16 MS. TENNYSON: Daunting if not impossible.

17 JUDGE MOSS: My concern is this necessary
18 party thing. This relates back to the discussion we
19 had with the City of Clyde Hill, and I think to the
20 extent they have a unique set of circumstances,
21 probably some action beyond intervening is going to be
22 necessary in order for those issues to be taken up in
23 the case, and we talked about that a little bit, and
24 you will all figure that out after we take our morning
25 break.

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1 I should confirm at this juncture, to get
2 back to something I started on 45 minutes ago, that
3 everyone is of a mind that we should proceed in the
4 direction of a declaratory order? I see nods of
5 affirmation.

6 MS. ARNOLD: It might need to be a two-phase
7 proceeding, and that's we styled ours as a petition for
8 declaratory order and complaint, just to be on the safe
9 side. A declaratory order should be phase 1, and that
10 may resolve all the issues, but to the extent that it
11 doesn't, then the specific complaint, I think, needs to
12 be adjudicated.

13 JUDGE MOSS: The question is how we go
14 forward at this juncture, and my inclination is to
15 treat the matter as a declaratory judgment matter,
16 declaratory order matter and see if we can't do it on a
17 paper record. Does everybody think that's the best way
18 to proceed?

19 MS. DODGE: A paper record to the degree that
20 facts are --

21 JUDGE MOSS: Stipulated facts, sure. I told
22 you I'm being optimistic.

23 MS. DODGE: There was also suggestion of
24 going forward on declaration. I think we ought to be
25 able to stipulate facts.

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1 JUDGE MOSS: There are alternative ways to
2 develop a paper record, and if we find that there are
3 facts to which you can not stipulate, then we will have
4 another prehearing conference and decide how we are
5 going to deal with those, whether we will need a
6 hearing with witnesses or whether we can do it by cross
7 affidavits or what have you. Those decisions can wait,
8 and I will make myself available on short notice to the
9 extent these things come up. It's my intention to
10 proceed with dispatch.

11 MS. TENNYSON: I think that is part of
12 Staff's discussion in its responses to the Bench
13 requests was that perhaps we might set a time frame
14 within which we come up with stipulated facts or come
15 back with other procedural issues.

16 JUDGE MOSS: I should mention that based on
17 internal discussions, the commissioners will sit on
18 this case, so I will not be deciding this case; they
19 will. In terms of what we've been talking about all
20 morning, what that means is that we will establish the
21 process here this morning, and I will present to them
22 the results of that. They can, of course, sit, whether
23 we go forward on a paper record of one form or another,
24 stipulated set of facts, or whether we have to have
25 live hearing, and that is their intention.

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1 It is conceivable that they will ask me to
2 impose some additional process. I'm thinking
3 specifically of the possibility of them wanting to hear
4 oral argument. They may or may not. I don't know, but
5 that's a possibility. I would say for myself, I don't
6 see the need for it, but they may want that. So I just
7 wanted to mention that some things may change slightly
8 after today because of their particular needs in the
9 case.

10 I think then that as I sort of wade us
11 through this, we will proceed under the declaratory
12 order statute in rule for the time being, at least.
13 The Commission's procedural rules do allow for the
14 conversion of proceedings, and if it becomes apparent
15 that that is something we should do, then we can take
16 it up at the appropriate moment in time.

17 There are different procedural requirements
18 under the complaint statute rule. There are different
19 time frames. There is a different burden of proof, so
20 there are serious implications to deciding which way to
21 go forward, but I sense there is a general consensus we
22 should go forward in the fashion I've described. I'm
23 comfortable with it, and I believe the commissioners
24 will be comfortable with it. Subject always to the
25 caveat that we all have bosses, that is the way that I

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1 intend the case to go forward. So --

2 MS. ARNOLD: Your Honor, could I --

3 JUDGE MOSS: Go ahead.

4 MS. ARNOLD: I'm sorry. I wanted to get this
5 in before the break so you could sort of think about it
6 during the break. An issue that's come up and we spent
7 a lot of time dealing with is how to move forward with
8 these projects. The SeaTac project is right now. The
9 multicities project, I think the Federal Way problem
10 has been resolved in some bizarre way. They are
11 putting up temporary overhead lines or something.

12 But we've been talking with Puget about
13 entering into an underground agreement that contains a
14 reservation of rights or that somehow are subject to
15 the Commission's determination as to what Schedule 71
16 means, and I'm not sure what's the best way to move
17 this forward. At the minimum, I would ask the law
18 judge to ask the parties to try to reach agreement on
19 some kind of reservation of rights so they can move
20 forward with the project, particularly the Highway 99.

21 The cities are now in the stage of going out
22 to bid, and they need to tell the prospective
23 contractors who will be bidding on the project, give
24 them an idea of what the costs are on the project, and
25 who pays for easements can make hundreds of thousands

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1 of dollars worth of difference in a project. So we
2 need to have some form of mechanism for moving forward
3 while the Commission is deliberating, and whether it's
4 just encouragement on the Bench's part or some kind of
5 order that says that any contracts will be subject to
6 further order of the Commission, specifically directing
7 Puget to enter into these contracts or what, I don't
8 know, but I just wanted to raise that issue.

9 JUDGE MOSS: Ms. Dodge?

10 MS. DODGE: Puget has invited the cities, to
11 the degree they have concerns about specific projects
12 going forward, to come to Puget, say they are concerned
13 about the timing on a specific project. We will look
14 at that particular project and what's going on in the
15 ground there, and we are open to entering into
16 underground conversion agreement that contain a
17 reservation of rights that is specific to the project
18 and specific to the proceedings that are pending.

19 Just as an example, we have actually this
20 morning with us a proposed SeaTac Schedule 71 agreement
21 that contains a reservation of rights and attaches a
22 Schedule 70 agreement and basically sets out, pending
23 the Commission's decision, and the Commission's
24 decision will control, and it sets up the timing for
25 payment, and if we have no decision within 30 days of

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1 completion of that project, then they normally would
2 have to pay and so forth.

3 I don't think we need to get into that, but
4 just to say that we do believe these need to be
5 addressed on a case-by-case basis because, as an
6 example, the Federal Way project, which is the claim
7 was made that the bulldozers were ready to go and we
8 were standing in the way. As a factual matter, that's
9 incorrect. Accommodations were made. A conduit was
10 provided, so the conduit will be installed, so it's
11 available if in the future undergrounding is provided.

12 There are ways to work through specific
13 projects, specific issues, specific timing, but it is
14 inappropriate to take all of the form underground
15 conversion agreements and make some kind of template
16 reservation of rights of those, particularly when we
17 are not yet sure exactly what the scope of this
18 proceeding is. So I think that rather than having that
19 concept come from the Bench or some kind of generic
20 order that we are supposed to do something about it, I
21 think that any direction as to that question would
22 predecide some of the issues that are critical to this
23 proceeding. We don't believe that for the most part
24 these issues can't be worked through or there is actual
25 urgency, other than that deliberate process going

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1 forward and the issues being decided.

2 JUDGE MOSS: I think that what you are saying
3 is not entirely inconsistent and may be entirely
4 consistent with what Ms. Arnold was suggesting, that
5 there are projects that have critical time lines, and
6 that as to those, it would be appropriate for the
7 parties to enter into some sort of agreement to allow
8 the project to go forward while preserving the parties'
9 rights, and of course I will say one thing in this
10 connection, and that is simply that of course, PSE is
11 obligated to obey the terms and conditions of its
12 tariffs, so to the extent we find something has been
13 done that runs afoul of that requirement, then
14 certainly the Commission is empowered and would order
15 appropriate relief.

16 Probably far better for you all to simply
17 provide something like that as between yourselves in
18 allowing this. It's so sensible to do that. It
19 strikes me that again, I feel confident that you all
20 ought to be able to do that. And it sounds like both
21 parties are inclined in that direction, and it's only a
22 matter of working out the details in terms of working
23 in the specific terms in the proposed agreement and
24 perhaps having to add a coma or a sentence or two or
25 take one out or something.

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1 So again, this is a subject for the break.
2 I'm thinking we are probably going to take a longer
3 break than I normally take to allow the parties to have
4 the opportunity for the various discussions I've
5 suggested might be fruitful, and so we will do that
6 here shortly.

7 Before we take our break, I would like to get
8 back to some of the more fundamental issues that we
9 started on. I think this has been very useful for us
10 to expand our discussion and get into some of the
11 issues in the case and that sort of thing, but getting
12 back to the question of consolidation, it does appear
13 to me preliminarily that we ought to consolidate the
14 City of Kent matter with the multicounty complaint. I
15 realize that we may get to a juncture where specifics
16 overwhelm generalities, but that at the threshold,
17 there are a couple of fundamental issues that are
18 common between the cases and essentially our
19 interpretation of the language in the tariff. So I
20 will hear any objection to the suggestion that we
21 consolidate those two before I make a ruling. Is there
22 any objection to the idea of consolidating the two
23 proceedings? Hearing no objection, then it is my order
24 that Docket No. UE-010778 be consolidated with Docket
25 No. UE-010911.

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1 Now, with respect to the other petition, the
2 suggestion that I think was common among the parties
3 who responded to the Commission's questions was that
4 the City Of SeaTac petition should be handled
5 separately, that it raises a separate issue. You all
6 have a lot of good sense. It strikes me that way. Is
7 there any objection to handling that as a separate
8 matter but on a, I would say, highly parallel track?
9 Hearing no objection, it will not be consolidated, and
10 I will make an effort in managing these dockets to
11 schedule things in such a fashion as to promote both
12 efficient use of your time and the Commission's,
13 including mine, so obviously, we will have less
14 opportunity for joint hearings and that sort of thing,
15 but to the extent that opportunity presents itself, we
16 would even do that, because, of course, we can't have
17 joint proceedings even in an unconsolidated question.

18 But that brings us to the next question,
19 which is a suggestion by some of parties in the City of
20 SeaTac matter that it be handled as a brief
21 adjudicatory proceeding, which is yet another
22 procedural mechanism with another set of possibilities,
23 shall we say. I will go ahead and scratch the line in
24 the sand and say I'm a little bit reluctant to go
25 there. The brief adjudicatory proceeding is something

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1 we normally reserve for types of proceedings that are
2 more summary by their nature. This one may well be one
3 that could be resolved on a motion for summary
4 determination and stipulated facts, but it is not in
5 the nature of, for example, a penalty proceeding where
6 a party is seeking relief from a Commission-imposed
7 penalty, which is a typical type of brief adjudicatory
8 proceeding. I'm just concerned that the significant
9 informality of the brief adjudicatory proceeding is not
10 entirely appropriate in this case.

11 So having taken the wind out of anyone's
12 brief-adjudicatory-proceeding sails, I will ask if
13 anyone wishes to object to my suggestion that we simply
14 go forward with that in a fashion similar to what we
15 are doing in the consolidated dockets, which is to
16 treat the matter as one petition for declaratory relief
17 and again move forward on a quick schedule, assuming
18 the parties can stipulate as to any disputed material
19 facts or can otherwise provide a means by which the
20 Commission can have before it what it needs to decide
21 disputed facts, whether or not that requires a live
22 hearing. If it does require a live hearing, I will
23 tell you that I suspect it will take a bit longer than
24 otherwise, because I will have to then schedule a
25 hearing that will work for the Commissioners'

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1 schedules, and their schedules tend to be very busy, so
2 that could be problematic to do in a quick turnaround;
3 although, they have many times in my experience here
4 been willing to put other matters aside to take up
5 these pressing questions, so we would certainly do our
6 best, and then that would have implications for the
7 City of Clyde as well. Let me just check my notes and
8 see if we can take a break.

9 MR. WALLACE: Your Honor, if I might ask a
10 question. I think certainly in terms of the speed of
11 the procedure, it would be highly dependent upon
12 whether or not Puget Sound will enter into a reasonable
13 agreement, whatever the tariff is decided upon
14 controls, so these current projects like Clyde Hill can
15 go forward now this summer. If we can get that done,
16 obviously, as long as we get a decision before the cows
17 come home, we are happy, because we don't want to miss
18 this construction season.

19 JUDGE MOSS: Time becomes less important if
20 you can have something in place that will allow you to
21 go forward and be in line for refund, if that's
22 appropriate, or not, as the case may be.

23 MR. WALLACE: Or perhaps some greater payment
24 from my client to PSE.

25 JUDGE MOSS: It might go that way; although,

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1 I would be less optimistic.

2 MS. ARNOLD: Mr. Wallace took the words out
3 of my mouth. The SeaTac project, literally, the
4 bulldozers are in the street. They were supposed to
5 have started on Monday and they haven't, and Puget's
6 willingness to enter into an agreement to start work
7 with the reservation of rights -- I'm not sure even a
8 brief adjudicatory proceeding would be adequate. I
9 think the City would probably have to go to court to
10 get an injunction, because it really is very urgent.
11 So we don't care if it's a brief adjudicative
12 proceeding or a declaratory proceeding as long as it
13 moves quickly and as long as work can get started.

14 JUDGE MOSS: It does strike me that the best
15 of all possible worlds from everyone's perspective is
16 to, as we have been discussing, have you all get
17 together this morning and see if you can't work
18 something out like that that will be a practical
19 short-term solution that will give us all adequate
20 opportunity to cue these issues up and get them
21 resolved, and everybody's rights will be reserved, and
22 if there is ultimately some adjustment that has to be
23 made one way or the other, it can be made. It's only
24 money. Nobody is going to die. Nobody is going to the
25 hospital. That seems to me when it's only money, you

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1 ought to be able to work something like that out, and
2 I'm encouraging you to do so.

3 MS. DODGE: I think it may be that in many of
4 these cases it's only money and then a reservation of
5 rights. I will say that this is the first I've heard
6 that in SeaTac, there are bulldozers ready to go on
7 Monday, and I've heard it before, so we will see. In
8 any case, on some projects, there is a question of
9 whether undergrounding will occur at all, and that may
10 be one of the primary situations where going forward on
11 a project could significantly change the status quo in
12 a way that in the end would have been a much different
13 outcome given the Commission's ruling, but I haven't
14 seen that yet -- well, Federal Way, but in any case,
15 there are many projects we can address with the
16 reservation of rights on a case-by-case basis.

17 JUDGE MOSS: Of course you do your best to
18 work this thing out, and there is always risk in doing
19 it and not doing it, and you will have to weigh those
20 risks because it could ultimately end up costing one or
21 the other of you a great deal more money if you are not
22 able to work something out as a practical short-term
23 solution. So I think it's in everyone's interest, and
24 that is perhaps why I feel optimistic about it, to do
25 something along those lines, and this isn't Tieneman

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1 Square. I'm not really concerned about bulldozers in
2 the streets and PSE's personnel standing out there
3 bravely facing them down, so we don't need to worry
4 about that sort of thing. You all know what the
5 practical problems on the ground are. That's what
6 needs to be looked at.

7 MR. CHARNESKI: Just one brief comment if I
8 may, Your Honor. I'm in agreement on anything we can
9 do with the reservation of rights to move the projects
10 along, but to the extent we look at that as a remedy or
11 relief of some kind -- we can take a deep breath. We
12 now have time -- I don't think it's necessary to take
13 the time for SeaTac.

14 On the one project, obviously this is
15 necessary, but we talk about going forward on a paper
16 record or developing a stipulation as to facts. I'm
17 not even sure that's necessary. On the motion that
18 Kent has filed, there is already a stipulation. One
19 factual question is, do the criteria in Section 2 of
20 Schedule 71 exist? You are adding a lane. There is so
21 many volts. It's a commercial zone area, and PSE has
22 already stipulated on that in writing with respect to
23 the City of Kent's project. I don't believe there is
24 any other factual issue there, and I assume the same
25 stipulation could come very readily with respect to

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1 every other city's issue.

2 So I'm just expressing a concern that we not
3 get too bogged down in the notion of brainstorming and
4 developing stipulated facts and so on and so forth. I
5 think everything that needs to be on the table may
6 well, in fact, be on the table already to resolve those
7 two threshold issues.

8 JUDGE MOSS: I think much of it is, and I
9 don't have any intention of proceeding other than the
10 fashion I've described, which is to say with dispatch,
11 so that is what we are going to do, and we are going to
12 set a schedule to insure that. We are going to do that
13 today, but we aren't going to do it right now because
14 I'm running out of breath. So I want to take a break,
15 and I do think, and let me ask you, will 15 minutes be
16 adequate, or should we take a slightly longer break?
17 We'll shoot for 15. Try to be back at about 12 minutes
18 after the hour.

19 (Recess.)

20 JUDGE MOSS: We've had our morning recess,
21 and the parties have had an opportunity to discuss
22 things among themselves, and I think I would like to
23 turn first to the City of Clyde Hill, Mr. Wallace, and
24 see what fruit your discussions have borne.

25 MR. WALLACE: We would like at this time to

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1 request that you delay action in ruling in our petition
2 to intervene. If you could give us until a week from
3 tomorrow, which is the 18th, I think, to file a
4 separate petition and a motion to consolidate with the
5 SeaTac case, which is UE-010891, and at this time, we
6 would withdraw the petition to intervene, and then as I
7 indicated, we had some conceptual discussions with
8 Puget so that our project isn't delayed, and our
9 bulldozers are not there, but we can get them there
10 fairly quickly, and the concept we discussed would
11 work, and it's obviously to both our mutual advantage
12 to do so. So if Your Honor would grant us that
13 request, then our next request would be to be excused
14 from the rest of the proceedings.

15 JUDGE MOSS: I don't see any particular
16 problem with that. We are only talking a week, so I
17 don't think it's going to have any material effect on
18 the procedural schedule. Assuming for half a moment
19 that we were able to go forward on cross-motions for
20 summary determination, we will still set that for a
21 fairly short time frame, so your motion would have to
22 follow close on the heels of your complaint, but that
23 shouldn't be a problem, so it would not affect the
24 procedural schedule in the SeaTac case, which I'm sure
25 might be a concern that you would have, Ms. Arnold, but

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1 I do think it's appropriate that we do that. Let's
2 don't do this in such a fashion that we end up with yet
3 another separate case. Don't you think that's the best
4 approach, Ms. Dodge?

5 MS. DODGE: I think that sounds fine.

6 MR. WALLACE: I think our legal issues are
7 the same.

8 JUDGE MOSS: With that, we will give the City
9 of Clyde Hill -- we will continue to carry the
10 intervention until you do withdraw it. If for some
11 reason that does not eventuate, then I will rule on it.
12 That probably is not going to be necessary. The City
13 of Clyde Hill should file by the 18th any separate
14 complaint it wishes to bring and seek consolidation
15 with the City of SeaTac docket, and Mr. Wallace, you
16 asked to be excused from the balance of our prehearing
17 this morning, and I will say that's fine with me;
18 however, we will be setting the schedule, so to the
19 extent you want to participate in this discussion,
20 which I hope will follow shortly here, you might want
21 to stay, but that's up to you.

22 MR. WALLACE: Again, because in our
23 discussions with Puget -- our facts are pretty cut and
24 dry. What's there is there. We don't have any real
25 shades of gray.

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1 JUDGE MOSS: In that event, you may want to
2 get back to other business.

3 MR. WALLACE: Thank you, Your Honor.

4 JUDGE MOSS: I was just making a few notes as
5 to process as to which we need to establish dates.
6 Based on the conversation that we've had so far this
7 morning, it strikes me, and this is subject to
8 amendment, but that we need to establish a date for the
9 parties to present a comprehensive issues list, for the
10 parties to present any fact stipulations they are able
11 to achieve, and simultaneous with that would be motions
12 or other papers that would cue up other process for
13 fact determination to the extent there are material
14 facts that cannot be stipulated to, and of course,
15 there may be some dispute about materiality, and I may
16 have to resolve that, but at this juncture, at least, I
17 think if we set that date, and there is some
18 possibility, at least, that we will not have to get to
19 the point of ruling on that sort of thing, except in
20 the context of motions for summary determination, of
21 course. We should set a date, I believe, for motions
22 for summary determination. We already have a motion
23 for summary determination and an amended motion for
24 summary determination. I believe that's from the City
25 of Kent.

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1 MR. CHARNESKI: Correct.

2 JUDGE MOSS: Puget, in its answer, did make a
3 statement of facts and law in response to the Petition,
4 but I would assume you would want to recast a lot of
5 that argument, perhaps, on a cross-motion for summary
6 determination. Would that be your inclination,
7 Ms. Dodge, or would you think just to respond to any
8 motion that is presented?

9 MS. DODGE: I think it would be in effect a
10 cross-motion, but we should probably talk about doing
11 that rather than double sets of briefing, all
12 this Part 1 consolidated briefing. I think in every
13 case it will be cross-motions.

14 JUDGE MOSS: I think that's appropriate. The
15 suggestion, as I understand it, is that we would
16 establish a date for dispositive motions. Kent will
17 already have achieved that but might wish the
18 opportunity for further amendment. Then everybody can
19 have the same opportunities in the case, and, of
20 course, we are only going to focus on the one we have
21 to decide. Just like a series of amended complaints,
22 we only focus on the one that we say we are going to
23 focus on, and sometimes, that's the first amendment.
24 Sometimes it's the second amendment, so we will see.
25 What about responses to motions for summary

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1 determination? Do the parties wish to have a
2 opportunity to respond to each other's motions?

3 MS. DODGE: Your Honor, I might suggest, if
4 we are talking about going this way, rather than
5 simultaneous motions for summary determination, it may
6 make more sense to have, just as an idea, the
7 petitioners file their motion for summary
8 determination, which is then responded to, which is
9 then replied to, because as part of the response, Puget
10 could cue up anything. Obviously, it's a response
11 saying, No, you are wrong. As a matter of law we win,
12 would decide that issue, and to the degree Puget had
13 any additional topics it felt were not raised, we could
14 raise them there. The petitioners would have an
15 opportunity to respond and essentially reply, and that
16 way, we are not at cross-purposes and just doubling up
17 facts and citations.

18 JUDGE MOSS: Everybody is nodding in
19 affirmation. That approach works fine, I think. The
20 Commission's rules require that any replies be
21 authorized, and I will do that. We will set a date
22 then for the motions, the response by the respondent,
23 and then we will set a date for replies as well.

24 The only other process and perhaps date
25 matter that I would ask the parties whether we need to

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1 establish is the question that I raised earlier about
2 the prospect of having some sort of alternative dispute
3 resolution mechanism in place to allow you all to
4 proceed in parallel with the adjudicatory proceeding.
5 The Commission has in the past made one of its
6 experienced and trained mediators available to parties
7 in these types of complaints in the nature of the
8 complaint dispute with some success for the parties
9 achieved by the parties in that context. So if that is
10 something the parties would like to have available to
11 them, I can take steps to have someone assigned to
12 assist you in that fashion. Probably would be another
13 week before that could actually happen, and obviously,
14 I can't sit in that role so I can't volunteer, and we
15 would have to consider what the demands on various
16 people's time is. All of the judges at the Commission
17 are trained in mediation, and it will probably be one
18 of them to assist you in that way, if that's something
19 you all want me to set up. If it is, then we'll set a
20 date that you get together for an initial meeting.

21 Of course, ADR is in the control of the
22 parties, and you can come to the first meeting and say,
23 Forget it. We hate each other and we are not going to
24 talk. And that will be the end of it, but it's an
25 option I'm offering to you, and tell me if you would

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1 like to avail yourselves of it. It doesn't hurt my
2 feelings one way or the other.

3 It's also not a closed book after today. If
4 you come back to me later and say, We've now reached
5 the point where we think this will be helpful, I would
6 be glad to initiate the process at that point. If you
7 want to say, We're not ready to go there today, don't
8 feel like it's your last opportunity. Ms. Arnold?

9 MS. ARNOLD: I think as I said before, the
10 ultimate issues need resolution by the Commission, but
11 I think ADR -- I would think it would be helpful to
12 have someone we could defer the smaller skirmishes
13 rather than the outcome of the war to ADR, because I'm
14 hearing from the clients that there is an urgency in
15 moving ahead, and I think we need assistance in working
16 out mechanisms for moving ahead.

17 Ms. Dodge said that she wants to do it on a
18 case-by-case basis, and that's fine, but that's very
19 time-consuming, and I think it would be to the benefit
20 of everyone if we would defer those issues to a
21 mediator. How are we going to move this particular
22 project forward? Are we going to have a reservation of
23 rights? Are we going to have two contracts, that sort
24 of thing.

25 MS. DODGE: I think until we see any specific

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1 requests, which we have not -- the ones that we have
2 seen have been addressed -- there appear to be maybe
3 some additional items. It's hard to say, so I think
4 that we would like to obviously reserve the ability to
5 call on our resources of the Commission for a mediator,
6 but at this point, that may well slow the process
7 rather than move it along, because sometimes, this is
8 just a matter of figuring out what the facts are and
9 moving forward, and that can actually accomplish it
10 faster than actually setting up a schedule to meet with
11 the mediator to talk about what the facts are.

12 JUDGE MOSS: I think what I will prefer to do
13 at this juncture is put the mechanism in place, make it
14 available to you, and you may use it or not as you
15 choose.

16 MS. TENNYSON: I might suggest another option
17 in the interim. Commission staff, we might be in a
18 position to fill that kind of a role on an informal
19 basis to facilitate discussions and then formally
20 invoke a settlement.

21 MS. ARNOLD: That would be very helpful.

22 JUDGE MOSS: I think that's a very helpful
23 suggestion, Ms. Tennyson.

24 MS. TENNYSON: We're not taking a position on
25 anything at this time.

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1 JUDGE MOSS: We'll go ahead and get somebody
2 assigned to be available to you, but I think that's an
3 excellent idea that you should go forward with. Is
4 Staff taking a position on the issues in the case at
5 this time?

6 MS. TENNYSON: No. We have to figure out
7 what the issues are.

8 JUDGE MOSS: Of course, to help insure that
9 any settlement that the parties achieve is consistent
10 with the public interest, which would be the standard
11 under which the Commission would consider and approve
12 or not, so that's always an important consideration. I
13 know most of you are familiar with Commission practice,
14 and I recognize some of you may be here for the first
15 time. We need to set some dates. Let's be off the
16 record.

17 (Discussion off the record.)

18 JUDGE MOSS: We have had some off-the-record
19 discussion about scheduling and have determined what
20 our dates will be. July 18th is the date that we have
21 set for the amended complaints in the consolidated
22 proceedings, and that is also the date we have set for
23 the City of Clyde to follow through on its plan to file
24 its own complaint and seek consolidation with the City
25 of SeaTac matter.

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1 In the consolidated proceedings, again, we
2 have set August 1st as the date for a comprehensive
3 issues list to be presented to the Commission and
4 either a full or partial factual stipulation and/or as
5 necessary suggested by the parties as to how to most
6 expeditiously resolve any facts that cannot be agreed
7 to that are material.

8 We have set in the consolidated proceedings
9 the 8th of August as the date for motions for summary
10 determination. The City of Kent may rest on its
11 current amended motion or may elect to file something
12 else. Responses to those motions on August 20th and
13 replies to the responses on the 27th. Assuming
14 everything is in good order at that juncture, the
15 Commission will be in a position to deliberate on the
16 motions and resolve the case as expeditiously as it may
17 consistent with the Commission's other obligations that
18 fall in that time frame.

19 Let's go ahead and finish the consolidated
20 cases procedural issues and then we will return to the
21 other case and set a schedule for it, considering the
22 other procedural matters in that case as a discreet
23 matter. Ms. Arnold, you raised a moment ago off the
24 record the question of whether we would have discovery,
25 and it has not thus far been my impression that this

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1 was a case where discovery was going to be required,
2 but perhaps there is something you would want to tell
3 me on that.

4 MS. ARNOLD: The discovery that I think is
5 not needed is the specifics of each and every project,
6 but if there is a project with unique features, Puget
7 might want to do some discovery on that. Where is it?
8 How long is it? Is it two blocks or three blocks, that
9 kind of thing.

10 JUDGE MOSS: Do you need discovery?

11 MS. ARNOLD: The cities need limited
12 discovery at this point on some allegations that Puget
13 has made in its papers that this is the way that it's
14 always been done, and we would like to do some
15 discovery on Puget's prior practices with respect to
16 how they have interpreted Schedule 70 and 71 in the
17 past, 71 specifically for the cities' case and 70 for
18 the SeaTac case.

19 JUDGE MOSS: So you would anticipate perhaps
20 a few data requests?

21 MS. ARNOLD: Yes.

22 JUDGE MOSS: How about PSE? Does PSE see any
23 need for discovery?

24 MS. DODGE: If the discovery rule is invoked,
25 I would imagine that we would ask for responses to

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1 everyone else's, because Staff has issued a number of
2 requests too.

3 JUDGE MOSS: Staff has informally done some
4 discovery?

5 MS. TENNYSON: Yes, we already have.

6 MS. DODGE: I'm not sure that Puget
7 anticipates needing any discovery. It's a little hard
8 to answer now before we've sat down to talk about
9 stipulated facts. The facts are in disagreed, maybe
10 some discovery would be appropriate. I'm also a little
11 bit unclear, if you are looking at how Puget has
12 complied with the tariff in the past, how we would --
13 project, so this may get pretty big pretty fast
14 depending on the scope of discovery and what we are
15 looking for, so I have a little bit of concern about
16 that on this schedule in particular.

17 Maybe we need to try to hammer out facts, see
18 what happens, and if there are big factual disputes
19 that discovery might resolve, come back and talk about
20 doing discovery at that point and potentially moving
21 the briefing schedule.

22 MS. ARNOLD: That makes sense.

23 JUDGE MOSS: We will reserve on the question
24 of whether to invoke WAC 480-09-480, the Commission's
25 discovery rule, rely on the parties to pursue their

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1 initial questions at least informally. If they come to
2 loggerheads then you may call me, and we will establish
3 a conference call on short notice and resolve it; all
4 right? And I will then address the question of a
5 protective order in the same way. A protective order
6 is a mechanism to facilitate discovery, so if we are
7 not going to have discovery, clearly we won't need a
8 protective order. If that comes up, we will deal with
9 it at the time.

10 Any questions or any points that I may have
11 overlooked in terms of what the parties need to know in
12 the prosecution of this case as it stands today, at
13 least consolidated cases, I should say. Let's be back
14 off the record to discuss the question of the SeaTac
15 Complaint and its schedule.

16 (Discussion off the record.)

17 JUDGE MOSS: We've had some off-the-record
18 discussion about procedural dates for the SeaTac matter
19 that's being handled on a separate track, although
20 closely in parallel with the consolidated cases. We
21 had previously established that the 18th would be
22 something of a triggering date in that the City of
23 Clyde will have that date to file a complaint and
24 motion for consolidation with the SeaTac Complaint and
25 petition for declaratory relief.

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1 Starting with that date, we will have the
2 statement of issues and facts, the same process we
3 described for the other proceeding, but in the SeaTac
4 case, it will be the 31st of July that will be due.
5 Motions for summary determination in the SeaTac matter
6 will be on the 6th day of August, responses on the 17th
7 day of August, and replies on the 24th day of August,
8 and I will memorialize all of these dates in a
9 procedural order in the next day or two.

10 MS. DODGE: Just to clarify again, these are
11 not simultaneous but the petitioners -- on the 6th?

12 JUDGE MOSS: That's correct. Our process
13 contemplates that the complaining parties will file
14 their motion for summary determination. PSE will
15 respond, and then the complaining parties will have an
16 opportunity to reply on the schedule that I've set.

17 Is there any other business we need to take
18 up? Have I missed or skipped anything, not been
19 apprised of anything?

20 MS. ARNOLD: Thank you.

21 JUDGE MOSS: I think it's probably going to
22 be about a week before I can identify the individual
23 who we will make available for you for purposes of any
24 mediation or other ADR. In the meantime, Ms. Tennyson
25 has graciously offered to make herself and staff

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1 available to assist you in that way. I will do that at
2 the earliest possible moment and let you know who that
3 is.

4 There are a couple of housekeeping matters I
5 should cover. On filings in this proceeding, we are
6 going to need an original and 14 copies to meet the
7 Commission's internal distribution requirements. All
8 of you present now will be familiar with the
9 Commission's filing requirements, but I'll put it in
10 the record because some of our participants have not
11 been in proceedings here before. All filings must be
12 made through the Commission secretary either by mail to
13 the secretary at the WUTC, P.O. Box 47250, 1300 South
14 Evergreen Park Drive Southwest, Olympia, Washington,
15 98504-7250, or by other means of delivery to the
16 Commission's offices at the street address I mentioned.
17 We require that filings of substance, that is to say,
18 testimony, briefs, motions for summary determination,
19 include not only a paper copy but an electronic copy.
20 That may be furnished either on a 3.5-inch diskette in
21 either Word Perfect 5.0 or later format or Microsoft
22 Word 97 or later format or in PDF format, and I want to
23 say another word about that. I really want you all to
24 do that. I say this in every case. It makes our lives
25 so much easier if do you that, and I would really very

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1 much appreciate it.

2 I learned yesterday that administrative law
3 judges in Texas have the power of contempt. We do not
4 in this state enjoy that, but that's how strongly I
5 feel about it.

6 MS. TENNYSON: Your Honor, you reference the
7 three-and-a-half-inch disk. Would e-mailing be another
8 option?

9 JUDGE MOSS: Yes. They may be sent as e-mail
10 attachments, and it's probably more convenient these
11 days than a three-and-a-half-inch diskette. Thank you,
12 Ms. Tennyson.

13 Service on all parties must be simultaneous
14 with the filing. Ordinarily, the Commission does not
15 accept filings by facsimile, and you need to secure my
16 permission in advance if you want to make a filing by
17 facsimile. I'm pretty liberal about that. This case
18 does not appear to raise concerns in terms of the need
19 for highly expedited disposition of process dispute,
20 such as a company discovery, for example. If the case
21 should take that return turn, then we will have some
22 discussion about how I like to do that in an e-mail,
23 but for present purposes, we won't go into that.

24 MS. ARNOLD: Your Honor, could we ask the
25 Bench's permission in advance to file the issues lists,

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1 facts stipulations by fax? It makes a big difference
2 to those of us in Seattle, because with the traffic and
3 so forth, you just about have to complete your filing
4 the day before it's actually filed in Olympia, and we
5 might use the extra time on the stipulated facts and
6 the issues list if we can fax them, really working
7 until the last minute on the date that they are due.

8 JUDGE MOSS: I'll grant that request, and
9 I'll make a self-serving advertisement. The Commission
10 is undertaking a comprehensive review of its procedural
11 rules. That's a matter that is noticed to the world
12 recently, and I want to just remind you all of that and
13 tell you that we are encouraging members of the private
14 bar and various companies we regulate to participate in
15 that process with us, and we are aware of the
16 difficulties that are imposed by the fact that most of
17 the lawyers are in Seattle and the Commission is here,
18 and I would personally welcome input that you all may
19 have for potential revisions to our rules that would
20 help these types of things work more smoothly, so
21 that's a little aside. Ms. Tennyson is on the project.
22 So am I.

23 I will enter a prehearing conference order in
24 the next day or two, as time permits, and I may include
25 some requirements that I haven't discussed today, but

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1 they will be minor and won't really affect our going
2 forward. If you do undertake settlement discussions,
3 it is best to keep the Commission advised of any
4 progress you make so we have a good sense of what's
5 going on in the case and where it is at any given point
6 in time. I don't expect daily reports, but if you make
7 some significant progress, let us know. You all are
8 familiar with our rules on continuances and whatnot so
9 you can look at those yourselves.

10 I believe that completes what I had on my
11 agenda, and we were able to weave our discussion of the
12 issues in sufficient so I'm reasonably satisfied I'm
13 beginning to understand them, and of course, you all
14 are going to present them to me in writing anyway, so
15 that will make things very easy. Is there any other
16 business we need to conduct this afternoon?

17 MS. ARNOLD: Your housekeeping details apply
18 to both cases, right?

19 JUDGE MOSS: Yes. Anything else? I
20 appreciate you all coming today and participating with
21 us, and I look forward to working with you to bring
22 this case to resolution. We are off the record.

23 (Prehearing concluded at 12:08 p.m.)

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