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 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

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 4 WASHINGTON UTILITIES AND )Docket No. UE-161123

 TRANSPORTATION COMMISSION, )

 5 )

 Complainant, )

 6 )

 vs. )

 7 )

 PUGET SOUND ENERGY, )

 8 )

 )

 9 Respondent. )

10 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

11 SETTLEMENT HEARING, VOLUME II

12 Pages 52-159

13 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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15 May 3, 2017

16 9:26 a.m.

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 KEVIN HIGGINS (via bridge line)

23 GARY SALEBA (via bridge line)

 CHRIS HENDRIX (via bridge line)

24

25 \* \* \* \* \*

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 1 OLYMPIA, WASHINGTON; MAY 3, 2017

 2 9:26 A.M.

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 4

 P R O C E E D I N G S

 5

 6 JUDGE KOPTA: All right, then. Let's be on

 7 the record in Docket UE-161123, captioned "Washington

 8 Utilities and Transportation Commission vs. Puget Sound

 9 Energy."

10 We are here for a settlement hearing on

11 Wednesday, May 3rd, 2017, and we are having preliminary

12 discussions before the Commissioners join us to handle

13 some matters that we can handle without them here.

14 I'm Gregory J. Kopta, the administrative law

15 judge who will be presiding with the Commissioners at

16 this hearing. And we will save appearances from the

17 parties until the Commissioners are here. In the

18 meantime, we need to take care of two things.

19 First, the parties have stipulated to the

20 admission of all exhibits that have been prefiled, both

21 the direct testimony that was filed on behalf of Puget

22 Sound Energy and Microsoft, and the testimony of each of

23 the parties in support of the settlement stipulation and

24 agreement. Rather than read them into the record, I

25 have an exhibit list I will provide to the court

0060

 1 reporter, and all of the exhibits on this exhibit list

 2 are admitted into the evidentiary record.

 3 (Exhibits admitted.)

 4 JUDGE KOPTA: The second matter is just a

 5 notification that the Chairman received an email as part

 6 of a distribution group from Nancy Hirsh at the

 7 Northwest Energy Coalition generally discussing the

 8 agreement between Puget Sound Energy and Microsoft that

 9 is at issue in this proceeding. There's nothing new in

10 this email and no attempt to influence the Commission

11 with respect to this matter, but in an excess of

12 caution, I wanted to notify the parties that the

13 Commission -- that the Chairman received this email. I

14 consulted with the parties off the record, and no one

15 has any concerns or any desire to have this made a part

16 of the record but -- other than to mention it on the

17 record of the hearing.

18 So is there anything else that we need to

19 handle on the record before the Commissioners join us?

20 Hearing nothing, let's be off the record.

21 (Pause in the proceedings.)

22 JUDGE KOPTA: Then let's be back on the

23 record. I am now joined on the bench by Chairman Danner

24 and Commissioners Rendahl and Balasbas. I want to

25 extend a special welcome to Commissioner Balasbas. This

0061

 1 is his first hearing with the Commissioner -- as a

 2 Commissioner with the Commission, and we are pleased to

 3 have him with us.

 4 I held off on taking appearances until now,

 5 and so we will take appearances. Let's begin with

 6 counsel for the Company.

 7 MR. KUZMA: Good morning. My name is Jason

 8 Kuzma for Puget Sound Energy.

 9 JUDGE KOPTA: And for Microsoft.

10 MS. THOMAS: Good morning. I'm Elizabeth

11 Thomas with K&L Gates.

12 JUDGE KOPTA: And Staff.

13 MR. CASEY: Good morning. Christopher

14 Casey, Assistant Attorney General for Commission Staff.

15 JUDGE KOPTA: Public Counsel.

16 MS. GAFKEN: Good morning. Lisa Gafken,

17 Assistant Attorney General appearing on behalf of Public

18 Counsel.

19 JUDGE KOPTA: Okay. And continuing around

20 the table.

21 MR. FFITCH: Good morning, Commissioners and

22 Your Honor. Simon ffitch on behalf of the Energy

23 Project.

24 MR. GOLTZ: Good morning. Jeffrey Goltz,

25 Cascadia Law Group on behalf of the Northwest Energy

0062

 1 Coalition.

 2 MR. SANGER: Irion Sanger here for the

 3 Northwest & Intermountain Power Producers Coalition.

 4 MS. BALDWIN: Vicki Baldwin on behalf of

 5 Walmart Stores and Sam's West, Incorporated.

 6 MR. PEPPLE: I'm Tyler Pepple on behalf of

 7 the Industrial Customers of Northwest Utilities.

 8 JUDGE KOPTA: And Mr. Boehm on the bridge

 9 line.

10 MR. BOEHM: Good morning. Kurt Boehm on

11 behalf of the Kroger Company.

12 JUDGE KOPTA: All right. Anyone else want

13 to make an appearance?

14 Hearing none, I now would like to swear in

15 the witnesses. If you would all stand, even the people

16 on the phone. I will trust that you're doing that.

17 (Witnesses sworn.)

18 JUDGE KOPTA: You may be seated.

19 All right. And let's have some

20 introductions. Probably the easiest thing is just to

21 start on my left and go across the row.

22 MR. COLLINS: Shawn Collins, director of the

23 Energy Project.

24 MS. GERLITZ: Wendy Gerlitz, policy director

25 of Northwest Energy Coalition.

0063

 1 MS. PLENEFISCH: Good morning. Irene

 2 Plenefisch, government affairs director for Microsoft.

 3 MR. PILIARIS: Jon Piliaris, Puget Sound

 4 Energy.

 5 MR. GOMEZ: David Gomez, Commission Staff.

 6 MR. MULLINS: Brad Mullins for the

 7 Industrial Customers of Northwest Utilities.

 8 MS. COLAMONICI: Carla Colamonici, Public

 9 Counsel.

10 MS. SNYDER: Jennifer Snyder, Commission

11 Staff.

12 MR. KAHN: Robert Kahn, Northwest &

13 Intermountain Power Producers Coalition.

14 JUDGE KOPTA: And on the bridge line.

15 MR. HIGGINS: Kevin Higgins, consultant for

16 the Kroger Company.

17 MR. SALEBA: Gary Saleba with EES Consulting

18 on behalf of Microsoft.

19 MR. HENDRIX: Chris Hendrix with Walmart.

20 JUDGE KOPTA: All right. I think that's

21 everyone, then.

22 So the witnesses have been sworn, and we

23 have asked the parties to make a brief presentation on

24 the contents of the settlement and why it is consistent

25 with the public interest in the parties' view. I

0064

 1 believe Mr. Casey is going to begin with that

 2 presentation.

 3 MR. CASEY: Yes. Thank you, Judge Kopta.

 4 Good morning, Chairman Danner, Commissioner

 5 Rendahl. Welcome, Commissioner Balasbas.

 6 I want to start by acknowledging the time

 7 and effort each party dedicated to reaching a full

 8 settlement agreement to resolve all issues in this

 9 docket. Over the course of several months, the ten

10 parties worked very hard to bridge their diverse

11 interests to develop a unique agreement that both holds

12 remaining customers harmless from cost shifts and

13 significantly promotes the public interest.

14 The settlement represents a true compromise

15 of the parties. I think it's important to note that

16 each party has its own unique nuanced view about the

17 terms of the settlement and about why the settlement is

18 in the public interest. So I want to just briefly

19 provide some background and overview of the settlement

20 proposal.

21 PSE initiated this docket by filing a tariff

22 revision to establish a new optional retail wheeling

23 service that would allow a narrowly defined class of

24 customers to become distribution-only customers that

25 acquire energy from power suppliers other than PSE.

0065

 1 PSE developed a proposed service because

 2 Microsoft had a strong desire to pursue with its

 3 corporate commitments to carbon neutrality and renewable

 4 energy by acquiring its electricity from power suppliers

 5 of its choosing. PSE's initial filing also sought

 6 Commission approval of a service agreement that

 7 contained a provision committing Microsoft to pay

 8 approximately $23.7 million to hold PSE's customers --

 9 remaining customers harmless from cost shifts caused by

10 the loss of Microsoft's load.

11 The originally proposed retail wheeling

12 tariff raised issues broader than necessary to resolve

13 Microsoft's desire to meet its clean energy goals

14 through direct purchases of electricity. The tariff

15 elicited law and policy questions of potential

16 state-wide significance about the extent to which

17 competitive retail power supply should be available to

18 utility customers.

19 The settlement does not address these

20 broader issues that are beyond its scope. Rather the

21 settlement narrows the scope of this proceeding to the

22 issue of service to Microsoft under the proposed special

23 contract.

24 The settlement includes a special contract

25 for retail wheeling service that would enable Microsoft

0066

 1 to pursue its corporate commitments to carbon neutrality

 2 and renewable energy while significantly advancing the

 3 energy policy goals of the state and this Commission.

 4 In both the settlement stipulation and the

 5 special contract, Microsoft made a variety of

 6 substantial commitments that addressed four areas of

 7 concerns to the parties. These areas include the

 8 resources used for power supply, energy efficiency, low

 9 income program funding, and rate impacts to remaining

10 customers. The settling parties all agree that the

11 commitments from Microsoft embedded in the settlement

12 stipulation and special contract both hold remaining

13 customers harmless from cost shifts and significantly

14 promote the public interests.

15 First, with respect to power supply

16 resources, Microsoft's commitment to procure only carbon

17 neutral and renewable energy resources advances not only

18 Microsoft's corporate goals, but also the shared energy

19 policy goals of this state and this Commission.

20 Washington Public Policy prefers carbon neutral power

21 generation and mandates large utilities to deliver

22 retail customers increasing amounts of power generated

23 from eligible renewable resources.

24 The special contract is in the public

25 interest because Microsoft will pursue -- procure only

0067

 1 carbon neutral and renewable energy resources. Under

 2 this special contract, Microsoft would ultimately exceed

 3 the Energy Independence Act's renewable energy

 4 requirement by 25 percent, meaning that it will nearly

 5 triple the status quo requirement.

 6 Over the first few years of the contract,

 7 Microsoft's use of eligible renewable resources will

 8 escalate from 25 percent to 40 percent. If the EIA's

 9 renewable targets are revised by the -- to exceed the

10 percentage of renewable energy, Microsoft agrees to

11 procure under the special contract, Microsoft will

12 comply with the elevated standard. In addition, the

13 remainder of Microsoft's power supply will be carbon

14 neutral. Microsoft will eliminate the emissions of

15 carbon dioxide produced to serve one of the largest

16 loads in Washington State.

17 Second, with respect to energy efficiency,

18 under the special contract, Microsoft will continue to

19 fund and participate in PSE's self-directed energy

20 efficiency program for large power users. This is in

21 the public interest because it will help ensure that

22 both PSE and Microsoft pursue all conservation that is

23 cost-effective, reliable, and feasible.

24 Third, with respect to low income program

25 funding, under the special contract, Microsoft will

0068

 1 continue to fund PSE's help program at its current rate,

 2 and Microsoft will make an additional payment of half of

 3 that rate to a separate account to be managed and

 4 disbursed by PSE's low income weatherization manager to

 5 expand access to energy efficiency services and

 6 renewable energy technology for low-income customers in

 7 PSE's service territory. This means that Microsoft,

 8 under the special contract, will provide low income

 9 funding at 150 percent of its current contribution.

10 Fourth, with respect to rate impacts to

11 remaining customers, under the special contract,

12 Microsoft will make an approximately $23.7 million

13 transition payment to mitigate cost shifts caused by

14 Microsoft's decision to procure its own energy. PSE

15 will distribute this payment over a 12-month period to

16 those customers continuing to take bundled service after

17 Microsoft relinquishes its core customer status and

18 begins to take service under this special contract.

19 The parties all agreed this amount, along

20 with Microsoft's other commitments, is sufficient to

21 hold the remaining customers harmless from cost shifts

22 caused by PSE's loss of Microsoft's load. PSE will also

23 charge Microsoft for distribution services rendered.

24 The charge will continue to be updated in rate case

25 proceedings to recover Microsoft's share of fixed

0069

 1 distribution costs.

 2 Ultimately, the settling parties have

 3 resolved all of the issues and dispute among them, and

 4 their resolution complies with Commission rules and

 5 satisfies each of the parties' individual interests, as

 6 well as the public interests. The settling parties

 7 request that the Commission approve the settlement and

 8 special contract in their entirety.

 9 JUDGE KOPTA: All right. Thank you,

10 Mr. Casey.

11 Mr. Kuzma, did you have something in

12 addition?

13 MR. KUZMA: Mr. Casey provided a very

14 comprehensive and excellent overview of the settlement.

15 Puget has been focused on, over the past several years,

16 in helping Microsoft achieve its goal of its corporate

17 sustainability and using alternative power sources to

18 meet its loads. Although Puget would prefer that

19 Microsoft remained a customer of PSE, with respect to

20 generation, we believe that the settlement reaches the

21 public interest.

22 It -- it does not deter from any service

23 reliability or operational issues from Puget. PSE will

24 remain the distribution and transmission provider of

25 Microsoft. And we think that -- we appreciate all of

0070

 1 the work that all of the parties put together in coming

 2 up with a creative solution that helps both Microsoft

 3 and PSE, while at the same time maintaining the public

 4 interest.

 5 JUDGE KOPTA: All right. Thank you.

 6 Anything further by way of initial

 7 presentation?

 8 Hearing none, we will now go to questions

 9 from the Commissioners. We have a lot of witnesses and

10 only two microphones, so it may be a little

11 cumbersome -- all right, three microphones. Mr. Kahn

12 has his own.

13 MR. KAHN: Just for me.

14 JUDGE KOPTA: But please remember that we

15 need to speak into the microphones when you're speaking.

16 And for the benefit of the court reporter, at least

17 initially, if you could say your name before you start

18 talking just so that she knows who it is that's talking

19 and doesn't have to remember when she's preparing the

20 transcript.

21 So we will now go to questions from the

22 Commissioners.

23 Ms. Rendahl, do you want to begin?

24 COMMISSIONER RENDAHL: Thank you, I will.

25 And my initial questions are to Microsoft,

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 1 Puget Sound Energy, and Staff, but then if there are

 2 other parties who have a response to the question as

 3 well, then we'll allow an opportunity. So I'm going to

 4 focus primarily on the terms of the special contract, so

 5 if you want to have that available to look at.

 6 I'm going to start with the sections on the

 7 renewable portfolio standard requirements, Section 4.9.3

 8 in particular. And that provision has to do with the

 9 enforcement of these -- of the terms of the special

10 contract. It provides that PSE is going to provide --

11 that Microsoft will provide to PSE and the end goal

12 renewable portfolio standard report and that PSE will

13 file this report with the Commission as a compliance

14 filing in this docket.

15 So my question is, in terms of the

16 relationship between Microsoft, PSE, and Commission and

17 Commission Staff, which entity is ultimately

18 responsibile for the accuracy of the filing? And I

19 guess I will start with Microsoft and then turn to PSE

20 and then Staff.

21 MS. PLENEFISCH: Well, good morning, and

22 thank you for the question. I guess I -- well, I think

23 maybe that's a legal question, which I'm not sure is in

24 my scope. I'll take a stab at it, and then if it's all

25 right, maybe our attorney can chime in if she thinks

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 1 I've gone the wrong direction here.

 2 But it strikes me that we are required to

 3 report to PSE. PSE is required to report to Commission.

 4 I think Commission has the verification duty, so that

 5 strikes me as, you know, them being the ones that need

 6 to -- that Commission Staff, rather, to make sure that

 7 the compliance is, in fact, consistent with the

 8 requirements.

 9 COMMISSIONER RENDAHL: So let me ask it a

10 different way. So if after our Staff -- because they do

11 do -- you know, they're analysts; our Staff are

12 analysts. They will review what the parties filed as

13 they review other filings as well. If they find a

14 deficiency in the compliance report, does Staff work

15 directly with PSE or with Microsoft?

16 MS. PLENEFISCH: I believe with PSE.

17 COMMISSIONER RENDAHL: Okay. And I'll turn

18 to PSE and Staff and see what their thoughts are on

19 this.

20 Mr. Piliaris?

21 MR. PILIARIS: This is Jon Piliaris. I

22 guess from the Company's standpoint, I guess we feel

23 sort of like the conduit between the two effectively.

24 So we're just taking it out of one hand and delivering

25 it with the other. So I don't know if we necessarily

0073

 1 have a verification responsibility per se, not directly.

 2 COMMISSIONER RENDAHL: Ms. Plenefisch, go

 3 ahead. You look like you have something further to say.

 4 MS. PLENEFISCH: Well, I guess I would say

 5 that it's clearly in our interest to ensure that the

 6 Commission is satisfied that we are meeting those

 7 requirements because we wouldn't want the contract to be

 8 threatened in any way. I guess from my perspective, the

 9 reason for my answer was that while I think the

10 Commission has authority over the contract, the

11 Commission does not have authority over our company,

12 Microsoft, and that's why I believe the communication

13 would be with PSE. But as Jon points out, they are the

14 conduit. So I am certain that we would be involved,

15 even though I think that would be the chain of the

16 engagement.

17 COMMISSIONER RENDAHL: Okay. I have further

18 questions on that, but I want to allow Staff an

19 opportunity to respond to that too.

20 MS. SNYDER: This is Jennifer Snyder with

21 Commission Staff. So I think what you've heard from

22 Microsoft and PSE is essentially the way that Staff has

23 envisioned this as well. PSE will, in some way, be the

24 conduit or the middleman in this delivery of information

25 and back and forth. I don't envision Commission Staff

0074

 1 ever directly contacting Microsoft. Commission Staff

 2 will work with PSE. PSE will then work with Microsoft

 3 to correct any deficiencies needed. If there becomes a

 4 situation where we would need to speak directly to

 5 Microsoft, I envision all three parties being involved

 6 in the conversation.

 7 COMMISSIONER RENDAHL: Okay. Well, that

 8 actually leads me to a different section of the

 9 contract, which is Section 2.2, which talks about --

10 which is also a provision about essentially the

11 enforcement of the contract, and it provides that the

12 essential terms and conditions of this special contract

13 will be considered part of PSE's tariffs and will be

14 subject to enforcement, supervision, control, and public

15 inspection by the Commission.

16 So as a follow-on to this, does that mean if

17 there is a need for enforcement under this provision,

18 first, what's the difference between essential terms and

19 nonessential terms of the contract? I think that's the

20 starting point there, and maybe, Ms. Snyder, if you have

21 a response for that?

22 MS. SNYDER: So I think -- I mean, the

23 essential terms of the contract are certainly the

24 details that have been worked out amongst the parties.

25 Nonessential terms, they're -- you know, there are

0075

 1 certain pieces of the contract that were worked out

 2 purely between Microsoft and Puget Sound Energy, and

 3 there may be a reason for a slight variation in there

 4 that both Microsoft and Puget Sound Energy agree to.

 5 And so I suppose from Staff's point of view, those may

 6 be some nonessential terms.

 7 COMMISSIONER RENDAHL: Okay. Chair Danner?

 8 CHAIRMAN DANNER: I just -- if we don't have

 9 a definition of essential and nonessential, it's going

10 to be a judgment call and this is a contract. So the

11 question is, I mean, would the parties be okay striking

12 that word "essential" because otherwise, I mean, if we

13 don't have it, then we can simply look at the four

14 corners of the document. If we have it, we've got to

15 bring in something from the outside, and so far, I don't

16 see any definitions. So I'm just wondering how to

17 proceed here. I don't know that it's a major issue, but

18 it certainly is an issue that could become a major

19 issue.

20 Mr. Casey?

21 MR. CASEY: Your Honor, the Commission rule

22 for special contracts in WAC 480-80-143 has a definition

23 for essential terms under Section 7. "Essential terms

24 and conditions are the identity of the customer; nature,

25 and characteristics of the service provided, including

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 1 interruptible, firm, or peak delivery; duration of the

 2 contract, including any options to renew; charges for

 3 service, including minimum charge provisions; geographic

 4 location where service will be provided; and additional

 5 obligations specified in the contract, if any."

 6 COMMISSIONER RENDAHL: Okay. Thank you.

 7 That's helpful.

 8 Does that help you, Mr. Danner?

 9 CHAIRMAN DANNER: It does. I'm trying to

10 think of what a nonessential term would be, then.

11 Can you give me an example?

12 MR. CASEY: Ultimately, this is a -- the

13 special contract is a -- provides a service that remains

14 subject to the Commission's regulation just as all

15 utility services are subject to the Commission's

16 regulation. So the Commission's jurisdiction over this

17 special contract is not different from its jurisdiction

18 over the tariffs for generally applicable utility

19 service.

20 COMMISSIONER RENDAHL: All right. So this

21 is -- we're talking about jurisdiction over the special

22 contract, but in this case, we have a party that we do

23 have regulatory authority over separate from the

24 contract and a party that we do not clearly from

25 Ms. Plenefisch's comments. So in terms of trying to

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 1 figure out enforcement of the contract where Microsoft

 2 has taken on a substantial responsibility here, if there

 3 is an issue of enforcement, my question was going to be

 4 whether both Microsoft and PSE are subject to our

 5 jurisdiction? It goes back to this issue of upholding

 6 the terms on the renewable portfolio standard.

 7 So if we have a proceeding resulting from

 8 this, which I would hope we would not get to, but, you

 9 know, that's what lawyers do. We think about these

10 issues. I'm hearing from Ms. Plenefisch that we would

11 not have any jurisdiction over Microsoft, and our only

12 jurisdiction would be over PSE. Is that your

13 understanding? I'm looking at both Ms. Plenefisch and

14 Mr. Piliaris.

15 MS. PLENEFISCH: Yeah, I guess I would just

16 say we're not a utility, and that's not going to change

17 as we -- you know, as this contract is finalized. You

18 do have jurisdiction over the contract, and we're a

19 party to the contract. So we would be certainly a part

20 of those discussions.

21 COMMISSIONER RENDAHL: Okay. So then I'm

22 going back to the original provision I was talking

23 about, 4.9.3, and that -- the last sentence of that

24 provision talks about the enforcement of that

25 obligation, and it says, "Any penalty imposed upon

0078

 1 Microsoft under this provision is subject to a showing

 2 that Microsoft failed to exercise reasonable care and

 3 prudence in obtaining eligible renewable resources or

 4 renewable energy credits as defined in the Energy

 5 Independence Act."

 6 So does this imply that UTC would issue a

 7 complaint or penalty assessment against Microsoft if

 8 Microsoft didn't comply? I mean, it says "penalty

 9 imposed upon Microsoft," so that's where my questions

10 arise as to whether, in fact, it's the special contract

11 or it's Microsoft that we would be having some authority

12 over if there were an issue under this contract. Do you

13 understand what I'm asking?

14 MS. PLENEFISCH: I do. I don't think I can

15 answer that question right now, but perhaps we could

16 talk at the break and supply more information for you on

17 that later.

18 MR. CASEY: Your --

19 COMMISSIONER RENDAHL: Okay.

20 MR. CASEY: Your Honor, if I may, because I

21 think we're getting into some legal issues here and

22 certainly would also like to hear from counsel of the

23 other parties. But the way Staff envisions this

24 working, this penalty provision is embedded in the terms

25 and conditions of service. So the Commission would not

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 1 be, for instance, imposing the penalty provision from

 2 the Energy Independence Act on Microsoft, which is not a

 3 qualifying utility. Instead, it is applying the terms

 4 of service that Microsoft has agreed to, and, you know,

 5 while it might seem --

 6 COMMISSIONER RENDAHL: Is that a breach of

 7 contract, then, between PSE and Microsoft in which PSE

 8 goes to Microsoft or is that something the Commission in

 9 our order, if we would approve this, we would then have

10 the authority to issue a penalty against a party to the

11 contract? That's the issue.

12 MR. CASEY: Yeah. So it might be a bit of

13 an extreme example but --

14 COMMISSIONER RENDAHL: It is, but, you know.

15 MR. CASEY: I think Staff envisioned this

16 kind of like a, you know, penalty provision in a normal

17 tariff where if a customer, for instance, doesn't pay

18 their bill on time, they're subject to a penalty for --

19 for not meeting the date when they were supposed to pay.

20 COMMISSIONER RENDAHL: So would we then

21 impose the penalty on PSE then in your analogy and then

22 PSE would seek reimbursement from Microsoft?

23 MR. CASEY: No. Microsoft would owe a fee

24 to PSE that is part of the terms and conditions of

25 service, and PSE, under this special contract, is

0080

 1 required to pass that back to the Commission for the

 2 deposit in -- and I'm forgetting the name of it, but

 3 it's essentially the Renewable Energy Fund.

 4 COMMISSIONER RENDAHL: The account, right.

 5 All right. So then in this -- in that

 6 sentence, there's a statement about "any penalty is

 7 subject to a showing that Microsoft failed to exercise

 8 reasonable care and prudence." And who -- and I guess

 9 this is another legal question. I -- you know,

10 obviously usually we don't swear in attorneys to answer

11 these questions, but if there's any witness who can

12 answer this, go ahead, and then I guess we'll defer to

13 the attorneys. But who has the burden to make that

14 showing? Is that Staff that will have that burden to

15 demonstrate? This is a difference from the usual

16 standard where the Company bears the burden of showing

17 they're not.

18 MS. SNYDER: It is the -- the burden that

19 there will be on Staff to make the showing and do the

20 analysis based on the report that is provided by PSE

21 that handles the -- provided to PSE from Microsoft. So

22 Staff will be the ones to determine whether or not

23 Microsoft is in compliance with the contract, and then

24 Staff will let PSE know that they need to apply this

25 penalty.

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 1 CHAIRMAN DANNER: But the burden would be on

 2 Staff so Staff has to make the showing. They've got to

 3 prove that this is so. Normally under a tariff, it's

 4 the Company that has the burden.

 5 MS. SNYDER: And I believe that's -- part of

 6 the agreement, what we talked about was, you know,

 7 Staff, at the same time they're evaluating PSE's

 8 renewable targets, it will be done along the same lines.

 9 So what we had talked about was that Staff would be the

10 ones to make the showing and inform PSE if a penalty was

11 necessary.

12 COMMISSIONER RENDAHL: Okay. So then under

13 Section 2.2, it says, Under the special contract -- or

14 "Under the terms of the special contract that the

15 contract will be subject to enforcement, supervision,

16 control, and public inspection by the Commission."

17 So if Staff needs further information from

18 the Company, from Microsoft, it would use PSE as the

19 conduit. And so if Staff cannot get the information, if

20 Microsoft doesn't provide that information and Staff

21 can't make the showing, then there is no penalty.

22 MS. SNYDER: If that is the case, I believe

23 Microsoft would be in breach of contract.

24 COMMISSIONER RENDAHL: Okay. All right. So

25 clearly this is a different standard than under our --

0082

 1 under the statute and rules for the Energy Independence

 2 Act currently.

 3 MS. SNYDER: (Nodding head.)

 4 COMMISSIONER RENDAHL: Okay. And can you

 5 give a verbal response, please?

 6 MS. SNYDER: Yes, it is.

 7 COMMISSIONER RENDAHL: Okay. Thank you.

 8 So a background --

 9 JUDGE KOPTA: Can I follow up on that for

10 just one moment?

11 COMMISSIONER RENDAHL: Sure, go ahead.

12 JUDGE KOPTA: I'm trying to understand from

13 a purely procedural standpoint what would happen. So

14 let's assume that for whatever reason, Microsoft doesn't

15 make its renewable portfolio standard. What happens?

16 Would you walk me through the process?

17 MS. SNYDER: If Staff was provided

18 sufficient information, there was no additional

19 information needed but they did not meet the standard,

20 Staff would inform PSE that this penalty should be

21 applied to Microsoft, and then PSE would inform

22 Microsoft, receive payment, deposit the money into the

23 account, and inform Staff that that had all been taken

24 care of.

25 If for some reason that was not done, then

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 1 Staff, I believe, would be able to file a complaint

 2 against PSE, and PSE could claim that Microsoft was in

 3 breach of contract, but I may be kind of delving into

 4 some legal issues here, so I would defer to my attorney.

 5 JUDGE KOPTA: Okay. So at least as an

 6 initial matter, all of this would be handled without

 7 involving the decision side of the Commission; is that

 8 your anticipation?

 9 MS. SNYDER: That is my anticipation.

10 Ideally, you know, if Microsoft agreed that the penalty

11 was appropriate, this could all be done without coming

12 before the Commission necessarily. If Microsoft did not

13 agree, obviously we may need to have some sort of

14 discussion in front of the Commission.

15 CHAIRMAN DANNER: A complaint proceeding.

16 MS. SNYDER: Yeah.

17 COMMISSIONER RENDAHL: So, Mr. Casey, you

18 look like you're about to say something.

19 MR. CASEY: So, again, kind of going back to

20 the analogy we provided earlier, PSE has an obligation

21 to charge tariff rates. You know, in this case, it's a

22 special contract rate. It has an obligation to

23 administer the terms of service as provided in the

24 contract that is on file with the Commission and

25 approved by the Commission. And so we've -- PSE would

0084

 1 be -- if PSE is notified by Staff that there is an

 2 issue, it will administer the penalty, and then the

 3 customer, Microsoft, would have an -- if it disputed it,

 4 it would have an opportunity to, you know, file a

 5 complaint with the Commission disputing a -- you know, a

 6 charge that PSE administered. And that is something

 7 that customers have a right to do.

 8 COMMISSIONER RENDAHL: Right. So there's a

 9 section of the contract, Section 15, that says,

10 "Microsoft shall have all rights of redress before the

11 Commission that are normally accorded to PSE's Customers

12 regarding these general tariff provisions." So that's

13 what you're implying?

14 MR. CASEY: Yes.

15 COMMISSIONER RENDAHL: And if they have a

16 complaint under the contract, they can bring that to the

17 Commission under that section?

18 MR. CASEY: Yes. So again, that's exactly

19 right. I see PSE administering the contract, and then

20 if Microsoft has a dispute about how it's being

21 administered, then that would come to the Commission

22 through the normal avenues, procedural avenues, that are

23 available to all customers of the regulated utility.

24 COMMISSIONER RENDAHL: Okay. So,

25 Mr. Piliaris or Ms. Plenefisch, do you have anything

0085

 1 further to add to what Ms. Snyder and Mr. Casey have

 2 said? If you can make a verbal response.

 3 MR. PILIARIS: This is Jon Piliaris. I do

 4 not.

 5 CHAIRMAN DANNER: All right. I think

 6 Mr. Goltz was reaching for the microphone.

 7 MR. GOLTZ: Well, I was, and I think

 8 Mr. Casey answered most of that. I agree with what

 9 Mr. Casey said. Conceptually, this is I don't think any

10 different than the situation where we in Thurston County

11 who are customers of Puget Sound Energy, if we fail to

12 live up to our end of the deal, we will have to pay a

13 late fee. And Puget Sound Energy just can't say, oh,

14 we're going to forgive that. Never mind.

15 That's part of the overall tariff structure

16 is these late fees, these different types of payments.

17 And there's other provisions also in the normal contract

18 of service. We have to allow PSE to come on our

19 property with reasonable notice to take care of their

20 appliances and so forth and their facilities. So this

21 is just a much grander scale.

22 Now, the -- a settlement agreement is like a

23 consent decree. In the court system, a consent decree

24 the law is pretty clear is both a judicial act, a

25 judicial order. It's also a contract. So the

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 1 contractual relationship here included in that is the

 2 penalty provision, and maybe the world "penalty" is a

 3 little bit misstated. I mean, it's not the same sort of

 4 penalty that you have under Initiative 937. It's a

 5 penalty almost like liquidated damages under a contract,

 6 if they don't live up to their obligation, they owe this

 7 amount. And maybe one way to look at it is to have the

 8 Commissioner and the state's almost like a third-party

 9 beneficiary of this contract, they get the -- they would

10 then get the payment.

11 If there is -- if for some reason Puget

12 Sound Energy just doesn't do it -- I'm sorry, Microsoft

13 just doesn't make the payment and they're in violation

14 of the terms of their agreement, and Puget Sound Energy

15 just says, oh, never mind, then there would be an action

16 by the Commission perhaps initiated by a complaint

17 either by Commission Staff, by Public Counsel, or I

18 think any of the other parties here could initiate a

19 complaint and require Puget to in effect go after this

20 amount.

21 CHAIRMAN DANNER: But the difference, the

22 big difference -- and I think this is what Commissioner

23 Rendahl was bringing up in the first part -- is there's

24 a shift in the burden of proof. So Staff is the one now

25 carrying the burden of proof to show that Microsoft

0087

 1 failed to exercise reasonable care, and we don't

 2 actually regulate Microsoft. So I don't know, do you

 3 see complications there? And this is the language in

 4 493.

 5 MR. GOLTZ: Well, I guess I don't know that

 6 it makes that big of a difference as to actually who has

 7 the burden of proof. I mean, there is a -- in going

 8 back to Mr. Casey's analogy of the customer who fails to

 9 make a late fee payment, I don't know that it's an

10 obligation on the part of customer to meet the burden of

11 proof. The Company just says, you owe this, you didn't

12 pay it, and there it is. So I'm not sure the burden of

13 proof difference is really a real world difference.

14 COMMISSIONER RENDAHL: Well, in this case,

15 it's not a question of just a late fee or not a late

16 fee. This is a question of whether there's some

17 analysis involved, right? There's analysis by Staff to

18 determine whether, just like they do with PSE or Avista

19 or PacifiCorp, whether the Company has complied with the

20 terms of the Energy Independence Act, and in this case,

21 Microsoft has essentially agreed to take on the

22 obligations that a utility would have under the Energy

23 Independence Act under the special contract.

24 And so there is some analysis on Staff's

25 part of determining that, and sometimes those get

0088

 1 complicated. We've had those proceedings here. And so

 2 it's not as cut and dried as a late fee. So that is an

 3 analogy but maybe not quite the same. So the burden of

 4 proof does fall on Staff here and just trying -- just

 5 concerned about that element.

 6 MR. CASEY: So going, you know, back to

 7 our -- the explanation --

 8 I'm sorry, Christopher Casey.

 9 Going back to the explanation of PSE

10 administers the special contract, and then if Microsoft

11 had an issue with how it was being administered, it

12 could, you know, file a complaint. In that complaint

13 proceeding, I believe the burden of proof would be

14 dictated as -- as statute requires under the complaint

15 provisions, and I believe Microsoft was challenging how

16 PSE administered the tariff if it would have the burden

17 of proof as the party who initiated that filing.

18 In terms -- and I think what Ms. Snyder was

19 addressing in terms of kind of the early stages where

20 Commission Staff, you know, reviews the report and

21 determines if it is in compliance with the contract and

22 then communicates that back to PSE, that I think is, you

23 know, a little bit different than the legal standard

24 before the Commission like --

25 COMMISSIONER RENDAHL: Well, the burden

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 1 discussion or in terms of the contract, it refers to a

 2 showing. And that is -- that is the standard, the

 3 determination under the standard of whether any penalty

 4 is due from Microsoft failing to, quote, "exercise

 5 reasonable care and prudence." And so that's -- that's

 6 the burden I'm talking about being shifted to Staff in

 7 this case, but it sounds like that was part of the deal

 8 and I clarified that. I may be beating a dead horse

 9 here so I'm going to move on.

10 But I do want to ask if any other witness

11 has any further -- further testimony on that -- on that

12 discussion. I am seeing shaking of heads so we'll move

13 on.

14 Okay. I guess I'll turn to my colleagues if

15 they have any other questions at this point. I may have

16 more as we go on.

17 CHAIRMAN DANNER: I have a few. I will step

18 in right now.

19 So the contract says that Microsoft has to

20 source this power for renewable and carbon-free power,

21 and I am very pleased to see that. I am interested,

22 though, in the challenges of identifying the source of

23 power. There are going to be some places where we have

24 unspecified power when you're purchasing at the hub, and

25 I would like to know basically how you intend to deal

0090

 1 with those situations to ensure that what you're getting

 2 is how to -- to know that what you're getting is

 3 eventually going to be carbon-free.

 4 I guess I'll look to Mr. Piliaris and

 5 Ms. Plenefisch first.

 6 MS. PLENEFISCH: Well, we have put that into

 7 the -- so we have issued an RFP to potential power

 8 suppliers, and in that RFP, there is a requirement that

 9 all of the power be carbon-free, which we have defined

10 to mean not generated by fossil-fueled resources. And

11 then, of course, there's the requirement we've been

12 discussing about the Energy Independence Act.

13 And so our suppliers will testify to us that

14 that is -- you know, as a part of the contract that we

15 will make with them, they will agree that -- that the

16 power will be carbon-free.

17 CHAIRMAN DANNER: Okay. And so -- and if

18 they're not willing to do that, then you will look

19 elsewhere for the power?

20 MS. PLENEFISCH: Absolutely.

21 CHAIRMAN DANNER: Okay. The reason I raise

22 this is we've been dealing in the past with purchases

23 that utilities have to make at the hubs, and the hubs

24 aren't willing to say where the power is coming from.

25 They just say, well, it's coming from wherever we get

0091

 1 it. And it's very hard to chase down the source of this

 2 unspecified power -- or at least it's hard for us. It

 3 may not be as hard for the trading hubs to do, but

 4 they're not willing to bring that information forward.

 5 So I just wanted to clarify that you don't

 6 see that as a problem and, in fact, if you don't get the

 7 assurances that it is carbon-free or renewable, then you

 8 will look elsewhere.

 9 MS. PLENEFISCH: That is a part of the

10 contract, yes.

11 CHAIRMAN DANNER: Mr. Kahn?

12 MR. KAHN: Yeah, this is Robert Kahn,

13 Northwest & Intermountain Power Producers Coalition,

14 henceforth, NIPPC, N-I-P-P-C. Just to say that as an

15 industry -- and I'm here representing the competitive

16 power industry -- it is entirely routine to provide this

17 kind of documentation. So Microsoft's expectation and

18 Puget's experience would confirm that we can go about --

19 whoever's servicing Microsoft can go about providing

20 that kind of documentation.

21 CHAIRMAN DANNER: All right. Well, thank

22 you for that.

23 I also wanted to ask about Colstrip and the

24 remediation costs going forward. The way I read the

25 settlement, I did not -- what -- the language was a

0092

 1 little vague. I couldn't tell if what was agreed to was

 2 that if there are additional remediation costs, that

 3 Microsoft would agree to those costs whatever they might

 4 be. In other words, determining what the -- the

 5 proceeding going forward to determine whether they owe

 6 additional money, but they're -- but nonetheless, they

 7 assert their willingness or acknowledge their

 8 willingness to pay their share of remediation costs

 9 going forward or whether in this contract, they are

10 saying, no, we're done. This exit fee takes care of all

11 of that. So I'd just like a little clarification on

12 that, please.

13 MS. PLENEFISCH: Irene Plenefisch. We're

14 actually saying neither. We're saying that all of

15 the -- all of the settling parties have agreed that this

16 contract does not address or resolve any potential

17 obligations we may have with regard to decommissioning

18 and remediation costs, and that that issue will be taken

19 up in a separate docket.

20 CHAIRMAN DANNER: So if we find that

21 remediation costs are higher than they had been

22 anticipated or estimated to be, then it is possible that

23 Microsoft will say, no, no, we're done in this contract

24 as opposed to, let's figure out what we owe, what --

25 what our fair share is. You are reserving all legal

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 1 arguments going forward. So you could, in fact, say in

 2 a future proceeding that, hey, we don't owe anything.

 3 We settled everything in this 23.7 million?

 4 MS. PLENEFISCH: Yeah, we are reserving all

 5 future arguments and intend to be included in that

 6 discussion or a party to that discussion when it comes

 7 up. So I think the parties felt that, given that there

 8 are many other parties that would be a part of that

 9 discussion and that the costs are as yet unknown, it

10 would be impossible to make any sort of determination at

11 this point as to whether or not Microsoft had continued

12 or future liability.

13 And so the settlement -- the settlement

14 states that that issue is not addressed here and, yes,

15 all the parties have reserved the right to make whatever

16 arguments they may wish to make. Those, of course, may

17 or may not be accepted, but that's the way the

18 settlement has been agreed to.

19 CHAIRMAN DANNER: Okay. And so we are not

20 ceding our authority to seek those additional payments

21 if some are needed in the future?

22 MS. PLENEFISCH: Not to my knowledge.

23 CHAIRMAN DANNER: Okay. Ms. Gerlitz, do you

24 have any thoughts on that particular provision?

25 MS. GERLITZ: Yeah. I would say that our

0094

 1 interpretation, we agree with what Irene has just

 2 testified to. You know --

 3 JUDGE KOPTA: Is your microphone on?

 4 MS. GERLITZ: Oh, I'm sorry. Maybe I just

 5 need to be closer. Sorry.

 6 I agree with what Irene just testified to.

 7 I think our interpretation is that those issues are not

 8 a part of this settlement and that we have agreed to

 9 address them in a future proceeding when more certainty

10 is provided around the actual costs that we're talking

11 about. So I would --

12 CHAIRMAN DANNER: But that would include the

13 argument that this 23 million is -- is the exit fee, we

14 have no further obligations as opposed to, we believe

15 we've already paid our fair share in the calculation. I

16 mean, those are two different -- those are two different

17 positions.

18 MS. GERLITZ: We -- our interpretation is

19 that the costs that are currently unknown could not

20 possibly be in that calculation because they are

21 unknown. And so unknown costs will be dealt with in a

22 future proceeding.

23 COMMISSIONER RENDAHL: So that's your

24 interpretation?

25 MS. GERLITZ: That's my interpretation.

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 1 CHAIRMAN DANNER: Okay. So that does not

 2 include an argument that this exit fee is the final

 3 resolution of any future decommissioning costs?

 4 MS. GERLITZ: Well, I think -- let me get

 5 my -- I mean, I'm going to refer to what the actual

 6 settlement agreement says, but -- which I have in my

 7 notes here, if you give me a second to find it.

 8 So what the settlement agreement actually

 9 states, I believe it's in paragraph 11, is that the

10 "Settlement does not address or resolve any issues

11 relating to Microsoft's potential obligation to

12 contribute to Colstrip remediation, decommissioning, or

13 accelerated depreciation costs," and that those are

14 reserved for a future proceeding. So that's -- I think,

15 you know, that's relatively clear language.

16 COMMISSIONER BALASBAS: So is it your

17 interpretation and argument, then, that the 23.685

18 million is solely the transition fee for Microsoft to

19 procure its own power?

20 MS. GERLITZ: Are you asking me?

21 COMMISSIONER BALASBAS: Sorry, I'm directing

22 that to both of you. Irene and -- both of you.

23 MS. PLENEFISCH: Okay. I guess it's on. No

24 red light.

25 Yeah, the exit -- the transition fee was

0096

 1 calculated by PSE, and it takes into account five years

 2 of future generation costs and our projected load. It

 3 has four years of, you know, detriment to remaining

 4 ratepayers calculated in there and one year of benefit

 5 to remaining ratepayers when Colstrip 1 and 2 shut down

 6 and PSE becomes in a resource-constrained environment

 7 and they no longer have to serve our load.

 8 I guess, you know, I would say that to the

 9 extent that Colstrip costs are included in PSE's

10 generation costs, then that is a part of the transition

11 fee, but perhaps, you know, Puget Sound Energy may have

12 comments on that as well.

13 CHAIRMAN DANNER: I'm looking at you,

14 Mr. Piliaris.

15 MR. PILIARIS: So, yes. To answer that last

16 question, yes, there are some Colstrip-related costs

17 embedded within the calculation of the transition fee.

18 A fairly small amount. I guess more broadly, you're

19 noticing a wide variety of opinions around the number,

20 the validity of the number -- "number" being the

21 transition fee -- what it represents, what it includes,

22 what it does not include. It's been noted that it's

23 intended to mitigate the intended harm to customers.

24 I think what you're hearing in the

25 settlement as well related to Colstrip is that I think

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 1 the parties are reserving the right to argue whether or

 2 not some amount of that transition fee is sufficient to

 3 cover whatever potential obligation there would be for

 4 future Colstrip-related costs. Obviously, others would

 5 argue that, no, no, no, that's already covered but...

 6 CHAIRMAN DANNER: Sure. And I believe that

 7 the 23.7 is, you know, your best calculation today of

 8 what those costs are going to be. And I'm thinking

 9 of -- no?

10 MR. PILIARIS: No, that's not correct.

11 The -- nothing, at least in the analysis that I've

12 prepared, there are no future remediation costs embedded

13 in that calculation currently. If we have reserves for

14 ARO or a depreciation expense, those are clearly -- if

15 there are rates right now, then they're being included.

16 The ongoing discussions in the rate case around, maybe,

17 further accelerating or future costs, those are not

18 embedded currently within that analysis.

19 CHAIRMAN DANNER: Okay. So I'm still going

20 back to my original question, which is if there are

21 remediation and closure costs going forward in the

22 future, is -- it's not clear to me in the contract

23 whether Microsoft is saying this -- that in the future,

24 we can make the argument that this $23.7 million is it,

25 that's final, we're not paying anything more, or are

0098

 1 they saying that in a future proceeding, we can

 2 determine whether or not we owe something for our share

 3 of remediation costs?

 4 MR. PILIARIS: Well, I can't obviously speak

 5 for Microsoft as to what they think about that

 6 particular issue. I can speak to sort of the -- what is

 7 presented before you right now. And I think what is

 8 presented before you right now is that we're leaving

 9 open the arguments for or against whether or not

10 Microsoft owes anything beyond the 23.7 after this

11 point.

12 CHAIRMAN DANNER: Okay.

13 MR. PILIARIS: So we're not -- but we're not

14 precluding the Commission from making a further

15 determination in a future proceeding as to whether or

16 not that is, in fact, the case.

17 CHAIRMAN DANNER: So -- and we would have

18 the authority, then, if we determine that they should

19 have paid a percentage of the -- or a share of the

20 remediation costs, that we would be able to seek those?

21 MR. PILIARIS: For example, you could rule

22 in some future proceeding that the 23.7 paid as part of

23 this contract in the Commission's eyes did not cover

24 what they view to be a sufficient amount of future

25 remediation costs. And that issue would still be in

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 1 play. Your hands I don't believe would be tied in that

 2 regard.

 3 CHAIRMAN DANNER: Okay. Does anybody

 4 disagree with that?

 5 MR. MULLINS: This is Brad Mullins.

 6 COMMISSIONER RENDAHL: Before you go ahead,

 7 could those people on the bridge line mute their lines,

 8 please? We're getting some interference. Thank you.

 9 MR. MULLINS: Brad Mullins for ICNU, and I

10 don't necessarily disagree with any of that, but I just

11 wanted to note kind of our position on this matter

12 because a little bit nuanced.

13 So ultimately, you know, we don't know how

14 Colstrip remediation, decommissioning, and accelerated

15 depreciation is going to be handled for ratemaking, and

16 even from ICNU's perspective, we're still mulling over

17 different ideas and thoughts about the various aspects

18 of that.

19 But, you know, ultimately there should be

20 some sort of reconciliation between, you know, the costs

21 and benefits of -- of early closure. And from

22 Microsoft's perspective, they've paid this exit fee, and

23 it includes costs and benefits over a five-year period,

24 and it's really one year of benefit and four years of

25 cost. And so we think that that fact is relevant in

0100

 1 determining the ultimate ratemaking treatment of the

 2 remediation, decommissioning, and accelerated

 3 depreciation costs as it relates to Microsoft.

 4 And so, you know, we -- our view of the

 5 stipulation is all of those issues are open, and the

 6 Commission may, you know, decide whatever it ultimately

 7 wishes to decide in the rate case.

 8 CHAIRMAN DANNER: Okay. Yeah. The reason

 9 I'm harping on this, I mean, basically there's two --

10 two big points. I mean, when I look at this settlement,

11 basically I am concerned about cost shifts, and I'm

12 concerned about environmental degradation. And I think

13 that you -- or I think that the settlement is going a

14 long way to addressing both, and it's very clear that

15 those were at the top of your minds when you were

16 reaching this settlement. But I just want to make sure

17 that we're not agreeing to something here that could

18 lead to cost shifts, and that's why if there are

19 unexpected remediation or closure costs going forward,

20 that we would have the wherewithal to find that without

21 putting the burden on those least able to pay it. So

22 those are my concerns.

23 MS. SNYDER: This is Jennifer Snyder with

24 Commission Staff.

25 I do want to say that one of the big points

0101

 1 of the settlement around Colstrip was to make sure that

 2 you did retain that authority and that all parties

 3 retain their ability to make any arguments.

 4 MS. PLENEFISCH: This is Irene Plenefisch,

 5 if I could just add to that.

 6 I think that the spirit that was guiding

 7 that was really just the acknowledgment on all parties'

 8 part that we're so early in the Colstrip discussion, and

 9 it's really hard at this point to know -- I mean, we

10 certainly don't know costs. There are all sorts of

11 other things that we don't know, and so the hope, I

12 think, was that we could, you know, really handle this

13 matter separately, and that everybody would agree that,

14 you know, there's this matter we're dealing with now.

15 When Colstrip comes, we'll deal with that. And the

16 purpose of reserving the right to make all arguments is

17 just if you start to say, well, okay. We're going to

18 take certain arguments off the table, that's very hard

19 to decide which ones one would take off the table

20 because, again, there's so much that's unknown. So

21 that's really the motivation behind the language.

22 MR. GOLTZ: Your Honor, Jeff Goltz, attorney

23 for Northwest Energy Coalition.

24 Just following up briefly on the Chairman's

25 statement of general principles about cost shifts. You

0102

 1 know, the parties did have and the Commission has in

 2 front of it its policy statement from 1994 on Guiding

 3 Principles for Regulation in an Evolving Electricity

 4 Industry. And paragraph 2 of that and paragraph 5 of

 5 that policy statement are congruent with what you're

 6 saying, and I think those at least were overall guiding

 7 principles.

 8 CHAIRMAN DANNER: Yeah, and that's what's

 9 guiding me, too. I mean, we looked at that in our

10 preparation for today, and again, I'm just really trying

11 to anticipate unanticipatable outcomes here. And so

12 that's really the nature of this questioning. I don't

13 want to be in a situation where later, we have a

14 shortfall. But I also -- if there's something we can

15 put to bed now so that we don't have to have some sort

16 of very complicated, complex, antagonistic proceeding in

17 the future, that's always a good thing too.

18 But I also understand that we don't really

19 have the facts before us right now on what costs will be

20 and so forth, but it's not so much for me what those

21 costs might be as much as it is that, you know, if there

22 are costs that should be assigned to Microsoft as a

23 matter of equity, that we would have the ability to

24 assign those costs.

25 JUDGE KOPTA: And just as an administrative

0103

 1 matter, the Commission takes official notice of that

 2 policy statement entered in Docket UE-940932. So it can

 3 be relied on by the Commission in reaching its

 4 determination.

 5 Another sort of technical question.

 6 Mr. Piliaris, I believe that some of these issues are at

 7 issue in the pending PSE rate case; am I correct?

 8 MR. PILIARIS: Yes, that's correct.

 9 JUDGE KOPTA: And I don't believe that

10 Microsoft is a party to that proceeding, are they?

11 MR. PILIARIS: They may be indirectly

12 through the representation of ICNU.

13 JUDGE KOPTA: Okay. Well, I just didn't

14 want to be in a situation where the Commission, if it

15 does resolve some of those issues and Microsoft is not

16 at the table and later comes back and says, whoops, wait

17 a minute. What about us?

18 MR. PILIARIS: I believe that they're aware

19 of the case and that these issues are being raised in

20 that case.

21 JUDGE KOPTA: All right. Mr. Balasbas?

22 COMMISSIONER BALASBAS: Thank you.

23 This is to Mr. Piliaris. I have a couple of

24 clarifying questions on the transition fee payment. So,

25 one, the contract states that Microsoft will make --

0104

 1 make that a one-time payment, and I'm assuming that is a

 2 lump sum payment, correct?

 3 MR. PILIARIS: That's correct.

 4 COMMISSIONER BALASBAS: And the settlement

 5 agreement states that PSE will pass through that

 6 transition fee back to its customers through Schedule

 7 95; is that correct?

 8 MR. PILIARIS: That's correct.

 9 COMMISSIONER BALASBAS: And on a

10 dollar-for-dollar basis, the contract states to PSE's

11 bundled rate -- or, sorry, bundled retail electric

12 customers, while your testimony refers to repeat

13 customers. So I want to clarify, who are the specific

14 customers that will receive the monies through Schedule

15 95?

16 MR. PILIARIS: Bundled service would be --

17 in my mind, they're both the same customers, same group

18 of customers. Remaining would not include, for example,

19 449 customers who are not bundled service customers.

20 They would not receive any of those benefits.

21 JUDGE KOPTA: So bundled means both

22 transmission and generation?

23 MR. PILIARIS: Correct.

24 COMMISSIONER RENDAHL: Okay. So just to be

25 clear -- and this is getting a little more accounting

0105

 1 technical -- but what FERC account is PSE going to use

 2 to deposit those funds? Is that -- is that account

 3 going to accrue interest, and will that interest be

 4 passed on to customers if there is interest accrual?

 5 MR. PILIARIS: The account itself, I can't

 6 say with certainty at this point. I'm sure the

 7 accountants back home would know. It would probably be

 8 some deferred liability of some sort.

 9 As to the issue of interest, the Company's

10 interest in that part of the plan was to not pay

11 interest and to pass these dollars back as quickly as

12 possible. And so that was why it was thought to be

13 returned in a year would be sufficient, so the agreement

14 does not hold for any kind of interest accrual on top of

15 the payment that Microsoft is already paying.

16 Another way to perhaps look at it is the

17 interest is embedded within the transition fee

18 contemplating a 12-month return to customers. It's not

19 explicit, of course, but that would be another way of

20 perhaps looking at it.

21 COMMISSIONER RENDAHL: Okay. So maybe I can

22 make this bench request. One, about the FERC account,

23 what FERC account the monies would be deposited in while

24 they are being passed on to customers. And then

25 further, if PSE could identify the specific accounting

0106

 1 entries, the accounts being debited and credited from

 2 the time that PSE receives the transition fee monies

 3 until customers are compensated through Schedule 95.

 4 MR. PILIARIS: We can certainly do that.

 5 COMMISSIONER RENDAHL: Thank you.

 6 And then one follow-up question, which I

 7 don't know that will need to be a bench request, but

 8 we'll see. Will that transition fee be in a sense an

 9 additional rider that's calculated to calculate the

10 effective power cost adjustment rate? Is it being

11 calculated together or is it separate?

12 MR. PILIARIS: The contemplation is it would

13 be separate.

14 COMMISSIONER RENDAHL: Okay. So it's not

15 like the Federal Incentive Tracker, it will just be a

16 separate?

17 MR. PILIARIS: It would be a separate amount

18 that would be passed through Schedule 95, but it would

19 not be commingled with any of our current costs per se.

20 COMMISSIONER RENDAHL: Okay. So it would be

21 like a line item to calculate the baseline PCA rate?

22 MR. PILIARIS: Within the PCA calculations

23 themselves, I don't believe that there will be a

24 separate line item on the bill, if that is where

25 you're --

0107

 1 COMMISSIONER RENDAHL: Well, maybe a line

 2 item in calculating for the Commission.

 3 MR. PILIARIS: Yes, you would see that

 4 presented separately.

 5 COMMISSIONER RENDAHL: But not on the bill?

 6 MR. PILIARIS: I guess the answer to that is

 7 depends. If there are no other funds or no other rate

 8 adjustments going through Schedule 95 at the time, then

 9 that will be the only thing on the bill in Schedule 95.

10 If there are other power cost adjustments occurring

11 through Schedule 95, then they would likely be lumped

12 into that same line item.

13 COMMISSIONER RENDAHL: Okay. And I guess I

14 turn to Staff and see if that's Staff's understanding of

15 the same -- your understanding of how this would be

16 passed through.

17 Mr. Gomez?

18 MR. GOMEZ: Dave Gomez, Commission Staff.

19 Yes, Commissioner, you're -- as stated by Mr. Piliaris,

20 that's how Staff would envision it also. We're very

21 familiar with the Schedule 95 adjustments. It's fairly

22 routine. We just went through one for PCORC, and so

23 those adjustments are fairly straightforward and how

24 they blow through the cost of service.

25 COMMISSIONER RENDAHL: Okay. Thank you.

0108

 1 COMMISSIONER BALASBAS: Just one follow-up

 2 question, Mr. Piliaris, and others may answer it if they

 3 have anything to add.

 4 So from the timing perspective of that

 5 12-month return to customers, is it PSE's vision that

 6 Microsoft would make that payment in month A, and then

 7 beginning in month B, that begins -- the following

 8 month, that begins the 12-month return period?

 9 MR. PILIARIS: Yeah, I believe -- I believe

10 the language in the contract says that they will --

11 Microsoft would pay -- have to make the payment by the

12 last day of the first month that they -- full month that

13 they take service. We'll obviously have sufficient

14 notice that this is coming, and so we would likely

15 file -- make a Schedule 95 filing, put it before the

16 Commission so that it can go through its 30-day notice.

17 So if all goes as well as we would hope, it

18 could happen simultaneously, that the moment we get the

19 payment, rates would already be in effect at that time

20 in passing back money to bundled service customers.

21 JUDGE KOPTA: While we're talking about the

22 transition fee, I note that the calculation is based on

23 a five-year period, but the payout is on a one-year

24 period. Is there going to be a rate impact for

25 customers years two through five when they've already

0109

 1 received payment for the costs incurred during -- or not

 2 incurred -- during that time?

 3 MR. PILIARIS: Yes. The likely outcome

 4 would be that the rates would fall initially during that

 5 year with a credit, essentially four years' worth of

 6 costs and one year worth of benefit, as Mr. Mullins

 7 noted, are passed back to customers. In years two

 8 through five or two through four, I guess, rates would

 9 likely be higher from that point forward. So there's a

10 timing issue there, that's correct.

11 JUDGE KOPTA: Is there any other impact on

12 rates that this will -- for example, in the pending rate

13 case, will this have any impact on rate case or any

14 other calculations in terms of rates?

15 MR. PILIARIS: It will -- there's going to

16 be a number of impacts through -- if and when Microsoft

17 begins taking service. Decoupling, as you may know in

18 the rate case, the proposal is to roll fixed production

19 costs into the decoupling mechanism. And so

20 contemporaneous with the Schedule 95 filing would be a

21 filing to -- to change the allowed revenue per customer

22 that -- that PSE accrues its revenue through the

23 decoupling mechanism.

24 I don't think at this point, it's

25 contemplated that we would necessarily change customers'

0110

 1 rates at that time necessarily because it's unclear as

 2 to when this might happen anyway. And in so doing, it

 3 would just roll through the deferral in the decoupling

 4 mechanism, and then it would -- that deferral would then

 5 appear in the next regularly scheduled decoupling

 6 true-up filing, Schedule 142 filing, that occurs for

 7 rates effective May 1.

 8 So it's a little bit complicated, but the

 9 idea was to make it as sort of behind the scenes from a

10 customer's perspective so they're not seeing their rates

11 bounce up and down too much, any more than necessary

12 anyway. So that filing would need to be made. There

13 would be an impact. And that's why I raised in my

14 testimony in the rate case the need for evaluating the

15 decoupling of allowed revenue per customer for fixed

16 production costs both on the basis of having Microsoft

17 included as a bundled service customer and assuming that

18 their (inaudible).

19 JUDGE KOPTA: Okay. And as far as the

20 Schedule 95 payments or credits to customers, do you

21 have a quantification of how much that's going to be on

22 an average customer's bill? I mean, so that, you know,

23 going down in year one and not in year two is going to

24 be really noticeable or not so much?

25 MR. PILIARIS: When you're rolling through

0111

 1 roughly $20 million and change, in aggregate, that's

 2 about 1 percent of our electric revenue requirement, so

 3 that would roughly represent a 1 percent decrease in

 4 rates for that year, maybe slightly more. And it will

 5 vary obviously from class to class, depending on how the

 6 costs are allocated and the credits allocated.

 7 JUDGE KOPTA: So it would be a 1 percent

 8 decrease and then a corresponding 1 percent increase in

 9 years two through four?

10 MR. PILIARIS: Not necessarily 1 percent

11 decrease because the -- if you -- if you look at the

12 analysis in -- presented in JAP-3, it shows an annual

13 view of the stranded costs that we're estimating. Now,

14 if you -- if those projections bear out, those were in

15 the vicinity of about $12 million, and I believe that I,

16 actually, in my testimony had this as confidential

17 information so I apologize.

18 JUDGE KOPTA: Not anymore.

19 CHAIRMAN DANNER: Oops.

20 MR. PILIARIS: So that's -- so roughly

21 speaking, that's about a half percent increase

22 prospectively from your view on -- now, again, the

23 timing of that is unclear. As I noted, it's likely that

24 PSE would begin to accrue that revenue from an

25 accounting perspective but not actually start collecting

0112

 1 that revenue until Schedule 142 decoupling rates were

 2 adjusted in the following May 1st filing.

 3 JUDGE KOPTA: Okay. I'm just trying to get

 4 a sense of -- from a customer perspective, they're going

 5 to look at their bill and either say wow or eh.

 6 MR. PILIARIS: I don't think they're going

 7 to notice given the various changes. There's lots --

 8 obviously lots of pieces to the customers' bills

 9 particularly in our tariff. There's roughly ten riders

10 for customers, and so, I mean, any one of them could be

11 changing at any given point in time. A 1 percent

12 decrease followed by a half a percent increase, I don't

13 believe would get much notice.

14 JUDGE KOPTA: Okay. Mr. Chairman?

15 CHAIRMAN DANNER: Okay. I just want to

16 shift topics here just a little bit. Could you tell me

17 kind of --

18 MS. COLAMONICI: Oh, I just wanted to add,

19 the actual monthly impact for residential customers is

20 about 50 cents for the four years of costs.

21 CHAIRMAN DANNER: For years two through

22 five?

23 MS. COLAMONICI: Correct, yeah.

24 CHAIRMAN DANNER: All right. Thank you.

25 Now, I just want to hear kind of what the

0113

 1 timelines are for the implementation of this. How soon

 2 is the Company looking to procure this? I know you have

 3 to get some meters up and running in your campuses.

 4 When are we going to see all this take place?

 5 MS. PLENEFISCH: Well, the goal is around

 6 July 2018. As you say, we have to get meters in place.

 7 We also have to establish a transmission agreement. We

 8 have to come to a final agreement with whichever power

 9 supplier we end up choosing, and I think we have to sign

10 the special contract. I believe those were the four

11 requirements. So one of those has happened.

12 But, you know, as you know, these things

13 take quite a while, particularly the metering, because

14 there are more than a hundred meters on the campus that

15 all need to be replaced. But, yeah, we're looking at

16 July 2018.

17 CHAIRMAN DANNER: That's just on the campus.

18 You have other locations as well?

19 MS. PLENEFISCH: Well, it's our leased

20 facilities in Bellevue, as well as the campus, yeah.

21 CHAIRMAN DANNER: Okay. Thank you.

22 And then there are provisions about

23 termination, if you find you can do things cheaper

24 elsewhere. There's also provisions if you jointly

25 decide to amend, and I'm just wondering what the process

0114

 1 is for either notifying the Commission or what the

 2 Commission's authority would be in approving any

 3 amendments to this contract. What are you seeing

 4 Commission's role in that as being?

 5 MS. PLENEFISCH: I think I'm going to need

 6 to get back to you on that. I'm not sure I am familiar

 7 enough with the mechanisms for handling those issues.

 8 CHAIRMAN DANNER: All right. Would it be

 9 okay to ask Mr. Kuzma if he knows?

10 JUDGE KOPTA: Certainly, or Ms. Thomas.

11 MS. THOMAS: Sure, Liz Thomas for Microsoft.

12 It's our understanding that if the

13 Commission approves the contract as-is, Commission

14 approval would be required for any amendment to the

15 contract.

16 CHAIRMAN DANNER: Okay. So Commission is

17 not just notification but approval --

18 MS. THOMAS: Yes.

19 CHAIRMAN DANNER: -- for amendments?

20 Okay. And then if the Company -- let's see,

21 I am trying to remember where the provision is for

22 the...

23 MS. THOMAS: Termination?

24 CHAIRMAN DANNER: Well, just -- yeah, if --

25 yeah, Section 3.1 of the Special Contract, so you

0115

 1 terminated -- you find a cost effective alternative,

 2 same thing, does that require our approval or is that

 3 just notification to us?

 4 MS. THOMAS: That, I think, would be just a

 5 notice item, and the intent of this provision really

 6 from Microsoft's perspective is to ensure that the

 7 contract will never terminate unless by some major

 8 change in the industry, it develops that there is an

 9 alternative way to get the electrons to the campus.

10 CHAIRMAN DANNER: Okay. So but otherwise,

11 if there's a modification to the agreement, otherwise it

12 would be something that would come to us?

13 MS. THOMAS: Yes, Mr. Chair.

14 CHAIRMAN DANNER: Okay. Mr. Kuzma, is that

15 your understanding as well?

16 MR. KUZMA: Yes, that's PSE's understanding

17 as well. Any amendment to the terms and conditions

18 would require Commission approval.

19 With respect to termination under this

20 clause, as Ms. Thomas indicated, this would be some

21 alternative distribution supplier would be in that area,

22 whether that be municipal or another IOU in which case

23 the Commission would have jurisdiction over the other

24 IOU. But if it's going to be PSE that has the natural

25 monopoly of distribution there, then this would be

0116

 1 within the Commission's purview.

 2 CHAIRMAN DANNER: All right. Thank you.

 3 MR. CASEY: Your Honor, I would just --

 4 This is Chris Casey for Commission Staff.

 5 Just point Your Honor to WAC 480-80-143,

 6 which is the Commission rule for special contracts.

 7 Section 2 says, "Any significant modification of a

 8 previously executed contract will be treated as a new

 9 contract for purposes of this section" and would have to

10 go through the application process detailed in Section

11 5.

12 CHAIRMAN DANNER: I appreciate that. That

13 was my understanding as well. I just wanted to hear

14 folks say it. All right.

15 COMMISSIONER RENDAHL: Does anyone need a

16 break?

17 MS. PLENEFISCH: Breaks are always welcome.

18 JUDGE KOPTA: Sure. Let's take a ten-minute

19 break. It's now ten 'til 11:00. Everybody be back at

20 11:00, please.

21 (A break was taken from

22 10:49 a.m. to 11:03 a.m.)

23 JUDGE KOPTA: Let's be back on the record

24 after our brief morning break and resuming with

25 questions from the bench. Commissioner Rendahl.

0117

 1 COMMISSIONER RENDAHL: Good morning, again.

 2 So, again, Ms. Plenefisch and Mr. Piliaris,

 3 I'm going to go back to this issue of the enforcement of

 4 the RPS terms of the contract. Particularly the

 5 interplay between Section 4.9.3, which is that section

 6 about the penalty that we were spending some time on

 7 earlier, and also Section 2.2, which is the enforcement

 8 of the contract and provides that the contract is

 9 subject to the enforcement, supervision, regulation,

10 control, and public inspection by the Commission.

11 So, again, if there's questions from Staff,

12 in the usual course of events, Staff will issue a data

13 request to the Company to get a response to a query that

14 they have about particular information. Would Microsoft

15 be willing to submit to the Commission's jurisdiction

16 for the purposes of the review and analysis and

17 enforcement of this, of these terms, these RPS terms of

18 the contract so that Staff can ask those questions

19 directly of Microsoft and get a response? Because

20 clearly, as Mr. Piliaris said, PSE is a conduit. So

21 would Microsoft be willing to submit to the Commission's

22 jurisdiction for enforcement of this particular -- these

23 RPS terms of the contract?

24 MS. PLENEFISCH: Well, let me -- if I could

25 ask you a question to better understand your question.

0118

 1 Does your question -- does your question arise from

 2 concern as to the burden of proof?

 3 COMMISSIONER RENDAHL: My question arises

 4 from the concern about Staff being able to get the

 5 information it needs to do its work.

 6 MS. PLENEFISCH: Okay.

 7 COMMISSIONER RENDAHL: And so the reason --

 8 what I'm asking is, would you be willing to have Staff

 9 directly query Microsoft and provide a response directly

10 to Staff under the terms of Section 2.2 in terms of the

11 public inspection by the Commission. That's what I'm

12 referring to, getting the information to Staff directly.

13 MS. PLENEFISCH: Well, I guess I am

14 wondering if there's another way to get there because

15 we're not a utility and don't intend to become one

16 through this process so --

17 COMMISSIONER RENDAHL: But you have assumed

18 some of the responsibilities of a utility under the

19 Energy Information Act (sic) by -- in this special

20 contract. You have assumed some of the obligations so

21 that it's --

22 MS. PLENEFISCH: I don't believe we're

23 covered by that act, though. We have agreed to

24 requirements that parallel that act, but we have not

25 agreed that we come under its jurisdiction.

0119

 1 COMMISSIONER RENDAHL: I would agree, but

 2 you have taken on some of the responsibilities that a

 3 utility has under the Energy Information Act, correct?

 4 Energy Independence Act, so you've taken on the RPS --

 5 MS. PLENEFISCH: We have taken on

 6 commitments to meet certain renewable standards. They

 7 actually go above as we've discussed that act.

 8 So -- but I wonder if there's another way to skin this

 9 cat. If -- if, let's say, there's a question as to

10 whether or not we've met our requirement or let's say

11 that we provided information to Puget Sound Energy, they

12 provide that information to Commission Staff. It

13 appears that we have not met the requirement, then Staff

14 could direct Puget Sound Energy to issue a penalty. And

15 in that situation, if we felt that the penalty was

16 inappropriately applied, then it would be on us to open

17 a proceeding to show that.

18 COMMISSIONER RENDAHL: I guess my question

19 is maybe not as extreme as the penalty at this point.

20 MS. PLENEFISCH: Okay.

21 COMMISSIONER RENDAHL: My question is more

22 about the actual ease of -- of managing this provision

23 of the contract so that if PSE is just passing messages

24 back and forth, sometimes that's not the most efficient

25 way to ask a question, and can Staff ask questions

0120

 1 directly of Microsoft to understand the information that

 2 Microsoft is giving to PSE. Sometimes being a middle

 3 person is not as effective as having direct

 4 conversation. That is my question.

 5 MS. PLENEFISCH: So I don't get out of my

 6 swim lane, would it be all right for the attorneys who

 7 seem very interested in this discussion to --

 8 COMMISSIONER RENDAHL: I would be very

 9 interested to hear what the attorneys have to say as

10 well. Thank you.

11 MR. KUZMA: PSE's thought on this with

12 respect to this reporting requirement would be that

13 perhaps Staff, Microsoft, and Puget were to -- or other

14 interested parties as well -- to agree on a reporting

15 and a verification requirements beforehand. As

16 Ms. Plenefisch mentioned, the earliest probably any of

17 the service would be would be, you know, 15 months; 14,

18 15 months from now.

19 So if we could agree on a reporting format,

20 style, verification information, ultimately Puget will

21 have the information as far as what loads were provided

22 to the locations during any given period of time. And

23 so then it's just a matter of matching those kilowatt

24 hours up with some tags perhaps as far as the -- for the

25 carbon-free issue. And then as far as RECs with respect

0121

 1 to the renewable issue.

 2 So that's what we were thinking. So at that

 3 point, Staff would have comfort that it has the

 4 information that it needs coming in the door, so then

 5 it's just a matter of perhaps a mathematical formula as

 6 far as do these meet the formulas within this contract,

 7 at which point -- at which point it would just be a

 8 binary decision to Puget, yes, they've met their

 9 requirements under the contract, there's nothing more to

10 do. Or, no, they failed by X percentage, and therefore,

11 you should assess a charge of X on the next bill.

12 And so that's what Puget was viewing on this

13 so that we could minimize, you know, going back and

14 forth. I mean, the more work we do upfront, the less

15 this would be hopefully over the course of the contract

16 because as Mr. Kahn said earlier, there are mechanisms

17 within the industry as far as being able to match the

18 various generations to the load.

19 COMMISSIONER RENDAHL: Ms. Snyder, do you

20 have any thoughts on that?

21 MS. SNYDER: Yeah. I think what Jason and

22 Irene both outlined there are pretty close to what Staff

23 was envisioning. And if for some reason Staff was not

24 receiving a report that had all the required information

25 that we needed to see that they had procured the right

0122

 1 amount of renewables, at that point, we would instruct

 2 PSE that, you know, this might be the right time to --

 3 or it would be the right time to impose the penalty.

 4 They could impose the penalty on Microsoft,

 5 and if Microsoft did not agree, at that point, they

 6 could bring the proceeding to challenge what PSE has

 7 charged them, say this is inappropriate and here's why.

 8 The burden of proof would be entirely on Microsoft at

 9 that point.

10 JUDGE KOPTA: I want to ask a follow-up

11 question if I might.

12 What's the process if PSE fails to meet its

13 RPS requirements?

14 MS. SNYDER: If PSE fails to meet, then

15 they -- it's been a while since I've done an actual RPS

16 proceeding. There's one coming up here soon, but once

17 PSE provides their report, if they fail to proceed, then

18 they are charged a penalty by the Commission.

19 JUDGE KOPTA: How does that happen?

20 MS. SNYDER: I believe that happens through

21 an open meeting process. I'm not sure if that needs to

22 go to hearing.

23 COMMISSIONER RENDAHL: I don't believe we've

24 ever assessed any penalties yet under RPS, so I think

25 that's a bit uncharted water, but I believe it's

0123

 1 specified in the rule under the statute so...

 2 JUDGE KOPTA: Yeah, and the reason I ask is

 3 I'm -- you know, we're obviously comparing what the

 4 obligation is of a regulated utility under the Energy

 5 Independence Act and what Microsoft has agreed to do.

 6 And so in addition to the burden-of-proof issue, which

 7 we've discussed quite a bit, I'm looking at process

 8 issue. I mean, I hate passive voice, and so when you

 9 say a penalty will be imposed, I don't know who's doing

10 that. Is that me? Is that the Commissioners? Is it

11 Staff sort of saying, Hey, you guys owe us a check? Is

12 it PSE is instrumental in saying, you know what, our

13 bad. Here you go.

14 MS. SNYDER: So the penalty in this case

15 would be part of the tariffed rate. So this would be --

16 I mean, it would be charged by PSE, but they would be

17 required to charge this amount at that point.

18 JUDGE KOPTA: So PSE would be sort of acting

19 in our shoes to impose a penalty on Microsoft?

20 MS. SNYDER: I wouldn't want to say "in our

21 shoes." Microsoft is not actually agreeing to comply

22 with the EIA. They are agreeing to comply with a

23 framework that's based off of the EIA largely. However,

24 you know, it would not be Microsoft agreeing to the

25 Energy Independence Act in any way.

0124

 1 JUDGE KOPTA: And Staff will be monitoring

 2 whether PSE is holding Microsoft's feet to the fire?

 3 MS. SNYDER: Staff will be looking at annual

 4 reports verifying that all the information is being

 5 provided and that Microsoft is complying with their

 6 contract. If for some reason they don't comply to their

 7 contract, then Staff would monitor whether or not PSE

 8 actually impose that penalty, yes.

 9 MS. GERLITZ: Excuse me. I just wanted

10 to -- Wendy Gerlitz with Northwest Energy Coalition.

11 I just wanted to jump in as an entity that,

12 you know, spends a lot of time looking at compliance

13 with the Energy Independence Act. We did, you know,

14 consider these questions quite heavily during the

15 settlement discussions, and I just wanted to point out

16 -- and I think our attorney alluded to this earlier, but

17 we envision that the -- the access to the reports and

18 information was one of the really important elements of

19 the settlement because we envision that the Northwest

20 Energy Coalition would continue in our sort of role of

21 reviewing compliance in terms of this special contract,

22 and we would continue to look at whether Microsoft is,

23 you know, living up to its obligations that it has

24 agreed to and so the access to that information.

25 So while I appreciate, you know, that Staff

0125

 1 will also be doing that, I just wanted to point out that

 2 it is important to us as a party that has done that for

 3 the Energy Independence Act, to continue to play that

 4 role under this special contract, and so that we would

 5 envision that any party really, but in particular the

 6 Northwest Energy Coalition would be also able to bring a

 7 complaint if they reviewed that report and found that we

 8 didn't, you know, believe that Microsoft was fulfilling

 9 its obligations under the special contract.

10 JUDGE KOPTA: So is the anticipation that it

11 could be a complaint against Microsoft or would it have

12 to be against PSE bringing in Microsoft?

13 Mr. Kuzma?

14 MR. KUZMA: The way Puget would look at this

15 is this is almost like -- and I think Mr. Goltz

16 indicated earlier, liquidated damages or a take-or-pay

17 contract, in that Microsoft can meet its obligations

18 under the contract by either satisfying the RPS and the

19 carbon-free standards or it can pay an amount. And it

20 would be Puget's obligation to assess the amount,

21 although what the contract -- the settlement does is it

22 also works with Staff as far as to verify because, you

23 know, I think part of the indication was that having

24 Staff there to verify that, yes, they did agree to

25 that the standard would be helpful in that Puget would

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 1 be assessing a penalty, a contract.

 2 Again, I think the problem we're running

 3 into is that the word uses "penalty" and so does the

 4 EIA. This is not an EIA penalty. This isn't a due

 5 process issue. This is a contractual payment that

 6 Microsoft has agreed to make to Puget that Puget would

 7 then pass through to the State. And so having the Staff

 8 there -- is there to help verify the amounts because

 9 they're viewed as, you know, a third-party expert in

10 this area.

11 And so they would just essentially, as we

12 indicated earlier, make the determination, yeah, we

13 think that they've met it. There's nothing more to do.

14 Or they've fallen short by X percentage in which case we

15 think that this amount, based upon the formula in the

16 contract is warranted, and Puget would put that through

17 as a charge under the contract. And Microsoft then

18 would have the right, as any customer, to pay the charge

19 in which case the issue is resolved or challenge it by

20 bringing a complaint with the Commission, in which case

21 it would be any regular proceeding that the Commission

22 has with respect to a customer complaint.

23 So this isn't really something that I would

24 view as implementing lots of due process issues. It's

25 just, we're relying on Staff as a check as to whether

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 1 Microsoft has complied with the term.

 2 COMMISSIONER RENDAHL: Okay. So let me

 3 clarify, then, if looking at Section 4.9.3 and that

 4 language about the showing. So in a sense, this isn't

 5 putting the burden on Staff to make this decision. If

 6 you substitute the word "penalty" for "payment" in that

 7 sentence, so any payment imposed upon Microsoft, right?

 8 Then it's really PSE has the burden of determining

 9 whether Microsoft failed to exercise reasonable care and

10 prudence; is that what you're saying in your last

11 description? That's my now, you know, more developing

12 understanding of this sentence.

13 MR. KUZMA: Yeah, I think that that would be

14 a pretty accurate description of it. I think

15 ultimately, it would be sort of an issue where Staff

16 might suggest this amount is warranted under this

17 circumstance, Puget agrees, issues the payment.

18 Microsoft comes back with a, well, we -- here's the

19 problem. We had a transmission outage between X and Y,

20 and therefore, we had to rely on this unspecified energy

21 for this period of time, and that's why we failed to

22 meet it. In which case, you know, those discussions

23 would happen presumably between the three parties or

24 NWEC or any other interested party that might be

25 interested.

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 1 And so maybe it might warrant a mitigated

 2 penalty or payment under those circumstances. But that

 3 was sort of the intent here is that Microsoft, in this

 4 case, understood that it had an obligation and

 5 understood if it was just an abject failure of Microsoft

 6 to live up with the payment as warranted, but at the

 7 same time, I think they wanted to have the ability to --

 8 and I'm channeling for Microsoft a bit here -- they

 9 wanted to have the ability to, you know, provide some

10 justification for any -- any excuse that would be made,

11 whether it be a force majeure or something like that in

12 the future that prevented them from maintaining the

13 standard for a certain period of time.

14 COMMISSIONER RENDAHL: So it's less of a

15 liquidated damages-type provision because there is some

16 ability for mitigation and ability for discussion

17 between PSE and Microsoft, not the Commission and PSE?

18 I am trying to figure out who determines the mitigation

19 of this penalty. If it's under the contract, it's not a

20 penalty imposed by the Commission. And this negotiation

21 about mitigation and whether there's force majeure and

22 how that happens is between PSE and Microsoft; is that

23 what I'm hearing?

24 MR. KUZMA: Yes, I believe that would be

25 true, and Puget would probably involve others as well

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 1 because others have an interest in the issues as well,

 2 but it would not be the Commission itself.

 3 JUDGE KOPTA: So as far as the Commission's

 4 role goes -- excuse me -- am I hearing correctly that

 5 it's ultimately PSE's responsibility to pay whatever

 6 money is owed as a result of Microsoft not meeting its

 7 RPS obligations into the fund?

 8 MR. KUZMA: No, it's Puget's obligation to

 9 try to enforce the terms and conditions of the contract,

10 which are to collect the amounts.

11 JUDGE KOPTA: So I'm looking at it from our

12 perspective, which is where do we come into this

13 process? If we, for whatever reason, if Staff or

14 Northwest Energy Coalition or somebody else says, hey,

15 wait a minute. There's something screwy going on here,

16 what do we do? Can we file a complaint against -- or

17 have Staff initiate a complaint against PSE? Can we

18 have a complaint against Microsoft? Can it be against

19 both? How can we proceed?

20 MR. KUZMA: If Puget's filling its

21 obligations under the contract to try to impose the

22 charge upon Microsoft, then the Commission would have a

23 right to go in and file a complaint against Puget for

24 the same reason that if Puget failed to charge customers

25 the late charges required under its tariffs, then the

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 1 Commission would have the right to do it in that case.

 2 In Puget's view, this is no different than

 3 any other charges that we have in any of our tariffs.

 4 If Puget fails its obligations under the tariff, then

 5 the Commission has a right to come against Puget. If

 6 Puget follows through and assesses the charge to

 7 Microsoft and Microsoft fails to pay or would like to

 8 dispute that, then they can raise an issue before the

 9 Commission at that time.

10 JUDGE KOPTA: Well, and that's assuming that

11 they raise it. I mean, my concern is if -- I don't know

12 if this is going to happen, but, you know, the lawyer in

13 me looks at all contingencies. What if there's a

14 circumstance where PSE says, you know what, Microsoft,

15 you owe a certain amount of money. And Microsoft says,

16 no, we don't. And we bring a case against PSE, and PSE

17 is going to say, hey, Commission, we agree with you,

18 it's Microsoft, what do we do?

19 MR. KUZMA: Well, in that case, I think --

20 you've raised an interesting issue in there.

21 JUDGE KOPTA: I think so.

22 MR. KUZMA: Yeah.

23 MS. THOMAS: Judge Kopta, I think in that

24 highly unlikely circumstance, you would have continued

25 jurisdiction over the contract and could open a

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 1 proceeding in this docket, and, you know, presumably

 2 Staff would be interested in ensuring that the contract

 3 was enforced as well and, you know, for example, impose

 4 a further condition on the contract.

 5 JUDGE KOPTA: So this is sort of a parallel

 6 to Commissioner Rendahl's question, only in a different

 7 context. Is Microsoft agreeing that the Commission has

 8 jurisdiction to enforce the agreement under those

 9 circumstances? I mean, the Commission has jurisdiction

10 over Microsoft to enforce --

11 MS. THOMAS: Well, I guess in my view -- and

12 maybe this is a dualism that isn't really accurate --

13 but the Commission has continuing authority over the

14 contract and can revisit the contract if necessary to

15 ensure that the contract continues to serve the public

16 interests. And so if there is -- if Microsoft's

17 noncompliance basically means that the contract is not

18 being implemented as written, Microsoft believes that

19 the Commission would have the authority to -- to revisit

20 the contract and consider whether additional conditions

21 might be required.

22 JUDGE KOPTA: Well, what about, would you

23 think that the Commission would have the authority to

24 say, Microsoft, you owe this amount of money to go into

25 the EIA fund?

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 1 MS. THOMAS: I think that the Commission

 2 would -- would have the authority to determine that the

 3 contract requires Microsoft to make that payment to the

 4 EIA fund and to impose conditions designed to make sure

 5 that Microsoft complies with that conclusion.

 6 JUDGE KOPTA: And from an enforcement

 7 perspective, would that then put the monkey back on

 8 PSE's back to say, you need to collect this money from

 9 Microsoft or can we directly order Microsoft to make

10 this payment?

11 MS. THOMAS: I don't see that there is a way

12 for the Commission to directly order Microsoft to do

13 anything different from what the Commission could order

14 PSE's other customers to do. I think Microsoft -- and I

15 will defer to Mr. Casey on this.

16 MR. CASEY: You know, I think ultimately

17 what we're dealing with here is a tariff rate issue like

18 we deal with tariff rate issues all the time. PSE has a

19 responsibility to charge the rate and impose the terms

20 and conditions as they are in the contract once it's

21 approved by the Commission.

22 In terms of whether Microsoft was, you know,

23 unwilling to pay something, essentially have a bad debt

24 issue where the Commission -- the Commission would have

25 a number of ways to -- to deal with PSE in terms of

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 1 whether PSE prudently handled that debt issue. I don't

 2 believe the Commission would go directly after Microsoft

 3 for collection. I believe that would be PSE's

 4 responsibility, and PSE might even, you know, initiate

 5 litigation to pursue that debt out of a worry that if it

 6 didn't collect it, it might come out of its own

 7 shareholders' pockets.

 8 So, you know, again, I think that what's

 9 happening here is just implementation of a tariff rate,

10 and that's part of the reason why we were very careful

11 to take all of the, you know, essential terms of the

12 agreement and embed them directly into the contract so

13 that they are all embedded within the service. And I

14 agree, we have a -- there's, you know, this vocabulary

15 issue a little bit in terms of the word "penalty," and I

16 remember looking up that word and, you know, wondering

17 if "fee" was better and looking it up in Black's Law

18 Dictionary and then saying, okay, maybe this all doesn't

19 matter in terms of, you know, changing actual legal

20 responsibility.

21 There is -- you know, in terms of these

22 enforcement obligations, there are, you know, charges

23 that get imposed under certain conditions, and it's

24 PSE's obligation to correctly administer that.

25 JUDGE KOPTA: Well, the problem just --

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 1 CHAIRMAN DANNER: So -- go ahead.

 2 JUDGE KOPTA: The problem with your analogy

 3 about this being like a tariff term is that PSE doesn't

 4 get the money in this case. It goes to some other fund.

 5 So PSE doesn't have quite the same incentive to ensure

 6 that the money is collected as if it were going to

 7 receive the money itself.

 8 And there are also provisions that allow for

 9 some sort of mitigation of this amount, and so is PSE

10 going to determine whether or not this amount should be

11 mitigated or whether there have been force majeure

12 events? That's not something that PSE ordinarily would

13 be doing. It's something that the Commission ordinarily

14 would be doing, and so that's why we're trying to --

15 we're struggling a little bit with trying to understand

16 what is our role.

17 CHAIRMAN DANNER: Mr. Casey, does that

18 change? I mean, the terms of a special -- the essential

19 terms of a special contract are considered to be part of

20 the Company's electric tariff, correct?

21 MR. CASEY: Yeah, the special contract is

22 considered an extension of the tariffs, and it is

23 subject to the Commission's continuing regulation in the

24 same manner --

25 CHAIRMAN DANNER: Inspection, oversight,

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 1 enforcement, everything else. So if Microsoft doesn't

 2 meet the terms of the contract that it signs with Puget,

 3 the Commission can go after Puget to ensure performance

 4 of the contract or at least make the ratepayer whole,

 5 and then whatever it needs to get in terms of

 6 reimbursement from Microsoft, it would basically do like

 7 any other contract enforcement action, it would go in

 8 civil proceeding in court and get its money back?

 9 MR. CASEY: Yeah, I believe the Commission

10 would have, you know, a variety of tools to address PSE

11 and PSE's implementation of, you know, this contract. I

12 mean, we haven't gone -- gone through every potential

13 example, but I believe the -- you know, the tools are in

14 place for the Commission to ensure that a utility

15 subject to its regulation charges the correct -- correct

16 rates. I mean, if there is an incorrect charge, there

17 are statutes that deal with that and rules that deal

18 with that.

19 And so, again, I believe these are, you

20 know, highly unlikely situations we're talking about.

21 They're not situations that come before the Commission

22 often. You know, but I'm confident that the Commission

23 has the tools to ensure that PSE lives up to its

24 responsibilities to implement the tariff in the

25 contract.

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 1 CHAIRMAN DANNER: Okay. So if we feel we

 2 need some data, we make a data request to PSE. If PSE

 3 says, oh, we don't have that, that's Microsoft's data,

 4 then we can deem that to be a shortcoming on PSE's part

 5 that they didn't provide us the data we requested?

 6 MR. CASEY: Well, so with respect to the

 7 reporting requirement, Microsoft has a reporting

 8 requirement that is embedded in the contract, and if it

 9 doesn't live up to that requirement and -- and provide a

10 report that satisfies Staff that it has lived up to its

11 obligations, Staff is going to say, hey, PSE, we haven't

12 found from this report or there is no report, go

13 implement the fee. And -- and then if there is an issue

14 there, they will implement the fee, and if Microsoft has

15 issue with that, it would be required to challenge the

16 manner in which PSE is implementing the contract in the

17 same way any customer can say, PSE's overcharged me. I

18 don't think you usually get a situation where a customer

19 says, PSE has undercharged me. But, you know,

20 theoretically could happen as well.

21 But -- and we have dealt with that. I mean,

22 I have been on cases where we say, oh -- I don't believe

23 it was with PSE, but a regulated utility did not

24 implement a charge on a correct day or it over -- it

25 overcharged or -- because it was, for instance,

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 1 implementing the late fee too early. And so there was

 2 all these overcharges, those got passed back. There

 3 were penalties for not correctly implementing the

 4 tariff. This is, you know, a bigger version of those

 5 same types of problems because this is PSE's largest

 6 customer.

 7 CHAIRMAN DANNER: Well, and I would just

 8 echo that point. This is not the first special contract

 9 that has come before us, but it is by far the largest

10 and most complex. And so I think that's why we're

11 trying to do a deep dive into making sure we understand

12 it.

13 MR. CASEY: Certainly. Certainly appreciate

14 this, and this is something we toiled with in the

15 development of the special contract, despite the fact

16 that we all believe it's highly, highly unlikely that

17 these kinds of situations will occur.

18 And, you know, we're talking right now in

19 extreme terms about, you know -- you know, legal

20 authority to be able to do something. I would highly

21 anticipate that these issues would be resolved in a much

22 more cooperative way and, you know, likely with a, you

23 know, a proceeding to have the Commission help

24 resolve -- resolve the dispute. And I'll also note that

25 I believe there's some mediation provisions in the

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 1 special contract. You know, so there's some various

 2 tools to be able to work out any issues if they can come

 3 up.

 4 COMMISSIONER RENDAHL: So in those dispute

 5 resolution provisions, and I don't have the section.

 6 MS. SNYDER: Paragraph 13.

 7 COMMISSIONER RENDAHL: Thank you.

 8 So in that, I understand that Microsoft has

 9 agreed to bring itself within those provisions so if

10 there is a disagreement, Microsoft can request mediation

11 or discussion before the Commission; is that -- is that

12 how those provisions would work? Either party could

13 bring themselves before the Commission to seek mediation

14 of an issue?

15 MR. CASEY: Yes, that's my understanding

16 that they will -- prior to initiating, you know, a

17 formal complaint, they will -- they will attempt to use

18 those provisions to find a, kind of, less painful

19 resolution of the matter.

20 COMMISSIONER RENDAHL: Right. So,

21 Ms. Plenefisch, it says that "PSE and Microsoft shall

22 each make good faith efforts to resolve such dispute

23 pursuant to alternative dispute resolution procedures

24 consistent with WAC 480-07-700."

25 So does that mean they could be outside of

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 1 the Commission if they're consistent with those rules

 2 but not subject to those rules, you could seek alternate

 3 dispute resolution through some other avenue or is that

 4 before the Commission?

 5 MS. PLENEFISCH: Again, I think I have to

 6 ask our lawyer to respond to your question.

 7 MS. THOMAS: Thank you, Commissioner

 8 Rendahl. The -- what was contemplated here was that the

 9 parties would make use of the Commission's ADR

10 procedures to the maximum. When you go on to the

11 subsection ii of Section 13, it's clear that the concept

12 is to use the Commission's own ADR procedures.

13 COMMISSIONER RENDAHL: And that would

14 include seeking mediation before the Commission, seeking

15 use of the Commission's mediation opportunities?

16 MS. THOMAS: Yes, Your Honor.

17 COMMISSIONER RENDAHL: Okay. Thank you.

18 Well, I'm going to move on to another topic

19 now. I'm sure you're all very happy about that.

20 CHAIRMAN DANNER: I believe Mr. Goltz wanted

21 to say something.

22 MR. GOLTZ: I just wanted to say a couple

23 things regarding, you know, obviously everyone is

24 concerned about what if, what if, what if, what if the

25 worst happens. And I think there's several safeguards

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 1 built in that should give the Commission quite a bit of

 2 assurance that these bad things won't happen.

 3 One is, as exhibited throughout this

 4 process, the good-faith intent of Microsoft to actually

 5 get -- you know, they've got a lot invested in this,

 6 saying we're going to go 100 percent carbon-free energy,

 7 and we're going to meet and go above and beyond what

 8 I-937 does. I don't think they want to headline this

 9 as, you know, Microsoft, you know, goes back on its

10 deal.

11 Second, you have Commission Staff is very

12 eager to make this work and is going to be receiving

13 these reports.

14 Third thing, as Ms. Gerlitz mentioned, in

15 the course of the negotiations, the -- it was agreed

16 that any of the settling parties in addition to Staff

17 and Public Counsel could, upon request, receive all

18 those reports, and as you know, in the implementation of

19 Initiative 937, Northwest Energy Coalition and others

20 have been eager to participate in the evaluation and

21 review of those. So I don't think anything would slip

22 by some combination of NWEC and Public Counsel and the

23 Commission Staff.

24 And finally, if it all just goes to heck,

25 you know, then there is the nuclear option, which is

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 1 RCW 80.04.210, which says the Commission can go back and

 2 revisit any of its orders which it has in the past -- as

 3 Mr. ffitch may recall -- and this is a -- something --

 4 so if it's not going well, and in fact, they aren't

 5 meeting the obligations and/or this whole enforcement

 6 mechanism is breaking down, then we start a proceeding

 7 and say, let's look at this again, which, by the way, is

 8 another reason why, you know, in hindsight, this is

 9 better to be done as a special contract than a tariff

10 because I think everyone is learning with this process.

11 So I think there's plenty of safeguards, and

12 if worst comes to worst, we do have the nuclear option

13 of 80.04.210.

14 CHAIRMAN DANNER: Okay. And I note that

15 nuclear is carbon-free. I don't know if the options are

16 considered. But, Mr. Goltz, your points are well taken.

17 COMMISSIONER RENDAHL: Okay. Moving on to

18 another topic.

19 So concerning the payment that

20 Microsoft -- or the requirement that Microsoft has made

21 in this special contract to make additional low income

22 program payments, and that's in paragraph 17 of the

23 settlement, in Section 11 of the contract. My

24 understanding is that PSE's low income weatherization

25 manager will be managing and disbursing these funds.

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 1 So first, Mr. Piliaris, will this

 2 disbursement of the funds and the management of the

 3 funds be something discussed with the Staff and other

 4 interested persons who participate in PSE's Conservation

 5 Resource Advisory Group or some other advisory group?

 6 Is that the understanding or is it solely within PSE's

 7 discretion to figure out what to do with this money?

 8 MR. PILIARIS: I believe ultimately, it is

 9 solely -- as it's written, solely within PSE's

10 discretion, but, of course, practically speaking, I

11 believe we would be consulting with the interested

12 parties for their input as to most appropriate uses of

13 those funds.

14 COMMISSIONER RENDAHL: And that would be in

15 the CRAG or some other group? I don't know if there's a

16 low income group that PSE has at this point.

17 MR. PILIARIS: Probably -- it's hard to say.

18 It probably would be a subset of those likely suspects.

19 Many of them are on the CRAG. There may be others as

20 well.

21 JUDGE KOPTA: And for the court reporter's

22 benefit, that's an acronym. Capital C, capital R,

23 capital A, capital G.

24 COMMISSIONER RENDAHL: And I was going to

25 ask if anybody else wanted to discuss -- have an answer

0143

 1 to this question. I see Mr. Collins.

 2 MR. COLLINS: Sure. Shawn Collins with

 3 Energy Project.

 4 We do have regular communication with the

 5 Company, with their manager for weatherization, so

 6 quarterly check-ins and annual in-person meetings. And

 7 our anticipation and hope would be that there would be a

 8 consultation with Energy Project and community action

 9 agencies who are delivering the low income program for

10 the use of those dollars.

11 COMMISSIONER RENDAHL: Okay. Any other

12 parties?

13 Ms. Snyder?

14 MS. SNYDER: Yes, I believe that we talked

15 about, you know, having this brought before the CRAG,

16 but this is not money that is through the conservation

17 rider necessarily, so it wouldn't be under the CRAG's

18 purview, but a subset of CRAG members.

19 COMMISSIONER RENDAHL: So that's some

20 consultation before disbursement?

21 MR. PILIARIS: Again, as a practical matter,

22 I believe that's correct, yes.

23 COMMISSIONER RENDAHL: Okay. And so the

24 agreement also refers to allowable uses of the funds for

25 intended uses of the funds. And so PSE would have the

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 1 discretion to use the funds in another way, other than

 2 these allowable and intended uses if it saw fit?

 3 MR. PILIARIS: Yes, based on the -- more

 4 likely than not, based on the feedback we're getting

 5 from the interested stakeholders.

 6 COMMISSIONER RENDAHL: Okay. Any other

 7 comments on that?

 8 Oh, Mr. ffitch?

 9 MR. FFITCH: Simon ffitch for the Energy

10 Project. Just a technical addition to the answer with

11 regard to your last question, and that is that the

12 provisions of the settlement do specify generally that

13 the purposes of the additional funds be dedicated to

14 energy efficiency or renewables. So that's kind of an

15 overarching set of parameters that applies sort of above

16 before you get to the allowable uses of the specific

17 examples and the discretion. It's got to be used for

18 those purposes per the settlement agreement.

19 COMMISSIONER RENDAHL: Okay. And then the

20 intended or allowable uses or suggestions for -- for

21 ways to use those within the umbrella?

22 MR. FFITCH: That's my understanding. I

23 certainly -- Mr. Collins or the Company can also address

24 that, but that's my understanding.

25 MR. COLLINS: In terms of the negotiations,

0145

 1 the dollars that we identified here are directly for the

 2 benefit of low income households for those stated

 3 purposes. So that's my understanding is that we would

 4 use them for energy efficiency or renewables for the

 5 direct benefit of identified low income households that

 6 are not in PSE's service territory.

 7 COMMISSIONER RENDAHL: Okay. Thanks.

 8 So I'm going to turn to some questions about

 9 transmission, and I think these are for you,

10 Mr. Piliaris.

11 So in her testimony, Ms. Plenefisch does say

12 that Microsoft is working with PSE to obtain

13 transmission service and then upgrade the meters, which

14 you've already mentioned, throughout the campus to allow

15 it to take service under the special contract. So

16 concerning the PSE's long-term transmission capacity for

17 its remaining load, its remaining core customers, does

18 the special contract give Microsoft any different rights

19 to transmission service, including any special terms or

20 conditions different than any other entity that might be

21 making a transmission service request under PSE's Open

22 Access Transmission Tariff?

23 MR. PILIARIS: No.

24 COMMISSIONER RENDAHL: Okay. And has

25 Microsoft made a request yet, a transmission service

0146

 1 request yet to PSE or is that still too early in the

 2 process?

 3 MR. PILIARIS: Not to my knowledge, but

 4 Microsoft might have better information.

 5 COMMISSIONER RENDAHL: I see shaking of head

 6 no.

 7 Okay. In addition, Section 12.2 of the

 8 special contract relating to the transition fee says

 9 that "Microsoft will not incur transmission stranded

10 costs"; do you remember that part of contract?

11 MR. PILIARIS: Yes.

12 COMMISSIONER RENDAHL: Okay. So if the

13 Commission were to approve this settlement and the

14 special contract and PSE is no longer servicing

15 Microsoft's current load, is PSE planning to retain for

16 its core customers in its native load, the remaining

17 native load, all of its existing long-term firm

18 transmission capacity?

19 MR. PILIARIS: PSE will continue to evaluate

20 the need and the propriety of retaining that

21 transmission access as you probably are aware. It's our

22 access, essentially, to the cheap power that's available

23 at the NIPPC primarily. And so to the extent that

24 allows access to the least cost resource, we would

25 retain that, but that would evaluated through our

0147

 1 resource planning process.

 2 COMMISSIONER RENDAHL: Mr. Kuzma?

 3 MR. KUZMA: If I may just ask for a point of

 4 clarification. Are we discussing on Puget's own

 5 transmission system or are we discussing a third-party

 6 such as Bonneville's transmission system?

 7 COMMISSIONER RENDAHL: Well, both. Whatever

 8 you have currently as your own transmission system and

 9 whatever current contracts you might have with -- the

10 arrangements you might have with Bonneville for

11 transmission that are your -- that is the Company's

12 contract arrangements with BPA.

13 MR. KUZMA: Okay. Thank you.

14 COMMISSIONER RENDAHL: Does that help?

15 MR. KUZMA: Yes. No, I was just trying to

16 differentiate between the two because I think

17 Mr. Piliaris was talking more along the lines of

18 third-party systems as opposed to Puget's transmission

19 system in which case the available transmission capacity

20 would be freed up temporarily, and then it would have to

21 go through its queue according to the terms and

22 conditions of the OATT with respect to other

23 transmission service requests on its own transmission

24 system, and presumably Microsoft would be one of the

25 many customers on that TSR.

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 1 COMMISSIONER RENDAHL: Mr. Gomez?

 2 MR. GOMEZ: Dave Gomez for Commission Staff.

 3 I'll take a stab at it being fresh off of

 4 examining in the Company's recent case its transmission

 5 picture, if you will, as it's presented in this case.

 6 And in my examination, the Company has not shed any

 7 transmission capacity or made any reference to having to

 8 do so. The thing to remember is that presently,

 9 Microsoft is a distribution customer. It's not taking

10 service at transmission voltages, so to that extent,

11 it's the -- Microsoft's departure doesn't create a gap,

12 if you will, with transmission segment that's not being

13 -- you know, that doesn't have a home.

14 And so to that extent, I don't think that

15 the impacts of Microsoft's departure will necessarily

16 change, at least the immediate transmission picture, but

17 as Mr. Piliaris says, the Company is constantly

18 evaluating it and Staff looks at the Company's

19 evaluation when it looks at the overall, and in the case

20 of the new case, the prudency of the renewal of certain

21 transmission segments to serve native loads. So I don't

22 think that we have an issue with regard to that.

23 Now, to serve Microsoft in the future, then

24 that would be the transaction or at least the -- the

25 interaction between PSE and in this case, Microsoft if

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 1 I'm -- correct me if I'm wrong -- would be under the

 2 Company's own tariff, Open Access Transmission Tariff.

 3 And in that case, those -- that transaction or that is

 4 covered in that tariff, which is regulated by the FERC.

 5 COMMISSIONER RENDAHL: Right.

 6 MR. GOMEZ: So anyway, I don't know if that

 7 answers or makes you feel better, but I tried to take a

 8 stab at it.

 9 COMMISSIONER RENDAHL: I appreciate it.

10 Mr. Piliaris, do you have anything to add?

11 MR. PILIARIS: (Shaking head.)

12 COMMISSIONER RENDAHL: Shaking his head no.

13 Okay. So one other question for you, then.

14 So the Commission recently approved an extension of

15 PSE's IRP filing until November 2017, correct?

16 MR. PILIARIS: Correct.

17 COMMISSIONER RENDAHL: Yeah, so if the

18 Commission were to approve the settlement, will PSE be

19 evaluating the effects of Microsoft's departure on its

20 need for future capacity and transmission needs?

21 MR. PILIARIS: I believe it's currently

22 doing so as a scenario essentially. We don't know when

23 or if ultimately Microsoft will take service under this

24 contract, and so we obviously need to be prepared for

25 that. But until they're -- it's for sure, for certain

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 1 that they're leaving, then for now, it's just more of a

 2 scenario planning.

 3 COMMISSIONER RENDAHL: Okay. Thanks.

 4 COMMISSIONER BALASBAS: Ms. Snyder, this

 5 question is for you. In your testimony, you're

 6 advocating for the Commission to initiate a docket on --

 7 to receive comments and hold a workshop on the broader

 8 issues that are not addressed in this proceeding,

 9 specifically on retail wheeling. My question for you,

10 is this proceeding a high priority for Commission Staff

11 and if so, why? And -- I guess I will let you answer

12 that first.

13 MS. SNYDER: First, I want to make clear

14 that the Commission Staff is not asking for the

15 Commission to put into the order the requirement that

16 this docket be opened. The Commission Staff is hoping

17 to initiate this docket.

18 It's high priority for a couple of reasons.

19 We have seen from other customers, we've heard from

20 other customers that they're interested in a similar

21 type of situation, and while Staff is comfortable with

22 this one-off tariff -- or special contract, excuse me,

23 we don't know whether or not this should be more broadly

24 implied, and before anything like this were to come to

25 us again, we would want to have a broader conversation

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 1 that involves stakeholders not involved in this

 2 particular proceeding. There's just definitely

 3 questions that should be fleshed out.

 4 COMMISSIONER BALASBAS: So what's your

 5 vision of if the Commission were to initiate a docket on

 6 this topic, what would your vision be for a potential

 7 timeline?

 8 MS. SNYDER: I would hope to have a workshop

 9 somewhere within the next six months hopefully, if

10 that's at all possible. I believe -- I believe we put a

11 date into -- I don't know if it's in the agreement or

12 the memorandum, but July of 2018 where I hoped for

13 conclusion of that docket.

14 COMMISSIONER BALASBAS: And if the

15 proceeding were opened, what kind of outcome would you

16 anticipate the Commission doing? Would it be a policy

17 statement, a rule?

18 MS. SNYDER: Staff is actually very open to

19 several different types of outcomes. We do not know if

20 a policy statement or a rule would necessarily be the

21 outcome of this type of proceeding. Until -- until we

22 initiate a docket and have more of a conversation or

23 have a chance to talk with the Commissioners and their

24 policy staff, we don't have any predetermined outcome in

25 Staff's mind.

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 1 COMMISSIONER BALASBAS: Before Mr. Kahn, I

 2 have one last question for Ms. Snyder, and I think this

 3 might be related to you next, is what kind of interest

 4 have you heard from other stakeholders on this type of

 5 docket?

 6 MS. SNYDER: So I think you can look at the

 7 parties involved here and see that there are absolutely

 8 some types of interest from certain parties, and I

 9 believe that Mr. Kahn could probably speak to that

10 better than I can.

11 MR. KAHN: So Robert Kahn, NIPPC.

12 First of all, I also want to just chime in

13 and say that a lot of effort has gone into this docket,

14 and I'm sure you will reach a satisfactory conclusion.

15 We, speaking for NIPPC, appreciate the opportunity to

16 have had a chance to add some value to this proceeding.

17 And in part, it was with anticipation that the

18 experience that everyone in the room has undergone could

19 well be replicated.

20 There is a pent-up demand on the part of

21 Corporate America to, number one, show commitment to

22 reducing the carbon footprint of their operations and

23 also to stay competitive and to only pay as much for

24 electricity as is required. The market offers multiple

25 opportunities to achieve both objectives, and we've seen

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 1 as recently as earlier -- or last month in Oregon an

 2 expression of genuine interest for some action to be

 3 taken by that state.

 4 And so the advantage that Washington has is

 5 that Schedule 448 and 449, which is on the borderline of

 6 ancient history, does demonstrate a successful program

 7 which I frankly think the State should be proud. Now,

 8 having said that, it's kind of at least my observation

 9 that the conversation here today suggests that there is

10 lots of complexities and lots of valid questions which

11 will be resolved and I think are close to being resolved

12 in the form of a settlement among all the parties here.

13 But let's just say, not every company is

14 Microsoft. And so as we would expect from Microsoft,

15 we're pleased to see them be the leading edge of what

16 I'm referring to on the part of other corporations and

17 businesses in this state to follow suit in some way.

18 And clearly stakeholders are going to have, as we do, as

19 you will, a primary concern that existing ratepayers be

20 held harmless. And I would argue that existing

21 ratepayers may well do better.

22 The timing is important I think insofar as

23 the lessons learned should be applied fresh and as

24 alluded to just moments ago, the future planning by

25 Puget in particular and the other two IOUs have their

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 1 own stories, but we focus on Puget since this is the

 2 topic of the day, investments that they may make to

 3 replace capacity at Colstrip shouldn't trip up, if you

 4 will, the opportunities of businesses to go and assume

 5 this responsibility themselves. In other words, let's

 6 not create stranded assets when we don't need to, okay?

 7 So there is a timeliness, there is a demand,

 8 there is proof positive, I think, that ratepayers can

 9 benefit and be held harmless, and obviously there is a

10 demand and interest from businesses. Beyond that, we're

11 here to say we're glad we participated, and we will be

12 actively participating in whatever Staff decides as a

13 procedural matter for considering this important topic

14 of direct access and consumer choice.

15 CHAIRMAN DANNER: So is it necessary that we

16 make that decision in the context of this order or is

17 that something we can just do in our usual course of

18 business?

19 MR. KAHN: I think -- well, I will leave it

20 to Staff, but the nature of this settlement did not in

21 the end include such a commitment. We're comfortable

22 with that.

23 CHAIRMAN DANNER: Okay. So insofar as this

24 settlement is nonprecedential, it's -- it actually could

25 be a little precedential? No response. All right.

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 1 I have no further questions.

 2 JUDGE KOPTA: All right. Is everything -- I

 3 have a practical question. There are certain

 4 preconditions that Microsoft needs to put into place

 5 before this contract basically takes service under this

 6 contract. Are you anticipating a flash cut to all of

 7 the power that Microsoft gets going from PSE to the

 8 contract or will it be a phase-in where you're taking

 9 some power from PSE and some power in the contract?

10 MS. PLENEFISCH: We don't anticipate a

11 phase-in. It would be a complete cutover.

12 JUDGE KOPTA: And Mr. Kahn referred to

13 Schedule 448 and 449. As I understand it under those

14 agreements, once you're out, you're out if it's a

15 customer. Is that the same kind of arrangement that

16 Microsoft will have, you will never get generation from

17 PSE?

18 MS. PLENEFISCH: That's right. That's what

19 we've agreed to under this proposed contract.

20 JUDGE KOPTA: Okay.

21 COMMISSIONER RENDAHL: I have just one

22 follow-up. I meant to ask, there's reference in the

23 contract to that Microsoft will continue to be a core

24 customer for service to certain locations that aren't

25 served under the special contract. Can you elaborate a

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 1 little bit more and give us a sense of what parts of

 2 Microsoft's service will remain a core customer.

 3 MS. PLENEFISCH: So this contract would

 4 cover Schedule 40, which is approximately 80 percent of

 5 our Puget Sound load and -- so we have facilities, we

 6 have a facility in Bothell, for example. We have, I

 7 believe, Redmond Town Center is not included in this.

 8 So we have corporate facilities around the Puget Sound

 9 region that are not included that don't currently take

10 service under Schedule 40, and therefore, aren't

11 included under this special contract.

12 COMMISSIONER RENDAHL: Okay. Thank you.

13 JUDGE KOPTA: Okay. All right. I believe

14 that concludes the questions from the bench. Is there

15 anything further from any party, witness, counsel,

16 redirect? All right. Well --

17 MS. PLENEFISCH: I do have one last comment.

18 I just want to get back to what Chairman Danner raised

19 as one of his principle concerns, and that is regarding

20 any potential cost shift. And I just want to kind of

21 bring it back up to sort of the 40,000-foot level. I

22 think if you look at the transition fee that we have

23 agreed to pay, if you look at our agreements as far as

24 conservation and continuing that program and then our

25 willingness to go above and beyond on the low income

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 1 tariff, as well as the fact that everybody's right is

 2 reserved under this agreement to make any future

 3 arguments that they might want to make with respect to

 4 Colstrip, we feel confident that there will be no cost

 5 shift to any remaining customers on PSE's system. I

 6 just wanted to state that. Thank you.

 7 JUDGE KOPTA: All right. One housekeeping

 8 matter, we do have a bench request to PSE. Do you want

 9 a date by which you can provide that?

10 MR. KUZMA: We could likely have something

11 early next week.

12 JUDGE KOPTA: All right. Well, what -- want

13 to give me like the 9th?

14 MR. KUZMA: The 9th would be fine.

15 JUDGE KOPTA: All right. Then we'll have

16 that due on May 9th, and we will await the transcript,

17 and the Commission will enter an order in due course.

18 So thank you all. We appreciate you all

19 coming and providing the testimony and answering some

20 difficult questions. They will help the Commission in

21 reaching its determination, and we appreciate your

22 support and being here and helping us flesh out the

23 record.

24 CHAIRMAN DANNER: Yeah, and I just want to

25 add, I do appreciate all the work that everyone has done

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 1 on this. I think this is -- certainly is new, it was

 2 complete, it was thorough. We have questions, that's

 3 our job, and so we will take it under review, but I want

 4 to thank you all for the work you've done.

 5 JUDGE KOPTA: All right. We are off the

 6 record.

 7 (Adjourned at 12:01 p.m.)

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 3 STATE OF WASHINGTON

 4 COUNTY OF THURSTON

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 6 I, Tayler Russell, a Certified Shorthand Reporter

 7 in and for the State of Washington, do hereby certify

 8 that the foregoing transcript is true and accurate to

 9 the best of my knowledge, skill and ability.

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12 Tayler Russell, CCR 3358

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