

1 BEFORE THE WASHINGTON UTILITIES AND
 TRANSPORTATION COMMISSION
 2 WASHINGTON UTILITIES AND)
 TRANSPORTATION COMMISSION,)
 3)
 Complainant,) Docket Nos. UE-011570
 4) and UG-011571
 v.) (consolidated)
 5 PUGET SOUND ENERGY, INC.,)
) Volume II
 6 Respondent.) Pages 124 to 210
 _____)
 7

8 A hearing in the above matter was held on
 9 February 14, 2002, at 9:35 a.m., at 1300 South Evergreen
 10 Park Drive Southwest, Room 206, Olympia, Washington,
 11 before Administrative Law Judge DENNIS MOSS.

12 The parties were present as follows:

13 THE WASHINGTON UTILITIES AND TRANSPORTATION
 COMMISSION, by ROBERT CEDARBAUM and SHANNON SMITH,
 14 Assistant Attorneys General, 1400 South Evergreen Park
 Drive Southwest, Post Office Box 40128, Olympia,
 15 Washington, 98504. Telephone (360) 664-1188, Fax (360)
 586-5522, E-Mail bcedarba@wutc.wa.gov.

16 PUGET SOUND ENERGY, by KIRSTIN S. DODGE and
 17 MARKHAM A. QUEHRN, Attorneys at Law, Perkins Coie, LLP,
 411 - 108th Avenue Northeast, Suite 1800, Bellevue,
 18 Washington 98004, Telephone (425) 453-7326, Fax (425)
 453-7350, E-Mail dodgi@perkinscoie.com.

19 THE PUBLIC, by SIMON FFITCH, Assistant
 20 Attorney General, 900 Fourth Avenue, Suite 2000,
 Seattle, Washington, 98164-1012, Telephone (206)
 21 389-2055, Fax (206) 389-2058, E-Mail simonf@atg.wa.gov.

22 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
 by S. BRADLEY VAN CLEVE, Attorney at Law, Davison Van
 23 Cleve, 1000 Southwest Broadway, Suite 2460, Portland,
 Oregon, 97205, Telephone (503) 241-7242, Fax (503)
 24 241-8160, E-Mail mail@dvclaw.com.
 Joan E. Kinn, CCR, RPR
 25 Court Reporter

00125

1 CITY OF BREMERTON, by ANGELA L. OLSEN,
Assistant City Attorney, McGavick Graves, P.S., 1102
2 Broadway, Suite 500, Tacoma, Washington 98402, Telephone
(253) 627-1181, Fax (253) 627-2247, E-Mail
3 alo@mcgavick.com.

4 COST MANAGEMENT SERVICES, INC., AND THE CITIES
OF AUBURN, DES MOINES, FEDERAL WAY, REDMOND, RENTON,
5 SEATAC, and TUKWILA, by CAROL S. ARNOLD, Attorney at
Law, Preston Gates and Ellis, LLP, 701 Fifth Avenue,
6 Suite 5000, Seattle, Washington 98104, Telephone (206)
623-7580, Fax (206) 632-6077, E-Mail
7 carnold@prestongates.com.

8 KING COUNTY, via bridge line, by THOMAS W.
KUFFEL, Deputy Prosecuting Attorney, 516 Third Avenue,
9 Suite Number 550, Seattle, Washington 98104, Telephone
(206) 296-9015, E-Mail thomas.kuffel@metrokc.gov.

10

NORTHWEST INDUSTRIAL GAS USERS, by EDWARD
11 FINKLEA, Attorney at Law, Energy Advocates LLP, 526
Northwest 18th Avenue, Portland, Oregon 97209, Telephone
12 (503) 721-9118, Fax (503) 721-9121, E-Mail
efinklea@energyadvocates.com.

13

KROGER COMPANY, by MICHAEL L. KURTZ, Attorney
14 at Law, Boehm, Kurtz & Lowry, 36 East Seventh Street,
Suite 2110, Cincinnati, Ohio 45202, Telephone (513)
15 421-2255, Fax (513) 421-2764, E-Mail mkurtzlaw@aol.com.

16 SEATTLE STEAM COMPANY, by ROBERT B. SHEPPARD,
30 Glacier Key, Bellevue, Washington 98006, Telephone
17 (425) 641-3506.

18 FEDERAL EXECUTIVE AGENCIES, by NORMAN J.
FURUTA, Attorney at Law, Department of the Navy, 2001
19 Junipero Serra Boulevard, Suite 600, Daly City,
California 94014-1976, Telephone (650) 746-7312, Fax
20 (650) 746-7372, E-Mail FurutaNJ@efawest.navfac.navy.mil.

21 COGENERATION COALITION OF WASHINGTON, by
DONALD E. BROOKHYSER, Attorney at Law, Alcantar & Kahl,
22 LLP, 1300 Southwest Fifth Avenue, Suite 1750, Portland,
Oregon 97201, Telephone (503) 402-8702, Fax (503)
23 402-8882, E-Mail deb@a-klaw.com.

24

25

00126

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

NORTHWEST ENERGY COALITION AND NATURAL
RESOURCES DEFENSE COUNCIL, via bridge line, by DANIELLE
DIXON, Attorney at Law, Northwest Energy Coalition, 219
First Avenue, Suite 100, Seattle, Washington 98104,
Telephone (206) 621-0094, Fax (206) 621-0097, E-Mail
danielle@nwenergy.org.

P R O C E E D I N G S

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

JUDGE MOSS: Good morning, everyone. My name is Dennis Moss. I'm the presiding Administrative Law Judge in the matter styled Washington Utilities and Transportation Commission against Puget Sound Energy, Docket Numbers UE-011570 and UG-011571.

We're here today for the purposes of our final pre-hearing conference before the evidentiary hearing concerning the interim rate phase, which actually only implicates directly the first docket I mentioned, the electric docket.

I want to pause at this juncture and have the pleasure of introducing to you all, I'm going to ask her to stand, our newest judge, Judge Theo Mace, who has recently joined us, and Judge Mace will be assisting me in this case, backing me up on those occasions when the schedule requires me to be in several places at once. So you will be seeing her from time to time in the course of the proceeding, and I'm sure you will enjoy working with her as much as you have all no doubt enjoyed working with me.

So we are here for a working conference this morning, as you know. Our really primary goal is to get organized for our hearing next week. So I have a number of items on the agenda that I wish to get through

00128

1 including taking the short form of appearances this
2 morning. And I did allow for people to appear by the
3 teleconference bridge if they don't intend to
4 participate actively in this first phase of hearings.
5 So I have heard the electronic buzzer go off a few
6 times, so we will take those appearances as well. But I
7 just want the short form of appearances today unless
8 you're entering your appearance for the first time, so
9 all I need really is your name, if you wish your
10 affiliation, and then of course the party you represent.

11 So let's start with the company.

12 MR. QUEHRN: Good morning, Mark Quehrn on
13 behalf of Puget Sound Energy.

14 MS. DODGE: Kirstin Dodge on behalf of Puget
15 Sound Energy.

16 JUDGE MOSS: Why don't we go through the back
17 tables first, and then we will come back up to the
18 front.

19 MR. BROOKHYSER: Thank you, Your Honor,
20 Donald Brookhyser for the Cogeneration Coalition of
21 Washington.

22 MR. SHEPPARD: Your Honor, Robert Sheppard,
23 I'm not an attorney, but I'm here entering an appearance
24 for Seattle Steam Company.

25 JUDGE MOSS: All right, thank you,

00129

1 Mr. Sheppard, and you are represented by counsel in this
2 proceeding?

3 MR. SHEPPARD: Yes, Your Honor, we are.

4 JUDGE MOSS: Thank you.

5 Ms. Arnold.

6 MS. ARNOLD: Carol Arnold, Preston, Gates and
7 Ellis, here for Cost Management Services, Inc., and the
8 Cities of Auburn, Des Moines, Federal Way, Redmond,
9 Renton, SeaTac, and Tukwila.

10 JUDGE MOSS: I wonder, Ms. Arnold, if that
11 list sometimes rips through your mind in the middle of
12 the night.

13 Let's go back up to this table here.

14 MR. FURUTA: Thank you, Your Honor, Norman
15 Furuta from the Department of the Navy representing the
16 consumer interests of all the Federal Executive
17 Agencies.

18 JUDGE MOSS: Welcome, Mr. Furuta, we have
19 talked several times, but I think this is the first time
20 I have seen you.

21 MR. FURUTA: Yes, that's correct.

22 JUDGE MOSS: Nice to see you.

23 MR. FURUTA: Thank you.

24 MR. VAN CLEVE: Your Honor, Brad Van Cleve on
25 behalf of the Industrial Customers of Northwest

00130

1 Utilities.
2 MR. KURTZ: Mike Kurtz on behalf of Kroger
3 Company.
4 JUDGE MOSS: Mr. Kurtz, welcome.
5 MR. FINKLEA: Ed Finklea on behalf of the
6 Northwest Industrial Gas Users.
7 JUDGE MOSS: Mr. Finklea.
8 I believe we're over to you, Mr. ffitich.
9 MR. FFITCH: Simon ffitich, Assistant Attorney
10 General, for the office of Public Counsel.
11 JUDGE MOSS: And for Staff.
12 MS. SMITH: Shannon Smith, Assistant Attorney
13 General, for Commission Staff.
14 MR. CEDARBAUM: Robert Cedarbaum for
15 Commission Staff.
16 JUDGE MOSS: All right. Now the telephone
17 can be a little tricky, we don't want everyone speaking
18 at once, but I do want to take appearances from any of
19 you who are on the teleconference bridge. So I don't
20 have a comprehensive list here of those who were
21 intending to appear in that fashion, but I believe the
22 NRDC and Northwest Energy Coalition was planning to
23 attend in that fashion. Ms. Dixon, are you there?
24 MS. DIXON: I am, this is Danielle Dixon for
25 Northwest Energy Coalition and Natural Resources Defense

00131

1 Council.

2 JUDGE MOSS: All right. And looking at my
3 list, do we have anyone present for AT&T Wireless and
4 Seattle Times?

5 Apparently not.
6 City of Bremerton?

7 No.
8 City of Kent?
9 King County?

10 MR. KUFFEL: Yes, this is Tom Kuffel from the
11 King County Prosecutor's Office representing King
12 County.

13 JUDGE MOSS: I'm sorry, I couldn't quite make
14 out your last name.

15 MR. KUFFEL: It's Kuffel, K-U-F-F-E-L.

16 JUDGE MOSS: And, let's see, I don't see
17 Mr. Eberdt or Ms. Duclos here. Did anybody hear from
18 Multi-Service Center, Opportunity Council, Energy
19 Project?

20 Apparently not.

21 All right. Again, for the record, I had
22 previously sent out a notice letter to inform parties
23 that today's conference really is devoted primarily to
24 the task at hand in terms of preparing for the efficient
25 conduct of our hearings next week. We are going to take

00132

1 up some other matters of business that relate to other
2 phases of the case. Under the circumstances of having
3 sent that notice and having any number of parties not
4 represented today, I won't make any decisions on these
5 other matters. In fact, it was really my intention to
6 raise them for discussion at later phases, and so I will
7 do that, and I will probably have to send out a written
8 notice or something.

9 But anyway the first thing I want to do, and
10 we're going to do some of this on the record and some of
11 it off, when we get to the exhibit part, we will go off
12 the record because that tends to get a little confusing,
13 and I can simply memorialize it after the fact, but I
14 will do the first part of today's business on the
15 record. And the first order of business is to really
16 get our order of presentation of witnesses nailed down.
17 And let me just say I want to get an order of
18 presentation, I want to get the, maybe we should decide
19 this first, the order of cross-examination of the
20 witnesses, that is to say which party will cross-examine
21 first, second, third, and so forth. I want to get
22 estimates of time required for cross-examination, and
23 that in turn will give us the opportunity to consider
24 when witnesses might be required to appear. I know some
25 witnesses will be traveling some distance to be here,

00133

1 and we want to try to narrow down the time frame during
2 which they need to be present if we can.

3 Following those matters, then we will get
4 into the exchange of our cross-examination exhibits and
5 the marking of the exhibits. I have distributed to you
6 my preliminary exhibit list, which includes all of the
7 pre-filed exhibits arranged by witness, by party and
8 witness, and of course I have only numbered through the
9 first witness because we don't know where we will go
10 with our serial numbering.

11 And I will keep the other business as a
12 surprise for the end, so I won't go through all of that
13 right now.

14 In terms of our witnesses, the company, of
15 course, traditionally goes first. Let me just ask,
16 Mr. Quehrn, Ms. Dodge, in what order do you intend to
17 present your witnesses?

18 MS. DODGE: We plan to present Bill Gaines,
19 William Gaines, then Barbara Luscier, then Donald
20 Gaines, then Gary Swofford.

21 JUDGE MOSS: Okay. Now let me turn to Staff
22 and ask, and we can hear from other parties as well, is
23 it Staff's preference to present its witnesses last or
24 just after the company or what? We can always look at
25 736, I suppose, but I like to work with the parties on

00134

1 this.

2 MR. CEDARBAUM: Your Honor, it's Staff's
3 preference to -- and actually this goes more to the who
4 goes first on when the hearings begin. We have given it
5 some thought, and our preference would be to have Staff,
6 Public Counsel, and then the interveners precede the
7 company's presentation. The company can put on its
8 witnesses in whatever order it chooses.

9 The reasons for that are twofold. One is it
10 seems like the most efficient use of time to have the
11 company's direct and rebuttal testimony be cross
12 examined at one time rather than to have their direct be
13 cross examined, interrupted by everyone else, and then
14 cross examine the rebuttal after that.

15 But the more important reason is that the
16 company filed its rebuttal testimony mid afternoon on
17 Monday in accordance with the procedural schedule.
18 Since that time, we have put out two sets of data
19 requests, and admittedly fairly extensive data requests,
20 but each data request was directed to a specific line
21 and page of the company's rebuttal testimony. The first
22 set went out by noon on Tuesday morning, so responses to
23 that set will be due by the end of business on Friday.
24 The second set went out by noon yesterday, Wednesday,
25 and so responses to those will be due by the close of

00135

1 business on Monday.

2 The practice has been, which has worked out
3 fine up until now, is that the company does provide us
4 by E-mail the responses to data requests, prior data
5 requests, and that we get a hard copy the next day,
6 which is actually the hard copy comes on the fourth day,
7 the electronic version comes on the third day, but the
8 electronic version oftentimes doesn't have attachments
9 and confidential materials. And again, we have no
10 complaints, that has worked out fine.

11 But the consequence of that with respect to
12 today and for next week is that we won't have a lot of
13 what we consider to be important evidence or at least
14 responses to data requests that might become evidence
15 until right before the weekend starts and a large
16 portion after the hearings would commence on Monday. We
17 need the time to be able to look at that and analyze all
18 that, and we can do that -- and we can't do that if the
19 company takes the stand first on Monday. We need to
20 have -- if the Staff and Public Counsel go first, then
21 we can work at night to analyze what we get from the
22 company, then be prepared to cross examine them after
23 our cases are done.

24 So that's our proposal, which still gives the
25 company -- it seems that that's efficient, fair to all

00136

1 the parties, and it gives the company the last word,
2 which is usually what they want anyway, which sort of
3 goes against my grain I guess. The consequence of not
4 doing it that way again is that we can't be prepared, I
5 think, adequately to cross examine the company on
6 Monday. And I think it would unnecessarily prolong our
7 cross-examination, because we would have to, you know,
8 go through our data requests and essentially ask a lot
9 for the -- a lot of the same information and see if we
10 can get responses on the stand, which doesn't really
11 work out well for anybody. So our proposal is to have
12 Staff go first followed by Public Counsel and the rest
13 of the interveners, then have the company testify. And
14 we will just do the best we can to be prepared for
15 cross-examination of the company in that way.

16 JUDGE MOSS: Are you thinking that there
17 might be a significant volume of material that comes in
18 in response to your last data requests that you would
19 wish to introduce via cross-examination?

20 MR. CEDARBAUM: Well, you know, I would have
21 to -- to answer that question, I would admittedly be
22 speculating to some extent.

23 JUDGE MOSS: Sure.

24 MR. CEDARBAUM: All I can say is that I
25 believe we made a best efforts effort to only ask for

00137

1 what was necessary, and our data requests were very
2 pointed in terms of, you know, page and line number of
3 company rebuttal testimony so that the company would
4 have that clear road map as to what we were looking for.
5 We have asked for, you know, a fair amount of
6 information, and that consequently may mean that we
7 would have a fair amount of additional information to
8 present as exhibits and cross-examination. We have come
9 prepared today with the exhibits that we have been able
10 to put together thus far, but with all of those data
11 requests outstanding, I can't say how much more there
12 will be.

13 JUDGE MOSS: Is there an open public meeting
14 this Wednesday, next Wednesday? No, okay.

15 I'm considering logistics, and the reason I
16 put the question to you about the potential volume of
17 material relates to my concern that we not spend a lot
18 of time with the commissioners on the bench doing things
19 like arranging and numbering exhibits, so just thinking
20 through that process, but it sounds like that would be
21 something that could not be completed prior to Tuesday.

22 MR. CEDARBAUM: Well, we could, you know, to
23 the extent that we get information by the end of Friday,
24 we can do our best to look at that over the weekend and
25 maybe have the next installment Monday morning.

00138

1 JUDGE MOSS: Sure.

2 MR. CEDARBAUM: And then the same on Tuesday
3 or, you know, perhaps Wednesday morning for the second,
4 I guess the third installment, if there is any. But we
5 would certainly try, you know, do everything we can to
6 cooperate and predistribute those exhibits as soon as we
7 have them, alert the parties as to what they are so that
8 there will be no surprises.

9 JUDGE MOSS: All right. Why don't we ask the
10 company to -- have you all talked by the way, have you
11 talked to the other parties about this?

12 MR. CEDARBAUM: I only talked to Mr. ffitich
13 late yesterday. I just didn't -- I didn't talk to
14 anyone else mostly because I couldn't find the time.

15 JUDGE MOSS: I understand.

16 Is there something else, Mr. Cedarbaum? I
17 was just letting the company confer before they respond.

18 MR. CEDARBAUM: This is just maybe a related
19 housekeeping matter. Everything I have said assumes
20 that Monday is a business day for purposes of responding
21 to data requests. We're in hearing, so obviously we're
22 in business, but.

23 JUDGE MOSS: I have had the privilege of
24 defining all sorts of calendaring events this year so
25 far, and yes, certainly I would intend it to be a

00139

1 business day even though it is an official holiday,
2 because we announced early on that we were treating it
3 that way, so yes.

4 MS. DODGE: Your Honor, we have intended to
5 treat Monday as a business day in the circumstances.

6 JUDGE MOSS: Yeah, I would think everybody
7 would understand that.

8 I will just make one comment before turning
9 to the company, and that is to say that it would
10 normally be my intention that there only be one round of
11 cross of the company's witnesses anyway with respect to
12 both their pre-filed direct and pre-filed rebuttal. I
13 don't recall that I have ever split it up in the way you
14 described initially, so I don't want to have the
15 witnesses back and forth. But we typically can do that
16 even with the company's witnesses appearing first it
17 seems to me. But I understand the concerns that you
18 raise. I think there's some legitimate concerns. I do
19 want to promote efficiency. It's a novel idea, and I
20 want to hear what the company has to say about it.

21 MS. DODGE: Your Honor, it seems to make
22 sense under the circumstances to move forward in that
23 mode. The company would expect to have the last word in
24 any case, and we also would, I guess, object to having
25 our witnesses up and then brought back and having

00140

1 multiple rounds of cross. So under the circumstances,
2 it seems to make sense to go with the other
3 presentations first, and then they have the additional
4 opportunity to look at those data request responses.

5 JUDGE MOSS: Well, in terms of the company
6 having the last word, the company has the last word
7 through the expedient of filing rebuttal testimony. You
8 don't get to pose additional direct. You, of course,
9 get to redirect any cross-examination of your witnesses
10 with respect to their full body of testimony, but the
11 typical course of affairs is to have the company's case
12 first. I have done quite a few hearings here, and this
13 is the first time I have heard it suggested that we do
14 it some other way. That's not to say we can't do it
15 some other way, I just wanted to -- it sounds to me as
16 if the company doesn't have a problem with
17 Mr. Cedarbaum's proposal.

18 MS. DODGE: I only mean with respect to new
19 matters that might arise out of the cross-examination,
20 not that we would bring people back to put the rebuttal
21 in.

22 JUDGE MOSS: Right, we tend to be fairly
23 flexible considering the needs of the case.

24 Does any other party wish to be heard on this
25 proposal?

00141

1 MR. FFITCH: Your Honor, Mr. Cedarbaum did
2 mention this to me, as he said. We think it's also a
3 good suggestion. We do also have an outstanding data
4 request that would not be answered until next week, so
5 that would also work out better for us.

6 JUDGE MOSS: Better pull the mike up,
7 Mr. ffitich, I'm afraid the people on the phone won't be
8 able to hear you.

9 MR. FFITCH: So we believe it's a helpful
10 approach.

11 JUDGE MOSS: Mr. Finklea, did you wish to be
12 heard on this?

13 MR. FINKLEA: No.

14 MR. KURTZ: Your Honor, if I may, just one
15 point, this is a general point, not necessarily with
16 respect to a specific proposal. But we have a witness,
17 a Kroger witness, availability issue. He is going to be
18 available Tuesday afternoon or Wednesday, and so
19 whatever way you do it, if we could squeeze him in.

20 JUDGE MOSS: I think we can accommodate that
21 either way.

22 MR. KURTZ: Thank you.

23 JUDGE MOSS: Mr. Furuta, did you have
24 something?

25 MR. FURUTA: Just one thing. When planning

00142

1 my schedule for next week, I realized that I may not
2 possibly be here on Friday. Originally I thought that
3 may not be a problem because of the usual order of
4 witness presentations. If the company is on the stand
5 at the end of the week, I don't have a specific
6 objection, but I may have a request that I might like to
7 take my cross out of whatever is the usual order here in
8 order that I might complete my cross on Thursday.

9 JUDGE MOSS: We will know more in a few
10 minutes here when we talk about estimates of
11 cross-examination time and that sort of thing, and so we
12 will see, it may not be a problem at all. It would be
13 my hope that we can finish up in four days, but, of
14 course, we did allow for five in case we needed it, but
15 we will see, we will know more about that momentarily.

16 Well, I will say that, you know, I am
17 prepared under the circumstances to accept your
18 proposal, Mr. Cedarbaum. I do that with some slight
19 hesitation only because, as everyone is aware, the
20 commissioners will be sitting in this hearing, and they
21 are not available to me for consultation today because
22 they are in travel. And so I will accept the proposal
23 tentatively subject to being overruled by the
24 commissioners. If they have a strong preference to
25 proceed in the usual fashion as opposed to what you have

00143

1 proposed, then clearly it would be important to
2 accommodate them in that fashion.

3 But for I at least am convinced of the wisdom
4 of your suggestion, and I will convey that to them and
5 the reasons that you have stated and the general
6 agreement of the parties that under the circumstances
7 this is an appropriate way to proceed. But since it is
8 a novel approach, I can't perhaps speak with the
9 certainty that I might otherwise. Is that acceptable to
10 you? And, of course, I will communicate back to the
11 parties. I will just use E-mail, I suppose, because
12 that will be the quickest way if I am overruled and must
13 reverse myself.

14 MR. CEDARBAUM: Thank you, Your Honor, we
15 appreciate the accommodation.

16 JUDGE MOSS: All right, now subject to that,
17 why don't we go ahead, and I assume your witness order
18 will be the same regardless of at what point in the
19 hearing they appear?

20 MR. QUEHRN: (Nodding head.)

21 JUDGE MOSS: And I was speaking to the
22 company there, and I got an acknowledgment from
23 Mr. Quehrn.

24 MR. QUEHRN: Yes.

25 JUDGE MOSS: So the idea was that Staff would

00144

1 actually go first, and then who would you present first?

2 MR. CEDARBAUM: Our witnesses would first be
3 Ms. Steel and then Mr. Lott.

4 JUDGE MOSS: And then you have just the one
5 witness, Mr. ffitch, and that would be Mr. Hill?

6 MR. FFITCH: That's correct, Your Honor.

7 JUDGE MOSS: And that would be the third
8 witness.

9 MR. FFITCH: Your Honor, we haven't gotten to
10 witness availability yet.

11 JUDGE MOSS: Ah, another issue crops up.

12 MR. FFITCH: Mr. Hill will be here. He's
13 arriving on Monday and tells me that he will be able to
14 be in Olympia mid day on Monday, so it may be better to
15 have another intervener witness or two after Staff if we
16 can. We don't have a lot of those types of people, I
17 understand, but just to make sure that Mr. Hill is here.
18 Ideally it would be better if we were able to go on
19 Tuesday morning, but I don't know if that's possible.
20 He will be here, but not on Monday morning.

21 JUDGE MOSS: All right, well, let's jump
22 around a little bit here then and see about this. Does
23 any party other than the company have any intention to
24 cross examine either Ms. Steel or Mr. Lott?

25 MR. FFITCH: Your Honor, Public Counsel would

00145

1 reserve some time for both witnesses for
2 cross-examination.

3 JUDGE MOSS: All right, and we will need to
4 -- let's get a full picture then here. For the company,
5 can you give me an estimate, and I'm not sure who I
6 should be talking to, Mr. Quehrn, could you give me an
7 estimate on the company's cross-examination of
8 Ms. Steel.

9 MR. QUEHRN: Yes, Your Honor. Ms. Steel I
10 would estimate will take approximately two hours.
11 Mr. Lott approximately one hour.

12 JUDGE MOSS: All right.
13 And what about you, Mr. Ffitch?

14 MR. FFITCH: 30 minutes for each witness,
15 Your Honor.

16 JUDGE MOSS: And I saw a couple of hands go
17 up.

18 Mr. Finklea?

19 MR. FINKLEA: The Industrial Gas Users will
20 have about ten minutes for Mr. Lott.

21 JUDGE MOSS: Others?

22 MR. KURTZ: Your Honor, for Kroger, I think
23 we definitely have five to ten minutes for Mr. Lott and
24 perhaps five minutes for Ms. Steel.

25 JUDGE MOSS: All right. I have never seen a

00146

1 cross-examination last five minutes, so I'm going to put
2 ten.

3 MR. KURTZ: I may surprise you, but that's
4 probably true.

5 JUDGE MOSS: Well, there's always a first
6 time.

7 All right, let's go on around the room,
8 anybody else?

9 MR. VAN CLEVE: Yes, Your Honor, ICNU will
10 have approximately ten minutes for Mr. Lott.

11 JUDGE MOSS: Mr. Furuta?

12 MR. FURUTA: And FEA will have 10 to 15
13 minutes for Mr. Lott.

14 JUDGE MOSS: Mr. Lott is popular.

15 MR. BROOKHYSER: Your Honor, CCW would like
16 to reserve ten minutes for Mr. Lott.

17 JUDGE MOSS: Anybody else?

18 Okay, so we're looking here at, let's see,
19 give me a minute. It looks like we're looking at
20 sometime in the afternoon finishing those witnesses, so
21 it sounds like your witness could be here, and I really
22 just want to work back and forth with you here. Would
23 it still be your preference to push it to Tuesday? It
24 doesn't matter to me particularly, I was just following
25 Mr. Cedarbaum's lead there that his suggestion was

00147

1 Staff, Public Counsel, then the interveners, but it's
2 not that critical, I think.

3 MR. FFITCH: That's my preference just
4 because the witness will be traveling that day. I know
5 witnesses sometimes do travel and testify on the same
6 day, but if it's possible to have him on Tuesday
7 morning, that would be better.

8 JUDGE MOSS: Okay.

9 MR. FFITCH: He will be here on Monday.

10 JUDGE MOSS: All right. How about let me
11 Mr. Schoenbeck is a relatively local witness, could he
12 be available on Monday afternoon?

13 MR. VAN CLEVE: Yes, he could, Your Honor.

14 JUDGE MOSS: And let's go ahead and talk
15 about cross-examination times for him. What about the
16 company?

17 MS. DODGE: Your Honor, this is probably a
18 good time to raise that we intend to file a motion to
19 strike as to certain -- there's numerous sections of
20 testimony that we think are irrelevant to this
21 proceeding and shouldn't take up the parties' or the
22 commissioners' time at this stage.

23 JUDGE MOSS: You mean for this witness or
24 more broadly?

25 MS. DODGE: Well, it would be for

00148

1 Mr. Schoenbeck, Mr. Hill, I think to some extent
2 Ms. Steel, so there's -- it's scattered a little bit
3 throughout and we would intend -- we would think that
4 normally that would be argued Monday morning, which in
5 terms of talking about time projections, thinking about
6 that, and also depending on the ruling on that, it would
7 affect our cross-examination, so these estimates are all
8 a little bit tentative.

9 The other thing is that we do have a few data
10 requests outstanding as well ourselves that we expect to
11 get I believe tomorrow, and so, of course, that will
12 affect things as well.

13 JUDGE MOSS: Are you anticipating that you
14 will have that motion to me before the end of business
15 tomorrow?

16 MS. DODGE: Yes, that is our intention.

17 JUDGE MOSS: These normally take a little bit
18 of my time, and so I would really appreciate having that
19 by the end of business tomorrow so I can look at it over
20 the weekend.

21 MS. DODGE: We're going to try to get it out
22 just as early in the day as possible tomorrow.

23 JUDGE MOSS: And actually I'm thinking about
24 the parties too, that's going to put a certain burdon on
25 the parties to have that come late. Do you think you

00149

1 can have that out by noon tomorrow or even by the end of
2 today? I don't anticipate we'll be here later than noon
3 today, so you will have the afternoon.

4 MS. DODGE: If we have the afternoon today,
5 we can do it by noon tomorrow. And again, to the degree
6 we can get it out sooner, we will.

7 JUDGE MOSS: All right, well, I appreciate
8 and rely on your efforts in that regard, because, of
9 course, I'm sure we all expect to be doing some work on
10 the case over the weekend, but motions to strike are
11 something that at least from my perspective can be time
12 consuming undertakings, and so the earlier you can get
13 that to us, the better.

14 MR. CEDARBAUM: Your Honor, could I just --

15 JUDGE MOSS: Sure, Mr. Cedarbaum.

16 MR. CEDARBAUM: Sorry to interrupt.

17 JUDGE MOSS: That's all right.

18 MR. CEDARBAUM: The company is going to file
19 whatever motion it's going to file, but obviously if it
20 comes in any time between now and the hearing, I would
21 -- I guess I would just like to get a feel for whether
22 you are going to expect a written response from the
23 parties or not. I mean if we don't get something --
24 given all the work that we have to do to prepare for
25 this case, it's going to be difficult for us to respond

00150

1 in writing. I guess I'm assuming hopefully that we can
2 respond orally at the hearing.

3 JUDGE MOSS: I don't see that we really have
4 any option on that. The time has been compressed.
5 Sooner would be better, but here we are, so. And as I
6 think about it, I frankly would be just as pleased to
7 have the commissioners hear the argument on that, so
8 that's what we will do.

9 MR. CEDARBAUM: And if I --

10 JUDGE MOSS: And any other motions that come
11 in. There may be other motions to strike.

12 MR. CEDARBAUM: I'm sorry, sorry to sidetrack
13 from just this cross-examination time, but we -- Staff
14 intends on objecting to the admission of very small
15 portions of testimony, and we -- it sounds like the
16 company is looking at a broader brush here, so a motion
17 to strike ahead of time is perhaps appropriate, but we
18 were not intending on objecting to the admission of a
19 particular item until it was offered into evidence. And
20 I guess I would like to know whether that's procedurally
21 okay or whether you're now going to require motions to
22 strike even on very limited portions of evidence.

23 JUDGE MOSS: Well, I --

24 MR. CEDARBAUM: Ahead of time.

25 JUDGE MOSS: I haven't made any requirement

00151

1 in that regard. I normally leave it up to the parties
2 to conduct their own motions practice, relying on them
3 to do that in such a way that it does not make my life
4 difficult. As you know, Mr. Cedarbaum, from long
5 association with me, I prefer to have things done
6 earlier rather than later. If you know that you're
7 going -- that you wish portions of pre-filed testimony
8 struck or -- it's really more helpful to identify those
9 in advance so that I can have the opportunity to review
10 them carefully, and in a case where I'm sitting with the
11 commissioners, to actually review that with the
12 commissioners, so that we are better equipped to hear
13 the argument and rule. So you're right, I appreciate
14 the fact that everybody has got a great deal of
15 preparation to do in advance of our hearings on Monday,
16 but to the extent that you could pull together some sort
17 of written motion and also try to do that by noon
18 tomorrow, that would be helpful to the Bench.

19 MR. CEDARBAUM: We will make that effort.

20 JUDGE MOSS: I appreciate that. You know, in
21 terms of individual exhibits, it tends to be less
22 problematic than on the testimony itself. The reason
23 that is challenging I will say for the Bench is that we
24 have to consider it in the context of the overall
25 presentation and what it means to the case and to the

00152

1 record. As you all know from your long experience in
2 administrative practice, unlike a civil court
3 proceeding, one of the responsibilities of the presiding
4 judge is to ensure that there is a full and adequate
5 record for decision. And so this matter takes on some
6 dimensions that it does not have in a courtroom. And so
7 I appreciate the extra time if it can be given to me.
8 And, of course, you know, it helps the parties to
9 sharpen their arguments and keep them focused too, so.

10 All right, let's return then to the question
11 of estimates, and I appreciate your caveat, Ms. Dodge,
12 given the caveat, what is your estimate for
13 Mr. Schoenbeck?

14 MS. DODGE: We believe we have no more than
15 two hours for Mr. Schoenbeck.

16 JUDGE MOSS: Okay. And let's see, well,
17 let's just go back around the room again, I guess. Does
18 Kroger have any --

19 MR. KURTZ: Yes, Your Honor, I have ten
20 minutes, five to ten minutes.

21 JUDGE MOSS: How about the Federal Executive
22 Agencies?

23 MR. FURUTA: None, Your Honor.

24 JUDGE MOSS: Public Counsel?

25 MR. FFITCH: Your Honor, 15 minutes.

00153

1 JUDGE MOSS: And I'm just going down the
2 order by the way that I have on my little chart up here,
3 so no significance to it.

4 Staff?

5 MR. CEDARBAUM: We would like to reserve 15
6 minutes as well.

7 JUDGE MOSS: IGU?

8 MR. FINKLEA: Industrial Gas Users won't have
9 any questions.

10 JUDGE MOSS: CCW?

11 MR. BROOKHYSER: Ten minutes, Your Honor.

12 JUDGE MOSS: Anybody else? Did I miss
13 anybody?

14 Okay, well, let's go ahead and complete the
15 picture a little bit more here, and then we will go back
16 and talk about who we might need when. It looks to me
17 at this juncture, however, that given that we're
18 apparently going to spend some time Monday morning
19 arguing motions and the estimates that we have for
20 cross-examination and taking into account that there
21 will undoubtedly be questions from the Bench, it looks
22 to me like Mr. Hill is not going to have to worry about
23 testifying before Tuesday.

24 Where is he traveling from?

25 MR. FFITCH: West Virginia, Your Honor.

00154

1 JUDGE MOSS: Well, let's try to give him a
2 night of rest. All right, let's go ahead though and
3 take up the other witnesses here. And, in fact, let's
4 go ahead and get our cross-examination times for
5 estimates for Hill while we're on him. For the company?
6 MS. DODGE: About two hours, Your Honor.
7 JUDGE MOSS: Subject to striking all of his
8 testimony, right, okay.
9 Does ICNU have any cross for Mr. Hill?
10 MR. VAN CLEVE: No, Your Honor.
11 JUDGE MOSS: How about Kroger?
12 MR. KURTZ: Perhaps five minutes.
13 JUDGE MOSS: Federal Executive Agencies?
14 MR. FURUTA: None.
15 JUDGE MOSS: Staff?
16 MR. CEDARBAUM: I would reserve 15 minutes.
17 JUDGE MOSS: 15, okay.
18 Industrial Gas Users?
19 MR. FINKLEA: No questions.
20 JUDGE MOSS: And the CCW?
21 MR. BROOKHYSER: No questions.
22 JUDGE MOSS: No questions, all right.
23 Am I saying it right, Selecky, is that the
24 correct pronunciation?
25 MR. FURUTA: Yes, that's correct.

00155

1 JUDGE MOSS: All right, let's go ahead and do
2 Mr. Selecky, does the company have cross for
3 Mr. Selecky?
4 MS. DODGE: No, Your Honor.
5 JUDGE MOSS: How about the Industrial
6 Customers Northwest Utilities?
7 MR. VAN CLEVE: Ten minutes, Your Honor.
8 JUDGE MOSS: Kroger?
9 MR. KURTZ: Ten minutes.
10 JUDGE MOSS: Public Counsel?
11 MR. FFITCH: Ten minutes, Your Honor.
12 JUDGE MOSS: Staff?
13 MR. CEDARBAUM: Ten minutes.
14 JUDGE MOSS: Industrial Gas Users?
15 MR. FINKLEA: No questions.
16 JUDGE MOSS: And CCW?
17 MR. BROOKHYSER: No questions.
18 JUDGE MOSS: And then we have I believe is it
19 Mr. Higgins?
20 MR. KURTZ: Yes, Your Honor.
21 JUDGE MOSS: For the company?
22 MS. DODGE: At this time, we're reserving no
23 time.
24 JUDGE MOSS: No time.
25 Industrial Customers?

00156

1 MR. VAN CLEVE: Ten minutes, Your Honor.
2 JUDGE MOSS: Federal Executive Agencies?
3 MR. FURUTA: No questions.
4 JUDGE MOSS: Public Counsel?
5 MR. FFITCH: Ten minutes, Your Honor.
6 JUDGE MOSS: Staff?
7 MR. CEDARBAUM: Ten minutes.
8 JUDGE MOSS: Industrial Gas Users?
9 MR. FINKLEA: No questions.
10 JUDGE MOSS: And CCW?
11 MR. BROOKHYSER: No questions.
12 JUDGE MOSS: Okay. While we're on a roll, we
13 may as well go ahead and do the company witnesses even
14 though that will be less of an issue if we follow the
15 plan that I have approved tentatively. And I'm just
16 going to follow my list rather than the order that's
17 been designated by the company.
18 For Donald Gaines who is substituting for
19 Mr. Hawley, ICNU?
20 MR. VAN CLEVE: 20 minutes, Your Honor.
21 JUDGE MOSS: Kroger?
22 MR. KURTZ: Ten minutes.
23 JUDGE MOSS: FEA?
24 MR. FURUTA: Ten minutes.
25 JUDGE MOSS: Public Counsel?

00157

1 MR. FFITCH: 90 minutes, Your Honor.
2 JUDGE MOSS: 90 did you say?
3 MR. FFITCH: 90.
4 JUDGE MOSS: Staff?
5 MR. CEDARBAUM: Again, Your Honor, subject to
6 data request responses, we'll reserve two hours.
7 JUDGE MOSS: 120 minutes, okay.
8 And Industrial Gas Users.
9 MR. FINKLEA: No questions for Donald Gaines.
10 JUDGE MOSS: And CCW?
11 MR. KURTZ: We won't have any questions for
12 any of the company witnesses.
13 JUDGE MOSS: For any of the company
14 witnesses, thank you, that will save a few seconds,
15 thank you very much.
16 All right, now then for William Gaines,
17 Industrial Customers?
18 MR. VAN CLEVE: One hour, Your Honor.
19 JUDGE MOSS: Kroger?
20 MR. KURTZ: Ten minutes.
21 JUDGE MOSS: FEA?
22 MR. FURUTA: 20 minutes.
23 JUDGE MOSS: Public Counsel?
24 MR. FFITCH: One hour.
25 JUDGE MOSS: Staff?

00158

1 MR. CEDARBAUM: 45 minutes.
2 JUDGE MOSS: And Industrial Gas Users?
3 MR. FINKLEA: 15 minutes.
4 MS. ARNOLD: Your Honor.
5 JUDGE MOSS: Ms. Arnold, yes, I didn't mean
6 to ignore you back there but I haven't heard from you.
7 MS. ARNOLD: We would like to reserve 15
8 minutes for Mr. Bill Gaines.
9 JUDGE MOSS: And this will be on behalf of?
10 MS. ARNOLD: Cost Management Services.
11 JUDGE MOSS: Cost Management, okay, and I'm
12 sorry, did you say 15?
13 MS. ARNOLD: Yes.
14 JUDGE MOSS: I apologize, I'm thinking of you
15 in terms of your Cities' representation, and, of course,
16 that's a part of the case we're not taking up on the
17 interim. I understand their interests are limited, and
18 we're going to talk about that a little bit later on, so
19 I just want to be clear. All right, and just speak
20 right up if I miss you a second time, I apologize.
21 All right, Luscier, am I saying that right?
22 MR. QUEHRN: Luscier.
23 JUDGE MOSS: I had a hard time with French in
24 college, so I have a hard time, Luscier, okay.
25 Industrial Customers?

00159

1 MR. VAN CLEVE: 15 minutes, Your Honor.
2 JUDGE MOSS: Kroger?
3 MR. KURTZ: 20 minutes.
4 JUDGE MOSS: Federal Executive Agencies?
5 MR. FURUTA: 15 minutes.
6 JUDGE MOSS: Public Counsel?
7 MR. FFITCH: 20 minutes, Your Honor.
8 JUDGE MOSS: Staff?
9 MR. CEDARBAUM: 15 minutes.
10 JUDGE MOSS: Industrial Gas?
11 MR. FINKLEA: No questions.
12 JUDGE MOSS: And CMS?
13 MS. ARNOLD: No, Your Honor.
14 JUDGE MOSS: I'm going to pick you up now,
15 you understand.
16 MS. ARNOLD: Only Mr. Gaines.
17 JUDGE MOSS: And that's not right, it's
18 Swofford, isn't it?
19 MR. QUEHRN: Yes.
20 JUDGE MOSS: I've got a typographical error
21 here, I've got to correct that.
22 Mr. Swofford, Industrial Customers?
23 MR. VAN CLEVE: 15 minutes.
24 JUDGE MOSS: Kroger?
25 MR. KURTZ: No cross.

00160

1 JUDGE MOSS: FEA?
2 MR. FURUTA: Ten minutes perhaps.
3 JUDGE MOSS: Public Counsel?
4 MR. FFITCH: 30 minutes, Your Honor.
5 JUDGE MOSS: And Staff?
6 MR. CEDARBAUM: 45 minutes.
7 JUDGE MOSS: Then let's talk about Industrial
8 Gas, I guess you're last.
9 MR. FINKLEA: No questions, Your Honor.
10 JUDGE MOSS: All right, that completes my
11 matrix.
12 Mr. Van Cleve, you had nothing for Ms. Steel?
13 MR. VAN CLEVE: That's correct.
14 JUDGE MOSS: Okay, I had a blank, I've been
15 making zeroes and blanks.
16 And Federal Executive Agencies, also nothing
17 for Ms. Steel; is that right, Mr. Furuta?
18 MR. FURUTA: Yes, that's correct.
19 JUDGE MOSS: All right, that completes my
20 matrix.
21 All right, I'm going to, having failed in my
22 intention to bring my calculator with me to the Bench,
23 I'm going to take a brief recess and analyze some of
24 these numbers so that we can get some better sense of
25 who needs to be here when, and we will talk about that a

00161

1 little bit. And let's see, I guess we should go ahead
2 and -- well, I better do that first. I was thinking we
3 could go ahead and establish the order of witnesses, but
4 considering the situation with Mr. Hill, I will reserve
5 that until I've actually studied the math here a little
6 bit to make sure. I don't want to waste any hearing
7 time, I want to try to move us along as efficiently as
8 we can, so maybe give me ten minutes. We will come back
9 on the record at looking at the wall clock there we will
10 call it 25 after the hour.

11 MR. CEDARBAUM: Your Honor.

12 JUDGE MOSS: Which is actually going to be
13 about ten minutes.

14 MR. CEDARBAUM: Sorry to interrupt.

15 JUDGE MOSS: That's quite all right.

16 MR. CEDARBAUM: Before we go off the record
17 and in the spirit of keeping novel, I guess, in how to
18 proceed in this case, and you're going to do the math
19 and figure out exactly how much cross-examination time
20 we have, but just sort of looking at it, maybe you could
21 also consider while we're off the record the notion that
22 it appears that five full days of hearing would not be
23 necessary to complete cross-examination and that it
24 would be again helpful for us to prepare for cross that
25 if only four days were necessary perhaps the hearings

00162

1 start on Tuesday. We can argue motions Monday morning
2 as scheduled but then reconvene on Tuesday for the
3 evidence and then just finish it off that week. So if
4 you could just consider that while you're doing your
5 math.

6 JUDGE MOSS: Okay, I will take that under
7 consideration as well, and we'll see.

8 MR. KURTZ: Your Honor, can I make one
9 response to Staff's?

10 JUDGE MOSS: All right. Also, excuse me, I
11 am also mindful Mr. Furuta has a scheduling conflict on
12 Friday, so we have to take that into consideration as
13 well.

14 MR. KURTZ: Your Honor, just with respect to
15 Staff's tentative proposal to start the hearing one day
16 late on Tuesday, we have -- I am out of town and our
17 witness is out of town and we have sort of planned
18 around the original schedule, and so it would certainly
19 be more convenient for us if the Commission kept to the
20 original schedule.

21 JUDGE MOSS: Okay, I will take that into
22 account too.

23 Does anybody else have a comment that I
24 should take into account in connection with
25 Mr. Cedarbaum's suggestion? Are there any other things

00163

1 that I should be mulling over as I retire from the Bench
2 and cogitate on all of this?

3 Ms. Dodge.

4 MS. DODGE: We have also I think as well as
5 the witnesses have been planning on the original
6 schedule, and it was already unusual in setting hearings
7 on a holiday, and people have adjusted their schedules
8 accordingly, so I think that we would prefer to go
9 forward.

10 JUDGE MOSS: They might take me out and hang
11 me or something if plans have been cancelled and now
12 there was no need.

13 MS. DODGE: Rooms have been reserved and so
14 forth.

15 JUDGE MOSS: I'm sorry?

16 MS. DODGE: There has just been a lot of
17 arrangements made around the scheduling.

18 JUDGE MOSS: I understand.

19 All right, anything else?

20 We will be off the record then, and we will
21 try to get back together at again about 25 after the
22 hour by the wall clock there, which is a little slow,
23 but we will be off.

24 (Recess taken.)

25 JUDGE MOSS: Subject to the vagaries of my

00164

1 mathematical skills, I came up with a little over 24
2 hours of cross-examination time estimated, and that does
3 not take into account questions from the Bench. So I
4 think we are looking at four plus days, and it may
5 require the full five depending on how many questions
6 the Bench has, so I think we definitely need to start on
7 Monday.

8 As far as our witness order is concerned, the
9 cross-examination estimates for Ms. Steel and Mr. Lott
10 work out to roughly five and a half hours. It's a
11 little less than that, but I'm making some allowances
12 for the first day, which for some reason tends to go a
13 little slower. And then, of course, we also will have
14 some argument that morning with respect to motions, so
15 it looks to me that we probably will not get beyond
16 Mr. Lott on the first day, and so then we could go ahead
17 and plan on having Mr. Hill Tuesday morning.

18 Mr. ffitich, I think that would suit your
19 needs, your witness's needs.

20 MR. FFITCH: Yes, thank you, Your Honor.

21 JUDGE MOSS: Okay, so let's go ahead and have
22 Mr. Hill third. And then fourth, fifth, and sixth slots
23 I have just marked for intervener witnesses, and let me
24 turn to the interveners. As I recall the comments,
25 there's not a problem on Tuesday or Wednesday, is there?

00165

1 MR. KURTZ: The Kroger witness, Mr. Higgins,
2 would be available Tuesday afternoon or Wednesday,
3 preferably Wednesday.

4 JUDGE MOSS: And how about the Federal
5 Executive Agencies' witness?

6 MR. FURUTA: I believe my witness is arriving
7 Tuesday afternoon. It's possible he might be here at
8 the end of the day on Tuesday, but Wednesday would
9 probably work out better.

10 JUDGE MOSS: I wonder then if we could put
11 Mr. Schoenbeck after Mr. Hill.

12 MR. VAN CLEVE: That would be fine, Your
13 Honor.

14 JUDGE MOSS: Okay, so then he will be our
15 fourth witness. And why don't we, and I apologize, I'm
16 not mindful here of whether Mr. Selecky is the witness
17 for Federal Executive?

18 MR. FURUTA: Yes.

19 JUDGE MOSS: And so why don't we put
20 Mr. Higgins after Mr. Schoenbeck, it sounds like he will
21 be here a little earlier perhaps. And then we will put
22 Mr. Selecky sixth.

23 And then I was just going to follow the order
24 you gave me, Ms. Dodge, it would be the seventh, eighth,
25 ninth, and tenth witnesses would be respectively William

00166

1 Gaines, Luscier, Donald Gaines, and Swofford?

2 MS. DODGE: (Nodding head.)

3 JUDGE MOSS: Now in terms of our order for
4 cross-examination with respect to the Staff witnesses,
5 does the company have a preference with respect to
6 whether it cross examines first, last, or somewhere in
7 the middle?

8 MS. DODGE: I think we prefer to go first.

9 JUDGE MOSS: All right, so PSE will be the
10 first to cross examine the Staff witnesses.

11 And let's see here, how about you,
12 Mr. ffitch, do you have a preference as to whether you
13 go after the company or after the interveners?

14 I distinguish for those of you who have not
15 participated in our proceedings before, you will notice
16 that I sometimes will make some distinguishing remarks
17 with respect to Staff or Public Counsel and, of course,
18 the company. These parties do enjoy a special place in
19 the hearing in that Public Counsel is a statutory party,
20 Staff of course, and the company, so that's all that's
21 involved there.

22 So again, Mr. ffitch, do you have a
23 preference?

24 MR. FFITCH: No, Your Honor, we're fine to go
25 next after the company.

00167

1 JUDGE MOSS: All right, so Public Counsel
2 then will follow the company on the Staff witnesses.

3 And then in terms of the interveners, does
4 anybody have a strong preference, or can I just set an
5 order for you?

6 I'm not hearing anything, so I will just set
7 an order for you.

8 MR. BROOKHYSER: Excuse me, Your Honor, I
9 just might note that my need to cross examine may
10 disappear if I'm toward the end.

11 JUDGE MOSS: All right, since you're toward
12 the end of my list, that will work out. I'm just going
13 to go down my list here, and if anybody has a problem
14 with the order that I establish, let me know.

15 Mr. Finklea.

16 MR. FINKLEA: Well, Your Honor, we only have
17 very brief cross for Mr. Lott.

18 JUDGE MOSS: Yes.

19 MR. FINKLEA: And if it would be at all
20 possible for us to conduct that cross-examination first
21 thing Tuesday morning, it would accommodate some
22 conflicts I have.

23 JUDGE MOSS: That could be problematic,
24 because that could result in having to split the witness
25 between or would result in splitting the witness between

00168

1 two days, and I prefer not to do that.

2 MR. FINKLEA: That's fine, we will
3 accommodate, so it will be Monday afternoon?

4 JUDGE MOSS: It will be Monday afternoon, and
5 I could put you next after Public Counsel if that's your
6 preference.

7 MR. FINKLEA: That would be fine.

8 JUDGE MOSS: All right, so Industrial Gas
9 Users will follow Public Counsel. And then I'm going to
10 go back up and say how about Industrial Customers next,
11 and then Kroger, Federal Executive Agencies, and then,
12 let's see, we do have CCW on --

13 MR. BROOKHYSER: On Mr. Lott.

14 JUDGE MOSS: -- Mr. Lott, okay.

15 Have I missed anybody?

16 All right, so that will be the order on the
17 Staff witnesses.

18 On the Public Counsel witness, Mr. Hill, does
19 the company again prefer to go first?

20 MS. DODGE: Yes, Your Honor.

21 JUDGE MOSS: And with that, you also prefer
22 to go first on the other intervener witnesses? Or
23 actually you designated that you have no
24 cross-examination -- oh, with Mr. Schoenbeck you do.

25 MS. DODGE: Yes.

00169

1 JUDGE MOSS: So you prefer to go first?

2 MS. DODGE: Yes.

3 JUDGE MOSS: Okay, fine.

4 All right, let's see now, of course, Public
5 Counsel will not have any cross for its own witness, so
6 can we just follow that same order then for the rest of
7 you with the Public Counsel witness, Mr. Hill? That
8 would be IGU, ICNU, Kroger, FEA, well, and I'm naming
9 some of you who don't have cross, and CCW. All right,
10 we will follow the same order then.

11 MR. CEDARBAUM: Your Honor.

12 JUDGE MOSS: Oh, I'm sorry, I left Staff out
13 of that one, didn't I?

14 MR. CEDARBAUM: Yes.

15 JUDGE MOSS: All right, where would you
16 prefer to go, after the company?

17 MR. CEDARBAUM: That would be fine.

18 JUDGE MOSS: All right, Staff and then the
19 order that I indicated before.

20 And then on the intervener witnesses, does
21 Staff prefer to go directly after the company on the
22 other intervener witnesses?

23 MR. CEDARBAUM: Yes.

24 JUDGE MOSS: And then Public Counsel?

25 MR. FFITCH: Yes, thank you, Your Honor.

00170

1 JUDGE MOSS: All right, and then we will
2 follow the same order as appropriate for the remaining
3 interveners.

4 Now for the PSE witnesses, does Staff prefer
5 to go first?

6 MR. CEDARBAUM: We do.

7 JUDGE MOSS: Followed by Public Counsel?

8 MR. FFITCH: That's fine, Your Honor, thanks.

9 JUDGE MOSS: All right, and again we will
10 follow the same order for the interveners that I have
11 previously indicated.

12 MR. FINKLEA: Your Honor, in the interest of
13 efficiency, we have only questions for William Gaines.
14 If we could have a sense of whether that would be
15 Wednesday or Thursday, it would help us to be able to
16 pinpoint a day where we will be in attendance.

17 JUDGE MOSS: Okay, and I may just comment in
18 that regard, you may want to be monitoring things
19 because --

20 MR. FINKLEA: Yeah, we will by the bridge
21 line.

22 JUDGE MOSS: -- clearly we will move along,
23 and so if somebody says, oh, gee, Staff asked all my
24 questions, things can move along more quickly. So you
25 don't want to be taken by surprise.

00171

1 MR. FFITCH: Your Honor, on that Gaines
2 issue, I was going to ask if the company has any
3 objection to reversing the order of Gaineses, having
4 Mr. Gaines go first simply as a convenience. Mr. Hill
5 will be assisting -- will be present during the
6 Gaines/Hawley cross-examination, and just because of his
7 travel arrangements it might be more convenient if
8 that's the first company witness. Others may have other
9 concerns, but I just thought I would find out if that
10 was a possibility.

11 JUDGE MOSS: You're requesting of the company
12 that they consider putting Mr. Donald Gaines first
13 relative to Mr. William Gaines?

14 MR. FFITCH: Right.

15 JUDGE MOSS: How does the company feel about
16 that?

17 MS. DODGE: Your Honor, we would object to
18 that.

19 JUDGE MOSS: Well, it's your call, the
20 company gets to decide which order it wants to put its
21 witnesses on.

22 So, Mr. ffitich, you will just have to
23 accommodate to that.

24 MR. FFITCH: All right.

25 JUDGE MOSS: We could get to -- I would be

00172

1 surprised if we got to Mr. William Gaines before
2 Wednesday morning, but I have been surprised before, so
3 don't allow yourself to be surprised to your prejudice,
4 Mr. Finklea.

5 MR. FINKLEA: But we wouldn't be the first to
6 cross Mr. Gaines in any case, right, Staff would be?

7 JUDGE MOSS: Right, and Staff, well, for
8 Mr. William Gaines I think Staff indicated just 45
9 minutes. Public Counsel has indicated about an hour, so
10 we could move you to the end for the company witnesses
11 if you prefer.

12 MR. FINKLEA: It would just be for
13 Mr. William Gaines if we could be the last.

14 JUDGE MOSS: Well, I want to maintain the
15 same order.

16 MR. FINKLEA: Well, we don't have questions
17 for the rest, so we could be at the end for all of them.

18 JUDGE MOSS: All right, well, fine, then we
19 will just for the company witnesses, we will simply
20 change the order and this may help you out, Mr. Finklea.
21 It will be Staff, Public Counsel, and then Industrial
22 Customers, Kroger, FEA, CCW, IGU. And if you have taken
23 notes of the cross-examination times, Mr. Finklea, you
24 can do the math as well as I can, and I won't try to do
25 this. In fact, you can probably do it better than I

00173

1 can. But again, if you monitor and are in a position to
2 get here within an hour or something, then perhaps that
3 will work well for you.

4 MR. FINKLEA: We appreciate that, Your Honor.

5 JUDGE MOSS: All right, I think that
6 completes what I had in terms of making arrangements for
7 witness order, cross-examination order, and estimates of
8 cross-examination time, so I'm about prepared to move on
9 to the exchange and marking of exhibits, but let me just
10 ask since I have been surprised with novel suggestions
11 several times this morning if there are any other points
12 we need to take up before I move on to that phase of our
13 pre-hearing conference.

14 MR. CEDARBAUM: Was there going to be other
15 business after that phase?

16 JUDGE MOSS: Oh, yeah, we have other business
17 after the exhibit exchange and marking.

18 MR. CEDARBAUM: I can wait then, it's all
19 right.

20 JUDGE MOSS: All right, then what I want to
21 do then is I have pre-distributed the preliminary
22 exhibit list. I will want to conduct this exercise off
23 the record, give Ms. Kinn a break from all of this
24 transcribing, and then we will come back on the record
25 once we have completed that, and I will memorialize the

00174

1 results of our efforts in a few minutes instead of the
2 45 minutes or an hour it's going to take to do the
3 exhibits, so we will be off the record.

4 (Discussion off the record.)

5 JUDGE MOSS: In the course of our marking of
6 the exhibits, a point has come up that we need to
7 discuss on the record. Ms. Dodge has raised to me the
8 question of my understanding of the reservation of
9 exhibits numbers for exhibits that may come in next week
10 as opposed to being exchanged today. It had been my
11 understanding that we were doing that in most part to
12 accommodate the fact that there were certain outstanding
13 responses to data requests that have not been furnished
14 due to timing, the timing circumstances of the case. So
15 that is what I had in mind, but -- and I will say
16 generally that it is my practice to have this final
17 pre-hearing conference, and indeed it is a practice that
18 we follow in all cases, to have this final pre-hearing
19 conference.

20 Now the exhibits that we exchange today, as I
21 have previously explained in other proceedings, it's not
22 iron clad in the sense that if someone has a good reason
23 for not producing something today that they intend to
24 use in cross-examination, then certainly to the extent
25 it's not otherwise objectionable, it may be admitted.

00175

1 And I extend that rule to everyone, because occasionally
2 things will come up, and you may discover the need to
3 use an exhibit or document that you had not anticipated
4 by the time of the final pre-hearing conference.

5 Now subject to those two thoughts, I think
6 Mr. Ffitch and Mr. Cedarbaum both indicated they wished
7 to have a word on this subject.

8 Mr. Cedarbaum, go ahead.

9 MR. CEDARBAUM: I agree with what you just
10 said. We have made an effort to, based on the
11 information we have, to provide as many exhibits as we
12 can under the very difficult time constraints of the
13 case, having just gotten the company's rebuttal case
14 less than three days ago. Our intent is to try to limit
15 any additional cross-examination exhibits to responses
16 to data requests that are outstanding, but there may be
17 a small number of additional exhibits that don't fall
18 into that category that we may also offer, and that's my
19 understanding of -- and that would be okay based on my
20 understanding of what you just said and also the
21 practice that we have had before you and other ALJs.

22 So that's our understanding, that this wasn't
23 limiting to only data request responses to come, but
24 that there might be additional exhibits as well. Again,
25 we're not trying to hide the ball here, we just are

00176

1 operating under difficult time constraints, and things
2 may just come up. We can certainly as they come up if
3 they fall into the category of non-data request
4 responses, we will do our best to predistribute those
5 prior to the witness taking the stand, but that's just
6 the best we can do.

7 JUDGE MOSS: Mr. ffitich, anything to add?

8 MR. FFITCH: Your Honor, we would simply
9 agree with your characterization of the process that
10 we're about today in terms of making best efforts to
11 pre-identify exhibits and also your description of the
12 availability of the opportunity to offer additional
13 material if there's a cause for not producing it
14 earlier. That has been the practice, and so we agree
15 with your characterization. We have made our best
16 efforts to provide a complete list so far, but as
17 everyone knows, we are under a very tight schedule in
18 this case, and there may be things that develop in the
19 final preparation of cross-examination that we would
20 want to bring forward that are in addition to the
21 outstanding data requests. I believe that I would just
22 echo everything Mr. Cedarbaum said and not prolong this
23 discussion. I would fully agree with his statements
24 that he just made.

25 JUDGE MOSS: Prior to hearing from the

00177

1 company, does anybody else have a comment?

2 I will give the company an opportunity if
3 they have something to say on this subject matter before
4 I have a few more well chosen words.

5 MS. DODGE: Your Honor, your remark that
6 occasionally circumstances will arise where perhaps an
7 exhibit is missed and someone wants to bring it in and
8 that makes sense and there's good reason, I understand
9 that that is something that will be looked at. But I
10 think there's significant room for abuse to take that
11 what is meant to be a limited exception to avoid really,
12 you know, terrible hardship say if someone just
13 overlooks something.

14 My understanding of what Public Counsel and
15 Staff are talking about is potentially far broader, and
16 I'm quite concerned that there's room for a lot of abuse
17 there. We're exchanging exhibits, the witnesses will
18 have a chance to look at those in advance. The idea is
19 that everyone does it at once. And if in effect certain
20 parties get multiple rounds to put in additional
21 exhibits after the fact, I think there's an undue
22 advantage that prejudices the witnesses' ability to
23 prepare, and I'm quite concerned about it.

24 JUDGE MOSS: All right, well, I think I do a
25 pretty good job of running these hearings in such a way

00178

1 that nobody's interests get prejudiced, Ms. Dodge. I
2 don't hear any hint or suggestion of abuse. I think
3 Public Counsel and Staff have appeared before me many
4 times and are familiar with my practices and beliefs
5 about this. What I hear them saying is that they
6 understand that and that they certainly are not
7 intending to try to use the circumstances of this case
8 to spring a surprise upon you or one of your witnesses,
9 and I am confident that that is not something that is
10 contemplated.

11 Circumstances come up during the heat of the
12 hearings sometimes that people may feel that someone has
13 taken advantage. Well, I can certainly hear about that
14 if it comes up and will certainly rule appropriately
15 under whatever circumstances are described and
16 acknowledged, but I don't anticipate any problem. I
17 have had an excellent experience with all members of the
18 bar who have appeared before me over the course of the
19 last five years that I have been here at the WUTC, so I
20 feel very comfortable with where we are on this. I
21 don't think there will be the type of abuse you are
22 concerned about.

23 I do have a couple of comments in further
24 elaboration. One is, as Mr. Cedarbaum suggested, it
25 certainly is also the practice that when an exhibit that

00179

1 is somehow missed during our final pre-hearing
2 conference is recognized as one that a party wishes to
3 use, the expectation is that they will bring that
4 immediately to the attention of the sponsoring party and
5 everybody else as far as that's concerned and make a
6 conscientious effort to ensure that everyone has a copy.
7 Oftentimes it's a data request response or something
8 that everybody has anyway.

9 And so I'm sure Mr. Cedarbaum and Mr. ffitich
10 and anybody else who at the last moment as it were
11 identified an exhibit would do that at the earliest
12 possible moment. That is the expectation, and everyone
13 understands that that's my expectation. And again, I
14 have had excellent experience with all of you counsel
15 living up to those sorts of expectations. That's what
16 works best, and you all seem to do a good job. And, of
17 course, the same thing is true for the company, the
18 company may find itself in the position of identifying a
19 late exhibit, and, of course, the same principle extends
20 to you.

21 Perhaps in a case that is proceeding at a
22 more deliberate pace, this one is proceeding at a rather
23 rapid pace, I might tend to be a little stricter. But
24 under the circumstances of this expedited proceeding
25 particularly, I have to be a little more flexible with

00180

1 everyone, and so I think that's why we're having this
2 discussion now. And I understand the concern is
3 heightened because of the circumstances we're in, but
4 again, I think it's a best efforts basis, and I think a
5 best effort has been undertaken.

6 So unless somebody else has a further comment
7 on the subject, we will go back off the record and
8 resume our exhibit numbering.

9 Okay, let's be off the record.

10 (Discussion off the record.)

11 JUDGE MOSS: We have marked for
12 identification Exhibit Number 207, which is being
13 tendered for identification by the Industrial Customers
14 of Northwest Utilities. This is a composite exhibit
15 that consists of is it all the testimony or just
16 portions?

17 MR. VAN CLEVE: Your Honor, it is all of the
18 testimony and most but not all of the exhibits.

19 JUDGE MOSS: This consists of all of the
20 pre-filed direct testimony of Mr. James A. Heidell that
21 was pre-filed in this docket number for purposes of the
22 general case as opposed to the interim case. And as
23 Mr. Van Cleve has described it then, it includes the
24 testimony and most but not all of the exhibits, and he's
25 tendered it here as a composite exhibit. Mr. ffitich

00181

1 indicated off the record that he wishes to place some
2 comment on the record at this time regarding this
3 exhibit, and so I am offering him the opportunity to do
4 so.

5 MR. FFITCH: Thank you, Your Honor. Public
6 Counsel intends to file a motion to strike or in the
7 alternative to require recomputation and refiling of
8 designated portions of Mr. Heidell's exhibit. The
9 grounds for that motion would be that the exhibit
10 violates prior Commission orders with respect to cost of
11 service methodology. We raise it at this time, we
12 understand that Mr. Heidell's exhibit is a general case
13 exhibit, however, it is being referred to in this
14 proceeding in the interim case. It's been identified
15 here as a cross exhibit, and we wanted to raise the
16 issue at this time, because we felt it was appropriate
17 rather than sitting on it until later. Since it is
18 becoming a matter of discussion in the interim case, we
19 wanted to put our motion forward at this time, so we
20 will be filing that as soon as we can. I believe that
21 we could file that by tomorrow, Your Honor. That would
22 be our goal. We are not objecting to the use of this
23 exhibit as a cross exhibit, per se, but I did want to
24 let you know our intentions with respect to the Heidell
25 exhibit.

00182

1 JUDGE MOSS: And, of course, I won't be
2 making any evidentiary rulings today because of the
3 purposes of the process and procedure today, and I
4 wouldn't want to do anything substantive in that regard.
5 And as I understand your comment, Mr. ffitich, the motion
6 to strike will be in connection with the proposed
7 pre-filed testimony exhibits of Mr. Heidell insofar as
8 they relate to the general case. In so far as these
9 papers are offered as a cross-examination exhibit, of
10 course, that's an entirely different purpose, and I can
11 see some problems that might develop in this connection,
12 so I think it is prudent for you to go ahead and put
13 that motion in early rather than later. I appreciate
14 you bringing it to our attention.

15 And, of course, the parties may wish to
16 confer among themselves on the subject matter. And, of
17 course, the company at hearing may have an objection to
18 the use of this exhibit anyway, or someone else may have
19 an objection to it. I don't know what will happen in
20 connection to that, of course, until we get there and
21 hear the argument to the extent there is any, that sort
22 of thing. Probably enough said on this at this
23 juncture.

24 Does anybody else wish to comment on this
25 subject matter before we go back off the record and

00183

1 resume numbering exhibits?

2 MR. CEDARBAUM: Yes, Your Honor, I guess just
3 also as a forewarning, the Staff will, as we discussed
4 earlier with respect to other potential motions to
5 strike, we will be filing our motion, I guess it's
6 really an objection, to the admission of the testimony
7 and exhibits. We will try to do that by noon tomorrow.
8 We will also be including in that motion what's been
9 marked for identification as Exhibit 207 probably for
10 some similar reasons as Mr. ffitich. I think that motion
11 would also be directed to what's been marked for
12 identification as Exhibit 168, which is a cross exhibit
13 from the FEA. Those also involve workpapers of Jim
14 Heidell. So just fair warning on that I guess.

15 JUDGE MOSS: All right, well, I do appreciate
16 the parties bringing this to everyone's attention so
17 that everybody can be prepared for this and we don't
18 have to spend, hopefully, don't have to spend an undue
19 amount of time at hearing. And clearly I don't want to
20 get into the substance of this today, I don't want to
21 hear anything about it, but I do wish to encourage the
22 parties to confer among themselves. Perhaps there is
23 some unidentified problem or what have you that can be
24 worked out in advance and may facilitate things at
25 hearing, so I just want to encourage you all to do that,

00184

1 or we'll take it up in the hearing.

2 Mr. Van Cleve, did you have something?

3 MR. VAN CLEVE: Your Honor, in the event that
4 we don't work it out, is this an issue that you would
5 take up on Monday morning?

6 JUDGE MOSS: It's a little hard to say. Of
7 course, typically we take up objection to
8 cross-examination exhibits with the witness on the stand
9 and so that we understand the circumstances fully in
10 terms of what the exhibit is being tendered for, and it
11 may be necessary to defer any ruling of this sort until
12 that moment in time. I guess it will come up first in
13 that sense, if it does come up, with respect to
14 Mr. William Gaines' cross-examination where we have
15 Mr. Furuta's exhibit marked for identification 168 and
16 then perhaps again in connection with Ms. Luscier's
17 cross and your tender if that's something you're going
18 to follow through with.

19 Now, of course, again, we're marking things
20 for identification today, so you may have some
21 discussion off the record among yourselves and decide
22 that this isn't the prudent course of action, or you may
23 decide that it is and go forward, and we will take up
24 the objection at the appropriate time.

25 Typically motions to strike, which I do like

00185

1 to see filed in advance of the hearing for some of the
2 reasons I indicated earlier, concern the pre-filed
3 direct response and rebuttal testimonies as opposed to
4 cross-examination exhibits. But this case is becoming
5 full of novelty, and I am prepared to take up motions
6 and appreciate the forewarning on the potential
7 objections to cross-examination exhibits as well. And
8 so that will be good to have that heads up in advance as
9 it were.

10 Anything else?

11 All right, let's go back off the record.

12 (Discussion off the record.)

13 JUDGE MOSS: I didn't really mark the clock,
14 but I think for about the past 90 minutes or so, 60
15 minutes anyway, we have been in the process of
16 exchanging cross-examination exhibits and marking those
17 for identification. We have completed that process. I
18 see no reason to memorialize the exhibits and numbering
19 on the record orally. I will in lieu of that prepare an
20 exhibit list that includes the cross-examination
21 exhibits, and I will distribute that to all parties. At
22 some point, of course, we will get to the business of
23 offering and admitting exhibits, and at that point in
24 time, the various numbers can be acknowledged as part of
25 our transcript record. So that's how we will handle

00186

1 that.

2 We have several other essentially procedural
3 matters to take up in the next 20 minutes or so. I hope
4 to have us out of here by about 12:30. One matter that
5 came up lately off the record concerns the handling of
6 various comment and letters that have been tendered to
7 the Commission through its secretary. These include, as
8 I understand it having not seen them, primarily letters
9 from interested members of the public, I imagine many of
10 whom are rate payers, and also there is I am told a
11 significant number of letters from Puget Sound Energy
12 shareholders who have an interest in the outcome of this
13 proceeding as well whether or not they be rate payers in
14 addition.

15 Public Counsel will correct me if I misstate,
16 but just to summarize my understanding, Public Counsel
17 has expressed a concern perhaps or at least a
18 recognition that the letters from shareholders seem to
19 be in a separate category from the normal or ordinary
20 commentary that public counsel assembles for purposes of
21 offering in connection with the public comment portion
22 of our hearing proceedings, which are in this event
23 scheduled for Thursday evening. I believe that's the
24 21st. Public Counsel has suggested that perhaps the
25 company may wish to consider taking a look at the

00187

1 Commission's public files and seeing what's in there and
2 whether the company wishes to offer that commentary from
3 the shareholders to the extent in support of its case.

4 I believe the Commission for its part subject
5 to objection from parties, it would have to be ruled
6 upon, would be open to that. The Commission has
7 previously indicated a concern that parties be highly
8 conscious of the rule against ex-parte contacts and has
9 expressed a heightened concern in light of the highly
10 visible nature of the case and the highly active
11 shareholder group, that everyone be fully aware of the
12 ex-parte rule and adhere to it, and the assurances have
13 been from the parties that that was the case, and I
14 think the Bench feels comfortable with that situation.

15 At the same time, having expressed that
16 concern, the Commission also recognized through entry of
17 a notice I believe it was that the Commission welcomes
18 comment from the public, from all sectors of the public,
19 whether it be shareholders of the company, rate payers
20 of the company, or people who just have an interest for
21 whatever reason.

22 And so the appropriate way for that material
23 to become part of our record consistent with the
24 ex-parte rule is those materials are materials that have
25 been filed through the secretary of the Commission but

00188

1 which have been withheld from review by the
2 Commissioners or myself or anyone involved in the Bench
3 efforts in this proceeding. But as typically occurs, we
4 can have those as part of the record and look at those
5 and read those letters, comments, what have you, if a
6 party chooses to offer them, but that is up to the
7 parties to make that decision.

8 Public Counsel is not bound to my knowledge
9 by law or rule to extract those documents from the
10 Commission's public records and tender them. Although
11 that is a common practice, there is no legal requirement
12 that it be done. Similarly, so far as I know, there is
13 no legal or rule prohibition against any other party
14 going through the Commission's records and finding
15 material that may be pertinent to the proceeding and
16 tendering that. And again, parties surprise me from
17 time to time, but sitting here thinking in the abstract,
18 it's hard to see how that would be objectionable. These
19 are official records of the Commission. I suppose we
20 could even take notice of them if it came to that, to
21 the extent relevant, of course. So I hope I have been
22 clear on this point.

23 Perhaps in light of the sensitivity of the
24 matter, I should have prepared some remarks instead of
25 shooting from the lip, as it were. But does anybody

00189

1 have any questions or comments or concerns they wish to
2 express about this subject before we move on?

3 MR. FFITCH: Well, I just wanted to state for
4 the record, Your Honor, I appreciate the comments, that
5 we certainly would not have a problem with those
6 shareholder letters being presented in the same fashion
7 as the customer letters. My only concern was that my
8 office is acting as a I think suggested a rate payer or
9 customer advocate in this proceeding, and it doesn't
10 seem consistent with that role for us to be formally
11 offering an exhibit consisting of letters from owners of
12 the company who have a very different interest from the,
13 in many cases, from the mass of customers. So I don't
14 have a problem with them being offered by another party,
15 but it just seemed to me that the company might want to
16 take that on as a more appropriate role rather than
17 having that be a Public Counsel task, if you will.

18 JUDGE MOSS: Okay, thank you.

19 Ms. Dodge, did you have a comment?

20 MS. DODGE: Your Honor, since we're on the
21 record, I will just note that I don't know that the
22 company agrees that shareholder and customer interests
23 are not aligned in some respects, but that's not really
24 the point of the discussion in terms of being able to
25 offer some of those comments as an exhibit.

00190

1 JUDGE MOSS: Sure.

2 MR. FFITCH: I would agree there are
3 sometimes a coincidence of interest as well.

4 JUDGE MOSS: All right, thank you.

5 Anything else on this subject matter?

6 All right, a few other things. One question
7 I have, and this will be of interest to our reporter as
8 well, we had some discussion at our last pre-hearing
9 conference regarding the transcript. And as I recall,
10 the way we left things was PSE agreed that it would take
11 the initiative to request a daily transcript. Now there
12 are two options on that, and I believe we discussed them
13 at that time perhaps off the record, which was that we
14 could have either what's called the real time transcript
15 or the official daily transcript, the difference being,
16 as I understand it, those parties who have the software
17 and hardware capability to hook up to the reporter's
18 equipment and actually view the transcript as she
19 produces it here in the hearing room will then have that
20 daily transcript on the hard drive of their portable
21 computer, and that those parties who don't have that
22 capability can be furnished at the end of the day with a
23 diskette that would contain the daily transcript in an
24 ASCII format. And the Bench, for your information, does
25 have the hardware and software capability and so can

00191

1 receive its daily transcript in that fashion easily
2 enough.

3 The daily transcript that is the so-called
4 real time is not the official transcript of the
5 proceeding. But we have had experience with this once,
6 and it worked very well in another rate proceeding,
7 interim rate proceeding. You can refer to it in
8 argument, in brief, what have you. You may find the
9 occasional homonym problem or typographical problem.
10 These are usually obvious and can be corrected for
11 purposes of written or oral argument. If it later
12 turned out in a review of the official transcript, which
13 is basically one that has been proofed and cleaned up,
14 that there was a problem, then, of course, we would have
15 to correct it, but chances are that's not going to come
16 up.

17 The other option is the so-called official
18 daily, which is actually next day. And the difference
19 then is that somebody takes the task of going through
20 that and correcting those typographical problems that
21 creep into this exercise.

22 So I think Ms. Kinn can confirm, but I think
23 it's important for you to know in advance, isn't it,
24 Ms. Kinn, which it's going to be?

25 THE REPORTER: Yes.

00192

1 JUDGE MOSS: Let's go off the record for a
2 minute.

3 (Discussion off the record.)

4 JUDGE MOSS: All right, we discussed briefly
5 off the record some of the technological innovations
6 that are available to us, and Ms. Dodge described that
7 she has had some interaction with the reporting service
8 and has come to understand that the transcripts for
9 Monday through Wednesday will be official versions
10 available on Friday on an expedited basis, and then that
11 the Thursday and Friday portions will be available the
12 following Monday. The parties have all indicated that
13 that satisfies their needs given the briefing schedule,
14 and so that is what we will do.

15 And I would just add that we all appreciate
16 the company's willingness to take the laboring oar in
17 expediting and coordinating this effort.

18 I had said we might get out of here by 12:30,
19 but I see that it's 12:20, and I'm going to raise a
20 subject that may take a bit more time, confidentiality.
21 As I look at the pre-filed record in this proceeding, I
22 see a great deal of material that has been designated as
23 confidential. In fact, I brought my notes, I will share
24 with you that I have had some conversation with the
25 commissioners about this subject. They have been on

00193

1 travel status this week in connection with other
2 important Commission business. But in that conversation
3 yesterday, they expressed to me as well a concern with
4 the amount of material that has been designated as
5 confidential because of the problems that raises in
6 several regards.

7 It raises a difficulty in the hearing itself
8 in that we typically will have people in the room who
9 are not privy to the confidential information. And, of
10 course, we have to worry about our transcript, it's a
11 public document, so even if everyone in the room is
12 privy, we have to ask questions in a somewhat
13 constrained fashion at times or designate portions of
14 the transcript as confidential or otherwise handle the
15 matter with certain logistics that are frankly
16 cumbersome.

17 Another problem is that it not only hampers
18 the questioning and the ability to develop a record that
19 has clarity and lucidity, it also hampers our ability at
20 the time we write the decision, because we have to be
21 guarded in terms of making reference to the testimony or
22 specific aspects of the testimony.

23 So what we need to do, I think, is something
24 that the parties have begun to do a little bit, and that
25 is to reduce the volume of material as to which

00194

1 confidentiality has been asserted. I will cite a couple
2 of examples. I know Staff worked very, very hard to get
3 its testimony filed on time and as part of the logical
4 problems it ran into was unable to provide both a
5 redacted and an unredacted version at the time of
6 filing, and so did provide the testimony in a full
7 confidential format. Later Staff was able to furnish
8 everyone a copy of that same testimony with only certain
9 portions indicated as confidential. Public Counsel also
10 provided its testimony in the fashion that indicated
11 those select phrases, numbers, what have you, that
12 apparently had some implications in that regard. Today
13 Ms. Dodge indicated with respect to the exhibit that
14 ended up being marked 167-C that there really were only
15 a couple or three numbers on that document that
16 confidentiality is being asserted as to as opposed to
17 the entire document.

18 I am open to suggestions about how we handle
19 this, but I think it is important that we all make a
20 conscientious effort to limit the assertions of
21 confidentiality to the extent it is possible to do so.
22 Now I recognize there is such a thing as a legitimate
23 trade secret, for example, that needs to be protected
24 from public disclosure. There is sometimes a number
25 that is a forward looking number or sufficiently

00195

1 contemporaneous with respect to, for example, the
2 company's business operations that there is a high
3 degree of sensitivity about that number being public.
4 Typically, however, there comes a point in time when
5 such numbers no longer need to be protected, and a prior
6 assertion of confidentiality can be lifted, or on
7 further consideration and consultation, it can be
8 determined that the matter is not sufficiently sensitive
9 that it needs to be protected in that fashion.

10 Having said all that, let me just ask if the
11 parties might wish to comment on that, and I will turn
12 first to the company, because the simple practical fact
13 of the matter is most of the information in a case such
14 as this comes from the company initially at least, and
15 it is the company asserting confidentiality, so let me
16 ask you to speak to that.

17 MS. DODGE: Your Honor, I think there's
18 probably more confidential designation in this case
19 because of the nature of the case, which is looking at
20 the company's current financial situation and its
21 short-term forward projections, and so it's not stale
22 yet. The company is trying to be careful with, for
23 example, projections that were made, and frankly I'm
24 getting my data requests mixed up if I do between this
25 and a couple of other proceedings, but I know, for

00196

1 example, that we have released projections that were
2 marked confidential in the past, say two years ago or in
3 other dockets that may have been stamped confidential at
4 that time. We have lifted those confidentiality
5 provisions where that makes sense. We have also tried
6 to be very careful. I don't know in our rebuttal
7 testimony that almost anything was marked confidential.
8 We have tried to be very careful about that.

9 It's tricky when, for example, the other
10 parties are responding or putting their own numbers
11 together and they're using company data. For example,
12 that was the case with 167, it's really Mr. Schoenbeck's
13 response, and he incorporates a few numbers. I didn't
14 take it that Mr. Schoenbeck felt that his text was
15 confidential. He really just tried to protect the
16 company's numbers, and that's all we're needing to carve
17 out. The difficulty is that there are tables full of
18 numbers, there are, you know, numbers here and there in
19 text, and it does start to depend a little bit on
20 context and what is that number and what's the context
21 for the number.

22 JUDGE MOSS: Well, I think that -- well, let
23 me just ask first if others wish to comment on this
24 subject matter before we move back to my comments.

25 MR. CEDARBAUM: Just briefly, Your Honor, we

00197

1 have the same concern about the amount of confidential
2 information, especially with respect to when Staff takes
3 the stand and is cross examining, we want those
4 witnesses and all witnesses to be able to feel
5 unrestrained by worrying about confidential information,
6 to be able to answer questions fully and accurately. If
7 it's necessary to have a closed session to allow that to
8 happen, we would want that to happen. We would like to
9 avoid it obviously, but we don't want to err on the side
10 of the testimony not being complete and full.

11 I guess my suggestion -- and you're right
12 also that we took our cue from the company. If they
13 designated something confidential, we preserved that
14 confidentiality. And if we had a question about it,
15 quite honestly we erred on the side of caution and
16 designated it confidential. It's true, however though
17 that looking at Mr. Gaines' rebuttal testimony, there
18 may be information in Ms. Steel's and Mr. Lott's
19 testimony that is not confidential.

20 My suggestion would be for the company to go
21 ahead and review that testimony, and if we have
22 designated something confidential that isn't, we can
23 create a new exhibit that takes the -- removes the
24 redacted bolding of the -- or the blacking out of that
25 information. So we're amenable to doing that, but we

00198

1 really need to rely on the company to let us know.

2 JUDGE MOSS: Thank you.

3 Anybody else want to comment on this subject?

4 MR. FFITCH: Your Honor, just for the record,
5 we strongly support the Commission's direction in this
6 area, and I think we have had a growing concern
7 generally with the increasing amount of confidential
8 material in utility proceedings. I think it bears
9 remembering that this is a public proceeding. There is
10 an intense public interest in these matters. It is the
11 intention I think of the state law of Washington that
12 the regulation of utilities be conducted in public.

13 And I think the other point to make here is
14 perhaps, Mr. Cedarbaum just kind of touched on this, as
15 a practical matter, there's I think a lot of reliance on
16 the company here to make a good faith narrow
17 designation. The practical logistics of these
18 proceedings are that it becomes very time consuming if
19 other parties are presented with large amounts of
20 confidential information in a very large number of
21 different documents and data requests and testimony and
22 so on, the physical reality of trying to challenge all
23 of those through motions and bring all of that to the
24 Commission becomes difficult, and there is kind of a
25 default that develops where because we have signed

00199

1 protective orders, we are able to go forward and use the
2 material. But unfortunately, that ends up being a
3 disservice to the openness of the process and leads to
4 the kind of problems that you have identified for the
5 hearing and for the transcript and for the general
6 public.

7 So I think it's good to kind of take a hard
8 look at this point and see if we can get back to fewer
9 designations. This is a regulated monopoly. This is
10 not a company that is in direct competition with other
11 companies, especially with regard to the issues that are
12 before the Commission right now. And in general, the
13 expectation should be that the information about the
14 company's business is public due to the nature of the
15 company and the nature of the regulatory scheme.

16 JUDGE MOSS: I will remark that I think your
17 comments are well taken, Mr. ffitich.

18 Does anyone else wish to comment on this
19 subject matter?

20 Mr. Finklea.

21 MR. FINKLEA: Well, just a note of optimism,
22 I am also involved in the Olympic matter, and I will
23 note for the record that we did have a lot of
24 confidential information during the discovery process,
25 but in the hearing itself, we were able to work it out

00200

1 so that we did not ever have to have a closed session.

2 JUDGE MOSS: Thank you, appreciate a note of
3 optimism is always a refreshing thing.

4 MS. DODGE: Your Honor, may I just say one
5 word with respect to Mr. ffitich's comments?

6 JUDGE MOSS: Sure.

7 MS. DODGE: Just I will just observe that the
8 utility world is a more complicated world now than it
9 was, and when you have wholesale markets and you're
10 trading for future purchases and so forth, it's not to
11 anybody's benefit at times, anyone sitting here in terms
12 of the customers for potential trading partners to know
13 all the ins and outs of what the company may be wanting
14 to buy when, for what price, and things like that. All
15 it does is potentially lead to higher prices for
16 everybody, and so that's part of what's going on is that
17 there's a whole nother realm of stuff that now is going
18 on that is quite sensitive, not as much to people
19 sitting here as much as it is to people who may be, you
20 know, looking to make bids or trade with the company.
21 So it's complicated, and the company I believe is trying
22 in good faith to draw that line.

23 JUDGE MOSS: And again, as I have said at
24 various other -- with respect to various other points, I
25 have no reason to think anyone is acting other than in

00201

1 the highest good faith and cooperative effort.

2 I do think Mr. Cedarbaum's suggestion that as
3 you continue and complete your preparations for the
4 hearing next week and you're reviewing your own material
5 and material filed by others that you have in mind the
6 comments today and that to the extent possible,
7 feasible, remove confidential designations, or limit
8 them to the minimum necessary to protect from some
9 unfortunate result. We may revisit this subject next
10 week, I don't know.

11 I do again want to emphasize that the
12 commissioners have expressed their own concern about
13 this, and some of the comments consistent with what
14 Mr. ffitich said in terms of the public process and what
15 we're about here. I mean we do have to be cognizant of
16 that in our mission as well. So I feel like I have said
17 enough about this and that everyone understands well the
18 needs of the case and will do their best to limit this
19 problem. Hopefully things will work out as they did in
20 the other case that Mr. Finklea mentioned.

21 All right, two final matters I want to take
22 up, and these actually relate to the general case, but I
23 just wanted to sort of give everybody a heads up today
24 and get you started thinking about these things perhaps
25 as soon as the end of the interim phase. Or if you have

00202

1 a really sharp and attentive mind and don't sleep at
2 night, you can even think about it now.

3 One is the issues list. I do think it's
4 important in connection with the general proceeding,
5 which is a far broader and more complex matter than the
6 interim proceeding in some ways, that we develop a
7 detailed comprehensive issues list in outline format. I
8 view such an issues list as a dynamic document. It can
9 change as we approach various evidentiary hearing
10 phases.

11 We have two evidentiary hearing phases in the
12 general case, one concerning the company's pre-filed
13 direct, and then there will be a second for the Staff
14 and interveners and the rebuttal. As we approach those
15 two phases and indeed as we pass through them, any sort
16 of issues list that's in the works will, of course,
17 change, or I expect it to either by the addition of
18 issues, the elimination of issues, the refinement of
19 issues, what have you. So I say that so that no one
20 gets the impression that we're going to require a graven
21 in stone sort of issues list at an early stage and then
22 not allow deviation from that as things change through
23 the case. But I do want you to start thinking about
24 that at the earliest opportunity.

25 I want the parties to take the laboring oar

00203

1 on pulling together some sort of an agreed list. That's
2 not to say that every party has to have an interest in
3 every issue. Certainly that won't be the case. But as
4 Staff prepares for the company's cross-examination of
5 the company's case, of course Staff will identify
6 issues. Public Counsel will identify issues. Other
7 parties will. And so this can be something that's a
8 work in progress. We will revisit this issue sometime
9 after the interim phase, and we may set up a telephone
10 conference, or I may send out a notice or something to
11 get you started in a more formal way on this. What I
12 want is that the parties get together without me at some
13 point in time to formulate this, and I will put a date
14 on that or ask you all to agree to a date for that so
15 that it works for everyone.

16 And in connection with that, I will tell you
17 quite frankly that I have had mixed results with this in
18 the past, and sometimes it's proven to be quite onerous
19 from my perspective, so that's one reason I want to
20 raise it now early, and I also want to raise to you that
21 I have made arrangements so that if you wish I can have
22 one of our other judges work with you as a process
23 facilitator, and this would not be for purposes of
24 resolving substantive issues in the case, but simply for
25 helping move the process issues along, that is to say

00204

1 the development of the issues list. So that's something
2 I can do and offer to do if that will be helpful. And
3 again, we will revisit this later.

4 And finally, in connection with that I should
5 say, we also, of course, stand prepared to offer you the
6 services of a mediator through the WUTC if that's
7 something that will help you in terms of stipulating
8 facts, stipulating issues, stipulating the whole case,
9 whatever. So that's another I will call it a service
10 that we make available. Of course, you are also free to
11 pursue ADR on your own with private persons or however
12 you want to do it if that's something you want to do.

13 Anybody want to comment on that subject
14 matter before I move on to the final point that I wanted
15 to make today?

16 Mr. Cedarbaum.

17 MR. CEDARBAUM: I guess I was curious as to
18 -- I know you haven't set any dates for when this issues
19 list is going to be due, but can you just state at what
20 phases along the way?

21 JUDGE MOSS: I would like to have something
22 prior to the first round of evidentiary hearings. And I
23 realize at that point that's pretty early, but you at
24 least will have identified a number of issues going in
25 that you want to examine, and it may be at the end of

00205

1 that process they won't be issues anymore. And you will
2 certainly identify additional issues at the end of that
3 first round of examination. But I think it would be
4 best if the process could get started before even that
5 first round of evidentiary hearing, so quite frankly, I
6 will need to look at the calendar to give you a better
7 sense of what I had in mind in terms of time, but that's
8 sort of generally what I had in mind.

9 MR. CEDARBAUM: Well --

10 JUDGE MOSS: As things begin to gel I guess
11 is what I'm thinking. By that point in time, you will
12 be through your initial discovery, you will be
13 formulating your cross-examination, so.

14 MR. CEDARBAUM: And I guess this is another
15 novel idea of how to proceed with the case. I think the
16 Staff's preference would be to have that kind of an
17 issues list formulated, and each party can be working on
18 their list for that, but have it presented after the
19 cross-examination, because there will be then that
20 narrowing of issues potentially that I think would
21 assist in the creation of that list. So if the
22 Commission is going to require that, our suggestion
23 would be that it be a post hearing development of an
24 issues list rather than a pre-hearing development of an
25 issues list.

00206

1 JUDGE MOSS: Well, I will take your thought
2 back for further discussion internally. I will say
3 this, there is some advantage to doing it in advance,
4 and that is that it gives the Bench a road map of sorts,
5 and that's helpful. Pre-hearing briefs serve the same
6 function. And I believe weren't, Mr. Finklea, weren't
7 those required in the Olympic case?

8 MR. FINKLEA: Yes, they were.

9 JUDGE MOSS: And I believe the parties found
10 those useful, didn't they?

11 MR. FINKLEA: I think they crystallized the
12 issues prior to the cross-examination.

13 JUDGE MOSS: So it can be a useful thing to
14 do something along those lines, and we will think
15 further about it. Again, I wasn't -- I don't want to
16 make any decisions about this today, I just wanted to
17 raise it early. This seemed like a good opportunity to
18 raise it so we can all be thinking about it, and this is
19 I think essentially a procedural issue. I'm not -- I
20 think as long as we're all careful to keep it in that
21 realm that we can talk about it off the record even.
22 Individual counsel, in other words, could contact me and
23 offer me ideas about how we proceed with this, how we
24 develop this, and so forth and so on. We can also, of
25 course, all get together and do it. I think everybody's

00207

1 sensitivity about ex-parte contact is heightened to the
2 point where no one would slip into talking about the
3 substance of the case with me in an ex-parte setting.
4 So anyway, we'll work it out.

5 I'm being a little tentative because that's
6 the nature of things at this point, but I wanted you all
7 to start thinking about it, and we can have further
8 discussion about it before any final decisions are made
9 or requirements imposed. I think the Commission also
10 found the pre-hearing briefing process in the Olympic
11 proceeding useful, and so that's something that no doubt
12 will be being thought about in connection with other
13 cases as we go forward. Okay, I think that's probably
14 covers that subject matter.

15 Another subject matter that I'm throwing out,
16 just sort of planting a seed if you will, and we will
17 discuss this more later and with everyone involved, in
18 looking at the case, we have a number of interveners
19 including the Cities of Auburn, Bremerton, Federal Way
20 -- no, I can't do that to Ms. Kinn, the cities that
21 Ms. Arnold represents, and the City of Bremerton is also
22 in the case on its own, I think, and Kent and
23 represented by Ms. Olsen, isn't it, anyway a number of
24 parties participating who are primarily interested, if
25 not exclusively interested in the issues surrounding the

00208

1 proposed changes to Schedules 70 and 71, and there may
2 be one or two other rate schedules of similar ilk that
3 these parties are interested in.

4 I don't know that it will be possible, but it
5 has occurred to me that there may not be facts in
6 dispute with respect to this aspect of the case. It may
7 be that the factual aspects of the argument, if you
8 will, or disagreements among the parties can be
9 stipulated or simply don't exist and that it is more a
10 question of law and policy with respect to those
11 particular rate schedules. I want you to be thinking
12 about that, and if you are inclined to think and perhaps
13 discuss among yourselves that those issues can be
14 somehow usefully treated on a separate tract from the
15 rest of the rate case, perhaps through cross motions for
16 summary determination or on some sort of paper record or
17 what have you, supplemented by oral argument or
18 something like that that we could fit in at an earlier
19 stage.

20 My only concern is that this is a big
21 complicated case. There is a lot to be done. And to
22 the extent we might be able to focus on an aspect of it
23 that can appropriately be considered separately and
24 apart from the rest, it might be worthwhile considering
25 doing so. I don't mean to suggest any strong

00209

1 inclination and certainly no predisposition to do it
2 that way, but you all think about it, and get back to me
3 and maybe in connection with a status conference or
4 pre-hearing conference or something that we have at a
5 point in time, of course, after the interim. I'm not
6 going to schedule any additional business for us until
7 the interim is done, but after that, these are the sorts
8 of -- some of the sorts of things we need to be thinking
9 about and taking up so that we can again maximize our
10 efficiency and the speed with which we can get through
11 all of this during the course of this year.

12 All right, any other business the parties
13 wish to raise on the record?

14 MR. FFITCH: Your Honor, just an inquiry, a
15 point regarding public notice. We did work successfully
16 with the company and the Commission public affairs Staff
17 in crafting a notice that went out to customers. The
18 Commission rules require a certification to be filed by
19 the company describing the mechanics of the notice to
20 its customers and providing the Commission information
21 about the media notice which was provided. I just
22 wanted to -- I am not aware that that certification has
23 been filed. I wanted to inquire of the company if that
24 has been filed and I missed it or they're intending to
25 file that certification.

00210

1 JUDGE MOSS: Ms. Dodge, Mr. Quehrn, do you
2 know?

3 MR. FFITCH: I know that I got my notice in
4 the mail, so.

5 MS. DODGE: We will look into it and file the
6 necessary certification if that hasn't been done.

7 JUDGE MOSS: Sometimes that's done actually
8 at the public comment hearing that record is made.
9 Sometimes it's made at another point in time. So thank
10 you for raising that, Mr. ffitich.

11 Anything else?

12 All right, let's go have lunch, and I will
13 see you Monday.

14 (Hearing adjourned at 12:50 p.m.)

15

16

17

18

19

20

21

22

23

24

25

