

**SPECIAL CONTRACTS RULEMAKING WORKSHOP**  
**U-991928**  
**January 20, 2000**

**Attendees:**

Bruce Folsom, Avista  
Pat Wiles, Washington Water Service IOWUA  
Ed Finklea, NW Industrial Gas Users  
Phillip Popoff, PSE  
Mick Waas, Cascade Natural Gas  
Jamie Van Nostrand, PacifCorp  
Mary Ann Hutton, NW Industrial Gas Users  
Karl Karzmov, PSE  
Melinda Davison, Boeing, Epilog, & ICNU

**Staff:**

Fred Ottavelli  
Karen Caille  
Merton Lott  
Sally Johnston  
Danny Kermode  
Sondra Walsh  
Dick Byers  
Glen Blackmon

FO: Overview and introductions.

KC: Overview of rulemaking process

FO: Groundrules overview.

The current rule requires the filing of special contracts with the Commission by water, gas and electric companies. The intent in this process is to review that rule. I want to make a couple things clear here when we start the process. Some of the commenters seemed to be confused by the notice that we put out and I want to make sure that I clarify where we are. Number one, the whole rule is up for consideration. We are considering the language in the rule pursuant to the Governor's directive to try to bring some clarity to the rule. We are also looking at the entire rule in terms of any changes that may be necessary. So don't feel constrained in any way or limit yourself in any way in terms of the entire rule. The other part, of course that we are addressing in the rule, is the discussion of the essential terms and conditions with the intent would be to make available to the public and the intent is to describe those terms and conditions in the rule and I'm sure there will be considerable discussion this morning, and as the rule goes forward, with what those terms and conditions should be. The other thing I want to make

very clear is that this is not a process for the (not clear on tape). Staff has in no way made up its mind in terms of what those terms and conditions should be. That is still under discussion at the staff level. The results of the meeting this morning and the comments that have been submitted will be part of the staffs consideration. The staff has determined, has reached consensus at least, of what the rule should look like and the rule will be drafted and the Commissioners will review the rule and the rule will be submitted to all of you for comments again. Looking at the comments that were submitted there seem to be some thoughts that we have made up our minds. We haven't. We have received comments from a number of groups and those comments are summarized in the packet that you have, at least it was our effort to capture the primary points that you were making. The reason staff's response all has not been completed is because staff has not decided yet what its responses will be. Again, we have not predetermined where we're going with this. This morning what I want to do to kind of set the basis for this discussion is first go around the table and have each of those of you that are here and not members of the staff, comment on your comments, if you will, and I don't want to spend a lot of time on this, but I want to make absolutely certain that what we have captured is what you meant to say and it's also an opportunity for you to embellish, to a certain extent and to elaborate on what your position is in terms of this rule. Again the comments can go both to the entire rule and the issues of the terms and conditions that can be made available to the public. After each of you have had an opportunity to speak then we will open it up for open discussion and kind of see where we are. With that I'm just going to start around the table.

KK: I think that the staff has done a pretty good job of summarizing the comments (not clear on tape). The companies concerns are, first of all I think that the existing rules seem to be adequate as they are. I think that one of the most important things is with regard to disclosure that the customer not be disadvantaged in any way because of what has to be disclosed. The disclosure requirement actually, if we disclose all the information about the customer is more disclosure than what we have on our general tariffs. We don't generally disclose any information about our customers. The disclosure requirements seem to go beyond that. So the company's position is that confidentiality is important to them not to disadvantage our customer and there's, we would like to know what the public interest reason is for requiring disclosure. The current requirements supply enough information for the Commission to make a decision. In any event if disclosure is required it should be after (not clear on tape).

PP: I think what it kind of comes down to on part of this of what's met by essential terms and conditions. There seems to be two kinds of questions. One is, when you say essential terms and conditions it can mean that enough information has to be disclosed so that the whole world can understand fully what this contract is. This is sort of essential in the context of explaining the content. The other way that essential may be used and I think that these can be different questions, though I'm sure some people around the table think

they're the same, is that essential can mean what information is essential to support the public interest that must be made public. We didn't see those two questions as necessarily being the same. So that if you assume that there has to be enough provided so that whole world can understand what the contract is, then defining essential terms and conditions is a different look at different kinds of information. If you back up and take the first step which says, what information is essential to support public interest, I guess that I just want to point out that those could be different questions. And that's part of what our comments were trying to get at.

- JV: I guess we would tend to agree with what the things that have been said by Karl and Phillip. I guess we approach it from the perspective that it has to be recognized that special contracts are beneficial to the utility and to the general by in customers. Utilities simply use special contracts to respond to credible bypass threats and as long as the contract covers their incremental costs and make some contribution to fixed costs the general body of ratepayers benefit by the utility being able to retain that customer in a special contract. So we think the important thing is to preserve the ability of the utilities using this tool to retain customer loads and that in the efforts by the Commission along the lines of requiring more disclosure should not make it harder for the utilities to use this tool. Because it does provide a lot of benefits. If you look at it in terms of what is, if you balance the benefits that may be lost if the utilities can't use this tool, what is it that's being furthered by the disclosure of essential terms? I guess Karl made the point of what is the compelling motive of these that these single terms be disclosed and I think it points to the Puget contracts repeated comments that I know came up in the Arco special contract as I was handling that is this notion that at the time the Commission considers the special contract it has have all this information be made public as part of its analysis as to whether the terms of the rule had been met and in our view it's, the circumstance either justify using a special contract where they know it isn't something that you have to have all the information out in the public and take the public input, it's a very strict test as to whether or not there's a credible bypass threat and whether or not the contract (not clear on tape) the next time the fixed cost. It isn't a matter about what you have to seek public opinion or public input. So, I guess in these particular circumstances we step and wonder well, what is the compelling need if essential terms would be disclosed if that disclosure would make that tool less useful for a utility and potentially clip the utilities ability to retain a customer (not clear on tape) to benefit all customers.
- BF: Avista's substantive comments get to clarification of discrimination and we have three edits that we would suggest. The first edit is pretty minimal, to add "undue" or "unreasonable" before discrimination because that's pretty much how the rule is currently implemented. The next edit we would suggest is to add the word "incremental" before costs so that there is clarification on what costs are that we're discussing and this would be incremental costs plus some contribution to fixed costs. The third edit that we made would be to clarify that effective competition could be fuel on fuel specifically to

neighboring co-op where a customer is on our fringe service territory. That would be effective competition by itself. I hope that this issue will be relatively a minor issue. In a recent order the Commission made that legal finding as it relates to competitive rates. And the definition of effective competition in that docket, Avista believes, would be applicable in this rulemaking. So that's just a brief summary of our comments.

FO: Does Avista have any comments on the privacy issue?

BF: No. We're silent on that at this point.

DB: Just a clarifying question for Bruce. I heard two things that you said now that I did not see in your written comments. One was a clarification that would be, in addition to complete covering of incremental costs, some modicum of contribution to an external order or other costs. If I missed that in your written comments.....

BF: It's in two places. One is in the second paragraph where we talked about the benefits of special contracts. It benefits all general customers, etc., it retains these customers at below (not clear on tape) prices if those prices provide a contribution to fixed costs. And then in the specific editing portion, the last sentence gets to that point. The way you would have some contribution to fixed costs by using the term "incremental" the utility does not continue to file a series of one year agreements. By filing one year agreements you're really looking at short run marginal costs. If the duration of the contract is longer than that you'll pick up some more fixed costs. You'll have more contribution fixed costs.

DB: So it's implicit in that notion?

BF: Yes.

DB: You would not be opposed to it being made explicit if that was an edit that was made to the rule?

BF: Correct. Depending on how it reads and what it is.

DB: The second point was the last one that you just mentioned which had to do with effective competition. Was that included in your written comments?

BF: Our last edit reads "customers that have alternatives to taking service from the utility are not considered to be served under substantially similar circumstances. This probably not as artfully written as it could be but this sentence does get at the point of any customer who has any alternative, including neighboring utility service, would not be considered to be a regulated customer. That customer would consider to be as having competitive

options. Just like you may want to clarify by editing Avistas previous comments this may probably need to be drafted to get to the point I'm talking about. I'm not saying this is the best language.

DB: Is it the case that in order to put a sharper point on both of those you would be interested in sending us an additional language or suggestion?

BF: Sure I'd be happy to.

DB: I think both of the points that you've made are implicit in your written comments but they aren't very explicit.

BF: And maybe we could have some discussion today about really the first point, the points are incremental costs and what should be the contribution to fixed costs. I think the second point we can simply list the language from Commission's order and banded rate proceeding. The incremental language is one that we might want to spend a little time crafting as a group or at least discussing.

PW: (not clear on tape) We want to make sure that the contracts are still viable alternatives to including everything in our written tariff. Most of the water companies use contracts for developer extensions rather than contracts for possible rate schedules. We worked many months drafting and formulating the rules under which those contracts can be used and I just don't want these to go away.

FO: You don't want to lose that? I understand.

EF: I guess three things I would elaborate on from our written comments. One, we agree with the utilities that special contracts are an important tool for them to address competition. We're not convinced though, that that tool is weakened if the price term of a contract is public information. We cited in our comments, by way of example, the approach that Oregon has taken to special contracts. We don't see more than what is provided in the Oregon example as being necessary but, we do think the price term is an essential term of a special contract and we don't see making the price term public as something that would weaken the ability of the utility to compete.

FO: You bring us right down to the bottom line.

EW: I think that's really the essence of our concern has been the price term. I note by way of getting us to focus, do any of the utilities that function in Oregon and Washington feel that the approach Oregon has taken has kept them from addressing competitive situations?

FO: We have two that are in both states and Cascade has..

General: We have three.

MH: And by that we would say, the publishing of the data, not the approval process.

EW: The approval process is a different question which goes to the merits of does it meet the competitive alternative. That's to us a different question than just the question, does the public availability of the price term.

ML: When we did that case in Northwest, we actually looked at all the Oregon contracts because we did it on a public company basis. What Oregon does and how they approve something is substantially different than just what we do here when we look at incremental costs and whether they cover their pricing methodology is totally different and what they allow in rates is different. We didn't accept all the rates that they did and they don't consider some of the stuff that we considered. So the pricing in your case is different since they don't totally look at incremental costs. So the methodology that they set prices in special contracts therefore becomes different in methodology that we set special contracts by.

MH: That's why I said Mert, I didn't mean to comment et. al.

ML: Since they have an easier method for certain customers, yes they do, that's why we disallowed some of their rates, they have an easier method of setting their prices for some of their industrial customers that we wouldn't accept. That methodology has a lot to do with how they determine the prices. The prices are determined differently in Oregon. I want to point that out. It's not an incremental cost test in the same fashion that we do an incremental cost test in this state. And, therefore the prices that fall out of their study are different than the prices that fall out of our study.

MH: Let me clarify because I didn't mean to get into that side at all. And that might be another issue that you're looking at in regard to special contracts. But we're not attempting to comment upon that at all. What we were talking about the Oregon methodology was simply the fact that a summary of the essential terms and conditions is placed in a tariff form. That's all we were talking about was the format not the substance at all.

FO: So the price is disclosed in the tariff?

MH: Right. For instance, as an example Northwest Natural has a, I think it's a schedule 60. It has a 60-1 which is one persons contract. A 60-2 which is another contract. Each of those summarizes the eligibility, what distinguishes that particular contract. The unusual

circumstances, whatever it may be. The basic term, the basic rates, any other essential pricing information, like a minimum monthly bill, any other special terms that might distinguish it from another. Essentially the essential terms and conditions as we would define it. That's all we met.

ML: I'm just saying the way those special terms and conditions, in particularly price, are calculated in Oregon is more formulated and not necessarily incremental to that company and therefore the price and other data related to the individual customer are not as important in Oregon as they are in Washington in the calculation of the special contract rates. What I'm saying is there's a difference in what the special contracts rates are in Oregon than what special contracts rates are in Washington. That's all I'm trying to point out. They don't have special contract rates the way we do. They have special contract rates that are different than what our special contract rates are. The basis of determining what they are is different.

FO: Does that complete Northwest Industrial?

MH: I might just supplement with regard to one thing. We do want to emphasize that we have been perfectly satisfied with the practice that we've followed on the gas side, that's the side that we're familiar with, for the last ten years or so, when I think this issue first came up and since that time virtually all of the gas distributors at the time they have filed the special contract, I know Cascade has been particularly good about this, is just filing a separate sheet with the terms and conditions on it, these four or five items like I just mentioned, and not filing the whole contract. We haven't said we need to see all of that. I think there's legitimate concern with regard to priority information that may be contained in the body of the contract. But, separately filing the terms and conditions which then can be a separate sheet that's made public, I think has worked exceptionally well. So, we wouldn't necessarily be asking for a change in the rule but for the fact that that practice has been challenged and obviously then it leads to needing a clarification in the rule. We are also talking about regulated utility services. If there's an upstream service and as we get into various sectors of the energy economy being competitive and of course we're more familiar on the gas side, and if a utility is doing something with the gas supply or pipeline transportation I think an argument can be made that that is not a Commission regulated utility service. So, we're not talking about that. With those two clarifications...

FO: OK, Cascade then, if you can address the Oregon issue plus whatever else.

MW: Cascade did not submit any written comments but as it's been eluded to here, we do have special contracts in the state of Washington and also in the state of Oregon. In Washington we probably have approximately 15 special contracts. In Oregon probably 5 or 6 contracts that I'm aware of. But we have included what we've called a contract

summary sheet to the basic special contract. In that summary sheet we include the rate and any escalation features in that rate. The length of the contract and any other regulated services that we provide are also listed in that summary sheet. We've found it to be a very valuable tool in retaining customers. We've used it both for existing customers that have pursued bypass as well as new large volume customers that have come in and those customers that have had an alternative to receiving service from Cascade as a distribution company. Without those contracts, obviously, we wouldn't enjoy the type of business that we're enjoying right now.

DB: Just one clarifying question. I'm not entirely familiar with the summary sheet so I was curious if it includes price information, does it also include any quantity or volume information?

MW: The only thing it includes

ML: ....yesterday and the answer is no.

MH: Usually not. These are all different ones actually.

ML: It gave exact rates but it did not give any quantities. Then they give the rates per therm and the rates per month, the minimum charge, then the special terms for escalation, something like that.

MH: There might be a block rate or something like that that has a volume component but it wouldn't tell what volumes the customer's using.

ML: Other than the minimum charge.

FO: We've had two additional people join us since we started and I'm going to give 30 seconds notice here in terms what I'm going to do next, how I want to proceed. Glen Blackmon with Commission staff has joined us.

MD: I'm Melinda Davison and I represent Boeing, Epilog, and ICNU.

FO: Then what I proposed that we will do next is take whatever comments that Melinda has from her clients and then I'm going to ask Sally to make whatever comments she has in view of the comments that we've had around the table to this point and I'm going to ask Glen to do the same and then we'll throw it open. So Sally your comments may be none or you may have some. So Melinda do you want to begin?

MD: I apologize, I came in a little late. I'm not sure if anyone has talked about the litigation that has occurred in the Thurston Superior Court as sort of a backdrop to this



rulemaking?

FO: Actually we have not and that was one of my reasons for asking Sally to comment. I perhaps should have heated up with that, but we did not.

MD: Do you want me to defer to Sally or do you want me to.....

SJ: Just start anywhere.

MD: Alright, well in that litigation ICNU was not allowed in that litigation, however, Boeing and Epilog and the Northwest Industrial Gas users were involved as well as Puget Sound Energy and Arco. And at issue in that particular litigation is whether or not certain pricing terms in the Arco special contracts should be disclosed. The Commission thought that they should and PSE and Arco thought that they should not. That resulted in pursuing the matter to Thurston Superior Court. The litigation did not go very far in terms of in the process with typical litigation with discovery and all that sort of thing and the parties got together and decided that perhaps the best resolution was to propose a rulemaking in which the essential terms and conditions would be disclosed and there would be further elaboration on the use of the rules for that particular purpose. And the intent, or I should say the interest of Boeing and Epilog in this is to make sure that they are able to look at the essential terms and conditions from a discrimination perspective. I think that there are certainly components of a special contract that are legitimately competitively sensitive that should remain confidential. We are not suggesting otherwise. As said we echo the comments that special contracts are legitimate tools and they're useful. However we do believe that particularly as we are seeing bypass, restructuring, that sort of thing, that there are elements in a special contract, for example, the Arco special contract deals with the issue of stranded costs. And if a stranded cost dollar amount is assessed against Arco then that means that there is, by definition, some type of stranded cost that will be applicable to the remaining customers, if in fact, they decide to leave the system. So, that is an important issue particularly for Boeing. Boeing is a very large customer of Puget Sound Energy and Boeing are very concerned about any language or any treatment of stranded costs in the Arco contract that could be found to impact or impair their rights. And we were not able to get that information with regard to the Arco contract. So Boeing certainly doesn't know where they stand in terms of Puget's stranded costs. Boeing was told by Puget that Puget did make an overall stranded cost determination. We got a number and we assigned a portion of that number to Arco. Well I think it's important that the other customers knows what that number is. So those are the sorts of things that Boeing and Epilog are concerned about and the reason why they supported the Commission in the Thurston Superior Court case.

FO: Will you be submitting written comments at some point?

- MD: I did on behalf of Industrial Customers and Northwest Utilities. We may see, depending on how this proceeds some additional involvement specifically by Boeing and Epilog.
- MH: Boeing is a member of Northwest Industrial Gas Users so we've been coordinating our positions.
- MD: We are in complete agreement with the Northwest Industrial Gas Users comments. We support their comments.
- FO: Sally do you have any comments?
- SJ: No. I don't have anything to add. I agree with Melinda that the reason for this rulemaking was the Arco (not clear on tape) Thurston County. My belief is the goal of this rulemaking is to determine the basic terms and conditions that should be disclosed to the Commission in proposed special contracts.
- FO: I'll shift to Glen and ask if he has any comments, in view of what we've heard this morning with essential terms and conditions that should be disclosed.
- GB: (Very unclear on tape) The written comments from Arco, is there anybody here associated with these comments? These comments address the litigation and (not clear on tape). What we agreed to in settling that case is kicking back to a rulemaking. Essentially to balance the two conflicting areas of the law. Published rates shall be charged (not clear on tape). Like situated customers should be charged like rates. In the telecommunications area we have tried to balance those two requirements using the essential terms and conditions mechanism. One of the things that we found very recently is that we add a geographic component to protect trade secrets in the telecommunications area we have tried to balance those two requirements. We have fine tuned it over time added geographic component not just how much of it at what price. To some extent I think in drafting this proposed rules, we've tried to build on the experience we've had. We do feel like it's a really workable balance point. We're revealing anybody's... some information sort of let the industry..... One of the things I've thought about especially when we got an early adverse ruling in the Arco case was what would it be like if we didn't have that mechanism. And I have concluded that it wouldn't be a very workable result if Arco were to prevail. In general there was not disclosure of essential terms. Essentially Arco's argument is that the Staff and the Commission can take care of that and that should be enough. I really encourage this group, the industry or industries, not to go down that road even you feel like you have a legal right to....marked confidential and sort of use the staff for that purpose. If we're going to be the discrimination cop your going to get a special contract through and it's going to be even a more hairy process. There is going to be a lot more information demanded of utilities so that we can analyze these things to death to see whether there is undo discrimination occurring or

not. We really cut a lot of slack to industries and to customers....because we know that they can look at each others essential terms and if there's a problem they'll raise a hand. So because of that, in the vast majority of cases there is not going to be any discrimination occurring. It's a lot better just keeping the basic information on the table.....

FO: Glen as I understand the telco rules do not define what essential terms and conditions are. And that's a distinction with what we're doing here. We're taking the next step saying that essential terms and conditions are price.

GB: We've worked them out sort of informally. It was probably about six months ago that ...start getting the geographic locations. At some point I think we will adapt the telecom rule .....At this point we don't have those laid out in a rule.

FO: Which we are going to do in this process.

GB: Right. I think that if Arco had as much interest in it's telephone rates.....

FO: Now I want to just throw it open to general discussion. I've tried to get as much comment as I can. I think the core question is are we going to identify as essential terms and conditions. I'm looking at PacifiCorps, and maybe this will kind of set the table, but PacifiCorp makes a statement in any event the utilities should not be required to disclose enough information that would allow others to calculate the customers total electric energy bill. I don't know if anyone wants to comment on that?

ML: I want to ask another general question. It more goes to Bruce, but Sally can answer the question too. In the energy industries we have banded rate authority and Avista does have a banded rate tariff and therefore when Avista signs special contracts in the gas industry they weren't signed under the special contract tariff they were signed underneath their tariff. So what is the difference between how you process the contracts you sign underneath the banded rate tariff and the tariffs you sign on the contracts you sign in the electric industries under special contracts rule and processing the information you have to submit to the Commission. And, Sally the same question, is there any legal difference under the banded rate tariff. Because all these special contracts we have, one of the things staff has said all along is this is just two ways kill the same, you know, special contracts are just the way that the other gas companies have gone along without using the banded rate tariff. You know, Cascade could file a banded rate tariff like Avista has and live with that. I just want to make sure I understand the distinction between special contracts and the banded rate tariff and the information required to be submitted in order to sign contracts underneath those two. The truth is I haven't really gone out and studied the issue what the difference between signing contracts under.... I worked on the rate bands with the Commission when we set that up, that Order, but I don't understand the

signing of the contracts underneath the banded rate tariff.

BF: I'm going to speak at a very broad level for reasons that you'll see once I start talking about it. Avista did some work on the banded rate provision and made a filing under that provision and the results were such that it's a tool that we would not use as it is currently implemented. That the special contracts rule is a tool to get to a similar place, as you're talking about, but maybe a better way for our company and customers. And if I were to go into more detail I would talk about the contract and customer in specifics in that the Commission Order, as I understand it, would place the company at risk for lost revenue which we did not think was the intention of the banded rate statute and therefore it is a tool that we would not use as much as special contracts.

ML: Special contracts generally.... we treat that the same. We treat those lost revenues as potential lost revenues also.

BF: I think Avista will litigate that in the current rate case.

ML: Sally, what information is required in the contract signed under the banded? That's one of my concerns is that there's a difference between these two even though they're the same.

SJ: I'm not sure I know the answer to your question. I haven't seen a banded rate tariff recently. But, in terms of the analysis that staff performed (not clear on tape)

ML: I was one of the advisors when the Commission set up the banded rate tariff. What the Commission did and what was presented in that 1415 or whatever the docket number was there was a lot of look at Kaiser but I don't remember what the floor is right now, I'd have to go back and look at what the floor is, but it has to do with incremental costs. Basically the floor is based on incremental costs. There might have been a price that was determined based on the minimum prices set on one of those particular contracts. Again you're talking seven years ago, a memory that's pretty shady, but we did set the banded floor at that price. We set the maximum up as a tariff rate. Again I'm from the staff side, I'm from the advisors side, and I didn't get to look at everything that Ed got to look at or Bruce's company got or staff .....

BF: The bottom line from Avista's standpoint is that was an Order that the company thought wasn't beneficial to the company (turned tape over).

SJ: Then the special contract contact that information's not covered at all.

ML: Certainly, Cascade they are...

FO: Well, wait a minute, if the price is disclosed, the rate as an essential term, then that is a proposal. And one of the written proposals as I understand it is that the price be disclosed. So I think Mert's question is well taken. You come in under a banded rate and they could be anywhere within that band and no one know what's being counted.

ML: .... just based on incremental costs. I don't know whether it's a number or whether it just says incremental costs....

FO: If we define as an essential term "price" then that amount will be known.

SJ: There's a floor and a ceiling in terms of the rates that we charge. If the range itself is narrower then there's less guessing going on. Special contracts contacts as it stands today, the price and the rates are not disclosed.

FO: That's correct but one of the considerations is that we require the price an essential term.

MH: That's what's under consideration.

FO: Right. Does Puget have any comments in terms of disclosure of price?

KK: Not necessarily additional comments. I think the value of the special contract is to protect the core customer and the disclosure of the price in a special contract puts the company at a disadvantage in terms negotiating with other potential special contract customers (not clear on tape). As we said before once it is established that you have a special contract that, and the Commission has enough information to make a decision on that special contract, I don't know that I've heard anything ....that it's in the public interest to disclose that information.

MH: I find it frustrating to say that this would put the company at a disadvantage in negotiating the best price when the company has perfect knowledge of what it is charging all other customers. And the only way you can gain an advantage in negotiating is to keep some information from that customer. So what you're saying is it's in your best interest to keep information from a customer so they could not come to the bargaining table as well informed as you are about what the alternatives are. And I find that difficult to agree with. I also find it not borne out in practice, in that we've seen, as we mentioned 17 some contracts by Northwest Natural alone, where they've disclosed essential terms and conditions, including price. Mick you said how many special contracts?

MW: About 15 in Washington.

MH: About 15 in Washington where you've disclosed every essential term and condition

including price, duration. And we have not seen a chilling effect on the ability to aggressively negotiate, not the exact same deal, but a different contract in every instance, where I'm sure you've had difficult discussions in explaining to customers why, no I'm sorry you don't have quite as good a competitive advantage and X company who got a better deal. Again, since we're talking about differences, material differences, in the competitive alternative, the location of the plant, whatever it may be, those are legitimate differences. You bargain at arms length. You come up with a different contract rate. So, I don't see it borne out either in theory or in practice.

ML: Mary Ann, you said that every essential thing is included in Cascades proposals. So you don't think additional information, other than what Cascade has revealed, is essential terms? Including quantity?

MH: No. I don't think quantity is. And I think quantity does start to get into that gray area of propriety information about the volumes at a particular plant site and production and all the rest. So sticking with just the pricing terms and nature of the service provided, the geographic location, obviously, was mentioned. I think the other thing is if there was an essential operating condition that's materially different than the companies. In other words, we're going to give you super priority for interruptability, something like that. I think that's an important term in terms of when you talk terms and conditions that would be an important...

ML: Interruptability etc.

MH: Yes that kind of thing.

ML: So Sally, she said all the essential terms, such as Cascade, so you think that Cascade's, which doesn't include quantity, you don't consider quantity then an essential term and your answer then with that explanation was, yes I agree that quantity is not an essential term. Then she went on. So price was but quantity wasn't.

SJ: OK

DB: I'd like to harken back to a question that Mary Ann asked in the first go round and that is, for those companies that do disclose that information in Oregon would any choose to comment about whether that may or may not be undermining their ability to effectively negotiate such contracts, since we do have some examples here?

JN: There's another aspect of the disclosure. If you look at it, in particular a customer who may not be interested in having those terms disclosed. If they come from a utility, negotiating they first come from utility you sort of get another alternative. I can sign a contract with PacifiCorp in which case I'm going to have to go to the WUTC and

disclose all my terms to the public or I can sign a contract with supplier B and it will remain confidential. In as much as there are three or four of my competitors in the next thirty miles, I'd rather not have my pricing terms disclosed to anybody because energy is a chief component of my cost input and it's priority to me. I don't like competitors to know about it. So, therefore (not clear on tape) I'm going to go with supplier B because I don't have to disclose my prices with supplier B and therefore, even though that price may not be as (not clear on tape) the fact that I have to disclose the price is a cost and is a cost that should not be there. If there's a customer that's situated like that the ability of PacifiCorp or Puget to retain that customer is less, their ability is reduced because of this disclosure requirement.

DB: I could see that as a reasonable theoretical concern. Have you experienced....

JN: The Arco situation is a prime example. They did not want that disclosed because of this competitive situation.

SJ: That's not true. Arco was quite willing to have...if it met the approval of that special contract by the Commission on April 30<sup>th</sup> they were willing to wait...

DB: With respect to ...it's operation in Oregon would involve the disclosure of price terms. Are you aware of any practical experience where that concern actually occurred? I'm not suggesting that in theory it might not be a problem but I'm trying to get some practicality.

JN: I guess trying to find a middle ground. I think in these circumstances it may not be an actual problem. But I think one of the points that Arco makes in it's comments is that there may situations where it is very important to a customer, where a customer believes there will be private economic loss suffered or it put a competitor at a disadvantage and it seems like you've got to have an opening to allow the utility or the customer, depending on the circumstances, to make the case. In light of these comments I think the customer and the utility would have the burden to show those circumstances. I think that's probably the way it ought to be is to make the presumption in favor of disclosing essential terms and maybe, I don't know how specific you want to get about price, but leave an opening because I think given the way 80-04-095 is written, if you have a risk of a private ....I think you could potentially run afoul of that statute if you would require disclosure if you don't give the utility or a customer an option of..... I think by this rule you would probably....in favor of disclosure. The burden is great but it seems to me you've got to provide an opening to make that showing, as difficult as it may be, and I don't know if there's any circumstance where it could arise. I think some of those situations are there depending on the customers situation.

BF: The bottom line from Avista's standpoint is that in the three states where we have

industrial customers the bottom line, from the customers standpoint is, can you, Avista, get the contract approved in Olympia, Salem, or Boise? Of course confidentially is an issue for competitive concerns, but we do try to explain, you are not a normal customer. You're not in like and similar circumstances. So we get beyond that and then the issue becomes one of can you get the proof and that gets to the determination issues that staffs in respective state capitals may bring up and that kind of gets Avista back to where we started which is some clarification. And Dick I have written up some language that maybe we can talk about later, either as part of the meeting or later today.

?: Bruce are you seeing this more from the gas side than the electric side?

BF: Both. Our two or three largest electric customers are constantly seeking special contracts.

MD: I'd like to go back and address a couple of points that Jamie made. One of the points that Jamie made was that he's concerned that if we revise this rule, that...that we would have to reveal the essential terms of their special contracts and competitors will not. What I have found is that the state of Washington has been exactly the opposite. That under the public records law in the state of Washington I can call up Klickitat PUD and get a copy of their recent contract with DSI faxed to me the next day. I have had no trouble whatsoever getting contracts from Whatcom County PUD, as well, because they understand that as a public entity they're subject to public records law and they, a quasi governmental agency, recognize that it's important that they not hide that information from the public. Those contracts are regularly given to me just by simply filling out a form or making a phone call. So, the exception to that, I assume although I have not researched it so I can't tell you with any specificity as to whether that would apply to a ... but certainly it does apply to PUDs and I've had extremely good success... So, I'm not sure how real that concern is. Then I'd like to also talk a little bit about that you're trying to get to the practicality of how does this work in reality. I think that Avista has had some recent examples of special contract negotiations with AR in very heated competition with their local cooperative and I think the reality is that all sides know what everybody is offering. It's a back and forth, what's going to be the final deal. I understand that everybody knew what everybody else was talking about. It wasn't a situation where there's a cooperative involved....it's just part of the negotiation process.

MH: Melinda, I would agree with everything you said, but I'd like to add one thing. Klickitat, Whatcom, and Inland have a different rate making body to report to. So an IOU may have a competitive disadvantage because once they learn what the public information is they can out-bid us by 5% and there may or not be subsidies going on among classes. We don't know that. So that's how come we were kicking back to the discrimination issue. What it comes down to is the rate making body and does that create any undue advantage or disadvantage to the actual utility?



- MD: No. I agree with you and that's why we supported you recently in the rate case.
- PP: I think there's two concerns I think about. I think that on the gas side I can't think of a single special contract that I've seen that wasn't somebody threatening to build their own facilities. Where none of the information would be public except if they were a public entity like Valley Medical Center. On the electric side as you get restructuring in different kinds of market structures evolving, whatever might come out in the Northwest, that could happen on the electric side, folks might start threatening to build their own facilities and that information is.... Right now the only bypass threat is you're going to go to a union or a public agency, but that may not be all of the situations.
- MD: It may not be but certainly, and I'll defer to Ed and Mary Ann on gas issues, but on the electric side I think the number of exceptions would be very, very limited. I'm not sure if part the purpose of the general conversation is to see if there are areas that there are disagreement among the parties and I assume that is what we are talking about. And despite my disagreement with what Jamie was saying earlier, I think there are some elements in what Jamie had included in his comments that I actually agree with. Of the comments on the table I have to tell you that the comments of PSE on page two at the bottom I find just flat out offensive, just offensive. I'm sorry but the statement that customers have no right to be a part of this process is just offensive to me because.... Having said that moving back to the more positive statement with PacifiCorp. What I do agree with is of his bullets on page two I would agree with that although I think the general description of price and terms should be defined. And I do agree that we should have some exceptions that in extraordinary or unusual someone has the ability to make a case that if there is something very particular to them that they should be able to argue. I do agree with the quantities that have to be disclosed. I think that does start getting into....
- EF: One of the things that I would add on the gas side, and Mary Ann mentioned this but I want to stress why we think this is an important distinction. Where the gas industry has become unbundled there are services provided by gas utilities that are upstream of the local distribution and those services are an area, Jamie, where the concern would be that the utility not be at a competitive disadvantage vis a vis a marketer to provide upstream transportation services or commodity, that if a utility is going to compete on a level playing field it has to be able to keep those kinds of terms confidential. But that is for an upstream service not for the regulated side of the business.
- ML: We have to be really careful there because I know in the gas industry almost every special contract, I think it's every one, is just a special contract for transportation and distribution and none, and I don't mean upstream transportation I mean their own system of distribution. Cross town distribution. But in reality special contracts could be applied to the commodity or the upstream capacity because that is part of the general service that

gas companies provide. In the electric industry special contracts usually have to deal with the whole nine yards. They could sign a special contract just for transmission and distribution, but they generally sign special contracts for delivery of electricity. And if the rule is going to be difficult to distinguish in the gas industry that we have this upstream piece that for core customers and for interruptible customers it is all provided by special contracts, that is going to be treated differently than the transmission distribution piece, the cross-town piece. I'm just saying that because the rule applies to three industries, to break out that one piece of the gas industry that for customers is not provided to them because they've chosen to be, even if they are a core customer, because they take firm service, they don't take gas and they don't take upstream property. This is a choice that's made in a fully competitive market not to take that. There's still, for a lot of the customers it is, I don't know how we break gas out and say gas for this piece of gas it's not going to be there. Sooner or later you are going have indigo in electric and people are going to be able to hook up to an electric grid and it's going to be the same thing.

MH: One of the ways that that was addressed, actually in legislation in Oregon was when one of the gas companies was concerned about entering into contracts for upstream services that they were in a competitive marketplace and what was the nature of state utility commission regulation over those. So they went to the legislature and got some clarification in the law, it may or may not have been necessary, but right in there was a distinction drawn that if the Commission found certain markets to be competitive, then they essentially just said that's competitive and we're not applying our special contracts rule anymore to those areas of the marketplace. It was kind of a good way to put the structure in place and yet allow the Commission the flexibility that as other industries evolve, or as other components of even the gas industry may evolve, to allow a utility to come in and file a petition and that's how it's handled. To say please declare this element of the marketplace to be competitive and that's what Northwest Natural did, and I think now that Cascade and Avista have come in as well to get that declaration. That then frees them to be able to be able to enter into the kind of upstream kinds of arrangements for gas supplies and pipeline transportation. It might be storage, it could be options, it could be any number of different mechanisms, without coming in under state regulations or anything, let alone approval of special contracts or disclosure of terms or anything.

ML: Maybe there's some way then to put something like that in the rules?

MH: Yes and it also provided for them, how does the Commission account for revenues and expenses from those activities. It drew that back in as to how those get accounted for or allocated, or reviewed. And they still, obviously, still have that review power very clearly to make it what the net revenues or expenses are from those activities and how they are treated. I just offer that by way of example. That it was a way to set up a

mechanism that allowed some flexibility looking into the future as things change.

ML: That was done by the legislature but we could do something like that in a rule.

MH: I'm not sure they would have needed to go to the legislature for it, but they felt they needed their backside covered a little bit, so they did.

DB: Just a clarifying question Mary Ann. It's a very intriguing idea. Are you proposing that that be something that we might consider in the context of this rule? Or just in the context, that would seem to broaden the scope of this rule.

MH: It really does and I think it depends on what you're trying to accomplish as you get into, you said you wanted to look at the whole of the special contracts rule and if you really got into dissecting what is there now under special contracts and felt that was needed that might be something to look at. If you don't feel the need to go there now, I'm suggesting you do. I don't think it's necessary.

ML: To me it's just another way of looking at essential terms. There would be one type of essential terms for competitive situations and a different type of term for....

DB: Yes. I understand.

BF: That's kind of where we were headed with our last comment that Dick and I discussed as being in-artfully worded by Avista. One reason that it's in-artfully worded is because there's no word competition, or effective competition in the rule. So we had to reference the language in the rule, which is what we did. If you want to go down that other road you put in a definition, effective competition means, customers would have alternatives to taking service from the utility, etc. So going down that path could be as simple as adding a definition of effective competition and changing some other language and that those would be the edits I would offer in response to our discussion earlier.

MH: We may still disagree on where you draw that line because for instance the typical anti-bypass gas contract we would not say is in a competitive marketplace because you're still a deregulated utility providing a regulated utility service which is distribution transportation.

FO: Now we shift to the argument of where competition is.

BF: Your first revision a couple years ago specifically ....that issue. We only brought it up because Dick noticed we didn't define otherwise.

FO: What I'm going to do now is take about a ten minute break. Before we do that, we've

had some discussion of price and quantity in terms of what the various positions are. In terms of those being identified as essential terms and conditions I'd also like to throw into the discussion geographic location, if that should be an essential term and conditions. The duration and nature of the service provided. Let's come back at 25 of 11 and discuss that along with anything else that you may want to add as far as price, quantity or anything else. What we're trying to do is shed as much light as possible. As I mentioned earlier, we have no preconceived notions here. We would like to get as much input as possible.

\*\*\*\*\*BREAK\*\*\*\*\*

FL: First do we have any additional comments that anyone might want to make in terms of price and quantity? That price is OK to disclose, that quantity is not.

MH: Price is essential. It would seem to be an essential term to me.

FO: Alright then, the nature of the service...

?? (tape is unclear) It's specific enough that ..

Break in tape.

MH: I'm looking at one of the tariff pieces I just pulled out...shall pay a fixed monthly charge of \$11,000 and a commodity rate of 11 cents per MMBTU of gas transported. I have no idea how much gas they'd be transporting. I know that \$11,000 must mean that they transport enough to make that worth their while on a fixed charge. But, I have no idea.

FO: Keep in mind that the other item that I want to discuss is quantity.

MH: Yes. So I don't see where disclosing the rate leads you to understanding what the total cost is because I just think that it's that well know the volumes. I'm in the business of dealing with these industries and frankly I don't know plant by plant what their volumes are and I wouldn't be able to discern it from looking at these contracts or these summaries.

?: We would agree that in general terms price is OK but specific enough that then someone could go on to calculate the total consumption or the price of the bill then.

FO: Keep in mind that we're going to have the reduce this to a rule that anyone can pick up and know exactly what we are requiring, what we are considering essential the absence of which would result in the (not clear on tape). So I think it what I'm trying to say is that maybe on this next go around some help with the language would alleviate future

problems.

PP: I wanted to mention about what Jamie said that, we're structured like the telecom rule where it says that if the information is not disclosed the contract will be rejected. One of the comments that we made was that if this information, if whatever is determined essential has to be disclosed, that we think it should be disclosed as a compliance filing type of basis which is I think that's how Cascade has done it in Washington on the gas side, after it's approved. I could be wrong.

MH: No. Before they file it at the same time the contract is filed.

ML: It's a matter of they then filed before they've been approved. So information has been filed before it's been approved. Now whether it's filed with the contract or after the contract....

?: It comes with the contract, that's kind of the separate summary sheet.

ML: It might of started as after the filing and now it's become more....

MH: It sometimes it will depend because a lot of times we'll see that a contract has been filed, we see that in the UTC's listing. I might say lets call and get the terms and conditions summary sheet, if there isn't one we'll call the company and say, hey, did you do one? You're suppose to do one and they will go in and it will get filed before. But it's all before. It might be within a week.

ML: Because we needed those sheets so we could prepare memos and submit...well we're here so we can prepare memos and submit them to the Commission. But whether they were filed with it or just before they were approved, I'm not sure. It's been done both ways.

FO: Maybe I'm being too circumspect here but the intent, Phil, is to create a rule similar to the gas rule that says the contract filing must include the essential terms and conditions or the Commission may reject the contract. The essential terms and conditions are 1, 2, 3, 4..

PP: I guess that's what our comment was that if those things have to be disclosed they should be done as a compliance filings after it's been approved.

FO: Any comments on that?

MH: I think there's value in having the information before and I think it goes to the comments Glen has made. In the sense that if the staff and Commission know that something has been made public, I guess litmus test out there to some degree and it's the court of public

opinion, if you want to call it that. But it's more that having announced that there's that contract there, having not received any objections or concerns I think there's a higher degree of certainty or comfort that the action that the Commission is taking is not going to be contrary to what customers may perceive to be a problem with that contract. Whereas if those elements are not disclosed until after the fact and there were concerns with regard to it, I think the Commission staff is going to have a lot harder job to do in terms of bird-dogging every potential issue, whether they know what those potential issues may be or not, because they're not inside the heads of other players in the arena and the Commission is going to have a more difficult job to do. By putting the contract terms into the public hands in advance it's a little bit like the canary in the mine shaft I think. And you're going to have some very expensive testing equipment to use if you don't have the canary in the mine shaft. I think that's important. I think disclosure is essential at some point and, but disclosure before the fact I think has some important attributes and should really be the way that it's considered.

MD: I agree with that. I think it is virtually impossible for a customer to take look at a filing. The way it is now, the .... contract is an example, and to be able to ... a rulemaking kind of determination without discrimination. I get back to my very strong disagreement with Puget's comments that I do not believe that it is legitimate for only gas and public... to be involved in that evaluation. I don't believe that that is the intent of the legislature. I believe that part of the public interest in looking at discrimination issues should be that those who may believe that they are being discriminated against should have that opportunity to make their own evaluation and not have to go through sort of this ridiculous exercise of, is it between here and here, am I getting warm? Am I hot or am I cold? This whole charade that we have to go through right now is silly and you don't have any ability as a customer to really take a look at what has been filed and make an informed, intelligent decision about discrimination.

ML: I'm trying to figure out why, I don't see the concern of why you're concerned about waiting 30 days. I can see some really tiny things in there, assuming the Commission rejected the contract or said the contract didn't meet something and then the company said no that we don't want it. Even that case I'm trying to figure out why that makes a difference. If the contract is ultimately approved you're just talking about 30 days later and they're going, who cares. And if it isn't approved then those terms aren't legitimate for some reason. I'm just trying to figure why it makes a difference. I'm trying to see what your point is.

PP: I think the basic issue is that you've gone through this long, most likely perfected negotiation with this customer where evidence, especially on the gas side it's a lot easier to say, you are different. You're not situated the same as everybody else. You're across a cornfield from Northwest pipeline. So nobody else is across a cornfield like that from Northwest pipeline so you're going to get a special deal. Now if you've worked out and

you've spent a lot of time working out all the terms and conditions of that contract then if you have to provide a lot of information and you have to provide whatever is deemed essential here, up front, then that has the potential of upsetting all of those negotiations. It starts bringing up a lot of arguments from all sorts of parties, whether they're customers or competitors in other places perhaps, that may upset the negotiations that are still not final. So having the information disclosed and in the public's hands after it's approved. The difference is if what you want is to be able to argue that this contract is inappropriate. What we're looking at is that this is a contract between us and a unique customer. You've gone through the negotiations and everything is done but for Commission approval. So, if you make ....compliance filing afterwards that discloses whatever information that is deemed essential, I guess we were thinking that probably meets the public interest in terms of disclosure.

- MH: It would seem from a point of being concerned about the competitor they may offer that is better than what you've got on the table, that would be the customer. As soon as they get your final answer they turn around and go well OK here's the Puget deal what have you got that can beat it. They're going to be the one that's running between you and whoever the other potential service provider is and telling them what you're offering in negotiating the best possible deal. So once they have signed the deal with you, you've got them, they're signed on the contract and I don't see the circumstances changing because I think they will have already negotiated that knowing full well what the other alternatives are. With regard to a gas direct connect, there you're really just negotiating about distance and pipeline and that doesn't change. You're just pipe in the ground and a meter. So I don't think that's going to have an impact. I don't see any need for concern.
- SJ: The other thing is that you're proposing (not clear on tape) after the Commission ...(not clear on tape) It deprives the Commissioner's of input on discrimination issues or other issues prior to approving the contract. (Not clear on tape)
- BF: May I weigh in here. I think we're talking around the issue and I want to be somewhat candid. I think the issue really is as simple as, can the company get the special contract approved? If I'm hearing PSE correctly, and let me know if I'm not, the issue is it's easier to get it approved if you're dealing with the facts of the case on discrimination with the staff. I don't want to have any offense here and that's not my intent, it's more just to paraphrase what I'm hearing PSE say, but when you have other parties weighing in claiming discrimination or non-discrimination it increases the degree of difficulty getting it approved and therefore will the customer who wants a special contract just go straight to the alternative or will they (new tape put in). Isn't that really the issues Phil that you are discussing? A customer with us wants to know ....is we sign. They may be leery of negotiating.
- PP: I'm sure there's others that could talk more fully about Arco, but I would imagine that

was part of their concern is that they're losing a lot a money every week if that contract was hanging out there. While confidentiality to them is important, it doesn't have a complete confidentiality, and that's part of the concern, that it's going to drag out. We wouldn't want to unnecessarily delay people.

JN: I think some of the ....confusion about what is similarly situated means. It's so a customer is going to say well I'm similarly situated and seems like the analysis that this Commission has followed has been fairly clear. If you have a creditable bypass threat you can, in order to meet that bypass threat. But basically there are no similarly situated customers, except the customers who the bypass threat is available. And this notion that other customers will come in and argue that I'm similarly situated then you have a creditable bypass threat to the same alternative and still have your special contract secure as well. This notion of an account knows this and sees they're similarly situated the customers weigh that they're similarly situated, there's been a number of decisions built. It's a class of one. You have a bypass alternative in front of you do a....price to meet that alternative and there aren't similarly situated customers. If there were they'd have special contracts....

MD: I think in response to that, I have two responses. One is I agree with that argument as it relates to PacifiCorp because you only had one large investor, customer in the Washington service territory. So by definition there is nobody else similarly situated. So for PacifiCorp I should say that I agree. But if you're going back to your Puget days I challenge the degree with you. I think we mitigated that issue in the Schedule 48 complaint case and I don't believe that Commission pays you for assessment of that.

JN: ??

MD: In schedule 48 Puget made arguments about similarly situated and that issue was present in that litigation based on.....

JN: There weren't any bypass threats established as a foundation in the Schedule 48 approval and...

MD: The schedule 48 litigation that we went through last year, in response to trying to figure out what that was all about and was the basis of Schedule 48 implemented to prevent bypass. Puget argued in that litigation that it was not, and used that argument that you just made. The Commission rejected that. We can pull out the order and I can point to you the language in the Schedule 48 wording. But that was rejected.

FO: Why don't we move on to nature of service provided. Is that an essential term?

MH: On the gas side are you talking about distribution system transportation? If you're



talking about interruptible or firm, those are kind of the things I would put in that category. A couple of real basic kinds of things that define the service.

FO: So we'd have no problem with that...

ML: It's kind of a broad term. I think you have to be really careful here which by nature of service provided someone may... All I'm saying is I heard her say two items, somebody else might think six other items. That person might not be in the room today.

FO: The thing I'm learning this morning it's been much more difficult to grasp or to craft, if you will, than I thought. In fact, one of the things I wanted to say, and I'll say it right now before we wrap up. We can certainly split this in pieces. It does not have to be a rule that universally applies to gas, electric, and water. We can do as we did in the budget rule and in fact other rules. Be specific in terms of specific parts of it, I'm not sure we want to do that. It's certainly something that can be done. The drafting of this rule, we are going to have to be extremely careful, you bet. Duration of the contract does that create a problem in anyone's mind?

PP: Sitting down and looking at some of our tariffs relative to the information that's disclosed in Oregon. It seems like you can see a lot more information about what a..... the service and be able to price out an individual customer service in a lot more detail than what you could under our Schedule 57 for example. Where you wouldn't know, I mean there's an optional firm. In a special contract where you're saying you're taking firm service and here's how much you're paying for it. Whereas they are looking at their competitor down the street taking service off of 57 they wouldn't know. They wouldn't have any idea how much firm service they're taking or if at all. I don't know if that makes any difference in anybody's mind. But that's one of the things that we were looking at in our tariffs. It's going to ..... in the same way when there's actual services that customers don't have to take and you're required, well are you disclosing, or are you going to want to be careful not to disclose any more information than what's needed to be disclosed in the tariff. So this customer has to disclose more information than anybody else.

ML: They do need to know, I wasn't trying to disagree with what you were saying earlier, but, they do need to know if you have prices, you still need to know what type of product it is. So they do need to know if it's firm service or interruptible service or maybe like in Schedule 57. There's an optional firming thing. It doesn't have to say how much is optional, necessarily. Because, take firm service, come up with a price, she quoted it right here earlier of 11 cents. Was that firm or was that interruptible? There's a lot of difference there cause I want a contract and I want to kind of get the big picture. There's a lot of difference between those two. Not as much in the electric industry but there's an awful lot of interruptible in the gas industry and there's still some firm even I guess.

MH: At real risk of taking us off on another tangent, indulge me here for a second. That brings up another aspect of why disclosure before the fact of getting input is important. Is for us, let's just say that someone entered into a special contract for firm service, it's down an over-stressed lateral and they're offering firm service, if you sign the contract for firm service for a really cheap rate. It's cheaper than the guy that's already paying for interruptible service down at the end of that line and he's going, geez, I'm going to be interrupted now a 100 days or 200 days a year probably, which he's on interruptible service, that can happen. I think it would be of interest to him to know that someone else is getting firm service for a whole lot cheaper and he'd be questioning well, why did he get that deal when I'm paying the tariff interruptible service and I'm going to have a ....degradation of my reliability. It brings up another aspect that's not related to discrimination, it's not related to me wanting the same deal, it's related to my own service levels and ...from the company. It might be of interest for me to know that.

FO: I have an advantage, I don't even know what an over stressed lateral is.

MH: It means the pipe's too small and everybody is sucking too hard, is what it really can mean.

FO: Duration of the control. I don't think we had a problem with that. Geographic location.

MH: I think that's important.

ML: That's probably more important in telephones than this... Customers are broken up all over, it's not a big deal here.

FO: Glen is not here so. We didn't couple this with telephone rule on purpose because there are some differences, a lot of differences between telephone and energy. For one thing telephone has a very deliberate determination of competition. It's a different dynamics and we felt if we mixed the telephone group in with this group that I'm sure we'd never...

PP: Was one of the things that we were going to talk about, and I don't think I heard it on the list and I don't think it's regarding the phone, but it's the name of the customer.

FO: Yes

PP: If you're not going to disclose the name of the customer, you don't think that that's important,.....But you do provide geographic location and it would seem in some circumstances you're probably... which could be an issue.....

FO: Is that an issue here, the name of the customer?

MH: I just presumed that we were disclosing because that's how it's always been done.

ML: But the geographic location is.

SJ: That's right the identity.....

DB: I've got a theoretical question here and that is what do we mean by geographic location and why is it relevant? Are we talking about the address here or are we talking about a description of location that is sufficiently precise that you know what part of the infrastructure that the customer is being served off of, i.e., stressed lateral or a particular transmission line or a particular substation. What are we .....

FO: That's right, we're going to have to define these.

ML: That has never been a problem in the gas industry. Every special contract other than Boeing is basically you know the Darigold plant in Sunnyside. Well, there's only one Darigold plant in Sunnyside. Valley Medical, the Correction facilities, course that ones marked all confidential, but the correction facilities. There's not much question about it. Now electric would probably be a little bit more diverse. Telephone with banks and all that type of stuff, they're all over the place. It's never been much of a problem to identify exactly where these customers were. They're large customers and when you drive by and you know they're there. They're not getting in SeaFirst tower building in downtown Seattle.

FO: How would we define geographical terms?

BF: I'd just call it location which would imply street address.

FO: Business address of the company?

MD: I think particularly in the electric world it's incredibly obvious.

MH: I was just looking at one of these, well, Cascade's contract with Longview fiber, well, duh.

ML: Here's a question that comes down. Ultimately you may get, thinking about what Avista came and talked to us about numerous times, you could get somebody, lets say McDonalds walked into Avista and said we want a special contract for all of our McDonalds in Spokane. OK, I think saying all the McDonalds in Spokane, you don't need street addresses. All the McDonalds in Spokane are part of the special contract.

DB: Would they all be situated similarly in a class of one?

- ML: Well the customer has it's situation which includes all of those.
- FO: It could be a factor in water if there's a resale to a development.
- ML: I think it should be sufficient enough to let people know to identify who that customer is and where that customer is.
- MH: And that might be the name or it might be all locations or it might be...
- ML: Weyerhaeuser in Longview I think is going to get us there.
- MW: Is that every McDonalds in Spokane or in Bellevue?
- ML: I didn't want to talk about that one.
- FO: I'm going to start to wrap this up and first before I do that I want to know if anyone has any comments that they want to make. Let me do this, let me describe the process going forward and then ask for any additional comments that any of you may have. The results of the written comments and the comments that are made here this morning will be considered by the staff team which is identified on the cover page of the agenda. The comments will then be discussed with the Commissioners. The hope is to then float out a proposed rule and we would look for comments. At that juncture there will be a specific comment period and then the rule would go forward to a CR-102 which brings the support of Commissioners. It would be again distributed following the CR-102 again ask for written comments. With any luck at all we will be starting to get focused at that point and we can go back on the agenda for a final order and for submission to the code revisers office a rule. There will be two distinct opportunities for written comments. There may be another stakeholders meeting, it will depend on how things progress as we're going forward. The more smoke and fire the more likelihood that we will have another meeting. The schedule that I had suggested for this rule was rather aggressive and probably not possible. But we will still try to move as quickly as we can. The reality that we have certain designated comment periods does not pre-empt you from making comments at any time. Arco's I received going out the door at 5 o'clock last night certainly will be considered as well as any comments. I would urge you to share with us any specific comments that you might have on how the rule should look. I think there's value... the various areas of concern and hopefully know where we are going. We are also available if anyone wants to call and discuss this with me at any time, I'll return your call. My phone number is spread around. Having said all that does anyone have any additional observations, comments, etc. that they want to make?
- DB: May I ask a question Fred. We kind of skipped over duration because no one seemed to think it was a problem, but I'm trying to figure out again how we define it. Should the

term duration include and provisions in the contract for renewal? Does anyone have any concerns or thoughts about whether that ought to be....

MH: Some of the gas contracts have included evergreen clauses, rollover clauses and that I think it's an essential term to be mentioned. So it supplies your contract with a one year evergreen thereafter.

DB: I don't hear anybody screaming. OK good. Anything else?

MH: There was one item it might go under the nature of service, we were talking about what all that might include and maybe it's a separate one but, if there's a provision in the contract that's significantly different than the operating terms of the underlying tariff and I think I'd mentioned earlier something like priority of service or interruptability or something like that, that we would consider to be a significant essential term to include as well. Most of the contracts we've seen will defer to the tariff provisions with regard to those kinds of balancing and operation, but if there's a difference and you're offering a balancing service or something, then that goes to the nature of the service and that's important to include on the list.

FO: Any other comments? Then we'll stand adjourned.