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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 AIR LIQUIDE AMERICA)
CORPORATION, AIR PRODUCTS AND)
4 CHEMICALS, INC., THE BOEING) Docket No. UE-001952
COMPANY, CNC CONTAINERS,) VOLUME I
5 EQUILON ENTERPRISES, LLC,) Pages 1 - 117
GEORGIA-PACIFIC WEST, INC.,)
6 AND TESORO NORTHWEST CO.,)
)
7 Complainant,)
)
8 vs.)
)
9 PUGET SOUND ENERGY,)
)
10 Respondent.)
-----)
11 In the Matter of)
) Docket No. UE-001959
12 Petition of Puget Sound) VOLUME I
Energy, Inc., for an Order) Pages 1 - 117
13 Reallocating Lost Revenues)
Related to any Reduction in)
14 the Schedule 48 or G-P)
Special Contract Rates,)
15 _____)

16 A hearing in the above matter was held on
17 December 14, 2000, at 3:20 p.m., at 1300 South Evergreen
18 Park Drive Southwest, Olympia, Washington, before
19 Administrative Law Judge DENNIS MOSS, Chairwoman MARILYN
20 SHOWALTER, and Commissioner RICHARD HEMSTAD.

21 The parties were present as follows:

22 THE COMMISSION, by ROBERT D. CEDARBAUM and
DONALD T. TROTTER, Assistant Attorneys General, 1400
23 South Evergreen Park Drive Southwest, Olympia,
Washington 98504-0128.

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25 Joan E. Kinn, CCR, RPR
Court Reporter

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1 PUGET SOUND ENERGY, INC., by JAMES M. VAN
2 NOSTRAND, Attorney at Law, Stoel Rives, LLP, 600
3 University Street, Suite 3600, Seattle, Washington
4 98101, and by STAN BERMAN, Attorney at Law, Heller
5 Ehrman White & McAuliffe, LLP, 701 Fifth Avenue, Suite
6 6100, Seattle, Washington 98104.

7 BELLINGHAM COLD STORAGE COMPANY, by JOHN
8 CAMERON and TRACI GRANDON, Attorneys at Law, Davis
9 Wright Tremaine, 1300 Southwest Fifth Avenue, Suite
10 2300, Portland, Oregon 97201.

11 THE PUBLIC, by SIMON J. FFITCH, Assistant
12 Attorney General, 900 Fourth Avenue, Suite 2000,
13 Seattle, Washington 98164-1012.

14 AIR LIQUIDE AMERICA CORPORATION, AIR PRODUCTS
15 AND CHEMICALS, INC., THE BOEING COMPANY, CNC CONTAINERS,
16 EQUILON ENTERPRISES, LLC, GEORGIA-PACIFIC WEST, INC.,
17 and TESORO NORTHWEST COMPANY, by MELINDA DAVISON,
18 Attorney at Law, Davison Van Cleve, P.C., 1300 Southwest
19 Fifth Avenue, Suite 2915, Portland, Oregon 97201.

20 CITY OF ANACORTES, by JAMES R. PEMBERTON,
21 Attorney Pro se, Director of Public Works, City of
22 Anacortes, 904 Sixth Street, Anacortes, Washington
23 98221.

24 ASSOCIATION OF WESTERN PULP AND PAPER WORKERS,
25 by FRANK D. PROCHASKA, Northeast Washington/Alaska Area
26 Representative, 3124 Grand Avenue, Everett, Washington
27 98201.

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1 P R O C E E D I N G S

2 JUDGE MOSS: All right, good afternoon again,
3 everyone. We are now on the record in the matters
4 styled as follows, and let me pause and say we noticed
5 this proceeding on a rather quick turn around basis, and
6 the matter that we noticed is Docket Number UE-001952,
7 styled Air Liquide America Corporation, Air Products and
8 Chemicals Inc., The Boeing Company, CNC Containers,
9 Equilon Enterprises, LLC, Georgia-Pacific West, Inc.,
10 and Tesoro Northwest Company against Puget Sound Energy.

11 After our notice, a petition came in and was
12 docketed as Docket Number UE-001959. It is
13 unquestionably related to the prior docket that I have
14 indicated, and we will take that matter up too this
15 afternoon, and I don't think it will be of prejudice to
16 anyone that we do so. We will, I think, consider
17 consolidating the proceedings, whether they should be
18 consolidated dockets. We will ask that question and ask
19 if anybody wants to comment on that suggestion. It does
20 appear that there are common issues of fact and law,
21 which is the basic standard for consolidation, and
22 that's a question we should take up procedurally along
23 with some others.

24 In any event, let me for the record state
25 that the style of the second docket I mentioned is

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1 Petition of Puget Sound Energy, Inc. for an Order
2 Reallocating Lost Revenues Related to any Reduction in
3 the Schedule 48 or Georgia-Pacific Special Contract
4 Rates. And again, that's been docketed as number
5 UE-001959.

6 Our basic agenda today will be to take
7 appearances. We will then take up petitions to
8 intervene. I have a couple of indications in writing or
9 otherwise. I had an oral exchange with some folks in
10 the hall a few minutes before I walked in here who
11 indicated they wished to intervene, and I have heard by
12 rumor that there may be yet others, so we will take that
13 up. And, of course, it is a proper matter of business
14 for there to be oral petitions to intervene in a
15 proceeding such as this where there has been short
16 notice, that we will try to be as flexible as possible
17 if parties have the need to file later a statement in
18 writing or something along those lines.

19 We will take up any motions. I mentioned the
20 Bench wishes to take up the question of whether these
21 dockets should be consolidated on its own motion, and so
22 we would like to hear from the parties on that.

23 And then the heart of the matter will be a
24 discussion of the issues, including assertions regarding
25 the need for emergency adjudication pursuant to

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1 Washington Administrative Code Section 480-09-510.

2 Once we have concluded that, we will talk
3 about process and procedural schedule and conclude with
4 any other business the parties wish to bring forward and
5 that may properly be considered in the context of a
6 prehearing conference.

7 Let's begin with the appearances, and I'm
8 just thinking in Docket 001952, and I'm just going to
9 start using the last four numbers to shorten things a
10 little bit, so in the 1952 docket, let's take up the
11 appearance of the Complainant first.

12 MS. DAVISON: Thank you, Your Honor. My name
13 a Melinda Davison. I'm with the law firm of Davison Van
14 Cleve, my address is 1300 Southwest Fifth Avenue, Suite
15 2915, Portland, Oregon, 97201. My phone number is area
16 code (503) 241-7242. My fax number is area code (503)
17 241-8160. My E-mail is mail@dvclaw.com. I am appearing
18 today on behalf of the Complainants, Air Liquide America
19 Corporation, Air Products and Chemicals, Inc., The
20 Boeing Company, CNC Containers, Equilon Enterprises,
21 LLC, Georgia-Pacific West Inc., and Tesoro Northwest
22 Company.

23 JUDGE MOSS: Thank you, Ms. Davison.
24 And the Respondent.

25 MR. BERMAN: Good morning, Your Honor. I

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1 would like to enter my appearance. My name is Stan
2 Berman, B-E-R-M-A-N, with the law firm of Heller Ehrman
3 White & McAuliffe, appearing on behalf of Puget Sound
4 Energy. My address is 701 Fifth Avenue, Suite 6100,
5 Seattle, Washington 98104. My phone number is (206)
6 389-4276. My fax is (206) 447-0849. And my E-mail is
7 sberman@hewm.com. And my co-counsel also will enter his
8 appearance.

9 MR. VAN NOSTRAND: Good afternoon, Your Honor
10 and Commissioners. James M. Van Nostrand with the law
11 firm of Stoel Rives, LLP, 600 University Street, Suite
12 3600, Seattle, 98101. Telephone number (206) 386-7665.
13 Fax (206) 386-7500. E-mail jmvannostrand@stoel.com.

14 JUDGE MOSS: All right, and I'm going to
15 depart from the usual order of things a little bit and
16 go ahead and take Public Counsel and Staff, and then we
17 will get back to the interveners, if any.

18 MR. FFITCH: Thank you, Your Honor, Simon
19 ffitich, Assistant Attorney General, Public Counsel
20 Section of the Washington Attorney General's Office
21 representing small business and residential customers of
22 Puget Sound Energy. My address is 900 Fourth Avenue,
23 Suite 2000, Seattle, Washington 98164. Phone is (206)
24 389-2055. Fax (206) 389-2058. E-mail is
25 simonf@atg.wa.gov.

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1 JUDGE MOSS: Thank you very much.
2 Mr. Cedarbaum.
3 MR. CEDARBAUM: Thank you, Your Honor. My
4 name is Bob Cedarbaum. I'm an Assistant Attorney
5 General representing the Commission Staff. My business
6 address is the Heritage Plaza Building, 1400 South
7 Evergreen Park Drive Southwest, Olympia, WA 98504.
8 Telephone number is area code (360) 664-1188. Fax
9 number is area code (360) 586-5522. And my E-mail
10 address is bcedarba@wutc.wa.gov.
11 Also appearing is Donald Trotter, and I will
12 ask him to enter his appearance.
13 MR. TROTTER: Thank you. Donald T. Trotter,
14 Assistant Attorney General. I have the same address and
15 fax number as Mr. Cedarbaum. My phone number is (360)
16 664-1189. Fax is dtrotter@wutc.wa.gov.
17 JUDGE MOSS: Okay, thank you very much.
18 We did receive one, well, I guess actually
19 two written petitions for intervention. I have one. I
20 think the intended intervening party would be the AWPPW.
21 The individual is identified as Frank Prochaska.
22 Mr. Prochaska, are you present?
23 MR. PROCHASKA: Yes.
24 JUDGE MOSS: Is this a labor union?
25 MR. PROCHASKA: Yes.

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1 JUDGE MOSS: AWPPW. Let me just ask for a
2 show of hands. How many people here today are planning
3 to participate as interveners?

4 Just a couple. Why don't you all come on up
5 here to counsel table. We can put one of you here next
6 to Ms. Davison, and then somebody can sit over here in
7 the witness box. We won't have any witnesses today, so
8 you can have a microphone available, and that way we can
9 have a better situation. I think you can just pull up a
10 chair there and ask for you to share microphones.

11 Let's go ahead and have the AWPPW appearance.

12 MR. PROCHASKA: My name is Frank Prochaska.
13 I'm an Area Representative with the Association of
14 Western Pulp and Paper Workers. My address is 3124
15 Grand Avenue in Everett, 98201. My voice and fax number
16 is area code (425) 339-6196. My E-mail address is
17 fprochas@premier1.net.

18 JUDGE MOSS: And I understand you will be
19 appearing pro se on behalf of the, I'm sorry, I keep
20 losing it, give me the acronym again.

21 MR. PROCHASKA: AWPPW.

22 JUDGE MOSS: Thank you. Is that correct?

23 MR. PROCHASKA: Yes.

24 JUDGE MOSS: All right.

25 And let's go ahead and take the appearances

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1 and then come back to the petitions to intervene.

2 Go ahead.

3 MR. PEMBERTON: Thank you. My name is Jim
4 Pemberton. I'm the Director of Public Works for the
5 City of Anacortes, and that's 904 Sixth Street,
6 Anacortes, Washington 98221. My telephone number is
7 area code (360) 293-1010. And my fax number is area
8 code (360) 293-1938. And my E-mail address is
9 jim@cityofanacortes.org.

10 JUDGE MOSS: Thank you very much. I had some
11 earlier communication on the telephone with attorneys
12 who have previously represented Public Utility District
13 Number 1 of Whatcom County. They indicated to me that
14 there was a potential conflict that they were working
15 through and so they would not be appearing. Is anyone
16 present either in person or on the bridge line for
17 Public Utility District Number 1 of Whatcom County?

18 All right, we will nevertheless take up the
19 request to intervene which they submitted by filing.
20 Probably most of you don't have it. It's a letter that
21 was submitted this afternoon, and we will take that up
22 in a moment once we have considered these other
23 petitions to intervene.

24 So as far as the AWPPW goes, Mr. Prochaska,
25 would you state briefly your interest in the proceeding.

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1 MR. PROCHASKA: The AWPPW represents --

2 JUDGE MOSS: Excuse me just a second.

3 (Discussion off the record.)

4 JUDGE MOSS: Oh, Mr. Cameron, were you going
5 to intervene in this proceeding? I apologize, I
6 overlooked you.

7 MR. CAMERON: I was just trying to be
8 patient.

9 JUDGE MOSS: You're patient to a fault. You
10 need to step up there when I overlook you that way. Go
11 ahead and enter your appearance, please.

12 MR. CAMERON: All right. My name is John
13 Cameron, here on behalf of Bellingham Cold Storage. I
14 would also like to enter the appearance of my colleague,
15 Traci Grandon. We are each with Davis Wright Tremaine,
16 Suite 2300, 1300 Southwest Fifth Avenue, Portland,
17 Oregon 97201. My voice phone number is area code (503)
18 778-5206. Fax number (503) 778-5299. And E-mail is
19 johncameron@dwt.com.

20 JUDGE MOSS: All right. And in case anyone
21 else is being so polite this afternoon I better ask if
22 there is anyone else present who wishes to enter an
23 appearance at this time.

24 Apparently not. All right, now I apologize
25 for the interruption and ask you to get back, if you

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1 would please, and just state briefly the interest that
2 your organization has in the proceeding.

3 MR. PROCHASKA: The AWPPW representing
4 approximately 6,000 pulp and paper workers in the state
5 of Washington, including roughly 600 workers that work
6 at the Georgia-Pacific West facility in Bellingham.

7 JUDGE MOSS: All right. Is there any
8 objection to the intervention of the union?

9 MR. VAN NOSTRAND: Yes, Your Honor,
10 Respondents object to the intervention.

11 CHAIRWOMAN SHOWALTER: Mr. Van Nostrand, can
12 you speak into the microphone.

13 MR. VAN NOSTRAND: Yes, Your Honor,
14 Respondents object to the intervention. Under the
15 standard of intervention in the Commission's rules, the
16 intervening party must demonstrate a substantial
17 interest in the outcome of the proceeding, and the
18 interest of these proposed interveners really is not any
19 different than parties already to this proceeding,
20 Georgia-Pacific. Their interest is only indirectly
21 through them, and that typically has not been sufficient
22 as a basis for deeming intervention.

23 COMMISSIONER HEMSTAD: I suppose the question
24 is, in your view, is your interest identical or
25 different from that of Georgia-Pacific?

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1 MR. PROCHASKA: I view it as very different.
2 I represent the interests of the employees and their
3 families, not necessarily the interests of
4 Georgia-Pacific as a corporation. Georgia-Pacific as a
5 corporation may have some common interests, perhaps some
6 very different interests. If the Bellingham facility is
7 curtailed for a significant period of time, that may or
8 may not have a longstanding impact on the corporation as
9 a whole. But it will certainly have a longstanding
10 impact on the 600 or so members that I represent as well
11 as the Bellingham and greater Whatcom County community.

12 JUDGE MOSS: Anybody else want to comment on
13 this? We always give Staff and Public Counsel an
14 opportunity to put their oar in the water no matter how
15 muddy or clear.

16 MR. CEDARBAUM: Staff has no objection to the
17 intervention. I would just note for your deliberation
18 on this that in WAC 480-09-430, it would be sub 3, there
19 is a standard that allows the Commission to grant
20 intervention if it would be in the public interest, so
21 you have the discretion, I think, to allow intervention
22 even if you found that the interests of this petitioner
23 were the same as Georgia-Pacific.

24 JUDGE MOSS: Thank you.

25 MR. FFITCH: Your Honor, Public Counsel is

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1 for the intervention of AWPPW. I think the
2 representative has aptly stated their interest in the
3 proceedings.

4 JUDGE MOSS: I think we have heard all we
5 need to hear on that, and the petition will be granted.
6 Thank you.

7 Let's hear next then from the public works,
8 and if you could tell us, please, what your client's
9 interest is. Or you're appearing Pro se on behalf of
10 it. You're not an attorney, is that --

11 MR. PEMBERTON: That's correct.

12 JUDGE MOSS: That's correct, all right.

13 MR. PEMBERTON: The City of Anacortes
14 operates and owns a major regional water supply system
15 consisting of water transmission pipelines and a water
16 treatment plant located on the Skagit River. We are a
17 Schedule 48 customer. We provide water to not only the
18 city of Anacortes, but the city of Oak Harbor, the city
19 of La Conner, the Snohomish Tribal Community, as well as
20 several major industrial customers, and we have been hit
21 very hard by this rate increase.

22 JUDGE MOSS: Thank you.

23 Any objection to this party's intervention?

24 MR. VAN NOSTRAND: No.

25 JUDGE MOSS: Any inquiry from the Bench?

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1 All right, the petition will be granted.

2 Thank you very much.

3 Bellingham Cold Storage, would you please
4 state the interest of your client.

5 MR. CAMERON: Yes, sir. Bellingham Cold
6 Storage and Georgia-Pacific have identical special
7 contracts, each of which base energy pricing on the Mid
8 Columbia firm energy index. I believe it's fair to say
9 that anything decided in this case of impact on
10 Georgia-Pacific also potentially impacts Bellingham Cold
11 Storage. Our reasons are the same as we advanced in
12 support of our intervention in the separate complaint
13 proceeding initiated by Georgia-Pacific under the
14 so-called most favored nation clause of our contract.
15 And in that instance, you did grant our intervention,
16 Your Honor.

17 JUDGE MOSS: Okay, thank you very much.

18 Is there any objection to the intervention of
19 Bellingham Cold Storage in this proceeding?

20 Apparently not.

21 Inquiry from the Bench?

22 I think the petition will be granted.

23 MR. CAMERON: Thank you, Your Honor.

24 CHAIRWOMAN SHOWALTER: While we're pausing
25 here, please try to speak close to the microphones.

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1 And Mr. Goltz, since you're in the back, if
2 you ever can't hear people up here, can you just wave
3 your hand, and then we will ask people to either speak
4 up or speak closer to the microphones.

5 JUDGE MOSS: All right, I have, as I
6 mentioned earlier, the, and as it is styled, I have a
7 letter here that's dated today and was, in fact, filed
8 at my suggestion by means of facsimile transmission at
9 2:45 this afternoon from the Public Utility District
10 Number 1 of Whatcom County. And I indicated then and I
11 will state now on the record that given the short time
12 that was available for the notice of this proceeding
13 this afternoon, we certainly will be flexible in terms
14 of petitions to intervene and that sort of thing.

15 So what I have here is this letter, we will
16 treat it as a petition to intervene as it requests to be
17 treated. The statement of interest is essentially I
18 will read from the letter:

19 Complainants' second claim for relief
20 alleges that Puget Sound Energy has not
21 provided them with the ability to
22 purchase power directly from third party
23 power suppliers. The District has
24 attempted to be a third party power
25 supplier to one or more of PSE's

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1 industrial customers, including
2 Georgia-Pacific, which is one of the
3 Complainants. The District desires to
4 protect its interest as third party
5 power supplier.

6 So let me just ask if there would be any
7 objection to the intervention of Whatcom County Public
8 Utility District Number 1.

9 MR. VAN NOSTRAND: Yes, Your Honor, the
10 Respondents would object to that proposed intervention,
11 grounds being primarily that the interests --

12 CHAIRWOMAN SHOWALTER: We can't even hear
13 you, let alone the people in the back of the room. You
14 really do have to hear yourself on the mike being pretty
15 loud, otherwise people can't hear.

16 MR. VAN NOSTRAND: The precedent,
17 particularly the Cole versus Washington Utilities and
18 Transportation case, establishes the principle that a
19 potential party seeking to intervene must be within the
20 zone of interest to be protected by the Commission. And
21 I think that case also stands for the proposition that
22 the interests of a potential supplier or someone
23 perceived as a potential competitor of the utilities
24 does not fall within the zone of interest which the
25 Commission is charged to protect. So on that basis,

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1 Respondent would oppose the proposed intervention of
2 Whatcom PUD.

3 JUDGE MOSS: Anybody else have anything to
4 say on this one?

5 Mr. Cedarbaum.

6 MR. CEDARBAUM: We don't object to the
7 intervention. We will just remind the Commission that
8 the PUD has sought to intervene in other cases and has
9 been allowed, other cases involving these customers and
10 has been allowed to participate, primarily because their
11 interests went to the transmission issues, which are
12 included in the complaint in this proceeding, so we
13 don't object to the intervention.

14 We would just reserve the right later on if
15 and when those transmission issues might be resolved or
16 moved from this docket or whatever, to object to the
17 intervention at that time. But pending that happening,
18 we would have no objection to the intervention.

19 JUDGE MOSS: Okay, well, there is not anyone
20 here from Whatcom. If the Bench has any inquiry, that
21 will have to be postponed to another day unless you all
22 have some questions of parties present, of course. PSE
23 has objected and would be available to respond to any
24 questions you had on that, or we can take the matter
25 under advisement, or we can rule on the basis of the

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1 petition.

2 (Discussion off the record.)

3 JUDGE MOSS: The Commission has had an
4 opportunity to consider the petition as filed and the
5 remarks that we have heard here today and grants the
6 petition to intervene, entering the caveat that we are,
7 of course, concerned with a specific set of issues which
8 are hopefully going to be better defined after today.
9 And should it come to pass at some point the Commission
10 recognizes that the participation by this intervener, or
11 any intervener as far as that goes, is no longer in the
12 public interest, then our procedural rules do provide
13 that we can consider having that intervener removed from
14 the status as a party in the proceeding. So that's the
15 determination and the caveat there.

16 Is there anyone else who wishes to intervene
17 in the docket that we noticed as the UE-001952?

18 Now let me say this. Since we did not
19 formally notice UE-001959, although we're going to talk
20 about that and we're going to take up the question of
21 whether that should be consolidated with this, we will
22 make some provision for any party who is not present
23 today and may wish to formally intervene in that docket
24 if it's not consolidated. We will take that up. We
25 won't foreclose any opportunities, procedural or

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1 otherwise, by virtue of considering that docket this
2 afternoon even though it was not part of the notice.
3 There simply was not time, and there was not an
4 opportunity to get a notice out on that docket. So
5 everybody understands we're not going to deny anyone due
6 process on a technicality. All right, so I think that
7 concludes our petitions to intervene.

8 I suppose we should take up next the question
9 of whether these proceedings should be consolidated, and
10 I think we would like to hear what the parties have to
11 say about that, if anything, the suggestion that they
12 should be consolidated, and then the Commission can
13 either make that determination or take that procedural
14 question under advisement as well.

15 MR. VAN NOSTRAND: Your Honor, we do have a
16 motion to that effect, which I can distribute.

17 JUDGE MOSS: All right, why don't you go
18 ahead and do that.

19 MR. VAN NOSTRAND: (Distributes copies.)

20 JUDGE MOSS: All right, we have PSE's motion
21 for consolidation. Everybody probably reads as fast as
22 I do, so I will ask if there are any objections to that
23 motion.

24 Ms. Davison.

25 MS. DAVISON: Your Honor, I guess I bring

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1 this up with the utmost reluctance. We got to know each
2 other fairly well through the last Schedule 48 complaint
3 case, and I know this is not the sort of matter that you
4 like to hear, so.

5 JUDGE MOSS: Well, I can't wait now to hear
6 what it is you're going to bring up.

7 MS. DAVISON: With that preface, I have to
8 say that, Your Honor, I did not receive a service copy
9 of the petition from Puget Sound Energy, I did not
10 receive a copy of the letter and the attachments that
11 Puget Sound Energy filed with the Commission yesterday
12 until I learned of this through reading a press release
13 issued by Puget Sound Energy yesterday.

14 I immediately, once I read the press release
15 and it indicated that there was some filing that was
16 made at the Commission, we immediately called the
17 Commission to have that faxed to us. It was late in the
18 day. Unfortunately the fax copy was missing the two key
19 pages of the petition and, of course, didn't have any of
20 the attachments to the letter. By the time I discovered
21 that I didn't have a full complete document, the records
22 office had closed.

23 To continue my tale of woe, I then called PSE
24 and left a message with their general counsel to please
25 Federal Express a copy of this to me so that I could

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1 look at it this morning. I did receive a copy of the
2 letter from PSE with the attachments at 10:30 this
3 morning. I did not receive a service copy of the
4 petition. I was on a conference call and then had to
5 hop in my car and drive to Olympia.

6 So I feel somewhat disadvantaged that I have
7 not had a chance other than to in a cursory manner skim
8 the materials that are involved in this proceeding. So
9 I really don't feel like I have an informed position
10 whether these matters should be consolidated or not,
11 having not read the materials.

12 JUDGE MOSS: You haven't read the petition?

13 MS. DAVISON: I skimmed the petition when I
14 arrived at the hearing room this afternoon. Also I did
15 have a conversation with Mr. Cedarbaum, who was very
16 kind to give me at least an essence of what the petition
17 is, so I'm not going to plead total ignorance, but I
18 have not had an opportunity to study it. I do
19 understand there is a connection between the two
20 proceedings.

21 I guess I'm very disappointed that I was not
22 provided a copy of this directly from PSE. I believe
23 that certainly my experiences with Mr. Van Nostrand have
24 been very good and very positive and a high degree of
25 professionalism exhibited.

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1 JUDGE MOSS: Well, I'm sure that's true too,
2 and we don't really need to go any further down that
3 path.

4 Let me ask if Staff has any view on this
5 question of consolidation.

6 MR. CEDARBAUM: The Staff doesn't oppose the
7 consolidation for our part, but I think we have some
8 sympathy for making sure that Ms. Davison's client is
9 fully informed before they take a position. So I wonder
10 whether this is something that you could take under
11 advisement and give her a chance to respond after she
12 has seen all of these materials and then rule on it, but
13 Staff doesn't object to the consolidation.

14 JUDGE MOSS: Okay, fine.

15 Mr. ffitich, do you have anything on this?

16 MR. FFITCH: Two things. First of all, Your
17 Honor, like Ms. Davison, we learned of the petition
18 through the press and then obtained a copy by request
19 from Puget Sound yesterday. We have read it.

20 Also at this time I'm not prepared to agree
21 with the petition or the motion for consolidation. The
22 motion is essentially based on an assumption of certain
23 outcome in the complaint proceeding that would require
24 certain kinds of actions. And we, I think, have an
25 issue initially about whether, you know, the

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1 establishment of a deferred account as proposed in the
2 petition is even appropriate under interim rate relief
3 law.

4 So that's something that, again, we would
5 support the notion of postponing this at least to allow
6 for some briefing, and may be something that would be
7 better taken up as we see how the complaint proceeding
8 develops.

9 JUDGE MOSS: Okay, well, we can certainly
10 continue our discussion here. I do want to put to you
11 though, Mr. ffitich, that we also have your response, or
12 I think you may have styled it as a preliminary
13 response. And certainly things have come fast and
14 furious, and I don't think we need to be pointing any
15 fingers about anybody trying to blind side anybody else
16 or anything like that. And I didn't hear that, but I
17 wouldn't want to hear that either, because it has been a
18 fairly intense couple of days for all concerned, and so
19 I'm sure things have been handled professionally as far
20 as that goes.

21 But in terms of your response, that you did
22 have a chance to read before coming in this afternoon,
23 it seems to me that the petition in a sense and your
24 response are really raising the same point. Basically
25 PSE is saying, well, if these revenues are capped in

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1 some fashion and we suffer a revenue loss as a result or
2 if these rates are capped in some fashion and we suffer
3 a revenue loss as a result, then we want the Commission
4 to take up the matter of how that revenue loss should be
5 redistributed across our customer base, as I understand
6 the petition. And I also understood the essence of your
7 response to be that that should not under any
8 circumstance happen. And so that would seem to join the
9 issue in that fashion. And I wonder if you would
10 comment on how that might bear on the question of
11 consolidation.

12 MR. FFITCH: Well, again, Your Honor, I think
13 there's a sequence there. First of all, the issue
14 doesn't arise until -- well, it's dependent upon the
15 sorts of remedies, if any, that might be crafted in the
16 complaint case.

17 In addition, I guess we would suggest that as
18 a matter of law under the Commission orders in the
19 Schedule 48 case that it's impermissible to allocate
20 costs to residential customer classes, to shift cost to
21 those classes as a result of any relief that might occur
22 here. So that to create a deferred account should
23 either not be done in order to accomplish that, or at
24 least if it were to be done, should be done with an
25 understanding that that's not one of the possible

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1 outcomes.

2 In addition, the company is currently
3 operating under a rate plan, so that there is, in fact,
4 no opportunity for, we would suggest, for rate changes
5 during that rate plan, and that would govern the
6 question of whether there should be a deferred account
7 which isn't in the nature of interim rate relief.

8 So that essentially we're saying that the
9 question could be deferred until a later time, and in
10 the alternative, that we would like an opportunity to at
11 least address those questions. I certainly would
12 concede that there is a significant overlap, however,
13 and if the Commission should choose to consolidate, I
14 would certainly defer to that decision.

15 CHAIRWOMAN SHOWALTER: Mr. ffitich, the
16 question I have is that the complaint by Ms. Davison
17 requests emergency relief. So if this were an ordinary
18 complaint and we were proceeding slowly through the
19 complaint and got to the point at which we were perhaps
20 considering a remedy, then at that point we might also
21 put it over for, you know, another period of time to
22 consider what effect the remedy would have, you know, at
23 which point maybe the petition or the issues in the
24 petition would be relevant as well as your response to
25 the petition.

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1 But because this is an emergency petition and
2 we are being asked to grant emergency relief, don't we
3 have to have at the same time that we consider whether
4 to grant emergency relief a sense of what the
5 consequence of granting emergency relief would be on
6 Puget and Puget's customers, and aren't those the very
7 issues that Puget has raised in its petition and you
8 have raised in your response? So how do we consider the
9 ramifications of emergency relief without considering
10 the issues that you have raised?

11 COMMISSIONER HEMSTAD: Well, before you
12 answer that, let me elaborate on that. It really is
13 part of the Chair's question here. Does the Puget
14 petition affect at all what kind of a remedy we would
15 potentially fashion in the principal proceeding here?

16 MR. FFITCH: Not per se, Your Honor, no, it
17 does not. I would suggest that it perhaps, however,
18 does lead in a certain direction and perhaps prejudge
19 some remedy issues, and that's one of the reasons why
20 I'm raising this question.

21 Again, I guess I would just note that because
22 Puget is under a rate plan, we would suggest that the
23 establishment of a deferred account raises some
24 questions about appropriateness because of the existence
25 of the rate plan, and that for that reason, the kinds of

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1 remedies that are out there for the company might well
2 -- there's some additional time for those to be
3 addressed.

4 COMMISSIONER HEMSTAD: But doesn't the rate
5 plan cut both ways? I believe Puget in its petition is
6 saying that raising the issue of the impact of the rate
7 plan upon this, let's see, getting in 1952, in other
8 words, you're concerned about a deferred account under
9 the rate plan, but isn't the rate plan affected at least
10 with the Puget pleading raising the issue of violating
11 the terms of that plan if the relief requested by the
12 petitions here were to be granted?

13 MR. FFITCH: Perhaps that's the case, Your
14 Honor. I guess I just meant to suggest that Puget has
15 options beginning as early as March of next year of
16 filing a rate case or of waiting until after the rate
17 plan is over to file a rate case, at which time the
18 Commission could examine whether there were financial
19 reasons to make adjustments based on some relief that's
20 granted here. It's not perhaps necessary to establish a
21 deferred account at this time.

22 I'm getting to the merits of whether there
23 should be a deferred account, which isn't really before
24 you right now. I'm just suggesting that that may be a
25 reason why it doesn't have to be consolidated with the

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1 complaint case.

2 JUDGE MOSS: Any other representative or
3 counsel wish to comment on the question of
4 consolidation?

5 COMMISSIONER HEMSTAD: Well, a question that
6 I would at least pose, does consolidating these, from a
7 different perspective, unreasonably expand or make more
8 complex the request for emergency relief of the
9 petitioners?

10 JUDGE MOSS: Ms. Davison, would you care to
11 comment on that?

12 MS. DAVISON: Your Honor, I guess based on
13 what I have heard in my cursory understanding of the
14 petition, I think there is a potential that it is
15 raising an issue that we certainly intended to
16 explicitly not raise through our complaint. And that is
17 the relief that we're asking for, I think we have been
18 very clear, and if we haven't, this is probably a good
19 opportunity to make this point, which is we in no way
20 want to impose relief that would be harmful to any other
21 customers. We are not seeking to have relief imposed in
22 this complaint proceeding, the 1952 proceeding, that
23 would shift any costs to residential or commercial
24 customers.

25 And it's my understanding of this petition

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1 that that would raise this issue through the petition,
2 and that's an issue that we intend to address through
3 whatever representations are necessary to ensure that
4 other customers remain whole and are not adversely
5 impacted by the relief that we're seeking in 1952.

6 JUDGE MOSS: Mr. Van Nostrand, last word,
7 your motion.

8 MR. VAN NOSTRAND: Your Honor, I think
9 Commissioner Hemstad has raised the correct issue, does
10 this unnecessarily broaden the issues. We believe the
11 issue are inextricably intertwined, so to speak, and I
12 think Public Counsel and the company would agree on the
13 fact that the merger order is implicated, and the rate
14 plan is implicated, and the rate plan limits the
15 conditions. If I can read from the Public Counsel's
16 response:

17 The merger already prescribes very
18 limited conditions under which rates can
19 be changed during the rate plan period.
20 That is precisely the point that we're making
21 in our petition is that you can not just tinker with
22 these Schedule 48 and Georgia-Pacific contract rates,
23 because Schedule 48 and Georgia-Pacific preceded the
24 adoption of the merger rate plan. It was all part of
25 the picture that the Commission considered when the

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1 merger rate plan was adopted.

2 And you can not do anything in this
3 proceeding to adjust the revenues that the company
4 receives under Schedule 48 and under the Georgia-Pacific
5 special contract without addressing the implications of
6 that on the rate plan. And we believe the issues are
7 definitely raised, the merger rate plan issues are
8 definitely raised by this complaint, and the petition
9 needs to be considered alongside the relief requested by
10 the Complainant.

11 JUDGE MOSS: Okay, thank you.

12 (Discussion off the record.)

13 JUDGE MOSS: All right, the Commission has
14 had an opportunity to deliberate on this consolidation
15 question, and there is a definite inclination in the
16 direction of granting the motion.

17 However, given Ms. Davison's comments that
18 she has not had an adequate opportunity to review the
19 materials and perhaps formulate arguments that she may
20 wish to formulate in opposition to that, we will provide
21 the opportunity, if you would like to take it, to recess
22 for 15 minutes or half an hour, what you think you need
23 to review the relevant papers and make any further
24 argument on the subject. Otherwise, the motion will be
25 granted.

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1 MS. DAVISON: Can I take five minutes and let
2 you know how my clients feel about this?

3 JUDGE MOSS: All right, we'll go into recess.
4 You just let me know. I will be lingering about.

5 MS. DAVISON: Okay.

6 JUDGE MOSS: Everybody should stay around,
7 because I may call the proceedings back to order in as
8 little as five minutes.

9 (Brief recess.)

10 JUDGE MOSS: Ms. Davison, you indicated to me
11 off the record that you have an answer for us.

12 MS. DAVISON: Thank you, Your Honor, I do. I
13 would like to state that we do not oppose consolidation
14 of the two proceedings. But having said that, of
15 course, we would like to preserve our ability to address
16 the merits of the petition at the appropriate time.

17 JUDGE MOSS: Sure, and as I indicated
18 earlier, we're not going to cut anybody off. Things
19 have been happening rather quickly over the last few
20 days, and we will certainly provide adequate opportunity
21 for everyone's due process interest to be fully
22 protected, so we will do that.

23 MR. CEDARBAUM: Your Honor, if I could add on
24 that. I guess I would just like to echo that same
25 point. When I answered your question, I took that just

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1 really as a question of process and not one of
2 substance. So staff did not object to the
3 consolidation, but we don't know what our position on
4 the merits might be, along with any number of people
5 here, so.

6 JUDGE MOSS: Who knows what mysteries may
7 unfold.

8 (Discussion off the record.)

9 JUDGE MOSS: All right, the motion to
10 consolidate is granted.

11 Now this brings us to the part of the agenda
12 that I had previously announced where we will discuss
13 the issues, including assertions regarding the need for
14 emergency adjudication.

15 Ms. Davison, you have brought this complaint,
16 your clients have brought this complaint asking that the
17 Commission invoke its procedures under WAC 480-09-510, I
18 believe it is, which is the rule for emergency
19 adjudications. So it would seem that the appropriate
20 starting point would be for you to offer some discussion
21 with respect to the need for proceeding under that
22 extraordinary of a process.

23 MS. DAVISON: Thank you, Your Honor. Yes, we
24 have brought this complaint, and we have asked that at
25 least what we are terming phase one to proceed under the

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1 emergency adjudicative statute, which is 480-09-510. We
2 believe that we are in extraordinary times in the
3 electric utility industry. The events that are
4 unfolding from yesterday and today dramatize how
5 extraordinary things are.

6 I guess what I would offer in terms of a
7 demonstration of the emergency is not only the
8 affidavits that were attached to the complaint that we
9 filed in the 1952 proceeding, but I would also offer to
10 the Commission this. We have been experiencing high
11 energy prices for many, many months. When the energy
12 prices hit the \$100 point, that was extraordinarily
13 high, but we paid those bills, and we hoped that things
14 would get better. The prices continue to climb. At the
15 point that the prices hit the \$1,000 mark on Monday for
16 non firm and \$3,000, over \$3,000 for firm at the Mid
17 Columbia, that became a very dire emergency. At that
18 point, we saw a \$10,000 price increase from where we had
19 been before.

20 CHAIRWOMAN SHOWALTER: I just want to --

21 MS. DAVISON: I'm sorry, 10,000%, we're
22 dealing with such big numbers here. I have been saying
23 100 fold which translates into a 10,000% increase.

24 CHAIRWOMAN SHOWALTER: I just want to make
25 sure I understand. Are you -- is the index, the

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1 non-firm index or the firm index, was that index itself
2 ever at \$1,000 or \$3,000? In other words, is that the
3 rate that your clients paid?

4 MS. DAVISON: Yes.

5 CHAIRWOMAN SHOWALTER: What day was that?

6 MS. DAVISON: Let me pull out -- I have the
7 price for the Dow Jones Mid Columbia Index on Monday,
8 December 11, for firm on peak energy was \$3,322. For
9 Monday, December 11th, the non firm on peak price was
10 \$1,285.

11 CHAIRWOMAN SHOWALTER: And does that
12 translate directly to the price that you pay? In other
13 words, is that the index that you pay?

14 MS. DAVISON: Yes, it is. That index price
15 is used in the calculation of the rate. We pay that
16 directly plus some adders that are set out in the tariff
17 in the special contract. But that -- that is the energy
18 component of what we pay, and then we pay a 2.5 mil
19 adder on top of that plus distribution and transmission
20 charges.

21 CHAIRWOMAN SHOWALTER: Okay.

22 MS. DAVISON: To try to put those dollars in
23 some kind of a perspective that perhaps is a little more
24 understandable, we did a very quick calculation, and the
25 average Puget Sound Energy residential customer pays

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1 roughly \$60 a month for their electric bill. If they
2 had been under that index on Monday, their \$60 monthly
3 bill would have increased to roughly \$2,500.

4 The dollars that we're talking about here,
5 the percentage increase that we're talking about here
6 isn't in the realm of some increasing prices or a spike
7 or something of that nature. We are in the realm of
8 such dramatically staggering prices that these are
9 prices that truly affect the public interest and the
10 economy of the state of Washington. And we believe that
11 the affidavits attached to the complaint talk about the
12 impacts on these Complainants.

13 And we discussed on Saturday and I'm
14 certainly happy to reiterate, the impacts that they will
15 have, the ripple impacts throughout the economy of
16 Washington. I believe that you don't have to look very
17 far to look at statements, there was an article in the
18 Wall Street Journal this morning, if you look at the
19 statements that Governor Locke has been making, if you
20 look at the statements that DOE secretary Richardson has
21 been making, we are -- I think that we can all assume
22 that we are very directly impacted by what is happening
23 in California. And California, the California market is
24 terribly, terribly broken at this point, and we are
25 suffering the direct consequences of that broken market

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1 through this index pricing.

2 CHAIRWOMAN SHOWALTER: I have another
3 question, and that is you have or you have established
4 the index or you can establish the index that is used
5 for the payment owed to Puget? Is there any evidence in
6 front of us as to whether your clients do or don't have
7 hedges against those prices or whether they have or
8 haven't had hedges against those prices say since July?

9 MS. DAVISON: I would have to talk to each of
10 the individual clients during particular periods of
11 time. But at this moment in time, all seven
12 Complainants do not have hedges in place. They are
13 paying these prices.

14 CHAIRWOMAN SHOWALTER: Do you know if any of
15 them have had any hedge in place since July?

16 MS. DAVISON: I would say, subject to check,
17 I am not aware of any hedge that these seven companies
18 have had in place for their electric prices during this
19 period of time. Not to be confused with they all
20 purchase gas, and I'm not personally familiar with what
21 their gas situation is.

22 Typically this is the time of year where
23 prices are going down, and hedges would be, I think,
24 much more seriously contemplated to cover the summer
25 months when we typically see the spikes in the price in

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1 the August time frame. But usually by the time November
2 comes around, we see declining prices with usually April
3 being one of the lowest priced months.

4 JUDGE MOSS: You mentioned seven Schedule 48
5 customers as Complainants here. How many Schedule 48
6 customers are there?

7 MS. DAVISON: I'm sorry, Your Honor, I
8 misspoke. We have six Schedule 48 Complainants.
9 Georgia-Pacific, as you are well aware, is on a special
10 contract. I don't have the exact list in front of me,
11 but there are somewhere around 12 or 13 companies that
12 are on Schedule 48.

13 JUDGE MOSS: 12 to 13. Now why are there
14 only 6 here, what about these others; they're paying
15 these same rates, aren't they?

16 MS. DAVISON: Yes, Your Honor. I think that
17 you have heard this afternoon from the City of Anacortes
18 Water Treatment Facility. I have had conversations with
19 the Port of Seattle. They are, although they are a
20 wholesale customer of Puget Sound Energy, they are
21 impacted by these prices as well as King County. Each
22 individual customer on Schedule 48 I guess is making its
23 own decision about how it wishes to proceed.

24 JUDGE MOSS: I'm not so concerned about your
25 client base in this proceeding as I am in terms of the

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1 impact of anything the Commission might do, and I want
2 the record to be clear about that. If we have 12 or 13
3 Schedule 48 customers, they would all presumably be the
4 beneficiaries of any relief the Commission might order
5 in this complaint proceeding; is that correct?

6 MS. DAVISON: I would presume that to be the
7 case under basic rate making principles.

8 JUDGE MOSS: But you're asking for relief for
9 all Schedule 48 customers, those both present as
10 Complainants and those absent?

11 MS. DAVISON: I'm not sure that I could be so
12 presumptuous as to represent all Schedule 48 customers,
13 but I think my complaint does not explicitly say that,
14 but I think as a practical matter, you could reach that
15 conclusion.

16 JUDGE MOSS: Well, that would be the effect.
17 Is there another conclusion we could reach? Could the
18 Commission order relief specifically for these six
19 customers and not other customers under the same rate
20 schedule?

21 MS. DAVISON: I suppose you could do that,
22 but I don't think that would be proper under rate making
23 principle.

24 JUDGE MOSS: Do you think we could legally do
25 that?

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1 MS. DAVISON: No.
2 JUDGE MOSS: Wouldn't it be unduly
3 preferential?
4 MS. DAVISON: Yes.
5 JUDGE MOSS: Probably.
6 MS. DAVISON: Yes, right.
7 JUDGE MOSS: I'm not trying to --
8 MS. DAVISON: Right.
9 JUDGE MOSS: I'm just trying to inquire so we
10 understand the full consequences of anything the
11 Commission might do.
12 MS. DAVISON: Yes.
13 JUDGE MOSS: Now what --
14 COMMISSIONER HEMSTAD: What if some of those
15 other Schedule 48 customers, depending on what steps
16 they have taken, would find that to be adverse to their
17 interests?
18 MS. DAVISON: I would presume that they would
19 proceed to intervene in our proceeding. I have had
20 conversations with most of those other customers, and
21 they're very aware of what we're doing here. I
22 certainly didn't hear any indication that they did not
23 support our complaint action in terms of the relief that
24 we're asking for. I'm quite confident that if they
25 thought we were doing something that would be

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1 prejudicial to them, they would intervene. I did
2 provide copies of our complaint to the Port of Seattle
3 and to King County.

4 CHAIRWOMAN SHOWALTER: What about the
5 opposite problem. Supposing some of those other
6 customers had bought hedges and are protected.
7 Supposing somebody bought a hedge in October for \$75 for
8 the next six months. I think that was -- I saw
9 something about those being approximate prices.
10 Wouldn't it be a windfall then to those customers who
11 had hedged, along the lines of Kaiser, for example, who
12 they would find it would be beneficial to shut down and
13 sell their power on this market?

14 MS. DAVISON: I'm not aware of a situation in
15 which that would be the case. I'm sure that if my
16 statement is incorrect, others can quickly correct me.
17 I was informally told that neither the Port of Seattle
18 nor King County had a hedge in place. I am aware that
19 Bellingham Cold Storage has a hedge. That is the
20 customer that I am aware of that's impacted by these
21 very high index prices that actually does have a hedge
22 in place.

23 CHAIRWOMAN SHOWALTER: I want to broaden the
24 question just a bit. I think your point is that these
25 prices are very, very high and work a real hardship on

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1 whoever has to pay them. But it is beyond the scope of
2 this proceeding or our ability to actually bring those
3 prices down. It's not beyond FERC's ability, and we
4 hope that they act tomorrow.

5 But given that those high prices are there,
6 don't we really only have three groups of players who
7 can incur the risk associated with them, the Schedule 48
8 customers, who are incurring those risks; the Puget as a
9 company, who is operating within this volatile market in
10 all its activities, not just purchasing power for
11 Schedule 48 customers, but managing its portfolio for
12 itself and the other rate payers; and then the third
13 group is the other rate payers. So currently the risks
14 are assigned in a certain way. Schedule 48 customers
15 pay the index rate. Puget under its merger agreement is
16 supposed to manage its resources. And the rest of the
17 rate payers are under a rate freeze. And that's the
18 general way that the current risks are assigned.

19 So the question I have is, if we are going to
20 change the risks for one group, i.e., Schedule 48
21 customers, how do you avoid not subjecting some kind of
22 shifting of those risks to either Puget or Puget's other
23 rate payers? And in particular, we see in California,
24 utilities who can not charge their retail customers as
25 much as they must buy power for. That has put them in a

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1 very precarious situation, so precarious that suppliers
2 will not sell to them. And at the point at which your
3 own utility can't buy power because nobody will sell to
4 them, that is also an emergency. And I'm citing
5 California, not here.

6 But given that it's the high prices that
7 underly the problem, don't we have to deal with that, or
8 doesn't someone have to face that volatility in some
9 manner, the someones being 48 customers, Puget
10 shareholders, and Puget's other customers?

11 MS. DAVISON: Well, I think that's obviously
12 an excellent question, and I think it gets to the heart
13 of the matter here. And we are trying to propose a
14 course of action in the 1952 complaint case that doesn't
15 shift the risk. And let me explain why that is. What
16 we are proposing is that we are requesting from the
17 commission two things sort of immediately.

18 The first one is a statement that as of a
19 date certain, any type of rate relief that we might get
20 from the 1952 case would be effective from that date so
21 as to take care of Mr. Cedarbaum's concerns about
22 retroactive rate making. We have all become very well
23 versed in that issue of late.

24 The second thing and perhaps more
25 importantly, what we are asking and how we have

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1 fashioned our complaint is to say, please impose some
2 type of cap or select some type of rate level that will
3 allow these businesses to continue to operate, and let's
4 do that quickly. And we are proposing that there be a
5 hearing to take evidence about the need to do that.

6 And then let's move to a next stage, and
7 let's take evidence, and let's put on -- we will put on
8 our case, and Puget will respond, and let's look at
9 these issues very, very carefully and see if, in fact,
10 the situation is what we believe it to be.

11 And that is that we have extensive discovery
12 in the first Schedule 48 complaint case, and we have
13 rebuttal testimony of Charlie Black from Puget Sound
14 Energy who said specifically that:

15 While a portion of Schedule 48 rate is
16 based on a market priced index, PSE does
17 not purchase index price supplies
18 specifically to serve Schedule 48
19 customers.

20 We do not believe that they are out on the
21 market serving these customers with this very, very
22 expensive power.

23 CHAIRWOMAN SHOWALTER: Okay, but let me give
24 you this example. Supposing we request or we grant your
25 request and place Schedule 48 customers at Schedule 49

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1 prices.

2 MS. DAVISON: Yes.

3 CHAIRWOMAN SHOWALTER: And then Colstrip
4 plant goes down, similar to Pacificor's plant going
5 down, and suddenly Puget needs to go out on the market
6 at those very high prices and purchase power. Now isn't
7 there a shift in risk there? That is 48 customers would
8 be subject to a cap, but Puget and the rate payers using
9 those resources would be forced to go out on the market.

10 MS. DAVISON: I have two responses to that
11 question. The first one is that I don't believe that
12 part of this rate plan and part of the order approving
13 Schedule 48, there was ever any intention that these
14 Schedule 48 customers protect the entire system from an
15 event like a Colstrip unit going down.

16 But having said that, again, I believe that
17 we are asking for a remedy from this Commission where we
18 are asking that a certain rate be established, and then
19 we can have a proceeding to determine whether that was
20 correct. And in your judgment, if you believe that
21 there is a legitimate basis for a surcharge, we're
22 asking you to consider that evidence. And if that is
23 proven to you, then impose a surcharge on these
24 customers to keep other customers whole.

25 CHAIRWOMAN SHOWALTER: Okay, let me ask

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1 another question then. If you were placed on Schedule
2 49, at Schedule 49 rates today or Monday or sometime
3 soon without a finding that that was an appropriate in
4 and of itself, in effect, would you agree to a lower
5 rate now but deferring through a deferral account, I
6 guess, or it would be a negative account, but subject to
7 balloon payment basically on your part if it turns out,
8 no, the index is the index, and Schedule 48 is Schedule
9 48, and now you really did owe that index all along? It
10 would seem to me, first, are you agreeable to that?
11 Because it would seem to me not, because that's
12 subjecting you to the same risk at a later point in time
13 depending on what we determined.

14 MS. DAVISON: I think that the way to answer
15 that is that if you decided to issue an order along
16 those lines, then each individual company or entity
17 would have to make their own judgment call about whether
18 they wanted to take the risk of continuing to operate
19 with these very, very high prices or whether they
20 believed that the evidence would support that PSE is
21 making high profits and that they basically have their
22 basic load covered already through power purchases and
23 their own resources, generating resources.

24 CHAIRWOMAN SHOWALTER: So just to put this --
25 I just want to be clear what it is you would find

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1 acceptable, I guess, recognizing you're asking us to
2 grant it. But if you were subject to a cap on your
3 payments but not necessarily a cap on the bill that was
4 ultimately owed pending this Commission's review of the
5 underlying merits of your case, would that be acceptable
6 to you? Is that what you -- I mean in effect then you
7 would be betting on -- you would have to be betting on
8 what we were going to decide in addition to if that was
9 a negative consequence, guessing what the market might
10 do. Have I made myself clear on that?

11 MS. DAVISON: I understand your question, and
12 I understand the difficulty with this issue, and I guess
13 I would answer the question this way. That if we are
14 wrong and Puget is out buying power on an hourly basis
15 at the Mid Columbia to serve Schedule 48 customers, then
16 I guess I'm very hard pressed to say that we shouldn't
17 pay for that, because we do not want to harm other
18 customers.

19 And if we get a rate that is roughly 42 mils
20 under Schedule 49, that's a delivered price, I think
21 it's 38 mils or something like that, for energy, and, in
22 fact, Puget can demonstrate that it cost \$1,000 to serve
23 Schedule 48 customers, then I would submit that we
24 probably are in a position where we have to pay that
25 bill. We do not believe that to be the case, and that's

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1 why we're asking for this emergency relief.

2 However, having said that, I think if we
3 reach the point where there is evidence and there is a
4 conclusive determination that Puget is out buying power
5 on an hourly basis to serve Schedule 48 customers, then
6 at the point that we are aware of that, I believe that
7 we should stop purchasing power that way to serve these
8 customers, because that doesn't make sense at all in
9 this, you know, terribly, terribly broken market.

10 CHAIRWOMAN SHOWALTER: But that analysis
11 assumes that the correct analysis is if Puget is not
12 buying on the market, then your price should be capped.
13 And only if they are buying on the market for you should
14 you have to pay extra.

15 I have a different question. Supposing it
16 turns out, no, Puget, we don't know these facts, by the
17 way, we're talking hypothetically, and that's one of the
18 issues here, what facts do we even know today, but
19 supposing Puget is generally not going out on the market
20 and generally does have the resources or maybe wisely
21 bought ahead in the forward market a few months ago, but
22 suppose also that they are not over earning overall as a
23 company. Is it if they are not over earning as a
24 company, is it then fair to shift this risk to them?
25 Which is another way of saying, is the issue as broad as

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1 how is the company doing as a whole, or is it only as
2 narrow as you originally suggested, what's Puget doing
3 for Schedule 48 customers?

4 MS. DAVISON: I believe the issue is, as we
5 have framed it in the complaint, is narrowly focused on
6 what Puget is doing for Schedule 48 customers. I
7 believe that under your hypothetical, if they have this
8 power purchased or hedged for serving Schedule 48
9 customers and that power price is, let's say for sake of
10 argument, \$50 or \$40, whatever, and they are at the same
11 time charging us \$1,000, I believe that to be so unjust,
12 unreasonable, and unfair that they should not be allowed
13 to do that.

14 And I do not believe that that was what was
15 contemplated in the rate plan, and I do not believe that
16 that was what was contemplated under Schedule 48. And I
17 don't believe that it is the responsibility of Schedule
18 48 customers to make them whole if they happen to be
19 losing money on the gas side or they happen to be losing
20 money with some other completely unrelated activity that
21 doesn't impact Schedule 48 customers.

22 CHAIRWOMAN SHOWALTER: How do you separate
23 out what resources they have for you or what they have
24 hedged for you versus what resources they have for
25 everybody or everyone else and how they have hedged for

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1 everybody else; how do you track that?

2 MS. DAVISON: I believe that based on
3 statements from the company along the lines that I just
4 read to you from Charlie Black that they treat all of
5 the load, including the Schedule 48 load, as system
6 load. I do not believe that they segregate Schedule 48
7 customers out for purchases. And I believe that to
8 determine a fair rate, you would look at their system
9 costs for serving all customers. And I don't believe
10 that you need to look at something theoretical, because
11 I don't believe they're operating that way.

12 JUDGE MOSS: Well, before we go too far down
13 this path, I suppose that we should allow the company to
14 have a response on these points we have been discussing.

15 MR. BERMAN: Your Honor, Chair, and
16 Commissioner, it's a little hard to address all of the
17 points that have been addressed right now. I think we
18 started out on the issue of whether there was an
19 emergency. And much of the discussion we have had just
20 now related to the merits of the complaint. And I
21 understand how they get intertwined. I tend to
22 intertwine them. I think we all intertwine them a
23 little bit.

24 I think it's worth stepping back first though
25 and looking at the issue of whether or not there is an

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1 emergency and whether it's an emergency that leads to
2 some result that we should be dealing with in this
3 hearing room and in this proceeding.

4 As we see it, there are definitely very
5 serious conditions that Secretary of Energy Richardson
6 has determined to be an emergency in the wholesale power
7 markets in the West. In fact, that was the basis of his
8 orders under Section 202(c) of the Federal Power Act
9 that he has issued in the last day or two. So from that
10 perspective, there's an emergency in the wholesale power
11 markets.

12 That's not the same as the issue that we're
13 addressing here, and I think Chair Showalter has
14 recognized that a number of times in her discussion,
15 that there's a distinction between the wholesale power
16 market issues and the markets that we're dealing with
17 here.

18 We agree with the comment that was made at
19 the very start of the session at 3:00 that the single
20 most important thing that can be done to deal with that
21 emergency in the wholesale power markets is to have
22 those who have power to deal with the wholesale power
23 markets address those issues. And as has been pointed
24 out by a number of people here, the UTC has addressed
25 those issues at FERC. Governor Locke has addressed

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1 those issues with a letter to the President. The
2 Secretary of Energy has addressed those issues and said
3 that there are problems throughout western wholesale
4 power markets.

5 Puget Sound Energy has identified the concern
6 and has, in fact, filed a complaint proceeding at FERC,
7 Docket Number EL00-10-000 at FERC. It's set for a
8 ruling tomorrow at 3:00 p.m. Eastern time. And so
9 there's definitely a situation that needs to be
10 addressed, and it's a situation where I think everyone I
11 have just identified has recognized some common
12 solutions.

13 Puget Sound Energy in its complaint said if
14 you -- said you have to look at the West as an
15 integrated region, and therefore if you impose price
16 caps in California, you have to consider how that
17 impacts the rest of the West, and you have to consider
18 what's going on in California versus the rest of the
19 West and come up with a relief that addresses wholesale
20 power markets throughout the West, and that's what we
21 said.

22 The UTC in its letter of is it yesterday, I
23 guess two days ago, said that it concurred. Governor
24 Locke concurs. The Secretary of Energy concurs. We
25 will find out if FERC concurs. But yes, there is an

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1 emergency, but it's an emergency we can't solve here,
2 and it's being addressed elsewhere.

3 There's another type of emergency of sorts,
4 though I wouldn't want to characterize it as an
5 emergency under the Administrative Code, and that
6 emergency of sorts is that we have a set of very
7 sophisticated businessmen who have, and women, who have
8 come here who work with a number of very large
9 sophisticated companies, and they have made a number of
10 business decisions over time, and sometimes those
11 business decisions have been smart ones, sometimes they
12 have turned out to be not quite as smart.

13 And a lot of these companies have made a lot
14 of very smart decisions. I know that some of these
15 companies have announced that, who are Complainants
16 here, have announced that dividend increases, large
17 increases in their earnings, record earnings. These are
18 companies who are very good, good businesses,
19 sophisticated businesses, who make very profitable
20 decisions. But when they find that some of their
21 decisions will not be profitable, well, for them that's
22 an emergency.

23 And if you're a worker in a particular plant
24 that's involved with those businesses and if that
25 business decides that a combination of decisions, for

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1 instance, a decision that you're going to enter into a
2 contract to sell gas canisters at a fixed rate for a
3 long-term, but a decision to enter into -- to buy your
4 energy that you use to bottle the canisters at a market
5 rate that floats, that if you chose not to hedge, if
6 those two contracts don't match up, well, you might
7 decide to make some business decisions with respect to
8 your plans that could hurt people, and that's a serious
9 problem that concerns us.

10 It's not -- but that's not an emergency in
11 the sense of what justifies emergency relief in this
12 proceeding, which relates to is there some problem with
13 the contract that they're challenging.

14 COMMISSIONER HEMSTAD: Well, if I can break
15 in, isn't the issue of whether there is an emergency is
16 for us to determine in the current circumstances whether
17 there is an immediate danger to the public health,
18 safety, or welfare requiring immediate action by the
19 Commission? I mean isn't the focus, is there something
20 adverse to the public's health, safety, or welfare at
21 the present time. And if that's the case, I suppose,
22 well, I suppose the question whether the Schedule 48
23 customers were smart or stupid or not, prudent or not,
24 may not even be relevant to that. What's your response
25 to that?

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1 MR. BERMAN: My response to that is that you
2 have cited the legal standard in the Code for
3 determining whether emergency relief might be
4 appropriate, but I think that you have to determine
5 whether that's somehow related to the proceeding that
6 we're dealing with here. For instance, if there is a
7 problem that's caused because of out of control
8 wholesale power markets, my answer to that is, let's all
9 go and try to fix the problem before the regulators who
10 can fix them.

11 COMMISSIONER HEMSTAD: All right. Back then
12 to the point of the relationship of whether there is an
13 emergency, if that is the standard for us to look at.
14 What are the substantive issues, and what are the
15 remedies. They all tend to merge with one another. But
16 I suppose we could conclude there is an immediate danger
17 to the public health, safety, or welfare if there is
18 evidence that demonstrates that. But there's no
19 effective remedy, because it's a wholesale market
20 problem within the ambit of FERC's authority, not ours.

21 I mean, for example, there may or may not be
22 anything we can do about it, but of course the petitions
23 will be asserting there is something we can do about it,
24 and therefore the remedy that they will fashion
25 reverting to Schedule 49, or there may be lots of other

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1 kinds of alternative remedies that could flow.

2 But I guess my point is, I'm not sure just
3 what the level of their prudence or not in the scheme of
4 things that has happened over the last several months,
5 how that at least dictates the result of the threshold
6 issue as to whether there is a demonstrable emergency
7 affecting the health, safety, or welfare of the public
8 here at this point.

9 MR. BERMAN: Well, I do think it's relevant
10 whether the emergency is, to the extent there is one, is
11 a problem that is truly and really confronted by the
12 Complainants here or if it's a problem that they have
13 made a business decision to subject themselves to a
14 certain risk, now they're unhappy that they're being
15 subjected to that certain risk, and then the issue of
16 how much it really impacts them is not really at all
17 clear.

18 I think that if we were to start looking into
19 the details, the facts, is this really an emergency for
20 say the jumbo jet maker who is here who is arguing that
21 despite record earnings that there's an emergency that
22 they confront. I think we would have to examine, you
23 know, what really is at issue for that particular
24 Complainant.

25 COMMISSIONER HEMSTAD: Or, again throwing out

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1 hypotheticals here, the Air Liquide, Air Products in
2 what they manufacturer and produce, all of a sudden
3 there is a shortage of oxygen and no other available
4 supplies and hospitals are shutting down. I mean you
5 would agree that that would be an emergency, wouldn't
6 you, I mean if the facts that would support that kind of
7 a conclusion?

8 MR. BERMAN: If the facts could support that
9 hospitals were going to shut down, I would agree that
10 that was an emergency. I don't think the facts go
11 anywhere near there.

12 COMMISSIONER HEMSTAD: I'm not leaping to
13 that conclusion. But if you're going to cite the Boeing
14 example, there can be other kinds of extremist examples
15 on the other end of the spectrum, I suppose.

16 But I guess that's why I come back to is,
17 aren't what we are about here is not necessarily to
18 decide these issues, but I assume what we're about is
19 attempting to define what are the issues that need to be
20 addressed in evidence and briefs and the like.

21 MR. BERMAN: Well, to me, one of the issues,
22 for instance, let's say we're talking about the gas
23 canister maker, perhaps a solution for them to get
24 through their problem is to spend some sum of money on a
25 hedge. Hedges were brought up, and maybe that's a

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1 solution. Working through how much the hedge is and
2 whether that's something that that particular
3 Complainant would want to buy is an important thing, and
4 I don't think that there has been anything close to a
5 demonstration that buying the hedge would be a problem.
6 There has been no demonstration that they couldn't buy a
7 hedge. We know that's -- in fact, we have been told
8 that there are some people in these circumstances who
9 have bought hedges.

10 And so the issue of working through is it an
11 emergency whether they -- the fact that they're
12 confronted with the option of buying a certain financial
13 instrument and they would prefer not to buy that
14 financial instrument, to me I don't see that as
15 necessarily an emergency. And in any event, whether
16 they should buy that financial instrument or not is to
17 me a problem that this particular proceeding it seems
18 odd that we should have to worry about that on an
19 emergency basis.

20 What would be useful, I think, would be if we
21 worked on trying to get them those hedges if they wanted
22 them or other solutions if they wanted them. And Puget
23 Sound Energy stands ready to assist the Complainants in
24 acquiring financial instruments that would assist them
25 through this situation. We have tried to do that. We

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1 stand ready to find solutions of various sorts.

2 And we think that we would welcome frankly
3 the good offices of the State, whether it's through this
4 Commission or other arms of the State in helping to work
5 through the consequences of the various business
6 decisions that have been made by these sophisticated
7 businesses. But that's different from concluding that
8 there's some emergency that relates to the contract that
9 the Complainants are trying to break in this proceeding.
10 That all relates to the emergency.

11 I would hate to lose the Mike before I
12 commented on the very apt comments that were made
13 concerning the allocation of risk between different
14 groups. I think that there were some very accurate
15 comments made by the Chair and I think others on the
16 Bench relating to the fact that there are more or less
17 three different groups who are sharing, I shouldn't say
18 sharing, but among whom the risk has been distributed by
19 the various contracts that were entered into at the time
20 that the Puget Sound merger occurred.

21 And as was stated, we have Puget Sound Energy
22 itself, we have the Schedule 48 customers and the
23 special contract customers, and we have the other rate
24 payers. And most definitely in the contracts that were
25 entered into by Puget at the time, there was an

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1 agreement about how risks would be shared and allocated.

2 There was an agreement that Puget, which is
3 also a sophisticated business person, business entity,
4 would get to manage its resource portfolio. And that in
5 doing so, it would be free to perhaps win, perhaps lose
6 if it managed that resource portfolio well or not.

7 And this Commission has recognized those
8 agreements that were made. And I could cite to various
9 opinions where that's been done. I don't think I need
10 to put that into the record just now. But this
11 Commission has recognized that contracts were entered
12 into and that risks were allocated between the parties.
13 And it's very clear that the Complainants here are
14 trying to break contracts and shift risks amongst the
15 parties to those contracts. We don't think that is an
16 appropriate thing in any case.

17 We think that examining those issues does not
18 make sense on an emergency basis. And the fact that for
19 various business reasons they would like to have the
20 issue addressed more quickly doesn't mean we should do
21 anything less than a thorough examination of those very
22 difficult legal issues.

23 CHAIRWOMAN SHOWALTER: I have a question on,
24 that again I apologize, I probably am getting a little
25 bit away from whether there is or isn't an emergency,

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1 and I agree that's an important one, but I think we also
2 need to be able to explore perhaps some of the voluntary
3 options that might be available, if agreeable.

4 Schedule 48 by its terms requires Puget to
5 refile Schedule 48 before January 1st of this year. In
6 other words in two weeks, in less than two weeks or
7 within two weeks, Schedule 48 itself has to come back
8 before us. And as I read Schedule 48, it says that
9 after it comes back to us, we can either modify it,
10 approve it, or terminate it.

11 There may or may not be legal arguments about
12 whether that means that we could terminate Schedule 48
13 sometime shortly after January 1st, but let's suppose we
14 have the authority to terminate Schedule 48 after
15 January 1st. At that point, it seems to me that by its
16 terms, the customers are entitled to get back on any
17 rate that's available, so long as they pay their own way
18 and don't affect other customers.

19 My question is, if we are so close to January
20 1st with the possibility, subject to a lot of legal
21 argument probably, that we could move past Schedule 48
22 quickly, why don't we just go there? That is, why don't
23 we anticipate the termination of Schedule 48 with the
24 options that are available after that time, the options
25 being, I would think, Schedule 49 or the buy-sell tariff

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1 that may come in, all subject to insuring that long run
2 costs are paid by those incurring them? What is your
3 reaction to that first?

4 MR. VAN NOSTRAND: That's a very good
5 question, Chairwoman Showalter. You do cite the
6 Schedule 48 order correctly regarding the filing that
7 Puget is going to be required to make within the next
8 couple of weeks. And the issue from the Schedule 48
9 order, I think it's the very issue that Public Counsel
10 raises in its initial response, was the issue of cost
11 shifting. Because when Schedule 48 was originally
12 implemented, the rates which these industrial customers
13 paid were less than the tariff rates that they escaped
14 by leaving Schedule 49, for example.

15 The concern posed by Public Counsel at the
16 time and addressed by the Commission in the Schedule 48
17 Order was that there not be any cost shifting, that
18 those lost revenues not be shifted to the remaining
19 customer classes because large industrial customers were
20 getting discounts. That was the reason that we're going
21 to be making this filing on January 1. And to address
22 that cost shifting issue, in other words, can the rate
23 schedule be justified, does it recover its cost, is
24 addressing the issue of cost shifting to other classes,
25 and that's the context in which that filing will be

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1 made.

2 And again, I think it's also important to
3 keep in mind the timing, the chronology of the Schedule
4 48 Order was issued in October of 1996, and the merger
5 rate plan was approved in February of 1997, and I think
6 the very issues which Puget Sound Energy raises in its
7 petition may very well come into play to the extent
8 there is a premature termination of Schedule 48 prior to
9 the end of the rate planning period, assuming the
10 necessary showing is made about no cost shifting in that
11 filing.

12 I certainly don't want to prejudge, nor
13 should, I hope, the Commission prejudge what they're
14 going to do in response to that filing, but that filing
15 needs to be considered in the context in which that
16 condition was imposed in the Schedule 48 Order, whether
17 or not the company sustains the burden of that condition
18 in the Schedule 48 Order.

19 CHAIRWOMAN SHOWALTER: So in other words,
20 you're saying that it is a possibility that Puget will
21 simply refile Schedule 48 in January and bear the burden
22 to show that operating under Schedule 48 does not
23 adversely impact the other customers.

24 MR. VAN NOSTRAND: Does not shift cost to the
25 other customer classes.

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1 CHAIRWOMAN SHOWALTER: From there it would
2 be --

3 MR. VAN NOSTRAND: Those portions of the
4 schedule that were cost based when it was initially
5 adopted continue to remain cost based. Those portions
6 of the schedule that are market based continue to remain
7 market based. The Commission has commented in the
8 Schedule 48 complaint proceeding the extent to which
9 there needs to be a tracking between the costs that PSE
10 actually incurs in serving those customers and the rates
11 that are charged, and those findings are relevant as
12 well.

13 And it's all in the context of the merger
14 rate plan, which was approved by the Commission four or
15 five months later, which again goes to the point that
16 you made about the allocation of risk, what the company
17 was going to be allowed to do during the five year term
18 of the merger rate plan. One of them was these
19 customers are being charged market rates. The company
20 is given the freedom to respond in managing its supply
21 portfolio in response to that allocation of risk.

22 And is it an appropriate thing in light of
23 that merger rate plan to consider something so drastic
24 as prematurely terminating Schedule 48. Again, those
25 are issues that will be addressed in that filing, but I

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1 just want to emphasize that that filing should be
2 evaluated in light of the context in which those
3 conditions were imposed and may not be the solution to
4 issues raised here which are not really related to the
5 cost shifting issue under which that condition was
6 premised.

7 CHAIRWOMAN SHOWALTER: I mean really you can
8 see I'm just groping for solutions, but what I'm getting
9 from your comments is that it's not necessarily the case
10 that everybody will agree to terminate Schedule 48 post
11 haste after January 1st.

12 MR. VAN NOSTRAND: I think that's a fair
13 statement to make.

14 CHAIRWOMAN SHOWALTER: All right.

15 MR. VAN NOSTRAND: And I think it also should
16 be pointed out that Puget Sound Energy is exploring
17 other options. Mr. Berman mentioned some, but I think
18 there are other ways of dealing with this issue, other
19 possible tariff filings that could be made to find
20 solutions. I think the company is interested in finding
21 solutions as well. These are not good conditions. The
22 impact is on people and then employees that have really
23 no say or control over the outcome of these matters
24 should not be adversely affected, so I think the company
25 is interested in finding solutions as well.

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1 CHAIRWOMAN SHOWALTER: What about I'm really
2 not entirely certain what Ms. Davison would or wouldn't
3 agree to, but I will ask you the question. Would the
4 company be agreeable to bill for now the Schedule 49
5 rate deferring for later the rest of the bill, should it
6 turn out that the rest of the bill up to 48 levels is
7 owed? What do you have to say about that situation?

8 MR. BERMAN: Madam Chair, basically that
9 proposal would say that Puget Sound Energy becomes the
10 banker for these very large, very sophisticated
11 companies, and we don't think that's fair. We also
12 think that it's not right to modify the terms of the
13 contract we have today. We feel that we're not dealing
14 with just any old rate schedule. We're dealing with a
15 contract that was entered into with a set of offsetting
16 or a set of reciprocal obligations, and parties have
17 acted in reliance on that contract, and we don't think
18 that it would be just or right to ask our company to act
19 as the banker for what is often what is in many cases
20 much larger companies with, frankly, in many cases
21 healthier balance sheets.

22 JUDGE MOSS: Ms. Davison, I wanted to ask a
23 question to you. Why wouldn't a hedge, such as PSE's
24 representatives were discussing, why wouldn't that be
25 preferable to your clients relative to the remedy that

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1 you suggest, which seems to me to be imbued with a high
2 degree of uncertainty as to what you ultimately will
3 pay?

4 MS. DAVISON: There are numerous problems
5 with purchasing a hedge. I am not entirely clear that
6 there is such a product available in a market that is as
7 chaotic as this market is today. I was informally told
8 that there is a party that was actively seeking to
9 purchase a hedge and had not found any willing sellers,
10 because they simply can't predict what the price is
11 going to be.

12 There is this notion that is sort of mind
13 boggling to me that somehow or another a hedge gives you
14 this discount or that you're not going to fully pay the
15 price of that power, and that's just simply not the
16 case. A hedge is you have to buy over a long period of
17 time, and you simply take the price that you would have
18 paid today, and you spread it out over say a five year
19 period of time.

20 So I think we've got three basic problems.
21 One is I'm not sure there is such a product available
22 today in this chaos. Number two, the price that we
23 would have to pay under a hedge today would require us
24 to pay these very, very high prices for a very long
25 time. The third problem is that Schedule 48 and the

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1 special contract are terminating very soon. And it
2 seems to me that we would be foolish to go out when we
3 know that this is terminating very soon and buy a ten
4 year hedge to try to smooth out the price of the power
5 that we're paying today, particularly in the market
6 where you're seeing a 10,000% increase in the price of
7 power from what we paid just a year ago.

8 COMMISSIONER HEMSTAD: I assume that, well, I
9 will put it differently. A remedy, I suppose, assuming
10 we have some rather broad discretionary powers here, but
11 would be to accelerate the termination of Schedule 48.
12 But when it was entered into, the contemplation at the
13 time was that thereafter the Schedule 48 customers would
14 have open access to the market. Well, you probably
15 aren't very enthused about that at this point, are you?
16 I mean if the remedy were to accelerate 48 terminated
17 and said, okay, but you can't come back, you can deal
18 with the market yourselves, at this point, you wouldn't
19 want that remedy, would you?

20 MS. DAVISON: Well, I think that I would
21 address that in two parts. The first one is that I do
22 believe that the language that is in Schedule 48 means
23 -- it says that at the end of the service agreement, any
24 customer may come back to any retail tariff, provided
25 they pay the long run incremental cost. So I believe

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1 that it was contemplated that there would be an option
2 to come back to 49 and pay the long run incremental
3 cost.

4 Putting that aside, I agree with you,
5 Commissioner Hemstad, I believe that there was a very,
6 very strong intent on the part of these parties in 1996
7 that by the time we got to today that we would actually
8 already be on the market and that we would be on the
9 market through true open access, not through a buy-sell
10 arrangement or anything of that nature, but we would be
11 able to manage our own resources, our own energy
12 resources. But we don't have that ability right now,
13 and that is part of the problem.

14 But I think if we were thrown out on the
15 market today, that would probably not be the best
16 possible day to be thrown out on the market. But I
17 think if we were free from purchasing these services
18 from Puget, we would have more options available to us
19 that would be much broader than just simply buying a
20 financial hedge.

21 CHAIRWOMAN SHOWALTER: Well, then what about
22 a step away from that buy-sell arrangement whereby you
23 designate the power supplier and Puget buys it for that
24 price and passes it through to you. Isn't that very
25 close to being out on the market?

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1 arrangement that Puget is proposing is the same as the
2 market.

3 CHAIRWOMAN SHOWALTER: This discussion that
4 you just had reminded me of one question I had in your
5 complaint. And it's your Paragraph 34 where you're
6 saying that Puget has breached their obligations to you
7 because they have not provided these customers with the
8 ability to purchase power directly from third party
9 power suppliers at the end of the five year service
10 agreements. Well, we're not at the end, right?

11 MS. DAVISON: They have already told us that.

12 CHAIRWOMAN SHOWALTER: Oh, I see.

13 MS. DAVISON: They have told us that
14 repeatedly in these discussions, and that's why you have
15 the affidavit of Mr. Cannon that supports that
16 statement.

17 CHAIRWOMAN SHOWALTER: Sorry, I think I got
18 us a little off track with that question.

19 JUDGE MOSS: I would like to, subject to any
20 other questions, turn to a legal question. Anybody feel
21 free to jump in on this point. I think Staff may
22 particularly. I'm wanting to know on a legal basis how
23 the Commission can do what you ask. How does that
24 comport with the legal standards of just and reasonable
25 rates and the Commission's ability to change those

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1 rates? I guess I would refer you to RCW 80.28.020
2 perhaps as a starting point.

3 MS. DAVISON: I'm sorry, Your Honor, could
4 you reiterate that cite again?

5 JUDGE MOSS: Yes, 80.28.020. There's a
6 couple of points here. One is, as I understand the
7 complaint, you are essentially asking the Commission to
8 change the rate that you pay, and so it seems to me that
9 that provision of law is implicated by that.

10 Another request that you have in place, and I
11 guess this is through your Complainants' proposed
12 schedule here, you're suggesting that the Commission
13 issue an order stating that rates charged by PSE after
14 12-15-00 are subject to refund, and I think that may
15 have some implications in terms of the filed rate
16 doctrine and the other statutory principles that govern
17 rate making. And I just want to hear from the parties
18 that, you know, how do we satisfy these legal standards
19 in both regards?

20 MS. DAVISON: Okay, finally found the cite.
21 I would like to address that a couple of ways. The
22 first thing that I would like to do is distinguish this
23 case from your decision this summer in the
24 Georgia-Pacific/Bellingham Cold Storage case. That was
25 essentially part of your discussion, you broadly, the

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1 Commission, about your ability to fashion the remedy
2 that was proposed to you through summary judgment. I
3 have looked at that case very carefully, needless to
4 say, and I believe that the issues that were addressed
5 by the Commission in that decision are not present by
6 the Commission utilizing its emergency adjudicatory
7 statute. I think that that gets around the issues that
8 were addressed in that particular case.

9 So I think to answer your question of how you
10 get around or get through the procedural maze of the
11 resolution that we're asking for, I believe that it
12 requires invoking the emergency statute. The
13 Commission --

14 JUDGE MOSS: Let me stop you there. That's
15 just a procedural. I mean you're talking about, as I
16 understand what you're saying, 34.05 trumps 80.28; is
17 that what you're saying?

18 MS. DAVISON: Yes.

19 JUDGE MOSS: Okay.

20 CHAIRWOMAN SHOWALTER: Well, I have a
21 question.

22 JUDGE MOSS: I'm not sure how.

23 MS. DAVISON: I believe it does.

24 CHAIRWOMAN SHOWALTER: Well, wait a minute.
25 Okay, let's say we have an emergency, let's just say

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1 there is one. Maybe various things have happened and
2 there is an emergency. Now does the fact that there is
3 an emergency give us authority to -- does that make a
4 rate unjust? I mean supposing there's an emergency but
5 the rate is still just, or the emergency itself doesn't
6 make the rate unjust. All right, then let's say we've
7 got an emergency, what makes the rate that you're paying
8 legally unjust?

9 MS. DAVISON: I believe, again, I would -- I
10 would answer this that what we're proposing is two
11 parts. I believe that under the emergency statute, you
12 declare an emergency, you take evidence about that
13 emergency, you have a hearing on that, you take evidence
14 about the unjustness of the rate. I would submit that a
15 10,000% increase is on its face unjust.

16 Then we're proposing a second phase to the
17 proceeding, which is to -- and you implement some type
18 of temporary rate until we can then go through a
19 proceeding in which we in detail determine what the just
20 and reasonable rate should be for these customers.

21 COMMISSIONER HEMSTAD: In effect, you're
22 saying the unjust rate, too high a price, creates an
23 emergency.

24 MS. DAVISON: Yes, yes, I believe that's
25 correct. I believe we're at such a dramatic drastic

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1 level that it has created an emergency.

2 CHAIRWOMAN SHOWALTER: Well, I think the
3 price itself can't be the emergency. If you're
4 Microsoft, you can probably pay it.

5 COMMISSIONER HEMSTAD: No, but the point is
6 that --

7 CHAIRWOMAN SHOWALTER: The consequence.

8 COMMISSIONER HEMSTAD: -- the consequence of
9 the unjust rate is an emergency, and you would have to
10 have some kind of evidence showing the consequences of
11 that rate. I assume that would be the thrust of the
12 case.

13 MS. DAVISON: For phase one, that is correct.

14 JUDGE MOSS: I would like to hear from Staff
15 on this question of 34.05 trumping 80.28.

16 MR. CEDARBAUM: In what respect?

17 JUDGE MOSS: Well, the suggestion by
18 Ms. Davison is that the Commission because it has the
19 power under RCW 34.05.479 to conduct an emergency
20 adjudicative proceeding, that that somehow relieves the
21 Commission from the responsibility of finding after a
22 hearing that a rate is unjust, unreasonable, unduly
23 preferential, or discriminatory, which I believe is the
24 language in 80.28. And once the Commission makes that
25 finding under 80.28, then it can and must indeed set the

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1 rate to be thereafter, in effect, what is just,
2 reasonable, and so on and so forth.

3 So Ms. Davison has answered my question quite
4 candidly that she believes 34.05.479 trumps 80.28.020.

5 MR. CEDARBAUM: I guess I would answer that I
6 guess I would disagree with that, because I think that
7 they go hand in hand, and here's how. If you look at
8 34.05.479, it says:

9 The Commission can engage in an
10 emergency adjudicative proceeding where
11 it finds that there is an immediate
12 danger to the public health, safety, or
13 welfare.

14 So let's say we clear that legal standard,
15 there are facts in evidence on the issues the Commission
16 thinks are relevant, and the Commission concludes, and
17 that's an if, the Commission concludes that there is an
18 emergency that this statute can be triggered. The
19 statute also says:

20 The Commission issues an order giving
21 its reasons for that determination.

22 Then it says:

23 After rendering that order, it proceeds
24 as quickly as feasible to complete any
25 proceedings that would be required if

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1 the matter did not involve an immediate
2 danger.

3 That's in sub 5 of the statute. Then I think
4 that's where you come into the 80, the statutes that the
5 Commission traditionally deals with.

6 JUDGE MOSS: That's where you come in to your
7 80.28.020 hearing requirement.

8 MR. CEDARBAUM: It this wasn't an emergency,
9 if the Commission found it was an emergency, but if it
10 wasn't an emergency, then we would normally look at the
11 justness and reasonableness of the rate under 80.04.110,
12 the complaint statute. And under that -- and so we have
13 to have a legitimate complaint, which actually is an
14 issue which we might want to talk about later as a
15 procedural matter. But once we're under that statute,
16 the Commission, I think, has discretion from the date of
17 the complaint to allow for a temporary rate assuming
18 that it's at a level that makes sense, sustainable
19 somehow, pending the hearing on the complaint, the
20 determination of whether the underlying rate is just and
21 reasonable, and then setting the just and reasonable
22 rate from thereafter. So that's how I see all of this
23 being wound together.

24 And the issue about whether we have a
25 legitimate complaint is one that I think we would have

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1 talked about later, and that's because Ms. Davison's
2 clients have asked the Commission to initiate this
3 emergency adjudicative proceeding, which would then put
4 us into the complaint statute eventually. That
5 complaint statute has some standing requirements, 25
6 customers, which I don't think her clients do.

7 So if the Commission is going to proceed
8 along this way, and I'm getting kind of off the field
9 here but I will raise it anyway, if the Commission is
10 going to proceed this way, we think there's a risk that
11 if it doesn't actually trigger this complaint on its own
12 motion, if it wants to do this, that there will be a
13 standing issue that might undermine the Commission's
14 jurisdiction to get to an ultimate remedy down the road.
15 So that's a procedural problem which I think you ought
16 to be aware of.

17 CHAIRWOMAN SHOWALTER: But just so I
18 understand you, do we have authority to grant emergency
19 relief before we have found or determined that the
20 underlying complaint is valid?

21 MR. CEDARBAUM: I guess what I would say is
22 that at that point, I'm not sure we need to use the word
23 emergency. What you're granting is temporary rate
24 relief, which I do think you have the discretion to do.
25 Once you have made a determination that there is an

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1 emergency to trigger this statute, then I think you have
2 the authority for temporary rate relief. Or you can
3 file your own motion under the complaint statute
4 tomorrow and have temporary rate relief as well. We
5 don't have to go under the emergency adjudicative
6 proceeding statute.

7 CHAIRWOMAN SHOWALTER: But we can, in your
8 opinion, under the emergency statute itself grant a
9 temporary rate while we then turn to the --

10 MR. CEDARBAUM: I don't think that's under
11 the emergency adjudicative statute. I think that's
12 under the complaint statute, because that says once you
13 have issued your order that there is an emergency, you
14 have to proceed as you would if there were not an
15 emergency, and that's where the complaint statute comes
16 in.

17 CHAIRWOMAN SHOWALTER: All right. But then
18 do we need, in order to grant the temporary rate relief,
19 do we need to be satisfied that the complaint is a valid
20 one, that is if all we have is --

21 MR. CEDARBAUM: Well, I guess perhaps --

22 CHAIRWOMAN SHOWALTER: -- the customer's
23 complaint here?

24 MR. CEDARBAUM: I think you have to have some
25 basis upon which to set that temporary rate. I mean I

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1 don't think you can just pull a number out of a hat.
2 They suggested Schedule 49. Maybe that's not
3 appropriate. Maybe some cap is appropriate at some
4 number. But the -- sorry, I lost my train of thought.

5 CHAIRWOMAN SHOWALTER: Well, I guess --

6 MR. CEDARBAUM: I guess the way to -- what
7 you would also probably want to do would be to have this
8 temporary rate subject to refund or surcharge so that
9 nobody is at risk during the time that the complaint is
10 pending.

11 CHAIRWOMAN SHOWALTER: Well, back on the
12 emergency, how do we know that if we grant this kind of
13 relief, we aren't going to trigger a related emergency,
14 that is on Puget? Do we need -- how do -- what kinds of
15 facts do we need before we grant emergency relief? In
16 other words, it's not just a price cap on those
17 customers. I'm sure you would agree that that, on its
18 face anyway, does subject Puget to some kind of
19 additional risk that it didn't have before without --
20 unless we -- without more facts.

21 In other words, if there is a general
22 wholesale price emergency and we grant you emergency
23 temporary relief protecting you from it, don't we need
24 to be sure we're not flipping over to another emergency,
25 which is Puget's situation? Don't we have to have at

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1 least as much information about Puget as we have about
2 you in terms of the ability to absorb that temporary
3 risk subject to refund?

4 MR. VAN NOSTRAND: Your Honor, if I might
5 interject at this point before we get too far without
6 giving us a chance to respond. I think you raised the
7 precise point, you can't tinker with one rate schedule
8 and lower one rate schedule without looking at the
9 overall circumstances of the company. It's called a
10 general rate case. It takes 11 months.

11 CHAIRWOMAN SHOWALTER: Well, that would be
12 the ultimate merits of this. I think I'm just talking
13 right now just about the temporary relief. If we
14 granted the Complainant's temporary relief subject to
15 refund or later payment as of today, it seems to me what
16 that does to you is it subjects you to a temporary risk
17 subject to later resolution. And my question is, how do
18 -- what facts do we need as to your ability to absorb
19 that temporary risk?

20 MR. VAN NOSTRAND: In the absence of a fix of
21 this problem in the wholesale power market, it does what
22 Mr. Berman stated earlier, it makes Puget the banker for
23 these larger, more powerful companies.

24 CHAIRWOMAN SHOWALTER: Well, it does make
25 Puget the banker, but then isn't the question, what is

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1 Puget's ability to absorb the risk of being the banker
2 without its own emergency or its own problems with its
3 own bankers or Wall Street.

4 MR. VAN NOSTRAND: I don't know how you can
5 examine the entire financial condition of a company on a
6 short-term basis. We have had these discussions about
7 general rate cases and how that process works. That's
8 the purpose of the general rate case is to examine the
9 entire financial circumstances of a company, and the
10 burden can't be shifted like that. So we're talking
11 about changing one rate schedule in isolation by looking
12 at the impact on the entire financial condition of the
13 company.

14 MS. DAVISON: May I take a quick response to
15 that. I, of course, do not believe that a general rate
16 case is necessary to do what we are asking to be done
17 here, but I believe that you are asking a good question,
18 and I believe that that's the purpose of the one day
19 hearing that we have set forth in our proposed schedule
20 is that you would have the ability to have a hearing and
21 take evidence. And if the statements that I have read
22 to you that the company has made in the past about how
23 they purchase power for Schedule 48 is incorrect and if
24 they can produce evidence during that hearing that they
25 are, in fact, out buying this power on a daily basis and

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1 that it will subject them to extreme financial risk to
2 not be able to receive these dollars from these
3 customers immediately to pay for that, then I think they
4 would have the ability to present that evidence during
5 the one day hearing.

6 CHAIRWOMAN SHOWALTER: But why would the
7 question be that narrow. It seems to me that the
8 question would be, would taking on the risk for the
9 price, for the retail price cap, subject Puget to
10 unacceptable risk of its own. In other words, I don't
11 mean that there would be some adverse consequence. I
12 think it's obviously a shift in risk. And that's the
13 legal issue ultimately, whether that is legally
14 permissible under Schedule 48 and the merger agreement
15 and the rate freeze. But the shorter term argument
16 would be not is or isn't Puget going out and buying on
17 the market, but does or doesn't shifting that risk over
18 to them in general subject them to the kind of emergency
19 risk that you want to avoid?

20 MS. DAVISON: Again, I don't believe that
21 that is present here, and I think that you can look at
22 the financial reports that Puget files with you every
23 month that contains their revenues, and it shows their
24 costs, and I think you can look at those monthly
25 reports, just as we have, and reach some conclusions

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1 about what is or is not occurring with Puget Sound
2 Energy financially and their ability to accept Schedule
3 49 rates during what is a very short interim period that
4 we are proposing here.

5 MR. BERMAN: Your Honors, if I might
6 interject. Just one other point that I think is
7 important to make in the context of this discussion is
8 that we don't agree that the emergency procedures that
9 are in place, and I think that this relates to Judge
10 Moss's question, we don't agree that the fact that the
11 Statutes and Code provide for emergency procedures
12 change in any fundamental respect the legal standard and
13 legal findings that must be made.

14 That is, they allow you to examine things on
15 a fast track basis, but if you're going to order any
16 relief, you're going to have to order relief based on
17 the same findings that would be necessary if you
18 examined things on a longer term basis. That is, we
19 don't see how you can grant relief based on some other
20 lesser different set of findings. That's not how we
21 understand the Code. So you would examine the same
22 things that we would examine in a longer term process,
23 and you would have to reach those conclusions.

24 And in a true terrible sort of emergency, I
25 would imagine that you could find, if there was

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1 something being done wrong, you could find very quickly
2 and make the appropriate findings that that something
3 was being done wrong and fix it. But we don't think you
4 should get caught up in the notion that you can render
5 emergency relief without making all of the necessary
6 statutory findings that are required under the statutes.

7 And I think this relates directly to the
8 question the Judge initially put out there, and I think
9 that where he was leading was perfectly correct, that we
10 must go through the set of procedures, we must examine,
11 you know, the difficult procedural questions of whether
12 they have, in fact, met the standard for having a valid
13 complaint, whether they have met the standard for
14 relief, for getting relief in a valid complaint. You
15 just have to do it much, much, much, much, much faster
16 if you're convinced that it's an emergency. Again, we
17 don't think it is an emergency. But if you think it is,
18 then before you give relief, you better make all the
19 appropriate findings.

20 COMMISSIONER HEMSTAD: Well, findings, like
21 what, when you say appropriate findings, what does that
22 mean?

23 MR. BERMAN: Well, I think in general that
24 means findings concerning whether the rates are fair,
25 just, and reasonable, et cetera, though I think that

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1 those need to be taken in the context of a contract. I
2 don't think that it's necessarily the same type of
3 analysis as in other rate schedule cases.

4 COMMISSIONER HEMSTAD: Well, I suppose the
5 higher the price, the less, the lower the burden. I
6 mean let's assume that the price is infinity. I mean
7 there is some discussion in the Midwest markets that the
8 prices could have gone to infinity. But what are the
9 prices at infinity. I mean it wouldn't be much of a
10 burden to establish that as an emergency at that point
11 or \$100,000 a megawatt. I mean at some point, the
12 burden is a relatively modest one that there is an
13 emergency of some kind. So I guess the question I have
14 is, what kind of findings then would that require?

15 MR. BERMAN: Well, again, and I think we keep
16 mixing together the emergency part and the merits part.

17 COMMISSIONER HEMSTAD: Right.

18 MR. BERMAN: There's the issue of what
19 findings are necessary to conclude there's an emergency.
20 And then there's the issue of once you have concluded
21 there is an emergency, what findings are necessary to
22 actually order any relief. It's not enough to order
23 relief, to just conclude yeah, there's a big problem.

24 COMMISSIONER HEMSTAD: Right.

25 MR. BERMAN: You have to make the appropriate

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1 findings, and we think you have to make all the findings
2 that you would have made in a non-emergency proceeding,
3 just a lot faster. Everyone has to focus their efforts
4 and attention a lot faster on the key questions, which
5 presumably would be easier if it was a real emergency.

6 We shouldn't let the record get too far with
7 the notion that say, for instance, that rates were
8 infinity or even that they were 10,000% higher than they
9 were before. I think those numbers are exaggerated.
10 And if they went very high for a few hours, but in most
11 hours are a lot lower than the numbers that are being
12 tossed around in the courtroom, that's other things that
13 we would get into if we were to start looking at all of
14 the different rate numbers.

15 Again, we don't think that looking at the
16 rate numbers is necessarily the right way to examine it.
17 Back when these contracts were entered into, the
18 Commission examined this and recognized that rates could
19 go up and rates could go down and that what they were
20 approving was a way of looking at things. And we think
21 that that's still the right thing to do is to consider
22 whether the way of looking at things which allocates
23 risks in a certain way to certain customers based on
24 their choice to accept those risks as part of a
25 contract, whether that's appropriate.

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1 CHAIRWOMAN SHOWALTER: I have a question.
2 Supposing FERC tomorrow does impose a Westwide wholesale
3 price cap, how does that change the landscape? And, of
4 course, well, what is that price, but let's say it's
5 \$250 or lower. Well, number one, won't that bring the
6 prices down to that level? I don't know that that --
7 well, is that level an emergency? Maybe that's the
8 question. The index has certainly been at \$200 or \$250
9 over some weeks. Would we still be in the emergency as
10 you pose it?

11 MS. DAVISON: Yes, we would be. I think that
12 these numbers have gotten so extraordinarily high that I
13 think we have lost sight of where a reasonable rate
14 should be or what was expected and what the market has
15 been producing before all of these actions had taken
16 place in California.

17 I have a couple of very quick responses to
18 the dialogue that just took place. I believe that you,
19 for sake of argument, I still believe that you have
20 very, very broad authority under the emergency statute,
21 but for sake of argument, I think that if you need to
22 make the two statutory provisions work, I believe you
23 can declare emergency, and you can impose Schedule 49.

24 You have already declared that to be a just
25 and reasonable rate for industrial customers. We have

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1 stated repeatedly that if there is proven that we need
2 to pay a surcharge on top of the Schedule 49 price, we
3 will pay that. So I believe that that is a solution
4 that is legally permissible and keeps all customers
5 whole, including Puget.

6 CHAIRWOMAN SHOWALTER: Well, what about this
7 issue of them becoming your banker, and I mean it's a
8 banker for some pretty big companies.

9 MS. DAVISON: I believe that's just a classic
10 red herring. They are a regulated monopoly utility that
11 has to charge just and reasonable rates. And when the
12 rates get into the realm that we are talking about here,
13 I don't believe that there's anybody that can argue with
14 a straight face that these are just and reasonable rates
15 and that any company should be forced to pay those rates
16 or go out of business. I don't believe that that is
17 intended by the statute or intended by the orders that
18 have been issued by this Commission in the past.

19 COMMISSIONER HEMSTAD: Well, Mr. Cedarbaum,
20 from the way you were, if I followed your sequential
21 steps or as I understood what you stated, in order -- we
22 would have need to determine as a threshold issue, is
23 there an emergency. If the answer to that is yes, then
24 we would impose some kind of temporary rate relief. And
25 then because of the curious statutory limitation

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1 requiring the 25 customers that filed a complaint, then
2 we could initiate a Commission initiated complaint and
3 then proceed to determine what would be a permanent
4 rate, which would then open up the variety of issues
5 that are yet to be precisely defined as to what kind of
6 a rate that would be. And, well, is that your intent?
7 Am I -- did I read you correctly that that would be the
8 process we would need to go through here?

9 MR. CEDARBAUM: I think that's essentially
10 right. And I guess that I in a sense also agree with
11 Mr. Berman about the sort of the characteristic of the
12 emergency proceeding. I mean it's still an
13 adjudication. It's just a fast track adjudication. Our
14 position is that if you're going to examine the justness
15 and reasonableness of the rate within, well, in this
16 case Schedule 48, you still have to have a valid
17 complaint underlying it all. But you just then you set
18 up a process that reflects the emergency situation that
19 you found exists. You may not have a hearing that takes
20 ten months under the complaint statute. You just
21 shorten it up as long as you follow whatever process the
22 statute requires.

23 And there is a 25 customer standing
24 requirement, which I don't believe has been met here,
25 but I could be wrong about that.

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1 COMMISSIONER HEMSTAD: It would appear not to
2 be, but that would be avoided by the Commission
3 initiating the complaint.

4 MR. CEDARBAUM: That's right.

5 COMMISSIONER HEMSTAD: So that process can be
6 gotten over assuming we wanted to get there.

7 But within the context of the petitioners are
8 asking for here, a one day emergency evidentiary
9 hearing, the purpose of that I'm assuming would be to
10 determine there is an emergency and they have to put on
11 evidence to establish an emergency.

12 MR. CEDARBAUM: As I understand the -- I
13 can't find Ms. Davison's proposed schedule that she gave
14 me.

15 MS. DAVISON: (Indicates.)

16 MR. CEDARBAUM: Thank you.

17 As I understand it, she's proposing a one day
18 hearing to determine whether or not price caps or other
19 emergency rate relief should be implemented per Schedule
20 48 where there has been --

21 COMMISSIONER HEMSTAD: But isn't that begging
22 the initial question whether or not, in fact, there is
23 an emergency?

24 MR. CEDARBAUM: You still need to have facts
25 upon which you are reaching the legal conclusion under

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1 the emergency adjudicate statute that there is an
2 immediate danger to public health, safety, and welfare.

3 COMMISSIONER HEMSTAD: That's the threshold
4 issue that this petition needs to get over before we can
5 even go any further. We need to get over that initial
6 hurdle.

7 MR. CEDARBAUM: If you want to act on an
8 emergency basis. I mean the Commission always has the
9 discretion to issue a complaint against the rate and
10 engage in a hearing.

11 COMMISSIONER HEMSTAD: I see, so we can avoid
12 all of that, not all that, at least that by the
13 Commission issuing on its own motion a complaint and
14 then proceeding on an accelerated basis to address the
15 questions presented. I'm assuming for the purposes of
16 discussion that the complaint essentially raises the
17 same issues as are found in the petitioner's petition
18 here.

19 MR. CEDARBAUM: There are certain procedures
20 in the complaint statute and other statutes which talks
21 about ten days notice after a complaint is served, the
22 opportunity for cross-examination, putting on testimony.
23 But, you know, within people, as long as you respect
24 people's due process concerns, it doesn't have to be a
25 ten month process.

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1 COMMISSIONER HEMSTAD: Right.

2 JUDGE MOSS: Do you have a --

3 COMMISSIONER HEMSTAD: Do you have a
4 recommendation for us as to how you think we ought to
5 proceed.

6 MR. CEDARBAUM: I think --

7 CHAIRWOMAN SHOWALTER: You need to be a
8 little closer to the mike.

9 MR. CEDARBAUM: I think to answer that
10 question would be I would like to take some time to talk
11 with Staff about that.

12 CHAIRWOMAN SHOWALTER: And I think we will
13 take a little break at some point soon. I see everybody
14 has some things to say.

15 JUDGE MOSS: I had a quick question for you,
16 I think, I hope it's a quick question. What we're being
17 asked here under the Complainant's proposed schedule is
18 to have the Commission enter an order tomorrow that
19 would state that the rates charged by PSE after tomorrow
20 are subject to refund. Now what would have to happen
21 along the lines we have been discussing in order to make
22 a rate that's currently charged just -- I mean would we
23 have -- if the Commission -- let's say the Commission
24 issues a complaint and establishes the current rate as a
25 temporary rate and thereafter subject to refund, is that

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1 how you do that, or is it possible to do that I guess is
2 the fundamental question?

3 MR. CEDARBAUM: Again, I think you have to,
4 you know, underlying all of this, you would have to have
5 a valid complaint which -- because I don't think they
6 have met the 25 person threshold standing requirement we
7 have.

8 CHAIRWOMAN SHOWALTER: Just so I understand,
9 does that mean if nothing more is filed by anyone, you
10 don't think we have authority to grant emergency relief,
11 because we don't have before us any valid complaint?

12 MR. CEDARBAUM: I believe that's true.

13 CHAIRWOMAN SHOWALTER: Okay.

14 MR. CEDARBAUM: You don't have a complaint or
15 a petitioner in this situation who has met the standing
16 requirement of the complaint statute, which I think is
17 the underlying basis for determining whether an existing
18 rate is a just and reasonable one and then correcting it
19 to the just and reasonable rate thereafter.

20 JUDGE MOSS: That being the case, to do
21 anything tomorrow, it would be necessary for the
22 Commission to first determine to issue a complaint?

23 MR. CEDARBAUM: I believe so.

24 CHAIRWOMAN SHOWALTER: But then for us to
25 issue a complaint, then don't we have to determine at

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1 some threshold level, and I hope you will tell me what
2 it is, that these rates are not fair, just, reasonable,
3 and sufficient, and I want to talk about the sufficient
4 side. We would have to be saying ourselves --

5 MR. CEDARBAUM: Well --

6 CHAIRWOMAN SHOWALTER: -- not that there's an
7 emergency, but that we don't think the rates are fair,
8 just, reasonable, and sufficient.

9 MR. CEDARBAUM: Let me just find the statute
10 for you, but this is 80.04.110. It doesn't require you
11 to -- and you wouldn't be reaching the ultimate
12 conclusion in the complaint that --

13 CHAIRWOMAN SHOWALTER: Right.

14 MR. CEDARBAUM: -- it's not just for reasons
15 sufficient, you would be --

16 CHAIRWOMAN SHOWALTER: You really do need to
17 get to the microphone.

18 MR. CEDARBAUM: There would be at least an
19 allegation to that effect, that that issue is being teed
20 up.

21 CHAIRWOMAN SHOWALTER: Actually, I realize,
22 that's not my question on sufficiency. I think my
23 concern is that granting relief to the customers shifts
24 or has the potential to create or trigger some kind of
25 emergency effect on the company. It's that issue. And

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1 I guess it seems like for legally granting the
2 customer's relief, we only have to find there's an
3 emergency out there with respect to them.

4 But do we have an obligation, either legally
5 or in some other way, to determine that whatever we do,
6 even if temporary, even if subject to refund later,
7 doesn't jeopardize another actor in the play, and that
8 is Puget?

9 MR. CEDARBAUM: Well, I think the Staff
10 position is that, and I think legally, that you would
11 have the discretion, and Staff would ask you to consider
12 those interests.

13 CHAIRWOMAN SHOWALTER: And what --

14 MR. CEDARBAUM: We wouldn't want to ignore
15 the sufficient part of the equation.

16 CHAIRWOMAN SHOWALTER: But what kind of
17 evidence do we need before us to determine basically
18 that Puget can absorb this risk for a temporary period?

19 MR. CEDARBAUM: Well, you know, quite
20 frankly, I'm not sure what the answer to that question
21 is, but we would be doing some sort of financial
22 analysis of the company, analysis of what their costs
23 are to serve these customers, that kind of thing. But I
24 just don't off the top of my head know what every point
25 in the analysis that we would do.

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1 CHAIRWOMAN SHOWALTER: But do you agree we
2 need some kind of -- we need -- the Commission ought to
3 be satisfied to some degree that shifting that risk
4 would not jeopardize the company.

5 MR. CEDARBAUM: I think that's within the
6 statutory standard of the, you know, the immediate
7 danger of the public health, safety, and welfare.

8 JUDGE MOSS: Did you find anything in the way
9 of authority out there on that subject? I've been
10 wondering as we're sitting here, wondering what is the
11 standard for this? It begins to sound like injunctive
12 relief at some point. It begins to sound like a party
13 coming in asking for a temporary injunction at which
14 time they have to show a number of things, including a
15 substantial likelihood of prevailing on the merits. And
16 I'm wondering if we have that kind of a standard here
17 that we need to have satisfied or whether there is some
18 lesser standard that would justify the Commission in
19 effect putting in place a temporary injunction against
20 the charging of the lawful rates.

21 MR. CEDARBAUM: In our research, we could
22 find no case law interpreting the emergency adjudicative
23 statute.

24 JUDGE MOSS: There may be some in the next
25 six months.

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1 MR. CEDARBAUM: At least in this state. I
2 haven't researched other states.

3 COMMISSIONER HEMSTAD: Apparently, there's no
4 control in legal authority.

5 CHAIRWOMAN SHOWALTER: That's not fair today.

6 MR. CEDARBAUM: So we could find no court
7 case in this state that we're aware of that interprets
8 what it means to include an immediate danger to the
9 public health, safety, or welfare.

10 JUDGE MOSS: As someone who has been involved
11 in this for a number of years, I wonder if you have any
12 educated legal opinion on what sort of standard the
13 Commission should consider using for evoking its
14 emergency adjudicative powers. And if you don't or want
15 to think about that, I wouldn't want to put you on the
16 spot too much.

17 MR. CEDARBAUM: I guess it's not so much what
18 the standard is, it sounds like Florida, but what the
19 criteria for the standard would be, because the standard
20 is in the statute. But the criteria that we were
21 looking at was broader than just are these companies
22 going to shut down because of the price of electricity.
23 We would be looking at issues such as the hedging issues
24 that would come up. These are large corporations. They
25 may or may not have power to borrow money for covering

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1 these types of costs.

2 There are other issues with respect to the
3 plant operations and the customers of these customers.
4 We don't know, for example, whether Air Liquide or Air
5 Products, the contracts they have with the hospitals or
6 whoever they serve, have variable rate provisions in
7 them. Can they pass these costs on, or have they just
8 chosen not to. We don't know that. So there are lots
9 of other issues.

10 JUDGE MOSS: And we need to know those things
11 before we know if there's an emergency, right?

12 MR. CEDARBAUM: Well, that's what Staff would
13 recommend, but I think it's a -- the standard in the
14 statute I think is a relatively high hurdle, but it's
15 also a broad standard in what you can consider. I think
16 you have the discretion to accept our recommendation on
17 what you look at or not.

18 CHAIRWOMAN SHOWALTER: Mr. ffitch leaned
19 toward the microphone at one point.

20 MR. FFITCH: I did, Your Honor, thank you,
21 for two reasons. One was to ask for a break to call my
22 wife and tell her why I'm not home, and the other was to
23 make an observation about the 34.05 statute. And
24 certainly this is really irrelevant if there's a problem
25 with the complaint. However, the emergency adjudication

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1 statute, I think, has a second element, which is that
2 the Commission has to conclude that the emergency, if
3 there is one, or the immediate danger, to use the
4 statutory language, has to require immediate agency
5 action, and I thought I would just add that bit of food
6 for thought to the discussion. So, you know, I think
7 that's relevant given some of the points that have been
8 raised here about other ongoing events that might affect
9 the controversy here.

10 JUDGE MOSS: So that --

11 MR. FFITCH: But I don't have any
12 disagreement with the analysis that's been laid out by
13 Mr. Cedarbaum.

14 JUDGE MOSS: So that would include looking at
15 things like whether FERC acts tomorrow to effect the
16 wholesale rate. Also it would involve looking at things
17 like whether Boeing Corporation, one of the Complainants
18 here, is having the most profitable year in its history,
19 would that be a consideration in terms of whether there
20 is an emergency here, or would we not look at that in
21 your view?

22 MR. FFITCH: I think that would be under the
23 immediate danger to welfare prong rather than the need
24 for immediate action prong. I think that the statute
25 speaks to public welfare, which might be in some

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1 situations you might conclude that doesn't cover private
2 economic harm. Certainly though in this case, I think
3 there is some indication that goes, you know, the
4 consequences of these kinds of prices do go beyond mere
5 private economic harm. At least we have one company
6 that, to my knowledge, that has shut down, and we have
7 employees affected.

8 The only other comment I guess I would make
9 about the statute is there is a narrowness provision in
10 subsection 2 of the statute that appears to limit the
11 Commission to taking only such action as necessary to
12 prevent or avoid the specific danger that's the basis
13 for the emergency adjudication.

14 I don't know if that helps or not, but I
15 guess it does seem to say, you know, if you're going to
16 act in an emergency fashion, be narrow, be cautious, be
17 limited. There are a lot of bigger issues here that
18 have been raised, but they don't necessarily have to all
19 be addressed in that first adjudication if, in fact,
20 that even occurs.

21 CHAIRWOMAN SHOWALTER: Does that suggest that
22 if we take emergency action in the form of a cap that
23 the cap should be lowered only down to non-emergency
24 levels?

25 MR. FFITCH: Perhaps it does, yes. I hadn't

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1 really thought of it quite that way. But that would --
2 the statute would sort of seem to say that. That would
3 be one conclusion you could draw from that provision.

4 JUDGE MOSS: I'm mindful you asked for a
5 break. How much time would the Commissioners prefer?

6 COMMISSIONER HEMSTAD: Ten minutes.

7 JUDGE MOSS: Ten minutes, we're off the
8 record.

9 (Brief recess.)

10 JUDGE MOSS: We took a somewhat longer than
11 anticipated break, which gave the Commission an
12 opportunity to I will say mull over and discuss,
13 deliberate about the many, many things we have heard
14 this evening.

15 I think at this juncture and given the late
16 hour, given all that has been heard, the appropriate
17 course of action is to allow the parties to have a brief
18 opportunity to sum up with anything they wish, and
19 hopefully about 90 seconds per party. And then the
20 Commission is going to take the various matters that
21 have been raised under advisement this evening and
22 tomorrow. And we will issue an order as soon as
23 practicable and announcing procedures and outlining
24 issues, and that's how we will proceed from this
25 juncture. The Commission is not going to make any

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1 findings or determinations from the Bench tonight.

2 With that, given the posture of the
3 proceeding, I will turn first to the Complainant and ask
4 if you have anything you would like to say in summary.

5 MS. DAVISON: Thank you, Your Honor. I would
6 like to say that first, I believe that procedurally the
7 process that we have laid out that is contained in our
8 proposed schedule is legally permissible. The issue of
9 the sufficiency of the complaint is something that we
10 can remedy. I have heard indications that if we need to
11 go out and collect signatures from members of the AWPPW,
12 we can do that. I'm willing to do whatever is the
13 Commission's pleasure in terms of meeting what I think
14 is a technicality of the statute. Obviously we want to
15 have a legally sufficient complaint, and we will do
16 whatever is necessary to do that.

17 In terms --

18 COMMISSIONER HEMSTAD: As a suggestion, under
19 the statute you might look at concerning Anacortes as a
20 Complainant.

21 MS. DAVISON: Yes, we are, thank you. They
22 indicated to me a desire to join on, pending approval
23 from their mayor, of course, but I think that that could
24 be an easy solution as well. So we will address that
25 issue. We're aware of that issue.

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1 In terms of the legal sufficiency of the
2 process, I believe that if you believe there is an
3 emergency, you have broad authority to act. I believe
4 that you can declare an emergency. You can put a
5 temporary rate in effect. You can give the parties the
6 ability to argue about the impacts on PSE or the impacts
7 on other customers. And at the end of a process, we can
8 come up with a just and reasonable rate to put into
9 effect. It is our desire to bring this to you quickly
10 and orderly, and we hope to get resolution of this
11 before the current emergency becomes a dire emergency.

12 JUDGE MOSS: Thank you very much.
13 Puget.

14 MR. BERMAN: Thank you. I guess we have
15 addressed again several issues here. One is the issue
16 of emergencies, and two is the issue of the merits. Let
17 me address them in turn.

18 First on the issue of emergencies, I think
19 the obvious first thing is that's a very hard factual
20 question, whether there is one, and they certainly
21 haven't shown it in the pleadings they have submitted
22 here. If we were to try to determine whether there
23 really was an emergency, for instance, if we were really
24 going to determine whether the Complainants here were in
25 a situation where they had to shut their plants, you

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1 know, for example, some of the Complainants again are
2 enjoying record years, record profits, increasing their
3 dividends, if we really were going to inquire into the
4 impact on these Complainants, we would have to do
5 extensive discovery into their finances, extensive
6 discovery into the impacts on them, extensive discovery
7 and hearing into what other alternatives they have in
8 their business practices and how they can float through
9 these costs to their customers, how do they charge their
10 customers, what are their other factors of production,
11 what are other reasons that they might be having
12 business difficulties aside from electrical issues, even
13 if there are business difficulties, which are not
14 necessarily clear for all of these Complainants.

15 And then again, even if you conclude there is
16 an emergency, there is the issue that the emergency, to
17 the extent there is one, is in wholesale power markets
18 and is best addressed elsewhere and is not an emergency
19 that's properly considered or addressed in this
20 proceeding. It's properly addressed at FERC, were Puget
21 is addressing it, where the Commission is addressing it,
22 where ICNU, which is an association that includes these
23 various Complainants, is addressing it and has supported
24 Puget's complaint, and that's where the emergency, if
25 any, should be addressed.

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1 If you were to conclude that there was an
2 emergency, we found no basis, no authority, for coming
3 up with a temporary relief that gives a reduction in
4 rates based on such an emergency absent going through
5 all the statutorily required standards of the Code
6 without making all the findings that would be necessary
7 if there were no emergency. All the emergency does is
8 have you do it on a fast track basis. So with all the
9 suggestions there have been that there be some sort of
10 temporary or interim relief put in place, we don't think
11 that's consistent with retroactive rate making and file
12 rates and all of those principles to impose a new rate
13 on us, particularly in light of the contract that we
14 have with these parties.

15 And that really brings me to the merits,
16 which is that we do have a contract with these parties.
17 It's a contract that carefully balanced the risks
18 between Puget, between the Schedule 48 customers, and
19 then there was the related contract that you have now
20 consolidated involving the merger rate plan that dealt
21 with how other customers of Puget's fit into this risk
22 allocation. And we think that there's no basis for
23 disturbing that set of arrangements in any way. If you
24 were to disturb one part of it, you would have to
25 inevitably address all of the other parts and would open

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1 up all of the other parts. And we don't think that's
2 appropriate, but that's what we would have to do if you
3 went there.

4 JUDGE MOSS: Thank you very much.

5 Would any of the interveners care to make a
6 statement?

7 MR. PEMBERTON: If that's permissible, yes I
8 would like to. Jim Pemberton, thank you for the
9 opportunity to speak. It's been stated that this was
10 not an emergency. From the City of Anacortes'
11 perspective as a water utility providing service to four
12 other municipalities, it does constitute an emergency
13 for us from a cash flow basis, also from the ability to
14 fund out of rates and our revenue bonds improvements
15 that are already in our capital improvement plan and
16 that are scheduled for construction. So I don't know
17 all the issues as far as remedies go, but I can say that
18 our rates have, through October, have been quadrupled,
19 and I have no idea what Monday has done to us, but I
20 suspect that's been very, very negative.

21 JUDGE MOSS: Thank you very much.

22 CHAIRWOMAN SHOWALTER: You didn't get a
23 chance to talk earlier, so I will just ask a question.
24 Have you raised your water rates, the rates to your
25 customers, in response to your electric, your own

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1 electric rates?

2 MR. PEMBERTON: No, we haven't. In fact, we
3 just did finish a rate study based on past costs and
4 what the history was. We did not raise the rates for
5 our customers.

6 JUDGE MOSS: Any other intervener wish to
7 make a statement?

8 MR. PROCHASKA: Yes, just really quickly.
9 Right now we have approximately 500 of our members laid
10 off in the Bellingham area. Whether or not this
11 situation constitutes an emergency for a large
12 corporation, just simple business common sense, you need
13 to understand that if one site becomes unprofitable in
14 that region for whatever reason, electrical rates or
15 whatever, they're not going to jeopardize the earnings
16 of the entire corporation to keep that site open. That
17 site's in jeopardy. That means our members are in
18 jeopardy. That means the community is in jeopardy.

19 The City of Bellingham is already trying to
20 calculate what the lost tax revenue is going to do to
21 their budgets for the coming year. There are literally
22 hundreds or maybe thousands of other jobs that depend on
23 the Georgia-Pacific jobs to exist, the restaurants, the
24 retail stores, the construction contractors that work in
25 the site on a daily basis, part suppliers. It's all

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1 connected.

2 The AWPPW has members at another facility
3 within the state that isn't subject to these sorts of
4 electrical rates because they're current contract, but
5 they nearly shut down yesterday morning because they
6 didn't -- no longer had a supply of one of the raw
7 materials because of a chemical company in Tacoma that
8 is shut down because of these rates.

9 Whether it is or is not an emergency based on
10 the financials of a particular corporation, there is a
11 definite significant impact to the public welfare of,
12 you know, our members and the communities that they live
13 in.

14 JUDGE MOSS: Thank you very much.

15 Before I turn to Public Counsel, any other
16 interveners?

17 We have covered the waterfront. Mr. ffitch.

18 MR. FFITCH: Thank you, Your Honor.

19 Essentially just have a couple of points to make. First
20 of all, our chief interest here is to request that the
21 Commission again affirm the guarantees of protection
22 from cost shifting and of rate stability that are found
23 in the merger order and the Schedule 48 order in
24 crafting any kind of relief in this proceeding.

25 I also want to make it clear, however, that

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1 Public Counsel is strongly interested in finding a
2 solution to the problems that are faced by Schedule 48
3 customers in this case. We're encouraged by
4 Ms. Davison's representations that they are seeking
5 solutions which do not involve cost shifting to other
6 customers, and we will be happy to try to continue to
7 explore those. We have laid out a couple of ideas in
8 our initial response filing.

9 With regard to the procedure, we do think
10 there, as a couple of the previous speakers have
11 mentioned, some concerns about the public welfare if
12 these wholesale rates stay high, which I think bear on
13 the question of whether this is an emergency under RCW
14 34.05. Even if those standards are not met, if this
15 kind of volatility continues in the electric market, we
16 think that the Commission should nevertheless proceed
17 expeditiously to look at these issues, assuming it's
18 presented with, you know, with a valid complaint that --
19 or proceeds on its own motion.

20 JUDGE MOSS: Thank you.

21 Mr. Cedarbaum or Mr. Trotter.

22 MR. FFITCH: I'm sorry, there was one other,
23 I apologize, I just didn't read my notes thoroughly,
24 there's one other thought there about perhaps one of the
25 solutions that might be out there that was mentioned was

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1 the refiled Schedule 48 kind of approach, which we
2 thought would have some merit down the line.

3 MR. CEDARBAUM: Thank you, Your Honor. I
4 just -- I think I covered the points I wanted to make
5 during the discussion before, and hopefully I was clear
6 enough. Just a couple of wrap-up points.

7 The first is that the threshold issue before
8 you is whether or not there is an emergency, and I think
9 as we have indicated before, that standard to us is a
10 fairly broad one, and you have a fair amount of
11 discretion as to what criteria you would think is
12 important for interpreting whether or not there is an
13 immediate danger to the public health, safety, and
14 welfare. We have suggested a range of criteria that we
15 think you should look at, but you may obviously disagree
16 with us, and Staff is prepared to go forward with any
17 process that you would want to pursue on an emergency
18 basis if you were to reach that conclusion that there is
19 an emergency.

20 CHAIRWOMAN SHOWALTER: Your suggestions were
21 just here orally. You haven't submitted anything in
22 writing, have you?

23 MR. CEDARBAUM: That's correct, it was just
24 our oral discussions.

25 And a second point, I guess, following what

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1 Mr. ffitch said, was that we have thought of some
2 solutions. Staff has, we have discussed some solutions
3 amongst ourselves, and we will be prepared to discuss
4 those with the parties informally to see if we can try
5 to reach a solution that we can all live with. And so I
6 would just offer that as an aside to everyone to let
7 them know that we are thinking along those lines. If
8 you want to get together and talk about them, we can.

9 JUDGE MOSS: Which sagues very nicely into
10 what I think will be the last point we want to discuss
11 this evening, which is the possibility of the parties
12 working in the mediated settlement context. We can make
13 the services available of one of our administrative law
14 judges who has training and experience in mediation and
15 who has expressed a willingness and eagerness to help
16 the parties achieve a negotiated result if they can,
17 something that would perhaps provide some temporary
18 relief.

19 And I would ask if the parties have an
20 interest in that process, if they would so indicate.

21 Ms. Davison.

22 MS. DAVISON: I'm sorry, Your Honor, I would
23 have to talk to my clients and find out what their
24 preference is on that. I'm not comfortable just giving
25 my opinion without consulting with them first.

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1 JUDGE MOSS: When could you let me know?
2 MS. DAVISON: I could let you know tomorrow.
3 JUDGE MOSS: By what time?
4 MS. DAVISON: By probably mid to late
5 afternoon.
6 JUDGE MOSS: All right, then I will count on
7 hearing from you by mid to late afternoon on this, all
8 right?
9 MS. DAVISON: All right, thank you.
10 JUDGE MOSS: I would like to hear from Puget
11 on this.
12 MR. BERMAN: Your Honor, we think that
13 talking to customers and finding out of the box
14 solutions is an appropriate way to proceed on this. We
15 have, in the letter that we submitted the other day and
16 in our conversations I think with everyone, have made
17 clear that we're willing to consider options that are
18 difficult and complex and that we really didn't want to
19 consider in the past, but issues concerning the buy-sell
20 transactions and other transactions that create hard
21 jurisdictional issues that have to be worked through.
22 The last time I was in front of this
23 Commission, I was talking about how all the hard
24 jurisdictional issues that have to be sorted out in such
25 a transaction, but we're willing to try to cut through

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1 all of that, and we think that we can. And so there are
2 any number of different solutions that we think could be
3 worked out to give relief to these customers.

4 We have been trying to talk to the various
5 customer groups. We have been inviting them in. I
6 would like to hear what they have to say first about
7 what forum would work best for that discussion to occur.
8 If they think that having that discussion with some sort
9 of mediator would make it more likely that we get
10 somewhere on those sort of out of the box options, we
11 would, I think, be interested in that as well, but we
12 want to hear more about what they have to say on that.

13 JUDGE MOSS: I'm wondering if we should have
14 a teleconference on this tomorrow with me. Do you think
15 that would be a good idea? I think that would be a good
16 idea. I think that would be a good idea.

17 CHAIRWOMAN SHOWALTER: I also think, I think
18 on this question, I think it may make a difference to
19 your thinking on this to say, well, who would it be,
20 since that's -- and we're thinking of Bob Wallis, who
21 has been sitting in the back of the room following all
22 of this, so if we provide a mediator.

23 JUDGE MOSS: And we don't mean either to
24 foreclose any options to the parties. I think the
25 comments are well taken that it would be useful, and

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1 this is why I'm suggesting that we have a teleconference
2 tomorrow, which will simply provide a forum for the
3 parties to discuss among themselves with some modest
4 monitoring, shall we say, by me what would be the best
5 approach. So I do stick with my earlier remark, I think
6 its a good idea. Let's do it. Mid to early afternoon
7 work for everybody?

8 Will you be able to talk to your clients,
9 involve them in this process?

10 MS. DAVISON: Yes, I need to talk to my
11 clients and involve them in the process. I guess I'm
12 struggling at the moment, because I don't know exactly
13 what my calendar is, but I would be reluctant to commit
14 to a time before 3:00 in terms of my availability. I
15 know I have some commitments in the morning.

16 JUDGE MOSS: Sure.

17 MS. DAVISON: But I think 3:00 would be fine.

18 And I guess certainly mediation is a very
19 important tool. We believe that negotiating is always
20 better than litigating. I'm just concerned about the
21 timing and the very crucial circumstances that everybody
22 is involved in here, and I don't think we would really
23 want to abandon ability to get some sort of quick
24 relief, even if it's on a temporary basis, and then
25 proceed to figure out a more long-term solution.

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1 JUDGE MOSS: Well, let me just drop the
2 suggestion that you all could reach an agreement by 9:00
3 this evening and have your relief by noon tomorrow,
4 whereas the Commission can not. It is not
5 institutionally set up in a way that it can react that
6 quickly.

7 So the quickest solution for you is to talk
8 to your clients and convince them as well that to be
9 open minded at least to innovative ideas. We have heard
10 the expression out of the box, which I take to mean
11 innovative, and I think that that is probably the
12 superior course of action. I really do believe that.
13 And I may be wrong ultimately, but I think you should
14 really consider with your clients very carefully whether
15 that is not the best solution for a quick relief.

16 And I know there has been a history here, and
17 I know there has been some difficulties in terms of the
18 parties talking. It's no secret to anyone. But I think
19 you can rise above that, and I think you can best effect
20 your own solutions. And I would like to see you make a
21 conscientious effort in that direction. And if we
22 proceed in parallel track in litigation, so be it. We
23 can do that too.

24 Well, I have said enough, probably too much.
25 All right, so then at 3:00 tomorrow afternoon, why don't

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1 we have this conference call. I wish I knew whether the
2 teleconference bridge was going to be available, because
3 I would say you can just call in to that. I will make
4 arrangements in the morning, and we will E-mail out the
5 information to everyone, so keep an eye on your E-mail.
6 We will send out some kind of a notice as to a number to
7 call in to or whatever, however it's going to be set up
8 logistically.

9 MR. BERMAN: If I could just raise a
10 logistical point, I think that there are a number of
11 Puget folks who wanted to go off for the weekend
12 perhaps, and if this is going to turn into another 3:00
13 until 7:00 thing on Friday, that would be a problem, I
14 think.

15 JUDGE MOSS: I'm anticipating that this will
16 be a half an hour type of thing, and it will just be me,
17 and it will be informal. There won't be any record. Is
18 that going to work?

19 MR. BERMAN: That's going to work.

20 JUDGE MOSS: All right.

21 CHAIRWOMAN SHOWALTER: I guess I just wanted
22 to say that it's clear that the factual situation here
23 is difficult and compelling and complicated, and the
24 legal issues are difficult and complicated, and I think
25 it's going to be difficult and complicated to deal -- to

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1 find our way out of this, if there is any way. But I
2 really do appreciate all of the parties putting together
3 what information they could bring to bear and the legal
4 issues they could bring to bear.

5 And also thinking on the spot here today
6 really isn't the usual way we do this, and I'm sure this
7 wasn't the usual prehearing conference, and it would
8 have gone much faster if we hadn't been here and Judge
9 Moss had been just running the show. But I think it is
10 an unusual circumstance, and so we ranged fairly far and
11 wide over a number of issues just to get a feel for what
12 we might possibly do. So I just wanted to express my
13 appreciation to everyone.

14 COMMISSIONER HEMSTAD: But it is our
15 intention that we will issue an order attempting to deal
16 with what we have discussed tonight, and do that as
17 promptly as we can.

18 JUDGE MOSS: I believe that concludes our
19 business for this evening. I thank you all and
20 apologize for the late hour, but probably worth the
21 investment of time to all of us.

22 Good night, we're off the record.
23 (Hearing adjourned at 7:10 p.m.)

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