

Docket No. UE-161123 - Vol. II

Washington Utilities and Transportation
Commission v. Puget Sound Energy

May 3, 2017



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1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION

4 WASHINGTON UTILITIES AND) Docket No. UE-161123
 TRANSPORTATION COMMISSION,)
 5 Complainant,)
 6 vs.)
 7 PUGET SOUND ENERGY,)
 8 Respondent.)

11 SETTLEMENT HEARING, VOLUME II
 12 Pages 52-159
 13 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

15 May 3, 2017
 16 9:26 a.m.

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 23 GARY SALEBA (via bridge line)
 24 CHRIS HENDRIX (via bridge line)
 25 * * * * *

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1	EXHIBIT INDEX (cont.)		1	OLYMPIA, WASHINGTON; MAY 3, 2017	
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3	IP-6T Second Supplemental Direct Testimony Supporting Full Settlement Stipulation and Agreement	60	3	--o0o--	
4	GSS-1T Direct Testimony	60	4	PROCEEDINGS	
5	GSS-2 Qualifications	60	5		
6	GSS-3 Calculation of Value of Firm Load Following Wholesale Power Supply Product	60	6	JUDGE KOPTA: All right, then. Let's be on	
7	GSS-4C Net Benefit Calculation of Exit Fee Over 15 Year Period (Confidential)	60	7	the record in Docket UE-161123, captioned "Washington	
8	GSS-5C Alternative Net Benefit Calculation Of Exit Fee Over 15 Year Period (Confidential)	60	8	Utilities and Transportation Commission vs. Puget Sound	
9	JES-1T Testimony in Support of Settlement Agreement	60	9	Energy."	
10	JES-2 PSE Response to Staff Data Request No. 31	60	10	We are here for a settlement hearing on	
11	JES-3 PSE Response to Staff Data Request No. 14	60	11	Wednesday, May 3rd, 2017, and we are having preliminary	
12	JES-4 PSE Response to Staff Data Request No. 23	60	12	discussions before the Commissioners join us to handle	
13	JES-5 PSE Response to Public Counsel Data Request No. 20	60	13	some matters that we can handle without them here.	
14	DGC-1T Testimony - Calculation of Microsoft's Retail Wheeling Transition Payment	60	14	I'm Gregory J. Kopta, the administrative law	
15	CAC-1T Settlement Testimony	60	15	judge who will be presiding with the Commissioners at	
16	CAC-2 PSE Response to Staff Data Request No. 9, Without Confidential Attachments A-D	60	16	this hearing. And we will save appearances from the	
17	CAC-3 PSE Response to Public Counsel Data Request No. 51	60	17	parties until the Commissioners are here. In the	
18			18	meantime, we need to take care of two things.	
19			19	First, the parties have stipulated to the	
20			20	admission of all exhibits that have been prefiled, both	
21			21	the direct testimony that was filed on behalf of Puget	
22			22	Sound Energy and Microsoft, and the testimony of each of	
23			23	the parties in support of the settlement stipulation and	
24			24	agreement. Rather than read them into the record, I	
25			25	have an exhibit list I will provide to the court	

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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

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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 ffitich on behalf of the Energy
 23 Project.
 24 MR. GOLTZ: Good morning. Jeffrey Goltz,
 25 Cascadia Law Group on behalf of the Northwest Energy

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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.

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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

<p>Page 64</p> <p>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.</p>	<p>Page 66</p> <p>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</p>
<p>Page 65</p> <p>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</p>	<p>Page 67</p> <p>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</p>

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<p>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.</p> <p>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.</p> <p>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</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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,</p>
Page 69	Page 71
<p>1 distribution costs.</p> <p>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.</p> <p>9 JUDGE KOPTA: All right. Thank you, 10 Mr. Casey.</p> <p>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.</p> <p>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</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>

<p>Page 72</p> <p>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</p>	<p>Page 74</p> <p>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</p>
<p>Page 73</p> <p>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</p>	<p>Page 75</p> <p>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</p>

<p>Page 76</p> <p>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</p>	<p>Page 78</p> <p>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</p>
<p>Page 77</p> <p>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. Pilaris. 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</p>	<p>Page 79</p> <p>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</p>

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1 required to pass that back to the Commission for the
 2 deposit in -- and I'm forgetting the name of it, but
 3 it's essentially the Renewable Energy Fund.
 4 COMMISSIONER RENDAHL: The account, right.
 5 All right. So then in this -- in that
 6 sentence, there's a statement about "any penalty is
 7 subject to a showing that Microsoft failed to exercise
 8 reasonable care and prudence." And who -- and I guess
 9 this is another legal question. I -- you know,
 10 obviously usually we don't swear in attorneys to answer
 11 these questions, but if there's any witness who can
 12 answer this, go ahead, and then I guess we'll defer to
 13 the attorneys. But who has the burden to make that
 14 showing? Is that Staff that will have that burden to
 15 demonstrate? This is a difference from the usual
 16 standard where the Company bears the burden of showing
 17 they're not.
 18 MS. SNYDER: It is the -- the burden that
 19 there will be on Staff to make the showing and do the
 20 analysis based on the report that is provided by PSE
 21 that handles the -- provided to PSE from Microsoft. So
 22 Staff will be the ones to determine whether or not
 23 Microsoft is in compliance with the contract, and then
 24 Staff will let PSE know that they need to apply this
 25 penalty.

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1 CHAIRMAN DANNER: But the burden would be on
 2 Staff so Staff has to make the showing. They've got to
 3 prove that this is so. Normally under a tariff, it's
 4 the Company that has the burden.
 5 MS. SNYDER: And I believe that's -- part of
 6 the agreement, what we talked about was, you know,
 7 Staff, at the same time they're evaluating PSE's
 8 renewable targets, it will be done along the same lines.
 9 So what we had talked about was that Staff would be the
 10 ones to make the showing and inform PSE if a penalty was
 11 necessary.
 12 COMMISSIONER RENDAHL: Okay. So then under
 13 Section 2.2, it says, Under the special contract -- or
 14 "Under the terms of the special contract that the
 15 contract will be subject to enforcement, supervision,
 16 control, and public inspection by the Commission."
 17 So if Staff needs further information from
 18 the Company, from Microsoft, it would use PSE as the
 19 conduit. And so if Staff cannot get the information, if
 20 Microsoft doesn't provide that information and Staff
 21 can't make the showing, then there is no penalty.
 22 MS. SNYDER: If that is the case, I believe
 23 Microsoft would be in breach of contract.
 24 COMMISSIONER RENDAHL: Okay. All right. So
 25 clearly this is a different standard than under our --

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1 under the statute and rules for the Energy Independence
 2 Act currently.
 3 MS. SNYDER: (Nodding head.)
 4 COMMISSIONER RENDAHL: Okay. And can you
 5 give a verbal response, please?
 6 MS. SNYDER: Yes, it is.
 7 COMMISSIONER RENDAHL: Okay. Thank you.
 8 So a background --
 9 JUDGE KOPTA: Can I follow up on that for
 10 just one moment?
 11 COMMISSIONER RENDAHL: Sure, go ahead.
 12 JUDGE KOPTA: I'm trying to understand from
 13 a purely procedural standpoint what would happen. So
 14 let's assume that for whatever reason, Microsoft doesn't
 15 make its renewable portfolio standard. What happens?
 16 Would you walk me through the process?
 17 MS. SNYDER: If Staff was provided
 18 sufficient information, there was no additional
 19 information needed but they did not meet the standard,
 20 Staff would inform PSE that this penalty should be
 21 applied to Microsoft, and then PSE would inform
 22 Microsoft, receive payment, deposit the money into the
 23 account, and inform Staff that that had all been taken
 24 care of.
 25 If for some reason that was not done, then

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1 Staff, I believe, would be able to file a complaint
 2 against PSE, and PSE could claim that Microsoft was in
 3 breach of contract, but I may be kind of delving into
 4 some legal issues here, so I would defer to my attorney.
 5 JUDGE KOPTA: Okay. So at least as an
 6 initial matter, all of this would be handled without
 7 involving the decision side of the Commission; is that
 8 your anticipation?
 9 MS. SNYDER: That is my anticipation.
 10 Ideally, you know, if Microsoft agreed that the penalty
 11 was appropriate, this could all be done without coming
 12 before the Commission necessarily. If Microsoft did not
 13 agree, obviously we may need to have some sort of
 14 discussion in front of the Commission.
 15 CHAIRMAN DANNER: A complaint proceeding.
 16 MS. SNYDER: Yeah.
 17 COMMISSIONER RENDAHL: So, Mr. Casey, you
 18 look like you're about to say something.
 19 MR. CASEY: So, again, kind of going back to
 20 the analogy we provided earlier, PSE has an obligation
 21 to charge tariff rates. You know, in this case, it's a
 22 special contract rate. It has an obligation to
 23 administer the terms of service as provided in the
 24 contract that is on file with the Commission and
 25 approved by the Commission. And so we've -- PSE would

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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

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1 further to add to what Ms. Snyder and Mr. Casey have
 2 said? If you can make a verbal response.
 3 MR. PILIARIS: This is Jon Piliaris. I do
 4 not.
 5 CHAIRMAN DANNER: All right. I think
 6 Mr. Goltz was reaching for the microphone.
 7 MR. GOLTZ: Well, I was, and I think
 8 Mr. Casey answered most of that. I agree with what
 9 Mr. Casey said. Conceptually, this is I don't think any
 10 different than the situation where we in Thurston County
 11 who are customers of Puget Sound Energy, if we fail to
 12 live up to our end of the deal, we will have to pay a
 13 late fee. And Puget Sound Energy just can't say, oh,
 14 we're going to forgive that. Never mind.
 15 That's part of the overall tariff structure
 16 is these late fees, these different types of payments.
 17 And there's other provisions also in the normal contract
 18 of service. We have to allow PSE to come on our
 19 property with reasonable notice to take care of their
 20 appliances and so forth and their facilities. So this
 21 is just a much grander scale.
 22 Now, the -- a settlement agreement is like a
 23 consent decree. In the court system, a consent decree
 24 the law is pretty clear is both a judicial act, a
 25 judicial order. It's also a contract. So the

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

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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

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1 complicated. We've had those proceedings here. And so
 2 it's not as cut and dried as a late fee. So that is an
 3 analogy but maybe not quite the same. So the burden of
 4 proof does fall on Staff here and just trying -- just
 5 concerned about that element.

6 MR. CASEY: So going, you know, back to
 7 our -- the explanation --
 8 I'm sorry, Christopher Casey.
 9 Going back to the explanation of PSE
 10 administers the special contract, and then if Microsoft
 11 had an issue with how it was being administered, it
 12 could, you know, file a complaint. In that complaint
 13 proceeding, I believe the burden of proof would be
 14 dictated as -- as statute requires under the complaint
 15 provisions, and I believe Microsoft was challenging how
 16 PSE administered the tariff if it would have the burden
 17 of proof as the party who initiated that filing.

18 In terms -- and I think what Ms. Snyder was
 19 addressing in terms of kind of the early stages where
 20 Commission Staff, you know, reviews the report and
 21 determines if it is in compliance with the contract and
 22 then communicates that back to PSE, that I think is, you
 23 know, a little bit different than the legal standard
 24 before the Commission like --

25 COMMISSIONER RENDAHL: Well, the burden

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1 discussion or in terms of the contract, it refers to a
 2 showing. And that is -- that is the standard, the
 3 determination under the standard of whether any penalty
 4 is due from Microsoft failing to, quote, "exercise
 5 reasonable care and prudence." And so that's -- that's
 6 the burden I'm talking about being shifted to Staff in
 7 this case, but it sounds like that was part of the deal
 8 and I clarified that. I may be beating a dead horse
 9 here so I'm going to move on.

10 But I do want to ask if any other witness
 11 has any further -- further testimony on that -- on that
 12 discussion. I am seeing shaking of heads so we'll move
 13 on.

14 Okay. I guess I'll turn to my colleagues if
 15 they have any other questions at this point. I may have
 16 more as we go on.

17 CHAIRMAN DANNER: I have a few. I will step
 18 in right now.

19 So the contract says that Microsoft has to
 20 source this power for renewable and carbon-free power,
 21 and I am very pleased to see that. I am interested,
 22 though, in the challenges of identifying the source of
 23 power. There are going to be some places where we have
 24 unspecified power when you're purchasing at the hub, and
 25 I would like to know basically how you intend to deal

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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

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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

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<p>1 little vague. I couldn't tell if what was agreed to was</p> <p>2 that if there are additional remediation costs, that</p> <p>3 Microsoft would agree to those costs whatever they might</p> <p>4 be. In other words, determining what the -- the</p> <p>5 proceeding going forward to determine whether they owe</p> <p>6 additional money, but they're -- but nonetheless, they</p> <p>7 assert their willingness or acknowledge their</p> <p>8 willingness to pay their share of remediation costs</p> <p>9 going forward or whether in this contract, they are</p> <p>10 saying, no, we're done. This exit fee takes care of all</p> <p>11 of that. So I'd just like a little clarification on</p> <p>12 that, please.</p> <p>13 MS. PLENEFISCH: Irene Plenefisch. We're</p> <p>14 actually saying neither. We're saying that all of</p> <p>15 the -- all of the settling parties have agreed that this</p> <p>16 contract does not address or resolve any potential</p> <p>17 obligations we may have with regard to decommissioning</p> <p>18 and remediation costs, and that that issue will be taken</p> <p>19 up in a separate docket.</p> <p>20 CHAIRMAN DANNER: So if we find that</p> <p>21 remediation costs are higher than they had been</p> <p>22 anticipated or estimated to be, then it is possible that</p> <p>23 Microsoft will say, no, no, we're done in this contract</p> <p>24 as opposed to, let's figure out what we owe, what --</p> <p>25 what our fair share is. You are reserving all legal</p>	<p>1 interpretation, we agree with what Irene has just</p> <p>2 testified to. You know --</p> <p>3 JUDGE KOPTA: Is your microphone on?</p> <p>4 MS. GERLITZ: Oh, I'm sorry. Maybe I just</p> <p>5 need to be closer. Sorry.</p> <p>6 I agree with what Irene just testified to.</p> <p>7 I think our interpretation is that those issues are not</p> <p>8 a part of this settlement and that we have agreed to</p> <p>9 address them in a future proceeding when more certainty</p> <p>10 is provided around the actual costs that we're talking</p> <p>11 about. So I would --</p> <p>12 CHAIRMAN DANNER: But that would include the</p> <p>13 argument that this 23 million is -- is the exit fee, we</p> <p>14 have no further obligations as opposed to, we believe</p> <p>15 we've already paid our fair share in the calculation. I</p> <p>16 mean, those are two different -- those are two different</p> <p>17 positions.</p> <p>18 MS. GERLITZ: We -- our interpretation is</p> <p>19 that the costs that are currently unknown could not</p> <p>20 possibly be in that calculation because they are</p> <p>21 unknown. And so unknown costs will be dealt with in a</p> <p>22 future proceeding.</p> <p>23 COMMISSIONER RENDAHL: So that's your</p> <p>24 interpretation?</p> <p>25 MS. GERLITZ: That's my interpretation.</p>
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<p>1 arguments going forward. So you could, in fact, say in</p> <p>2 a future proceeding that, hey, we don't owe anything.</p> <p>3 We settled everything in this 23.7 million?</p> <p>4 MS. PLENEFISCH: Yeah, we are reserving all</p> <p>5 future arguments and intend to be included in that</p> <p>6 discussion or a party to that discussion when it comes</p> <p>7 up. So I think the parties felt that, given that there</p> <p>8 are many other parties that would be a part of that</p> <p>9 discussion and that the costs are as yet unknown, it</p> <p>10 would be impossible to make any sort of determination at</p> <p>11 this point as to whether or not Microsoft had continued</p> <p>12 or future liability.</p> <p>13 And so the settlement -- the settlement</p> <p>14 states that that issue is not addressed here and, yes,</p> <p>15 all the parties have reserved the right to make whatever</p> <p>16 arguments they may wish to make. Those, of course, may</p> <p>17 or may not be accepted, but that's the way the</p> <p>18 settlement has been agreed to.</p> <p>19 CHAIRMAN DANNER: Okay. And so we are not</p> <p>20 ceding our authority to seek those additional payments</p> <p>21 if some are needed in the future?</p> <p>22 MS. PLENEFISCH: Not to my knowledge.</p> <p>23 CHAIRMAN DANNER: Okay. Ms. Gerlitz, do you</p> <p>24 have any thoughts on that particular provision?</p> <p>25 MS. GERLITZ: Yeah. I would say that our</p>	<p>1 CHAIRMAN DANNER: Okay. So that does not</p> <p>2 include an argument that this exit fee is the final</p> <p>3 resolution of any future decommissioning costs?</p> <p>4 MS. GERLITZ: Well, I think -- let me get</p> <p>5 my -- I mean, I'm going to refer to what the actual</p> <p>6 settlement agreement says, but -- which I have in my</p> <p>7 notes here, if you give me a second to find it.</p> <p>8 So what the settlement agreement actually</p> <p>9 states, I believe it's in paragraph 11, is that the</p> <p>10 "Settlement does not address or resolve any issues</p> <p>11 relating to Microsoft's potential obligation to</p> <p>12 contribute to Colstrip remediation, decommissioning, or</p> <p>13 accelerated depreciation costs," and that those are</p> <p>14 reserved for a future proceeding. So that's -- I think,</p> <p>15 you know, that's relatively clear language.</p> <p>16 COMMISSIONER BALASBAS: So is it your</p> <p>17 interpretation and argument, then, that the 23.685</p> <p>18 million is solely the transition fee for Microsoft to</p> <p>19 procure its own power?</p> <p>20 MS. GERLITZ: Are you asking me?</p> <p>21 COMMISSIONER BALASBAS: Sorry, I'm directing</p> <p>22 that to both of you. Irene and -- both of you.</p> <p>23 MS. PLENEFISCH: Okay. I guess it's on. No</p> <p>24 red light.</p> <p>25 Yeah, the exit -- the transition fee was</p>

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1 calculated by PSE, and it takes into account five years
 2 of future generation costs and our projected load. It
 3 has four years of, you know, detriment to remaining
 4 ratepayers calculated in there and one year of benefit
 5 to remaining ratepayers when Colstrip 1 and 2 shut down
 6 and PSE becomes in a resource-constrained environment
 7 and they no longer have to serve our load.
 8 I guess, you know, I would say that to the
 9 extent that Colstrip costs are included in PSE's
 10 generation costs, then that is a part of the transition
 11 fee, but perhaps, you know, Puget Sound Energy may have
 12 comments on that as well.
 13 CHAIRMAN DANNER: I'm looking at you,
 14 Mr. Piliaris.
 15 MR. PILIARIS: So, yes. To answer that last
 16 question, yes, there are some Colstrip-related costs
 17 embedded within the calculation of the transition fee.
 18 A fairly small amount. I guess more broadly, you're
 19 noticing a wide variety of opinions around the number,
 20 the validity of the number -- "number" being the
 21 transition fee -- what it represents, what it includes,
 22 what it does not include. It's been noted that it's
 23 intended to mitigate the intended harm to customers.
 24 I think what you're hearing in the
 25 settlement as well related to Colstrip is that I think

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1 the parties are reserving the right to argue whether or
 2 not some amount of that transition fee is sufficient to
 3 cover whatever potential obligation there would be for
 4 future Colstrip-related costs. Obviously, others would
 5 argue that, no, no, no, that's already covered but...
 6 CHAIRMAN DANNER: Sure. And I believe that
 7 the 23.7 is, you know, your best calculation today of
 8 what those costs are going to be. And I'm thinking
 9 of -- no?
 10 MR. PILIARIS: No, that's not correct.
 11 The -- nothing, at least in the analysis that I've
 12 prepared, there are no future remediation costs embedded
 13 in that calculation currently. If we have reserves for
 14 ARO or a depreciation expense, those are clearly -- if
 15 there are rates right now, then they're being included.
 16 The ongoing discussions in the rate case around, maybe,
 17 further accelerating or future costs, those are not
 18 embedded currently within that analysis.
 19 CHAIRMAN DANNER: Okay. So I'm still going
 20 back to my original question, which is if there are
 21 remediation and closure costs going forward in the
 22 future, is -- it's not clear to me in the contract
 23 whether Microsoft is saying this -- that in the future,
 24 we can make the argument that this \$23.7 million is it,
 25 that's final, we're not paying anything more, or are

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1 they saying that in a future proceeding, we can
 2 determine whether or not we owe something for our share
 3 of remediation costs?
 4 MR. PILIARIS: Well, I can't obviously speak
 5 for Microsoft as to what they think about that
 6 particular issue. I can speak to sort of the -- what is
 7 presented before you right now. And I think what is
 8 presented before you right now is that we're leaving
 9 open the arguments for or against whether or not
 10 Microsoft owes anything beyond the 23.7 after this
 11 point.
 12 CHAIRMAN DANNER: Okay.
 13 MR. PILIARIS: So we're not -- but we're not
 14 precluding the Commission from making a further
 15 determination in a future proceeding as to whether or
 16 not that is, in fact, the case.
 17 CHAIRMAN DANNER: So -- and we would have
 18 the authority, then, if we determine that they should
 19 have paid a percentage of the -- or a share of the
 20 remediation costs, that we would be able to seek those?
 21 MR. PILIARIS: For example, you could rule
 22 in some future proceeding that the 23.7 paid as part of
 23 this contract in the Commission's eyes did not cover
 24 what they view to be a sufficient amount of future
 25 remediation costs. And that issue would still be in

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1 play. Your hands I don't believe would be tied in that
 2 regard.
 3 CHAIRMAN DANNER: Okay. Does anybody
 4 disagree with that?
 5 MR. MULLINS: This is Brad Mullins.
 6 COMMISSIONER RENDAHL: Before you go ahead,
 7 could those people on the bridge line mute their lines,
 8 please? We're getting some interference. Thank you.
 9 MR. MULLINS: Brad Mullins for ICNU, and I
 10 don't necessarily disagree with any of that, but I just
 11 wanted to note kind of our position on this matter
 12 because a little bit nuanced.
 13 So ultimately, you know, we don't know how
 14 Colstrip remediation, decommissioning, and accelerated
 15 depreciation is going to be handled for ratemaking, and
 16 even from ICNU's perspective, we're still mulling over
 17 different ideas and thoughts about the various aspects
 18 of that.
 19 But, you know, ultimately there should be
 20 some sort of reconciliation between, you know, the costs
 21 and benefits of -- of early closure. And from
 22 Microsoft's perspective, they've paid this exit fee, and
 23 it includes costs and benefits over a five-year period,
 24 and it's really one year of benefit and four years of
 25 cost. And so we think that that fact is relevant in

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<p>1 determining the ultimate ratemaking treatment of the</p> <p>2 remediation, decommissioning, and accelerated</p> <p>3 depreciation costs as it relates to Microsoft.</p> <p>4 And so, you know, we -- our view of the</p> <p>5 stipulation is all of those issues are open, and the</p> <p>6 Commission may, you know, decide whatever it ultimately</p> <p>7 wishes to decide in the rate case.</p> <p>8 CHAIRMAN DANNER: Okay. Yeah. The reason</p> <p>9 I'm harping on this, I mean, basically there's two --</p> <p>10 two big points. I mean, when I look at this settlement,</p> <p>11 basically I am concerned about cost shifts, and I'm</p> <p>12 concerned about environmental degradation. And I think</p> <p>13 that you -- or I think that the settlement is going a</p> <p>14 long way to addressing both, and it's very clear that</p> <p>15 those were at the top of your minds when you were</p> <p>16 reaching this settlement. But I just want to make sure</p> <p>17 that we're not agreeing to something here that could</p> <p>18 lead to cost shifts, and that's why if there are</p> <p>19 unexpected remediation or closure costs going forward,</p> <p>20 that we would have the wherewithal to find that without</p> <p>21 putting the burden on those least able to pay it. So</p> <p>22 those are my concerns.</p> <p>23 MS. SNYDER: This is Jennifer Snyder with</p> <p>24 Commission Staff.</p> <p>25 I do want to say that one of the big points</p>	<p>1 know, the parties did have and the Commission has in</p> <p>2 front of its policy statement from 1994 on Guiding</p> <p>3 Principles for Regulation in an Evolving Electricity</p> <p>4 Industry. And paragraph 2 of that and paragraph 5 of</p> <p>5 that policy statement are congruent with what you're</p> <p>6 saying, and I think those at least were overall guiding</p> <p>7 principles.</p> <p>8 CHAIRMAN DANNER: Yeah, and that's what's</p> <p>9 guiding me, too. I mean, we looked at that in our</p> <p>10 preparation for today, and again, I'm just really trying</p> <p>11 to anticipate unanticipatable outcomes here. And so</p> <p>12 that's really the nature of this questioning. I don't</p> <p>13 want to be in a situation where later, we have a</p> <p>14 shortfall. But I also -- if there's something we can</p> <p>15 put to bed now so that we don't have to have some sort</p> <p>16 of very complicated, complex, antagonistic proceeding in</p> <p>17 the future, that's always a good thing too.</p> <p>18 But I also understand that we don't really</p> <p>19 have the facts before us right now on what costs will be</p> <p>20 and so forth, but it's not so much for me what those</p> <p>21 costs might be as much as it is that, you know, if there</p> <p>22 are costs that should be assigned to Microsoft as a</p> <p>23 matter of equity, that we would have the ability to</p> <p>24 assign those costs.</p> <p>25 JUDGE KOPTA: And just as an administrative</p>
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<p>1 of the settlement around Colstrip was to make sure that</p> <p>2 you did retain that authority and that all parties</p> <p>3 retain their ability to make any arguments.</p> <p>4 MS. PLENEFISCH: This is Irene Plenefisch,</p> <p>5 if I could just add to that.</p> <p>6 I think that the spirit that was guiding</p> <p>7 that was really just the acknowledgment on all parties'</p> <p>8 part that we're so early in the Colstrip discussion, and</p> <p>9 it's really hard at this point to know -- I mean, we</p> <p>10 certainly don't know costs. There are all sorts of</p> <p>11 other things that we don't know, and so the hope, I</p> <p>12 think, was that we could, you know, really handle this</p> <p>13 matter separately, and that everybody would agree that,</p> <p>14 you know, there's this matter we're dealing with now.</p> <p>15 When Colstrip comes, we'll deal with that. And the</p> <p>16 purpose of reserving the right to make all arguments is</p> <p>17 just if you start to say, well, okay. We're going to</p> <p>18 take certain arguments off the table, that's very hard</p> <p>19 to decide which ones one would take off the table</p> <p>20 because, again, there's so much that's unknown. So</p> <p>21 that's really the motivation behind the language.</p> <p>22 MR. GOLTZ: Your Honor, Jeff Goltz, attorney</p> <p>23 for Northwest Energy Coalition.</p> <p>24 Just following up briefly on the Chairman's</p> <p>25 statement of general principles about cost shifts. You</p>	<p>1 matter, the Commission takes official notice of that</p> <p>2 policy statement entered in Docket UE-940932. So it can</p> <p>3 be relied on by the Commission in reaching its</p> <p>4 determination.</p> <p>5 Another sort of technical question.</p> <p>6 Mr. Piliaris, I believe that some of these issues are at</p> <p>7 issue in the pending PSE rate case; am I correct?</p> <p>8 MR. PILIARIS: Yes, that's correct.</p> <p>9 JUDGE KOPTA: And I don't believe that</p> <p>10 Microsoft is a party to that proceeding, are they?</p> <p>11 MR. PILIARIS: They may be indirectly</p> <p>12 through the representation of ICNU.</p> <p>13 JUDGE KOPTA: Okay. Well, I just didn't</p> <p>14 want to be in a situation where the Commission, if it</p> <p>15 does resolve some of those issues and Microsoft is not</p> <p>16 at the table and later comes back and says, whoops, wait</p> <p>17 a minute. What about us?</p> <p>18 MR. PILIARIS: I believe that they're aware</p> <p>19 of the case and that these issues are being raised in</p> <p>20 that case.</p> <p>21 JUDGE KOPTA: All right. Mr. Balasbas?</p> <p>22 COMMISSIONER BALASBAS: Thank you.</p> <p>23 This is to Mr. Piliaris. I have a couple of</p> <p>24 clarifying questions on the transition fee payment. So,</p> <p>25 one, the contract states that Microsoft will make --</p>

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<p>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</p>	<p>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 --</p>
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<p>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</p>	<p>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.</p>

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<p>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</p>	<p>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</p>
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<p>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'</p>	<p>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</p>

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<p>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</p>	<p>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</p>
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<p>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</p>	<p>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</p>

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<p>1 within the Commission's purview.</p> <p>2 CHAIRMAN DANNER: All right. Thank you.</p> <p>3 MR. CASEY: Your Honor, I would just --</p> <p>4 This is Chris Casey for Commission Staff.</p> <p>5 Just point Your Honor to WAC 480-80-143,</p> <p>6 which is the Commission rule for special contracts.</p> <p>7 Section 2 says, "Any significant modification of a</p> <p>8 previously executed contract will be treated as a new</p> <p>9 contract for purposes of this section" and would have to</p> <p>10 go through the application process detailed in Section</p> <p>11 5.</p> <p>12 CHAIRMAN DANNER: I appreciate that. That</p> <p>13 was my understanding as well. I just wanted to hear</p> <p>14 folks say it. All right.</p> <p>15 COMMISSIONER RENDAHL: Does anyone need a</p> <p>16 break?</p> <p>17 MS. PLENEFISCH: Breaks are always welcome.</p> <p>18 JUDGE KOPTA: Sure. Let's take a ten-minute</p> <p>19 break. It's now ten 'til 11:00. Everybody be back at</p> <p>20 11:00, please.</p> <p>21 (A break was taken from</p> <p>22 10:49 a.m. to 11:03 a.m.)</p> <p>23 JUDGE KOPTA: Let's be back on the record</p> <p>24 after our brief morning break and resuming with</p> <p>25 questions from the bench. Commissioner Rendahl.</p>	<p>1 Does your question -- does your question arise from</p> <p>2 concern as to the burden of proof?</p> <p>3 COMMISSIONER RENDAHL: My question arises</p> <p>4 from the concern about Staff being able to get the</p> <p>5 information it needs to do its work.</p> <p>6 MS. PLENEFISCH: Okay.</p> <p>7 COMMISSIONER RENDAHL: And so the reason --</p> <p>8 what I'm asking is, would you be willing to have Staff</p> <p>9 directly query Microsoft and provide a response directly</p> <p>10 to Staff under the terms of Section 2.2 in terms of the</p> <p>11 public inspection by the Commission. That's what I'm</p> <p>12 referring to, getting the information to Staff directly.</p> <p>13 MS. PLENEFISCH: Well, I guess I am</p> <p>14 wondering if there's another way to get there because</p> <p>15 we're not a utility and don't intend to become one</p> <p>16 through this process so --</p> <p>17 COMMISSIONER RENDAHL: But you have assumed</p> <p>18 some of the responsibilities of a utility under the</p> <p>19 Energy Information Act (sic) by -- in this special</p> <p>20 contract. You have assumed some of the obligations so</p> <p>21 that it's --</p> <p>22 MS. PLENEFISCH: I don't believe we're</p> <p>23 covered by that act, though. We have agreed to</p> <p>24 requirements that parallel that act, but we have not</p> <p>25 agreed that we come under its jurisdiction.</p>
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<p>1 COMMISSIONER RENDAHL: Good morning, again.</p> <p>2 So, again, Ms. Plenefisch and Mr. Piliaris,</p> <p>3 I'm going to go back to this issue of the enforcement of</p> <p>4 the RPS terms of the contract. Particularly the</p> <p>5 interplay between Section 4.9.3, which is that section</p> <p>6 about the penalty that we were spending some time on</p> <p>7 earlier, and also Section 2.2, which is the enforcement</p> <p>8 of the contract and provides that the contract is</p> <p>9 subject to the enforcement, supervision, regulation,</p> <p>10 control, and public inspection by the Commission.</p> <p>11 So, again, if there's questions from Staff,</p> <p>12 in the usual course of events, Staff will issue a data</p> <p>13 request to the Company to get a response to a query that</p> <p>14 they have about particular information. Would Microsoft</p> <p>15 be willing to submit to the Commission's jurisdiction</p> <p>16 for the purposes of the review and analysis and</p> <p>17 enforcement of this, of these terms, these RPS terms of</p> <p>18 the contract so that Staff can ask those questions</p> <p>19 directly of Microsoft and get a response? Because</p> <p>20 clearly, as Mr. Piliaris said, PSE is a conduit. So</p> <p>21 would Microsoft be willing to submit to the Commission's</p> <p>22 jurisdiction for enforcement of this particular -- these</p> <p>23 RPS terms of the contract?</p> <p>24 MS. PLENEFISCH: Well, let me -- if I could</p> <p>25 ask you a question to better understand your question.</p>	<p>1 COMMISSIONER RENDAHL: I would agree, but</p> <p>2 you have taken on some of the responsibilities that a</p> <p>3 utility has under the Energy Information Act, correct?</p> <p>4 Energy Independence Act, so you've taken on the RPS --</p> <p>5 MS. PLENEFISCH: We have taken on</p> <p>6 commitments to meet certain renewable standards. They</p> <p>7 actually go above as we've discussed that act.</p> <p>8 So -- but I wonder if there's another way to skin this</p> <p>9 cat. If -- if, let's say, there's a question as to</p> <p>10 whether or not we've met our requirement or let's say</p> <p>11 that we provided information to Puget Sound Energy, they</p> <p>12 provide that information to Commission Staff. It</p> <p>13 appears that we have not met the requirement, then Staff</p> <p>14 could direct Puget Sound Energy to issue a penalty. And</p> <p>15 in that situation, if we felt that the penalty was</p> <p>16 inappropriately applied, then it would be on us to open</p> <p>17 a proceeding to show that.</p> <p>18 COMMISSIONER RENDAHL: I guess my question</p> <p>19 is maybe not as extreme as the penalty at this point.</p> <p>20 MS. PLENEFISCH: Okay.</p> <p>21 COMMISSIONER RENDAHL: My question is more</p> <p>22 about the actual ease of -- of managing this provision</p> <p>23 of the contract so that if PSE is just passing messages</p> <p>24 back and forth, sometimes that's not the most efficient</p> <p>25 way to ask a question, and can Staff ask questions</p>

Page 120	<p>1 directly of Microsoft to understand the information that</p> <p>2 Microsoft is giving to PSE. Sometimes being a middle</p> <p>3 person is not as effective as having direct</p> <p>4 conversation. That is my question.</p> <p>5 MS. PLENEFISCH: So I don't get out of my</p> <p>6 swim lane, would it be all right for the attorneys who</p> <p>7 seem very interested in this discussion to --</p> <p>8 COMMISSIONER RENDAHL: I would be very</p> <p>9 interested to hear what the attorneys have to say as</p> <p>10 well. Thank you.</p> <p>11 MR. KUZMA: PSE's thought on this with</p> <p>12 respect to this reporting requirement would be that</p> <p>13 perhaps Staff, Microsoft, and Puget were to -- or other</p> <p>14 interested parties as well -- to agree on a reporting</p> <p>15 and a verification requirements beforehand. As</p> <p>16 Ms. Plenefisch mentioned, the earliest probably any of</p> <p>17 the service would be would be, you know, 15 months; 14,</p> <p>18 15 months from now.</p> <p>19 So if we could agree on a reporting format,</p> <p>20 style, verification information, ultimately Puget will</p> <p>21 have the information as far as what loads were provided</p> <p>22 to the locations during any given period of time. And</p> <p>23 so then it's just a matter of matching those kilowatt</p> <p>24 hours up with some tags perhaps as far as the -- for the</p> <p>25 carbon-free issue. And then as far as RECs with respect</p>	Page 122	<p>1 amount of renewables, at that point, we would instruct</p> <p>2 PSE that, you know, this might be the right time to --</p> <p>3 or it would be the right time to impose the penalty.</p> <p>4 They could impose the penalty on Microsoft,</p> <p>5 and if Microsoft did not agree, at that point, they</p> <p>6 could bring the proceeding to challenge what PSE has</p> <p>7 charged them, say this is inappropriate and here's why.</p> <p>8 The burden of proof would be entirely on Microsoft at</p> <p>9 that point.</p> <p>10 JUDGE KOPTA: I want to ask a follow-up</p> <p>11 question if I might.</p> <p>12 What's the process if PSE fails to meet its</p> <p>13 RPS requirements?</p> <p>14 MS. SNYDER: If PSE fails to meet, then</p> <p>15 they -- it's been a while since I've done an actual RPS</p> <p>16 proceeding. There's one coming up here soon, but once</p> <p>17 PSE provides their report, if they fail to proceed, then</p> <p>18 they are charged a penalty by the Commission.</p> <p>19 JUDGE KOPTA: How does that happen?</p> <p>20 MS. SNYDER: I believe that happens through</p> <p>21 an open meeting process. I'm not sure if that needs to</p> <p>22 go to hearing.</p> <p>23 COMMISSIONER RENDAHL: I don't believe we've</p> <p>24 ever assessed any penalties yet under RPS, so I think</p> <p>25 that's a bit uncharted water, but I believe it's</p>
Page 121	<p>1 to the renewable issue.</p> <p>2 So that's what we were thinking. So at that</p> <p>3 point, Staff would have comfort that it has the</p> <p>4 information that it needs coming in the door, so then</p> <p>5 it's just a matter of perhaps a mathematical formula as</p> <p>6 far as do these meet the formulas within this contract,</p> <p>7 at which point -- at which point it would just be a</p> <p>8 binary decision to Puget, yes, they've met their</p> <p>9 requirements under the contract, there's nothing more to</p> <p>10 do. Or, no, they failed by X percentage, and therefore,</p> <p>11 you should assess a charge of X on the next bill.</p> <p>12 And so that's what Puget was viewing on this</p> <p>13 so that we could minimize, you know, going back and</p> <p>14 forth. I mean, the more work we do upfront, the less</p> <p>15 this would be hopefully over the course of the contract</p> <p>16 because as Mr. Kahn said earlier, there are mechanisms</p> <p>17 within the industry as far as being able to match the</p> <p>18 various generations to the load.</p> <p>19 COMMISSIONER RENDAHL: Ms. Snyder, do you</p> <p>20 have any thoughts on that?</p> <p>21 MS. SNYDER: Yeah. I think what Jason and</p> <p>22 Irene both outlined there are pretty close to what Staff</p> <p>23 was envisioning. And if for some reason Staff was not</p> <p>24 receiving a report that had all the required information</p> <p>25 that we needed to see that they had procured the right</p>	Page 123	<p>1 specified in the rule under the statute so...</p> <p>2 JUDGE KOPTA: Yeah, and the reason I ask is</p> <p>3 I'm -- you know, we're obviously comparing what the</p> <p>4 obligation is of a regulated utility under the Energy</p> <p>5 Independence Act and what Microsoft has agreed to do.</p> <p>6 And so in addition to the burden-of-proof issue, which</p> <p>7 we've discussed quite a bit, I'm looking at process</p> <p>8 issue. I mean, I hate passive voice, and so when you</p> <p>9 say a penalty will be imposed, I don't know who's doing</p> <p>10 that. Is that me? Is that the Commissioners? Is it</p> <p>11 Staff sort of saying, Hey, you guys owe us a check? Is</p> <p>12 it PSE is instrumental in saying, you know what, our</p> <p>13 bad. Here you go.</p> <p>14 MS. SNYDER: So the penalty in this case</p> <p>15 would be part of the tariffed rate. So this would be --</p> <p>16 I mean, it would be charged by PSE, but they would be</p> <p>17 required to charge this amount at that point.</p> <p>18 JUDGE KOPTA: So PSE would be sort of acting</p> <p>19 in our shoes to impose a penalty on Microsoft?</p> <p>20 MS. SNYDER: I wouldn't want to say "in our</p> <p>21 shoes." Microsoft is not actually agreeing to comply</p> <p>22 with the EIA. They are agreeing to comply with a</p> <p>23 framework that's based off of the EIA largely. However,</p> <p>24 you know, it would not be Microsoft agreeing to the</p> <p>25 Energy Independence Act in any way.</p>

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<p>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 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</p>	<p>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</p>
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<p>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</p>	<p>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.</p>

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<p>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.</p> <p>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?</p> <p>24 MR. KUZMA: Yes, I believe that would be 25 true, and Puget would probably involve others as well</p>	<p>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.</p> <p>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?</p> <p>19 MR. KUZMA: Well, in that case, I think -- 20 you've raised an interesting issue in there.</p> <p>21 JUDGE KOPTA: I think so.</p> <p>22 MR. KUZMA: Yeah.</p> <p>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</p>
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<p>1 because others have an interest in the issues as well, 2 but it would not be the Commission itself.</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>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</p>	<p>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.</p> <p>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 --</p> <p>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.</p> <p>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?</p>

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1 MS. THOMAS: I think that the Commission
 2 would -- would have the authority to determine that the
 3 contract requires Microsoft to make that payment to the
 4 EIA fund and to impose conditions designed to make sure
 5 that Microsoft complies with that conclusion.
 6 JUDGE KOPTA: And from an enforcement
 7 perspective, would that then put the monkey back on
 8 PSE's back to say, you need to collect this money from
 9 Microsoft or can we directly order Microsoft to make
 10 this payment?
 11 MS. THOMAS: I don't see that there is a way
 12 for the Commission to directly order Microsoft to do
 13 anything different from what the Commission could order
 14 PSE's other customers to do. I think Microsoft -- and I
 15 will defer to Mr. Casey on this.
 16 MR. CASEY: You know, I think ultimately
 17 what we're dealing with here is a tariff rate issue like
 18 we deal with tariff rate issues all the time. PSE has a
 19 responsibility to charge the rate and impose the terms
 20 and conditions as they are in the contract once it's
 21 approved by the Commission.
 22 In terms of whether Microsoft was, you know,
 23 unwilling to pay something, essentially have a bad debt
 24 issue where the Commission -- the Commission would have
 25 a number of ways to -- to deal with PSE in terms of

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1 whether PSE prudently handled that debt issue. I don't
 2 believe the Commission would go directly after Microsoft
 3 for collection. I believe that would be PSE's
 4 responsibility, and PSE might even, you know, initiate
 5 litigation to pursue that debt out of a worry that if it
 6 didn't collect it, it might come out of its own
 7 shareholders' pockets.
 8 So, you know, again, I think that what's
 9 happening here is just implementation of a tariff rate,
 10 and that's part of the reason why we were very careful
 11 to take all of the, you know, essential terms of the
 12 agreement and embed them directly into the contract so
 13 that they are all embedded within the service. And I
 14 agree, we have a -- there's, you know, this vocabulary
 15 issue a little bit in terms of the word "penalty," and I
 16 remember looking up that word and, you know, wondering
 17 if "fee" was better and looking it up in Black's Law
 18 Dictionary and then saying, okay, maybe this all doesn't
 19 matter in terms of, you know, changing actual legal
 20 responsibility.
 21 There is -- you know, in terms of these
 22 enforcement obligations, there are, you know, charges
 23 that get imposed under certain conditions, and it's
 24 PSE's obligation to correctly administer that.
 25 JUDGE KOPTA: Well, the problem just --

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1 CHAIRMAN DANNER: So -- go ahead.
 2 JUDGE KOPTA: The problem with your analogy
 3 about this being like a tariff term is that PSE doesn't
 4 get the money in this case. It goes to some other fund.
 5 So PSE doesn't have quite the same incentive to ensure
 6 that the money is collected as if it were going to
 7 receive the money itself.
 8 And there are also provisions that allow for
 9 some sort of mitigation of this amount, and so is PSE
 10 going to determine whether or not this amount should be
 11 mitigated or whether there have been force majeure
 12 events? That's not something that PSE ordinarily would
 13 be doing. It's something that the Commission ordinarily
 14 would be doing, and so that's why we're trying to --
 15 we're struggling a little bit with trying to understand
 16 what is our role.
 17 CHAIRMAN DANNER: Mr. Casey, does that
 18 change? I mean, the terms of a special -- the essential
 19 terms of a special contract are considered to be part of
 20 the Company's electric tariff, correct?
 21 MR. CASEY: Yeah, the special contract is
 22 considered an extension of the tariffs, and it is
 23 subject to the Commission's continuing regulation in the
 24 same manner --
 25 CHAIRMAN DANNER: Inspection, oversight,

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1 enforcement, everything else. So if Microsoft doesn't
 2 meet the terms of the contract that it signs with Puget,
 3 the Commission can go after Puget to ensure performance
 4 of the contract or at least make the ratepayer whole,
 5 and then whatever it needs to get in terms of
 6 reimbursement from Microsoft, it would basically do like
 7 any other contract enforcement action, it would go in
 8 civil proceeding in court and get its money back?
 9 MR. CASEY: Yeah, I believe the Commission
 10 would have, you know, a variety of tools to address PSE
 11 and PSE's implementation of, you know, this contract. I
 12 mean, we haven't gone -- gone through every potential
 13 example, but I believe the -- you know, the tools are in
 14 place for the Commission to ensure that a utility
 15 subject to its regulation charges the correct -- correct
 16 rates. I mean, if there is an incorrect charge, there
 17 are statutes that deal with that and rules that deal
 18 with that.
 19 And so, again, I believe these are, you
 20 know, highly unlikely situations we're talking about.
 21 They're not situations that come before the Commission
 22 often. You know, but I'm confident that the Commission
 23 has the tools to ensure that PSE lives up to its
 24 responsibilities to implement the tariff in the
 25 contract.

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1 CHAIRMAN DANNER: Okay. So if we feel we
 2 need some data, we make a data request to PSE. If PSE
 3 says, oh, we don't have that, that's Microsoft's data,
 4 then we can deem that to be a shortcoming on PSE's part
 5 that they didn't provide us the data we requested?
 6 MR. CASEY: Well, so with respect to the
 7 reporting requirement, Microsoft has a reporting
 8 requirement that is embedded in the contract, and if it
 9 doesn't live up to that requirement and -- and provide a
 10 report that satisfies Staff that it has lived up to its
 11 obligations, Staff is going to say, hey, PSE, we haven't
 12 found from this report or there is no report, go
 13 implement the fee. And -- and then if there is an issue
 14 there, they will implement the fee, and if Microsoft has
 15 issue with that, it would be required to challenge the
 16 manner in which PSE is implementing the contract in the
 17 same way any customer can say, PSE's overcharged me. I
 18 don't think you usually get a situation where a customer
 19 says, PSE has undercharged me. But, you know,
 20 theoretically could happen as well.
 21 But -- and we have dealt with that. I mean,
 22 I have been on cases where we say, oh -- I don't believe
 23 it was with PSE, but a regulated utility did not
 24 implement a charge on a correct day or it over -- it
 25 overcharged or -- because it was, for instance,

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1 implementing the late fee too early. And so there was
 2 all these overcharges, those got passed back. There
 3 were penalties for not correctly implementing the
 4 tariff. This is, you know, a bigger version of those
 5 same types of problems because this is PSE's largest
 6 customer.
 7 CHAIRMAN DANNER: Well, and I would just
 8 echo that point. This is not the first special contract
 9 that has come before us, but it is by far the largest
 10 and most complex. And so I think that's why we're
 11 trying to do a deep dive into making sure we understand
 12 it.
 13 MR. CASEY: Certainly. Certainly appreciate
 14 this, and this is something we toiled with in the
 15 development of the special contract, despite the fact
 16 that we all believe it's highly, highly unlikely that
 17 these kinds of situations will occur.
 18 And, you know, we're talking right now in
 19 extreme terms about, you know -- you know, legal
 20 authority to be able to do something. I would highly
 21 anticipate that these issues would be resolved in a much
 22 more cooperative way and, you know, likely with a, you
 23 know, a proceeding to have the Commission help
 24 resolve -- resolve the dispute. And I'll also note that
 25 I believe there's some mediation provisions in the

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1 special contract. You know, so there's some various
 2 tools to be able to work out any issues if they can come
 3 up.
 4 COMMISSIONER RENDAHL: So in those dispute
 5 resolution provisions, and I don't have the section.
 6 MS. SNYDER: Paragraph 13.
 7 COMMISSIONER RENDAHL: Thank you.
 8 So in that, I understand that Microsoft has
 9 agreed to bring itself within those provisions so if
 10 there is a disagreement, Microsoft can request mediation
 11 or discussion before the Commission; is that -- is that
 12 how those provisions would work? Either party could
 13 bring themselves before the Commission to seek mediation
 14 of an issue?
 15 MR. CASEY: Yes, that's my understanding
 16 that they will -- prior to initiating, you know, a
 17 formal complaint, they will -- they will attempt to use
 18 those provisions to find a, kind of, less painful
 19 resolution of the matter.
 20 COMMISSIONER RENDAHL: Right. So,
 21 Ms. Plenefisch, it says that "PSE and Microsoft shall
 22 each make good faith efforts to resolve such dispute
 23 pursuant to alternative dispute resolution procedures
 24 consistent with WAC 480-07-700."
 25 So does that mean they could be outside of

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1 the Commission if they're consistent with those rules
 2 but not subject to those rules, you could seek alternate
 3 dispute resolution through some other avenue or is that
 4 before the Commission?
 5 MS. PLENEFISCH: Again, I think I have to
 6 ask our lawyer to respond to your question.
 7 MS. THOMAS: Thank you, Commissioner
 8 Rendahl. The -- what was contemplated here was that the
 9 parties would make use of the Commission's ADR
 10 procedures to the maximum. When you go on to the
 11 subsection ii of Section 13, it's clear that the concept
 12 is to use the Commission's own ADR procedures.
 13 COMMISSIONER RENDAHL: And that would
 14 include seeking mediation before the Commission, seeking
 15 use of the Commission's mediation opportunities?
 16 MS. THOMAS: Yes, Your Honor.
 17 COMMISSIONER RENDAHL: Okay. Thank you.
 18 Well, I'm going to move on to another topic
 19 now. I'm sure you're all very happy about that.
 20 CHAIRMAN DANNER: I believe Mr. Goltz wanted
 21 to say something.
 22 MR. GOLTZ: I just wanted to say a couple
 23 things regarding, you know, obviously everyone is
 24 concerned about what if, what if, what if, what if the
 25 worst happens. And I think there's several safeguards

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1 built in that should give the Commission quite a bit of
 2 assurance that these bad things won't happen.
 3 One is, as exhibited throughout this
 4 process, the good-faith intent of Microsoft to actually
 5 get -- you know, they've got a lot invested in this,
 6 saying we're going to go 100 percent carbon-free energy,
 7 and we're going to meet and go above and beyond what
 8 I-937 does. I don't think they want to headline this
 9 as, you know, Microsoft, you know, goes back on its
 10 deal.
 11 Second, you have Commission Staff is very
 12 eager to make this work and is going to be receiving
 13 these reports.
 14 Third thing, as Ms. Gerlitz mentioned, in
 15 the course of the negotiations, the -- it was agreed
 16 that any of the settling parties in addition to Staff
 17 and Public Counsel could, upon request, receive all
 18 those reports, and as you know, in the implementation of
 19 Initiative 937, Northwest Energy Coalition and others
 20 have been eager to participate in the evaluation and
 21 review of those. So I don't think anything would slip
 22 by some combination of 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

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1 RCW 80.04.210, which says the Commission can go back and
 2 revisit any of its orders which it has in the past -- as
 3 Mr. ffitich may recall -- and this is a -- something --
 4 so if it's not going well, and in fact, they aren't
 5 meeting the obligations and/or this whole enforcement
 6 mechanism is breaking down, then we start a proceeding
 7 and say, let's look at this again, which, by the way, is
 8 another reason why, you know, in hindsight, this is
 9 better to be done as a special contract than a tariff
 10 because I think everyone is learning with this process.
 11 So I think there's plenty of safeguards, and
 12 if worst comes to worst, we do have the nuclear option
 13 of 80.04.210.
 14 CHAIRMAN DANNER: Okay. And I note that
 15 nuclear is carbon-free. I don't know if the options are
 16 considered. But, Mr. Goltz, your points are well taken.
 17 COMMISSIONER RENDAHL: Okay. Moving on to
 18 another topic.
 19 So concerning the payment that
 20 Microsoft -- or the requirement that Microsoft has made
 21 in this special contract to make additional low income
 22 program payments, and that's in paragraph 17 of the
 23 settlement, in Section 11 of the contract. My
 24 understanding is that PSE's low income weatherization
 25 manager will be managing and disbursing these funds.

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1 So first, Mr. Piliaris, will this
 2 disbursement of the funds and the management of the
 3 funds be something discussed with the Staff and other
 4 interested persons who participate in PSE's Conservation
 5 Resource Advisory Group or some other advisory group?
 6 Is that the understanding or is it solely within PSE's
 7 discretion to figure out what to do with this money?
 8 MR. PILIARIS: I believe ultimately, it is
 9 solely -- as it's written, solely within PSE's
 10 discretion, but, of course, practically speaking, I
 11 believe we would be consulting with the interested
 12 parties for their input as to most appropriate uses of
 13 those funds.
 14 COMMISSIONER RENDAHL: And that would be in
 15 the CRAG or some other group? I don't know if there's a
 16 low income group that PSE has at this point.
 17 MR. PILIARIS: Probably -- it's hard to say.
 18 It probably would be a subset of those likely suspects.
 19 Many of them are on the CRAG. There may be others as
 20 well.
 21 JUDGE KOPTA: And for the court reporter's
 22 benefit, that's an acronym. Capital C, capital R,
 23 capital A, capital G.
 24 COMMISSIONER RENDAHL: And I was going to
 25 ask if anybody else wanted to discuss -- have an answer

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1 to this question. I see Mr. Collins.
 2 MR. COLLINS: Sure. Shawn Collins with
 3 Energy Project.
 4 We do have regular communication with the
 5 Company, with their manager for weatherization, so
 6 quarterly check-ins and annual in-person meetings. And
 7 our anticipation and hope would be that there would be a
 8 consultation with Energy Project and community action
 9 agencies who are delivering the low income program for
 10 the use of those dollars.
 11 COMMISSIONER RENDAHL: Okay. Any other
 12 parties?
 13 Ms. Snyder?
 14 MS. SNYDER: Yes, I believe that we talked
 15 about, you know, having this brought before the CRAG,
 16 but this is not money that is through the conservation
 17 rider necessarily, so it wouldn't be under the CRAG's
 18 purview, but a subset of CRAG members.
 19 COMMISSIONER RENDAHL: So that's some
 20 consultation before disbursement?
 21 MR. PILIARIS: Again, as a practical matter,
 22 I believe that's correct, yes.
 23 COMMISSIONER RENDAHL: Okay. And so the
 24 agreement also refers to allowable uses of the funds for
 25 intended uses of the funds. And so PSE would have the

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<p>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,</p>	<p>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</p>
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<p>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</p>	<p>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.</p>

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<p>1 COMMISSIONER RENDAHL: Mr. Gomez?</p> <p>2 MR. GOMEZ: Dave Gomez for Commission Staff.</p> <p>3 I'll take a stab at it being fresh off of</p> <p>4 examining in the Company's recent case its transmission</p> <p>5 picture, if you will, as it's presented in this case.</p> <p>6 And in my examination, the Company has not shed any</p> <p>7 transmission capacity or made any reference to having to</p> <p>8 do so. The thing to remember is that presently,</p> <p>9 Microsoft is a distribution customer. It's not taking</p> <p>10 service at transmission voltages, so to that extent,</p> <p>11 it's the -- Microsoft's departure doesn't create a gap,</p> <p>12 if you will, with transmission segment that's not being</p> <p>13 -- you know, that doesn't have a home.</p> <p>14 And so to that extent, I don't think that</p> <p>15 the impacts of Microsoft's departure will necessarily</p> <p>16 change, at least the immediate transmission picture, but</p> <p>17 as Mr. Piliaris says, the Company is constantly</p> <p>18 evaluating it and Staff looks at the Company's</p> <p>19 evaluation when it looks at the overall, and in the case</p> <p>20 of the new case, the prudence of the renewal of certain</p> <p>21 transmission segments to serve native loads. So I don't</p> <p>22 think that we have an issue with regard to that.</p> <p>23 Now, to serve Microsoft in the future, then</p> <p>24 that would be the transaction or at least the -- the</p> <p>25 interaction between PSE and in this case, Microsoft if</p>	<p>1 that they're leaving, then for now, it's just more of a</p> <p>2 scenario planning.</p> <p>3 COMMISSIONER RENDAHL: Okay. Thanks.</p> <p>4 COMMISSIONER BALASBAS: Ms. Snyder, this</p> <p>5 question is for you. In your testimony, you're</p> <p>6 advocating for the Commission to initiate a docket on --</p> <p>7 to receive comments and hold a workshop on the broader</p> <p>8 issues that are not addressed in this proceeding,</p> <p>9 specifically on retail wheeling. My question for you,</p> <p>10 is this proceeding a high priority for Commission Staff</p> <p>11 and if so, why? And -- I guess I will let you answer</p> <p>12 that first.</p> <p>13 MS. SNYDER: First, I want to make clear</p> <p>14 that the Commission Staff is not asking for the</p> <p>15 Commission to put into the order the requirement that</p> <p>16 this docket be opened. The Commission Staff is hoping</p> <p>17 to initiate this docket.</p> <p>18 It's high priority for a couple of reasons.</p> <p>19 We have seen from other customers, we've heard from</p> <p>20 other customers that they're interested in a similar</p> <p>21 type of situation, and while Staff is comfortable with</p> <p>22 this one-off tariff -- or special contract, excuse me,</p> <p>23 we don't know whether or not this should be more broadly</p> <p>24 implied, and before anything like this were to come to</p> <p>25 us again, we would want to have a broader conversation</p>
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<p>1 I'm -- correct me if I'm wrong -- would be under the</p> <p>2 Company's own tariff, Open Access Transmission Tariff.</p> <p>3 And in that case, those -- that transaction or that is</p> <p>4 covered in that tariff, which is regulated by the FERC.</p> <p>5 COMMISSIONER RENDAHL: Right.</p> <p>6 MR. GOMEZ: So anyway, I don't know if that</p> <p>7 answers or makes you feel better, but I tried to take a</p> <p>8 stab at it.</p> <p>9 COMMISSIONER RENDAHL: I appreciate it.</p> <p>10 Mr. Piliaris, do you have anything to add?</p> <p>11 MR. PILIARIS: (Shaking head.)</p> <p>12 COMMISSIONER RENDAHL: Shaking his head no.</p> <p>13 Okay. So one other question for you, then.</p> <p>14 So the Commission recently approved an extension of</p> <p>15 PSE's IRP filing until November 2017, correct?</p> <p>16 MR. PILIARIS: Correct.</p> <p>17 COMMISSIONER RENDAHL: Yeah, so if the</p> <p>18 Commission were to approve the settlement, will PSE be</p> <p>19 evaluating the effects of Microsoft's departure on its</p> <p>20 need for future capacity and transmission needs?</p> <p>21 MR. PILIARIS: I believe it's currently</p> <p>22 doing so as a scenario essentially. We don't know when</p> <p>23 or if ultimately Microsoft will take service under this</p> <p>24 contract, and so we obviously need to be prepared for</p> <p>25 that. But until they're -- it's for sure, for certain</p>	<p>1 that involves stakeholders not involved in this</p> <p>2 particular proceeding. There's just definitely</p> <p>3 questions that should be fleshed out.</p> <p>4 COMMISSIONER BALASBAS: So what's your</p> <p>5 vision of if the Commission were to initiate a docket on</p> <p>6 this topic, what would your vision be for a potential</p> <p>7 timeline?</p> <p>8 MS. SNYDER: I would hope to have a workshop</p> <p>9 somewhere within the next six months hopefully, if</p> <p>10 that's at all possible. I believe -- I believe we put a</p> <p>11 date into -- I don't know if it's in the agreement or</p> <p>12 the memorandum, but July of 2018 where I hoped for</p> <p>13 conclusion of that docket.</p> <p>14 COMMISSIONER BALASBAS: And if the</p> <p>15 proceeding were opened, what kind of outcome would you</p> <p>16 anticipate the Commission doing? Would it be a policy</p> <p>17 statement, a rule?</p> <p>18 MS. SNYDER: Staff is actually very open to</p> <p>19 several different types of outcomes. We do not know if</p> <p>20 a policy statement or a rule would necessarily be the</p> <p>21 outcome of this type of proceeding. Until -- until we</p> <p>22 initiate a docket and have more of a conversation or</p> <p>23 have a chance to talk with the Commissioners and their</p> <p>24 policy staff, we don't have any predetermined outcome in</p> <p>25 Staff's mind.</p>

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1 COMMISSIONER BALASBAS: Before Mr. Kahn, I
 2 have one last question for Ms. Snyder, and I think this
 3 might be related to you next, is what kind of interest
 4 have you heard from other stakeholders on this type of
 5 docket?
 6 MS. SNYDER: So I think you can look at the
 7 parties involved here and see that there are absolutely
 8 some types of interest from certain parties, and I
 9 believe that Mr. Kahn could probably speak to that
 10 better than I can.
 11 MR. KAHN: So Robert Kahn, NIPPC.
 12 First of all, I also want to just chime in
 13 and say that a lot of effort has gone into this docket,
 14 and I'm sure you will reach a satisfactory conclusion.
 15 We, speaking for NIPPC, appreciate the opportunity to
 16 have had a chance to add some value to this proceeding.
 17 And in part, it was with anticipation that the
 18 experience that everyone in the room has undergone could
 19 well be replicated.
 20 There is a pent-up demand on the part of
 21 Corporate America to, number one, show commitment to
 22 reducing the carbon footprint of their operations and
 23 also to stay competitive and to only pay as much for
 24 electricity as is required. The market offers multiple
 25 opportunities to achieve both objectives, and we've seen

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1 as recently as earlier -- or last month in Oregon an
 2 expression of genuine interest for some action to be
 3 taken by that state.
 4 And so the advantage that Washington has is
 5 that Schedule 448 and 449, which is on the borderline of
 6 ancient history, does demonstrate a successful program
 7 which I frankly think the State should be proud. Now,
 8 having said that, it's kind of at least my observation
 9 that the conversation here today suggests that there is
 10 lots of complexities and lots of valid questions which
 11 will be resolved and I think are close to being resolved
 12 in the form of a settlement among all the parties here.
 13 But let's just say, not every company is
 14 Microsoft. And so as we would expect from Microsoft,
 15 we're pleased to see them be the leading edge of what
 16 I'm referring to on the part of other corporations and
 17 businesses in this state to follow suit in some way.
 18 And clearly stakeholders are going to have, as we do, as
 19 you will, a primary concern that existing ratepayers be
 20 held harmless. And I would argue that existing
 21 ratepayers may well do better.
 22 The timing is important I think insofar as
 23 the lessons learned should be applied fresh and as
 24 alluded to just moments ago, the future planning by
 25 Puget in particular and the other two IOUs have their

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1 own stories, but we focus on Puget since this is the
 2 topic of the day, investments that they may make to
 3 replace capacity at Colstrip shouldn't trip up, if you
 4 will, the opportunities of businesses to go and assume
 5 this responsibility themselves. In other words, let's
 6 not create stranded assets when we don't need to, okay?
 7 So there is a timeliness, there is a demand,
 8 there is proof positive, I think, that ratepayers can
 9 benefit and be held harmless, and obviously there is a
 10 demand and interest from businesses. Beyond that, we're
 11 here to say we're glad we participated, and we will be
 12 actively participating in whatever Staff decides as a
 13 procedural matter for considering this important topic
 14 of direct access and consumer choice.
 15 CHAIRMAN DANNER: So is it necessary that we
 16 make that decision in the context of this order or is
 17 that something we can just do in our usual course of
 18 business?
 19 MR. KAHN: I think -- well, I will leave it
 20 to Staff, but the nature of this settlement did not in
 21 the end include such a commitment. We're comfortable
 22 with that.
 23 CHAIRMAN DANNER: Okay. So insofar as this
 24 settlement is nonprecedential, it's -- it actually could
 25 be a little precedential? No response. All right.

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1 I have no further questions.
 2 JUDGE KOPTA: All right. Is everything -- I
 3 have a practical question. There are certain
 4 preconditions that Microsoft needs to put into place
 5 before this contract basically takes service under this
 6 contract. Are you anticipating a flash cut to all of
 7 the power that Microsoft gets going from PSE to the
 8 contract or will it be a phase-in where you're taking
 9 some power from PSE and some power in the contract?
 10 MS. PLENEFISCH: We don't anticipate a
 11 phase-in. It would be a complete cutover.
 12 JUDGE KOPTA: And Mr. Kahn referred to
 13 Schedule 448 and 449. As I understand it under those
 14 agreements, once you're out, you're out if it's a
 15 customer. Is that the same kind of arrangement that
 16 Microsoft will have, you will never get generation from
 17 PSE?
 18 MS. PLENEFISCH: That's right. That's what
 19 we've agreed to under this proposed contract.
 20 JUDGE KOPTA: Okay.
 21 COMMISSIONER RENDAHL: I have just one
 22 follow-up. I meant to ask, there's reference in the
 23 contract to that Microsoft will continue to be a core
 24 customer for service to certain locations that aren't
 25 served under the special contract. Can you elaborate a

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1 little bit more and give us a sense of what parts of
 2 Microsoft's service will remain a core customer.
 3 MS. PLENEFISCH: So this contract would
 4 cover Schedule 40, which is approximately 80 percent of
 5 our Puget Sound load and -- so we have facilities, we
 6 have a facility in Bothell, for example. We have, I
 7 believe, Redmond Town Center is not included in this.
 8 So we have corporate facilities around the Puget Sound
 9 region that are not included that don't currently take
 10 service under Schedule 40, and therefore, aren't
 11 included under this special contract.
 12 COMMISSIONER RENDAHL: Okay. Thank you.
 13 JUDGE KOPTA: Okay. All right. I believe
 14 that concludes the questions from the bench. Is there
 15 anything further from any party, witness, counsel,
 16 redirect? All right. Well --
 17 MS. PLENEFISCH: I do have one last comment.
 18 I just want to get back to what Chairman Danner raised
 19 as one of his principle concerns, and that is regarding
 20 any potential cost shift. And I just want to kind of
 21 bring it back up to sort of the 40,000-foot level. I
 22 think if you look at the transition fee that we have
 23 agreed to pay, if you look at our agreements as far as
 24 conservation and continuing that program and then our
 25 willingness to go above and beyond on the low income

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1 tariff, as well as the fact that everybody's right is
 2 reserved under this agreement to make any future
 3 arguments that they might want to make with respect to
 4 Colstrip, we feel confident that there will be no cost
 5 shift to any remaining customers on PSE's system. I
 6 just wanted to state that. Thank you.
 7 JUDGE KOPTA: All right. One housekeeping
 8 matter, we do have a bench request to PSE. Do you want
 9 a date by which you can provide that?
 10 MR. KUZMA: We could likely have something
 11 early next week.
 12 JUDGE KOPTA: All right. Well, what -- want
 13 to give me like the 9th?
 14 MR. KUZMA: The 9th would be fine.
 15 JUDGE KOPTA: All right. Then we'll have
 16 that due on May 9th, and we will await the transcript,
 17 and the Commission will enter an order in due course.
 18 So thank you all. We appreciate you all
 19 coming and providing the testimony and answering some
 20 difficult questions. They will help the Commission in
 21 reaching its determination, and we appreciate your
 22 support and being here and helping us flesh out the
 23 record.
 24 CHAIRMAN DANNER: Yeah, and I just want to
 25 add, I do appreciate all the work that everyone has done

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1 on this. I think this is -- certainly is new, it was
 2 complete, it was thorough. We have questions, that's
 3 our job, and so we will take it under review, but I want
 4 to thank you all for the work you've done.
 5 JUDGE KOPTA: All right. We are off the
 6 record.
 7 (Adjourned at 12:01 p.m.)
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1 CERTIFICATE
 2
 3 STATE OF WASHINGTON
 4 COUNTY OF THURSTON
 5
 6 I, Tayler Russell, a Certified Shorthand Reporter
 7 in and for the State of Washington, do hereby certify
 8 that the foregoing transcript is true and accurate to
 9 the best of my knowledge, skill and ability.
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 12 Tayler Russell, CCR 3358
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