

Docket No. UE-161123 - Vol. II

Washington Utilities and Transportation  
Commission v. Puget Sound Energy

May 3, 2017



1325 Fourth Avenue • Suite 1840 • Seattle, Washington 98101

**206.287.9066**

[www.buellrealtime.com](http://www.buellrealtime.com)

Olympia | **360.534.9066** Spokane | **509.624.3261** National | **800.846.6989**

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

---

WASHINGTON UTILITIES AND ) Docket No. UE-161123  
TRANSPORTATION COMMISSION, )

)  
Complainant, )

)  
vs. )

)  
PUGET SOUND ENERGY, )

)  
Respondent. )

---

SETTLEMENT HEARING, VOLUME II

Pages 52-159

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

---

May 3, 2017

9:26 a.m.

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504

REPORTED BY: TAYLER RUSSELL, CCR #3358

Buell Realtime Reporting, LLC  
1325 Fourth Avenue  
Suite 1840  
Seattle, Washington 98101  
(206) 287-9066 | Seattle  
(360) 534-9066 | Olympia  
(800) 846-6989 | National

[www.buellrealtime.com](http://www.buellrealtime.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

COMMISSIONERS:

CHAIRMAN DANNER  
COMMISSIONER RENDAHL  
COMMISSIONER BALASBAS

ADMINISTRATIVE LAW JUDGE:

GREGORY J. KOPTA  
Utilities and Transportation  
Commission  
1300 South Evergreen Park Drive SW  
Olympia, Washington 98504  
(360) 664-1160

FOR PUGET SOUND ENERGY:

JASON KUZMA  
Perkins Coie  
The PSE Building  
10885 NE Fourth Street, Suite 700  
Bellevue, Washington 98004  
(425) 635-1416  
jkuzma@perkinscoie.com

FOR MICROSOFT:

ELIZABETH THOMAS  
BEN A. MAYER  
K&L Gates  
925 Fourth Avenue, Suite 2900  
Seattle, Washington 98104  
(206) 370-7631  
liz.thomas@klgates.com

FOR COMMISSION STAFF:

CHRISTOPHER CASEY  
Assistant Attorney General  
P.O. Box 40128  
Olympia, Washington 98504  
(360) 664-1189  
ccasey@utc.wa.gov

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S (cont.)

FOR PUBLIC COUNSEL:

LISA GAFKEN  
Assistant Attorney General  
Public Counsel Unit Chief  
800 Fifth Avenue, Suite 2000  
TB-14  
Seattle, Washington 98104  
(206) 464-6595  
lisa.gafken@atg.wa.gov

FOR THE ENERGY PROJECT:

SIMON FFITCH  
Attorney at Law  
321 High School Road NE  
Suite D3, Box 383  
Bainbridge Island, Washington 98110  
(206) 669-8197  
simon@ffitchlaw.com

FOR NORTHWEST ENERGY COALITION:

JEFFREY D. GOLTZ  
Cascadia Law Group, PLLC  
606 Columbia Street NW, Suite 212  
Olympia, Washington 98501  
(360) 528-3026  
jgoltz@cascadialaw.com

FOR NORTHWEST & INTERMOUNTAIN  
POWER PRODUCERS COALITION:

IRION SANGER  
Sanger Law, PC  
1117 Southeast 53rd Avenue  
Portland, Oregon 97215  
(503) 756-7533  
irion@sanger-law.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S (cont.)

FOR WALMART & SAM'S WEST:

VICKI BALDWIN  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
(801) 532-1234  
vbaldwin@parsonsbehle.com

FOR INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES:

TYLER PEPPLER  
Davison Van Cleve, PC  
333 Southwest Taylor, Suite 400  
Portland, Oregon 97204  
(503) 241-7242  
tcp@dvclaw.com

FOR KROGER STORES:

KURT BOEHM  
Boehm, Kurtz, & Lowry  
36 East 7th Street, Suite 1510  
Cincinnati, Ohio 45202  
(513) 421-2255  
kboehm@bkllawfirm.com

WITNESSES:

SHAWN COLLINS  
WENDY GERLITZ  
IRENE PLENEFISCH  
JON PILIARIS  
DAVID GOMEZ  
BRAD MULLINS  
CARLA COLAMONICI  
JENNIFER SNYDER  
ROBERT KAHN  
KEVIN HIGGINS (via bridge line)  
GARY SALEBA (via bridge line)  
CHRIS HENDRIX (via bridge line)

\* \* \* \* \*

EXHIBIT INDEX		
EXHIBITS FOR ADMISSION		PAGE
JP-1	Settlement Stipulation & Agreement	60
JP-2	Joint Memorandum in Support of the Full Settlement Agreement	60
JP-3	Microsoft Special Contract	60
PSE-1	Schedule 451 Large Customer Retail Wheeling Service Agreement	60
PSE-2	Microsoft Service Agreement	60
JAP-1CT	Direct Testimony (Confidential)	60
JAP-2	Professional Qualifications	60
JAP-3C	Stranded Cost Calculation (Confidential)	60
JAP-4C	Alternative Stranded Cost Calculation Using Peak Credit	60
JAP-5C	Alternative Stranded Cost Calculation Using PCA Classifications (Confidential)	60
JAP-6T	Supplemental Direct Testimony	60
JAP-7	PSE Response to Wal-Mart Data Request No. 004	60
JAP-8T	Testimony in Support of Settlement Stipulation and Agreement	60
IP-1T	Direct Testimony	60
IP-2	Qualifications	60
IP-3T	Supplemental Direct Testimony	60
IP-4	Microsoft Climate and Energy Report	60
IP-5	Greener datacenters for a brighter future: Microsoft's commitment to renewable energy (May 19, 2016)	60

EXHIBIT INDEX (cont.)		
	EXHIBITS FOR ADMISSION	PAGE
1		
2		
3	IP-6T Second Supplemental Direct	60
4	Testimony Supporting Full Settlement	
	Stipulation and Agreement	
5	GSS-1T Direct Testimony	60
6	GSS-2 Qualifications	60
7	GSS-3 Calculation of Value of Firm Load	60
8	Following Wholesale Power Supply	
	Product	
9	GSS-4C Net Benefit Calculation of Exit Fee	60
10	Over 15 Year Period (Confidential)	
11	GSS-5C Alternative Net Benefit Calculation	60
12	Of Exit Fee Over 15 Year Period	
	(Confidential)	
13	JES-1T Testimony in Support of Settlement	60
	Agreement	
14	JES-2 PSE Response to Staff Data Request	60
15	No. 31	
16	JES-3 PSE Response to Staff Data Request	60
	No. 14	
17	JES-4 PSE Response to Staff Data Request	60
18	No. 23	
19	JES-5 PSE Response to Public Counsel	60
	Data Request No. 20	
20	DGC-1T Testimony - Calculation of	60
21	Microsoft's Retail Wheeling	
	Transition Payment	
22	CAC-1T Settlement Testimony	60
23	CAC-2 PSE Response to Staff Data Request	60
24	No. 9, Without Confidential	
	Attachments A-D	
25	CAC-3 PSE Response to Public Counsel Data	60
	Request No. 51	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## EXHIBIT INDEX (cont.)

EXHIBITS FOR ADMISSION	PAGE
BGM-1T Settlement Testimony	60
BGM-2 Regulatory Appearances	60
BGM-3 Company Data Requests	60
WG-1T Testimony in Support of Settlement Stipulation and Agreement	60
SMC-1T Testimony - Low Income Issues	60
CWH-1T Testimony in Support of Settlement	60
CWH-2 Qualifications	60
KCH-1T Testimony in Support of Settlement Stipulation and Agreement	60
RDK-1T Direct Testimony	60



1 OLYMPIA, WASHINGTON; MAY 3, 2017

2 9:26 A.M.

3 --o0o--

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

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

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

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. PEPPLER: 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.

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

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.

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

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



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

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

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

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,

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 responsible 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

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

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

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



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

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

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

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

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

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.

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 --

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



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

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

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

1 contractual relationship here included in that is the  
2 penalty provision, and maybe the word "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

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

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

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

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



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

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

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

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.

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

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

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

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



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

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

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

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

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 --

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

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

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 --



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.

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

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'

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

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

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

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

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



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

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.

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.

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.

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

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

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

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



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.

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

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

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

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 NWECC or any other interested party that might be  
25 interested.

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

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

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



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?

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

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 --

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,

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.

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,

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

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



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

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 NWECC 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

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.

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

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

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,

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

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 be evaluated through our



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.

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 prudence 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

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

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

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.

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

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

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.



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

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

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

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.)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

STATE OF WASHINGTON  
COUNTY OF THURSTON

I, Tayler Russell, a Certified Shorthand Reporter  
in and for the State of Washington, do hereby certify  
that the foregoing transcript is true and accurate to  
the best of my knowledge, skill and ability.

\_\_\_\_\_  
Tayler Russell, CCR 3358