

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

2 -----)
 3 WASHINGTON UTILITIES AND)
 4 TRANSPORTATION COMMISSION,) DOCKET NO. UE-960299
 5)
 6 Complainant,) VOLUME 4
 7) Pages 77 - 124
 8 vs.)
 9)
 10 PUGET SOUND POWER & LIGHT)
 11 COMPANY,)
 12 Respondent.)
 13 -----)

14 A pre-hearing conference in the above
 15 matter was held on July 23, 1996 at 1:30 p.m. at 1300
 16 South Evergreen Park Drive Southwest before
 17 Administrative Law Judges MARJORIE SCHAER and JOHN
 18 PRUSIA.

19 The parties were present as follows:

20 PUGET SOUND POWER & LIGHT COMPANY, by JAMES
 21 M. VAN NOSTRAND, Attorney at Law, 411 - 108th Avenue
 22 Northeast, Bellevue, Washington 98004.

23 WASHINGTON UTILITIES AND TRANSPORTATION
 24 COMMISSION STAFF, by SALLY G. JOHNSTON, Assistant
 25 Attorney General, 1400 South Evergreen Park Drive
 Southwest, Olympia, Washington 98504.

FOR THE PUBLIC, ROBERT F. MANIFOLD,
 Assistant Attorney General, 900 Fourth Avenue, Suite
 2000, Seattle, Washington 98164.

MATSUSHITA SEMICONDUCTOR of AMERICA, by
 by RICHARD A. FINNIGAN, Attorney at Law, 2405
 Evergreen Park Drive Southwest, Suite B-1, Olympia,
 Washington 98502.

Cheryl Macdonald, CSR

Court Reporter

1 P R O C E E D I N G S

2 JUDGE SCHAER: The hearing will come to
3 order. This is a hearing in docket No. UE-960299
4 which is a filing by Puget Sound Power and Light
5 Company seeking approval of a special contract to
6 provide electric service to Intel Corporation. This
7 is an oral argument on a joint motion to compel that
8 was set by a letter dated July 11, 1996. It's taking
9 place on July 23rd, 1996 in Olympia, Washington. The
10 hearing is being held before administrative law judges
11 Marjorie R. Schaer and John Prusia, and let me first
12 tell the parties that we're going to take your
13 arguments today and then Judge Prusia and I will be
14 conferencing with the commissioners early next week
15 and then issuing an order based on that conference, so
16 there will not be an oral ruling on this today.

17 MR. MANIFOLD: Does that mean the ruling
18 will be a ruling of the commissioners?

19 JUDGE SCHAER: It will.

20 MR. FINNIGAN: And you said early next
21 week. There is a question in my mind as to whether or
22 not we can continue to meet the schedule we've got.
23 That puts us in a pretty tough spot to put our
24 testimony together.

25 JUDGE SCHAER: I understand that it does,

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1 and it may be that we'll need to discuss either a
2 supplemental deadline by which you could file
3 testimony relating just to these items or some change
4 in that, but let's get through the argument today, and
5 then if we need to at the conclusion have some kind of
6 a scheduling discussion we can talk about that.

7 I'd like to begin by taking appearances
8 starting with the appearance of the company, please.

9 MR. VAN NOSTRAND: On behalf of respondent
10 Puget Sound Power and Light Company, James M. Van
11 Nostrand.

12 JUDGE SCHAER: For Commission staff,
13 please.

14 MS. JOHNSTON: Sally G. Johnston, assistant
15 attorney general.

16 JUDGE SCHAER: For public counsel, please.

17 MR. MANIFOLD: Robert F. Manifold,
18 assistant attorney general.

19 JUDGE SCHAER: For Matsushita.

20 MR. FINNIGAN: Richard A. Finnigan.

21 JUDGE SCHAER: For the Industrial Customers
22 of Northwest Utilities. Let the record reflect that
23 Mr. MacIver is not with us today, and let me inform
24 the parties that the motion for dismissal by King
25 County was granted in an initial order yesterday.

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1 The purpose of today's hearing is to hear
2 arguments regarding a joint motion to compel filed by
3 the Commission staff, public counsel, and Matsushita
4 Semiconductor Corporation. I would like each moving
5 party in turn to briefly address its motion starting
6 with the Commission staff.

7 MS. JOHNSTON: Thank you, Your Honor. Our
8 joint motion sets forth the evidence that we rely upon
9 as well as the authority for the motion. For obvious
10 reasons I will focus on Commission staff's data
11 requests. Staff is here asking the Commission to
12 compel responses to data request 5, 22, 37, 39 and 42.
13 At the time that we filed the joint motion we had not
14 yet received from Puget responses to our data request
15 42 and 43. We have received responses to those
16 requests. However, we believe that the response to
17 data request 42 remains incomplete. As you're aware,
18 these data requests pertain to Intel, the other
19 contracting party to the case. Apparently neither
20 Puget nor Intel is either ready, willing or able to
21 respond to these data requests.

22 We learned in the company's response to our
23 joint motion to compel that the reason is that the
24 company believes that the requested information was
25 not known to Puget at the time that it entered into

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1 the contract with Intel and as a result the
2 information that we request here is both irrelevant
3 and beyond the scope of the issues in this case.
4 Well, we disagree. First, the company is making the
5 large assumption that the applicable standard of
6 review is the prudence standard. We don't believe
7 that that is the applicable standard.

8 The proposed Intel contract, for example,
9 can be easily distinguished from Puget's power supply
10 contracts. In the power supply context Puget has
11 already entered into the contract. Puget management
12 makes a decision and this Commission does not seek to
13 micro-manage the utility. Here the Intel contract is
14 merely a proposed contract currently pending before the
15 Commission. The contract approval has yet to be
16 received and the Commission must approve the contract
17 before the contract is able to take effect.
18 Consequently, the Commission must satisfy itself of the
19 accuracy of the bypass threat, for example.

20 Because we're not dealing with a prudence
21 standard the requested information is highly relevant
22 to this proceeding. I just want to remind the hearing
23 examiner of the definition of relevant evidence.
24 Relevant evidence is defined as evidence having any
25 tendency to make the existence of any fact that is of

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1 consequence to the determination of the action more
2 probable or less probable than it would be without the
3 evidence.

4 Moreover, under the APA RCW 34.05.461
5 subsection 4 the Commission cannot base a finding on a
6 material issue exclusively on inadmissible hearsay.

7 With that --

8 JUDGE SCHAER: What was that citation
9 again?

10 MS. JOHNSTON: RCW 34.05.461 subsection 4.
11 It's cited in our joint motion.

12 Finally, we believe that we made the
13 requisite showing that we're entitled to the responses
14 to data requests 5, 22, 37, 39 and 42 and Puget should
15 be compelled by the Commission to provide responses to
16 those requests. I will turn it over now to public
17 counsel.

18 JUDGE SCHAER: I have some questions for
19 you. Would you like me to hold those questions until
20 each counsel has spoken and then go through them?
21 Okay. Go ahead, Mr. Manifold.

22 MR. MANIFOLD: I will try not to repeat
23 things that the able counsel for Commission staff has
24 stated so well. The information that we're seeking is
25 set forth in the motion so I won't repeat it.

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1 Generally, what it goes to is the electric rates that
2 Intel currently pays at other locations, and the
3 electric rates that it was considering paying at other
4 proposed locations that were in competition with its
5 possible Du Pont location, the location that it shows.
6 It has responded, or Puget has responded on its behalf
7 as one seeks to put it, that that information is
8 confidential.

9 We need to have that information in order
10 to judge and in order to assist the Commission in
11 judging the accuracy of the assertions contained in
12 Puget's testimony that Intel had to have I think it
13 was 2.7 cents or less as a rate. That has been
14 asserted as one of the important considerations for
15 Intel. Not the only consideration but as an important
16 consideration. And that's obviously the one that
17 brought about this contract.

18 The issue that this concerns -- we
19 submitted a joint issues list, which I understand the
20 Commission has accepted, I believe. Anyway, issue No.
21 9, the last one on that on page 3 is the issue that
22 this motion really brings forward, and that is, are
23 the facts to be evaluated from a perspective of Puget,
24 i.e., a prudence standard, or on totality of
25 information that the Commission can know, i.e.,

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1 including Intel's information. We -- I -- was
2 particularly interested in having that issue on this
3 list because of this very situation. We, of course,
4 argue that it's the latter, that is, that when the
5 Commission makes a decision about whether or not to
6 allow this contract to be entered into on a going
7 forward basis it needs to have the best information
8 available to know if that contract is in the public
9 interest.

10 As the bench undoubtedly recalls, at the
11 pre-hearing conference we asked why Intel was not a
12 party at that time. It was indicated by the company
13 that if we needed information from Intel, and we said
14 we would, the company would check and see what the
15 preferred way to obtain that was, whether to get it
16 directly from Intel or through the company, and it was
17 represented to us that we would be able to obtain
18 information through Puget. That is what we've sought
19 to do and that avenue has not been fruitful.

20 Part of the response or actually the main
21 response to our data request is that the information
22 we're seeking is confidential and proprietary. There
23 is of course a protective order entered in this case;
24 information which is confidential and proprietary or
25 is so asserted. It is routinely made available to the

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1 parties in cases before the Commission pursuant to
2 these protective orders, and in particular, as to
3 staff and public counsel, we have no commercial use
4 whatsoever for that information, and the fact that
5 it's asserted to be confidential is not a reason for
6 not producing, at least as to us.

7 Again, I would second the comment that Mr.
8 Finnigan made a few minutes ago before we started
9 making our arguments, which is that we would like to
10 stay on the schedule that this case is currently on.
11 It calls for us to provide prefiled testimony in about
12 two and a half or three weeks, and we are very late in
13 the process at this point to be obtaining data. The
14 reason we are at this point is because we've tried
15 over some period of time, with Puget's good
16 intentions, I believe, to obtain this data in an
17 informal manner rather than having to bring it before
18 the Commission here today.

19 In my view, this motion is a predicate to a
20 motion to dismiss this case. If this information
21 cannot be made available despite Puget's best efforts,
22 then I don't see how Puget's burden of proof in this
23 case can be sustained, and I would expect that the
24 next motion would be a motion from the same parties as
25 brought this motion to dismiss this case. That's the

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1 reason we felt it was important that this be a
2 Commission decision on the motion to compel. And with
3 that I will turn it over to Mr. Finnigan.

4 MR. FINNIGAN: Thank you. I certainly
5 agree with the arguments advanced by Ms. Johnston and
6 Mr. Manifold. Again, without being overly repetitive,
7 I do want to point out that we believe that this issue
8 is relevant. It goes to what Puget itself identified
9 as a critical issue in this case. I will refer you to
10 Mr. Owens's prefiled direct testimony in this matter.
11 At page 1, line 20 he states, "The company was faced
12 with a credible bypass threat requiring the offering of
13 a special contract." He then states at page 3, lines 2
14 through 5 that Intel requested electricity rates at or
15 below 2.7 cents per kilowatt hour. When asked what
16 Puget's response was to that request he states, "It was
17 the perception of the Puget senior management involved
18 in the discussions involving the Intel project that the
19 energy cost element was an integral component in the
20 package of incentives that would be necessary to
21 attract the Intel facility to Du Pont." And he goes on
22 from there.

23 They've clearly put as a core issue in
24 this case the question of whether or not a special
25 contract was required because of Intel's request for

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1 an energy rate of 2.7 cents per kilowatt hour or less.
2 That is the issue that we are trying to test with
3 those data requests, whether or not that was
4 reasonable. I agree with Ms. Johnston that this is not
5 a prudence case, but even if it was it would be an
6 appropriate inquiry to look at what not only did Puget
7 know but what it should reasonably have inquired in
8 order to before it reached its conclusion that a
9 special contract was required.

10 One of the issues raised by Puget is that
11 this is a competitive issue, that the information
12 requested is highly competitive and would be used by
13 my client to gain a competitive advantage. I would
14 just ask, How could my client do that? With the
15 protective order in place, only persons who agree to be
16 bound by that protective order are allowed to see that
17 information. There is no indication that my client
18 under any circumstances would violate any portion of
19 that protective order. The key here is for us to have
20 information available to be able to determine whether
21 in fact a special contract was required as alleged by
22 Puget, and even if required to meet Intel's needs it is
23 discriminatory.

24 One of the things that is of some interest
25 to my client is that they, quite frankly, don't view

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1 this information as being highly competitive or highly
2 proprietary. My client was quite willing to put its
3 energy consumption figures into the record as part of a
4 stipulation we were trying to reach. I suppose if it
5 becomes apparent that nobody's energy consumption
6 figures will be in the record then they will rethink
7 that position, but their initial position is this
8 information is not all that competitive in terms of the
9 end product that they produce. Thank you.

10 JUDGE SCHAER: Thank you. Mr. Van
11 Nostrand, would you like me to ask the questions that
12 I had for these counsel so that you can hear them
13 before you respond or would you like to respond and
14 then we'll get into more of a discussion phase? How
15 would you feel better prepared to proceed?

16 MR. VAN NOSTRAND: I think probably a brief
17 response now would be in order if that's okay with you,
18 Your Honor.

19 JUDGE SCHAER: All right. Please proceed.

20 MR. VAN NOSTRAND: First responding to the
21 points raised by Commission staff, I guess I don't
22 really dwell on the issue of whether or not it's the
23 prudence standard. It seemed to me it's the -- and, as
24 we indicated in our response to the motion to compel,
25 the standard is what did Puget know at the time that it

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1 entered into these agreements, and that's the evidence
2 which is relevant, and if the parties believe that
3 Puget should have inquired about certain things and
4 didn't then they can criticize Puget, and it may be
5 that that would arise to where Puget failed to sustain
6 its burden, but it's what did Puget consider, not what
7 these parties all think Puget maybe should have asked
8 Intel at the time, and whether or not that amounts to a
9 prudence standard, I don't know. I really have no
10 interest in relitigating that pleasant case.

11 And I guess in terms of Mr. Finnigan's
12 comment about what it reasonably should have inquired
13 at the time it entered into the contract, again, I
14 think the same point is if the parties believe that
15 Puget should have asked these questions -- I think
16 these data requests go far beyond what were reasonable
17 requests of information of a potential customer of
18 Puget, but if the parties really believe this
19 information was necessary, in the Commission believes
20 that information was necessary and if Puget failed by
21 failing to ask it at the time it negotiated the
22 contract then the argument goes to whether or not Puget
23 has sustained its burden but not as to whether the
24 information should be required now.

25 In terms of the totality of the

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1 circumstances versus what Puget knew, I think these
2 parties have some pretty far reaching requests for
3 information relating to facilities not even contained
4 within North America, and for the Commission to say
5 that because a party believes that it's in that body of
6 information that's out there that somebody thinks
7 should have been asked of Intel at the time this
8 contract was decided, we don't believe that's the
9 relevant standard. It's what did Puget actually
10 inquire about, what was the basis for Puget's decision.
11 On that point Mr. Finnigan cites from Mr. Owens's
12 testimony in terms of the basis for Puget's
13 management's conclusions that it was required -- that a
14 special contract was required in order to serve this
15 load. I think Mr. Owens can properly be subjected to
16 cross-examination on that issue in terms of what was
17 the basis for his conclusion, what was the basis for
18 Puget's senior management conclusion, but to go behind
19 that and impose these sort of unreasonable data
20 requests on a customer of Puget seems to be far beyond
21 what has been required.

22 And in terms of the protective order, I
23 agree that does provide some limited protections, but
24 I think what that point does not recognize is that
25 there are certain restrictions on Intel's ability to

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1 release confidential information in that the siting
2 game out there, as I understand it, is fairly
3 competitive, and occasionally, in fact regularly, when
4 Intel secures a bid or proposal from a potential
5 supplier at another site Intel itself is subjected to
6 very serious confidential restrictions which preclude
7 it from releasing information to anybody under any
8 circumstances, and while a protective order may address
9 how that information may be used among these parties it
10 does not address the ability of a party like Intel
11 being forced to release information which it itself is
12 under contract not to release.

13 And as far as the billing information,
14 again, I think there are serious concerns about
15 Matsushita, the information that is being made
16 available to a purported competitor of Intel in this
17 proceeding. Matsushita may indicate that it does not
18 believe the information is proprietary or confidential,
19 but our indications from Intel are that it does
20 believe it's proprietary and confidential and and is
21 subject to nondisclosure restrictions on Intel, so --
22 I think in our response to the motion to compel I
23 think we also raised the policy questions of as this
24 industry in this state moves into a more competitive
25 environment the impact and the competitive

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1 disadvantage that it places on an investor in a
2 utility if this motion is granted and customers
3 signing contracts with a utility are subjected to the
4 type of information requests we have at issue in this
5 case. Thank you, Your Honor.

6 JUDGE SCHAER: Thank you. Mr. Van
7 Nostrand, let me just first clarify with you a couple
8 of points in your response. I believe that you
9 indicate on page 2 of your response, you indicate in
10 the first section that you have responded
11 satisfactorily to Commission staff requests No. 42 and
12 43, and then I've heard Ms. Johnston say today that
13 staff disagrees that you have responded completely or
14 satisfactorily to No. 42. Do you have any brief
15 response to that?

16 MS. JOHNSTON: Well, I do, Your Honor.

17 MR. VAN NOSTRAND: No, I do not. That's
18 the first I've heard of it, frankly. I don't even
19 have that response in front of me so I don't know what
20 the basis for the alleged incomplete response is. I'm
21 really not in a position to answer this. First I knew
22 that that response was thought to be inadequate.

23 JUDGE SCHAER: What is the basis for that
24 concern, Ms. Johnston?

25 MS. JOHNSTON: Well, in the data request we

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1 specifically asked the company to explain how Intel
2 became aware of market-based rates offered by Puget to
3 ARCO, and the response provided by the company simply
4 states that Puget doesn't know and doesn't know what
5 Intel knew. And so the question remains how did Intel
6 come to know or believe that 2.7 cents was a
7 market-based rate. I think it's the very questions
8 that Mr. Manifold asked.

9 MR. VAN NOSTRAND: I do have a response on
10 that, Your Honor. If that's the point I don't believe
11 our testimony or the data requests, which this is
12 following up on, make the point that Intel was
13 necessarily aware of the market-based rates offered by
14 Puget to ARCO. The point was that the ARCO contract
15 confirmed what the market -- basically what the market
16 for power is out there, and it was because of Puget's
17 knowledge of the terms of the ARCO contract and the
18 prices being requested by Intel as being consistent
19 with that market information. I don't think Puget ever
20 made the assertion that Intel was aware of the ARCO
21 contract, and it's frankly irrelevant. Puget used the
22 ARCO contract to confirm that the prices being sought
23 by Intel were indeed in the range of what is currently
24 available for -- in the market for competitively priced
25 power. So I really can't provide any more information

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1 in that response that would apparently satisfy staff
2 because that's -- the response is as it is on that
3 point.

4 JUDGE SCHAER: On the next section you
5 indicate with regard to the Commission staff request
6 5, 22, 37 and 39 and public counsel requests 252
7 through 256 that Puget does not have in its possession
8 the information which responds to the request; is that
9 correct?

10 MR. VAN NOSTRAND: Yes.

11 JUDGE SCHAER: Is that still correct that
12 you do not -- your company, your client, does not
13 possess any of the information that's responsive to
14 those requests?

15 MR. VAN NOSTRAND: Yes.

16 JUDGE SCHAER: Then in the third section
17 regarding Mr. Finnigan's client's request No. 502 and
18 503 you don't indicate whether or not Puget possesses
19 the information sought. Does Puget have that
20 information?

21 MR. VAN NOSTRAND: No.

22 MR. MANIFOLD: Your Honor, I'm not sure what
23 the appropriate time is, but I have a couple of
24 rebuttal points to the arguments that Puget raised in
25 response to the motion.

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1 JUDGE SCHAER: I think it might be useful
2 if I were to raise the questions that I have with the
3 parties so that you could have those in mind, too, in
4 case they raise any more points you would like to
5 respond to and then give each party one more chance to
6 comment.

7 Ms. Johnston, if it's true that Puget
8 doesn't have the material that you seek, what benefit
9 does an order have compelling them to give you that
10 material to the Commission staff?

11 MS. JOHNSTON: Well, perhaps I'm not
12 understanding the question, but we're interested in
13 receiving the information that we've requested. If
14 the Commission issues an order compelling Puget to
15 take whatever steps necessary to obtain the requested
16 information then that requested information would
17 benefit Commission staff in the preparation of its
18 case.

19 JUDGE SCHAER: What efforts have you made
20 to obtain the information in question from Intel?

21 MS. JOHNSTON: We have made no direct
22 efforts to obtain the information directly from Intel.
23 That is so because of what transpired at the two or
24 three pre-hearing conferences in this case in informal
25 discussions the parties have had with Mr. Van

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1 Nostrand. It was his preference, his stated
2 preference, that we direct our data requests to Puget
3 and that Puget would shepherd them through the process
4 and make every effort to obtain the information from
5 Intel.

6 MR. MANIFOLD: Your Honor, could we have
7 just a moment, please.

8 (Discussion off the record.)

9 MR. MANIFOLD: Could I add something to
10 that last answer --

11 JUDGE SCHAER: Certainly.

12 MR. MANIFOLD: -- because there was a
13 meeting when Ms. Johnston was not present because she
14 was out of town. We met informally -- we meaning the
15 three moving parties -- met informally with Intel last
16 week in an attempt to resolve some of these issues and
17 no resolution has been forthcoming.

18 JUDGE SCHAER: I recall from the
19 pre-hearing conferences that there was a brief
20 discussion that there was a potential of a future
21 deposition of someone from Intel. Has there been any
22 effort to obtain a deposition from someone from Intel?

23 MR. MANIFOLD: No.

24 JUDGE SCHAER: I will ask this of all three
25 of you if you would like because I have the same

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1 questions written down for all three of you at this
2 point.

3 MR. MANIFOLD: Do you want to take us as a
4 panel?

5 MS. JOHNSTON: We've made no effort to note
6 up a deposition of any Intel representative such as
7 Mr. Fisher.

8 MR. MANIFOLD: Part of the -- I don't want
9 to get in the way of your process but maybe we could
10 each take a crack at each of these as they come up
11 because our answers may be kind of similar but we may
12 build on each other a little bit. The contract that
13 Puget and Intel signed, my recollection is that it says
14 that Puget will use its best efforts to obtain approval
15 of this contract. My assumption from that is that
16 Intel will support Puget in its best effort to obtain
17 approval of the contract so that in effect Puget
18 becomes the agent for Intel to this Commission in order
19 to obtain approval of the contract.

20 And certainly that's the sense that we got
21 from Puget's representation that information from Intel
22 should be sought through Puget. That's why it seemed
23 to me that the appropriate procedural move was to seek
24 a motion to compel because Puget is the party. It is
25 certainly true that there are other mechanisms

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1 available to the Commission or the parties to compel
2 information from somebody who is not a party. But
3 since Puget is the party, since Intel is a friendly
4 party with Puget, presumably, not a hostile party, it
5 did not seem, to me at least, to be necessary to start
6 off with depositions or subpoenas or any of the other
7 mechanisms available to force information from a
8 recalcitrant party.

9 Intel has an interest in having this
10 contract approved. They are the ones who with Puget
11 are seeking a below tariff rate. If the Commission --
12 if the parties want information it seemed reasonable
13 that they would provide it. If the Commission deems
14 that it's information that should be provided, I would
15 assume an order to Puget to provide the information
16 would cause Intel either to, A, provide the
17 information, or B, to decide they're not going to and
18 risk the results that would flow therefrom.

19 JUDGE SCHAEER: Well, the questions I have --
20 put them one at a time -- have there been any
21 depositions, any subpoenas, any subpoenas duces tecum,
22 and then finally is it your understanding that under
23 the Commission's discovery rules you may subpoena a
24 nonparty?

25 MS. JOHNSTON: Well, as a general

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1 proposition I think that at least as far as discovery
2 disputes go it's best to try to reach some amicable
3 resolution to the issue. I mean, discovery battles
4 aren't popular. We don't enjoy them either, and we
5 discussed the course of action we would take in this
6 case extensively with all the parties and with Mr. Van
7 Nostrand, and I think that he would probably confirm
8 here today that this was the chosen course. We made a
9 strategic decision to file this joint motion to compel
10 and bring this issue to the Commission for resolution.
11 And finally I just want to add that I would agree with
12 Mr. Manifold that Commission staff views this as a
13 predicate to a motion to dismiss also because if the
14 data is unavailable to Puget or cannot be obtained
15 from Intel then I think the case is going to turn on a
16 sufficiency of the evidence question, and the motion
17 to dismiss would be appropriate.

18 JUDGE SCHAEER: Did you want to add
19 anything, Mr. Finnigan?

20 MR. FINNIGAN: I concur with all of the
21 statements that have been made. In addition, I'd just
22 point out that given the very short time frame that
23 this case has to proceed under, this mechanism
24 appeared to be the fastest way to get any resolution.
25 Presumably if a deposition was sought it would be

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1 opposed. Presumably if a subpoena was issued it would
2 be opposed. So the fastest and most expeditious way
3 given the time lines seems to be to ask the proponent
4 of this contract to seek that information from the
5 other party to the contract. They both have a good
6 faith duty to one another under their agreement to try
7 and seek approval -- to obtain approval and that
8 seemed to be the fastest way to try and get this
9 matter resolved and on the record.

10 JUDGE SCHAEER: Well, my concern at this
11 point is that the Commission -- we're beyond the point
12 where agreements are working. There was an informal
13 agreement at the pre-hearing conference that parties
14 could go through Mr. Van Nostrand to reach Intel and
15 obtain information, although even at that point, as I
16 said, there was some discussion of possibly deposing
17 someone from Intel, but we're to the point where you're
18 seeking something more from the Commission. You're
19 seeking a process that would compel Puget to give,
20 information and if Puget had that information in its
21 possession and if your motions were granted they would
22 either be forced to provide that information or go to
23 Superior Court to seek to protect it. I am concerned
24 that that process is defeated by their response that
25 they don't have any of this information in their

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1 possession.

2 You're trying to get information from Intel.
3 I believe that under the Commission rules there are
4 methods for doing that, but if we're going to get to
5 compulsory process and compel people to take actions, I
6 believe that perhaps the more appropriate procedural
7 framing for this would be in Intel either seeking to
8 quash a subpoena here or, if they were unsuccessful
9 here, in superior court rather than -- as Puget has
10 argued, and I believe argues in their motion and as Mr.
11 Van Nostrand has argued today, if your argument is
12 without this information Puget hasn't met its burden
13 then the case can proceed on that issue. But in terms
14 of my discussion with the commissioners next week on
15 what we have power to do under a motion to compel, I am
16 concerned that we don't have the right party here to
17 compel, and I am seeking from you what your analysis is
18 that we do have authority or do have power to compel
19 Intel through this mechanism.

20 MS. JOHNSTON: Well, Your Honor, I think
21 it's less a question of at this point -- less a
22 question of compelling Intel than it is of compelling
23 Puget, which is the party to the case, the party to the
24 contract that is seeking Commission approval of its
25 proposed contract, and I think that to take the

00102

1 position that the Commission lacks authority to order
2 Puget to obtain this information from Intel whom it
3 presumably has a good relationship with does nothing
4 but endorse the ostrich approach. I think as a matter
5 of public policy it makes it very easy then for a
6 regulated utility to say may be relevant, may lead to
7 the discovery of admissible evidence, may impact the
8 key issue, but hey, I don't have the information. So I
9 guess maybe what we'll need to do is to pursue
10 conversations and discussions with Mr. Van Nostrand to
11 see if his preference would be if we were to note up
12 depositions on five days' notice of Intel senior
13 management as opposed to obtaining some sort of ruling
14 out of the Commission on this issue.

15 MR. MANIFOLD: May I add one thing which is
16 that -- I wish the company would correct me if I'm
17 wrong, but maybe the Commission feels we pursued the
18 wrong procedure. This was the procedure that all four
19 parties thought would be the best way to bring this
20 forward for a Commission determination on whether this
21 is something that has to be done or not. The issue is
22 going to come to the Commission one way or another so
23 the question is just when and how.

24 In addition, RCW 80.04.020 provides that
25 each commissioner shall have the party to "... issue

00103

1 subpoenas for the attendance of witnesses, production
2 of books, papers," so if the commissioners and the
3 bench felt as a result of this presentation, this
4 motion, that it lacked the authority to compel Puget to
5 provide something Puget doesn't have, it should
6 consider issuing a subpoena to Intel to provide that
7 information. And that would be another way to perhaps
8 get to the result of this in a quicker way. We already
9 know what Intel's answer is going to be.

10 MR. FINNIGAN: Your Honor, it struck me
11 when we were bringing this motion that this was the
12 appropriate vehicle in that if the Commission issued
13 an order to compel to Puget then Puget can go back to
14 its other contracting party and say that we need to get
15 this information in or we're in danger of not having
16 the contract approved and then Intel has a choice. I
17 mean, it can say no and ride with the consequences or
18 it can say yes and ride with those consequences, but it
19 struck me as a very appropriate vehicle to allow this
20 to go forward and allow the information to either be
21 produced or just receive a flat, that's where we are,
22 you know, do what you must type of response.

23 JUDGE SCHAEER: So in your concept of this
24 the Commission would order Puget -- issue an order
25 telling Puget it was compelled to provide this

00104

1 information.

2 MR. FINNIGAN: If Puget came back and said
3 we tried and we couldn't, they wouldn't provide it, I
4 mean, they've done their best to comply with the order.

5 JUDGE SCHAEER: And that's all that the
6 three parties are seeking.

7 MR. FINNIGAN: As far as I'm concerned.

8 MR. MANIFOLD: It would not be my intention
9 -- if the Commission issues such an order, if Puget
10 seeks the information from Intel and Intel refuses to
11 provide it and Puget comes back and says I can't
12 provide it because Intel won't give it to me, it was
13 not my intention that any of us would be seeking
14 penalties against Puget for violation of a Commission
15 order. It would have done what it could have done to
16 obey the Commission order, and the result on the case
17 and a motion to compel would flow, but we're not
18 talking about its noncompliance with the Commission
19 order because it would have done what it could have.
20 It really allows us to bring the issue of the scope of
21 this review to the Commission for its determination
22 relatively early so that we can all proceed to build
23 our cases or not on the information that the Commission
24 is going to deem appropriate.

25 JUDGE SCHAEER: Mr. Van Nostrand.

00105

1 MR. VAN NOSTRAND: I do have a brief
2 comment in terms of following up on what was said at
3 the pre-hearing conference because it would be -- in
4 all fairness it would be unfair to penalize the other
5 parties for not using discovery processes that might
6 have been available to them such as depositions or
7 using the subpoena power because it was our preference
8 because of the customer-company relationship to try not
9 to do anything that would be intrusive upon the
10 customer, so we asked that the data requests be
11 directed to Puget and we would marshal them through,
12 and that process hasn't, you know, been as fruitful as
13 I think we might have envisioned at the time of
14 pre-hearing conference. So I just want to clarify the
15 record that it shouldn't be used against the other
16 parties at this point that possibly they could have had
17 a deposition noted up and didn't because I think we
18 were sort of -- we were operating under what I think
19 all four of us had agreed on was how we wanted to
20 proceed on this.

21 JUDGE SCHAER: Well, do you have any idea
22 of Intel's preferred method of proceeding? Would they
23 rather receive subpoenas and subpoena duces tecum and
24 appear to defend their information or to provide it or
25 would they prefer to deal with you through that?

00106

1 MR. VAN NOSTRAND: I think if we go the
2 subpoena route we would probably be getting motions to
3 quash, and we would be arguing about authority to
4 issue such subpoenas or if so, and the information
5 that could be produced in response thereto. I suspect
6 that may be what would happen. And the alternative
7 is, as they're proposing, if a motion to compel is
8 issued Puget has an opportunity to try to take one
9 more run at trying to get the information. If not we
10 proceed and the issue is what is before the Commission
11 and what is the standard and does Puget meet that
12 standard based on the evidence which it now has in
13 front of it. I really can't speak as to what Intel's
14 preference is.

15 JUDGE SCHAEER: So that's not something
16 you've discussed with them.

17 MR. VAN NOSTRAND: No.

18 JUDGE SCHAEER: Okay. Well, I had a few
19 more questions of the individual parties, actually
20 just of your client, Mr. Finnigan. First of all,
21 which issues in the issue list do your requests 502
22 and 503 relate to?

23 MR. FINNIGAN: Certainly relates to the
24 testimony I cited. I would have to go back and look
25 at the issues list, if you will bear with me. It

00107

1 relates largely on the same ones that public counsel
2 had indicated. 2A, 4 to some extent 5 -- or actually
3 strike the qualifier. 5, 8, 9.

4 JUDGE SCHAER: This question is kind of
5 both for you and Mr. Manifold. I can understand what
6 the relevance might be of power costs at other sites
7 under consideration at the time Intel entered into
8 this contract, but what is the relevance, to your mind,
9 of their power costs that exist in sites throughout
10 the world?

11 MR. FINNIGAN: I will take that in two
12 steps. The sites throughout the world may be, quite
13 frankly, may be a bit of a stretch and we would be
14 willing to drop those outside of the continental United
15 States, but certainly the concept of what it now pays
16 within comparable areas and within the United States
17 should be a comparable area. As to how reasonable its
18 demand is of Puget for a power rate of 2.7 cents or
19 less kilowatt hours will be premised on a foundation of
20 what it's paying today, since that appears to be a key
21 issue in this proceeding, one test, and I think a very
22 good test of the reasonableness of that request is in
23 fact what it pays at its ongoing sites on an ongoing
24 basis. It's not the only test, but it is a very good
25 one.

00108

1 MR. MANIFOLD: Your Honor, looking at our
2 request, it's not clear to me that we asked for
3 anything outside the U.S. Our 251 asked for
4 Washington, Oregon, Idaho and California and
5 unfortunately California is still part of the U.S.
6 No. 252 is again Washington, Oregon, Idaho and
7 California. 253 was contracts with electric utility in
8 the United States; 254 was the other sites considered
9 by Intel for this facility. If they were considering
10 out of country sites I suppose that would include
11 outside United States sites. I don't know. Their
12 answer doesn't -- their answer actually says they were
13 conducting sites throughout western U.S., so I assume
14 their answer would not include outside the United
15 States.

16 JUDGE SCHAEER: Really what I was a little
17 more interested in was existing contracts that may
18 have been entered into some years ago as opposed to
19 what prices are in the market for power at the time
20 that this was going on.

21 MR. MANIFOLD: In that regard I would
22 pretty much adopt the comments that Mr. Finnigan gave,
23 which is basically that they say they need a certain
24 rate to locate a facility here. The rates that
25 they're currently paying at other facilities seems to

00109

1 be one measure of the rates that are available to them
2 since one can expand an existing facility or start a
3 new facility someplace else.

4 JUDGE SCHAER: Mr. Finnigan, who has signed
5 the confidentiality agreement on your client's behalf?

6 MR. FINNIGAN: There are three individuals,
7 a Mr. Robert Frisbie who is the individual that I am
8 working with most closely and will be -- I believe he
9 will be my witness. A Mr. Frank Pfefferkorn, who is
10 the vice-president and who Mr. Frisbie reports to, and
11 one other individual, and if you will bear with me for
12 a moment I will find it.

13 JUDGE SCHAER: Let me just ask, are each of
14 these employees of Matsushita?

15 MR. FINNIGAN: Yes, they are. And a Mr.
16 Ron Cook who is their controller. He would be the
17 person that for this purpose we could limit his role
18 on this information. He would be the person that
19 would be looking more at the Puget confidential
20 information related to costs and prices and things.
21 This is not something that he necessarily would need to
22 see.

23 JUDGE SCHAER: Mr. Van Nostrand, what
24 efforts has Puget made to obtain the information
25 sought here from Intel?

00110

1 MR. VAN NOSTRAND: Those data requests
2 which were specifically identified as being directed
3 to Intel, or that sought information which only Intel
4 has, were basically forwarded to Intel and in the case
5 of public counsel's 251 through 257, those responses
6 were prepared by Intel.

7 JUDGE SCHAEER: So looking at page 2 of your
8 response, which gives the numbers of the requests
9 which are before us today, were all of those forwarded
10 to Intel.

11 MR. VAN NOSTRAND: The public counsel ones,
12 yes. The staff 5 I do not believe was, but I would
13 have to check on that. 22 definitely was not. It
14 asked for the studies made by Puget, and No. 5 for
15 that matter asked for information relied upon by
16 Puget. There would have been no reason to forward
17 that to Intel. 37 I can't say for sure whether that
18 was forwarded to Intel either. 39 was not.

19 JUDGE SCHAEER: 37 was not you say?

20 MR. VAN NOSTRAND: 37 I can't say for sure.
21 I know the response was prepared by Puget. I'm just
22 not sure if it also included information that was
23 provided by Intel after we -- if they were provided a
24 copy of the request.

25 JUDGE SCHAEER: And you say all of the

00111

1 public counsel requests were sent to --

2 MR. VAN NOSTRAND: Yes.

3 JUDGE SCHAER: How about the Matsushita
4 requests?

5 MR. VAN NOSTRAND: I believe so. I am not
6 entirely certain. I believe they were. It wasn't
7 done by my office; it would have been done by the rate
8 case coordinator of Puget and that's why I just don't
9 know for sure on 502 and 503.

10 JUDGE SCHAER: Have you had any discussions
11 with Intel or counsel for Intel to explain to them the
12 protective order that's present in this case and what
13 that means in terms of confidential information?

14 MR. VAN NOSTRAND: Yes.

15 JUDGE SCHAER: Who have you had those
16 conversations with?

17 MR. VAN NOSTRAND: Well, they have an
18 in-house counsel, Mr. John Combo. They also have
19 regulatory counsel, Michael Dotten of the Heller
20 Ehrman firm in Portland, and Mr. Dotten is familiar
21 with regulatory proceedings having been a regular
22 participant in Bonneville rate proceedings, and I think
23 he is -- believe they were given copies of the
24 protective order. Mr. Dotten is generally familiar
25 with rate proceedings.

00112

1 MR. MANIFOLD: If I may supplement the
2 response, during our informal meeting with Intel we
3 also discussed the protective order.

4 JUDGE SCHAER: So they are aware of it in
5 terms of the protective order and the protections that
6 it gives to confidential information?

7 MR. MANIFOLD: Yes.

8 MR. VAN NOSTRAND: On that point I don't
9 know -- in knowing the people at Matsushita that have
10 entered into the protective order, it's a unique
11 situation in my experience that you have company
12 personnel signing what seems to be a document intended
13 for use by experts so that the expert can assist the
14 lawyer in preparing for litigation. Here you have
15 three officers or employees of Matsushita that while
16 bound by the terms of a protective order it's -- I
17 don't know that that's a situation that's envisioned
18 by the terms of protective order.

19 JUDGE SCHAER: Did you object to any of
20 them within the 10-day period?

21 MR. VAN NOSTRAND: No.

22 JUDGE SCHAER: Why not?

23 MR. VAN NOSTRAND: Well, I guess it escaped
24 my notice that they were employees of Matsushita
25 rather than experts, which is what the appendix is

00113

1 clearly directed towards.

2 MR. FINNIGAN: Your Honor, if I might
3 comment.

4 JUDGE SCHAER: Okay.

5 MR. FINNIGAN: I recognize that Mr. Van
6 Nostrand doesn't come into over the telecommunications
7 world nearly as often as perhaps some other members of
8 his firm do, but as the Commission is well aware, that
9 exhibit is used probably more times for company
10 employees than it is for outside consultants. It's the
11 exhibit that's there to bind nonattorneys, and though
12 it may be worded in a way in terms of an expert it
13 certainly is used in practice, in common practice, to
14 include the internal employees of a party who would be
15 providing information and assisting in development of
16 that party's case.

17 JUDGE SCHAER: Have the two of you talked
18 at all about any limits on access by those employees
19 to information which might be sufficient to allay
20 Intel's concerns and still to provide the information
21 requested?

22 MR. VAN NOSTRAND: I think those were some
23 of the issues that may have been explored at that
24 meeting last week. I was not a party to that meeting,
25 but I think that was generally the focus of that

00114

1 meeting was to try to figure out a way so that the
2 information needs could be met while still meeting
3 the confidentiality concern.

4 MR. FINNIGAN: I'm trying to remember. I
5 think I identified those individuals that had been --
6 that had signed. Quite frankly, I can't remember if
7 it was that conversation or another conversation, so I
8 may not have. The conversations didn't go very far
9 into what might be a reasonable accommodation.

10 MR. MANIFOLD: May I make an inquiry? First
11 of all, I agree they didn't go that far in that area,
12 but might I ask if Mr. Finnigan would be prepared to
13 allow for some period of time for objection to
14 confidentiality agreements to run anew as to these
15 particular responses so that Puget on Intel's behalf
16 could assert or question that for these particular
17 responses as to each of the three people who signed.

18 MR. FINNIGAN: I would be willing to work
19 on something like that. Obviously, of course that
20 plays into a problem we have with our time lines. I
21 would have to check with my client, but as far as I
22 know I would be willing in response to my client's
23 say-so to limit it to Mr. Frisbie, but I need to have
24 somebody at the company assist me in testimony and he
25 has been my primary contact. I'm offering this without

00115

1 authority but if they were willing to agree to that
2 that might be an accommodation.

3 JUDGE SCHAER: So that's something you
4 would be willing to work with Mr. Van Nostrand on?

5 MR. FINNIGAN: Certainly.

6 JUDGE SCHAER: Couple of housekeeping
7 questions, Mr. Van Nostrand. On page 5 of your
8 response, top of the first line you cite to a
9 Commission decision, and I wondered if you would give
10 me the name of the proceeding and the month and year
11 the order was entered in.

12 MR. VAN NOSTRAND: I don't have that with
13 me, Your Honor. It was a cite from another --

14 MS. JOHNSTON: I have the Commission order
15 right here, Your Honor.

16 JUDGE SCHAER: Okay. It is helpful when
17 you're citing Commission orders in your pleadings if
18 you could provide that information because that's what
19 we use to look up the orders.

20 MR. VAN NOSTRAND: It was a case cited in
21 the Washington Water Power proceeding which I also
22 cited later on --

23 JUDGE SCHAER: That's the next question.

24 MR. VAN NOSTRAND: -- on that page.

25 JUDGE SCHAER: You mean in the Cascade

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1 proceeding?

2 MR. VAN NOSTRAND: No. I guess I didn't
3 cite -- the Washington Water Power proceeding
4 UG-901459.

5 JUDGE SCHAER: Do you have the cite to
6 this?

7 MR. VAN NOSTRAND: From 1992.

8 JUDGE SCHAER: Ms. Johnston.

9 MS. JOHNSTON: Yes, I do. It's WUTC
10 vs. Washington Water Power Company. Docket No.
11 U87-1532-T second supplemental order at page 14.

12 JUDGE SCHAER: What month and year?

13 MS. JOHNSTON: September 30, 1988
14 is the service date of the order.

15 JUDGE SCHAER: The next question is the
16 month and year of the Cascade order that you cite in
17 the middle of that page, Mr. Van Nostrand.

18 MS. JOHNSTON: I have that right here, too.
19 April 29, 1994 is the service date.

20 JUDGE SCHAER: Thank you. I think I'm
21 ready to hear a brief sort of closing comment from
22 each party. You had asked to be able to provide that.

23 MR. FINNIGAN: At least Mr. Manifold is.

24 MS. JOHNSTON: I don't believe I have
25 anything more to add, Your Honor.

00117

1 JUDGE SCHAER: Mr. Manifold, have you?

2 MR. MANIFOLD: Yes, I do. The company
3 asserts that in its written motion and here today
4 orally that Intel may be subject to confidentiality
5 agreements with other third parties like other
6 utilities that would preclude it from responding to the
7 data requests which we propounded. This is the first
8 time that response has been made. It was not made at
9 the time the data requests were propounded, which by
10 Commission rules required to be, nor was it made in
11 responses to the data requests themselves. So I don't
12 think that that reason can be raised at this late date
13 as a reason for not responding to the data requests.

14 Secondly, to the extent that any of Intel's
15 alternative locations were in the state of Washington,
16 and perhaps in other states with publicly owned
17 utilities, those utilities may be subject to public
18 disclosure requests such that confidentiality might
19 not pertain with those matters anyway. I would bring
20 the Commission's attention to the fact that in the
21 recent consideration by it of two special contracts
22 between Puget and Bellingham Cold Storage and the
23 Georgia Pacific Company where the alternative bypass
24 was with the Whatcom County PUD, the Whatcom County PUD
25 -- well, the Commission was provided with what the

00118

1 alternative contracts were with the Whatcom County PUD.

2 Finally, in case I wasn't clear earlier
3 when I was speaking about the Commission's power to
4 issue subpoenas, my intent is not simply to point out
5 that it has that power but to request that it exercise
6 that power if it does not grant our motion in this --
7 grant the motion we've brought.

8 JUDGE SCHAER: On that point, Mr. Manifold,
9 I believe that our rules also provide that parties can
10 issue subpoenas; isn't that correct?

11 MR. MANIFOLD: I don't have a copy of them
12 with me so that may well be. I don't know.

13 MR. FINNIGAN: It may be, Your Honor, but it
14 may be that that rule relates to the process for the
15 adjudicative proceeding and would therefore mean to
16 parties, not to nonparties.

17 JUDGE SCHAER: I believe there's also
18 something in the utility statutes regarding the same
19 kind of thing that he's looking at for commissioner
20 issuance for subpoenas.

21 MR. FINNIGAN: You may be right. I just
22 don't have the statutes with me.

23 MR. MANIFOLD: I don't either and there may
24 be a distinction between getting the witnesses to
25 appear versus getting their books and records. I

00119

1 don't know without it in front of me.

2 JUDGE SCHAER: Well, if you look at -- we
3 do have a rule that allows you to issue subpoenas even
4 if the discovery rule isn't triggered and under terms
5 of that rule, if you read what the subpoena is, it's
6 really more of a subpoena duces tecum or a data
7 request. It tells you to put in questions and answers,
8 and I believe that's statute-based and that that can be
9 triggered by a party. But I looked at this two weeks
10 ago. I did not bring it with me today. I will note
11 your request, the Commission to do that, but I will
12 encourage you to continue your research and see what
13 your own powers are because I believe that parties to
14 Commission proceedings can issue subpoenas to
15 nonparties.

16 MR. MANIFOLD: Assuming that we can I'm not
17 sure what the importance of that is at this point
18 because Mr. Van Nostrand has stated, and I think we
19 could all agree that the result of us issuing a
20 subpoena is going to be a refusal to comply with it,
21 a challenge to the authority to issue the subpoena,
22 and we will be in one more proceeding and we'll be back
23 to the Commission on the very same issues. Maybe Intel
24 would be represented itself at that time, but other
25 than that the issue is going to be the same as to

00120

1 whether or not the Commission deems it relevant to the
2 scope of the inquiry in this matter that information
3 such as is being sought here of the electricity rates
4 at the locations and at other possible locations is a
5 relevant consideration.

6 MS. JOHNSTON: I agree with public
7 counsel's comments, Your Honor. Mr. Van Nostrand
8 already indicated that if we were to issue subpoenas
9 that we would be dealing with motions to quash and
10 authority to challenge -- challenge the authority to
11 even issue the subpoenas and then arguments in an
12 effort to suppress the information requested. So it
13 just seems that this is the most efficient course.

14 MR. VAN NOSTRAND: Your Honor, if I could
15 just clarify. I don't presume to speak for Intel. I
16 don't believe I indicated that would be the course of
17 action. I said I suspect we may be going down that
18 path, but I do not know that that is the case, and if
19 that was construed that way or if I did say that I
20 withdraw that, but I believe I indicated that may very
21 well be the path we would go down, but I can't presume
22 to speak for what Intel's response would be to a
23 subpoena or how it would respond if Puget were issued a
24 motion to compel. I'm not authorized to speak on
25 behalf of Intel nor have I discussed those matters with

00121

1 Intel.

2 JUDGE SCHAER: Well, I'm still puzzled by
3 what the real goal of the parties is here. If the
4 real goal of the parties here is to by legal force of
5 process compel Intel to provide this information, then
6 it appears to me that the most effective means of
7 doing that is to pursue a subpoena of some nature
8 against Intel rather than something against Puget
9 because Puget has indicated that they do not possess
10 any of this information. If the goal is to get some
11 kind of ruling pursuant on the issues and the issues
12 list as to what's relevant and not relevant in the
13 proceeding, without needing to have what's relevant
14 compelled to be provided, then perhaps proceeding with
15 this motion to some kind of order to Puget would make
16 some sense, but if you're talking about the quickest
17 way to get information from Intel, I don't see that
18 following the path of an order against Puget first is
19 the quickest way to get information from Intel, and
20 that's why I -- I really question what it is the
21 parties are after here.

22 MR. MANIFOLD: I will try again because
23 obviously I'm not saying the right thing somehow.
24 It's the latter.

25 JUDGE SCHAER: All of a sudden it went the

00122

1 other way.

2 MR. MANIFOLD: And maybe there's three
3 different views on that, or four. We think certain
4 information is relevant. Puget promised it would get
5 the information for us. It isn't able to do that, and
6 maybe in late June or early July we should have issued
7 a subpoena. Possible, I don't know. What we tried to
8 do was to work it out informally, as the rules require,
9 and then when we couldn't work it out informally we've
10 brought it to the Commission because of a belief that
11 if the Commission rules on what the scope of inquiry is
12 in this case, either of two things will happen --
13 assuming it rules in our behalf. If it rules against
14 us then that's obvious. If it rules in our behalf then
15 either Intel will provide the information to Puget and
16 we will go forward, or Intel will not provide the
17 information to Puget and we'll make a motion to
18 dismiss. Either way we move forward.

19 JUDGE SCHAER: I think I understand your
20 theory better.

21 MR. MANIFOLD: I guess I did have authority
22 to speak on that one.

23 JUDGE SCHAER: Is there anything else that
24 anyone wants to add to this discussion? Mr. Finnigan?

25 MR. FINNIGAN: No.

00123

1 JUDGE SCHAER: Mr. Van Nostrand?

2 MR. VAN NOSTRAND: No, Your Honor.

3 JUDGE SCHAER: Then hearing nothing we'll
4 be off the record.

5 (Recess.)

6 JUDGE SCHAER: Let's go back on the record.
7 We went off the record and then decided to have a
8 scheduling session talking about what to do after the
9 order on this matter comes out, and I am going to ask
10 Mr. Manifold to briefly describe those off the record
11 discussions if he would at this time, please.

12 MR. MANIFOLD: Yes. The perspective of the
13 moving parties is that we would like the Commission
14 order to specify the date by which information
15 required to be provided must be provided, and with the
16 understanding that the Commission order is likely to be
17 the first part of next week we would recommend that
18 the due date for information be August 5. If that
19 were the case we would request that our testimony not
20 be due until August 19th. If, depending on when the
21 Commission order comes out the information was to be
22 required to be provided by any time up until August
23 9th, then our testimony would still be due two weeks
24 after the information was provided, and as long as our
25 testimony is due on or about August 23rd, the company

00124

1 believes at this point that it could still meet its
2 rebuttal filing date of Thursday, September 5th.

3 If, because of when the information was to
4 be provided, if it slipped after August 9th, and
5 therefore production of our testimony slipped after
6 August 23rd, then the company would want to revisit the
7 date for its rebuttal testimony being due.

8 MR. VAN NOSTRAND: Fairly summarized, Your
9 Honor.

10 JUDGE SCHAER: You agree that that's a fair
11 summarization, then, Mr. Van Nostrand?

12 MR. VAN NOSTRAND: Yes.

13 JUDGE SCHAER: Do all other parties agree
14 to proceed in this manner?

15 MR. FINNIGAN: Yes.

16 MS. JOHNSTON: Yes.

17 JUDGE SCHAER: Is there anything to discuss
18 before we conclude today's hearing? Then we're off
19 the record and this hearing is adjourned.

20 (Hearing adjourned at 2:50 p.m.)

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