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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 GEORGIA PACIFIC WEST, INC.) Docket No. UE-000735
 v.) Volume I.A
5 PUGET SOUND ENERGY) Pages 1 - 69

_____)
6 BELLINGHAM COLD STORAGE COMPANY) Docket No. UE-001014
 v.) Volume I.A
7 PUGET SOUND ENERGY) Pages 1 - 69

_____)
8 WASHINGTON UTILITIES AND) Docket No. UE-001521
TRANSPORTATION COMMISSION) Volume I-A
9 v.) Pages 1 - 69
PUGET SOUND ENERGY)

10 _____)
GEORGIA PACIFIC WEST, INC.) Docket No. UE-001616
11 v.) Volume I-A
PUGET SOUND ENERGY) Pages 1 - 69

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15 A pre-hearing in the above matters
16 was held on November 30, 2000, at 1:33 p.m., at 1300
17 Evergreen Park Drive Southwest, Olympia, Washington,
18 before Administrative Law Judge DENNIS MOSS.

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20 The parties were present as
21 follows:

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22 BELLINGHAM COLD STORAGE COMPANY,
by John A. Cameron, Attorney at Law, 1300 S.W. Fifth
23 Avenue, Suite 2300, Portland, Oregon, 97201-5682.

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24 GEORGIA PACIFIC WEST, INC., by
Melinda Davison, Attorney at Law, Davison VanCleve,
1300 S.W. Fifth Avenue, Suite 2915, Portland, Oregon
25 97201.

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1 SCHEDULE 48 CUSTOMERS, by Chad
2 Stokes, Attorney at Law, Davison VanCleve, 1300 S.W.
3 Fifth Avenue, Suite 2915, Portland, Oregon 97201.

4 PUD NUMBER ONE OF WHATCOM COUNTY,
5 by Adam W. Gravley, Attorney at Law, Preston, Gates &
6 Ellis, 701 Fifth Avenue, Suite 5000, Seattle,
7 Washington 98104-7078.

8 PUGET SOUND ENERGY, by Markham A.
9 Quehrn and Kirstin S. Dodge, Attorneys at Law,
10 Perkins Coie, 411 108th Avenue N.E., Suite 1800,
11 Bellevue, Washington 98004-5584.

12 THE COMMISSION, by Robert
13 Cedarbaum, Assistant Attorney General, 1400 Evergreen
14 Park Drive, S.W., P.O. Box 40128, Olympia, Washington
15 98504-0128.

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17 PUBLIC COUNSEL, by Simon ffitch and
18 Robert Cromwell (via teleconference bridge),
19 Assistant Attorneys General, 900 Fourth Avenue, Suite
20 2000, Seattle, Washington 98164.

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32 Barbara L. Nelson, CCR

33 Court Reporter

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1 JUDGE MOSS: Let's go on the record. I
2 think I know everybody here, almost, at least, but
3 anyway, my name's Dennis Moss. I'm an Administrative
4 Law Judge for the Washington Utilities and
5 Transportation Commission. We are convened this
6 afternoon in a joint prehearing conference in four
7 dockets, none of which are consolidated at this
8 juncture, but all of which involve some common
9 parties and perhaps some common issues of law and
10 fact, and we felt it would be most efficient to
11 proceed in this fashion. We may discover that that
12 was a mistake.

13 I've got about a 12-page agenda here,
14 counting the appearances that I know of, so we'll
15 just do our best and struggle through, and I'm sure,
16 as Mr. Cameron already did off the record, you all
17 will correct me if I misstate a party or get one of
18 these proceedings mixed up with another one or
19 something like that.

20 For the record, I will note that the
21 matters in which we are convened include Georgia
22 Pacific West, Inc. against Puget Sound Energy, Docket
23 Number UE-000735; Bellingham Cold Storage Company
24 against Puget Sound Energy, Docket Number UE-001014.
25 I'll just note that Georgia Pacific West, Inc. was

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1 previously a complainant in that, but has been
2 dismissed on its own motion. The third matter is the
3 Washington Utilities and Transportation Commission
4 against Puget Sound Energy, Docket Number UE-001521;
5 and finally, Georgia Pacific West, Inc. against Puget
6 Sound Energy, Docket Number UE-001616. And I've
7 simply listed those in the order of the docket
8 numbers.

9 Our basic agenda today, fairly typical for
10 a prehearing conference. We'll take appearances. I
11 guess what I'll ask you all to do is to give the
12 usual information, name, whom you represent, address,
13 telephone, fax, e-mail, and just add to that which of
14 the proceedings you'll be representing the parties
15 in.

16 I've mentioned off the record that I have
17 some petitions to intervene, and that would include
18 Bellingham Cold Storage petitions to intervene in
19 Numbers UE-001521 and UE-001616, and Georgia
20 Pacific's petition to intervene in UE-001521, and Mr.
21 Gravley, for Whatcom County PUD, indicated off the
22 record that he would be making an oral petition to
23 intervene on behalf of the Whatcom County PUD in
24 Docket Number UE-001616.

25 In addition to those petitions, we have a

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1 Bellingham Cold Storage/Puget Sound Energy joint
2 motion to continue number UE-001014 for an additional
3 45 days, and we have a Georgia Pacific motion to
4 reply, parenthetically, to answer, answer
5 counterclaims in UE-001616.

6 I think that covers the matters right that
7 I'll be acting on today. We'll also want to discuss
8 the issues a bit, and I have outlined some questions
9 that I have for various parties in answers to that.

10 Perhaps you all have had an opportunity to
11 discuss beforehand the process and procedural
12 schedule, as I encouraged you to do in the prehearing
13 conference notice, and perhaps you have not had that
14 opportunity, but that may turn out to be the more
15 complicated part of our business today, in terms of
16 deciding how to proceed, how to go forward in these
17 matters. And we'll have to be mindful, in connection
18 with that. I guess we'll take up and withhold ruling
19 on the request for a continuance, and I'm going to
20 just use the last four numbers, 1014, because I think
21 there's some interplay there that we'll have to
22 consider in connection with some of the other dockets
23 in timing and hearings and so forth.

24 Then, of course, we'll take up any other
25 business that the parties wish to bring before the

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1 Commission today that are appropriate to the
2 circumstances of the prehearing conference.

3 All right. So let's begin with
4 appearances. And since we have a number of
5 complainants in various proceedings, I'm just going
6 to go around the room. We'll start over here on the
7 left with Mr. Quehrn.

8 MR. QUEHRN: Yes, good afternoon. My name
9 is Mark Quehrn, Q-u-e-h-r-n, appearing on behalf of
10 Puget Sound Energy in all four cases that have been
11 docketed. My name, address, fax number, is already
12 in the record. Would you like me to repeat it, or --

13 JUDGE MOSS: I think, since we already have
14 that as a matter of record in the 1014 and the 0735
15 matters, we need not have that again.

16 MR. QUEHRN: Okay.

17 JUDGE MOSS: And I can provide that
18 information to the reporter if she doesn't have it.
19 We'll note it in the record.

20 MR. QUEHRN: All right. Thank you.

21 JUDGE MOSS: We can do that with other
22 counsel, as well, to save time. So those of you who
23 have previously entered, that's how we'll do it.
24 Good suggestion.

25 MR. QUEHRN: Thank you.

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1 MS. DODGE: Kirstin Dodge, also with
2 Perkins Coie, for Puget Sound Energy. My information
3 is also in the record.

4 JUDGE MOSS: Before we move on, Mr. Quehrn,
5 I don't seem to have your e-mail in my records, so
6 let me get that.

7 MR. QUEHRN: Certainly. It's
8 quehm@perkinscoie.com.

9 JUDGE MOSS: Thanks. All right. Mr.
10 Cameron, go ahead.

11 MR. CAMERON: Thank you, Your Honor. I'm
12 John Cameron, with the law firm of Davis, Wright,
13 Tremaine. My information is already in the record,
14 as well, and I've tendered a copy of a business card
15 to the reporter, as well.

16 JUDGE MOSS: Good.

17 MR. CAMERON: I'm here on behalf of
18 Bellingham Cold Storage regarding all the dockets
19 except UE-000735.

20 JUDGE MOSS: You all are not intervenors in
21 that?

22 MR. CAMERON: No, sir.

23 JUDGE MOSS: And I have in my records from
24 the prior proceedings, perhaps from some papers that
25 have been filed, also Ms. Grundon from your firm.

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1 MR. CAMERON: Yes, sir.

2 JUDGE MOSS: Will she be appearing in these
3 matters?

4 MR. CAMERON: Why don't we enter her
5 appearance, as well. Traci Grundon, T-r-a-c-i
6 G-r-u-n-d-o-n, also with the law firm of Davis,
7 Wright, Tremaine.

8 JUDGE MOSS: How about Mr. Smith? He's on
9 one of your papers.

10 MR. CAMERON: His appearance is already
11 entered.

12 JUDGE MOSS: Okay, fine.

13 MR. STOKES: Good afternoon, Your Honor.
14 My name is Chad Stokes, with the law firm of Davison
15 VanCleve. I represent the Schedule 48 customers in
16 Matter Number UE-001014.

17 JUDGE MOSS: Okay. I'm trying to recall,
18 just looking through my notes here, either you, Mr.
19 Stokes, or Ms. Davison can remind me. I know I have
20 some of the Schedule 48 customers listed
21 individually. Do we have -- is the entire customer
22 group in this case or --

23 MS. DAVISON: We used the shorthand for
24 simplicity. It's the same five Schedule 48
25 complainants that --

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1 JUDGE MOSS: Air Liquide, Boeing Company,
2 Equilon Enterprises, Tesoro Northwest?

3 MS. DAVISON: And Air Products.

4 JUDGE MOSS: Air Products is the one I
5 don't have, so I appreciate you telling me that. And
6 that's just in the one docket?

7 MS. DAVISON: Yes, that's the only case in
8 which they've intervened.

9 JUDGE MOSS: They don't seek to intervene
10 in these other two?

11 MS. DAVISON: No.

12 JUDGE MOSS: Go ahead, Ms. Davison.

13 MS. DAVISON: Thank you, Your Honor. I'm
14 Melinda Davison. I am appearing today on behalf of
15 Georgia Pacific West, and I am appearing, in the
16 shorthand, the 735 docket. You are correct, Your
17 Honor, that we are no longer a party in the 1014
18 docket. We have entered our petition to intervene in
19 the 1521 docket, and of course we are the Complainant
20 in the 1616 docket.

21 JUDGE MOSS: Okay. Mr. ffitich.

22 MR. FFITCH: Your Honor, Simon ffitich,
23 Assistant Attorney General, Public Counsel. We are
24 appearing in all four dockets. Our information was
25 provided in Dockets 1014 and 735 as a matter of

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1 record.

2 JUDGE MOSS: Okay. And I'll go ahead and
3 pick up Mr. Cedarbaum here, but Mr. Gravley, isn't
4 it?

5 MR. GRAVLEY: Yes, Your Honor.

6 JUDGE MOSS: Let me invite you to come up
7 here. We're not going to have any witnesses today,
8 so you can enjoy that seat with immunity from
9 cross-examination.

10 MR. GRAVLEY: Thank you.

11 JUDGE MOSS: Mr. Cedarbaum, go ahead.

12 MR. CEDARBAUM: Thank you. My name is
13 Robert Cedarbaum. I'm an Assistant Attorney General
14 representing the Commission Staff in all four of the
15 cases that have been noticed today. My business
16 address and the rest of that information has also
17 been previously noticed.

18 JUDGE MOSS: If they keep piling on, we'll
19 have to clone you, I guess. All right. Go ahead,
20 Mr. Gravley. I don't believe you've previously
21 entered an appearance, have you?

22 MR. GRAVLEY: No, Your Honor, I have not.
23 I'm appearing on behalf of Whatcom Public Utility
24 District Number One of Whatcom County in Dockets 1014
25 and 1616. My co-counsel, Carol Arnold and Doug

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1 Rosenberg, of my law firm Preston, Gates and Ellis in
2 Seattle, are already counsel of record in Docket
3 Number 1014, and I would ask that their appearances
4 also be entered in Docket Number 1616, along with
5 myself.

6 JUDGE MOSS: All right. Hmm. That's
7 funny. Same address and phone for you as Ms.
8 Arnold?

9 MR. GRAVLEY: Correct.

10 JUDGE MOSS: And who was the other counsel?

11 MR. GRAVLEY: Douglas Rosenberg.

12 JUDGE MOSS: All right. Somehow he dropped
13 off my list, but I noticed you did have a motion to
14 intervene that was granted in that other docket, so
15 -- any other appearances today? Seeing and hearing
16 no indication, let's go ahead and take up our
17 petitions to intervene.

18 Do we have any objections to Bellingham
19 Cold Storage's petition to intervene in Number 1521?
20 Hearing no objections, the motion appears well
21 stated, and it's granted. How about Bellingham Cold
22 Storage in 1616? Any objection? Hearing no
23 objection, and again having reviewed the written
24 filing, finding it in good order, the petition is
25 granted.

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1 MR. CAMERON: Thank you, Your Honor.

2 JUDGE MOSS: And let's see. We have
3 Georgia Pacific in Number 1521. Any objections?
4 Hearing no objections, finding the petition well
5 grounded, it's granted.

6 And let's see. We have Whatcom County PUD
7 Number One wishes to intervene in 1616. We don't --
8 let me just ask you to briefly state your interest.

9 MR. GRAVLEY: The interest that we have is
10 precisely the same that was stated in our petition to
11 intervene in Docket Number 1014, that the Commission
12 granted in July. And briefly there, the interest is
13 that the Public Utility District has electric
14 utilities services agreements with both Georgia
15 Pacific and Bellingham Cold Storage to provide
16 electric service, and our issue is with the position
17 of Puget as to the Georgia Pacific and Bellingham
18 Cold Storage obligations regarding transmission
19 service and the frustration of the contract that we
20 have with both of those entities.

21 JUDGE MOSS: Or the alleged frustration, at
22 least. All right. And the transmission issue
23 certainly has been made part of 1616 by the
24 counterclaim, at least. Any objection to the
25 intervention of Whatcom PUD in that proceeding?

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1 MR. QUEHRN: Not as to the counterclaim. I
2 anticipate, I think, based upon discussion that I had
3 with Ms. Davison, that we may be talking later about
4 doing some sequencing of these issues that we would
5 be more than happy to agree to. I think there's a
6 sense that, and I don't mean to speak for counsel for
7 G.P., that perhaps we ought to hear the Schedule 48
8 issue first, the MFN clause issue, and if that's the
9 way that G.P. wants to proceed, we would not object
10 to deferring consideration of our counterclaim until
11 after the Commission had heard those issues and
12 entertained whatever ruling that it would make on the
13 case. We're happy to go either way.

14 JUDGE MOSS: Well, we'll get back to that
15 in a minute, because that has implications for the
16 1014 docket, as well. But in the meantime, if
17 there's no -- yes, Mr. Cedarbaum.

18 MR. CEDARBAUM: Your Honor, Staff doesn't
19 object to the PUD's intervention in the 1616 case to
20 the extent that those transmission issues remain in
21 that case. I think there's an issue as to whether or
22 not it's appropriate for the Commission to take up
23 those issues in the context of that complaint
24 proceeding. If the Commission does not take them up
25 in that complaint proceeding, then I don't think the

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1 PUD does have an interest, and at that time maybe we
2 could just, you know, renew or raise an objection to
3 their intervention or they can bow out because they
4 would no longer have an interest there, but I think
5 that their intervention does rest on when the
6 Commission hears those issues in that complaint case,
7 and that's not entirely clear at this time that it
8 should.

9 JUDGE MOSS: Yeah, it sounds to me the
10 practical considerations would probably take care of
11 any concerns you might have in that regard, in other
12 words, how, when, where we take up these various
13 matters will be something we talk about today and
14 resolve. But, certainly, I think that Whatcom has
15 satisfied the threshold in demonstrating a
16 substantial interest in the case as pled, and so
17 hearing no objection, then we'll go ahead and grant
18 the petition to intervene. So that was done.

19 MR. GRAVLEY: Thank you, Your Honor.

20 JUDGE MOSS: You're welcome. All right.
21 Now, we have -- well, let's turn to the Georgia
22 Pacific motion to file a reply in the -- which case
23 is it, 1616?

24 MS. DAVISON: Yes, Your Honor.

25 JUDGE MOSS: You have a need to file an

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1 answer to the counterclaim, but you, of course, don't
2 need permission to do that, but you are seeking also
3 leave to file a reply to the response, and you do
4 need permission for that. So why don't you go ahead
5 and make your argument. Why do you need that?

6 MS. DAVISON: Your Honor, I think that if
7 you look at the answer in the affirmative defenses,
8 as well as the counterclaims that were raised by PSE
9 in its answer, there's a certain relationship among
10 the three areas, and I think that it would assist the
11 Commission in understanding the positions of the
12 parties early on and, you know, perhaps the facts in
13 the case early on to provide a reply and to -- I
14 anticipate the reply will be short and concise, but I
15 think that to have a reply, as well -- and jointly
16 provide an answer to the counterclaims probably would
17 be of assistance -- we hope would be of assistance to
18 the Commission.

19 JUDGE MOSS: Okay. Well, these are the
20 pleadings and motions in the 1014 case in a state of
21 suspension for some time now, and I wouldn't want to
22 encourage that sort of thing, but let me just ask if
23 there's any objection to the request for leave to
24 file a reply?

25 MR. QUEHRN: Your Honor, I'm not sure what

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1 I heard. I understand that there is, as a matter of
2 right, the ability to answer the counterclaim.

3 JUDGE MOSS: Sure.

4 MR. QUEHRN: Which I presume will occur. I
5 guess -- and I'm not sure, from the standpoint of
6 your agenda, which I don't mean to interrupt, but
7 just again as practicality dictating, the
8 counterclaim was raised in part because we think
9 there is a tie to the MFN clause, although with an
10 understanding that we might be able to reach, through
11 further discussion of that tie-in, the significance
12 at this prehearing conference, we may be able to
13 again set aside the counterclaim to make the moving
14 forward on whichever one, 1616, a little bit more
15 streamlined.

16 And I don't know -- not wanting to waive my
17 objection at this point till we have this discussion,
18 I guess what I would suggest is maybe if we have that
19 discussion we can bring some clarity to that issue,
20 and then hopefully simplify what I think I heard from
21 Ms. Davison earlier and I think maybe what I just
22 heard from Bob here a few minutes ago of where there
23 may be a relationship and where there may not be a
24 relationship between these issues.

25 JUDGE MOSS: Okay. All right. We'll have

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1 that further discussion and you -- are you
2 anticipating, in terms of a reply, two or three
3 pages, something like that?

4 MS. DAVISON: Yes, Your Honor.

5 JUDGE MOSS: Okay. Well, let's just carry
6 that to the end of the day. After we have all this
7 other discussion, things will be more clear, and you
8 may decide you don't even want to do that and just
9 want to file an answer, what have you, and let me
10 know and we'll decide what we need to do about it at
11 the end. Don't let me forget to rule on it one way
12 or the other if you continue to wish the opportunity.

13 MS. DAVISON: Okay. Thank you, Your Honor.

14 JUDGE MOSS: Let's do break into -- I guess
15 it's going to have to be sort of a joint discussion
16 of both the issues and the process and procedures by
17 which we go forward, and let me just ask if the
18 parties have had an opportunity to discuss all of
19 those questions beforehand or if it would be
20 appropriate at this time to take a break from being
21 on the record and let you all discuss the best way to
22 proceed in all these various dockets.

23 There are a number of options. One obvious
24 option is that we can proceed on four separate tracks
25 with four separate procedural schedules and all of

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1 that. It does strike me that there's a commonality
2 of issues. Certainly, at least, there's the common
3 nexus of the special contracts and Schedule 48, which
4 are at least very similar and in many ways identical.
5 We're asked, as I understand the case -- cases, the
6 Commission is asked to interpret various provisions
7 of the special contract, Schedule 48, as the case may
8 be. I guess each one -- each proceeding speaks to
9 different parts of the same basic tariffs, and so to
10 that extent, they have things both in common and
11 things not in common. So proceeding separately is
12 one option.

13 We can proceed jointly, either on a
14 consolidated or unconsolidated basis, in terms of
15 formal legalities of the matter, combining any of the
16 dockets that are appropriate to be combined, and I
17 want to look to the parties for guidance on that
18 question. I don't have any preconceptions about how
19 this should be done. I should say that up front.

20 And of course, from an efficiency
21 standpoint, I will say that it appears to me the most
22 efficient way to proceed will be to go forward
23 jointly on all of them, but that's just me. So have
24 you all had an opportunity to talk about it, Mr.
25 Cedarbaum?

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1 MR. CEDARBAUM: Not directly about these
2 subjects.

3 JUDGE MOSS: Would it be useful, do you
4 think, to break for 10, 15 minutes --

5 MR. CEDARBAUM: Sure.

6 JUDGE MOSS: -- and let you all talk
7 through all that, and maybe just present a proposal
8 to me. I see heads nodding in the affirmative.

9 MS. DAVISON: Yes.

10 JUDGE MOSS: So why don't we do that. It's
11 about five before the hour now. I'll just stay
12 around, but you know, let's target about ten after
13 and see if you all can accomplish something in 15
14 minutes. Or I said I'd stay around. If you'd rather
15 I leave, I'll be glad to do that, as well. If you
16 all wish to talk privately, without me being present,
17 I'll be glad to leave. Nobody wants to throw me out?
18 Okay. Fair enough. All right. We'll be off the
19 record.

20 (Recess taken.)

21 JUDGE MOSS: Let's go back on the record.
22 Mr. Cedarbaum, I've been looking to you, although you
23 may not want to be the spokesman, I'll give you the
24 opportunity.

25 MR. CEDARBAUM: There are enough people

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1 here that if I screw up, I'm sure somebody will
2 correct me. Yes, Judge, we had a long discussion on
3 the schedule, but I think we actually settled a fair
4 amount of scheduling issues, so that was probably
5 time well spent.

6 JUDGE MOSS: Good.

7 MR. CEDARBAUM: With respect to the four
8 cases that are before the Commission today, we have
9 agreed, as a general matter, that they should not be
10 consolidated, that each case can go on its own
11 separate track on an unconsolidated basis.

12 With respect to the 1521 case, the schedule
13 that we came up with is as follows. And for the time
14 being, it does not include any kind of an evidentiary
15 hearing, but that's a possible track that might get
16 triggered in case things don't go along the way we
17 hoped.

18 JUDGE MOSS: Okay.

19 MR. CEDARBAUM: The first date on that is
20 on the 8th of December -- excuse me, on the 15th of
21 December, the parties will file with the Commission a
22 stipulation of facts or an indication to the
23 Commission that we were unable to reach a stipulation
24 of facts, in which case we would need to come back
25 before you in some manner to set an evidentiary

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1 hearing. I assume that can probably be done by
2 conference call, but the 15th of December will be
3 either a stipulation of facts or an indication that
4 we did not achieve that.

5 January 19th, assuming that we have reached
6 a stipulation of facts, we will file opening briefs
7 on January 19th simultaneously and then simultaneous
8 reply briefs on February 2nd.

9 JUDGE MOSS: Okay.

10 MR. CEDARBAUM: So that's the schedule we
11 have for the 1521 case.

12 JUDGE MOSS: All right.

13 MR. CEDARBAUM: The 1616 case, we agreed
14 that, as of today, the parties would invoke the
15 Commission's discovery rule and abide by that from
16 today with respect to discovery. January 12th, the
17 Complainants, Ms. Davison's clients, will file a
18 motion for summary judgment in that case, and replies
19 would be due to the motion for summary judgment on
20 February 1st. If the motion is denied and the case
21 needs to go for hearing, then again we'll need to
22 come back before you for an evidentiary hearing
23 schedule.

24 MR. QUEHRN: Pardon me. Just to pick a nit
25 there, January 12th, anyone that's going to file a

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1 summary judgment motion is going to file a summary
2 judgment motion, not just --

3 MR. CEDARBAUM: Sorry if I misstated that.
4 So January 12th is a day for any and all motions for
5 summary judgment. February 1st, any and all replies
6 to the motions for summary judgment that are filed.

7 JUDGE MOSS: Okay.

8 MR. CEDARBAUM: In the 1014 --

9 MR. CAMERON: Excuse me. Could we go off
10 the record for 30 seconds?

11 JUDGE MOSS: Sure, let's be off the record.

12 (Discussion off the record.)

13 JUDGE MOSS: Let's go back on the record.

14 Ms. Davison, do you have something to share with us?

15 MS. DAVISON: Thank you, Your Honor, yes.

16 In the case that's been docketed as 1616, Georgia
17 Pacific is willing to state for the record that the
18 scope of our complaint is to invoke the most favored
19 nations clause, but that the rest of the terms and
20 conditions which -- I should back up -- is to invoke
21 the most favored nations clause regarding pricing
22 only, and that the other terms and conditions of the
23 special contract remain in effect.

24 So any disputes that the parties might have
25 regarding the interpretation of those terms and

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1 conditions will remain. What we're asking for from
2 the Commission in the 1616 complaint is merely a
3 substitution of pricing.

4 JUDGE MOSS: Okay. Well, I understood that
5 to be your complaint and --

6 MS. DAVISON: That's what I thought, too.

7 JUDGE MOSS: I guess the question that was
8 in my mind is the -- what I consider to be the
9 threshold question in that case -- is the meaning of
10 Section 3.5, and whether it permits it. As I
11 understand the answer, it is that -- well, actually,
12 the answer left me wondering a little bit. Of
13 course, fundamentally, the answer is that any
14 opportunity for Georgia Pacific to adopt the Schedule
15 48 was defined by Schedule 48 itself, which was a
16 90-day period specified in Schedule 48 for customers
17 to opt in, special contract customers to opt in.
18 That's how I understand the answer.

19 I don't recall exactly, frankly, at this
20 juncture, whether the answer argues in effect that
21 it's an all or none under the most favored nations,
22 that you don't get to pick and choose, I believe is
23 the language that was used in the answer. So that
24 brings me to sort of the fundamental question, is
25 don't we have a fundamental or threshold type legal

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1 question. Does Section 3.5, the so-called most
2 favored nations, permit selective substitution?

3 MR. QUEHRN: Your Honor, a couple things.
4 We're starting to walk out on a balance that was
5 somewhat delicately struck. Before I forget to do
6 so, on the basis of that stipulation, Puget Sound
7 Energy would be willing to withdraw its counterclaim
8 without prejudice, with further clarification that I
9 hope I get right here, and if not, the gentleman to
10 my right, I'm sure, will correct me. I believe that
11 Whatcom PUD will then not be seeking to intervene in
12 1616 if we're just dealing with the pricing issue.

13 And I will reflect, I guess, since
14 hopefully we can do this orally and not have to write
15 anything further, that if and at such time we refile
16 the counterclaim, we would not object to Whatcom
17 PUD's intervention. So that would sort of close the
18 loop on those two issues, if that is acceptable to
19 Your Honor.

20 JUDGE MOSS: Isn't the transmission issue
21 that's been raised by counterclaim in 1616 the same
22 as the transmission issue counterclaim in 1014?

23 MR. QUEHRN: Yeah, the problem, Your Honor,
24 and again, without getting into too much detail here,
25 the most favored nation clause speaks to whatever

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1 they're allowed to substitute or not substitute under
2 that clause, in paren, as amended or varied by this
3 agreement. That gets you to the term provision, the
4 term of -- and then you've got some issues in the
5 term provision of the special contracts, some of
6 which pertain to the initial five-year power sales
7 agreement, and the others to the transportation
8 contract. That's kind of where we were getting
9 balled up.

10 What I think we've decided is we don't have
11 to go there now with the clarification if it's only a
12 pricing issue, the term is what the term is, and if
13 we have to argue about that later, we'll argue about
14 it later, or not.

15 JUDGE MOSS: A concern that I have in this
16 connection is that, you know, now we're up to four
17 dockets essentially concerning the same dispute
18 between the same parties. It's been cast in
19 different ways, it's -- you know, the imaginations of
20 the lawyers involved have been fertile. I would hate
21 to see us go forward with four dockets only to get to
22 the end of that process and have three or four more.
23 And maybe it's not a practical point, but I don't
24 mind putting on the record my own personal preference
25 here, which would be to, you know, get this whole

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1 thing wrapped up once and for all. The pleadings get
2 to be onerous, the issues seem to be standing on
3 shifting sands at times, and it makes it very
4 difficult for all of you, and to the extent the
5 Commission has a role in administering these tariffs
6 on a going forward basis, it becomes difficult for
7 the Commission, too.

8 You know, I'm thinking in terms of the 1521
9 case. We had the Schedule 48 proceeding concerning
10 essentially the same aspects of the relationships and
11 went through all that, but now we have the 1521 case,
12 because we didn't get that wrapped up with respect to
13 the special contracts customers. So I'm rambling a
14 little bit here, but I'm just expressing a general
15 concern that we not do this piecemeal, which is one
16 of the reasons that I called for a joint prehearing
17 conference.

18 I'm not suggesting we shouldn't go forward
19 on the tracks that you all are recommending to me as
20 we talk here, but let's be mindful of -- let's don't
21 just be reserving stuff so we'll say, okay, we'll
22 take one more bite at the apple now that that doesn't
23 work out for one side or the other. And chances are,
24 if you end up resolving these matters through the
25 adjudicatory process, one side or the other is not

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1 going to be satisfied with the outcome. That's
2 typically the situation in these proceedings, except
3 those that are resolved by settlement.

4 So I guess I've rambled on enough, but
5 those are some concerns I have. If it will simplify
6 matters to, I guess, limit the scope of the 1616
7 proceeding, as I understand the proposal to be,
8 simply to Section 3.5, what it allows, permits,
9 obliges, then I suppose we'll do that, but let's
10 continue to be mindful of the interplay of these
11 various proceedings, and it may be that we'll want to
12 bring this matter back into the case at some point in
13 time.

14 I think, as far as the intervention is
15 concerned, we'll just leave the ruling as it stands,
16 and Whatcom PUD will just, as a practical matter,
17 will be on the sidelines if there's not an issue of
18 interest to it, which would appear to be the case if
19 the transmission part is not there. Is that a fair
20 statement, Mr. Gravley? Your interest extends to the
21 transmission issue?

22 MR. GRAVLEY: That's correct.

23 JUDGE MOSS: Yeah, okay. All right. Well,
24 I talked at length there, but I hope I didn't break
25 your train of thought too much, Ms. Davison. I don't

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1 think you were quite through, or were you?

2 MS. DAVISON: Thank you, Your Honor. No, I
3 appreciate your comments, and we are struggling with
4 some of the same issues. I very much appreciate the
5 difficulty with having all these different dockets
6 that are involving the same contracts and the same
7 parties. And it could be that, in trying to deal
8 with something more simply, we may actually be
9 causing things to be more complicated, and I
10 apologize if that's the case.

11 I didn't have anything further to say with
12 regard to the intent of the complaint. I guess the
13 only observation I would say in response to what Mr.
14 Quehrn had said, and particularly with regard to what
15 Your Honor had just mentioned, is that at maybe some
16 point we do need to revisit the issue of -- I think
17 there's -- I've counted three, but perhaps there may
18 even be more issues that are looming on the horizon.
19 We have a special contract that expires in May.

20 I think we got some insights with the
21 counterclaims as to the position of PSE with regard
22 to the expiration of the special contract.
23 Obviously, Georgia Pacific doesn't agree with that
24 view, that the special contracts should continue on
25 another 15 years. So we have the term of the

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1 contract issue, we have the transmission debate. The
2 two parties see the transmission provision very
3 differently. And we have, kind of in the broader
4 context, the expiration of Schedule 48. That is not
5 very far away, either.

6 JUDGE MOSS: About November next year?

7 MS. DAVISON: That's correct, Your Honor,
8 with the obligation for Puget to make some sort of
9 filing by January 1, 2001, with regard to their
10 intentions on Schedule 48, so --

11 MR. QUEHRN: Excuse me, Your Honor.

12 MS. DAVISON: This is very complicated.

13 MR. QUEHRN: I don't mean to be difficult
14 here, but this came up when you were away, and I
15 profess not being involved in what the company is or
16 isn't doing with respect to Schedule 48, and there is
17 integrity of the record here that's not an issue
18 before you. Let's just move on, please.

19 JUDGE MOSS: Yeah, that's not before me at
20 this time, but --

21 MS. DAVISON: No, I understand that, Your
22 Honor, and I just -- I certainly recognize what
23 you're saying, and I think my intention was not to
24 delay things here or complicate things here, but to
25 certainly make everyone aware that I'm not trying to

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1 hold anything in reserve and I'm not trying to hold
2 back, but there are certainly very critical
3 unresolved issues at this point in time.

4 JUDGE MOSS: Well, and you know, I think
5 there is an interest in achieving some finality with
6 respect to all of this, and you know, whatever the
7 issues may be, I think there are some issues that are
8 going to come up in the next year with respect to all
9 of this.

10 And so, you know, this brings up the
11 broader question that I intend to talk about today,
12 and maybe we'll reserve any discussion of it, but I
13 think we should have some brief discussion at least
14 about the possibility or prospects for some sort of
15 an alternative dispute resolution mechanism that
16 might facilitate bringing all of this to finality.
17 We'll talk about that at the end and see if there's
18 not something we can come up with that will be
19 helpful to the parties. I don't think the Commission
20 is prepared to impose anything at this juncture,
21 although that possibility always lurks in the
22 background, but I'd like to talk about it. We'll do
23 that at the end.

24 Let me ask this, though, with respect to
25 the suggestion that we'll essentially have a

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1 voluntary withdrawal without prejudice of the
2 counterclaims in the 1616 case. What happens then if
3 we go forward with that case and it appears that the
4 parties contemplate we'll be able to resolve that
5 case on cross motions for summary determination? And
6 I agree, I think that's probably a very logical way
7 to proceed in that case.

8 Let's assume for half a minute that that
9 comes out unfavorably to your client. What happens
10 then to the transmission issue if it's withdrawn from
11 the proceeding? I mean, remember how this whole
12 thing got started. It all got started back in the
13 1014 docket, and of course the counterclaims were
14 alleged there through various exchanges of paper,
15 which ultimately the Commission ruled on. I don't
16 remember whether it was the Commissioners or me who
17 signed the order, but we had an order allowing for a
18 dismissal of those counterclaims without prejudice as
19 to Georgia Pacific, so -- but they linger there, and
20 of course we still got the live case going with
21 Bellingham Cold Storage and the counterclaims on the
22 table.

23 So what happens to those claims insofar as
24 Georgia Pacific is concerned if the scenario develops
25 that we go forward on cross motions for summary

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1 determination in 1616 and you lose, and meanwhile,
2 we're going on some kind of track with 1014, unless
3 they settle that case. What happens? What if those
4 transmission counterclaims resolved in that
5 proceeding and not in this proceeding?

6 MS. DAVISON: Well, hypothetically
7 speaking, I --

8 JUDGE MOSS: It is just one scenario. And
9 I'm not saying it's more plausible than the other
10 outcome, but it's just a possibility.

11 MS. DAVISON: Okay. I think that it really
12 gets back to what I mentioned earlier, Your Honor. I
13 think that the counterclaims that have been raised by
14 PSE in the 1616 docket are merely a slice of the
15 bigger issues that are looming with regard to the
16 Georgia Pacific special contract.

17 And so I think that if there is an
18 unfavorable resolution of the pricing dispute in the
19 Georgia Pacific 1616 docket, that if the parties are
20 unable to reach some sort of agreement about where we
21 go from here, that you would probably see some sort
22 of proceeding that is actually much bigger, that
23 raises -- I don't know if Georgia Pacific would be
24 filing it or PSE would be filing it. I honestly
25 don't know.

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1 But I think, as I said, we have not only
2 the transmission claims that G.P. had made back in
3 August in the original 1014 case in terms of their
4 interpretation of PSE's obligation to provide
5 transmission service and then PSE's interpretation of
6 essentially the same provision, saying, No, we don't
7 have to provide transmission; you have to be
8 committed to stay with us for 15 more years, and then
9 -- but I think the more significant issue is really
10 what happens after the expiration of the special
11 contract in May of 2001.

12 So those are very important issues, and I
13 would certainly hope that those would not -- if we
14 cannot reach agreement with PSE on those matters, I
15 would hope they would sort of stay together, because
16 I think they're very much linked.

17 JUDGE MOSS: Well, as time marches on, it
18 strikes me that what happens in the spring of next
19 year is probably the critical issue for all of you.
20 And it seems to me that, to one degree or another,
21 that issue is joined in one or more of these
22 proceedings. I will also venture to say that it is
23 probably the point as to which I feel the greatest
24 degree of angst, uncertainty, and confusion on the
25 basis of the pleadings, at least. Even with respect

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1 to what the parties' positions are, because you each
2 characterized the others' positions in a way that you
3 then, in turn, object to. So I'm not sure who's
4 saying what to whom at this point. It's a difficult
5 part of the whole thing.

6 But my concern, Ms. Davison, is that that's
7 going to end up getting resolved in another
8 proceeding, as to which you are -- I don't know, are
9 you even a party in 1014 anymore? You withdrew. You
10 were a complainant. You're not even an intervenor in
11 that case. We're going to go forward with that case,
12 I presume, or maybe these parties are going to settle
13 it, because they want a continuance to try to do
14 that, and I'm certainly inclined to grant that so
15 long as it doesn't interfere unduly with all the
16 other business that we're trying to conduct.

17 But do you see that that's the concern I
18 have? I guess, in part, it's because of the history
19 of all of this. I heard the Schedule 48 case, as you
20 know. From where I sit, it was a very enjoyable
21 case, parties conducted themselves very
22 professionally and did some very good legal work in
23 that case, but, you know, it's not my millions of
24 dollars, and it does matter to you all in that way.
25 And I just don't want to see us -- maybe we resolve

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1 that issue for Bellingham Cold Storage in one fashion
2 or another and then there you are.

3 We're probably going to hear a little bit
4 more in a minute here about the relationship between
5 that Schedule 48 case and this 1521 case, because I
6 have some questions about that, but this is the sort
7 of piecemeal resolution that concerns me, and so I
8 guess for now I'd be prepared to accept your
9 suggestion, but you all continue to think about it
10 and let me know in fairly short order whether you
11 think this is really the best way to go in the 1616.

12 You know, I frankly expected the
13 counterclaims to come in as they did. It struck me
14 as appropriate that they would be brought, since you
15 have essentially severed yourself from your
16 co-complainant.

17 MS. DAVISON: Your Honor, I would say in
18 response to that, that you've raised a very valid
19 question, and I think I can fairly say that if --
20 well, maybe I should back up and say why we withdrew
21 from the 1014 case. It wasn't that we didn't think
22 there was an issue in that case that was impacting
23 Georgia Pacific directly, because of course it is.
24 We withdrew from that case simply as sort of a
25 cleanup matter. That complaint was drafted by other

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1 counsel.

2 I think that if we're not able to resolve
3 these issues, and there have been settlement
4 negotiations going on with regard to the transmission
5 disputes, that you will probably see a revised and
6 amended complaint, perhaps from Mr. Cameron, perhaps
7 jointly, I'm not sure. And at that point, I can
8 assure you that Georgia Pacific will be back in that
9 case. And we have absolutely no intentions to
10 piecemeal the litigation, and certainly it would not
11 be a good outcome to have a G.P. case and then BCS
12 case. That's not our intention at all.

13 We will be, you know, cautiously optimistic
14 that we can continue to have settlement negotiations,
15 as we have on an ongoing basis with PSE, and reach
16 some resolution to these transmission issues. But in
17 the event that we're not, we will certainly be back
18 into that proceeding, whatever it is, with the same
19 parties.

20 JUDGE MOSS: All right. That segues, for
21 me, at least, into another question, which is what is
22 the status of the 1014 case? You all want a
23 continuance for 45 days to continue pursuing your
24 settlement negotiations in earnest?

25 MR. CAMERON: Yes, sir, if I could be heard

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1 on that. Well, first, let me say that the withdrawal
2 of the counterclaim by Puget in 1616 makes my life
3 easier in 1014, because as I sought more time for
4 discussion with Puget, I didn't want the transmission
5 issues going back in through the back door in yet
6 another proceeding.

7 We've sought a couple of continuances now,
8 and I do so with some trepidation, knowing that we do
9 have a milestone date coming up next May. I would
10 say that last summer we certainly ventilated the
11 legal issues that separated us, but I would say in
12 the past couple of months we have been able to focus
13 on the business issues, and there are some points of
14 common interest on the business side, whereas on the
15 legal side we seem to be at loggerheads. That's not
16 to downplay the legal issues, but it is to say that
17 we are talking principle to principle as much as
18 lawyer to lawyer right now.

19 And as I stated in our motion, BCS can't
20 simultaneously negotiate and litigate. We just don't
21 have the resources for that. And also, we appreciate
22 your offer of alternative dispute resolution. There
23 was a time when we had shuttle diplomacy going on,
24 but now we are talking face-to-face about business
25 issues, and my client felt it worthwhile to carry

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1 forward the discussion a little bit longer knowing
2 that we're going to have some difficulty just because
3 of the holidays ensuing in the weeks ahead.

4 But we wanted to give an opportunity for
5 these discussions to come to fruition. We've agreed
6 that these continuances will not go on indefinitely.
7 We anticipate knowing one way or the other whether we
8 have something in January. If we do not, then we
9 will have to press forward on the transmission
10 issues. I certainly join with Ms. Davison in
11 recommending that we not piecemeal these cases, that
12 if there's ever a point at which consolidation of
13 dockets makes sense, it would be when we discuss
14 common issues regarding common contracts. That's why
15 today we intervened in the 1616 docket, of course.

16 So we are mindful of the fact that these
17 dockets hang fire. We appreciate your indulgence in
18 letting us try to work through these things. We are,
19 in the separate track, trying to reduce the number of
20 issues, rather than increase them.

21 JUDGE MOSS: Mr. Quehrn, did you have
22 something to say or --

23 MR. QUEHRN: Well, Your Honor, I don't
24 actually have the pleasure of working with Mr.
25 Cameron, as I know he's involved in the negotiations.

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1 I guess I would just say for the record that we
2 remain optimistic that we are working to resolve many
3 of these issues, too, in a way that will hopefully
4 reduce the docket numbers and reduce the complexity
5 of anything that's left over, if any, by the time
6 we're completed with those negotiations.

7 JUDGE MOSS: You know, again, I think we
8 all need to be mindful of the need to move toward
9 some degree of finality with respect to all
10 interested parties and persons, and I include within
11 that group the Schedule 48 customers who have
12 intervened, the Whatcom PUD Number One that has an
13 interest out here in the wings, and so forth.

14 So you know, I don't want to impose on you
15 all some sort of process that will complicate your
16 lives, make it difficult or perhaps frustrate in some
17 way the efforts toward settlement of some aspects of
18 the thing, so that's one reason I came in here today
19 prepared to listen very carefully to the guidance
20 that you all give me about the way you want to
21 proceed, so that we can try to accommodate the
22 resolution of the various disputes in the best
23 possible way. And while I suspect the ultimate
24 result is perhaps not going to bear any resemblance
25 at all to what I would probably have imposed, I think

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1 I can go ahead in that direction to aid you all.
2 That's what I'm hearing will be the result of
3 accommodating you all on this.

4 So I don't mean to suggest that I'm
5 disinclined to do that. I just want to make sure
6 that we have out on the table cards face up, all the
7 concerns, both as I see them to be from your various
8 perspectives and also from the Commission's
9 perspectives.

10 All right. So 1616, you want to invoke the
11 discovery rule. You want to have any party that
12 wishes to file a motion for summary determination on
13 January 12th, and replies on February 1st, and then,
14 if no motion for summary determination is granted,
15 then we would reconvene in a prehearing conference
16 and establish a schedule for going forward. What
17 would be -- I mean, with the counterclaims withdrawn,
18 are there any fact questions that would have to be
19 resolved through a hearing? I mean, isn't it
20 basically a legal question here? I mean, is it
21 really conceivable that we need a hearing under any
22 circumstances in that case?

23 MR. QUEHRN: Without running to the merits,
24 one of the legal questions is what the intent of the
25 parties were in the special contract, and that gets

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1 very factual, since we seem to have some different
2 points of view on what the intent of the parties
3 were.

4 JUDGE MOSS: Well, I'm not going to
5 necessarily agree that your different points of view
6 reflect the working of reasonable minds. We may find
7 that there is no ambiguity in that language. Well, I
8 won't get ahead of myself there.

9 MR. QUEHRN: All we can say is if we find,
10 through discovery, there are no issues of fact, that
11 will just make our lives easier.

12 JUDGE MOSS: You have answered my question,
13 which is that someone may raise the possibility that
14 there's an ambiguity here, and that if the Commission
15 agrees, it will allow hearing on question for
16 evidence on intent. Okay, fine.

17 MR. CAMERON: Your Honor, I'd just note
18 that we began the procedural schedule, or we inserted
19 in the procedural schedule the motion for summary
20 judgment to test the proposition that there might not
21 be disputed facts.

22 JUDGE MOSS: Yeah, I think that will
23 probably -- I was just sort of getting ahead of
24 myself. Thank you.

25 MR. QUEHRN: Your Honor, if I may, before

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1 we -- and this is something that I just neglected to
2 bring up when you were out of the room. Again, not
3 knowing what facts might be elicited in this, there
4 was a protective order issued in 735 and 1014. I
5 would ask that it be extended to this proceeding,
6 too, so it's there if we need it.

7 JUDGE MOSS: Okay. Well, if we're going to
8 proceed on separate tracks, then I'll just see to it
9 there is a protective order, and the prehearing order
10 will reflect that the discovery rule has been
11 invoked. I'll probably issue separate prehearing
12 orders in all these. If, at the end of today, we are
13 indeed going to go forward on four tracks, I'll go
14 ahead and do the housekeeping work in the two newer
15 dockets in that fashion. Keep me off the streets,
16 anyway.

17 All right. Does that wrap up on the 1616
18 what we need to talk about, then, in terms of process
19 and procedure? I think it does. All right.

20 We had previously talked about 1521. The
21 parties anticipate that we may not need an
22 evidentiary hearing. The assumption being based on a
23 stipulation of facts being achieved by December the
24 15th, and if that cannot be accomplished, then I
25 guess we'd have a prehearing conference at that point

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1 in time to decide what we need to do about getting
2 our fact record, if any is required?

3 MR. CEDARBAUM: If you wanted to actually,
4 you know, set a contingent prehearing conference or a
5 prehearing teleconference for that day, that's fine.
6 I think we just anticipated, on that day, we would
7 let you know that we needed to come back before you
8 to schedule a hearing.

9 JUDGE MOSS: Yeah, I don't think we need to
10 pre-schedule anything. I'm just sort of thinking
11 through what we'll need to do at that time so that
12 nothing falls through the cracks on that.

13 I did have a couple of questions about the
14 issues in that case. Let's go ahead and touch on
15 those now, while we've got the subject on the table.
16 What do we need to resolve, in Staff's view, in that
17 case? Are you going to -- do you anticipate filing a
18 motion for summary determination on the substantive
19 issue?

20 MR. CEDARBAUM: Well, no. I think our plan
21 was that we assumed that we would reach a stipulation
22 of facts, and then, on the basis of that stipulation,
23 we would all just file legal briefs. And the legal
24 issues that we saw, just broadly speaking, were --
25 and I think we've all sort of approached this case as

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1 breaking it into two time periods, one time period
2 going from June 1998 to November -- October 31st,
3 '99; the second time period being from November 1
4 till June 12th -- November 1, 1999, to June 12th,
5 2000 --

6 MS. DAVISON: July.

7 MR. CEDARBAUM: Did I miss that? It's July
8 12th.

9 MR. QUEHRN: Close.

10 JUDGE MOSS: Those two periods being
11 defined in the middle there by the amendment?

12 MR. CEDARBAUM: The first period would
13 apply to the accord and satisfaction; the second
14 period would apply to an amendment which the
15 Commission approved effective July 13th, 2000, and
16 whether or not that can be made effective retroactive
17 to November 1st, 1999.

18 So the legal issues, as we've been looking
19 at them, is what is the legal effect, if any, of the
20 accord and satisfaction, and secondly, what is the
21 ability of the Commission to allow that amendment to
22 become effective retroactive to November 1st, 1999.
23 And then there's sort of the broad umbrella issue
24 about filed rate doctrine as kind of an overlay, I
25 think, to the whole discussion.

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1 So those are the -- I'm sure there are more
2 specific details of those issues as we get into them,
3 but those are the general concepts that we were
4 looking at.

5 JUDGE MOSS: Are we going to need to repeat
6 the exercise in one fashion or another that we went
7 through in the Schedule 48 case?

8 MR. CEDARBAUM: Which is what exercise?

9 JUDGE MOSS: Interpretation of the contract
10 itself.

11 MR. CEDARBAUM: No, I don't think so. I
12 think the -- no, I think we would be looking at the
13 legal issues surrounding the accord and satisfaction,
14 the effectiveness of that.

15 JUDGE MOSS: That's never been filed?

16 MR. CEDARBAUM: Well, it was filed. It was
17 never approved.

18 JUDGE MOSS: Okay. It was filed and
19 withdrawn? What was its status?

20 MR. CEDARBAUM: It was filed, and I
21 actually don't know if it was physically withdrawn or
22 just an agreement, I think, that it would not come
23 before the Commission. I don't know that the
24 physical -- as I recall, what the company filed
25 originally was a three-piece filing. It was the

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1 amendment to be effective July 13th; the second piece
2 was to make that effective actually back to November
3 1st, 1999; and the third piece was the accord and
4 satisfaction. There were discussions between the
5 Commission Staff and the company, and there was
6 argument about what those discussions were, who
7 thought what and said what, but my understanding is
8 the only thing that came before the Commission, and
9 that was approved, was the amendment to the contract
10 effective July 13th, 2000. The other two pieces were
11 not acted upon by the Commission.

12 And what we would be briefing to the
13 Commission in the case is whether or not,
14 irrespective of whether the Commission approved the
15 accord and satisfaction, the retroactive date,
16 whether or not the customers and the company can, in
17 essence, settle a dispute for less than the tariffed
18 amount and whether or not an amendment that was made
19 effective July 13th, 2000, can, in essence, be made
20 effective on an earlier date, November 1st, 1999.

21 JUDGE MOSS: Okay. And I'm perhaps being
22 dense here, but when the parties came in with their
23 request to amend the contract that became effective
24 July 13th, 2000, under the Commission's order, that
25 changed the pricing term consistent with the special

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1 contract allowing such a change to occur
2 prospectively from July 13th, 2000. At that point in
3 time, there was on the table this accord and
4 satisfaction.

5 Now, is there a difference of opinion as
6 between Staff, on the one hand, and PSE, on the other
7 hand, as to what period that accord and satisfaction
8 was intended to cover?

9 MR. CEDARBAUM: I don't think so. I think
10 the accord and satisfaction we all agree was intended
11 to cover from June 1st, 1998, through October 1st --
12 31st, 1999.

13 MS. DODGE: That's correct.

14 MR. CEDARBAUM: The question is whether or
15 not that accord and satisfaction has any lawful
16 effect, but other than the period of time that it
17 covers is not in dispute.

18 JUDGE MOSS: Now, the accord and
19 satisfaction was never formally put before the
20 Commission for approval. Although that was
21 contemplated at one time, it was never actually done;
22 is that right?

23 MR. CEDARBAUM: I believe that's correct.
24 It's definitely correct that the Commission never
25 approved the accord and satisfaction. It was filed

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1 with the Commission, but the company agreed not to
2 bring it before the Commission at the open meeting.

3 JUDGE MOSS: That was my recollection. I
4 was at that open meeting, and my recollection was it
5 was never -- the Commission was never asked to
6 formally act on the accord and satisfaction. Is that
7 consistent with your recollection, Ms. Dodge?

8 MS. DODGE: That's correct. I believe that
9 G.P. and BCS have raised some questions about that,
10 but that is Puget's position. The question of what
11 the parties contemplated would be brought before the
12 Commission I don't think is something that needs to
13 be gotten into now, and I don't know that it will be
14 anything that -- I don't know that the resolution of
15 that dispute turns on that question. I don't know
16 that it's material to the dispute, but we'll see how
17 the briefing develops, I think.

18 JUDGE MOSS: Anybody else want to --

19 MS. DODGE: If we get there.

20 JUDGE MOSS: -- chime in on this to help me
21 understand all this? All right. So is Puget, then,
22 essentially in agreement with what Mr. Cedarbaum
23 said, that there are basically three periods we're
24 concerned about in the 1521 case? The first period
25 is from June 1, 1998, through October 31, 1999, and

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1 the question is is an accord and satisfaction between
2 Puget and its customers with respect to that period
3 -- or what is the effect of that, I guess is the way
4 you phrased it, wasn't it?

5 MR. CEDARBAUM: Correct.

6 JUDGE MOSS: I guess I might tend to phrase
7 it a little differently. The question might be is
8 that accord and satisfaction -- well, if that accord
9 and satisfaction were presented to the Commission for
10 approval, could it be considered as resolving any
11 issues concerning the appropriate rates and charges
12 for that period in the same sense that any settlement
13 agreement would be considered and approved by the
14 Commission as a reasonable resolution of an issue.
15 Is that fair?

16 I mean, refunds are discretionary, and so
17 isn't that essentially what this comes down to, is
18 whether the accord and satisfaction would be a
19 satisfactory refund amount, in the Commission's view,
20 for that period of time?

21 MR. CEDARBAUM: Well, the issue that the
22 Staff has been looking at is whether or not, given
23 the filed rate doctrine, the parties, the company and
24 the customers, through an accord and satisfaction,
25 can settle on something other than the filed rate,

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1 which, given the Schedule 48 981410 case was
2 interpreted to be something different than what the
3 accord and satisfaction would result in.

4 JUDGE MOSS: Would the accord and
5 satisfaction have established a rate or just --
6 wasn't it just a payment of money?

7 MR. CEDARBAUM: It's a payment of money to
8 -- well, I guess I think, in effect, it is the same
9 thing as a rate. What, in essence, happens with the
10 accord and satisfaction is that the customers get
11 charged more than the filed rate, given the
12 Commission's order in the 1998 1410 case.

13 JUDGE MOSS: Or, looked at differently,
14 they get refunded less than they might be due if they
15 were fully refunded for the relevant period? Isn't
16 that a legitimate view of it?

17 MR. CEDARBAUM: Yeah, I'm not sure I
18 understood what you're saying.

19 JUDGE MOSS: This is where some of my
20 confusion comes in, because -- and let me go forward
21 with my analysis of the time periods or understanding
22 of the time periods, if you will. My impression had
23 been that we were concerned with the second time
24 period, from November 1st, 1999, through July 13th,
25 2000, and that during that time period, somebody, at

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1 least, was proposing that there would be deemed to be
2 -- the effective rate would be deemed to be the same
3 as the rate from July 13th, 2000, forward, and that
4 that is what implicated the filed rate doctrine, that
5 that's what raises your concerns about a violation of
6 the filed rate doctrine, because that would be
7 arguably retroactive ratemaking.

8 MR. CEDARBAUM: That's right. I think
9 that's correct, but the Commission's complaint on the
10 recommendation of Staff was to also place into
11 dispute the prior time period, from June 1st, 1998,
12 through October 31st, 1999, the accord and
13 satisfaction period, and that it was an issue for
14 Staff, which the Commission, as I read the complaint,
15 also placed at issue. And I think that gets into the
16 issue -- there are filed rate doctrine issues with
17 respect to that period, as well.

18 JUDGE MOSS: I think I am going to ask you
19 all to do a little something else for me here on
20 December the 15th. If you all -- well, I started to
21 say if you all failed to reach a stipulation on the
22 facts, I would like for you to provide at that time,
23 each of you, each of the principal parties, provide a
24 statement of the issues in the form of questions.
25 I'm wondering if that might not be a good idea

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1 regardless of whether you reach a stipulation. I'm
2 pondering whether it's necessary, since you'd be
3 filing briefs a month later and certainly would tell
4 me what the issues were then, but what do you think
5 about doing it regardless of whether you achieve the
6 stipulation?

7 MR. CEDARBAUM: You know, to be perfectly
8 candid, in my mind, I thought the issues were fairly
9 straightforward, which I think is one reason why we
10 were hopeful about reaching a stipulation of facts,
11 rather than something more complicated, like summary
12 judgment, or more complicated than an evidentiary
13 hearing.

14 JUDGE MOSS: And maybe when you all sit
15 down and talk about it, you will both find that the
16 issues are quite straightforward and if that old
17 judge wasn't so dumb, he could get it, too, but I
18 don't find them straightforward. I find them a
19 little bit more complex than perhaps what we're
20 looking at on the face of things. So I guess all I'm
21 trying to do is encourage some more careful thought
22 on that subject of what are exactly the issues, how
23 the issues should be joined for the three time
24 periods. Maybe I see some distinctions that you
25 don't want to draw or don't see, and maybe they're

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1 not important, but I see them.

2 MR. CEDARBAUM: And just to clarify, I
3 think it's probably better to say that there are
4 really two time periods. Nobody disputes the rate
5 effective July 13th, 2000. The issues are the prior
6 two time periods, being split by November 1st, 1999.

7 JUDGE MOSS: Do you see that as being the
8 same issue or two issues, or -- you don't have to
9 tell me one way or the other.

10 MS. DODGE: There are two different time
11 periods in dispute, through October 31st, and then
12 from the November 1st, 1999, through the effective
13 date of the new rate the Commission approved, the
14 modification of the index.

15 JUDGE MOSS: Do you see the legal issues as
16 being somewhat different for those two time periods
17 or do you see them as being the same?

18 MS. DODGE: We believe they're very
19 straightforward for the period prior to November 1,
20 for exactly the reasons you were pursuing. I don't
21 know whether Staff has fully looked at all the
22 numbers and facts, but they certainly will, we all
23 will, in terms of putting together stipulated facts.
24 But it's a quite straightforward settlement of
25 billing dispute analysis, we believe, for that time

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1 period.

2 The intervening period is more complicated
3 legally, but not factually. I mean, they've raised
4 filed rate doctrine, and there are many, many
5 elements of that that will need to get briefed, but
6 generally, I think the facts are what they are. It's
7 just a question of the Commission applying the filed
8 rate doctrine and its own rules.

9 JUDGE MOSS: Yeah, I don't see this being a
10 factually intensive matter.

11 MR. CEDARBAUM: No, I agree, which is,
12 again, why we were going along the assumption that
13 we'll reach a stipulation of facts.

14 JUDGE MOSS: Yeah.

15 MR. CEDARBAUM: Just to clarify, as I
16 stated before, I think kind of the big picture issue
17 is filed rate doctrine. I just think that once you
18 break it down to those two time periods, there are
19 other facets of that that have -- that need to be
20 briefed. One of them is, as Ms. Dodge just stated,
21 the accord and satisfaction billing dispute type
22 issues. There are other types of details of the
23 filed rate doctrine issues that come up for a later
24 period of time, but I think the broad picture is
25 still the filed rate doctrine matter.

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1 MR. CAMERON: Would you tell us again,
2 please, what you would like from us on the 15th by
3 way of a statement of issues?

4 JUDGE MOSS: Yeah, I think it would be
5 useful to me, certainly, and to the Commission, more
6 generally, to have the parties file just something
7 brief, a statement of the issues to be resolved in
8 the form of questions, just as you might use brief
9 headings in the form of questions. Does the filed
10 rate doctrine prohibit the accord and satisfaction
11 being an effective resolution for the period, da, da,
12 da, da, or whatever, I don't know. I'm just making
13 this stuff up.

14 I think the issues are somewhat different
15 for the two periods. It may be subtle, but I do
16 think they're different legal issues. And so,
17 anyway, I want you all to just think about that.
18 You've got a couple of weeks to do it.

19 MR. CAMERON: Are you asking for a single
20 set of issues from us?

21 JUDGE MOSS: If you all could achieve an
22 agreement as to what those issues are, that would be
23 great.

24 MR. CAMERON: But not necessarily. Okay.

25 JUDGE MOSS: But if you can't, then you

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1 could each file or several of you could file or
2 whatever. Yes, I think the intervenors in that case,
3 in the 1521 docket, certainly have something at stake
4 and would take an interest in expressing their view
5 of what the issues are legally.

6 MR. CAMERON: Yes, sir.

7 MR. CEDARBAUM: Well, part of the schedule
8 that we didn't tell you, because we didn't have to,
9 was --

10 JUDGE MOSS: Ah, the secret agenda.

11 MR. CEDARBAUM: -- that I had taken the
12 responsibility of circulating a draft stipulation of
13 facts by the 8th of December, and I can just go ahead
14 and take my own shot at the issues in that and then
15 everybody could respond to it.

16 JUDGE MOSS: That would be good.
17 Ultimately, we would work that into an outline,
18 common outline for the briefs, and that would make
19 everybody's life easier. All right. I appreciate
20 you all proceeding in that way, then. I think it
21 will help make things more clear.

22 Now, does that then give us what we need on
23 1521 and 1616? I think it does, in terms of process
24 and procedure.

25 MR. CAMERON: Yes, sir.

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1 JUDGE MOSS: All right. Now, what about
2 that old 735 docket?

3 MR. FFITCH: Your Honor, may I interject at
4 this point?

5 JUDGE MOSS: Yes, sir.

6 MR. FFITCH: I should be taking my leave at
7 this time, with your permission.

8 JUDGE MOSS: Sure.

9 MR. FFITCH: I believe that we have Mr.
10 Cromwell on the phone to take over for Public
11 Counsel.

12 JUDGE MOSS: Mr. Cromwell, are you there?

13 MR. CROMWELL: I am here. I don't know if
14 you can hear me.

15 JUDGE MOSS: Yes, I can.

16 MR. CROMWELL: I am present, Your Honor.

17 MR. FFITCH: I think I would just say, in
18 leaving, that we don't have any objection to any of
19 the procedural arrangements that have been described.
20 Our interest is, in general, to look at any
21 resolutions that may develop in these dockets for
22 impact on core customers, but we're quite comfortable
23 with the direction that's shaping up right at the
24 moment in terms of the procedures.

25 JUDGE MOSS: Okay. Thank you. And I

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1 appreciate you being here to participate in person,
2 Mr. ffitch, as I had indicated would be a requirement
3 for today. And I think I did it off the record, so I
4 will just put on the record, for everyone's benefit,
5 that I'm making an exception to allow Mr. Cromwell to
6 continue Public Counsel's participation under the
7 circumstances via the teleconference bridge, and I
8 think that's warranted, given that Mr. ffitch did
9 come in.

10 MR. FFITCH: Thank you, Your Honor.
11 Actually, I appreciate your accommodation. We hadn't
12 been intending to ask that. But since you've allowed
13 that, we very much appreciate it.

14 JUDGE MOSS: I understand, and I think
15 that's best, under the circumstances. So I
16 appreciate you being here.

17 MR. CROMWELL: Your Honor, Robert Cromwell,
18 I've not made a formal appearance in any of the
19 dockets involved herein.

20 JUDGE MOSS: All right. Mr. Cromwell, we
21 will note your appearance. And all these dockets, I
22 understand Public Counsel will be participating in
23 all of them. And although Mr. ffitch has sometimes
24 been able to be in two places at once, he's rarely
25 been able to accomplish three. So we'll probably see

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1 both of you as we move forward.

2 MR. CROMWELL: Thank you, Your Honor.

3 JUDGE MOSS: All right. Now, 735. What's
4 going on with that case? We had, in the original
5 round of process and procedural discussions, we had
6 decided to put that one on the -- shall we say the
7 slower track. Things may have changed in the
8 intervening time. What do we want to do with that
9 case? Have you all discussed it?

10 MS. DAVISON: Yes, we have, Your Honor, and
11 Georgia Pacific would request that we continue that
12 case on the same time frame as the 1014 case. And to
13 the extent that that case does need to come to life,
14 we will certainly look at opportunities to
15 consolidate.

16 JUDGE MOSS: Ah. That would be a welcome
17 development. Okay. Put you back into that case,
18 wouldn't it? So no real urgency about that one?

19 MS. DAVISON: No, Your Honor.

20 JUDGE MOSS: Okay. Anybody else have
21 anything to say on that one?

22 MR. QUEHRN: No, Your Honor. That proposal
23 is fine with Puget Sound Energy.

24 JUDGE MOSS: All right. Where would 45
25 days take us in the 1014 docket, what date?

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1 MR. CAMERON: January 11th, Your Honor.

2 JUDGE MOSS: So on or about January 11th,
3 you all will either have settled the case or will
4 need to have another prehearing; is that the basic
5 plan?

6 MR. CAMERON: Yes, sir. Yes, sir.

7 JUDGE MOSS: All righty. We'll continue
8 000735 and 1014 until January 11th, at which time we
9 will schedule a prehearing conference. I won't set
10 it for that date. We'll schedule one about then.
11 We'll try to coordinate with the parties to find
12 something convenient.

13 And let me just ask, generally, are the
14 afternoon sessions better for all of you all? I did
15 this one purposely in the afternoon, thinking it
16 might be more convenient, since people were coming
17 from various locales.

18 MR. QUEHRN: Yes, sir.

19 MS. DAVISON: That's very helpful. I
20 appreciate that.

21 JUDGE MOSS: Yeah, it's not a problem.
22 I'll do that. We'll set a date. I assume we can do
23 it on fairly short notice by coordinating with the
24 parties. We won't need to worry about seven-day
25 notice or anything like that. Okay, fine.

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1 I'm just pausing here to think. I think we
2 have resolved what we need to in the way of process.
3 Now, what about discovery and protective order in
4 1521? Did we resolve that?

5 MR. CEDARBAUM: We had -- actually, we
6 didn't discuss it.

7 JUDGE MOSS: Because you all are going to
8 try to stipulate the facts.

9 MR. CEDARBAUM: Yeah, I think probably
10 because we all -- we didn't think it would be
11 necessary.

12 JUDGE MOSS: Let me know if you need
13 something in that way, and we can easily take care of
14 that. I can take care of it on the telephone, so
15 just go forward, and in the good spirit of
16 cooperation, we'll anticipate good results and not
17 set things up for discovery. And I am encouraged by
18 what you all have told me today, that we'll be able
19 to get that one on a stipulated record, and probably
20 the 1616, as well, although we might get into some
21 interpretation questions that require us to have a
22 hearing, I guess. The others are in abeyance. I
23 guess that completes our business, doesn't it?

24 MR. QUEHRN: Actually, Your Honor, I think
25 there was the issue of not having ruled on, and

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1 whether dumping the counterclaim makes a difference
2 or not, so I think we do need to revisit that.

3 MR. CAMERON: Is it dumped?

4 MR. QUEHRN: It has been. Dumped without
5 prejudice, mind you.

6 JUDGE MOSS: Well, where do we stand on
7 that? I'll just turn it back to you, Ms. Davison.
8 What do you think at this point?

9 MS. DAVISON: Your Honor, I guess I was
10 just working it through in my mind, and it seems to
11 me that our request to respond to the counterclaims,
12 we can withdraw that, since that's no longer
13 necessary, since the counterclaims have been
14 withdrawn by PSE.

15 We would still like the opportunity to
16 submit, in a very short time frame, a very short
17 reply. Again, I think it's not intended to
18 complicate matters, but simply to try to focus, at
19 least for the Commission's benefit, the positions of
20 the parties.

21 MR. QUEHRN: I don't have an objection to
22 that.

23 JUDGE MOSS: All right. Well, without an
24 objection, then I'll allow it.

25 MS. DAVISON: Thank you, Your Honor.

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1 JUDGE MOSS: You are intending to withdraw
2 the counterclaims, then?

3 MR. QUEHRN: And I so moved on the record,
4 again, on the basis of the stipulation, to withdraw
5 it without prejudice to refile it.

6 JUDGE MOSS: All right. It would be
7 satisfactory to the parties if I simply rule on that
8 and make that part of the prehearing order?

9 MR. QUEHRN: It would be satisfactory to
10 me, sir.

11 JUDGE MOSS: All right. Well, I'll rule
12 from the bench that the withdrawal was without
13 prejudice to claims being restated in this proceeding
14 or in another docket, as appropriate. I'll
15 incorporate that in the prehearing order.

16 MR. CEDARBAUM: Do you want to set up a
17 date for the reply to come in?

18 JUDGE MOSS: Yeah, we probably should do
19 that. When do you want to have that ready, end of
20 the week?

21 MS. DAVISON: Is that tomorrow?

22 JUDGE MOSS: It is.

23 MS. DAVISON: That was a little sooner.

24 JUDGE MOSS: A little quick for you?

25 MS. DAVISON: Actually, I had in my mind

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1 five days, which would be --
2 JUDGE MOSS: Wednesday next week. Or do
3 you want till Thursday?
4 MS. DAVISON: That would be preferable, if
5 I could have till December 7th, Your Honor.
6 JUDGE MOSS: A day that lives in infamy.
7 MS. DAVISON: Yeah, maybe that's a bad
8 choice.
9 JUDGE MOSS: It's also considered to be a
10 good luck day.
11 MS. DAVISON: Oh, okay.
12 JUDGE MOSS: The seven, anyway. All right.
13 Not being a superstitious sort, in any event, we'll
14 set December 7th as the day for the reply.
15 MS. DAVISON: Thank you, Your Honor.
16 JUDGE MOSS: Get the dockets straight.
17 That's 1616. And I'm confident that will be brief,
18 as we previously discussed.
19 MS. DAVISON: It will, Your Honor.
20 JUDGE MOSS: Not a brief, but brief. All
21 right. Perhaps simply because we have so much
22 business today, I have this lingering sense that
23 we're overlooking something, but I'm going to rely on
24 you all to bring that to my attention now. Is there
25 anything we're overlooking that we need to resolve

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1 today? Yes, sir, Mr. Cameron.

2 MR. CAMERON: This is not something to be
3 resolved today, but as we attempt to work through
4 issues, if we come up with something, I think we will
5 be looking to the Commission for guidance on how we
6 handle disputes prospectively.

7 Some issues that we've been talking about
8 today have clear regulatory implications that quite
9 properly are before the Commission. Some, depending
10 on point of view, might look like private disputes.
11 It would be good, both from the company's standpoint
12 and the customer's, presuming good faith on
13 everyone's part, to know with some precision in
14 advance how to handle disputes which inevitably
15 arise.

16 We don't want to oust the Commission or
17 attempt to oust the Commission of jurisdiction over
18 dispute resolution, which we couldn't do anyway. On
19 the other hand, I think we're mindful of the fact
20 that we may be burdening the Commission with issues
21 that might better be handled through ADR. But it is
22 just hard to say and hard to advise a client on
23 remedies that are both simple and efficient, I think,
24 without some guidance from the Commission on how it
25 would like this to be handled.

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1 JUDGE MOSS: Okay. I appreciate you coming
2 back to that point. It brings me back to the point
3 of ADR that I said we would talk about a little bit
4 today, and we haven't talked about it. So I
5 appreciate very much you bringing that up. First of
6 all, let me say, in direct response to what you have
7 raised, that I will take it upon myself to speak with
8 people in authority who can perhaps consider a forum
9 of some sort during which these things can be
10 discussed.

11 You know, this sort of thing, the landscape
12 is shifting for the Commission, as well as for the
13 parties who appear before us. You know, we're in a
14 very dynamic period in the utility industries in the
15 plural, telecom, gas, electric, all very dynamic.
16 Certainly some curve balls have been experienced as
17 we've gone along the way.

18 And I agree with you and can say to you
19 that this has been a subject of some considerable
20 discussion internally and in our recent Bench and Bar
21 Conference in Seattle.

22 So I will raise this again, and we will
23 continue to work on this and try to provide our
24 constituency, our constituents some answers about
25 that. And I'm not sure how definitive it will be.

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1 These things tend to be a little difficult in the
2 abstract. We don't know what's coming. Our crystal
3 ball is murky, but we do have one. We have some
4 sense of what's coming. So I will certainly take
5 that up.

6 But let me then use that as a way to get
7 back into the question of ADR in these matters. And
8 one thing I want to do is to say to you that the
9 Commission stands ready to assist you in any way it
10 can to obtain the benefits of alternative dispute
11 resolution, whether that is by providing you a
12 mediator from within our own ranks, and we have a
13 number of people who are trained in that way,
14 recommending perhaps a list of private mediators,
15 facilitators, who have experience in dispute
16 resolution in your sector, that is to say, in this
17 instance, the electricity sector.

18 The Commission does have the option of
19 providing you a settlement judge, and the settlement
20 judge's role can take on various forms. And I would
21 say that typically those would be shaped largely by
22 the parties themselves. I have sat in that role once
23 in the last three years. It's not something that --
24 it's widely available, but not widely used, I guess I
25 might say. We have, I think, had one other case that

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1 we had a settlement judge in.

2 My approach in that context was to treat it
3 just as I would a private mediation or facilitation,
4 work with the parties to shape both the process and
5 the outcome. It's a party-driven process by its
6 nature.

7 So I think if one or all of the parties in
8 one of these cases or all of these cases or just in
9 this whole general ongoing business problem between
10 -- or among this particular group, the Commission
11 stands ready to aid you in any way it can. And I
12 encourage you to take advantage of that.

13 I have personally found it very useful to
14 engage the services of a mediator in complex disputes
15 of this nature, and I've seen some good results come
16 out of that. Sometimes it just is the one thing that
17 you need to get good faith negotiations beyond some
18 of those sticking points, somebody who can take a
19 more objective view and see a way to enlarge the pie,
20 rather than just focusing on more creative ways of
21 cutting it up.

22 And so, again, I just want to encourage you
23 to think about that. And I don't know what sort of
24 private mediation practice there is in this region of
25 the country, frankly, particularly in this area. I

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1 know it's been difficult to find people with what's
2 perceived to be the necessary expertise in the
3 substantive field, but I think we could probably find
4 somebody for you. Anything else? Did I address your
5 point adequately?

6 MR. CAMERON: Yes, sir. Thank you.

7 JUDGE MOSS: Any other business today? All
8 right. Well, thank you all very much, and we'll be
9 getting out a couple orders here in the next day or
10 two. Tomorrow's Friday. It will be next week. But
11 we'll get those out and we'll continue along as you
12 all have outlined. And I wish you all the best good
13 luck.

14 MS. DAVISON: Thank you, Your Honor.

15 MR. CAMERON: Thank you, Your Honor.

16 MR. QUEHRN: Thank you.

17 (Proceedings adjourned at 3:59 p.m.)

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