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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 THE WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

4 Complainant,)

5 vs.)

6 PUGET SOUND ENERGY, INC.,)

7 Respondent.)

8 -----)

DOCKET NO. UE-010525

Volume 2

Pages 34 - 139

9 A settlement conference in the above matter
10 was held on October 17, 2001, at 2:40 p.m., at 1300
11 South Evergreen Park Drive Southwest, Olympia,
12 Washington, before Administrative Law Judge DENNIS
13 MOSS, Chairwoman MARILYN SHOWALTER, Commissioners
14 RICHARD HEMSTAD and PATRICK OSHIE.

15 The parties were present as follows:

16 PUGET SOUND ENERGY, INC., by TODD G. GLASS,
17 Attorney at Law, Heller Ehrman White & McAuliffe, LLP,
18 701 Fifth Avenue, Suite 6100, Seattle, Washington
19 98104.

20 THE WASHINGTON UTILITIES AND TRANSPORTATION
21 COMMISSION, by DONALD T. TROTTER, Assistant Attorney
22 General, 1400 Southwest Evergreen Park Drive Southwest,
23 Post Office Box 40128, Olympia, Washington 98504.

24 QWEST CORPORATION, by ADAM L. SHERR, Attorney
25 at Law, 1600 Seventh Avenue, Room 3206, Seattle,
Washington 98191.

AT&T WIRELESS, by JOHN A. CAMERON, Attorney
at Law, Davis Wright Tremaine, LLP, 1300 Southwest
Fifth Avenue, Suite 2300, Portland, Oregon 97201.

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1 WORLDCOM, INC., by KIRK H. GIBSON,
2 Attorney at Law, Ater Wynne, LLP, 222 Southwest
3 Columbia, Suite 1800, Portland, Oregon 97201.

3 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
4 by MELINDA J. DAVISON, Attorney at Law, Davison Van
5 Cleve, 1000 Southwest Broadway, Suite 2460, Portland,
6 Oregon 97205.

7 PUBLIC COUNSEL, by ROBERT W. CROMWELL, JR.,
8 Assistant Attorney General, 900 Fourth Avenue, Suite
9 2000, Seattle, Washington 98164 (via bridge line.)

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27 Kathryn T. Wilson, CCR

28 Court Reporter

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EXHIBITS

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EXHIBIT NO.

MARKED/OFFERED/ADMITTED

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JUDGE MOSS: Good afternoon, everyone. My name is Dennis Moss. I'm an administrative law judge from the Washington Utilities and Transportation Commission. We are convened with the commissioners on the Bench this afternoon in the docket styled Washington Utilities and Transportation Commission against Puget Sound Energy, Docket No. UE-010525.

Our first order of business will be to take appearances. Let's begin with Puget.

MR. GLASS: Todd Glass of Heller Ehrman White and McAuliffe on behalf of Puget Sound Energy.

MR. CAMERON: Good afternoon. I'm John Cameron, Davis Wright Tremaine, here on behalf of AT&T Wireless.

MR. GIBSON: Kirk Gibson of Ater Wynne, LLP, on behalf of WorldCom.

MR. SHERR: Adam Sherr of Qwest.

MS. DAVISON: Melinda Davison of Davison Van Cleve on behalf of the Industrial Customers of Northwest Utilities.

JUDGE MOSS: Mr. Trotter?

MR. TROTTER: Donald Trotter, assistant attorney general with Commission staff.

JUDGE MOSS: We do not have a

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1 representative present from Public Counsel --

2 MR. CROMWELL: Your Honor?

3 JUDGE MOSS: Mr. Cromwell, I wasn't
4 anticipating anyone on the bridge line. I apologize.
5 Go ahead and enter your appearance.

6 MR. CROMWELL: Robert Cromwell on behalf of
7 Public Counsel.

8 JUDGE MOSS: Anyone else on the bridge line?
9 I believe we do now have all the parties represented.

10 The purpose of our gathering this afternoon
11 is to take up the proposed settlement of this
12 proceeding, and I'll describe it as a partial
13 settlement in the sense that not all parties are
14 signatory to it. We did have some procedural
15 discussion earlier in the week and further exchange by
16 e-mail that clarified the situation and perhaps
17 precipitated some late filings.

18 The fundamental idea for today is that we
19 will discuss the proposed settlement in its fullness,
20 which is to say, all of the alternatives presented,
21 recognizing that the parties have put forth through
22 their amended settlement agreement that their
23 preference is to have the Commission approve three
24 special contracts, and as I understand the settlement,
25 that would then lead or would be accompanied by a

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1 request for leave to withdraw the Schedule 45 that's
2 currently on the table, and then as a secondary
3 alternative for the Commission to approve the Schedule
4 45, as to which I understand there is at least one
5 party, the Industrial Customers, who are opposed, and
6 we did receive your filing. I suppose that was
7 yesterday. We also did receive PSE's comments. Has
8 Staff filed anything, Mr. Trotter?

9 MR. TROTTER: No. I am prepared to make oral
10 statements today about Staff's position.

11 JUDGE MOSS: I'm sure you've all come today
12 prepared to call your witnesses and to speak to the
13 settlement. I think also given the posture of the
14 matter, we are going to want to have a fair amount of
15 interaction with counsel and the Bench, and we
16 typically allow for opening statements, and perhaps
17 that would be the best way to proceed is to hear from
18 the parties as to how they see the posture of the
19 matter.

20 CHAIRWOMAN SHOWALTER: It's so easy for the
21 posture to get into arguments. I was going to say
22 subject to discussion here that since the special
23 contracts are the preferred option, as I understand it,
24 I would rather hear about that first. I think if we
25 heard from each of the parties on all, we would start

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1 losing track of the arguments for and against or about
2 special contracts and the arguments for or against or
3 about the tariff. So I just want to be sure we isolate
4 those somewhat and look at the special contracts first,
5 if that sounds like a good idea to others.

6 JUDGE MOSS: It sounds like a good idea to
7 Judge Moss. I see lots of nods of affirmance from the
8 counsel. That sounds like a very sensible way to
9 proceed. Let me ask if the parties had anticipated
10 that one or more of you would make a statement
11 regarding the proposed settlement in this preferred
12 option of the special contracts, and perhaps another
13 party would have something to say about that, very
14 brief.

15 MR. GLASS: I had prepared a brief T-up of
16 the special contracts only.

17 JUDGE MOSS: Let's get our witnesses on the
18 stand first, so to speak. Do the witnesses have
19 testimony on the special contracts?

20 MR. GLASS: No direct testimony, but, of
21 course, they are available for any questions.

22 JUDGE MOSS: Let's call them when we need
23 them. Go ahead and "T" us up, Mr. Glass.

24 MR. GLASS: Thank, Your Honor, Commissioners.
25 17 months ago, PSE embarked upon this rate schedule

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1 proceeding, a set of proceedings in the rate schedules.
2 Along the way, we have tried to fashion a rate schedule
3 that would deal with these types of customers. Along
4 the way, we have also come up with two settlements that
5 are before you today that we believe would adequately
6 deal with the transitional time period between now and
7 the end of Puget's next rate case, which, I should say
8 up front, as of today, it is Puget's intention to file
9 a rate case early next month, early in November, so I
10 think we are on record in that regard.

11 The first settlement that was arrived at was
12 filed on September 17th. It was between Puget Sound
13 Energy and the three telecommunications customers
14 represented here: AT&T, WorldCom and Qwest. That
15 settlement had stipulated Schedule 45, and then as a
16 backup, the special contracts. However, the rates,
17 terms, and conditions of both were identical.
18 Actually, the two forms were in the alternative.

19 During late last week, we reached a
20 settlement as far as procedural nature with some
21 substance as to with ICNU dealing with their opposition
22 to stipulated Schedule 45. The genesis of that
23 settlement was a statement by Mr. Sanger in the
24 prehearing conference on September 7th that ICNU might
25 be willing to go along with special contracts if we

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1 were to withdraw the Schedule 45. That is, in essence,
2 the settlement we reached with ICNU, all of the
3 customers, PSE as well, that we would come before you
4 today and request that you consider and approve the
5 special contracts as a way to put these issues to rest
6 pending the rate case and pending a more deliberate and
7 considered view of all the policy issues that these
8 rate schedule matters may have.

9 In my cover letter of yesterday, I have
10 detailed the agreement between ICNU customers and PSE,
11 but basically, I can say today that on behalf of PSE,
12 we will withdraw or move the Commission to withdraw
13 stipulated Schedule 45 and the Schedule 45 that was
14 initially filed pending your approval of the special
15 contracts --

16 CHAIRWOMAN SHOWALTER: That was two different
17 ways to say something because I first thought you were
18 going to say we will withdraw if you approve the
19 special contracts, and then you changed that to, we
20 will withdraw pending.

21 MR. GLASS: The first one is probably the
22 more accurate way, but the intent is the same. As soon
23 as you approve the special contracts, we want the
24 stipulated Schedule 45 and Schedule 45 to go away.

25 We noted this morning, counsel for the

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1 customers as well as myself, we realized that there is
2 an omission in the special contracts that merits your
3 consideration. If you will look at Page 2 of the
4 special contracts, there is a No. 5 item entitled
5 "Pricing Process and Designation of Load." Not
6 withstanding 10 sets of items reviewing these documents
7 before we all filed them on September 17th, we realized
8 that that Section 5 did not include the significant
9 load reduction provision that softens the customers'
10 take or pay provision. It is the meeting of the minds
11 of the parties that the significant load reduction
12 portion, which is actually included in the stipulated
13 Schedule 45, be included in the special contract. If
14 it pleases the Commission, I can read it in or I can
15 point you to it.

16 CHAIRWOMAN SHOWALTER: Could you point us to
17 it and then read it in?

18 MR. GLASS: Certainly. If you look at
19 stipulated Schedule 45 --

20 JUDGE MOSS: That's Tab A.

21 MR. GLASS: -- Tab A of our September 17th
22 filing, original sheet 45-D. It's the first full
23 paragraph that's labeled, "B, Significant Load
24 Reduction."

25 JUDGE MOSS: Why don't you go ahead and read

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1 that in.

2 MR. GLASS: "Significant load reduction: To
3 the extent customer does not consume its planned
4 incremental load take or pay energy in a given month,
5 the company shall remarket such energy and provide a
6 credit equal or such energy at a price of 90 percent of
7 the weighted average mid-Columbia firm index price for
8 the applicable month up to but not exceeding customers'
9 total take or pay obligation (the planned incremental
10 load times the price set forth in Paragraph 2-A.)

11 CHAIRWOMAN SHOWALTER: Where would that go in
12 the contract?

13 MR. GLASS: Basically, we would take 5 in the
14 special contract and add this as a new Subparagraph B
15 to 5. The reference to 2-A in the comments that I just
16 stated, I'm informed, would need to be changed to
17 Paragraph 5-A.

18 JUDGE MOSS: Is that the only point of that
19 type that you had, Mr. Glass?

20 MR. GLASS: Correct.

21 JUDGE MOSS: I noticed that on Page 1 of the
22 special contract under Arabic I, "Service", in the
23 first sentence there appears to be a term of art, "high
24 intensity load electric service." Is that defined
25 somewhere in the special contract?

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1 MR. GLASS: I do not believe so.
2 CHAIRWOMAN SHOWALTER: What does it mean?
3 COMMISSIONER HEMSTAD: What are the criteria
4 for it?
5 JUDGE MOSS: Perhaps it will ease things
6 along to note the term is defined in Schedule 45, and
7 my thought was perhaps it was your intention, at least
8 I thought it was.
9 MR. GLASS: I concur that that is probably
10 what the parties meant.
11 JUDGE MOSS: Would that be, for example, the
12 definition under the applicability term of Schedule 45?
13 MR. GLASS: Yes.
14 JUDGE MOSS: So would it be the settling
15 parties' intention that the special contract defined
16 the term according to the applicability section of the
17 Schedule?
18 MR. GLASS: Your Honor, I think that why that
19 definition fell out was it was our intention that these
20 contracts be bilateral agreements, not of general
21 applicability, and that is why this applicability
22 section was not reflected in the special contract.
23 CHAIRWOMAN SHOWALTER: So then does that mean
24 that the contract shouldn't even have the
25 customer-meets-the-criteria language at all because the

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1 customer is just the customer, or is the customer -- do
2 you intend that the contract state that the customer of
3 the contract meet some kind of criteria; which way?

4 MR. GLASS: We could probably go with the
5 first way, which is no criteria specifically in the
6 contract. It's our intention to offer but not require
7 any customer -- any other customer during the
8 transitional rate period, they will be offered this
9 contract to the extent they met this criteria, however,
10 that does not need to, of course, be in the special
11 contract itself.

12 COMMISSIONER HEMSTAD: But that opens one of
13 the issues first reading where we have some concerns;
14 namely, will this be available to other customers,
15 either existing customers of Puget or new customers
16 that come over the horizon, even short-term.

17 MR. GLASS: It will be available to them but
18 not required of them.

19 CHAIRWOMAN SHOWALTER: Who is the "them"? Is
20 it anybody who meets the criteria that you mentioned,
21 or is it anybody?

22 MR. GLASS: It's anybody who meets the
23 criteria.

24 CHAIRWOMAN SHOWALTER: If that's the case, I
25 think just as a matter of form, it might be a good idea

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1 to state these criteria in the contract because you
2 would at least have something in the bounds of the
3 contract that shows what type of customer this is for
4 purposes of comparison of discrimination or not
5 discrimination, but that leads to my question, let's
6 assume the criteria. The question then is, why are
7 these criteria -- the criteria are actually back on
8 Page 1 of Schedule 45. Why would it be justified to
9 limit application of these kinds of contracts only to
10 this group and not a broader group of existing
11 customers who say, "I would like this contract too"?

12 MR. GLASS: The customers that we seek to
13 serve under this special contract have certain
14 characteristics that we have attempted to capture in
15 the criteria listed. For instance, they require
16 additional infrastructure that most other customers do
17 not require. The special contract is specifically
18 designed to serve those customers that possess that
19 criteria. So that is why the criteria exists, and we
20 think that the criteria only captures the customers
21 that have joined in supporting these special contracts,
22 and for those who may come along, they will be offered
23 it, but not required.

24 COMMISSIONER HEMSTAD: I'm lost again. So
25 where are those criteria in the contract?

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1 MR. GLASS: I agree with the Commission that
2 they are not in the contract and that for purposes of
3 clarification, as the Chair said, putting that in there
4 as a point of clarification, that would be an advisable
5 thing to have in there.

6 CHAIRWOMAN SHOWALTER: So they aren't in the
7 contract, but they are on Page 1 of the proposed
8 Schedule 45.

9 MR. GLASS: Right. If the Commission so
10 desires, of course, we would be happy to put that in
11 there as a point of clarification. As far as the
12 customers, would you have any objections to that?

13 MR. CAMERON: If I could be heard for a
14 moment. I think speaking for the customers, certainly
15 for AT&T wireless, my first observation is that the
16 term "high intensity" is not an operative term in the
17 contract. From the customers' perspective these are
18 simply bilateral arrangements that cover the period
19 starting when Schedule 48 is terminated until the end
20 of the transitional period providing rates that we have
21 agreed to and also part of a package of resolutions
22 that cover construction and other issues associated
23 with how we found ourselves on Schedule 48 and what
24 we've been able to agree to the Company to do.

25 I think the customers are indifferent to the

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1 point of whether high intensity is defined within the
2 contract or not. It does not affect our deal. From
3 our perspective, I think we are indifferent, so
4 whatever your pleasure is.

5 COMMISSIONER HEMSTAD: One of our concerns is
6 the issue of whether other existing customers complain
7 they are entitled to the same set of arrangements that
8 are included in these contracts. The customers here
9 today are indifferent to that, but the question is,
10 should we be indifferent to that when it comes to other
11 customers?

12 MR. CAMERON: If you wanted it in, again, as
13 a matter of indifference to us, put it in to add the
14 clarification you need. The customers just find
15 themselves 14 days shy of the expiration of Schedule
16 48. We are somewhat anxious to know what the rate will
17 be after that period. That's the heart of our concern.

18 CHAIRWOMAN SHOWALTER: I don't think it is so
19 much an issue of whether it's in the contract or out of
20 the contract. If it's not in the contract, it can be
21 clarified in an order that these are the
22 characteristics that these contracts apply to, but the
23 substance of the question is, are these criteria -- we
24 can read the criteria. They are there. They certainly
25 define a group, whether new or old. The question is,

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1 are these the criteria that should make a difference in
2 terms of who is eligible to be treated one way under
3 the special contract or not under the special contract
4 and only under the existing tariffs? That's important
5 because we have to find in proving these special
6 contracts that they don't discriminate unduly.

7 MR. GLASS: I understand the point. Our
8 witnesses that are here today have prepared and
9 reviewed all of the current customers on Puget's system
10 and can answer for you today of whether any other,
11 other than the three here before you, qualify under the
12 criteria set forth here. That's only a partial answer,
13 but there is more information available to you other
14 than me.

15 CHAIRWOMAN SHOWALTER: That would be
16 interesting. We should get that, but it is only a
17 partial answer, because it begs the question of whether
18 there are others who don't meet these criteria who
19 would say, "This is an arbitrary line. I want this
20 special contract too for the next year." So that's
21 more of a policy or legal question than a factual one;
22 although, the facts are interesting as well. What's
23 the answer? Why should this define the group that
24 receives the option of similar special contract in the
25 future?

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1 MR. GLASS: We believe that these criteria
2 capture a group of customers that need to be served in
3 a different manner than is typically available under
4 Schedule 31 or 49. The customers here, for instance,
5 have all met these criteria. They all have loads,
6 either existing or projected, load factors in excess of
7 80 percent, and they all have the improved
8 infrastructure in order to avoid the possibility of
9 power service interruption. If there are other
10 customers that meet all of those criteria, it would be
11 wrong for us to say that we will not offer you the same
12 special contract.

13 CHAIRWOMAN SHOWALTER: What about those that
14 don't meet these criteria? Why shouldn't they get the
15 contract? A line has been drawn here, and it's a line
16 that happens to coincide with the existing three
17 customers, so they are all right with this contract and
18 provision, and anyone else who fell above that line or
19 within those lines would be eligible.

20 The question we are after at the moment is
21 that then means that others who fall outside of those
22 lines are not entitled to receive this contract. So
23 the question is, why are these the right lines? Why is
24 this the appropriate criteria for who should get a
25 special contract and who shouldn't?

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1 MR. GLASS: We had up to this point not
2 focused on that issue because it was our understanding
3 that nobody wanted such things. However, I can see
4 from a policy perspective how the Commission ought to
5 entertain it. I think that the witnesses that we have,
6 when they are called up here, will be able to provide
7 you with greater information that goes to factual as
8 well as policy.

9 COMMISSIONER HEMSTAD: When we started here
10 with an opening statement, I would like to hear from
11 both ICNU and Staff on this issue as to what their
12 views are.

13 MR. CAMERON: Could I offer one observation
14 first? It may seem a bit perverse, but these three
15 customers are here because they found themselves on
16 Schedule 48, and there have been a number of
17 discussions about whether 48 was appropriate or not.

18 During the course of our discussions that led
19 to this settlement, our position initially was we
20 should be on 31 or perhaps 49, depending on delivery
21 voltage. The issue that kept us apart was that one.
22 We have decided for the time being, at least the
23 transitional period leading up to the next general rate
24 case, to table that issue and to rejoin that issue
25 during the general rate case. Because frankly where we

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1 sit right now, we aren't sure whether 31 or 49 are that
2 good a deal for customers with these characteristics,
3 but for the time being, we are here.

4 These special contracts are here not because
5 we wanted them so much but because we couldn't come to
6 closure on the 31 or 49 issue. We elected not to sit
7 through a hearing on that before the end of the next
8 general rate case, so we got as far as we could, which
9 was one, to determine definitively, to your approval,
10 what rate would apply when 48 terminated to solving a
11 variety of construction issues between each individual
12 customer and the Company regarding the infrastructure
13 built to accommodate our operations, and three
14 settlements related to the fact that we were on 48, and
15 there was an issue about whether we should be there or
16 not.

17 To me, another potential customer comes in
18 first should ask the issue, "Shouldn't I just take 31
19 or 49?" If you look at the special contract and the
20 stipulated schedule -- they are as identical as they
21 could make them -- we pick up the 31 and 49 rates,
22 depending again on delivery voltage. The threshold you
23 see for that Tier 1 pricing is five megawatts,
24 40,650,000 kilowatt hours a month. We picked that
25 intentionally because we think within this transitional

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1 period, our loads are not going to exceed that amount.
2 So we get rates equal to 31 or 49, and we
3 preserve the issue for later resolution before you in
4 the general. So in terms of discrimination, it's
5 upside down. Other customers who come up in, I think,
6 would first ask for 26, 31, or Schedule 49 only if
7 there is an issue like the one we faced with Puget with
8 the question of a special contract. So it's not like
9 something that's been withheld so much as it is a
10 mutually-agreed-to accommodation to get us through the
11 issue rate eligibility until we can take it up with you
12 in the general.

13 CHAIRWOMAN SHOWALTER: Are you saying as a
14 practical matter you think that you probably will not
15 exceed Schedule 31 rates through the contract period?

16 MR. CAMERON: Yes, ma'am.

17 CHAIRWOMAN SHOWALTER: Then that's why as a
18 practical matter for you it doesn't matter; however,
19 the contract terms themselves, am I right, say that if
20 you should go above a certain threshold, you start to
21 pay market rates or you are subject to market
22 conditions; is that correct?

23 MR. CAMERON: Yes, ma'am.

24 CHAIRWOMAN SHOWALTER: Then depending on how
25 one views the market in the next year, might that be

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1 attractive to someone, more attractive than the
2 schedule they are on or not?

3 MR. CAMERON: Given the travail in the
4 market, I can tell you we picked that five megawatts
5 carefully to minimize the likelihood we would face it,
6 but I guess you could hypothesize a situation where
7 some customer might like to play that game.

8 CHAIRWOMAN SHOWALTER: Because it seems to me
9 a part of what is at issue here or is going on here is
10 you want to execute these special contracts pending
11 working out some more permanent class arrangement rate
12 in the rate case. On the other hand, in order to
13 approve these special contracts, we have to find they
14 don't discriminate based on similarly situated people
15 unduly.

16 So in some ways, at least on some level, we
17 have to say, "We think these are fair." Now, you can
18 define the contractees in various ways, Schedule 48 or
19 new or in litigation, various ways. The question
20 always come back to, Are those elements, however we
21 define them, distinctive enough that others who come
22 along and don't fit those elements have no right to
23 this. It's not as simple as, Let's just have a
24 contract until we settle the issue later, because we
25 are subject to constraints when we approve these

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1 special contracts for good reason. So that's why we
2 are wondering how to appropriately define the people
3 who are getting these special contracts in a way that
4 we are comfortable that we are not unduly
5 discriminating.

6 MR. CAMERON: I can offer you the simplest
7 possible class definition which would be customers who
8 still find themselves on Schedule 48 with no place to
9 go come October 31st.

10 CHAIRWOMAN SHOWALTER: That might be a good
11 answer, because you are the only three customers who
12 are left without a clear home after the end of the
13 month.

14 MR. CAMERON: We were covered in the Air
15 Liquide complaint stipulation, but we are not parties
16 to that case so it didn't determine this issue for us.

17 COMMISSIONER HEMSTAD: You are left hanging.
18 I would like to here from ICNU and Staff on the issue.

19 JUDGE MOSS: Ms. Davison, I believe you have
20 been called.

21 MS. DAVISON: I'm not sure where to start. I
22 don't want to sidetrack this discussion so I will try
23 to answer the questions that have been presented as
24 directly as possible, but I do want to note that I
25 would like to make some more general observations for

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1 the record with regard to an opening statement.

2 I think that the question that Chairwoman
3 Showalter has raised is a very appropriate question
4 because if you look at the definition that is contained
5 in Schedule 45 of high intensity load electric service,
6 which we just heard from Mr. Glass, is, in effect, the
7 definition that would be applied to the special
8 contract that looking at that definition, basically,
9 any industrial customer is going to qualify under that
10 definition. It does not have the original Schedule 300
11 characteristic of tying it specifically to data
12 centers, and there were a whole variety of criteria
13 that we saw in Schedule 300 that really tried
14 distinguish it from other industrial customers.
15 Industrial customers do require new facilities, and
16 they take at a high load factor, and that's basically
17 the criteria I see here that's laid out.

18 That is originally why you saw ICNU as the
19 trade association get involved in this case. When
20 Schedule 45 was originally filed, we thought it was a
21 very punitive schedule. You may recall in its original
22 form, it had a very, very high rate of -- one time, I
23 think it was roughly 160 per megawatt hour if you
24 reached a certain threshold, and we opposed that at the
25 time and we continue to oppose incremental pricing. As

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1 you saw from our letter yesterday, we don't think the
2 time is right for it, and I don't think this is the
3 right proceeding to decide an issue of that magnitude.

4 I think that Chairwoman Showalter is
5 absolutely correct in this very wild world that we are
6 living in today, if you follow the market prices for
7 power, we are down in the 20's again, so you are
8 looking at a situation in which the market price
9 provision that is set out as Tier 2 in this Schedule 45
10 is actually a more attractive rate than what you see on
11 Schedule 31 or 49. I don't know what will happen in
12 the future, but that is where we are today, which is a
13 very different situation than where we started when
14 Schedule 45 was originally filed.

15 So I think the questions that you are posing
16 in terms of the eligibility for this special contract
17 are good ones. There are several components of these
18 special contracts that may cause customers to shy away
19 from them, namely, the take or pay provisions.
20 Although, Mr. Glass did note today that there is a
21 provision that's been amended to the special contracts
22 to soften the blow of the take or pay aspects of it,
23 but fundamentally, ICNU has taken a consistent position
24 throughout, not in terms of trying to chase the market
25 or chase the prices. We fundamentally believe that

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1 this is not a correct classification of customer that
2 is directed at data centers, and we fundamentally
3 believe that this tariff discriminates on several
4 different levels as we set out in our letter yesterday.

5 CHAIRWOMAN SHOWALTER: But back on the
6 contracts, not the tariff, what about Mr. Cameron's
7 point that these are the last three Schedule 48
8 customers, and we didn't find Schedule 48 was unjust
9 and reasonable and it ends anyway. Do you think that
10 is a reasonable group to allow a special contract; that
11 that is a reasonable distinction to make between them
12 and some of these others who could come along and say,
13 "I use a lot of electricity too." And our answer would
14 be, "Yes, you do, but you were not left on October 31st
15 with nowhere to go, so for that group, we did have to
16 approve these special contracts. We did it on the
17 understanding that a rate case is coming in the door.
18 You, along with them, will be subject to the ultimate
19 decisions in the rate case and be part of that." Is
20 that a reasonable distinction to make.

21 MS. DAVISON: I believe that you can make
22 that distinction, yes. I think that there are several
23 outstanding issues that have to be decided pretty
24 quickly with regard to the issue of how these special
25 contracts are currently written in a way that does

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1 mirror many components of Schedule 45, and I do believe
2 that the rate case, as we have said consistently, is
3 the right place to resolve a lot of these broader
4 issues, and I could see a solution that was a limited
5 stopgap that doesn't have any precedential value that
6 is very narrowly defined that gets us through this very
7 short period of time but preserves what we consider to
8 be significant legal issues for the rate case.

9 CHAIRWOMAN SHOWALTER: Did I understand you
10 to say these special contracts are that limited
11 provision or not?

12 MS. DAVISON: I think that if the Commission
13 approved these special contracts, I would certainly
14 hope that the Commission would note that these are
15 limited and the class is limited. There is no
16 precedent here that this was not a proceeding in which
17 procedurally parties were able to present their
18 arguments with regard to many of the concepts that are
19 embodied in the special contracts and that those issues
20 will be saved for a later date.

21 JUDGE MOSS: Your position in the case is
22 that you would not oppose this approval of the special
23 contracts but you don't actively support it either. Is
24 that a correct statement of your position of the case
25 at this juncture?

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1 MS. DAVISON: It's such a nice, succinct
2 statement I wish I could say absolutely clearly yes. I
3 have one caveat to that, and it depends on the answers
4 that I get from the Puget Sound Energy witness on
5 cross-examination with regard to how my clients will be
6 treated during this interim period.

7 CHAIRWOMAN SHOWALTER: Maybe we had better
8 allow Staff to comment and then we'd better call the
9 witnesses.

10 MR. TROTTER: Thank you. First off, Staff
11 does support the Alternative 1, the special contracts
12 for the three customers, and it is because of the
13 context, and I'll focus on the Bench's discrimination
14 issue in a second, but we do agree, and I think it's
15 obvious from the pleadings that this was a mutually
16 agreed-to accommodation, as Mr. Cameron said, and I
17 think Staff is particularly attuned to the context of
18 which this arises. It is a transition mechanism.
19 These issues of what Schedule 31 and 49 and 45, if any,
20 will look like are good rate case issues, and that
21 vehicle will be available shortly, and that's where it
22 ought to be resolved. Having a two-track system where
23 we are litigating that here and there doesn't make
24 sense to us.

25 This is a way to accommodate the interests of

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1 all parties to get there, and it's very short term. If
2 the case is filed next month, it will be about a year
3 where these contracts will be in effect at the outside.
4 Again, a practical consideration, and we degree that
5 there is probably not too many customers that would
6 find this advantageous, and even the customers that are
7 on it that will not be in the tail blocks with the big
8 issues lay in wait.

9 But those are all practical, strategic, or
10 whatever considerations, but getting right to your
11 point, Chairwoman Showalter, you said the rules require
12 us to look at discrimination issues and so on, and
13 these are special contracts so let's look at those, and
14 I do think the fact that these are Schedule 48
15 customers is a key component of that. I note the
16 Company does provide some additional criteria or
17 distinctions that they allege on Page 14 of their
18 comment regarding how these customers are served. They
19 have a very high load factor. I believe that we've
20 been told that other existing customers don't have that
21 high of a load factor, and load factor is traditionally
22 a basis for distinguishing between customers.
23 Mr. McIntosh can talk about factual issues better than
24 I can when the opportunity arises, but these are things
25 that we have looked at and feel comfortable with in the

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1 overall strategic procedural context in which we find
2 ourselves.

3 Also, we considered that special contracts
4 are committed under the rate plan approved in Docket
5 No. UE-951270 in Paragraph 5 of the stipulation there.
6 So all these factors lumped together gave us some
7 comfort that this was an acceptable way to go. If we
8 went to litigation and hashed out to the last sentence
9 discrimination issues, it's hard to know where we might
10 end up, but we are comfortable right now with what we
11 know and the overall context proceeding on this basis.

12 JUDGE MOSS: Should we call our witnesses?

13 COMMISSIONER HEMSTAD: I suppose unless the
14 other customers have any other opening comments at all,
15 or do you just waive that?

16 MR. TROTTER: One other thing, this can be
17 unanalogous to an experimental tariff, and commissions
18 are given pretty wide latitude in areas of
19 discrimination in that context. I don't think it's
20 precisely experimental, but often those tariffs are
21 short term. They are quite different and so on.
22 That's something I just quite honestly thought of as
23 possibly were arguing, but I think overall if you
24 approve these special contracts, I think the likelihood
25 of a challenge on discrimination grounds is very slim,

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1 and I think we have a lot of factors here that would
2 provide a sufficient basis to sustain a contract.
3 Thank you.

4 CHAIRWOMAN SHOWALTER: I have one question
5 just on the word of the contract itself that I think is
6 more of a lawyer question, and that is on Page 2 of the
7 contract. It's at the top of the page, so the sentence
8 starts with the previous page, but the third line down
9 is "absent Commission approval," and I don't know what
10 that means. So maybe Mr. Glass could look at the whole
11 sentence and tell me what that means. I'm not clear
12 what approval we're talking about, because it looks to
13 me like we're talking about approval of the contract,
14 and if we don't approve the contract, there is no term
15 of a contract.

16 MR. GLASS: We added that provision absent
17 Commission approval after conversation with Staff with
18 regard to what happens -- first off, if PSE doesn't do
19 its rate case and it's not done within 24 months, what
20 happens at the 24-month period end of this, which is
21 several contingencies down the road, but in other
22 words, what we were stating here is absent Commission
23 approval, this contract would end at the later of the
24 two times, either the general rate proceeding or 24
25 months. However, if the Commission had said the rate

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1 proceeding is going to end in the 25th month, the
2 Commission could instruct the parties that continuing
3 on with the special contract would be allowable.

4 It was basically a caveat to give the
5 Commission authority to do whatever it wanted to with
6 these special contracts if we got out to the 24-month
7 deadline for these contracts and we didn't know what
8 was going to happen.

9 JUDGE MOSS: Just a follow-up on that point.
10 How does that square with your amendment to stipulation
11 of settlement at Page 1 that appears to have two
12 trigger dates as well, the later of the end of the rate
13 case or October 1st, 2002.

14 CHAIRWOMAN SHOWALTER: I haven't gotten an
15 answer on this question yet. I still don't understand
16 it. What is "absent Commission approval"? Approval of
17 what?

18 MR. GLASS: Of continuation of these special
19 contracts beyond 24 months.

20 COMMISSIONER HEMSTAD: In other words, it's a
21 modifier to the following phrase.

22 MR. GLASS: Correct.

23 JUDGE MOSS: We got that piece. Now, are we
24 talking about trigger mechanisms here, or should these
25 dates line up?

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1 MR. GLASS: I think what happened is because
2 PSE is going to be filing that rate case soon, this
3 portion, this "absent Commission approval" part, did
4 not make it into the amendment of the stipulation. I
5 think the amendment of the stipulation reflects one of
6 two dates, the end of the rate case or the end of the
7 24-month period.

8 JUDGE MOSS: That's what you intend it to
9 reflect, because this is 23 months the way I count.

10 MR. GLASS: Yes.

11 JUDGE MOSS: I just want to be clear we've
12 got a consistent criteria throughout. You're asking
13 the Commission to approve a set of documents here, and
14 these details become important at that point, so we
15 want to be clear. The intention is that it be the end
16 of the rate case or 24 months.

17 MR. GLASS: Correct.

18 JUDGE MOSS: So we can pick that up in a an
19 order, but we want to get it right. Mr. Gibson?

20 MR. GIBSON: The date October 1st goes back
21 to the original filing where we wanted it effective
22 October 1st but were unable to accommodate a hearing in
23 September, and this goes back to that. In a sense,
24 before the Commission is a request to make the
25 effective date October 1st, and I think that's allowed

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1 under the rules with show and cause, but I think that's
2 where the discrepancy occurs. Let my comments only go
3 to the reason that there is a difference in dates.

4 CHAIRWOMAN SHOWALTER: Are we being asked to
5 make this effective October 1st?

6 MR. GIBSON: No. I don't think we offered to
7 ask that. I probably shouldn't have thrown that little
8 extra knowledge in.

9 CHAIRWOMAN SHOWALTER: Now, on the issue
10 though of the term of this contract, I think there is a
11 significant difference if it's a contract that goes the
12 next 24 months versus the next 12 or so, which means it
13 makes a difference if the Company is going to file a
14 rate case. Since you have stated several times you are
15 going to, do you object to our approving these
16 contracts conditioned on the Company filing a rate case
17 by November 15th or something that fits within your
18 current statements?

19 MR. GLASS: Steve Secrist, director of rates
20 for Puget who is in charge of the rate filing, is
21 probably the best person to answer that question versus
22 me.

23 JUDGE MOSS: He's going to be your witness?

24 MR. GLASS: Yes.

25 JUDGE MOSS: Is the Bench ready to have our

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1 witnesses called?

2 MR. GIBSON: In a sense of the spirit of
3 opening comments, I would concur with what Mr. Cameron
4 has said before me, but we are here with unique
5 circumstances, and what we've done is a settlement
6 invites natures of compromise. As businesses, we've
7 gotten together to move forward so we have something
8 with certainty that we think is reasonable under the
9 circumstances, and it's transitional in nature, and
10 that's we would urge the Commission to approve this
11 contract.

12 JUDGE MOSS: Mr. Sherr, I don't want to skip
13 you.

14 MR. SHERR: Qwest is willing to waive its
15 opening statement. There is nothing I can add. All
16 the customers and PSE have fully spoken to this matter.

17 JUDGE MOSS: Ms. Davison, I think you
18 suggested earlier that you might have something
19 further.

20 MS. DAVISON: Very briefly. I don't mean to
21 raise these issues to try to derail this hearing in any
22 way, but I do want to state quickly on the record a few
23 procedural concerns I had about this particular docket.

24 The first is that I'm a little puzzled by the
25 schedule in the case. Testimony was due on October

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1 7th, and I didn't see any kind of motion to seek a
2 delay of filing of that testimony, and I went back and
3 read the order carefully, and it talked about a
4 concurrent path, so I just wanted to raise that issue.

5 JUDGE MOSS: My recollection from the
6 prehearing conference, the discussion -- whether it was
7 captured in the order or not -- was that the filing of
8 testimony and that sort of process, those dates were
9 set as a backstop, if you will, against a settlement
10 not being filed and that if a settlement was filed, we
11 would fall into our typical process for considering
12 such a filing. So that was the intention, and I
13 apologize to you if the order was not adequately clear
14 in that regard.

15 MS. DAVISON: That raised the next question I
16 had which was that the settlement here is a partial
17 settlement, so I wasn't sure, since you have three
18 parties who are not part of the settlement, if that
19 kept the schedule on track or not. So again, I just
20 wanted to note that quickly for the record.

21 JUDGE MOSS: We understood from your
22 representation during the prehearing that you would not
23 be a party to it.

24 MS. DAVISON: The second procedural issue
25 that is slightly confusing to me is that in the

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1 suspension order, there was a statement that Puget
2 Sound Energy may not change or alter the tariff
3 revisions without Commission approval. We now have
4 what is before the Commission the third version of
5 Schedule 45, and while I know that issue may come in
6 the second phase, I didn't want to lose track of it in
7 terms of -- so I'm not going to dwell on that.

8 The other point I wanted to make sure the
9 record was very clear on is that my clients did not
10 participate in the settlement negotiations. In fact,
11 they were not permitted to participate in the
12 settlement negotiations. That's all I have.

13 JUDGE MOSS: Okay. With that, I think we are
14 ready to call our witnesses and so we will be off the
15 record for a few minutes.

16 (Discussion off the record.)

17 JUDGE MOSS: We've arranged ourselves and had
18 some opportunity to discuss the process that will
19 follow this afternoon. I'm going to swear the
20 witnesses collectively in a moment. The parties
21 indicate they have no desire to conduct examination in
22 the nature of direct examination. Ms. Davison has
23 indicated she has a few questions she wishes to ask,
24 and she will direct those to individual witnesses, and
25 then we will have an opportunity for redirect to the

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1 extent counsel feels appropriate to elicit further
2 response from individual witnesses with respect to
3 what, for lack of a better term, what was described as
4 Ms. Davison's cross.

5 There will be opportunities after that for
6 inquiries from the Bench of the witnesses either
7 collectively or individually. If the witnesses will
8 rise, please, and raise their right hands.

9 (Witnesses sworn.)

10 JUDGE MOSS: Ms. Davison, you get the
11 lead-off pitch.

12 MS. DAVISON: I have to apologize that there
13 are two gentlemen that I know --

14 JUDGE MOSS: We need introductions. Good
15 point. That was actually rude of me. I apologize to
16 the witnesses. Normally, we would have inquiry from
17 counsel who would elicit from you your names and
18 affiliations and so forth. Go ahead, please.

19 MR. HENRY: Jerry Henry, Puget Sound Energy,
20 director of major accounts.

21 MR. SECRIST: Steve Secrist, Puget Sound
22 Energy, director of rates and regulations.

23 MR. TRUMM: Jeff Trumm, WorldCom, facilities
24 specialist.

25 MR. PARKER: Galen Parker, Qwest, real estate

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1 energy manager.

2 MR. HUNTER: William Hunter, AT&T Wireless,
3 senior technical analyst.

4 MR. MCINTOSH: Hank McIntosh, UTC staff.

5 MS. DAVISON: At the moment, I believe my
6 questions are probably most appropriately directed at
7 Mr. Secrist. Mr. Secrist, with regard to the special
8 contracts, focusing on Tiers 2 and 3, can you explain
9 how PSE derived those charges?

10 MR. SECRIST: And by Tiers 2 and 3, you are
11 talking about the amount that exceeds five megawatts as
12 well as the amount that provides the overage in case
13 there is over utilization by the customer?

14 MS. DAVISON: That's correct.

15 MR. SECRIST: The amount for the Tier 2 was
16 our effort to look at what other customers are out
17 there that might have loads that exceed a certain
18 level, and what we found is that there are no other
19 Schedule 31 customers that exceed the five megawatt
20 criteria, so we felt we had a safe ceiling there to say
21 if you exceeded this level, you had a rate consumption
22 that was going to be different from all of the
23 customers that are currently on imbedded rates.

24 MS. DAVISON: I'm sorry. Maybe I didn't ask
25 my question very clearly. What I was interested in --

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1 let's focus on Tier 2. How did PSE derive those
2 charges, those rates, not the eligibility, but how did
3 they derive the charges?

4 MR. SECRIST: In terms of a derivation, and
5 perhaps I'm not understanding. Are you talking about
6 what was the process we went through to say for this
7 averaging component that exceeds five megawatts; how
8 did we do that?

9 MS. DAVISON: Correct. Let's start with
10 that.

11 MR. SECRIST: We looked at what would be an
12 opportunity to identify the benefits of market pricing
13 for these customers over five megawatts and felt that
14 by looking at three separate options and then averaging
15 them, we were availing ourselves of the best possible
16 opportunity, the best market pricing for this type of
17 customer.

18 MS. DAVISON: The same question for Tier 3,
19 how did you derive that price?

20 MR. SECRIST: The Tier 3 was simply a
21 negotiated figure with the three customers that are
22 also present here.

23 MS. DAVISON: What is that rate currently?

24 MR. SECRIST: Off the top of my head, I don't
25 know. I would have to check that.

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1 MS. DAVISON: Can you give me a ballpark? Do
2 any of you have a ballpark figure of what Tier 3 rate
3 would be?

4 MR. MCINTOSH: I think it would be about 34
5 mills.

6 JUDGE MOSS: I'm going to have to ask the
7 witnesses not to consult with counsel while they are on
8 the stand, please.

9 MS. DAVISON: We certainly heard from your
10 counsel today that PSE plans to file a general rate
11 case, I believe, on or around November 1; is that
12 correct?

13 MR. SECRIST: We are making every effort to
14 file it on November 1st. Will we hit a date certain?
15 I'm not prepared to commit to a date of November 1st at
16 this point in time other than to say that is our
17 intent.

18 MS. DAVISON: Let's say a new data center
19 customer comes to PSE between now and the conclusion of
20 the general rate case, will PSE attempt to force this
21 customer onto a Schedule 45-like special contract?

22 MR. SECRIST: There are several levels to
23 that answer. If a new Internet data center under your
24 question was to come to Puget Sound Energy, they first
25 would first have to exceed that one megawatt criteria.

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1 What we would then do is indicate to them that their
2 base load would be available to them at the rate
3 Schedule 31 or 49-type criteria. They would also be
4 obligated to pay for the new dedicated facilities.

5 We would also indicate that we would make
6 available to them a special contract should they wish
7 to pursue the Tier 2 type of pricing. As a very
8 practical matter, however, we would see with few
9 exceptions a great deal of difficulty for a new
10 customer to arrange for distribution facilities within
11 that one-year period. So we believe that whether it
12 was a new customer or even an existing Rate Schedule 31
13 customer, you would not have any that would have the
14 infrastructure available within that one-year period
15 presently that would exceed that five megawatt
16 criteria.

17 MS. DAVISON: I think I got a little lost on
18 that. If I understood your answer correctly, I believe
19 that you said that -- let's just break this into
20 parts -- if a new data center customer came to PSE
21 requesting service and that customer's load was
22 anticipated to be between one and five megawatts, you
23 would offer that customer Schedule 31 or 49; is that
24 correct?

25 MR. SECRIST: If a new customer came to us

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1 and projected that their load would be between one and
2 five megawatts, there is still the question at which
3 point in time would they even exceed that one megawatt
4 criteria. So when I speak in terms of base load, I'm
5 talking about the initial criteria where they may not
6 even meet the sort of criteria we are talking about, at
7 least in the proposed tariff filing.

8 If they were to exceed that one megawatt
9 criteria, that's when we would certainly offer to them
10 the special contract. There remains the question
11 whether or not there would be any that would do that
12 over the course of the next year.

13 MS. DAVISON: Let me try this again. I'm
14 starting to think I'm suffering from lack of coffee
15 this afternoon. Under my question, my hypothetical is
16 that -- let me just nail it down and give you a
17 megawatt. My hypothetical customer comes to PSE.
18 Their load would be two megawatts. Will you offer that
19 customer service under Schedule 31 or 49?

20 MR. SECRIST: That's not a question I can
21 answer yes or no. It depends. When are they going to
22 have a two-megawatt load and what is the nature of that
23 two-megawatt load? And maybe I'm misunderstanding
24 because it's not clear to me under your hypothetical
25 the circumstances that are involved.

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1 MS. DAVISON: Under my hypothetical, the
2 customer immediately has, as soon as they get service,
3 they will have a two megawatt load, and under those
4 circumstances, will you offer that customer Schedule 31
5 or 49 service?

6 MR. SECRIST: And my answer is still -- under
7 your hypothetical, if I may just get the clarification,
8 are they going to have the two-megawatt load, for
9 instance, in December of 2001? That's where I'm not
10 understanding you, Ms. Davison.

11 MS. DAVISON: Let's assume they would have a
12 two-megawatt load December 2001.

13 MR. SECRIST: And if they had a two-megawatt
14 load in December 2001 and otherwise met all of the
15 criteria that we have identified in the special
16 contracts, then we would make available to them a
17 special contract.

18 MS. DAVISON: I certainly understand that
19 component of your answer, Mr. Secrist, but my question
20 is, in addition to making available to them the special
21 contract and being able to choose that, will you offer
22 them Schedule 31 or Schedule 49 rates?

23 MR. SECRIST: If they are requesting a Rate
24 Schedule 31 load and they do not meet the criteria that
25 we believe defines this new class, the answer is yes.

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1 If they did meet the criteria for the new class, then
2 we would offer them a special contract that would have
3 pricing at Schedule 31 or 49.

4 MS. DAVISON: I'm back to my hypothetical --

5 JUDGE MOSS: Let's speak directly to this,
6 Mr. Secrist. Ms. Davison is asking you whether 31 or
7 49 would be available to the customer under her
8 hypothetical or whether only the special contract would
9 be available under her hypothetical. It's just one way
10 or the other. It either is or isn't.

11 MR. SECRIST: If it's the high intensity load
12 type of customer, no, we don't believe it would if it
13 exceed that one-megawatt load criteria.

14 JUDGE MOSS: Let me try again. If the
15 customer that comes to you in December of 2001 meets
16 the criteria that these customers under these special
17 contracts must meet today, is the special contract
18 option the only option that PSE would make available to
19 that customer?

20 MR. SECRIST: Yes, that's correct.

21 CHAIRWOMAN SHOWALTER: In that case, I want
22 to hear what criteria are you talking about. Name me
23 specifically on the record now what are the criteria
24 that would cause you to say only a special contract is
25 available?

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1 MR. SECRIST: That would be the exceedance of
2 the one megawatt for the load and the 85 percent load
3 factor, and -- excuse me. It is 80. I stand
4 corrected. And then the improved infrastructure
5 requirement. This would be the redundancy and feed,
6 extraordinary backup load of criteria that the customer
7 would request that Mr. Henry, who is here with me,
8 could provide to you in more detail of what exactly
9 that entails.

10 CHAIRWOMAN SHOWALTER: I'm sorry to interrupt
11 you, Ms. Davison, but it seems to me that -- under the
12 hypothetical we are talking about, are the special
13 contracts in place or is a tariff in place?

14 MR. SECRIST: We are requesting a special
15 contract.

16 CHAIRWOMAN SHOWALTER: Then it seems to me
17 that these special contracts aren't a special contract.
18 You've just defined a tariff, because you are saying
19 that there is a customer who does not want a special
20 contract, and you are saying that it's going to be your
21 policy that this person has to go get a special
22 contract. That seems to me to define a class of
23 customers that is like a tariff.

24 That brings us to the second question that we
25 really haven't gotten to this afternoon which is

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1 whether it is appropriate and whether this commission
2 should approve any tariff that mandates an unwilling
3 customer onto market rates. We have not done that, and
4 as I see the special contracts, it is a way to avoid
5 that question, and if you are saying that you believe
6 that our approval of three special contracts is
7 tantamount to giving you license to refuse to serve
8 under a tariff and require an unwilling customer --
9 these three customers are willing -- an unwilling
10 customer to go onto a special contract, I think we are
11 not in a special contract situation.

12 MR. SECRIST: But that was the point I was
13 trying to clarify with Ms. Davison, because we are
14 looking as a practical matter in saying there are no
15 current requests before us that could get to a two
16 megawatt type of load. We don't even anticipate that
17 over the course of the next year, we would have the
18 infrastructure available to provide a two-megawatt
19 load, which is why there is the very practical as well
20 as contrasted with the theoretical.

21 Under Ms. Davison's hypothetical, there is
22 the hypothetical customer that is requesting a
23 two-megawatt load and initiating service in December of
24 2001, and for purposes of that hypothetical, that would
25 be our answer. There is also a very practical side

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1 that would say there is no infrastructure under
2 construction right now that would be available within
3 the course of the period of time that the Commission is
4 deliberating upon PSE's general rate case so that that
5 would be available in the interim. So that's why I'm
6 saying it's not a simple answer, and that's why we felt
7 we had a solution here that does get to the practical
8 realities of the type of load.

9 If a customer was to come to PSE today and
10 request infrastructure that would get them to a
11 two-megawatt load, with few exceptions, they would not
12 have that available within the time period that PSE
13 would both have filed an answer or some decision on its
14 general rate case.

15 CHAIRWOMAN SHOWALTER: What time period are
16 you assuming for the end of the rate case?

17 MR. SECRIST: The end of the 2002.

18 JUDGE MOSS: Perhaps before we move on, we
19 may as well get an answer to one unanswered question
20 that was deferred to you earlier, the filing date, if
21 you have it.

22 MR. SECRIST: Judge Moss, I'm hesitant to
23 give a date certain. The request was November 1st, and
24 that is our effort. When we get into a date certain,
25 is it November 1st; is it November 15th, it gives me

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1 butterflies only because we have people going around
2 the clock trying to develop this. It's our effort to
3 file this as soon as we are able to complete the
4 filing. We believe that that should be ready around
5 the first of November. There are certainly
6 circumstances that arise in the final review of a
7 filing of this magnitude that may delay that a few
8 days, a few weeks, but in any event, we are certainly
9 proceeding to have that filed as soon as we possibly
10 can.

11 COMMISSIONER HEMSTAD: Is it a certainty that
12 the Company will file a rate case?

13 MR. SECRIST: Yes, Commissioner Hemstad, it
14 is.

15 JUDGE MOSS: Ms. Davison, back to you, and we
16 all apologize for the interruption.

17 MS. DAVISON: I very much appreciate your
18 help. Mr. Secrist, is it your testimony today that
19 there is no one located in PSE service territory that
20 currently has the ability to bring on new load at, say,
21 one-megawatt level without the construction of
22 facilities?

23 MR. SECRIST: I would have to defer that
24 answer for verification to Mr. Henry to my right.

25 MS. DAVISON: Mr. Henry, could you answer

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1 that question?

2 MR. HENRY: Could you repeat the question?

3 MS. DAVISON: Is it PSE's view that there is
4 currently no customer within your service territory
5 that has facilities that are constructed, in place,
6 that could request service at a one-megawatt load
7 level?

8 MR. HENRY: Are you asking that about new
9 customers or existing customers or both?

10 MS. DAVISON: Let me break it down into
11 parts. What I'm trying to discern is -- we just heard
12 from Mr. Secrist that new customers from one-megawatt
13 load or higher are going to be forced to sign a
14 Schedule 45-like special contract, but his caveat to
15 that is, Well, don't worry about this because there are
16 no facilities in place for that type of customer to
17 come into your system currently, and my question to
18 you, is that assumption correct? Are you aware of
19 circumstances where a new customer could come to you --
20 perhaps they've purchased an existing building.
21 Perhaps they have a vacant building -- where they could
22 request service at a one-megawatt level without the
23 construction of major facilities?

24 MR. HENRY: That possibility always exists.
25 There is a possibility that somebody could purchase a

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1 substation and purchase a piece of property that is
2 adjacent to a substation that does not have a
3 significant amount of load on it and could build a
4 building, could put the infrastructure in, and could
5 actually have load more than one megawatt.

6 The practicality of that is to build a
7 building today and get it up to speed to where it would
8 actually use more than one megawatt in a year's time is
9 fairly unlikely. I don't know of any customers on our
10 system today that meet the criteria that Steve has
11 spelled out that are not on our system today, such as
12 the three that are party here today that are projecting
13 more than one megawatt in a year. If it doesn't start
14 today, and there are no other customers even today that
15 are to the point where we are talking about providing
16 service to them:

17 MS. DAVISON: Have you received requests from
18 data customers in the past for service under either
19 Schedule 31 or 49?

20 MR. HENRY: Yes.

21 MS. DAVISON: What was your response to that?

22 MR. HENRY: I think that's a question,
23 because of the rate nature of it, that Steve would need
24 to answer.

25 JUDGE MOSS: Let me just ask all of the

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1 witnesses, it is important to use surnames so we have a
2 clear record of the references to Steve being
3 Mr. Secrist.

4 MR. SECRIST: Just to clarify, Ms. Davison,
5 the question was, are there customers that are out
6 there that are Internet data center loads that have
7 requested service under Rate Schedule 31 or 49 in the
8 past. The answer is yes.

9 MS. DAVISON: And then the follow-up question
10 to that is what was your response to those customers?
11 Did you offer them service under Schedule 31 or 49?

12 MR. SECRIST: There are a number of answers
13 to that, the circumstances including customers that are
14 here at the table with PSE now as well as different
15 type of Internet data centers. Do you want me to break
16 that down into more detail?

17 MS. DAVISON: Have you permitted any Internet
18 data center customer who has requested new service from
19 you to take service under Schedule 31 or 49?

20 MR. SECRIST: There are Internet data center,
21 intranet within certain companies, certain existing
22 companies, that are taking service under Rate Schedule
23 31 or 49; the answer is yes.

24 MS. DAVISON: Have there been any new
25 Internet data center loads who have requested service,

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1 say, in the last 12 months that you have allowed to
2 take service under Schedule 31 or 49?

3 MR. SECRIST: The answer to that is no.

4 MS. DAVISON: What has been your response to
5 those customers as to what is the applicable tariff?

6 MR. SECRIST: The only customers that have
7 been prepared to take service are the three customers
8 that are at the witness table with PSE today. They
9 initially took service under Rate Schedule 48, and we
10 are now requesting the special contract alternative.

11 MS. DAVISON: Let's take a concrete example.
12 Has Kent, Washington, LLC, requested rate service from
13 PSE?

14 MR. SECRIST: Yes, it has.

15 MS. DAVISON: Did they request service under
16 31 or 49?

17 MR. SECRIST: They requested service under 31
18 but were not available or ready to take service at the
19 time they made their request.

20 MS. DAVISON: Did PSE allow Kent, Washington,
21 LLC to take service under 31?

22 MR. SECRIST: Again, they were not ready to
23 take service under Rate Schedule 31.

24 MS. DAVISON: But at the point they are ready
25 to take service, would you allow them to take service

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1 under 31?

2 MR. SECRIST: That would depend upon the type
3 of service they are requesting, but it's our
4 understanding that there has been some discussion as to
5 whether or not the Kent, Washington, LLC development
6 firm is looking at an Internet data center type
7 customer or an office building. So what we have told
8 them is we would need to get clarification on the type
9 of load, and to date, we have not received any firm
10 criteria regarding the type of load, at least that I'm
11 aware of, and Mr. Henry may have some different
12 knowledge on that. If so, I'm not aware.

13 MS. DAVISON: To get to the bottom line,
14 Mr. Secrist, isn't it correct that when Kent,
15 Washington, LLC requested electric service for data
16 center load, you told Kent, Washington, LLC that they
17 could not be served under Schedule 31 and 49?

18 MR. SECRIST: We told Kent, Washington, LLC
19 that if they were prepared to take service at that
20 time, which they were not, and if their load met the
21 outline that they were proposing, which I believe was
22 in excess of five to ten megawatts, as I recall,
23 that -- you are shaking your head. I don't recall, and
24 Mr. Henry may have more information, but we had told
25 them at that point in time that given the profile and

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1 nature of service, we did not believe they were a Rate
2 Schedule 31 type of customer.

3 MS. DAVISON: What rate schedule type of
4 customer did you tell them they were?

5 MR. SECRIST: At the time they made the
6 request, again, they were not ready to take their
7 service. At that point in time, I know that we had
8 discussions with them regarding the filing that we made
9 on, I believe it was April 16th of this year for the
10 proposed Rate Schedule 45, but they were not ready to
11 take service even under that. So we talked to them
12 about the solution and said if this was approved, that
13 would be an alternative, but we don't believe the
14 nature of this load would be a Rate Schedule 31.

15 CHAIRWOMAN SHOWALTER: Could I just ask for
16 clarification of your last answer? What I thought I
17 heard you say is you told Kent, LLC that because of
18 their load, they were not eligible for Schedule 31; is
19 that correct?

20 MR. SECRIST: If that's what I said, I would
21 modify that just a little bit. We said that the
22 profile they presented to us was not reflective of what
23 we felt was appropriate for Rate Schedule 31, but that
24 we also know they weren't able to give us any firm
25 schedule regarding their load. They were only able to

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1 give us some very general numbers, so we had an ongoing
2 request that we have to know what the specific load is
3 going to be, and that question, to my knowledge, has
4 never been answered.

5 CHAIRWOMAN SHOWALTER: What are the load
6 restrictions for Schedule 31?

7 MR. SECRIST: The load restrictions in terms
8 of minimum or maximum?

9 CHAIRWOMAN SHOWALTER: What load
10 characteristics disqualify a customer for Schedule 31?

11 MR. SECRIST: We felt that when we looked at
12 the Kent, Washington, the nature of their request, the
13 heightened level of reliability that they were
14 requesting, the infrastructure that they were looking
15 at in conjunction with their load factor and the amount
16 of the load was different than the nature of service
17 that was ever intended for Rate Schedule 31.

18 JUDGE MOSS: Do either you or Mr. Henry have
19 a copy of Rate Schedule 31 with you?

20 MR. SECRIST: I do not.

21 MR. HENRY: I do not.

22 JUDGE MOSS: Mr. Gibson, are you indicating
23 you have a copy?

24 MR. GIBSON: Yes, I think I do.

25 JUDGE MOSS: If you could furnish that to the

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1 Bench, I would appreciate it.

2 CHAIRWOMAN SHOWALTER: Is it your testimony,
3 Mr. Secrist, that some existing customers fall under no
4 existing tariff?

5 MR. SECRIST: No.

6 CHAIRWOMAN SHOWALTER: Does that mean it is
7 your testimony that every existing customer must fall
8 under some existing tariff?

9 MR. SECRIST: Every existing PSE customer
10 does fall under a tariff. We were anticipating, and
11 the Kent, Washington load was one that was coming to us
12 substantially earlier in the year, that this was a new
13 type of service. Therefore, we were working towards
14 the development of a Rate Schedule 45 because we were
15 concerned that as we viewed the intent of Rate Schedule
16 31, the type of service requested by this prospective
17 development company was going to be different than what
18 was available under Rate Schedule 31.

19 CHAIRWOMAN SHOWALTER: But Schedule 45 isn't
20 a tariff yet, so I'm back to that question. I asked
21 you two questions, and they are the logical
22 counterparts of one another. One is that every
23 customer today falls under some existing tariff. The
24 other is that some customers today fall under no
25 tariff, no existing tariff, and I want to know what

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1 your view is.

2 MR. SECRIST: There are no customers today
3 that fall outside of PSE's tariffs.

4 CHAIRWOMAN SHOWALTER: There is no Schedule
5 45 approved yet, so the question is, with either the
6 specific example you were asked or any other, but let's
7 take the specific one, if a customer doesn't fall under
8 Schedule 31, where do they fall, or at least where
9 would Kent fall?

10 MR. SECRIST: There presently is no customer
11 that falls within that category, so I'm struggling with
12 the hypothetical because I don't understand the
13 hypothetical. The situation with Kent, Washington, LLC
14 is a customer that was not able to take service and
15 still is unable to take service, so we are dealing with
16 the hypothetical there.

17 I take it to the practical, are there any
18 customers presently of PSE that do not have a tariff
19 available to serve them; no. Is there a concern that
20 there might be; yes, and that is why we are trying to
21 provide the solution and have been for some time.

22 CHAIRWOMAN SHOWALTER: Let's take new
23 customers who don't exist yet but who come to you.
24 I'll have ask the same question. If you have a new
25 customer who is requesting service, is it your

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1 testimony that there is such a thing as a new customer
2 where no tariff applies?

3 MR. SECRIST: The nature of that question is
4 such that I could envision -- I guess I need some help
5 with the question because I'm not sure if it's the
6 open-ended, is there hypothetically a circumstance
7 where a customer could come to PSE and not have
8 service. I understand Puget Sound Energy's obligation
9 to serve.

10 CHAIRWOMAN SHOWALTER: The question would be,
11 do our current tariffs in effect cover the universe
12 that you can imagine? That is, does our current set of
13 tariffs leave unanswered some situation that you could
14 name.

15 MR. SECRIST: The answer to that is yes, we
16 believe it does, and we believe the circumstance that
17 we outlined in PSE's proposed tariff filing is such a
18 situation.

19 CHAIRWOMAN SHOWALTER: What situation is
20 that? What are the elements of a customer that don't
21 fit under one or current existing tariffs?

22 MR. SECRIST: That is a customer that
23 requests a high load factor in excess of 80 percent
24 that accompanies with it a request for a heightened
25 level of reliability and also a load level such that

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1 PSE is required to undertake significant infrastructure
2 in order to provide service to that customer, and the
3 nature of their request is potentially so significant
4 that it could potentially increase costs to similarly
5 situated customers were they to receive service under
6 schedules that were never intended for this type of
7 customer.

8 CHAIRWOMAN SHOWALTER: So your testimony is
9 that customer that you have outlined is not eligible
10 under Schedule 31?

11 MR. SECRIST: That's correct. We don't
12 believe it meets the intent or historical design of
13 Rate Schedule 31.

14 CHAIRWOMAN SHOWALTER: I guess what I mean,
15 the terms of Schedule 31, not the intent but the terms
16 of Schedule 31.

17 MR. SECRIST: I would not be able to point to
18 any specific terms in Rate Schedule 31 that
19 specifically exclude, for instance, put a ceiling on
20 the requested service, so the question is can I point
21 to a sentence in Rate Schedule 31 that would prohibit
22 this. I can't do. What I'm pointing to is the
23 underlying intent and the background on Rate Schedule
24 31.

25 CHAIRWOMAN SHOWALTER: The reason I think

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1 this is relevant to this proceeding, which is about
2 three special contracts of three Rate Schedule 48
3 customers, is that it seems to bear on how Puget would
4 treat a new customer coming to it with some of these
5 characteristics, and a tariff would at least set those
6 characteristics out but would require us to make a very
7 significant policy judgment that unwilling customers
8 meeting those characteristics would be subject to the
9 Schedule 45, but it seems to me that approving special
10 contracts should not have that effect, but yet as I
11 hear you giving us answers, you seem to be saying that
12 you would not place such a customer on any tariff.

13 MR. SECRIST: But that is where we go from
14 the hypothetical to the practical, and the practical is
15 that we will be able to develop a permanent solution as
16 part of the general rate case that looks at a number of
17 factors, including potential impacts of serving this
18 type of customers to other customers and present a
19 permanent solution that we would hope the Commission
20 would adopt in some form, and the benefit of the time
21 we have right now is that as PSE is on the doorstep of
22 making such a filing, there are no customers that
23 either are talking to Puget Sound Energy or that we are
24 aware of that were they to request this type of load
25 would even have the infrastructure available to serve

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1 them prior to what we anticipate would be the
2 conclusion of PSE's general rate case the end of
3 calendar year 2002.

4 CHAIRWOMAN SHOWALTER: And that's why that
5 date is so important is because two years is quite a
6 bit different than one year.

7 MR. SECRIST: That's correct. At the time
8 there was discussion about the two years, this was an
9 issue that was discussed with PSE and the three
10 customers that are in the proceeding room right now,
11 and at that point in time, PSE was much earlier on in
12 the development and consideration of filing a general
13 rate case.

14 The customers and PSE had discussions about
15 the hypothetical of, Well, PSE is talking about a
16 general rate case. What if they don't file one. And
17 there was a request made of us to put an outside date
18 on that, so there is no more significance to that
19 outside date than it was one that the customers and PSE
20 agreed, if there was no general rate case, this should
21 terminate, this should force a permanent solution. So
22 whether the date was 24 months or the end of 2002 or
23 the end of PSE's next general rate case. Puget Sound
24 Energy is indifferent to that because we didn't view
25 there was anything magical about the 24-month period.

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1 CHAIRWOMAN SHOWALTER: I did want to you ask
2 the question that I asked of your counsel earlier. If
3 we conditioned our approval of these special contracts
4 on your filing the general rate case by, say, November
5 15th, do you have an objection?

6 MR. SECRIST: I would have concerns about
7 November 15th only because we are in the process of
8 drafting prefile testimony. We have every effort,
9 every intention of trying to make this filing by
10 November 1st, but I also know that in the course of
11 reviewing a filing of this magnitude, there may be new
12 issues that delay this, and I would hate to condition
13 something on a time frame that is so tight that it
14 would seem to potentially put an unfair burden on Puget
15 Sound Energy trying to get this general rate case
16 filed.

17 I can say on the record that Puget Sound
18 Energy is filing a general rate case. We are moving as
19 quickly as we can to complete that filing. We are
20 targeting the 1st of November. I don't know if we will
21 make the 1st of November, and that's what gives me
22 concern about the conditioning upon the filing of
23 November 15th.

24 I think that if we said by the end of the
25 year, that would be a safe outside harbor, and I'm not

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1 intending to imply anything by that other than to say
2 this is a very large case. It is the first general
3 rate case that PSE will have filed as a combined
4 utility, and there is quite a bit of investigation and
5 work that is being undertaken by a number of Puget
6 Sound Energy employees right now trying to pull this
7 together.

8 COMMISSIONER HEMSTAD: First to clarify a
9 question just so I understand, who is Kent, Washington,
10 LLC?

11 MR. SECRIST: Kent, Washington, LLC is a real
12 estate development company that first approached Puget
13 Sound Energy in discussions about some prospective
14 clients it had approximately 15 months ago and asked
15 Puget Sound Energy to undertake some planning and
16 construction for that type of a customer.

17 COMMISSIONER HEMSTAD: I suppose that if they
18 are begging the question of who is eligible for
19 Schedule 31, if there is some customer out there that
20 does not meet any existing tariff, then the answer is
21 either file a new tariff or enter into a special
22 contract.

23 MR. SECRIST: That is correct.

24 JUDGE MOSS: Ms. Davison, back to you.

25 MS. DAVISON: One follow-up question,

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1 Mr. Henry, is it correct that several months ago,
2 myself, Rene Kwan from Kent, Washington, LLC, yourself
3 and Mr. Glass, perhaps others, were on a telephone
4 conference in which Kent, Washington, LLC, was
5 requesting service under Schedules 31 and 49, and we
6 were informed the only service we could take was under
7 Schedule 45; "we," being Kent Washington, LLC.

8 MR. HENRY: At that time, I believe -- the
9 first part of your question is yes, there was a
10 telephone conference, and we were still in what I would
11 call the preliminary negotiation stages with Ms. Kwan
12 and yourself to determine a couple of things: Was
13 there a viable customer? Was there a load, and what
14 were the costs going to be for building the
15 infrastructure required for a data center on the
16 property in Kent.

17 We at that time indicated that we were in the
18 process of filing Schedule 45; that this customer, or
19 Ms. Kwan's customer, would qualify for Schedule 45 if
20 that was approved, but we would also avail to Kent LLC
21 at that time anything that was any kind of contract or
22 any kind of requirements or any kind of settlement that
23 came up with the three telecoms that we were
24 negotiating with.

25 Also at that time, Ms. Kwan indicated that --

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1 she asked many questions, and she indicated that it
2 would be doubtful that she would have five megawatts in
3 the period of time that we were looking at. It was
4 also doubtful that she was willing to pay the
5 infrastructure costs, and she asked the question, could
6 we --

7 MS. DAVISON: Mr. Henry, I'm not asking you
8 so recount the whole conversation. I was simply asking
9 the question of whether you recall a conversation in
10 which Kent, Washington, LLC requested service on behalf
11 of the data center tenant, and the response that Kent,
12 Washington, LLC received from you and from your legal
13 counsel, Mr. Glass, that the only tariff that would be
14 available for them to take service under was Schedule
15 45; is that correct?

16 MR. HENRY: I can't answer that specifically.
17 There was no Tariff 45 at that point in time. I don't
18 know that we could require them to take it under
19 Schedule 45. It would have to be taken under some
20 other method, and I think Mr. Glass or Mr. Secrist
21 would probably have to answer how they would do that.

22 MS. DAVISON: Mr. Henry, you don't recall
23 Mr. Glass and I having quite a lively debate in which I
24 argued to Mr. Glass that you cannot force a customer
25 onto a tariff that has not yet been approved?

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1 MR. HENRY: I definitely remember the lively
2 argument that we all had, in fact, but again, I think
3 the answer is the same. At that time, there was no
4 viable customer.

5 MS. DAVISON: But Mr. Henry, do you recall
6 Ms. Kwan explaining to you that she cannot rent her
7 building to a data center tenant because she has been
8 unable to secure a commitment from PSE to provide
9 service under a particular rate schedule and that she
10 explained to you that she cannot get a commitment in
11 terms of a long-term lease without a corresponding
12 commitment from PSE that they would provide the
13 electric service under a specific identified rate
14 schedule?

15 MR. HENRY: I remember discussions along
16 those lines, not quite with the specificness that you
17 indicate.

18 MS. DAVISON: Thank you.

19 CHAIRWOMAN SHOWALTER: I have follow-up
20 questions on the same topic, but Mr. Secrist, can you
21 turn to Puget's comments? It's Tab 3 of what we have
22 received today or yesterday, the comments in support of
23 the special contracts. Would you turn to Page 5? This
24 seems to be what Puget has agreed to do in the case of
25 new customers with similar type loads as the special

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1 contracts customers, however that might be defined; is
2 that correct?

3 MR. SECRIST: May I have just a moment to
4 refresh myself on the content? Yes, that's correct.

5 CHAIRWOMAN SHOWALTER: When I read this,
6 which admittedly was a couple of hours ago having just
7 received this, I took this to mean that if we approve
8 the three contracts, if somebody else comes along and
9 they've got to pay for their facilities, but they will
10 be on Schedule 31 or 49, and then they are free to
11 argue in the rate case about where they should end up
12 ultimately, but is that a correct reading or not?

13 MR. SECRIST: I think I believe it is, and
14 that's what I was talking about earlier where I was
15 talking about this base load, and if you look at item
16 No. 2 under heading No. 4 on Page 5, it says PSE will
17 serve a base level of electric power, and what we were
18 talking about there is there would be some minimum load
19 under the hypotheticals that we discussed as part of
20 our discussions and that if the customers had any
21 concerns about having service for that base load that
22 we would provide that under rate Schedule 31 or 49 as
23 they requested.

24 Then at such point in time as they were ready
25 to be fully operational, if you will, as an Internet

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1 data center, and they were exceeding and getting into
2 the type of criteria that we talked about in the
3 applicability section of the tariff, then they would
4 jump into the scope of item No. 3 on that page where
5 PSE would make available to them the special contract
6 if that was an issue during the course of this next
7 year period of time, and if it was and the customer did
8 not want that, they would be free to agree or disagree,
9 as the case maybe, regarding the rate that would apply
10 to their load.

11 CHAIRWOMAN SHOWALTER: Maybe I don't
12 understand the term "base level" and maybe it's not
13 defined here, but pending the rate case, someone comes
14 along and says, I'm an Internet data service provider,
15 and I'm going to pay for my dedicated facilities, and I
16 don't know how long it would take them, but assuming
17 that they are up and running before the end of our rate
18 case, assuming that, are they on Schedule 31 or 49?

19 MR. SECRIST: Just by way of clarification,
20 they are up and running, it would help me if we had as
21 part of this hypothetical some load, because we are
22 talking about, I assume, an Internet data center type
23 customer that would have this higher load factor,
24 heightened level of reliability as we have discussed
25 it, and a load that would exceed the one megawatt. Is

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1 that the intent of your --

2 CHAIRWOMAN SHOWALTER: Take that example.

3 Where is that customer? What schedule and what rates
4 is that customer paying pending the outcome of our rate
5 case?

6 MR. SECRIST: If that customer was ready to
7 take service and if that infrastructure was built, that
8 would be the issue where we would then provide a
9 special contract --

10 CHAIRWOMAN SHOWALTER: What if they don't
11 want a special contract?

12 MR. SECRIST: In that situation, we would be
13 potentially back here under this hypothetical looking
14 for a solution, but that's where we would go back to
15 the practical that that realistically would not happen
16 over the course of the next now and 13 or 14 months.

17 CHAIRWOMAN SHOWALTER: As I take it, I've
18 misread this. I read it to mean that new people would
19 be on 31 or 49 pending the outcome of this rate case,
20 and that's not your reading?

21 MR. SECRIST: Using your hypothetical, I
22 believe your reading is incorrect. As a practical
23 matter, they would be on Rate Schedule 31, because the
24 infrastructure facilities that you see in item No. 2 on
25 this page would not be built within that time frame.

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1 Hence, as a practical matter, they would be on rate
2 Schedule 31 or 49.

3 CHAIRWOMAN SHOWALTER: I would like to ask
4 Ms. Davison what her reading of this -- this is kind of
5 in the form of agreement, not exactly. ICNU has
6 written us a letter and Puget has lifted parts of it,
7 but on this part of it, what was your understanding
8 about what this says?

9 MS. DAVISON: Chairwoman Showalter, my
10 understanding of the, quote, deal that we struck with
11 PSE is precisely the way that you are reading this. We
12 agreed to not come in and challenge these special
13 contracts today if PSE did two things: The first thing
14 is that they withdrew Schedule 45, and that's assuming
15 special contracts are approved. The second thing is
16 that in the case of a Kent, Washington, LLC who
17 currently has a building, that currently has the
18 ability to get some load into that building, that they
19 would be able to take service under Schedule 31 or 49.

20 That was my understanding of our arrangement
21 and that in the meantime PSE would file a rate case,
22 they may or may not elect to file a Schedule 45 as part
23 of that rate case, our issues would be preserved and we
24 would fight it out in the rate case.

25 MR. SECRIST: If I may interject here, as a

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1 practical matter, I don't believe we have any
2 disagreement. I think where the issue has gotten
3 muddied is we've dealt with the hypotheticals, and
4 that's where I think the circumstances change, because
5 if we were going to assume a load that is going to be
6 what we are characterizing, and we've described loosely
7 here as the Internet data center type load, that is
8 a different situation. The practicality is that won't
9 present itself within this time frame that we are
10 talking about here.

11 CHAIRWOMAN SHOWALTER: You believe it won't,
12 but we have to deal with the words on paper, and we
13 really don't know what will develop in the next year.
14 You might predict that you wouldn't get one of these
15 customers, but there is no way to predict, so we do
16 have to know what we are approving or at least what the
17 behavior of the parties will be if we do approve.

18 MR. SECRIST: We have with me today
19 Mr. Henry, who would be person who was responsible for
20 building that infrastructure, and I believe what he has
21 said is that, in fact, it would not be built within
22 that time frame but with very limited exceptions.

23 CHAIRWOMAN SHOWALTER: Mr. Henry, I have a
24 question. Is Puget and only Puget the one who builds
25 dedicated facilities, or can a customer say, I'll pay

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1 myself. I'm in a hurry. I want to get these
2 facilities built, and they will be built to your
3 specifications. How does it work?

4 MR. HENRY: There is a portion of the system
5 that only we build. For instance, if it was an
6 extension to the transmission line, if it's on public
7 right-of-way, if it was distribution lines that were on
8 public right-of-way, we would build that.

9 Customers are entitled and do build a
10 substation on their own property, and we at times will
11 build that for them and charge them for that. They at
12 times will build that themselves, and we then would
13 provide everything up to the transformer. The
14 transformer would be theirs, but the switches generally
15 are ours because it's part of the transmission or the
16 high-voltage distribution system, either way, and it's
17 parts of what we would use to make sure that we can
18 isolate them if they had a problem, so we would retain
19 ownership of that.

20 CHAIRWOMAN SHOWALTER: Are these practices
21 consistent with the practices of Schedule 31 customers
22 and Schedule 49 customers?

23 MR. HENRY: It is consistent with all
24 customers, all classes, even special contracts within
25 our system.

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1 JUDGE MOSS: Ms. Davison, do you have much
2 more?

3 MS. DAVISON: Your Honor, I apologize. Given
4 the answers that I have heard today, I do have several
5 more questions.

6 JUDGE MOSS: What would you anticipate in
7 terms of time?

8 MS. DAVISON: I'm hoping maybe 15 or 20
9 minutes.

10 JUDGE MOSS: Why don't we push ahead.

11 MS. DAVISON: I would like to ask -- I hope I
12 have these names written down correctly. Perhaps
13 starting with Mr. Parker, I would like to ask you
14 whether you are aware of whether Qwest ever requested
15 from PSE service for your data center under Schedules
16 26, 31, or 49?

17 MR. PARKER: I was not involved in those
18 particular negotiations so I've only heard
19 word-of-mouth-type information from the construction
20 manager, and the message that I received was that
21 Schedule 48 was what we were offered.

22 MS. DAVISON: And you were denied service
23 under those other three rate schedules; is that what
24 you've heard?

25 MR. PARKER: I can't comment on that. All I

00108

1 can comment is we were offered service under 48. I
2 don't know if we necessarily at that point in time
3 requested it. There were other options.

4 MS. DAVISON: Have you since being on 48 and
5 in the process of working out this Schedule 45
6 settlement, do you know whether or not you've requested
7 service on any of these existing tariffs?

8 MR. PARKER: I believe as a result of the
9 settlement -- I'm not sure what the name of the
10 settlement is, but once we knew we were going to need
11 to go away from 48 that yes, we did request to be
12 placed on 31.

13 MS. DAVISON: What was PSE's response to
14 that; do you know?

15 MR. PARKER: I believe, if I remembering
16 correctly, that their response was that 31 was not the
17 correct rate and that we needed to be placed on their
18 proposed Schedule 45.

19 MS. DAVISON: Thank you. Mr. Hunter, I would
20 ask you the same questions. Are you aware of whether
21 or not AT&T Wireless requested service ever for your
22 data center under Schedules 26, 31 or 49?

23 MR. HUNTER: Yes. We were originally
24 offered service under Schedule 31, as I understand it
25 from out construction folks. That was retracted. We

00109

1 were informed we would be under Schedule 48. We were
2 under an extreme time crunch, so we basically agreed
3 to, under duress, to go to that schedule. We have
4 since against as part of the settlement process worked
5 that issue out and have agreed to the Schedule 45
6 filing subject to approval of the Commission or the
7 special contracts' subject to approval.

8 MS. DAVISON: Mr. Trumm, are you aware of
9 whether or not WorldCom requested service under
10 Schedules 26, 31, and 49?

11 MR. TRUMM: No, I am not aware of it.

12 MS. DAVISON: Thank you. I would like to
13 move on to some other areas. Mr. Secrist, were you
14 involved in these settlement negotiations that produced
15 the special contracts that we are discussing here
16 today?

17 MR. SECRIST: I was for a short period of
18 time, but I believe Mr. Henry was involved with them
19 for the longest period of time that they were under
20 way.

21 MS. DAVISON: I'll direct my questions to
22 Mr. Henry then. Mr. Henry, what customers were
23 involved in the settlement negotiations that produced
24 these special contracts and also what's called
25 stipulated Schedule 45?

00110

1 MR. HENRY: WorldCom, AT&T Wireless, and
2 Qwest.
3 MS. DAVISON: Were there any other customers
4 involved?
5 MR. HENRY: There were no other customers
6 involved.
7 MS. DAVISON: Was Staff involved in those
8 negotiations?
9 MR. HENRY: Yes. Mr. Hank McIntosh was
10 involved in many of the meetings.
11 MS. DAVISON: Could you describe Staff's
12 level of involvement, or perhaps, Mr. McIntosh, could
13 you describe the level of involvement?
14 JUDGE MOSS: Let's put the question to
15 Mr. McIntosh. That would be more direct.
16 MR. MCINTOSH: My level of involvement was
17 initially to propose suggested modes that these two
18 differing interests could find something in common and
19 to drop some hints about possible lines of argument and
20 then later as a referee when parties felt that a
21 referee would be useful. I wasn't an analyst for
22 either party.
23 MS. DAVISON: Thank you. Mr. Secrist, isn't
24 it correct that PSE has projected at one time 750
25 megawatts of new data load in the current filing, 670

00111

1 megawatts of new load related to Internet data centers;
2 is that correct?

3 MR. SECRIST: There have been a large range,
4 a large swing, large volatility in the nature of the
5 request. At one time, I believe it was 750 megawatts.
6 I'm not aware of where that is now. Mr. Henry would
7 have that information.

8 MS. DAVISON: Mr. Henry, what is PSE's
9 current projection of new load related to Internet data
10 centers?

11 MR. HENRY: Let me answer this maybe too
12 long, but there were originally 26 customers that asked
13 for service that we felt would fit into this category.
14 Of those 26, I think there were 13 that we actually put
15 together contracts and started to develop costs for
16 infrastructure. Of those 13, there were three -- the
17 three that are here -- that have actually completed
18 enough infrastructure where they could at least get
19 connected, and while that is important because they
20 will also need additional infrastructure in order to
21 get to the level of loads that they project.

22 There are a couple of other customers, up to
23 four other customers, that are still -- they have not
24 given us a notice that they are no longer interested.
25 Kent LLC is one of those. Kent LLC is looking at 25

00112

1 megawatts. Qwest is looking at 20 megawatts. AT&T is
2 looking at 10 megawatts. Global Gateway is looking at
3 25 megawatts. MCI is looking at about 16 megawatts.
4 And we are looking at around 90 megawatts potential
5 that we know about for sure. There are some others in
6 there that are also, a couple of others that I didn't
7 mention that are also looking at probably another 10 to
8 30 megawatts.

9 All of the ones that have since backed out
10 have said they are still interested. The market has
11 collapsed -- their words, not mine -- and that as soon
12 as the market rebounds, they are going to be back to us
13 so ask for data centers, and your guess is as good as
14 mine on how viable that is.

15 All of the three existing data centers are
16 the only ones we have accurate information on. The
17 ramp-up for them is significantly longer than they had
18 initially projected. They are all at the one to two
19 megawatt range right now, and they have had some months
20 they are over 80 percent and some months that they all
21 appear to be somewhat in the ramp-up stage, and none of
22 them are projecting significant load in the next two to
23 three years.

24 MS. DAVISON: Thank you. Mr. Secrist, do you
25 have any evidence today that these three customers have

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1 competitive alternatives available to them, and I mean
2 bu that alternatives other than taking service from
3 PSE?

4 MR. SECRIST: I'm sorry. I don't understand
5 your question at all.

6 MS. DAVISON: Let me try it again. Let's
7 take Qwest. Does Qwest have a competitive alternative,
8 and what I mean by "competitive alternative" is do they
9 have the ability to switch electric service providers
10 to take service from another facility other than PSE?

11 MR. SECRIST: The facility that is in our
12 service territory would certainly have the
13 infrastructure and the service provided by PSE, but I'm
14 still not certain if that's your question.

15 MS. DAVISON: Can Qwest bypass, have they
16 presented any kind of plan that they can bypass PSE's
17 system and take service from another electric utility
18 service provider?

19 MR. SECRIST: No, not that I'm aware of.

20 MS. DAVISON: How about AT&T Wireless?

21 MR. SECRIST: No, not that I'm aware of.

22 MS. DAVISON: How about MCI?

23 MR. SECRIST: No.

24 MS. DAVISON: WorldCom?

25 MR. SECRIST: No.

00114

1 MS. DAVISON: Have they demonstrated that
2 they have plans in place to provide their own
3 electricity?

4 MR. SECRIST: I don't know where the
5 discussions are in terms of their generation ability,
6 their backup generation.

7 MS. DAVISON: I'm not referring to backup
8 generation. I'm referring to their ability to provide
9 electric service to meet their own needs.

10 MR. SECRIST: I'm not aware of anything that
11 they have presented to PSE.

12 MS. DAVISON: Okay. I would like to ask each
13 of the three witnesses for the customers today the same
14 questions, maybe starting with you, Mr. Trumm. Are you
15 aware of any ability of WorldCom to bypass and take
16 electric service from another service provider other
17 than PSE?

18 MR. TRUMM: No, I'm not aware of any.

19 MS. DAVISON: Are you aware of any plans
20 today that you have to generate your own electricity
21 for your center?

22 MR. TRUMM: No, I'm not aware.

23 MS. DAVISON: Same questions for you,
24 Mr. Parker.

25 MR. PARKER: The answer to both of the

00115

1 questions would be no, I'm not aware of any.

2 MS. DAVISON: Mr. Hunter?

3 MR. HUNTER: The answer to number one is yes,
4 we have the ability. The answer to number two is no.

5 MS. DAVISON: You have ability to bypass PSE?

6 MR. HUNTER: We are within about 500 feet of
7 the Snohomish County line, so in our area if we had to,
8 we could bring a service line in from the north and
9 take service delivery in Snohomish County's area. We
10 don't have plans to do that at this time.

11 MS. DAVISON: Thank you.

12 MS. DAVISON: Mr. Secrist, has PSE presented
13 any evidence in this proceeding that it has bargained
14 effectively with customers who have competitive
15 alternatives?

16 MR. SECRIST: Excuse me?

17 MS. DAVISON: Perhaps I could ask the
18 question this way. I believe that we just heard from
19 the three customers that they do not have competitive
20 alternatives; is that correct?

21 MR. SECRIST: That's what I heard them say.

22 MS. DAVISON: I believe that what we've heard
23 today is that these customers have not entered into
24 these special contracts because of bargaining with PSE
25 to get more competitive rates than are present on your

00116

1 existing rate schedule; isn't that correct.

2 MR. SECRIST: I believe we have a proposed
3 settlement solution here right now.

4 MS. DAVISON: Did you offer these customers a
5 special contract as an incentive to keep them on PSE's
6 system?

7 MR. SECRIST: That never entered into any of
8 the discussions. They were existing on Schedule 48,
9 and we had discussions as a result of the April 16th
10 filing, and we need to move them off Schedule 48.

11 MS. DAVISON: Do you have any analysis of
12 whether or not the revenue that you would collect from
13 these three customers will cover the cost of servicing
14 these customers?

15 MR. SECRIST: I don't know the answer to that
16 question.

17 MS. DAVISON: Is there any evidence that you
18 are presenting here today that addresses that point?

19 MR. SECRIST: There is nothing independent
20 that we've filed as an exhibit today, no.

21 JUDGE MOSS: I want to make sure we have a
22 clear record. We do have PSE's comments that address
23 these very issues, and it's my intention to make them
24 an exhibit as part of our record today. I haven't done
25 that, and I don't want us to simply think that's not

00117

1 going to happen. It's going to happen, and I assume
2 you are aware of that filing?

3 MS. DAVISON: Yes, Your Honor, but I wasn't
4 sure, given the sort of nature of that document, what
5 its status is in terms of evidence.

6 JUDGE MOSS: I'll clarify that right now.
7 The amended stipulation of settlement will be marked as
8 Exhibit No. 1. PSE's comments will be marked as
9 Exhibit No. 2. ICNU's comments will be marked as
10 Exhibit No. 3. Is there any objection to the admission
11 of these exhibits at marked? Hearing no objection,
12 they will be admitted as marked. All right.

13 MS. DAVISON: I have no further questions,
14 Your Honor.

15 CHAIRWOMAN SHOWALTER: I have another subject
16 which is confidentiality. These contracts that we have
17 have exhibits that are stamped confidential, and I
18 actually don't have in front of me the confidential
19 versions of -- yes, I do in another section. Our rules
20 provide that we will make public essential terms and
21 conditions of the contract or we will reject the
22 contract, so I want the parties to turn to Exhibit A of
23 their contracts. We probably need to go through this
24 and ask that -- these are confidential, so I'm going
25 not going to provide the specific information, but the

00118

1 question is, what is the reason any of this is
2 confidential, and we will begin with the address, the
3 location. Is that something that the parties assert
4 should be confidential?

5 MR. GLASS: One preliminary point if I might.
6 It's PSE's position that none of the information is
7 confidential for PSE's purposes, so it defers, of
8 course to the customers themselves as to the need for
9 confidentiality of any of these provisions.

10 MR. CAMERON: Perhaps this is an oversight,
11 but to my knowledge, the label "confidential" was not
12 the request of the customers, certainly not with regard
13 to these data.

14 CHAIRWOMAN SHOWALTER: I had a hard time
15 seeing what anybody would want to be confidential, but
16 in particular, the essential terms and conditions may
17 not be confidential or we will reject the contract.
18 That's what our rule says, and that is in order to be
19 consistent with statutory law requiring terms and
20 conditions of the tariff to be public.

21 JUDGE MOSS: And maybe we can work through
22 this very, very quickly in light of Mr. Cameron's
23 remark. Can you waive confidentiality as to Exhibit A
24 for AT&T Wireless?

25 MR. CROMWELL: While there is a pause, I did

00119

1 have a clarification question I would like to ask the
2 Company; if that's possible.

3 JUDGE MOSS: I will give you a chance in just
4 a minute.

5 MR. CAMERON: I would assume that label was
6 on there out of an abundance of caution on the part of
7 Puget. I think the customers have no problem of
8 waiving confidentiality with regard to these data.

9 JUDGE MOSS: You are speaking with respect to
10 AT&T Wireless only? Mr. Gibson, any problem?

11 MR. GIBSON: On behalf of WorldCom, there is
12 no problem.

13 JUDGE MOSS: Mr. Sherr, on behalf of Qwest?

14 MR. SHERR: Qwest does not object to that
15 becoming a nonconfidential exhibit.

16 JUDGE MOSS: That clarifies that point.
17 Mr. Cromwell, are you with me?

18 MR. CROMWELL: I am.

19 JUDGE MOSS: You have a question, I believe.

20 MR. CROMWELL: I believe it was Mr. Secrist
21 who was responding to Ms. Davison's question about the
22 criteria or factors applied to customers or potential
23 customers of the Company, and one of those was an 80
24 percent load factor; is that correct?

25 MR. SECRIST: I believe I said that.

00120

1 JUDGE MOSS: I just want to be clear, the
2 question was concerning the 80 percent load factor and
3 whether that was one of the criteria.

4 MR. SECRIST: Yes, I believe I mentioned
5 that.

6 MR. CROMWELL: If I could ask, does that 80
7 percent load factor apply to computer load or air
8 conditioning load or both?

9 MR. SECRIST: Just to total load. We don't
10 differentiate between particular types of uses.

11 MR. CROMWELL: So it is total load.

12 MR. SECRIST: That's correct.

13 JUDGE MOSS: Thank you, Mr. Cromwell.

14 MR. TROTTER: I would like to refer
15 Mr. Secrist to Page 5 of Puget's comments, and this
16 relates to the principles one, two, three on that page.
17 It's my understanding that these principles apply
18 during the transition period, which we agree is at
19 least the pendency of the rate case?

20 MR. SECRIST: That is correct.

21 MR. TROTTER: Item 3, new customers are free
22 to disagree about rates that apply to that customer's
23 load after its facilities are up and running. Do you
24 see that language?

25 MR. SECRIST: Yes, I do.

00121

1 MR. TROTTER: Do I understand it's Puget's
2 position that those customers will only be offered a
3 special contract of the type here at issue?

4 MR. SECRIST: If they were to meet all the
5 other criteria, which I believe is your question, yes,
6 we would offer them a special contract.

7 MR. TROTTER: If the customer disagrees and
8 says they want to be served under Schedule 31, they can
9 bring that issue to the Commission for resolution?

10 MR. SECRIST: Under that hypothetical, that
11 is correct.

12 MR. TROTTER: Is that what you understand
13 this "free to disagree," how that disagreement would be
14 worked out potentially, at least?

15 MR. SECRIST: That was my understanding, yes.

16 MR. TROTTER: In such a proceeding, is it
17 your understanding that the things the Commission could
18 do would be to require Puget to serve under Schedule
19 31?

20 MR. SECRIST: That is my understanding; that
21 is correct.

22 MR. TROTTER: That's all I have.

23 JUDGE MOSS: Thank you, Mr. Trotter. Do we
24 have anymore inquiry from counsel? Inquiry from the
25 Bench?

00122

1 CHAIRWOMAN SHOWALTER: We have had a lot of
2 discussion about these criteria, and as we mentioned
3 earlier, if there is an actual tariff, the criteria are
4 laid out in the tariff itself who can take under that
5 tariff. If we are approving special contracts, it
6 seems to me that's all we are doing is approving
7 special contracts, so I'm not sure about the emphasis
8 on this criteria, but the question I have is if we say
9 in our order that what makes these three customers
10 distinctive and unique as a group is that they are
11 Schedule 48 customers whose service is about to expire.
12 That's what makes them special and eligible, in our
13 view, for these special contracts.

14 If that's the basis on which we approve the
15 special contracts, what is Puget's position as to
16 whether the contracts -- is it the contracts we are
17 approving or a stipulation we are approving, or maybe
18 to be more specific, if we do not approve the
19 settlement agreement that entails a lot of discussion
20 about criteria, but we do approve the three special
21 contracts on the grounds that these are special group,
22 what is Puget's position as to whether it still stands
23 with the offering of special contracts?

24 MR. SECRIST: May I ask a question of
25 counsel? I'm trying to get my hands on where the

00123

1 settlement document is, if I may take a quick glance at
2 that. PSE would still request approval of the special
3 contracts were the Commission to deny the amendment to
4 the stipulation in this record.

5 CHAIRWOMAN SHOWALTER: What would we be
6 denying exactly, because there is more than one
7 possible outcome that's covered by the stipulation,
8 namely, approval of the tariff or approval of the
9 contracts. What would we be denying?

10 MR. SECRIST: I think that's what was
11 confusing me about your question. I see them as
12 independent documents: One reflecting the terms of the
13 settlement and the other the underlying special
14 contracts that we have for the Commission at this time.

15 CHAIRWOMAN SHOWALTER: So if we do approve
16 the special contracts on that very narrow ground, is it
17 your view that we are not saying anything about the
18 next customer who comes in the door and how that person
19 should or should not be treated?

20 MR. SECRIST: That is both our understanding
21 and our intent. We are not intending to limit or
22 create any precedent with respect to what happens to
23 the next customer should they come in the door during
24 this interim period of time.

25 CHAIRWOMAN SHOWALTER: But you've testified

00124

1 as to what you would do.

2 MR. SECRIST: We've talked in terms of
3 hypotheticals; that is correct, but we are not as part
4 of this filing requesting anything that's going to
5 create any precedent. We understand that, and we've
6 attempted to lay that out in our filing.

7 CHAIRWOMAN SHOWALTER: Thank you.

8 JUDGE MOSS: Anything further from the Bench?
9 I've made the three documents I previously indicated
10 and marked exhibits. Are there other documents that
11 need to be made exhibits of record in this proceeding?
12 Ms. Davison.

13 MS. DAVISON: Your Honor, I do not have any
14 documents I would like to make as exhibits, but I did
15 want to request that I be permitted to summarize ICNU's
16 position after the end of testimony, particularly in
17 response to the question you had presented to me at the
18 beginning of the hearing.

19 JUDGE MOSS: All right. I think we will have
20 some brief summary at the end, but it will be brief.
21 Mr. Henry and Mr. Secrist, I'm not sure who the
22 question should go to, but I'm looking at Schedule 31
23 that speaks in term of under the availability section:
24 All necessary wiring, transformers, switches, cutouts
25 and protection equipment beyond the point of delivery

00125

1 shall be provided, installed, and maintained by the
2 consumer, and so forth.

3 Do those types of words mean the same thing
4 as the term "dedicated facilities infrastructure" under
5 the special contracts or Schedule 45 as proposed? Is
6 that the sort of thing we are talking about with
7 dedicated facilities infrastructure?

8 MR. HENRY: I do not believe so. The
9 difference that I understand -- what you are referring
10 to on a Schedule 31 customer or a actually any
11 customer, that is referring to the system behind -- I
12 think you said it remains the property of the customer?

13 JUDGE MOSS: Yes.

14 MR. HENRY: The simple explanation is that
15 anything behind the meter -- if it were a substation,
16 anything behind where the meter is metering the energy,
17 anything from that point on belongs to the customer.
18 What we are talking about as dedicated facilities, and
19 best to explain using these three examples in each of
20 these cases, we needed to build a dedicated line from
21 the substation directly to this facility in order to be
22 able to provide service at the levels they were talking
23 about. In some cases, and we are still discussing
24 this, we will require a substation to get to the level
25 of loads that they are interested in.

00126

1 JUDGE MOSS: If a customer under Schedule 31
2 required such facilities that you described, the line
3 from the substation or whatnot, who would pay for that,
4 PSE or the customer?

5 MR. HENRY: Mr. Secrist may want to correct
6 me on this, but in Schedule 31, there is a provision
7 that says that there will be a credit applied which is
8 based on the first two years' revenue of that
9 particular customer. So in a case like this, if this
10 were a 31 customer, the customer would be required to
11 pay all of the costs in excess of that two-year credit.

12 There is also another rate that indicates
13 that if it is a service that is provided specifically
14 for the use of this customer and that it is above and
15 beyond what our normal course of service would be that
16 the customer would be required to pay for the total
17 cost.

18 JUDGE MOSS: Do you know off the top of your
19 head how many customers there are under Schedule 31
20 currently?

21 MR. HENRY: I do not know.

22 JUDGE MOSS: Or magnitude?

23 MR. HENRY: I do not know.

24 JUDGE MOSS: How about 49?

25 MR. HENRY: I don't know that either.

00127

1 JUDGE MOSS: I'm going to make a Bench
2 request and ask that that be furnished to the Bench
3 tomorrow. We will make it Response Exhibit 4. Any
4 objection? Hearing no objection, Exhibit 4 will be
5 admitted as a placeholder for now. That's all I have.

6 All right; is there any further business we
7 need to conduct today, other than closing statements
8 that I said we would have an opportunity for?

9 MR. TROTTER: Your Honor, I hate to mention
10 this, but we only talked about Alternative 1. It
11 depends on how long you want to go today.

12 JUDGE MOSS: We do have, if memory serves,
13 the 11-page comment from ICNU. Does that pretty well
14 capture your points of opposition, Ms. Davison?

15 MS. DAVISON: I can't recall sitting here
16 today every point that we included in our 11-page --

17 JUDGE MOSS: It was very thorough.

18 MS. DAVISON: There is one thought that
19 actually did occur to me today that I'm sure we didn't
20 put into the letter, and that is we believe that the
21 Commission procedurally now has before it a third
22 Schedule 45, what is called the stipulated Schedule 45.
23 In our letter, we requested suspension of that or
24 rejection of that. I think there is a third
25 alternative which is to take that and defer it to the

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1 upcoming rate case and have it considered in the
2 upcoming general rate case, and that may be the
3 preferred alternative from our perspective, and I
4 believe I heard Mr. Trotter make some comments along
5 those lines as well.

6 MR. TROTTER: I don't think I did, but I'm
7 prepared to make any closing mark to Alternative 2 if
8 that's your wish.

9 JUDGE MOSS: Perhaps the Bench should caucus
10 momentarily, but we will stay on the record.

11 (Discussion off the record.)

12 JUDGE MOSS: I think the preference would be
13 to have you all conclude in your argument, and again,
14 you don't need to go over your letter, and I wasn't
15 being facetious. It was a very thorough document, and
16 we don't need parties to be repeating everything they
17 said in their comments and so forth, so I would like
18 this to be in the manner of a summary-type argument.
19 Being cognizant of the hour, it's already 5:10.

20 With the argument, we will have enough in our
21 record for the commissioners to take the matter under
22 advisement, and the options, of course, are many; to
23 approve the primary alternative, to consider what to do
24 if that is not approved with respect to the secondary
25 alternative, and that option would include further

00129

1 process if appropriate, so I think we can safely bring
2 matters to a close today with the final arguments.

3 In thinking of the order here, it strikes me
4 that we have the proponents of the settlement approach
5 should probably have the last word, and as the
6 principle opponent -- Ms. Davison, the Staff sitting in
7 a unique position, perhaps -- I think it would be most
8 appropriate if you argued first, Ms. Davison, and
9 Mr. Trotter, you did have some closing remarks, didn't
10 you?

11 MR. TROTTER: I'd be happy to go second.

12 COMMISSIONER HEMSTAD: Public Counsel may
13 have something to say.

14 JUDGE MOSS: Did you have anything to say,
15 Mr. Cromwell?

16 MR. CROMWELL: Thank you. I will waive them
17 for expediency.

18 JUDGE MOSS: Thank you very much. Then we
19 will go ahead and proceed with Ms. Davison's remarks.

20 MS. DAVISON: First, I would like the record
21 to clearly reflect that ICNU does not support these
22 special contracts based on the testimony we heard from
23 Mr. Secrist today. We believe that Mr. Secrist's
24 so-called interpretation of the agreement that we
25 reached with Mr. Glass that is laid out in his comments

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1 is -- his interpretation is simply not consistent with
2 the deal that we struck, and we do not believe that
3 these special contracts meet the legal criteria of the
4 special contract rule as interpreted by the various
5 cases decided by this Commission on special contracts.

6 Second, with regard to the stipulated
7 Schedule 45, we have laid out a variety of reasons why
8 we think that Schedule 45, the third version of it,
9 remains legally deficient. I will not reiterate our
10 bases here. I guess I would in the form of a plea to
11 the Commission, if you are going to approve these
12 special contracts in a limited form, please put
13 something in your order requiring PSE to serve this
14 data center load in the interim.

15 I think you got a little flavor from the
16 interchange between myself and Mr. Henry and
17 Mr. Secrist. I can't even begin to convey to you what
18 has been transpiring between my clients and PSE over
19 the course of the last 18 months. These are entities
20 who have purchased property, who have tried to develop
21 data centers, and they have been unable to do so
22 because PSE has refused to serve these customers under
23 existing rate schedules. It is a serious problem.

24 We have contemplated filing a complaint, a
25 formal complaint. It is a very costly, difficult,

00131

1 time-consuming process to go down that road. That's
2 why you haven't seen one appear before you yet, but I
3 believe you had enough evidence presented to you today
4 to get a flavor for the problem here, and I think that
5 I was trying to enter into a settlement with PSE that
6 would get us through an interim period where these
7 particular customers would be given electric service
8 and that we could defer all of these debates to the
9 general rate case where I believe they belong.

10 This record has absolutely no evidence
11 whatsoever on a cost-of-service basis. There is no
12 testimony. There is no company work papers. There is
13 nothing in this record that supports the rates that PSE
14 is proposing in either the special contracts or in
15 stipulated Rate Schedule 45. The original order that
16 suspended Schedule 45 to have an investigation as to
17 the determine whether these rates are fair, just, and
18 reasonable still needs to happen if you are going to
19 consider the revised Schedule 45. Thank you.

20 CHAIRWOMAN SHOWALTER: One question. If we
21 reject the tariff and the contract as you advocate,
22 what do you propose we do with these three customers?

23 MS. DAVISON: I believe that they, by their
24 terms, are eligible for either Schedule 31 or 49.

25 JUDGE MOSS: Mr. Trotter.

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1 MR. TROTTER: Thank you. I'll start with the
2 Alternative 2 because we haven't had a chance to weigh
3 in on that yet. Staff cannot support the alternative
4 at this time. Staff has participated extensively in
5 Schedule 45 discussions with all customers, but the
6 stipulated schedule has not had an adequate opportunity
7 to review, and it does include in a tariff incremental
8 cost pricing and take or pay and market rates, and
9 those are important policy issues. In the context of
10 bilateral contracts, that's one thing, but in a tariff
11 of general applicability that's quite another.

12 There is also an issue regarding whether
13 Schedule 45 is permitted under the rate plan. Special
14 contracts are permitted. It's an issue the Commission
15 should think about. The parties have not given you
16 anything on that. I think it probably is allowed
17 because it arises out of the complaint in the Air
18 Liquide matter, and the filing was approved by the
19 Commission's order approving that settlement
20 stipulation. They said they would file Schedule 45,
21 and I think it's arguably necessary to accommodate a
22 changing market, which is a standard in the
23 stipulation, but I think that's an issue that is out
24 there, and reasonable minds could potentially differ on
25 it. There is also a legal issue of whether the

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1 Commission can approve a nonunanimous settlement.
2 Alternative 2 is not unanimous at this point. There
3 are laws in other jurisdictions split, so we think if
4 you are intending to go with the Alternative 2 approach
5 on its merits that you should set it for hearing.

6 With respect to Settlement Alternative 1, I
7 think Staff can still support it. As you heard my
8 questions of Mr. Secrist at the end on Page 5 of the
9 comments of what the understanding was with ICNU, I
10 don't think it's fair for ICNU to say they expected to
11 be served under Schedule 31 for all of their load if
12 they are a new customer. The language there clearly
13 states for the base load while the facility and
14 structure is being built, yes, Schedule 31. After
15 that, it's probably going to be brought to you.

16 Now, litigation isn't cheap, but I'm hopeful
17 that we can handle such a problem if it ever should
18 arise. There is a lot of evidence here that that's
19 really speculative. You are right, Chairwoman
20 Showalter, we don't know what's going to happen in the
21 next 14 months regarding these loads, but the best
22 judgement they have right now is it does take money to
23 put in the infrastructure. It does take time to build
24 them out, and the reasonable anticipation at this time
25 is that the contingency that people are concerned about

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1 may not materialize, but if it does, those customers
2 can come to you and ask for an order requesting that
3 they be served under 31, and frankly, the testimony in
4 this record that there is nothing in the words of
5 Schedule 31 that says they can't be served, that should
6 be a fairly efficient proceeding.

7 But in the context of that case, I think you
8 can go with what was articulated, and that is the
9 former Schedule 48 customers, and that was a class
10 identified by this commission. These are the only
11 remaining ones, and special contracts are appropriate
12 for that reason. I do think that the comments of Puget
13 regarding meeting the statutory criteria are
14 sufficient. Staff did review that. It's not perfect,
15 but we think it meets minimum requirements, so we still
16 think that is a viable approach and is consistent with
17 the agreement that is stated here on Page 5 of Puget's
18 comments. That's all I have. Thank you.

19 JUDGE MOSS: Mr. Trotter, when you say "meets
20 minimum requirements," you are referring to
21 WAC 480-80-345?

22 MR. TROTTER: Yes.

23 JUDGE MOSS: Mr. Sherr, did you have anything
24 to say in closing?

25 MR. SHERR: Qwest supports the settlement

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1 under the terms outlined by Mr. Glass in his opening
2 statement. We believe it's a fair and practical
3 resolution, and I'll defer to Mr. Glass to sum up the
4 discussion today. Thank you.

5 JUDGE MOSS: We'll first ask Mr. Gibson if he
6 has something to say.

7 MR. GIBSON: Thank you. We are customers in
8 search of a solution. These were unique circumstances,
9 to say the least, brought about by the Commission's
10 order, and our circumstances between the customers and
11 the Company, and when we reached a global settlement of
12 many, many issues with a lot of compromise, and we are
13 before you today in an attempt to provide the
14 Commission with various solutions to the issues of
15 special contracts and then stipulated rate schedules
16 and so on and so forth, and we do honor our commitment
17 to the Company.

18 We urge the Commission to accept the special
19 contracts, and if they can't see their way to do that
20 to accept stipulated Rate Schedule 45, but if they
21 choose to move forward without those two is to give us
22 some kind of solution for our dilemma of October 31st
23 and give us some determination, and with that, I would
24 close.

25 JUDGE MOSS: Mr. Cameron.

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1 MR. CAMERON: Just four points, very briefly.
2 First, I would like to thank Staff on behalf of all the
3 customers, particularly Hank McIntosh who worked with
4 us long and hard, came up with some ideas, and sat with
5 us. He mentioned the referee function. I don't think
6 we called on him too much for that function, but maybe
7 once or twice.

8 Second, our purpose in being here today is to
9 honor the agreement we have with Puget. It comprehends
10 two alternatives -- one, the special contract; two, the
11 stipulated Schedule 45. We always had two alternatives
12 in mind thinking there might be issues such as this
13 that arose. As things came to pass, we reversed the
14 order, taking up the special contracts first.

15 We are not here to address the merits of
16 stipulated Schedule 45. Instead, if look you look at
17 the special contract, you look at the stipulated
18 schedule. They have the same effect for us. One, they
19 are transitional; two, they preserve our rates to argue
20 proper rate making in the next general rate case, and
21 three, they give us a rate after October 31st.

22 And that is my third point. We do need a
23 rate. We are going off of Schedule 45 as it terminates
24 the special contract. The stipulated schedule, each
25 provide alternatives that would be acceptable to us.

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1 Anticipating the Chairwoman's question about what
2 happens in the double contingency, what happens if
3 neither the stipulated schedule or special contract,
4 the customers did reserve the right as the ultimate
5 fallback to argue that Schedule 31 or 49 should apply.
6 We do that only for the purpose of making sure we
7 aren't left hanging, as Commissioner Hemstad said
8 earlier. We do need a rate after that October 31st
9 expiration.

10 The final point is that we will see you in
11 the general rate case where we will talk about the
12 permanent solution for these customers based on our
13 load characteristics and the cost of service as we see
14 them.

15 JUDGE MOSS: Mr. Glass.

16 MR. GLASS: Notwithstanding ICNU's recanting
17 of its offer nonopposition of the special contracts,
18 PSE still supports the special contracts as the best
19 way to deal with this transitional issue presented. My
20 recollection of the agreement that was put forth in the
21 amendment to the stipulation is the same as
22 Mr. Trotter's and Mr. Cameron's; that we were agreeing
23 to allow new customers to disagree as to those IVC
24 loads that were actually built and operational sometime
25 during this transitional rate period. Up to that

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1 point, PSE would provide 31 or 49 power and it wouldn't
2 be in the dark, and that was what I thought we had
3 agreed to.

4 The special contracts, we agree, apply to
5 these three customers. We also explicitly have said
6 several times today that these special contracts have
7 no precedential effect to any new customers or any
8 other existing customers that try to get on to these
9 special contracts. These are specific for these three
10 customers.

11 If you don't approve stipulated Schedule 45,
12 if you don't approve these special contracts, we need
13 to deal with the stipulated Schedule 45. We will
14 vigorously support stipulated Schedule 45. We think
15 that there are factual and legal bases for doing so.
16 We have not presented in full today all of those
17 things, and my submission in support of the special
18 contracts was limited only to that because I was trying
19 to get the settlement with ICNU and the settlement with
20 the customers through the Commission without too
21 vigorous opposition. We will defend stipulated
22 Schedule 45, and we would hope that that process would
23 continue. As for the interim, the triple
24 contingencies, I believe the amendment to the
25 stipulation states our position fairly accurately.

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1 Thank you.

2 JUDGE MOSS: I thank you for your argument,
3 and I would like to release all the witnesses from the
4 stand and thank you for being here today and providing
5 your testimony. Is there any other business we need to
6 conduct? Then we will be off the record. Thank you
7 very much.

8 (Settlement conference concluded at 5:25 p.m.)

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