

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the Joint)
4 Application of)
5)
6 PUGET HOLDINGS LLC and)DOCKET U-072375
7 PUGET SOUND ENERGY, INC.,)Volume VII
)Pages 692-940
8 For an order Authorizing)
9 Proposed Transaction)
10 _____)

11 A hearing in the above matter was held on
12 August 26, 2008, at 9:30 a.m., at 1300 South
13 Evergreen Park Drive Southwest, Room 206, Olympia,
14 Washington, before ADMINISTRATIVE LAW JUDGE DENNIS
15 MOSS and CHAIRWOMAN MARK SIDRAN, and COMMISSIONER
16 PHILIP JONES, and COMMISSIONER PATRICK OSHIE.

17 The parties were present as follows:

18 THE COMMISSION, by ROBERT D. CEDARBAUM,
19 Assistant Attorney General, 1400 South Evergreen
20 Park Drive Southwest, Post Office Box 40128,
21 Olympia, Washington 98504-0128, Telephone
22 (360) 664-1188, Fax (360) 586-5522, E-mail,
23 bcedarba@wutc.wa.gov.

24 THE PUBLIC, by SIMON J. FFITCH, Assistant
25 Attorney General, 900 Fourth Avenue, Suite 2000,
26 Seattle, Washington, 98164-1012, Telephone (206)
27 389-2055, Facsimile (206) 389-2058, E-mail
28 simonf@atg.wa.gov.

29
30
31
32 Deborah L. Cook, RPR, CSR
33 Court Reporter

1 PUGET HOLDINGS LLC and PUGET SOUND ENERGY, by
2 SHEREE STROM CARSON, Attorney at Law, Perkins Coie,
3 LLP, 10885 Northeast Fourth Street, Suite 700,
4 Bellevue, Washington 98004, Telephone (425)
5 635-1400, Fax (425) 635-2400, E-Mail
6 scarson@perkinscoie.com; and by JAMES VAN NOSTRAND,
7 Attorney at Law, Perkins Coie, LLP, 1120 NW Couch
8 Street, 10th Floor, Portland, Oregon 97209,
9 Telephone (503) 727-2162.

10 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES by
11 IRION SANGER, Attorney at Law, Davison Van Cleve,
12 333 Southwest Taylor, Suite 400, Portland, Oregon,
13 97204, Telephone, (503) 241-7242, Fax
14 (503) 241-8160, E-mail mail@dvclaw.com

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

9 NORTHWEST ENERGY COALITION, by DAVID S.
10 JOHNSON, Attorney at Law, Northwest Energy
11 Coalition, 811 First Avenue, Suite 305, Seattle,
12 Washington 98104, Telephone (206) 621-0094, Fax
13 (206) 621-0097, E-Mail david@nwenergy.org.

0694

1 -----

2 INDEX OF EXAMINATION

3 -----

4 WITNESS: PAGE

5 CHRISTOPHER LESLIE

6 Cross Examination by Mr. Ffitch 700

7 CONFIDENTIAL X Examination by Mr. Ffitch 746-829

8 Redirect Examination by Mr. Van Nostrand 832

9 Examination by Commissioner Jones 833

10 Examination by Commissioner Oshie 850

11 Examination by Chairman Sidran 855

12

13 RONALD SCHMIDT

14 Cross Examination by Mr. Ffitch 867

15 Redirect Examination by Mr. Cedarbaum 882

16 Examination by Chairman Sidran 883

17

18 ROBINSON KUPCHAK - CONFIDENTIAL

19 Cross Examination by Mr. Ffitch 887

20 Redirect Examination by Mr. Van Nostrand 927

21 Examination by Commissioner Jones 930

22

23

24

25

0695

1

2

INDEX OF EXHIBITS

3

4

EXHIBIT

ADMITTED

5

Christopher Leslie

6

31T to 63HC, and 65, 66HC

700

7

8

Ronald Schmidt, PhD

9

10

191T to 200 and 235 to 239

866

11

12

13

Robinson Kupchak

14

15

5, 6HC to 8HC, 11HCT to 30,

886

16

17

18

19

20

21

22

23

24

25

0696

1

PROCEEDINGS

2

Tuesday, August 26, 2008 at 9:05 a.m.

3

4

JUDGE MOSS: Good morning, everyone.

5

For anyone who is new, my name is Dennis Moss. I'm

6

an Administrative Law Judge at the Utilities and

7

Transportation Commission and I will be conducting

8

our proceedings today. With me on the bench are

9

the Commissioners of the Utilities and

10

Transportation Commission, Chairman Mark Sidran,

11

Commissioner Pat Oshie, and Commissioner Phillip

12

Jones.

13

We have a new court reporter with us

14

today, and to make her life easier, I am going to

15

ask counsel if you will be speaking today at some

16

point, if you will identify yourselves by name and

17

affiliation. We are just not strictly taking

18

appearances, but it will help the court reporter.

19

MS. CARSON: Sheree Strom Carson,

20

representing joint applicant.

21

MR. VAN NOSTRAND: James Van Nostrand

22

representing joint applicants.

23

MR. JOHNSON: David Johnson,

24

representing the Northwest Energy Coalition.

25

MR. SANGER: Iraion Sanger, I-R-A-I-O-N,

0697

1 S-A-N-G-E-R, representing the Industrial Customers
2 of Northwest Utilities.

3 MR. FFITCH: Simon Ffitch with the
4 Attorney General's Office, Public Counsel.

5 MR. CEDARBAUM: Robert Cedarbaum,
6 representing Commission Staff.

7 JUDGE MOSS: If we have any conversation
8 over the telephone with counsel or with any witness
9 who might be called upon in that fashion, I will
10 ask at that time that they identify themselves
11 since vision is not really an issue there. So we
12 won't take any further appearances, as it were.

13 We have Mr. Leslie, who has been
14 previously sworn. Of course, he remains under
15 oath, and we will be stipulating his exhibits in
16 this morning, his cross exhibits, or will there be
17 objections?

18 MR. VAN NOSTRAND: We have objection
19 with respect to one, Exhibit 64 HC.

20 JUDGE MOSS: 64 HC.

21 MR. FFITCH: Can you provide an
22 additional identifier on that? Data request
23 number --

24 MR. VAN NOSTRAND: It's a document
25 produced by public counsel, so it is not a data

0698

1 request response, which is part of our issue. It's
2 called Projected Electric Rate Increase Charts,
3 which is produced by public counsel.

4 JUDGE MOSS: All right. State your
5 objection.

6 MR. VAN NOSTRAND: Your Honor,
7 objection. We have -- this is not a document that
8 was produced by a joint applicant. It is a
9 document that takes selected data from a company --
10 a joint applicant study, and characterizes it as
11 projected rate increases. That characterization
12 is, we believe, is misleading and Mr. Leslie can
13 describe how those numbers taken from the company's
14 workpapers would be -- it's a mischaracterization
15 to describe them as projected electric rate
16 increases. But the fact of the matter is, we did
17 not produce this chart. It's a numbers from a
18 company study, but misleadingly labeled.

19 JUDGE MOSS: Mr. Ffitch.

20 MR. FFITCH: I think, Your Honor, the
21 key is we have taken the information from the
22 company's numbers. It is produced by us, that is
23 correct. The exhibit consists of two components.
24 The first is a chart produced by public counsel
25 using data from the company, and they have

0699

1 acknowledged that it uses certain data.

2 The other pages to the exhibit are
3 simply a printout of a portion of the financial
4 model that is otherwise a cross exhibit in the
5 record that I don't believe the company is
6 objecting to. And we can establish that further
7 with either Mr. Leslie or Mr. Kupchak. I believe
8 that the joint applicants can simply make their
9 clarifications on redirect with their witness as to
10 any problems they have with the way we've displayed
11 the data.

12 JUDGE MOSS: Or they may have something
13 to say about it in response to your own questions,
14 such as they can't respond to the questions because
15 it mischaracterizes the data, which is what I am
16 hearing is going to happen.

17 What I'm going to do at this time is
18 wait until I hear what you plan to do with this
19 exhibit. So I am going to treat it as one to which
20 an objection has been entered, and when you get to
21 it in the questions, we will see about it at that
22 time, whether we exclude it or whether we take it
23 in for whatever weight it should be afforded, given
24 the witness's testimony concerning its usefulness,
25 if you will.

0701

1 confidential exhibits, and relate generally to your
2 position with Macquarie and to the Macquarie
3 organization. First of all, as you state in your
4 direct testimony, you were employed by Macquarie
5 Holdings, USA, Incorporated, as an executive
6 director of the Macquarie Group of Companies; is
7 that right?

8 A That's right.

9 Q And I have provided a copy of
10 Exhibit 256, and there's a large chart version of it
11 behind you. And the bench and other parties have
12 been provided with a small copy of this. Could you
13 identify on this exhibit where Macquarie Holdings,
14 USA is located?

15 A (Complies.)

16 Q And also just looking at that exhibit
17 briefly to orient us, we can see that at the bottom
18 of the corporate structure we have the status quo
19 company, Puget Energy, Inc., and it's wholly
20 subsidiary Puget Sound Energy, correct?

21 A Correct.

22 Q And those are the companies that are the
23 subject of this acquisition request, correct?

24 A Correct.

25 Q Now, you note further in your testimony

0702

1 that the Macquarie Group is comprised of two separate
2 subgroups, a banking group, which includes Macquarie
3 Bank Limited, and a nonbanking group called Macquarie
4 Capital, which undertakes investment activities; is
5 that correct?

6 A That's right.

7 Q And are those entities shown on this
8 particular chart?

9 A Conceptually, they are in the sense that
10 the Macquarie Capital Group, which is the investment
11 side, is this long chain of companies in the middle
12 of the chart. The banking side of the group is not
13 displayed. They do come together at the top, so
14 Macquarie Group Limited is the holding company, and
15 is listed on the Australian stock exchange, and is
16 the point at which the two groups converge.

17 The left-hand side of this chart where
18 there are three boxes describe Macquarie
19 Infrastructure Partners, and Macquarie
20 Infrastructure Canada, and Macquarie Infrastructure
21 Partners International, all part of a fund which is
22 generally referred to as Macquarie Infrastructure
23 Partners. And they are the vehicle that is managed
24 by Macquarie Capital Group on behalf of its
25 investors. So there is a crossover between these

0703

1 two columns in the sense that the manager of those
2 funds is an entity called Macquarie
3 Infrastructures Partners, Inc., and that is also a
4 wholly owned subsidiary of Macquarie Group Limited.

5 Q Okay. If we stay on the left-hand side
6 of the chart here, it appears that Macquarie
7 Infrastructure Partners ALP, Macquarie Infrastructure
8 Partners Canada LP, and Macquarie Infrastructure
9 Partners International all own MIP Washington
10 Holdings GP LLC; is that correct?

11 A That's right.

12 Q And they also appear to, according to
13 the lines on the chart, also all own MIP Washington
14 Holdings LP, correct?

15 A Correct.

16 Q And then we also see that there's a
17 sideways arrow there that indicates that MIP
18 Washington Holdings GP LLC also owns MIP Washington
19 Holdings LP; is that correct?

20 A That's correct. MIP Washington Holdings
21 LP is a Limited Partnership of the three entities
22 above it. The limited partnerships organized
23 typically with a general partner, and so to effect
24 the implementation of a limited partnership structure
25 to simply aggregate the investments of the three

0704

1 entities above it, we have created a limited
2 partnership between the three where they are both the
3 limited partners and the general partner.

4 It's merely an aggregating mechanism to
5 allow the three entities, which are part of the
6 permanent structure of Macquarie Infrastructure
7 Partners, the fund -- in fact, there are four
8 elements to the fund which are involved in every
9 investment in which we make. This is a mechanism
10 to aggregate those various entities for the
11 purposes of this particular transaction.

12 Q Now, you are also the chief executive
13 officer of Macquarie Infrastructure Partners,
14 correct?

15 A I am the chief executive officer of
16 Macquarie Infrastructure Partners, Inc., which is not
17 displayed on this chart, but which is the manager of
18 the three boxes identified there, which I will call
19 A Canada International, as shorthand.

20 Q And so that organization is not shown on
21 this chart?

22 A No, that's right.

23 Q It's one of the Macquarie Group of
24 Managed Funds; is that right?

25 A That's right. It may help the

0705

1 explanation if I give a broad sense of the
2 organization of Macquarie Infrastructure Partners,
3 the fund, because it is a pretty standard structure
4 despite the apparent complexity of the three or four
5 boxes that comprise the fund, if that would be
6 helpful for the Commission.

7 Q I would like to go through this a little
8 bit at a time, and if after we're done with that,
9 either on redirect or if it seems appropriate at that
10 point, we can go into your overview.

11 A Okay.

12 Q There is a -- I guess just as a brief
13 segue, we have asked about Macquarie Infrastructure
14 Partners, Inc., which you are the chief executive
15 officer of. So if I can ask you to briefly take
16 down the chart that is on the easel now, behind it
17 I think we still have the chart that was up
18 yesterday, which is an enlargement of the pending
19 speech of the multi-party settlement agreement,
20 correct?

21 A Correct.

22 Q There's a box on the far left of the top
23 line, and can you read the name of the entity in that
24 box?

25 A Macquarie Infrastructure Partners.

0706

1 Q Is that Macquarie Infrastructure
2 Partners, Inc.?

3 A That is representative of the
4 infrastructure fund called Macquarie Infrastructure
5 Partners, which comprises various elements which are
6 traditional in private fund structures to accommodate
7 the demand of our various investors. We have
8 international investors and local investors. So
9 within the box on this chart is encompassed the three
10 entities listed on the other exhibit as A Canada and
11 International, and the manager of the fund we just
12 mentioned, Macquarie Infrastructure Partners, Inc.
13 And the subsidiary entities that were created for the
14 purpose of bringing the various elements have our
15 fund together for this particular investment.

16 Q So that's actually really a summary sort
17 of impressionistic placeholder for a more complicated
18 structure; is that right?

19 A Yes, that would apply across both of
20 these yellow boxes on this chart. It's a
21 simplification. But it does aid the understanding in
22 the sense that these are the various investors in the
23 investor group, and the decision making is divided up
24 along those lines organizationally. The detail of
25 the underlying structures is a matter of ordinary

0707

1 corporate structuring for transactions of this nature
2 and creating a special purpose entity to hold the
3 given investment, and so forth.

4 So I think this best explains, really,
5 the underlying nature of the investment and the
6 relationship between the investors. I accept that
7 the detail underneath is a little more complex,
8 but --

9 Q And the detail -- I am sorry, were you
10 finished?

11 A I was going to say it is very typical in
12 these solid investments.

13 Q Now, the detail underneath is accurately
14 portrayed by Exhibit 256, which is the other chart we
15 were looking at; is that right?

16 A (Witness nods head.)

17 Q You can put it up again, if you like.

18 A (Complies.) Yes, I believe it is. I
19 can speak only for the Macquarie side, but to the
20 best of my knowledge, the whole chart is accurate.

21 Q All right. Macquarie Infrastructure
22 Partners, Inc. currently has 11 infrastructure trusts
23 in the US and Canada; is that right?

24 A I am not sure I follow the question.

25 Q I am referring to a statement on page 6

0708

1 of the joint application. If you want to take a look
2 at that, and I can reask the question.

3 A (Looking at documents.)

4 Q You are the CEO of Macquarie
5 Infrastructure Partners, correct?

6 A Macquarie Infrastructure Partners, Inc.,
7 to be technically precise. The reason for that
8 distinction is that the coming together of our
9 investors in the fund per se doesn't give rise to the
10 need for a CEO, as such. The investors delegate to
11 Macquarie Infrastructure Partners, Inc., the
12 management of the fund, and that is the manager of
13 the fund. So that's where the CEO sits. So could
14 you remind me of the lines that you were --

15 Q I am afraid I don't have a line
16 reference, but the question is Macquarie
17 Infrastructure Partners, does Macquarie
18 Infrastructure Partners currently have 11
19 infrastructure trusts in the US and Canada?

20 A Looking at line 19 on page 6 of the
21 application, the statement is Macquarie
22 Infrastructure Partners has 11 infrastructure
23 investments. So having, I think you said 11
24 infrastructure trusts, which was the confusing
25 part for me.

0709

1 We presently have 12 since this
2 testimony was filed. We have made one other
3 acquisition, but we currently have 12 investments
4 in the utility, toll road, ports and communication
5 sectors in North America.

6 Q Thank you for the clarification. And
7 that is Macquarie Infrastructure Partners, Inc.?

8 A No, that's the fund known as Macquarie
9 Infrastructure Partners.

10 Q All right. Now, you are also currently
11 a manager of Puget Holdings, correct?

12 A Correct.

13 Q And we can see Puget Holdings on both
14 charts at the first entity directly under the
15 investment consortium, right?

16 A Yes.

17 Q And in the original application, it is
18 stated that upon the acquisition of Puget, if it were
19 approved, you will be chairman of the board of Puget
20 Holdings, correct?

21 A In the original application, yes, but
22 that has changed.

23 Q So you are now not going to be the
24 chairman of the board?

25 A That's correct, but I will continue to

0710

1 be a member of the board.

2 Q Now, I notice throughout various
3 documents there's the use of the term for Puget
4 Holdings of a board of managers. Is that effectively
5 the same as a board of directors?

6 A It is. It's a term of art related to
7 LLC structures, so LLCs have board of managers in the
8 same way as "Inc." companies have boards of
9 directors. It's functionally the equivalent.

10 Q Is Puget Holdings the only
11 infrastructure board of managers that you are
12 currently a member of?

13 A No.

14 Q How many other entities are you
15 currently a member of that are infrastructure
16 investments?

17 A Infrastructure holdings companies in the
18 type of Puget Holdings?

19 Q Yes.

20 A Of the 12 investments in which Macquarie
21 Infrastructure Partners fund is an investor, I sit on
22 the board of ten of those.

23 Q Are you the chairman of any of those
24 other boards?

25 A I generally am the chairman of the board

0711

1 in most cases, not in all cases.

2 Q If the acquisition of Puget proceeds,
3 the testimony states that you will be chairman of the
4 board of Puget Sound Energy originally, but that also
5 is no longer the case, correct?

6 A That's correct.

7 Q And given the fact that you ordinarily
8 serve as chairman of the board for these investment
9 acquisitions, what is the reason for the change in
10 the plan?

11 A There was obviously considerable
12 discussion from the time that we announced this
13 transaction to the present concerning participation
14 by local individuals, and so forth, on the board. In
15 response to that, we have introduced a number of
16 local directors, in the persons of Steve Reynolds,
17 CEO, Herb Simon, and Bill Ayer, and Mr. Ayer will be
18 the chairman of our various boards throughout the
19 structure.

20 That was very much in response to the
21 concerns expressed by local community, and the
22 interveners in the case. It's something that we
23 regard as important for the transaction, and
24 something that we are willing to do in this case to
25 be responsive to the needs of the local community.

0712

1 Q Now, I would like to ask you to please
2 turn to Exhibit 42, I believe, is the number. Yes,
3 Exhibit 42. It's a response to public counsel data
4 request 3011.

5 A Yes, I have that.

6 Q And that is yet another chart. Can you
7 just sort of tell us generally what that is?

8 A The chart on page 3?

9 Q Correct.

10 A This is a functional representation of
11 the Macquarie Group. As you mentioned before,
12 Mr. Ffitch, we are broadly divided into two parts, a
13 banking group and a nonbanking group. And this chart
14 at least attempts to depict the division between
15 those two groups. And the consolidation at the top
16 of the group of a variety of services, including risk
17 management, financial operations, and so forth.

18 So this does not purport to include all
19 of the individual companies within the group where
20 there are hundreds, I believe, on the global scale,
21 and Macquarie is a very large international
22 organization. And we have numerous different
23 subsidiaries for the organization of our business,
24 as evident from the earlier charts that we were
25 looking at.

0713

1 So this is merely a functional division,
2 and one which was affected last year to give the
3 group increased flexibility as it grows.

4 Q Let's see if we can get a sense of how
5 you and Puget fit into the Macquarie Organization.
6 Looking at this chart, starting from the top down,
7 you indicated earlier that you were one of the
8 executive directors of the Macquarie Group of
9 companies. Would that be at the top of the chart?

10 A That's strictly a term of convenience, I
11 think, in that I am employed by Macquarie Holdings,
12 if you want to go back to that earlier chart. And in
13 presenting myself to the world, I am obviously an
14 employee of Macquarie, as far as the world is
15 concerned. The group affords me the privileges of an
16 executive director, which in our parlance would line
17 up with Wall Street senior managing directors, so
18 executive director is the highest designation within
19 the organization. So I present myself in that
20 manner. And have a broad affiliation with the group.

21 However, my day-to-day role is as CEO of
22 Macquarie Infrastructure Partners, and my fiduciary
23 responsibilities lie principally with the fund and
24 with the investors in that fund. And they are all
25 separate and apart from Macquarie, except to the

0714

1 extent that Macquarie has a small investment in the
2 fund itself.

3 Q So does that mean that technically, no,
4 you are not an executive director of Macquarie Group
5 Limited?

6 A Seems surprising that I wouldn't know
7 the answer to this question, but it's the idea of
8 being an executive director of Macquarie Group
9 Limited -- yes, I am an executive director of
10 Macquarie Group Limited as broadly defined.

11 Q In the way that you have just qualified
12 that?

13 A Yes. I think in terms of being an agent
14 of the parent company abroad in the world, that's a
15 correct characterization.

16 Q Looking at Exhibit 42, you also reside
17 in the Macquarie Capital part of the nonbanking
18 group; isn't that correct?

19 A That's correct.

20 Q And that's on the right-hand side under
21 the heading Nonbanking Group?

22 A Yes.

23 Q What is your position with Macquarie
24 Capital?

25 A I am also an executive director with

0715

1 Macquarie Capital. I think the designation has a
2 general purpose throughout the group. So as I
3 mentioned before, legally I am employed by Macquarie
4 Holdings USA, Inc., which is the holding vehicle for
5 the Macquarie Capital activities in the United
6 States.

7 Q Now, Exhibit 43 turns out to be the same
8 as Exhibit 256, or the same as the chart that is
9 right behind you, the same as the handout that we
10 have passed out this morning, which is a kind of a
11 subset of part of Macquarie Organization, right?

12 A Yes.

13 Q Can you tell us, looking at that exhibit
14 which is -- it's either 43 or 256 as the mood takes
15 us, and that's the one up on the easel. Can you tell
16 us which are those corporate entities you have a
17 position with?

18 A As we mentioned before, I am a director
19 of the various entities in the transaction-specific
20 companies, so the Puget Holdings LLC, Puget Sound
21 Energy, Puget Energy, and so forth.

22 Q Like to take them one at a time. Start
23 at the bottom, will you have a board position with
24 Puget Sound Energy?

25 A Yes.

0716

1 Q Will you have an officer position with
2 them?

3 A No.

4 Q With Puget Energy will you have a board
5 position?

6 A Yes.

7 Q Will you have an officer position with
8 any of these entities?

9 A No.

10 Q Well, I will stop asking that as we go
11 through.

12 A It's the same all the way up to Puget
13 Holdings.

14 Q And you will have a position with Puget
15 Intermediate Holdings, Incorporated?

16 A Yes.

17 Q We know actually, now, do we not, that
18 there's another entity in the chart here, Equico, and
19 that falls in between Puget Energy and Puget
20 Intermediate Holdings, correct?

21 A Yes.

22 Q Will you have a position with Equico?

23 A Yes.

24 Q And you will have a position with Puget
25 Holdings?

0717

1 A Yes, throughout the structure.

2 Q Now, if we could go up the next level to
3 the Macquarie Entities, I assume you do not have
4 board positions on the right-hand side with the
5 Canadian investors?

6 A That's right.

7 Q Let's go to the tall column of the
8 Macquarie Entities there. Do you have board
9 positions with any of those, and with -- if so, with
10 which ones?

11 A No, I do not have board positions with
12 any of these entities.

13 Q And I am including in that question the
14 term manager as you have described it --

15 A Yes, I understand. No. No. Not across
16 any of those entities.

17 Q And then moving to the left, Macquarie
18 FFS Infrastructure Trust, do you have a board
19 position with them?

20 A No.

21 Q And moving to the far left, we have a
22 grouping of Macquarie Infrastructure Partners
23 organizations or entities. Do you have board
24 positions with any of those entities?

25 A Yes, all of them.

0718

1 Q All of them. And then you have
2 indicated that Macquarie Infrastructure Partners,
3 Inc., is not shown on here, but you also have a
4 position with MIP, Inc., correct?

5 A Yes, I am on the board of MIP, Inc.

6 Q And you are the chief executive officer
7 of MIP, Inc.?

8 A Correct.

9 Q Isn't it fair to say, Mr. Leslie, that
10 Macquarie is the party that arranged this
11 transaction?

12 A Yes.

13 Q And you started meeting with Puget in
14 2005; is that right?

15 A Mr. James met with Puget, I think, it
16 was as early as 2005. But in terms of standard
17 discussions on this transaction, it was more likely
18 2006, late 2006, early 2007.

19 Q And you solicited the equity investors
20 and the debt investors for the transaction?

21 A I personally didn't do that. The
22 Macquarie Group did, through the auspices of our
23 financial advisory arm representatives, of which are
24 Rob Kupchak and Allen James. So the financial
25 advisors of the consortium was instrumental in

0719

1 drawing the consortium together. The various
2 consortium members are known to me in my present
3 capacity as CEO of MIP. But we, as MIP, are akin to
4 a Canadian brethren, and we are each investors, and
5 the financial advisory group drew us all together to
6 form this investment consortium.

7 Q And let's just go through the
8 percentages of ownership. As a general matter, the
9 Canadian investors own approximately 49 percent of
10 Puget if the transaction is approved, and the
11 Macquarie entities, the three Macquarie entities
12 would hold 51.4 percent of the investment; is that
13 right?

14 A That's right. Although the shareholders
15 agreement between us specifies averting threshold for
16 majority decisions of 55 percent. So Macquarie
17 alone, even if the three elements of the Macquarie
18 part of the equation vote together, we can't all make
19 a majority decision despite our 51 percent interest.
20 So we don't control this investment in the ordinary
21 sense, as one might expect from a 51 percent share
22 holding.

23 Q And the second largest Macquarie
24 ownership position is 15.9 percent; is that right?
25 That comes down from the Macquarie Capital Group in

0720

1 the center column.

2 A Yes.

3 Q According to the joint application, this
4 Macquarie Group invests in an underwriting capacity.
5 Do you mean by that that they buy whatever portion of
6 the investment is not sold to other investors?

7 A The underwriting capacity, yeah, it does
8 anticipate that -- or rather it speaks to the fact
9 that Macquarie sort of fills the gap to the extent
10 that we haven't assembled a broad enough investor
11 group to meet the requirements of the transaction,
12 yes.

13 Q And you also note in the joint
14 application that Macquarie Capital Group intends to
15 sell its interest in Puget Holdings prior to the
16 close, or immediately after the transaction, correct?

17 A Yes.

18 Q Does that represent the 15.9 percent of
19 the share that we're talking about?

20 A Yes --

21 Q I am sorry. I spoke over you.

22 A Yes, it does.

23 Q Then to whom will that interest be sold?

24 A The expectation at this point is that
25 this interest will be sold to the Macquarie

0721

1 Infrastructure Partners family of funds, which now
2 includes Macquarie Infrastructure Partners, what we
3 call Macquarie Infrastructure Partners I, which is
4 the Fund Group on this page, and Macquarie
5 Infrastructure Partners II, which is the successor
6 fund of a very similar nature to the first fund,
7 which is presently being raised.

8 So by way of background, the transaction
9 came together with these various parties. The
10 Macquarie Group, in the form of MIP I, if I can
11 call it that, MIP 1 and Macquarie Capital came
12 together to bring the Macquarie part of the
13 equation to the 51 percent we have heard.

14 It's our expectation that as additional
15 funds are raised in MIP II that Macquarie Capital's
16 piece will be transferred into MIP II. So all of
17 those elements will remain under the broad control
18 of Macquarie generically, and Macquarie
19 Infrastructure Partners, Inc., specifically, MIP,
20 Inc., is the same MIP, Inc., is the manager of MIP
21 I and MIP II.

22 Q And you are the CEO of MIP 1?

23 A I am the CEO of MIP, Inc., and that will
24 be the manager of MIP I and MIP, II.

25 Q And for the court reporter, when you say

0722

1 MIP, it's M-I-P?

2 A Yes, Macquarie Infrastructure Partners.

3 Q And the smallest piece of the Macquarie
4 investment is the Macquarie-FSS Infrastructure Trust,
5 which will own 3.7 percent of the investment,
6 correct?

7 A Correct.

8 Q At this stage, I would like to turn to
9 the topic of corporate governance, and ask you to
10 turn to your direct testimony, which is Exhibit 31,
11 on page 20.

12 A Yes. My notebook isn't indexed. Just a
13 second. Page 20?

14 Q Page 20. And there is -- I will let you
15 find it. Sorry.

16 A Yes.

17 Q Starting at the bottom of the page, you
18 talk about post transaction governance and operations
19 of PSE, correct?

20 A Yes.

21 Q And at line 18 you state, the governance
22 and decision-making structure at PSE will essentially
23 be unchanged as a result of the proposed transaction,
24 except that -- excuse me, with the exception that
25 Puget Holdings will replace Puget Energy as the

0723

1 ultimate parent company in the PSE ownership
2 structure, correct?

3 A Yes.

4 Q And otherwise the board and committee
5 structures remain the same, you go on to say?

6 A Yes.

7 Q And so just, again, as a reminder, the
8 current structure is the two bottom boxes on the
9 chart that is right next to you, Puget Holdings is
10 the parent of Puget Sound Energy?

11 A Yes.

12 Q So under the new structure with Puget
13 Energy as the ultimate parent -- excuse me, with
14 Puget Holdings replacing Puget Energy as the ultimate
15 parent, there will be between Puget Holdings and
16 Puget Sound Energy, now Puget Intermediate Holdings,
17 Equico and PE, correct?

18 A Yes.

19 Q PE being short for Puget Energy. And if
20 we turn to page 21, there you say, starting at line
21 3, that Puget Holdings will be governed by a board of
22 managers representing the investment consortium
23 members, correct?

24 A Yes.

25 Q And that Puget Sound Energy CEO will be

0724

1 a member, and you have indicated that will be
2 Mr. Reynolds, or Mr. Reynolds has testified that he
3 will be in that position?

4 A Yes.

5 Q And then at line 6 you state that the
6 Puget Sound Energy board of directors is expected to
7 be largely the same persons who serve on the Puget
8 Holdings board of managers, correct?

9 A Correct.

10 Q Now, along with your testimony as
11 Exhibit 6, which has now been marked as Exhibit 36,
12 you have provided a description of the anticipated
13 governance structure of the Puget family of
14 companies; is that right? Your CJL 6, I believe
15 that's been marked as Exhibit 36.

16 JUDGE MOSS: That's correct.

17 THE WITNESS: Yes, I have that. Let me
18 just --

19 Q BY MR. FFITCH: I am going to page 1 of
20 that.

21 A Okay.

22 Q I am sorry. Are you there yet?

23 A Yes. This is the existing corporate
24 governance guidelines.

25 Q Well, let's take a look at it when you

0725

1 get there.

2 A Yeah.

3 Q There is a -- the document is entitled
4 Memorandum Describing Anticipated Corporate
5 Governance, correct?

6 A Which page of the exhibit are you
7 looking?

8 Q Page --

9 JUDGE MOSS: Page 1 of 40 --

10 Q BY MR. FFITCH: Page 2.

11 A Okay. Sorry. I was on page 6. Yeah.

12 Q So then if we turn to page 2 of the
13 exhibit there's a table there, which describes each
14 of the entities that will exist if the transaction is
15 approved, right? And some of their characteristics
16 or some of the governance provisions are summarized
17 there, correct?

18 A Yes. This was developed obviously at
19 the time of the original filings, so it has been
20 superseded, most notably of the inclusion of Equico
21 in the structure, so that's missing and there have
22 been various developments in terms of independent
23 local representation on the various boards since
24 then. So this has been a bit of a work in progress,
25 but with those caveats.

0726

1 Q As I go through my questions, please
2 indicate where something has been updated from this
3 original exhibit. I do understand it was filed
4 awhile back so --

5 A Okay.

6 Q And if we look at footnote 1 on page 2,
7 which is a footnote to the table, it states that it
8 is anticipated that members of the Puget Holdings
9 board of managers will also serve on the board of
10 Puget Intermediate, Puget Energy, and PSE. Is that
11 still correct?

12 A Footnote 1 to the table?

13 Q Yeah.

14 A Okay. (Reading document.) That's
15 correct.

16 Q Would that now also be correct for
17 Equico as well?

18 A Yes. If I can summarize in anticipation
19 of some of your questions, the members of the
20 holdings board, the same members all the way down the
21 chain from holdings to Puget Sound Energy, and they
22 are -- there's one additional director at the
23 utility, and there is one additional director at
24 Equico. Separate -- a different individual to the
25 additional director at Puget Sound Energy.

0727

1 Q Okay. Now, looking right below the
2 table, there's the heading Puget Sound Energy
3 Holdings, and there's a summary of the description of
4 the Puget Holdings governance organization, correct?

5 A Yes.

6 Q And that indicates that the board will
7 have 12 members?

8 A It says up to 12.

9 Q Up to 12, excuse me. And that each
10 member of the investment consortium will be entitled
11 to appoint one manager for each 10 percent of the
12 shares of Puget Holdings it owns?

13 A Correct. And based on the percentage
14 ownership, that effectively results in a board of
15 that level of nine representatives from the investor
16 group, together with the two local directors, making
17 a board of 11, sorry.

18 Q And of the nine, the nine members are
19 the members appointed by the investment consortium,
20 correct?

21 A Correct.

22 Q And would I be correct in my math if I
23 concluded that five members would be appointed by the
24 Macquarie side of the investment consortium, and four
25 by the Canadian investors?

0728

1 A The breakdown that we're anticipating is
2 three to the Macquarie Infrastructure Partners
3 investment group, two to the Macquarie Capital Group,
4 two to CPP, one to Alberta, and one to BC IMC?

5 Q So although I didn't have that detail, I
6 was essentially correct, the Macquarie investors will
7 have a total of five, and the Canadian investors a
8 total of four?

9 A Correct.

10 Q And the fractional board member is left
11 on the side lines?

12 A Exactly. Although, I would again make
13 the point that the voting mechanism at that level is
14 proportional to shareholding, so the five Macquarie
15 representatives are able to vote the 51 percent
16 approximately that Mr. Ffitch mentioned before. And
17 that is not sufficient for a majority approval at
18 that level, which requires 55 percent.

19 So despite -- if it were a one-man
20 one-vote environment, it would be a different
21 arrangement. But given it's proportional voting of
22 shares, we do not control -- we, being the
23 Macquarie Group collectively, do not control that
24 board.

25 Q Now, you mentioned additional board

0729

1 members in addition to those nine. Can you go back
2 to that and identify first -- I believe you said at
3 the Puget Sound Energy level and also at the Puget
4 Holdings level; is that correct?

5 A Yes.

6 Q So let's start with the Puget Sound
7 Energy level, and there's an additional director at
8 that level. Is that the additional local director
9 that you are committing to include?

10 A Yes.

11 Q And is that the independent director
12 that you are committing to include?

13 A Yes. And specifically to achieve the
14 objectives of the ring fencing proposals, that
15 director will have the so-called golden share in the
16 ring fencing arrangements.

17 Q And at least right now, according to the
18 testimony, that is indicated to be Mr. Simon?

19 A That's correct.

20 Q And let's go to Puget Holdings level,
21 and you have indicated -- well, earlier testimony
22 indicates that there will be a total of two regional
23 residents at that level, correct?

24 A Correct.

25 Q And we have heard, have we not, that

0730

1 Mr. Reynolds will be included at that level as the
2 CEO of PSE, and he would also constitute one of the
3 regional directors, correct?

4 A Correct.

5 Q So second would be, am I correct, the
6 second would be "Mr. Ayer"?

7 A "Mr. Ayer."

8 Q Mr. Ayer, is that correct, he would be
9 the second?

10 A Yes. And Mr. Ayer would be the chairman
11 at both levels.

12 Q And that would be a total of 11 members
13 at the Puget Holdings level?

14 A Correct.

15 Q And perhaps you have answered that, but
16 I will come back in a different way. There's no
17 commitment in the settlement agreement that requires
18 any regional directors at the Puget Intermediate
19 Holdings level, or the Equico level; is that right?

20 A I don't believe there are any
21 commitments specifically on those points. If I look
22 at counsel for a minute, I believe there are.

23 Practically speaking, those entities,
24 Puget Intermediate Holdings, would likely delegate
25 its board up to the holdings level.

0731

1 Q Did you say delegate its board?

2 A Delegate up, if you like. Or --

3 Q So can you explain what that means?

4 A Well, it's a structural element of the
5 transaction, and so it doesn't do much day-to-day,
6 and so it doesn't need to have a board. So the
7 parent of that company in Puget Holdings is likely to
8 take that role.

9 Q So it will be essentially a paper board,
10 in effect?

11 A It's the same board basically, yeah.
12 The same individuals at holdings will constitute the
13 intermediate holdings board.

14 Q Let's turn the page to page 3 of your
15 exhibit, and this is continuing to describe Puget
16 Holdings board of managers. And the list of bullet
17 points at the top of the page is a statement of the
18 functions of the board of Puget Holdings, correct?

19 A Correct. Again, this is subject to the
20 earlier caveat that this has been a work in progress
21 on governance since this testimony was filed.

22 Q Well, if you would like to take a minute
23 to look at it, I am not trying to trick you here.
24 But if there are material changes that you notice
25 there, please say so. But just working through some

0732

1 of the high points here, the first bullet point
2 indicates the board has the authority and the
3 function of reviewing and approving and amending the
4 business plan, and we have heard testimony about
5 that, correct?

6 A Yes, this is the holdings board.

7 Q Establishes policies and procedures for
8 the implementation of the business plan?

9 A Yes.

10 Q Correct? Reviews and approves material
11 transactions, including acquisitions, and the others
12 listed there, right?

13 A Yes.

14 Q And I won't go through the whole list.
15 Do you see anything else as you look through there
16 that is no longer an accurate statement of those
17 board functions?

18 A No, I think it's broadly aligned with
19 the present state of thinking.

20 Q So that board has pretty broad
21 decision-making authority for the utility,
22 ultimately, does it not?

23 A The management of the utility rests with
24 the utility. And central to the organization of this
25 structure, I guess, is the business plan, which is a

0733

1 document which is produced by management and makes
2 its way to the holdings board for approval. So we
3 have the ability to approve that plan, but little
4 input into the development of that plan and its
5 execution.

6 Q Well, the exhibit indicates that the
7 board has the function of reviewing, but also of
8 approving and/or amending, correct?

9 A Correct.

10 Q So the board could change the plan,
11 correct?

12 A Correct. Although as I mentioned,
13 day-to-day management of the business rests with the
14 management, and it's -- given the fact that the board
15 of holdings represents a group of investors who don't
16 have the proximity to the business that management
17 has, we wouldn't ordinarily presume to second-guess
18 management in terms of what might be right for the
19 business.

20 Q And then if we look about two-thirds of
21 the way down, we see the board has the authority and
22 the function of acquiring, issuing, and disposing of
23 securities, correct?

24 A Correct.

25 Q Let's turn the page before we -- excuse

0734

1 me, turn the page and look to the discussion of
2 committees -- actually, I hate to have people
3 flipping, but there's -- on the chart or table that
4 we look back, back on page 2, there's kind of a
5 summary. Maybe if we can go there first, I
6 apologize. There's a summary of the board committees
7 at the different levels. Do you have that?

8 A Yes, on page 2.

9 Q On page 2 on the table, you see that
10 the -- there are no committees at the intermediate
11 levels, the intermediate corporations, but the
12 committees for Puget Holdings and PSE are listed
13 there. And we see that Puget Holdings has, it
14 appears, two committees that PSE doesn't have, that's
15 the asset committee and the business plan and budget
16 review committee, correct?

17 A Correct.

18 Q If we go back to page 4, there's more
19 specific discussion of how these committees are made
20 up. And if we look at the asset committee, can you
21 describe what the makeup of that would be?

22 A Yes, asset management committee.

23 Q Asset management committee, yes.

24 Well, it consists of the CEO of PSE, and
25 one representative appointed by the two largest

0735

1 members of consortium, correct?

2 A Correct.

3 JUDGE MOSS: Mr. Ffitch, this is already
4 in the record, so if you have a question about it,
5 just ask him instead of having to confirm
6 everything that is on the page before us, if you
7 would. It would speed things along.

8 MR. FFITCH: Thank you, Your Honor.

9 Q BY MR. FFITCH: So I guess my question
10 is, who would that be, in practice?

11 A In practice, the asset management
12 committee would comprise the CEO in its present
13 contemplation, the CFO, also the two largest
14 investors being Macquarie and CPP.

15 Q So it's a three-member committee; is
16 that right?

17 A It's presently contemplated to be a
18 four-man committee. That's part of the progression
19 since this document was filed.

20 Q So who would the members be on the four
21 -- who would the additional member be?

22 A The CFO --

23 Q So --

24 A -- of PSE.

25 JUDGE MOSS: I am going to caution those

0736

1 of you sitting in the back there that it's not
2 appropriate for you to signal a confirmation for
3 the witness while the witness is testifying. If
4 the witness doesn't know, he will say so. So I
5 would appreciate it if you would refrain from
6 nodding or other acknowledgment of the witness's
7 testimony.

8 Go ahead, Mr. Ffitch.

9 Q BY MR. FFITCH: Could you give us the
10 same explanation for the business plan and budget
11 review committee

12 A That's essentially the asset management
13 committee, plus the addition of BC IMC.

14 Q So that would now be a five-member
15 committee?

16 A Yes.

17 Q And can you just, for my benefit, list
18 who those five people would be, or the entities they
19 represent. I don't need names, but --

20 A CEO of Puget Sound Energy, the CFO of
21 Puget Sound Energy, a representative of Macquarie, a
22 representative of CPP, and a representative of BC
23 IMC.

24 Q Turning to a new topic here, you can use
25 either one of the charts. The one that is up there

0737

1 is fine. I am focusing on the bottom section with
2 the Puget entities. If you want to go to the larger
3 one, that's fine. Actually, that's a little better.

4 Just for the record, the chart now shown
5 on the easel is Appendix B to the Settlement
6 Agreement. Can you first look at Puget Sound
7 Energy at the bottom of the table, and state what
8 is the source of income for that entity.

9 A The source of income is the provision of
10 utility service in the service territory,
11 specifically electric and gas.

12 Q So that entity is able to generate cash
13 by that means, correct.

14 A Correct.

15 Q And post-acquisition, will PSE be able
16 to issue debt?

17 A Yes, it will.

18 Q Now, let's go up to the next level,
19 Puget Energy. Now, that has no separate operations
20 or separate employees post-acquisition, correct?

21 A It will have officers and directors as
22 will be necessary to operate as an organization, but
23 it has no separate work force in the general sense.

24 Q And you have stated in Exhibit 6 it
25 shall have no separate operations or employees. Is

0738

1 that accurate?

2 A Yes.

3 Q And is Puget Energy able to generate
4 cash in any manner?

5 A Its principal source of cash is the
6 dividends from its wholly owned subsidiary, Puget
7 Sound Energy.

8 Q And post-acquisition, is Puget Energy
9 able to issue debt?

10 A Yes.

11 Q Let's move up to Equico, will Equico
12 have any separate operations or employees?

13 A No.

14 Q And is Equico able to generate cash or
15 revenue in any manner?

16 A By way of dividends from Puget Energy,
17 Inc.

18 Q And post-acquisition, will Equico be
19 able to issue debt?

20 A No.

21 Q Let's move up to Puget Intermediate
22 Holdings. Puget Intermediate Holdings will have no
23 separate operations or employees, correct?

24 A Correct.

25 Q And what is the source of cash or

0739

1 revenues for Puget Intermediate Holdings?

2 A Dividends from Equico.

3 Q And those dividends, in turn, come from
4 Puget Energy, and in turn come from Puget Sound
5 Energy?

6 A Correct.

7 Q And post-acquisition, is Puget
8 Intermediate Holdings able to issue debt?

9 A Yes, it is, although it's not our
10 intention to do so.

11 Q And then moving to the top, Puget
12 Holdings, Incorporated, does Puget Holdings -- or
13 will Puget Holdings have any separate operations or
14 employees?

15 A No.

16 Q And what is the source of cash or
17 revenue for Puget Holdings?

18 A The same flow of dividends we have
19 talked about for the other entities.

20 Q And post-acquisition, will Puget
21 Holdings be able to issue debt?

22 A Yes, but it's not our intention to do
23 so.

24 MR. FFITCH: Can I have a moment, Your
25 Honor. I think I may be finished with the

0740

1 nonconfidential material.

2 JUDGE MOSS: All right.

3 MR. FFITCH: Your Honor, that concludes
4 the questions that I had on these nonconfidential
5 exhibits. And at the beginning of this point I did
6 want to ask the witness a series of questions at
7 some length about various confidential exhibits,
8 the investor documents to be put in the record.

9 JUDGE MOSS: So to be clear, you are
10 requesting that we close the hearing room at this
11 time?

12 MR. FFITCH: I believe that's the only
13 way we can effectively have an intelligent
14 examination of the documents and the witness.

15 JUDGE MOSS: Let me ask you, you heard
16 yesterday the plan that I was hoping to implement
17 in terms of allowing people to go into 207 and
18 keeping the bridgeline on, so both could monitor
19 the proceeding, with the exception of those points
20 in time when you are, in fact, either asking
21 questions that include highly confidential
22 information explicitly, or elicit the disclosure of
23 highly confidential information into the record.
24 You know your questions, I don't. Let me ask you
25 if that's going to be workable.

0741

1 MR. FFITCH: Your Honor, the way that I
2 have -- what I have concluded from looking at the
3 questions there is really more or less a continuous
4 series of questions about private placement
5 memoranda that all cover a document that has been
6 marked Highly Confidential, and we're going through
7 several documents like that. So it appears to me
8 to be a continuous period of questioning on highly
9 confidential matters.

10 Now, unless there's some waiver as we go
11 along as to particular items, I am afraid that
12 we're in a situation that in order to do that
13 examination, we have to close the hearing room.

14 JUDGE MOSS: Give us a minute.

15 (Discussion off the record.)

16 JUDGE MOSS: Back on the record. We're
17 going to take a short recess until 10:30 to give
18 counsel an opportunity to confer, and perhaps
19 effect some waiver of the previous claims of
20 confidentiality so we can keep the hearing room
21 open to the extent possible. So we're in recess
22 until 10:30.

23 (Brief recess taken.)

24 JUDGE MOSS: Let's come back to order.
25 The parties have had an opportunity to discuss off

0742

1 the record and among themselves whether it would be
2 possible for Mr. Ffitch to conduct his planned
3 examination from this point forward in a fashion
4 that would allow us to have the use of room 207 and
5 the bridgeline at points in time, and then cut-off
6 that access at points in time.

7 Mr. Ffitch, I believe, will agree with
8 me that he does not believe he can conduct his
9 examination in that way after conferring with the
10 other parties. And so, Mr. Ffitch, you are
11 requesting that we have a continuous closed
12 session, and I believe you said that would clearly
13 carry us to the noon hour, and perhaps beyond?

14 MR. FFITCH: That's correct, Your
15 Honor. And I will state for the record that the
16 reason for this is, of course, the designations of
17 confidentiality by the joint applicants. These are
18 their documents, and we are, pursuant to the terms
19 of the protective order, accommodating that
20 designation.

21 JUDGE MOSS: And that is an important
22 point. I am glad you mentioned it. These
23 documents have, of course, been designated as
24 Confidential consistent with the terms of the
25 protective order and the rights of the parties

0743

1 under the protective order, and consistent with the
2 rights of the parties to assert confidentiality
3 under our RCW 80.04.095.

4 And at this point, of course, we
5 mentioned the other day that you have challenged
6 this, that in part through your motion filed late
7 last Thursday. But also, of course, that it is not
8 practical, as you note in your motion, to resolve
9 that during the course of our hearing. So what we
10 have at the moment is at least documents that are
11 designated as confidential consistent with law and
12 our rules and our protective order.

13 So with that in mind, what we're going
14 to do is close the hearing room to those who have
15 not executed the Confidential and Highly
16 Confidential affidavits that are part of the
17 protective order in this proceeding.

18 If you wish, you can remove yourself to
19 room 207, Ms. Gail Griffin-Wallace, who I
20 identified at the back of the hearing room, she can
21 show you where that room is. It doesn't look like
22 we will be back in open session until the
23 afternoon. So you may wish to take a break and
24 come back early afternoon, something like that.

25 Mr. Ffitch tells me he may renew this

0744

1 request when examining Mr. Kupchak. Are there any
2 others?

3 MR. FFITCH: Ms. Campbell, Your Honor.

4 JUDGE MOSS: So this may be something
5 that we have to follow for much of the remainder of
6 today. And while that is unfortunate, that is,
7 nevertheless, what we must do under the law.

8 So with that I will ask those of you who
9 have not signed the appropriate documents under the
10 protective order, if you will please leave the
11 hearing room at this time. Those of you who are
12 monitoring the matter on the conference bridgeline,
13 I am going to mute the send function, so you will
14 not be able to hear us either. And we will turn
15 that back on when we go back into nonconfidential
16 session.

17 One further point, we will be breaking
18 for lunch today approximately 12:00 and coming back
19 at approximately 1:15. When we come back at 1:15,
20 we will have the open mic, if you will, for a
21 period at that point in time to see if we can give
22 everyone some indication of when we will be back in
23 public session, and we will resume to the point
24 necessary in public session.

25 MR. SANGER: Can you give me the

0745

1 bridgeline number?

2 JUDGE MOSS: No, I can't, because I
3 don't know it off the top of my head but you can
4 check with the records center or
5 Ms. Griffin-Wallace can give it to you.

6 MR. SANGER: Do you have any objection
7 to me participating via phone, except for the
8 highly confidential portions?

9 JUDGE MOSS: That's fine. You are
10 asking to be excused from the hearing room?

11 MR. SANGER: Yes.

12 JUDGE MOSS: Sure, that's fine.

13 All right. I have eliminated the
14 mute-send function, and I have also turned off the
15 speaker system to Room 207. So with that, praying
16 that the technology gods are with us, Mr. Ffitch,
17 you may proceed.

18 (The following testimony is

19 CONFIDENTIAL ATTORNEYS' EYES ONLY.)

20

21

22

23

24

25

0746

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0747

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0748

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0749

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0750

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0751

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0752

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0753

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0754

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0755

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0756

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0757

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0758

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0759

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0760

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0761

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0762

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0763

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0764

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0765

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0766

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0767

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0768

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0769

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0770

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0771

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0772

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0773

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0774

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0775

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0776

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0777

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0778

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0779

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0780

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0781

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0782

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0783

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0784

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0785

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0786

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0787

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0788

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0789

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0790

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0791

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0792

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0793

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0794

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0795

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0796

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0797

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0798

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0799

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0800

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0801

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0802

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0803

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0804

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0805

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0806

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0807

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0808

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0809

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0810

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0811

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0812

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0813

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0814

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0815

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0816

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0817

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0818

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0819

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0820

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0821

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0822

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0823

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0824

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0825

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0826

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0827

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0828

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0829

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0830

1 (End CONFIDENTIAL TESTIMONY -- THE
2 FOLLOWING IN OPEN SESSION.)

3 JUDGE MOSS: Go ahead, or maybe we
4 should let Mr. Ffitch finish up. You had one
5 nonconfidential piece of cross left, and why don't
6 you finish that, and then if Mr. Van Nostrand has
7 any questions, we can take it all at once.

8 MR. FFITCH: I lost track of where I
9 was going to be in my notes.

10 Q BY MR. FFITCH: Please turn to
11 Exhibit 68, please.

12 A I am sorry. I just closed up my book,
13 and it's at the back. It's quite a distance. All
14 right. I am there.

15 Q And at the top of the page we see a
16 reference to Macquarie Infrastructure Company, LLC,
17 correct?

18 A Correct.

19 Q And this was a company that was
20 referenced earlier -- I am realizing we're into
21 confidential material here. I will stop.

22 Are you familiar with this company?

23 A Yes.

24 Q Do you have any status with the Company
25 as a director or officer or any other status?

0831

1 A I am a shareholder in the company, but
2 otherwise I have no affiliation with them.

3 Q And am I correct that this is a publicly
4 traded company that invests in infrastructure
5 projects globally?

6 A It presently is confined pretty much to
7 North America.

8 Q And this chart shows stock price
9 fluctuations from September 2007 to August 15, 2008,
10 correct?

11 A Correct.

12 Q And am I correct to read this as
13 indicating that the Company's stock price appears to
14 have lost approximately half its value in the last
15 year?

16 A That's approximately correct, going from
17 the \$40 range in September '07 to the low 20s, not
18 quite 50 percent, but close to that.

19 MR. FFITCH: Those are all the
20 questions I have, Your Honor.

21 JUDGE MOSS: Thank you.

22 Mr. Van Nostrand, you can do your
23 redirect.

24

25

0832

1

REDIRECT EXAMINATION

2

3 BY MR. VAN NOSTRAND:

4

Q Mr. Leslie, do you recall the questions
5 from Mr. Ffitch as far as corporate governance in
6 your exhibit 36, that describe the corporate
7 governance structure?

8

A Yes

9

Q I believe you mentioned there have been
10 some changes in the corporate governance structure
11 since this exhibit was prepared?

12

A That's correct.

13

Q And could you describe the nature of
14 those changes in the corporate governance structure
15 that -- in connection with the -- or the terms of the
16 settlement agreement?

17

A We have added the independent -- the
18 local directors to the holdings board, as we have
19 discussed during this proceeding. And the
20 consortium, as is detailed in response to our Bench
21 Request 8, has agreed that the affirmative vote of at
22 least one of those independent directors will be
23 required to effect a simple majority resolution at
24 the holding company.

25

Q So when Mr. Ffitch was asking you the

0833

1 questions on Exhibit 36, in particular on page three,
2 the discussion of reviewing, approving or amending
3 the PSE business plan, that is the change in the
4 corporate governance that you are describing?

5 A There's no change effectively as far as
6 reviewing the business plan goes. Today the board of
7 Puget Energy reviews and approves the business plan
8 of the utility, and we have the same structure in our
9 proposal. And as I mentioned, the affirmative vote
10 of one of the local directors will be required to
11 effect those kinds of decisions. So it's pretty much
12 the same as it is today.

13 MR. VAN NOSTRAND: Thank you. No
14 further questions.

15 JUDGE MOSS: Thank you. We will turn,
16 then, to the bench, and why don't we shake things
17 up and start with Commissioner Jones this time, and
18 work our way my direction.

19

20 EXAMINATION

21

22 BY COMMISSIONER JONES:

23 Q Mr. Leslie, I am going to turn to some
24 more general questions and get away from the
25 numbers, so I would appreciate you answering them a

0834

1 little more broadly and succinctly if possible.

2 If Macquarie believes, and if you have
3 advised the other three members of the investor
4 consortium, that PSE is an attractive investment,
5 why don't you and the other members of the investor
6 consortium simply buy stock in public markets and
7 supplement your existing \$300 million investment
8 through the private placement?

9 A The mandate that we have as Macquarie
10 Infrastructure Partners in many ways would not permit
11 that. We are, given the mandate by our investors, to
12 make private investments not listed investments, that
13 indeed many of our investors are capable of making on
14 their own behalf.

15 And I believe in terms of our partners
16 they also have listed equity investment programs,
17 but the investment allocation that they dedicate to
18 this investment comes from their private investment
19 pool, and so it would not be customary for them to
20 make public market investments out of that pool,
21 even though they are doing so temporarily, or at
22 least we hope temporarily, to the extent this
23 transaction is consummated.

24 Q So in summary, it primarily revolves
25 around the mandate in the MIP and other

0835

1 infrastructure asset funds, and the investment
2 objective, and the terms of those funds that dictate
3 that kind of direction?

4 A I think amongst the three Canadians,
5 they have a spectrum of asset allocations, which
6 includes bonds, equities, alternatives. This would
7 fall in part of their alternatives allocation. As
8 far as we're concerned, we are an infrastructure
9 manager, Macquarie MIP, or Macquarie Infrastructure
10 Partners, is an infrastructure manager.

11 Our investors, in turn, have similar
12 investment allocation structures to the Canadian
13 partners here. So they also have stocks, bonds,
14 and alternatives. So they are taking investments
15 from their alternative allocation, giving it to us
16 to invest on their behalf.

17 Q Can you explain to me what the
18 alternative class is? This primarily relates to the
19 three Canadian pension funds. But what is the
20 investment objective and the expected returns for an
21 alternative investment class, as opposed to
22 traditional bond investments that match up
23 liabilities and obligations over a 20- or 30-year
24 period?

25 A Right. The alternative investment class

0836

1 is very broad. And it presents a risk return
2 spectrum to investors in a sort of continuum, so you
3 can have a low risk, low return alternative
4 investment, and you can have a high risk, high
5 return. Elements of the category would include real
6 estate, I think the term alternative generically
7 connotes alternative to stocks and bonds.

8 So there is a very broad universe, so
9 real estate infrastructure, hedge funds, private
10 equity, by which I mean leverage buy-out firms,
11 venture capital, all of that would be encompassed,
12 timber investments, commodities, would be
13 encompassed as alternatives.

14 Q Could you refer to Bench 417, that's the
15 Economist article. I think you were made aware of it
16 last week sometime?

17 A Yes.

18 Q I suspect you are a reader of the
19 Economist, aren't you?

20 A I am when I get occasion.

21 Q So you are familiar with this article?

22 A Yes, I read it when it was published.

23 Q It was April 2008, so it's current.

24 What I would like to do is read -- I would like to
25 get a general response to this article, and then to a

0837

1 couple of provisions in there. So let me read
2 portions of the final paragraph of this exhibit.
3 Quote, Long term concerns over Macquarie's model are
4 bound to persist for as long as the world is worried
5 about financing, accounting disclosure, and complex
6 financial structures. Mr. Moss's -- and that's not
7 Judge Moss.

8 JUDGE MOSS: Nor any relative of mine, I
9 am sorry to say.

10 Q BY COMMISSIONER JONES: Mr. Moss's
11 departure raises fears about the future. The price
12 of five-year credit default swaps have risen much
13 higher than the one-year ones, but the investors
14 have little choice but to trust the millionaires on
15 the factory floor. They are tied in any way.

16 So what is your response to that
17 specific quote, and then to the article in general?

18 A I think, linking the first part of your
19 question to your last question, investors in the
20 alternative assets base generally look to or
21 appreciate the lower level of volatility in the
22 valuations that are inherent in alternative asset
23 classes. And so the concept of being tied in any
24 way, and that sort of longer term lockup sense is
25 inherent in the alternative asset class, generally

0838

1 speaking.

2 So the investors knowingly commit their
3 investments for long periods of time. That allows
4 the manager to be patient, I think as we heard
5 yesterday from Mr. Petit (phonetic). We're not
6 quarter to quarter earnings focused, we have a
7 longer term focus. We're able to take decisions
8 concerning capital expenditure, for example, which
9 may not yield returns for a long period, which
10 public companies may find challenging in terms of
11 the shorter term attitude of the shareholders.

12 So that's a response I guess to the
13 being locked into the investments. As I say, the
14 investors do it knowingly and consciously, and they
15 do seek the lower volatility as part of the
16 alternative asset class.

17 My response to the article more broadly
18 is in one sense that it's one of the more balanced
19 articles about Macquarie that has happened.
20 Particularly in recent times, we have unfortunately
21 been victim to some rather nasty press, as people
22 have potentially seen. So if you will bear with
23 me, it does bear an explanation of the Macquarie
24 model and what that means. Because the Macquarie
25 model as a concept has unfortunately been a little

0839

1 bit divorced from the way we run our business, and
2 it's come to be used in relation to our peers and
3 rival funds more than is probably applicable to us.

4 As we originally envisioned our business
5 model, it was the marriage of the long-term capital
6 with long-term assets. In this case, as we have
7 seen with MIP, we have assembled a group of
8 investors, over 80 percent of which are pension
9 funds who have long-dated liabilities in the form
10 of paying pensions to their members. They are
11 drawn to the very long-term predictable nature of
12 the infrastructure asset class, and Macquarie plays
13 a role in marrying those investors to the
14 investments.

15 An example might be a small pension
16 funds in the Midwest will struggle to locate a
17 large construction project in British Columbia, one
18 where we are presently involved, or potentially
19 involved as proponents. So our organization finds
20 the deals, and we assemble the capital to invest in
21 the deals.

22 One of the criticisms in the Macquarie
23 model which doesn't reflect the reality of
24 Macquarie's organization is that we buy assets
25 using Macquarie Bank's balance sheet, and we flip

0840

1 them to our funds for a profit. That's the
2 consistent theme in the criticism.

3 The facts speak a very different story.
4 It's true that we do have the balance sheet
5 available to us to make opportunistic investments
6 when they present themselves. This is a case in
7 point where the Macquarie Group didn't have quite
8 enough funds to complete the investment, so
9 Macquarie Capital has stepped in to take that
10 piece. So it's very helpful to have access to the
11 balance sheet.

12 But of the 116 assets which our funds
13 presently own, 100 of them were purchased directly
14 by the funds. The other 16 were purchased by the
15 funds following an underwriting or warehousing of
16 that asset by the balance sheet. And the only
17 reason we access the balance sheet is because we
18 didn't have a fund available at the time to execute
19 on the opportunity.

20 So I think we have been rather poorly
21 maligned, to be perfectly frank, in that respect.
22 One of our investors, one of whom is the subject of
23 a lot of speculation at the moment, did do a lot of
24 buying on the balance sheet and flip it into the
25 fund kind of approach, which was characterized as a

0841

1 Macquarie model, inappropriately so, and they have
2 fallen on difficult times.

3 Our systems, our risk control, are far
4 more robust. We're a much, much larger
5 organization than our peers. We are the largest
6 and most experienced infrastructure investor in the
7 world, and we attract rivals and they seek to
8 criticize us. So that's fair game.

9 Q Sure. Thank you for that. The
10 Economist article also talks about, they say
11 typically the unlisted funds are ten-year closed
12 investments. Investors can sell, but through a
13 tortuous process of a private sale.

14 Does that generally describe your
15 unlisted funds.

16 A I am not sure of the exact term of all
17 of them. It's a convenient characterization for our
18 purposes today. Investors are basically locked into
19 the investments for their term, and it's difficult
20 for them to sell their limited partnership interests.
21 There are secondary markets. We will endeavor to
22 make a market for them if they really need to get
23 out, but the understanding between the investors and
24 the firm is they will opt-in.

25 Q Do you think that using capital to meet

0842

1 expected dividends is a sustainable practice? That
2 appears to be part of the Macquarie model, correct?

3 A Not correct. Not correct. That's
4 another element, I think, of the mischaracterization
5 of the model.

6 Q Did you respond to that in Exhibit 31?
7 I think Exhibit 39 -- or Exhibit 41, is your response
8 to various criticisms of your funds. Is that in the
9 record? Have you responded in the record to that?

10 A If counsel can remind me --

11 JUDGE MOSS: CJL 11 as originally
12 numbered.

13 THE WITNESS: I have Exhibit 41.

14 Q BY COMMISSIONER JONES: I don't think
15 you have. You went through Mr. Chanos (phonetic)
16 article in Fortune, various elements of the risk
17 metrics approach?

18 A These are responses typically by the
19 parent organization in defense of some of the claims
20 that have been made. And Jim Chanos, for those of
21 you not familiar with him, is a short seller. He
22 operates a short-sale hedge fund, so his interest is
23 in stock prices declining. And one might expect him
24 to be making comments of a type that would decline or
25 reduce someone's stock price.

0843

1 So he did make a number of provocative
2 and incorrect statements about the Macquarie model.
3 Distributions are not paid out of borrowings.
4 That's not correct.

5 Now, again, our competitors and rivals
6 in this case may have assumed that's what we're
7 doing incorrectly, and gone forward and done it and
8 paid the price. But we certainly don't believe
9 it's a sustainable practice at all. And dividends
10 are paid out of operating cash flow, and
11 periodically out of refinances to the extent those
12 are prudent.

13 Q And that is detailed in Appendix C to
14 this exhibit, which I will read. Okay.

15 JUDGE MOSS: You are referring to
16 Exhibit 41?

17 COMMISSIONER JONES: Yes, Exhibit 41.
18 It's a little confusing, and it's Appendix C to
19 that exhibit.

20 Q BY COMMISSIONER JONES: Let's move onto
21 page three of your rebuttal testimony, please. This
22 is about the breakdown.

23 JUDGE MOSS: And the rebuttal testimony
24 is Exhibit 38?

25 COMMISSIONER JONES: Yes, Judge.

0844

1 THE WITNESS: Page 19 of the testimony.

2 Q BY COMMISSIONER JONES: Are you there
3 yet?

4 A Yes.

5 Q There's a table at the top, correct?

6 A Right.

7 Q I guess I am going to make a Bench
8 Request here, in that I ask you to provide a new
9 column that lists after At Financial Close, I would
10 like to for you to include a column that includes all
11 the term facilities that aren't closed, that aren't
12 fully drawn down and closed. Because I think this is
13 a source of confusion.

14 And so if you prefer to respond for the
15 record, that's fine, but I can ask you a couple of
16 questions that are confusing to me now if that's
17 okay.

18 A I can give it a go.

19 Q The consolidated debt is listed at 4.177
20 billion, 4.1 billion, but that is just for the PSE
21 and PE dat at financial close, correct?

22 A And that will be reduced by the 200
23 million additional equity.

24 Q Correct. Well, I'm not referring to
25 that point specifically. But what is the amount --

0845

1 can you list for me of the term facilities that have
2 been agreed to, what is not closing at transaction?
3 For example, the term loan the 1.225 billion term
4 loan of PE is not closing, is not being drawn down at
5 transaction, correct?

6 A I am sorry. The 1.225 billion term loan
7 is being drawn down.

8 Q It is?

9 A I believe so. There is some confusion.
10 I think a Bench Request may be the way to go.

11 Q Then let me pose this, Mr. Leslie, what
12 about -- I am mixing up HOLDCO and PE. What about
13 the PE CAPX facility of 1 billion?

14 A That's undrawn at close.

15 Q That's undrawn. So that should be added
16 to the incremental debt increase -- I guess what I am
17 asking to you do is if all of the debt facilities are
18 ultimately drawn down, what would be the incremental?
19 That's what I am driving at.

20 A Bearing in mind I believe the billion
21 dollar CAPX facilities in HOLDCO and the CAPX
22 facilities below that are designed to be spent only
23 on CAPX, so they are tight constraints in our ability
24 to use those facilities.

25 Q But at the PSE level, are the figures

0846

1 here reflective of the energy hedging facility?

2 A I don't believe that's included here.

3 Q 350 million --

4 A A bench request is probably the best way
5 to spell it out.

6 Q Could you do that, please?

7 JUDGE MOSS: Does counsel have in mind
8 what Commissioner Jones is asking for, the Bench
9 Request 23?

10 MS. CARSON: Yes.

11 JUDGE MOSS: Then I won't issue a
12 written request, and others can always respond to a
13 bench request.

14 (BENCH REQUEST NO. 23.)

15 Q BY COMMISSIONER JONES: Mr. Leslie, what
16 would be a useful financial metrics to this
17 Commission to monitor to assess the health or
18 instability of your Macquarie model in the future?
19 What should we be looking at? And the reason I say
20 that is I think you would agree with me that
21 financial markets have been quite volatile over the
22 past year?

23 A Yes.

24 Q Okay.

25 A Well, I can speak really only to what we

0847

1 look to, and it's very much the cash flow coverages
2 that are generated by the business. It's the
3 strength in those coverages, which is an indicator of
4 the health of the business, in our view. As I have
5 said a couple of times today, sort of the leverage
6 metrics.

7 If you have high leverage, and even
8 though at the utility level we aren't confined to
9 44 percent, if directly you have high leverage with
10 very high cash flow coverage, the former may not be
11 indicative of stress. So generically speaking cash
12 flow coverage ratio is --

13 Q So we should be looking at the annual
14 reports of Macquarie Group overall, and look at those
15 cash flow metrics, and return on equity and things.
16 For example, the Economist article cites credit
17 default swap premiums as being a useful measure of at
18 least financial distress, and this is at the investor
19 level, not at the PSE ring fence regulatory level.
20 But my question is broader in terms of the parent
21 company. How do we best assess financial distress?

22 A I understand where you are going. I
23 would make a point that the intended investor is
24 Macquarie Infrastructure Partners, which is a fund
25 that stands aside and apart from the Macquarie Group

0848

1 more broadly. So regardless of the fortunes of the
2 Macquarie Group, MIP stands alone. It has no
3 borrowings at the fund level. Its investments are
4 all nonrecourse and don't cross between each other,
5 so they are not cross collateralized in terms of the
6 debt facilities. So that stands separate and apart
7 from the Macquarie Group.

8 So I am not sure, except for the extent
9 Macquarie has a long term -- Macquarie Group has a
10 long-term investment, which is not its intention as
11 we have heard, then going up to the Macquarie Group
12 I am not sure will give you the right picture in
13 terms of the investor, which is Macquarie
14 Infrastructure Partners.

15 Q So you don't think the financial
16 stability of the Macquarie Group, the ultimate
17 parent, is important for us?

18 A I can see why it may interest you in
19 light of the press. I can assure you we are well
20 capitalized, very profitable, and very liquid, and
21 have made those kinds of statements. And we are by
22 nature, a conservative organization, despite what the
23 press may say. So our financial health is not in
24 question at the moment.

25 The rating agencies rate us, and our

0849

1 investors are supportive of our model. I think we
2 have -- we are a financial institution. Financial
3 institutions have been battered by the current
4 crisis. And if you were to track the Macquarie
5 Group's stock price, or Macquarie Infrastructure
6 Company's stock price, you will find they typically
7 track the sector as a whole, rather than any
8 particular distress in particular.

9 Q So you don't think we should be looking
10 at other financial instruments and other types of
11 activities of Macquarie Group because --

12 A In the long term the investor here --
13 the Macquarie Group, will not be the investor.

14 Q Don't you think Lehmann Brothers and
15 Merrill Lynch, and some of your other investment
16 banks may have been telling the same sort of story
17 before the mortgage bank securities became a big
18 issue? I mean, I just posed that as a general
19 question to you?

20 A I guess, again, defending our own iron
21 in the sense, we have no exposure to the mortgage
22 crisis NESIBS. Again, the governance at Macquarie,
23 the risk management is extremely tight, and we didn't
24 have any exposure. Which I think is testimony,
25 really, to the caliber of the group.

0850

1 We have been maligned poorly in the
2 press, and we try our best to defend that. But we
3 have no exposure to that. I am not sure what other
4 threat is out there in the world that might take us
5 by surprise, but we're not aware of any. We plan
6 on a daily basis for extreme volatility in terms of
7 how we manage our capital. We assume a kind of
8 catastrophic event every day, and that's how we
9 manage our balance sheet.

10 COMMISSIONER JONES: Thank you.

11 JUDGE MOSS: Commissioner Oshie.

12 COMMISSIONER OSHIE: Thank you, Judge
13 Moss.

14

15 EXAMINATION

16

17 BY COMMISSIONER OSHIE:

18 Q I just want to focus on one area
19 Mr. Leslie, and we will continue to refer to
20 Exhibit 38 your rebuttal testimony on page 9. Top of
21 the page, lines 3 through 5.

22 A (Complies.)

23 A Yes.

24 Q A couple of things. You also --
25 perhaps, let's start with how do you define quality.

0851

1 You make a point of it in your testimony that the
2 investors, which I assume that you represent here,
3 are eager to invest more equity in quality
4 infrastructure assets. So why don't you, if you
5 would, define quality from the context of your
6 testimony?

7 A Okay. If I might refer back to my
8 comments to Commissioner Jones about the
9 infrastructure asset class, within that class there
10 are various emerging subcategories, for want of a
11 better description, similar to the categories that
12 are present in the real estate industry. So there's
13 core real estate, core plus, value added. I won't
14 bore you with the details, but there's various
15 elements.

16 Macquarie is very much a core
17 infrastructure manager, which is focused on the
18 lower risk end of that spectrum. And so quality in
19 our way of thinking lines up with low risk
20 ultimately. That is determined with a reference to
21 potential volatility of earnings in a simplistic
22 sense, predictability about an asset. As I
23 mentioned before, the predictability of the given
24 regime, be it a regulatory regime as we have here,
25 or other mechanisms, the strength of the

0852

1 counterparties with whom we're involved, we do seek
2 quality assets. And I can point to a number of
3 them on the books of some of our sister funds,
4 Sidney Airport, for example, which is the gateway
5 to Australia; Thames Water in London, which is the
6 board utility that serves the city of London, and
7 numerous others. Quality is obviously sort
8 of somewhat subjective matter at the end of the
9 day.

10 Q I would agree.

11 A But we know when we see it. We do
12 extensive diligence on these assets, as I often tell
13 investors, if you do your homework with the
14 infrastructure. It can be abused, but it's forgiving
15 provided you don't overpay for it. But if you pay
16 too high a price, because of the caps that are
17 inherent in a lot of these businesses -- so here we
18 have ultimately caps on rates, but in return for that
19 we have hopefully some protection on the downside, so
20 we're operating in a sort of confined regime.

21 If we get that wrong, we can't recover
22 if we don't get paid. So part of our quality
23 assessment process goes to making sure we're paying
24 the right price for things, and understanding in
25 detail every aspect.

0853

1 I think you have seen the detail in our
2 financial models, and I am sure we drove the Puget
3 management team crazy with questions through this
4 process, but we do go to some length to interrogate
5 everything before we move forward. For example,
6 toll roads we invest in, a speculative toll road to
7 a new area of development is not something we would
8 do. An existing toll road, which is a congestion
9 reliever to an existing bottleneck where we have
10 some confidence about the amount of use on that
11 road, we would consider it to be a more quality
12 asset. So I think it's the predictability at the
13 end of the day that is central to a lot of the
14 quality assessment.

15 Q Well, let me tie that in to a response
16 that you made to Mr. Ffitch, because I believe it was
17 the central point of your comment and your answer,
18 but it certainly was apart of it in which you -- I
19 believe you tie your investment group's interest and
20 continuing to invest equity in this company, as long
21 as there was an -- and I will maybe paraphrase, some
22 sort of favorable regulatory treatment going forward.
23 Did I misunderstand your comment?

24 A Yes, I think you did. I think what I
25 said, and if I didn't say this I will correct it now,

0854

1 but it was the predictability, as I was just talking
2 about, in the context of quality and the consistency
3 of the regulatory environment, whether it be
4 consistently good, consistently bad or consistently
5 fair, that's important.

6 I think our assessment of Washington, as
7 I mention in my opening remarks yesterday, it's a
8 place we want to do business. Why, we believe it
9 is a fair regime, and one which has established
10 consistent precedent that gives us comfort, that
11 the regulatory principles are being applied
12 consistently over time, and we might take some
13 comfort in five years from now similar principles
14 will prevail, and that allows us to make some
15 judgments about our forecast.

16 But we're not suggesting for a moment
17 that our investment case relies on generosity at
18 all. I think all we're asking for is
19 predictability.

20 Q Do you think your group of investors is
21 more sensitive to regulatory certainty than the
22 investors that currently have their money in Puget
23 Sound Energy?

24 A I don't think so. I think if --

25 Q Would you say they are less sensitive,

0855

1 based on their long-term interests in this
2 investment?

3 A It's difficult to speculate as to the
4 broad community of investors at present. I guess we
5 saw the volatility of the share price, for example,
6 when public counsel filed objections to the case, and
7 the reaction the share market had to that. So they
8 are obviously concerned with kind of regulatory
9 outcomes, and are immediately sensitive to it.

10 I think we can take a longer term view
11 so we're probably less sensitive in the sense that
12 we are -- we probably have a more thorough
13 understanding of the regulatory process and can
14 make judgments over a much longer time period, as
15 opposed to what is next quarter's dividends going
16 to be.

17 COMMISSIONER OSHIE: Thank you,
18 Mr. Leslie. No more questions.

19 JUDGE MOSS: Chairman Sidran.

20

21 EXAMINATION

22

23 BY CHAIRMAN SIDRAN:

24 Q Mr. Leslie, if I recall your testimony,
25 and I may be wrong, but I believe Macquarie investors

0856

1 collectively will have something on the order of
2 51.4 percent of Puget Holdings?

3 A Yes.

4 Q And then you went on to note that
5 control of critical decisions at that level of Puget
6 Holdings requires 55 percent of the shares to be
7 voted in favor of certain super majority provisions,
8 correct?

9 A That's not quite correct. The
10 55 percent relates to majority decisions, so simple
11 majority. And that group covers everything except
12 super majority. So the majority is the default,
13 except if something is slated as super majority.

14 Q So would it be fair to say that
15 55 percent as the simple majority is effectively
16 control of Puget Holdings, except for these super
17 majority requirements?

18 A That's correct.

19 Q So if Macquarie's share were to move in
20 the future from 51.4 percent to 55 percent plus,
21 would that constitute a change in control?

22 A That's -- I have to qualify my answer by
23 reference to the agreement amongst the shareholders.
24 There are rights of first refusal and other
25 mechanisms designed to allow the entire shareholder

0857

1 group to participate in any reallocation of the
2 equity amongst the members. And so I would expect,
3 practically speaking, that to the extent we
4 maneuvered ourselves, as you are suggesting, to get
5 above 55 percent, the remaining shareholders wouldn't
6 consent. They would want to recalibrate that
7 threshold to keep the current balance between the
8 various investors.

9 All of these parties are sophisticated.
10 They have negotiated a position through this
11 transaction to satisfy themselves in terms of their
12 own governance requirements, and I don't think
13 that's something we could do just simply to get
14 around the rules, so to speak. The whole mechanism
15 would change and recalibrate itself.

16 Q Let me try asking the question a
17 different way. Let's suppose some point in the
18 future one of your other partners in the investor's
19 consortium, one of the Canadian partners, wants to
20 sell their share.

21 A Right.

22 Q And again, I am not all of that familiar
23 with the details of your agreement -- I don't have
24 then in mind. I did read the agreement. But I guess
25 what I am asking is if those partners, one of those

0858

1 partners were interested in selling some part of
2 their share of Puget Holdings, and Macquarie was
3 interested in buying additional shares, is it
4 possible that Macquarie could acquire 55 percent or
5 greater?

6 A It is possible. The mechanism would
7 first require that those shares be offered to all the
8 reigning shareholders pro rata. So there would be a
9 redistribution of that interest. But to the extent
10 they didn't take it up, and that they, for reasons
11 which I can't imagine they would, but if they did
12 then surrender the rights they presently have, then,
13 yes, technically you could get to that.

14 But I think practically speaking, given
15 the dynamics between the consortium and the
16 sophistication of the investors, I don't think they
17 would let us do that.

18 Q But if that did happen, it would
19 constitute a change of control?

20 A I think that be would a matter for
21 advice from counsel in terms of what constitutes a
22 change of control in Washington. I am aware there is
23 some -- potentially some ambiguity. Hopefully you
24 are more familiar with it than I am. But if it did,
25 we would certainly file for your approval.

0859

1 Q That's actually what I wanted to hear.
2 So we need not trouble ourselves with details. You
3 answered the question. What I was driving at was as
4 we discussed yesterday with the panel, the conditions
5 in 26 B, which talk about change of control, and in
6 28 C, which talk about compliance with statute
7 relating to transfers of property and the
8 applicability to Puget Holdings, in my view raises
9 this very point, which is if Macquarie were to move
10 to a position of control in some sense, which would
11 be a change as you describe it since they are
12 currently in this existing agreement not in control,
13 as you put it?

14 A Yes. Yes.

15 Q Then that would be a matter, as I
16 understand it, that would require permission from the
17 Commission, correct?

18 A If there was a change of control, it
19 does require your permission.

20 Q That's a lawyerly answer, but I will
21 take it, thank you. And if it did, in some sense,
22 constitute the change of control, that would also, as
23 I understand it, trigger the prepayment -- mandatory
24 prepayment requirements under the holding facilities
25 agreement?

0860

1 A I think there's an exclusion for
2 transfers amongst affiliates. There is a carve out
3 basically. If there were a change of control
4 involving a third party, then potentially there is an
5 acceleration. But, again, Mr. Kupchak may be the
6 best witness on the debt facilities.

7 Q Then I would like to -- yesterday, if
8 you will recall, we were talking about this
9 provision, again back in 26 B 2, and it used the word
10 material part. And I asked the panel what does
11 material mean. Do you recall that?

12 A I do. I do. And I recall some
13 hesitation on our side.

14 Q Yes, a prolonged silence. So I am going
15 to try to fill that silence by asking you this
16 question. Would you agree that being a member of the
17 board of directors of any of these entities, in
18 particular Puget Holdings, is an important position
19 with respect to the ultimate control of the company?

20 A I know where you are going with this.

21 Q Thank you.

22 A But it's undeniable that being on the
23 board of directors is an important position.

24 Q So it would seem. And if I recall your
25 testimony, 10 percent ownership entitles a position

0861

1 to the board?

2 A That's correct.

3 Q So would there be anything amiss in our
4 concluding that for purposes of this provision,
5 material part of Puget Sound Energy is 10 percent?

6 A I have been in discussions with counsel
7 on this point, and I am aware, I think, that this
8 particular definition in this jurisdiction is
9 presently unresolved. You certainly know more about
10 it than I do.

11 But part of our pause yesterday was the
12 hesitation about we're not sure what constitutes
13 material in this jurisdiction. So all I can admit
14 is that I am not certain what constitutes material
15 here. In building a record about what material is,
16 you know, it's difficult for me to say. I am not
17 sure it's my role to make that determination.

18 Q No, actually it's our role. And I am
19 just trying to sound you out on the proposition that
20 if the 10 percent ownership stake entitles you to a
21 seat on the board, and if a seat on the board is an
22 important authority with respect to the future of the
23 company, then I am asking if you see anything wrong
24 with the logic in concluding that 10 percent
25 ownership is a material part of the company?

0862

1 A I would like to make one suggestion here
2 related to what I just mentioned on the bank groups,
3 and what they think in terms of this carve out for
4 affiliates. I would like to suggest, given the
5 dynamics of the Macquarie Group, that if we were to
6 rearrange amongst affiliates, as is in contemplation
7 here potentially, that that potentially doesn't
8 change anything in a practical sense.

9 Macquarie is a single consciousness at
10 the management level, and we cannot abide, for
11 example, differences in opinions between two funds
12 that may be invested in the same deal. It's not
13 logically possible for a single organization to
14 hold two states of mind. So we are --

15 Q The Commission does it all the time.

16 A So with the caveat that moving around
17 between affiliates may be reason to disagree with
18 you, then I would say generally speaking 10 percent
19 on the director to a third party, for example, that's
20 maybe not unreasonable in the terms of the universe
21 of materiality in the world today.

22 Q Thank you. The last question, which I
23 confess in fairness, probably should be addressed to
24 your Alberta partner, but since you are the
25 representative of the investment consortium, and I

0863

1 might add, I assume, a citizen of the Common Wealth,
2 you may be able to answer this question in lieu of
3 the Canadians.

4 In Exhibit 43, which is the organization
5 chart, corporate structure, Exhibit 43 is the more
6 robust version. I note that on the far right it
7 refers to the entities that are the Alberta
8 Government Pension Fund, and higher up the ultimate
9 authority above those pension funds, it says Her
10 Majesty the Queen in Right of Alberta.

11 And bearing in mind the commitment I
12 believe I heard yesterday from the consortium, that
13 should we have questions for any of the principals
14 who are beyond our borders -- and I know you can't
15 speak for Alberta, but assuming due deference for
16 Her schedule, would the Queen of the United Kingdom
17 be available to answer questions with respect to
18 the Alberta Pension Fund Investment?

19 A Again, it's difficult for me to speak on
20 behalf of my colleagues, but I would be very
21 surprised if Her Majesty would be available to you.
22 We can maybe inquire.

23 Q Well, we won't make it a bench request.
24 We will take your answer as it stands.

25 A Thank you.

0864

1 JUDGE MOSS: Anything further for
2 Mr. Leslie?

3 MR. FFITCH: Your Honor, just a
4 clarification matter on the bench request. There
5 was a reference yesterday, and there is a reference
6 in the record to an inquiry in the future as part
7 of the debt financing, and I wanted to confirm that
8 that would be included in the response to the bench
9 request that Commissioner Jones had asked for.

10 JUDGE MOSS: I will have to turn to
11 counsel or the witness. I am getting
12 acknowledgment that that is the case.

13 THE WITNESS: We kind of declared and
14 waived the confidentiality yesterday, so I don't
15 see why not.

16 MS. CARSON: Yes.

17 JUDGE MOSS: So it will be part of it,
18 Mr. Ffitch.

19 Anything further Mr. Van Nostrand?

20 MR. VAN NOSTRAND: No.

21 JUDGE MOSS: Mr. Leslie, we appreciate
22 you being here and testifying again. You may step
23 down and perhaps someone can assist you with those
24 weighty --

25 We're going to forge ahead. So,

0865

1 Mr. Schmidt, if you would come forward please.

2 (Discussion off the record.)

3 JUDGE MOSS: Mr. Ffitch, one unfinished
4 piece of business before we turn to Mr. Schmidt, I
5 asked you at one point whether you were going to
6 withdraw Exhibit 64 or whether you want me to rule
7 on the objection pending to it.

8 MR. FFITCH: If I could choose a third
9 option, we would like to discuss it with
10 Mr. Kupchak to see if we can get a sufficient
11 clarification to get it in the record, and we would
12 also like to review it overnight to see if we can
13 make a final decision on it.

14 JUDGE MOSS: I will give you an
15 alternative third option, which is to discuss it
16 with counsel and work something out, because as it
17 stands, if I would have to rule on it, I would not
18 allow it into the record, so be forewarned.

19 MR. FFITCH: Thank you, Your Honor.

20 JUDGE MOSS: You can take that up with
21 counsel. Now with respect to Mr. Schmidt, this is
22 your witness, Mr. Cedarbaum. So I will turn to you
23 and ask whether we are stipulating to the admission
24 of the various exhibits that have been identified,
25 or whether we will have some dispute.

0866

1 MR. CEDARBAUM: It's my understanding
2 that we're stipulating to both the prefiled and
3 cross exhibits.

4 JUDGE MOSS: In the absence of
5 Mr. Trotter, your understanding will carry the day.
6 And if I can find it in the exhibit list, which I
7 can't seem to do at the moment -- we will admit the
8 exhibits previously identified for Mr. Schmidt that
9 actually begins at 191 T with his response
10 testimony, and carries through, with an intentional
11 break in the numbering, Exhibit 239, including some
12 exhibits identified by public counsel for purposes
13 of cross-examination. So without objection, those
14 will be admitted as marked.

15 (EXHIBIT ADMITTED.)

16 JUDGE MOSS: And unless there's
17 something preliminary -- were you present to be
18 sworn?

19 THE WITNESS: No, I was not.

20

21 RONALD SCHMIDT, PhD,
22 produced as a witness in behalf of the Staff,
23 having been first duly sworn, was examined and
24 testified as follows:

25 THE WITNESS: I do.

0867

1 JUDGE MOSS: Thank you. Please be
2 seated. And with that, and there being nothing
3 preliminary, Mr. Ffitch, you may proceed.

4

5 CROSS EXAMINATION

6

7 BY MR. FFITCH:

8 Q Thank you, Your Honor. Good afternoon.
9 I believe it's "Dr. Schmidt"; is that correct?

10 A Yes, it is.

11 Q And you were a witness for Staff in this
12 proceeding and filed testimony on June 18th of this
13 year; is that right?

14 A That's correct.

15 Q And you have a doctorate and a master's
16 degree in economics, and in a past life were a senior
17 economist with the Federal Reserve System?

18 A All of that is true.

19 Q And that was for 12 years, as I
20 understand it?

21 A That is correct.

22 Q And you also, during your career, have
23 developed expertise and understanding in energy
24 markets as well, am I correct?

25 A That's correct.

0868

1 Q And at the present time, as your
2 testimony indicates, you are a consulting economist
3 with Finance Scholars?

4 A Technically I am a principal.

5 Q And you were retained by Staff to -- let
6 me back up and get you to your testimony. Your
7 prefiled testimony has been marked as Exhibit 191.
8 Do you have that?

9 A I do.

10 Q And you were retained by Staff to offer
11 your professional opinion on certain financial risk
12 with respect to the proposed acquisition?

13 A That's correct.

14 Q And if we could go to page 3 of your
15 testimony at line -- starting at line 5, you state, I
16 identify trends in global capital markets and energy
17 markets and discuss how these trends affect the
18 utility sector, correct?

19 A That's correct.

20 Q And you go on to say that Staff witness,
21 Mr. Horton, focuses his testimony on the actual
22 structure of the transaction.

23 A That's correct.

24 Q And you didn't testify about that aspect
25 of the proposed acquisition, did you?

0869

1 A No. Mr. Horton has a great deal of
2 background and experience in actual deals.

3 Q And I am aware that the Commission
4 Staff, subsequent to your testimony, has entered into
5 a settlement in the case. My questions today are
6 really going to focus on your testimony within the
7 scope of your testimony. I am not trying to put you
8 on the spot or in an awkward position with regard to
9 the Staff settlement of the case. I just want to
10 focus on the statements in your testimony.

11 So let me go first to page 4, next page,
12 line 4, I guess, starting at line 3 really is where
13 your answer starts. And there you say, the
14 investor consortium plans to raise debt and equity
15 from the global capital markets, and the critical
16 difference is the consortium will be raising equity
17 in the private equity market and raising debt in
18 global capital based on the reputation and
19 portfolio of interests.

20 The question is, is that still a true
21 statement?

22 A I am not really familiar with all of the
23 changes that have been made in the settlement. So I
24 don't know. I think that's something that Mr. Horton
25 would be able to testify to.

0870

1 Q Let's continue on into the next question
2 and answer. And there you summarize, really, the
3 primary risks you believe can negatively impact PSE
4 compared to the status quo. That's the general topic
5 of your testimony.

6 And if we look at line 14, really at
7 line 16, and you are discussing your first factor
8 there you state, there is the risk that the current
9 appetite of investors for the higher expected
10 returns in the private equity investments could
11 change very rapidly if a market-driven shock causes
12 a major loss of confidence in those investments.
13 Increasing requirements to adopt fair market
14 accounting on all assets has the potential to
15 exacerbate this risk.

16 Isn't that still an accurate statement,
17 Dr. Schmidt?

18 A I think that's true.

19 Q Now, let's look at your second factor.
20 It continues in the next paragraph, and at line 22
21 you say, given the current state of financial
22 markets, interest rates are likely to be volatile in
23 the foreseeable future, because of factors such as
24 the risks of potential inflation and the value of the
25 US dollar.

0871

1 Is that true statement?

2 A I think that's definitely true.

3 JUDGE MOSS: Mr. Ffitch, the witness'
4 testimony says what it says. We don't need to
5 march him through it and confirm the things. If
6 you are challenging something he is saying, that
7 would be your purpose in cross examination; not to
8 confirm his testimony, which has been admitted by
9 stipulation, and, therefore, stands for what it
10 says.

11 So to save time, I will ask if you have
12 questions, if you want to challenge portions of his
13 testimony, that's fine, but to walk through and
14 read sections and have him say that's still true,
15 we don't need to do that. We take it as true.

16 MR. FFITCH: With respect, Your Honor,
17 first, this isn't going to continue a whole lot
18 longer --

19 JUDGE MOSS: If you get my drift, it's
20 not going to continue at all, Mr. Ffitch. We don't
21 need to do this. The testimony stands for what it
22 says. And we don't need to march the witness
23 through and ask him if it says what it says. We
24 have it. It's been offered and accepted into the
25 record, and we have accepted it for the truth of

0872

1 what it says if it's not challenged on
2 cross-examination by an adverse witness.

3 You understand what I am getting at, is
4 you are drifting into something that is in the
5 category of friendly cross-examination. You are
6 having the witness reiterate points that I believe
7 are points that you would use to establish your own
8 affirmative case. Am I mistaken about that?

9 MR. FFITCH: Your Honor, with respect,
10 if I could indicate that I am asking the witness by
11 way of cross-examination whether in the intervening
12 time since the testimony was filed, and I am going
13 to connect this up with other cross-examination
14 exhibits, there have been any changes which have
15 caused him to change the testimony that he's
16 provided here.

17 And I think that's a relevant factor,
18 Your Honor. I think that we're not simply getting
19 him to state that this is what is on the page, but
20 I am asking the witness to essentially say that
21 given the events in the national and international
22 economic markets that he's testified to, I need to
23 be able to ask him whether those things have
24 changed since he filed his testimony.

25 JUDGE MOSS: Then put that question to

0873

1 him, and see if there's any changes to his
2 testimony, whether there's any material change in
3 the testimony as filed as a result of the exhibits
4 that you have provided to him, and that, I presume,
5 Mr. Schmidt, you have reviewed?

6 THE WITNESS: Yes.

7 JUDGE MOSS: Thank you. Let's take that
8 approach, Mr. Ffitch, and see if we can shorten
9 this up.

10 Q BY MR. FFITCH: Well, if we stay on page
11 5, Dr. Schmidt --

12 MR. FFITCH: Thank you, Your Honor. I
13 will endeavor to do that.

14 Q BY MR. FFITCH: You list two additional
15 factors that you have identified in your testimony
16 as, I guess I will call them risk factors. Is that
17 a fair label to put on it?

18 A That is fair.

19 Q And if you look at those two discussions
20 starting at line 3 and going to line 18, has there
21 been any -- first, looking at the third factor
22 paragraph, has there been any developments in the
23 economy, nationally or globally, that would cause you
24 to change that testimony today?

25 A The only thing I would say is the risks

0874

1 in terms of energy markets, and I think we have only
2 seen that that continues to show that, yes, they are
3 very large. At the time I wrote this the price of
4 oil was headed up, now it's headed down, just
5 indicates the degree to which the energy markets
6 remain extremely volatile.

7 Q Thank you. And if we look at the final
8 paragraph beginning with the word finally, you are
9 discussing the representational issue. Do you have
10 any reason to change that testimony today?

11 A No.

12 Q Now, there have been a number of events
13 in the financial market since you filed your direct
14 testimony, haven't there, Dr. Schmidt?

15 A A lot has happened in markets, yes.

16 Q And we have provided for you a number of
17 articles from different sources, from the Wall Street
18 Journal, International Monetary Fund, and the
19 Economist. And have you had a chance to review those
20 prior to your testimony today?

21 A Yes, I have.

22 Q And so one of the events discussed in
23 those articles is the difficulties at Fannie Mae and
24 Freddie Mac; is that correct?

25 A That was one of the articles.

0875

1 Q With the Fed stepping in to assure
2 investors that the US government would shore up those
3 mortgage institutions, correct?

4 A Correct.

5 MR. CEDARBAUM: Your Honor, to interrupt
6 briefly, if Mr. Ffitch can please identify the
7 specific exhibit as he proceeds with his questions,
8 I would appreciate it.

9 JUDGE MOSS: That would help the record
10 much.

11 Q BY MR. FFITCH: If you can refer to
12 Exhibit 199, for example, that's a Wall Street
13 Journal article headed, Fannie Mae and Freddie Mac
14 Drag Down Stocks. Do you see that?

15 A Yes.

16 Q Have the stock prices at Fannie Mae and
17 Freddie Mac continued to fall?

18 A I haven't looked today, but they have
19 not been a good investment recently.

20 Q So that's a "yes"?

21 A That's yes.

22 Q And would you say investors may still be
23 nervous about investing in those institutions?

24 A That's apparently what the markets are
25 showing us. There's some question about whether or

0876

1 not there will be a recapitalization and potential
2 wipe out of the value to the current stockholders.

3 Q And what is it is reason for that?

4 A For which?

5 Q The potential that that scenario could
6 develop, that you just described?

7 A Well, under some measures of accounting
8 they are currently -- they are in a default situation
9 in terms of a negative value.

10 Q Are they in a default situation because
11 the international debt markets are unstable?

12 A That may contribute to it. The primary
13 factor is the problems with their mortgage holdings
14 and the write-down in the values of the mortgage
15 holdings.

16 Q All right. If you can turn to -- just
17 give me a moment here. Exhibit 238.

18 A Can you give me the title? I don't have
19 the numbers.

20 Q Economist article, Fear of Failure and
21 this discusses, among other things, the failure of
22 the Indy Mac Bank in California?

23 A Yes.

24 Q You are familiar with that event?

25 A I am somewhat.

0877

1 Q Is it correct that that is one of the
2 largest bank failures since the depression of the
3 1930s?

4 A It's a large one. I don't know where it
5 ranks.

6 Q And if we go to Exhibit 237.

7 A (Complies.)

8 Q This article titled, Merrill Aims to
9 Raise Billions More -- I will let you find that.

10 A Okay.

11 Q This discusses the fact that Merrill
12 Lynch as had to seek capital from the financial
13 markets to shore up its balance sheet as well; is
14 that correct?

15 A That's what the article says.

16 Q Let's go to Exhibit 239. It's the --
17 the Wall Street Journal article shaking up the
18 Macquarie model. Do you have that?

19 A Yes.

20 Q Now, you, in your previous testimony,
21 filed -- or included a newspaper article about
22 Babcock and Brown also, did you not?

23 A Yes, that's correct.

24 Q This article also talks about Babcock
25 and Brown, and Macquarie Group, and the Macquarie

0878

1 model generally, does it not?

2 A Yes, it does.

3 Q And you, in your testimony, talked about
4 the representational issues around Macquarie. Have
5 you had a chance to review this article?

6 A I just got it today.

7 Q So you haven't had a chance to review
8 it?

9 A I have read it, and that's about it.

10 Q Do you think that this is consistent
11 with your earlier testimony with regard to the
12 representational issues presented by the Macquarie
13 participation in this transaction?

14 A Would you repeat that question?

15 Q Are the issues discussed in this article
16 consistent with your testimony earlier in your
17 prefiled written testimony about the reputational
18 issues raised by the Macquarie transaction --

19 MR. CEDARBAUM: I object. The witness
20 indicated he read this, but didn't study it.
21 Whether there's consistency in his testimony can be
22 analyzed by looking at the two documents side by
23 side.

24 JUDGE MOSS: I tend to agree,
25 Mr. Cedarbaum.

0879

1 Mr. Ffitch, these are a whole series of
2 articles out of the Wall Street Journal. This
3 witness is not particularly well qualified to
4 testify to the contents of the various articles.
5 They stand on their own merits, and are either
6 consistent or not with his prior testimony, and you
7 can brief that point.

8 The witness is not qualified to get
9 behind these articles, and tell you whether it's
10 consistent with what he testified or not, because
11 he didn't rely on these articles in formulating his
12 testimony.

13 So far I am having a hard time
14 understanding where you are going with this, other
15 than the fact that you have these in the record.
16 You can brief from them to the extent you think
17 they provide us with some testimony of value -- or
18 some evidence of value, I should say. But I don't
19 see us developing anything particularly useful
20 through Dr. Schmidt here. Do you disagree?

21 MR. FFITCH: Your Honor, I really, in
22 that case, have one other question for Mr. -- for
23 Dr. Schmidt, and that is --

24 Q BY MR. FFITCH: You did rely in your
25 prefiled testimony and cite an article from the Wall

0880

1 Street Journal, did you not, Dr. Schmidt?

2 A I would have to go back and check to see
3 that. I don't have the list here. I presume you
4 would know if it's in there.

5 Q I guess my question --

6 JUDGE MOSS: Which exhibit, Mr. Ffitch?
7 Would that be 195?

8 MR. FFITCH: I suspect you are right,
9 Your Honor. Well, that's --

10 JUDGE MOSS: Well, that's one of your
11 exhibits. I don't see any exhibits from this
12 witness from the Wall Street Journal. He has one
13 from the Hedge Fund Gang up on Babcock and Brown,
14 June 12, 2008. That's the only article in his
15 testimony.

16 MR. FFITCH: I believe I am referring to
17 a citation in a footnote, Your Honor. I will try
18 and find that, unless I am not remembering
19 correctly.

20 COMMISSIONER JONES: Judge, on page 22
21 of his testimony, there's a reference to Wall
22 Street Journal and Macquarie and Babcock. That's
23 one.

24 MR. FFITCH: That was the reference I
25 was looking for.

0881

1 THE WITNESS: I am sorry. I don't
2 believe I have that with me.

3 Q BY MR. FFITCH: It's page 23 of your
4 rebuttal.

5 A I see that, but I am sorry. I don't
6 have that document with me.

7 Q This is your testimony --

8 JUDGE MOSS: He doesn't have the
9 article.

10 Q BY MR. FFITCH: All right. That's
11 fine. I simply wanted to confirm that you have, at
12 least in this instance, relied on an article from the
13 Wall Street Journal in support of your professional
14 testimony.

15 A Yes.

16 Q And as general matter, as your
17 professional capacity as an economist, I assume
18 that you are aware of the Wall Street Journal and
19 periodically review it as part of your general
20 knowledge about economic subjects?

21 A I would say that I use it to provide
22 information about current events. I don't tend to
23 use it much in terms of formulating theories or
24 testing hypotheses.

25 MR. FFITCH: Excuse me. No further

0882

1 questions. Thank you, Dr. Schmidt.

2 JUDGE MOSS: Any redirect,

3 Mr. Cedarbaum?

4

5 REDIRECT EXAMINATION

6

7 BY MR. CEDARBAUM:

8 Q Just briefly, Dr. Schmidt, Mr. Ffitch
9 reviewed with you some of the risk factors in your
10 testimony, and then you also went through some of the
11 articles on the Wall Street Journal and other
12 periodicals, publications, through the cross exhibits
13 that also deal with these risks in capital markets.
14 Do you recall that testimony?

15 A Yes.

16 Q Now, you indicated that your colleague,
17 Mr. Horton, is -- was responsible for analyzing those
18 risks in the context of the particular transaction
19 before the Commission; is that right?

20 A That's correct.

21 Q And so whether or not the transaction
22 and the commitments that the joint applicants have
23 agreed to in the settlement protect Puget Sound
24 Energy from those risks would be within Mr. Horton's
25 area of responsibility?

0883

1 A That would be correct.

2 MR. CEDARBAUM: Thank you. That's all
3 my questions.

4 JUDGE MOSS: Anything from the bench for
5 Mr. Schmidt?

6 COMMISSIONER OSHIE: No questions.

7 COMMISSIONER JONES: No questions.

8 CHAIRMAN SIDRAN: Mr. Cedarbaum asked a
9 question I was going to ask.

10

11 EXAMINATION

12

13 BY CHARIMAN SIDRAN:

14 Q Because I am just generally interested,
15 Mr. Horton is the witness that appears in the joint
16 testimony in this support of the settlement, and your
17 name is not on this document. Did you review the
18 terms of this proposed settlement?

19 A Not in any detail.

20 Q Do you have -- well, that may answer my
21 question. So do you have an opinion based on what
22 you reviewed?

23 A No, I think -- I would not want to
24 intervene with Mr. Horton's testimony. He is the one
25 who is the expert, and was and has spent a lot of

0884

1 time delving into the details of this transaction and
2 the proposed settlement.

3 CHAIRMAN SIDRAN: Thank you.

4 JUDGE MOSS: Thank you. If there's
5 nothing further for Dr. Schmidt -- apparently
6 there's not, Dr. Schmidt. Thank you for traveling
7 here to be with us and testify. You may step down,
8 and maybe you will catch your airplane.

9 Now, let me see. It's 3:35, so the next
10 scheduled witness was Mr. Kupchak, which would
11 cause us to go back into confidential session, as I
12 understand it.

13 Mr. Ffitch, is that correct?

14 MR. FFITCH: That's correct, Your
15 Honor.

16 JUDGE MOSS: How much do you have for
17 Mr.? Elgin.

18 MR. FFITCH: Approximately half an
19 hour, maybe a little more.

20 JUDGE MOSS: We will be off the record
21 for a second.

22 (Discussion off the record.)

23 JUDGE MOSS: Let's go back on the
24 record. Does your questioning call for a complete
25 confidential session with Mr. Kupchak? Do we need

0885

1 to close it now?

2 MR. FFITCH: Yes, Your Honor.

3 JUDGE MOSS: Mr. Ffitch has indicated
4 that, as with Mr. Leslie, his cross examination
5 delves extensively into Confidential and Highly
6 Confidential matter, therefore, it will be
7 necessary for me to close the hearing room to those
8 who are present and are not signatories to the
9 affidavit under the protective order that is in
10 place.

11 I will also mute the send function on
12 the tele-conference bridgeline, and this will carry
13 us through the end of the day. So those of you who
14 are now having to leave, or who will be cut off
15 from listening can rejoin us tomorrow morning at
16 9:00 and we will resume then. Hopefully, we won't
17 resume in confidential session, but we will see how
18 the day goes.

19 Mr. Kupchak, you have been previously
20 sworn, and you remain under oath. Do we have
21 anything preliminary this witness?

22 Apparently not.

23 Mr. Ffitch -- we do have one
24 preliminary, which is are we stipulating in all of
25 the exhibits?

0886

1 MR. VAN NOSTRAND: Yes.

2 JUDGE MOSS: So all of Mr. Kupchak's
3 exhibits, as previously marked and identified in
4 the exhibit list, are admitted.

5 And, Mr. Ffitch, you may proceed.

6 (EXHIBIT ADMITTED.)

7 (Begin CONFIDENTIAL TESTIMONY --

8 ATTORNEYS'S EYES ONLY.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0887

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0888

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0889

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0890

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0891

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0892

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0893

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0894

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0895

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0896

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0897

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0898

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0899

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0900

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0901

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0902

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0903

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0904

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0905

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0906

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0907

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0908

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0909

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0910

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0911

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0912

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0913

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0914

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0915

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0916

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0917

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0918

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0919

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0920

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0921

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0922

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0923

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0924

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0925

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0926

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0927

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0928

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0929

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0930

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0931

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0932

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0933

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0934

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0935

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0936

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0937

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0938

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

(End CONFIDENTIAL ATTORNEYS' EYES ONLY

23

TESTIMONY.)

24

JUDGE MOSS: Mr. Kupchak, we're going to

25

release you subject to recall. And counsel can

0939

1 confer after we have concluded our business today,
2 but with that, you may step down.

3 THE WITNESS: Thank you.

4 JUDGE MOSS: Our remaining witnesses are
5 Mr. Horton at 9:00 tomorrow morning, Ms. Campbell
6 at 10:30, and Mr. Elgin. And, Mr. Elgin,
7 apparently there's nothing confidential for him,
8 and the same is true for Mr. Horton; is that right?

9 MR. FFITCH: That's correct, Your
10 Honor. We do have a question that will direct
11 Mr. Horton to a confidential exhibit, but it's one
12 question. It's something that we have already
13 seen. I think we can easily steer away from any
14 problems.

15 JUDGE MOSS: How much time for him?

16 MR. FFITCH: 15 minutes.

17 JUDGE MOSS: And for Mr. Elgin?

18 MR. FFITCH: 30 to 45 minutes.

19 JUDGE MOSS: We will take Mr. Horton,
20 and then Mr. Elgin, and then we will take -- that
21 will take you us to the 10:30 hour when
22 Ms. Campbell is apparently going to appear. And we
23 will finish with her, and that will be in
24 confidential session, I gather?

25 Does the bench have anything further?

0940

1 I'll stay with the parties for a moment and see if
2 they have housekeeping matters. I don't believe I
3 have any housekeeping matters, but I want to give
4 counsel the opportunity to raise anything to my
5 attention that we need to take care of in that way.

6 MR. FFITCH: Your Honor, we have an
7 inquiry of the bench, which is whether Mr. Hill
8 needs to be prepared to respond to questions from
9 the bench tomorrow. He is here and available.
10 It's not a travel matter, but --

11 JUDGE MOSS: Apparently not.

12 MR. FFITCH: Thank you, Your Honor.
13 Mr. Hill will be here in the event --

14 JUDGE MOSS: Anything else. Very good.
15 We will be in recess until 9:00 tomorrow morning.
16 Have a pleasant evening.

17 ENDING TIME: 5:00 P.M.

18

19

20

21

22

23

24

25