

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,)
5 Complainant,) Docket Nos. UE-011570
6 v.) and UG-011571
7 PUGET SOUND ENERGY, INC.,) (consolidated)
8 Respondent.) Volume IX
9 _____) Pages 1440 to 1550
10))
11 THE PUBLIC COUNSEL SECTION OF)
12 THE OFFICE OF THE WASHINGTON)
13 ATTORNEY GENERAL,)
14 Complainant.) Docket No. UE-011411
15 v.) Volume II
16 PUGET SOUND ENERGY, INC.,) Pages 37 to 147
17 Respondent.)
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17 A hearing in the above matter was held on
18 March 25, 2002, at 1:30 p.m., at 1300 South Evergreen
19 Park Drive Southwest, Room 206, Olympia, Washington,
20 before Administrative Law Judge DENNIS MOSS and
21 Chairwoman MARILYN SHOWALTER and Commissioner RICHARD
22 HEMSTAD and Commissioner PATRICK J. OSHIE.

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Joan E. Kinn, CCR, RPR
Court Reporter

1 The parties were present as follows:

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

2 JUDGE MOSS: Good afternoon, everybody. My
3 name is Dennis Moss. I'm the presiding Administrative
4 Law Judge here to assist the commissioners today on the
5 Bench as we take up a proposed settlement in the interim
6 phase of the matter styled Washington Utilities and
7 Transportation Commission against Puget Sound Energy,
8 Docket Numbers UE-011570 and UG-011571 and in joint
9 session with the matter styled Public Counsel Section of
10 the Office of the Washington Attorney General against
11 Puget Sound Energy, Inc., Docket Number UE-011411.
12 That's a complaint proceeding, the first two dockets
13 being a general and interim rate proceeding.

14 Our basic agenda today, we will take
15 appearances, and I will take the short form of
16 appearances from any counsel or other representatives
17 who have previously appeared. Any counsel or other
18 representative who are appearing in this proceeding for
19 the first time should give me a more full set of
20 information including your address, telephone number,
21 fax, and E-mail.

22 We have two late filed petitions to intervene
23 on which the Commission has not taken official action,
24 we will do that. There is an ex-parte matter that I'm
25 going to raise to everyone's attention. We will then

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1 have a status report with respect to the status of the
2 case. And Mr. Cedarbaum and I discussed before we went
3 on the record, he will give us a brief statement and
4 also present the settlement agreement that's been filed,
5 and we will make that an exhibit of record.

6 We will then ascertain whether there are
7 other parties who wish to join the settlement agreement.
8 I have been given one additional signature page that I
9 understand was filed today by the Cogeneration Coalition
10 of Washington. There may be other parties who wish to
11 be signatories or wish to let us know today that they
12 are or intend to be signatories or otherwise support the
13 settlement, proposed settlement stipulation. And we
14 will, of course, at that same time ascertain whether
15 there is anyone in opposition to the proposal.

16 After that, we will call and swear our
17 witness panel. I understand there will be four
18 witnesses today, and I will ask them to seat themselves
19 up here. So if any counsel are occupying the
20 appropriate chairs, they will need to move. We will
21 take any narrative testimony from the witnesses and
22 then, of course, any additional exhibits that the
23 parties may wish to offer in support of the settlement
24 stipulation or in opposition. If there are adverse
25 parties, we will provide an opportunity for examination.

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1 Otherwise, our examination will be from the Bench. We
2 will just go through the settlement agreement a page at
3 a time.

4 In the category of other business, once we
5 finished talking about the settlement agreement, we have
6 a matter pending with respect to the filing of
7 substitute first revised tariff sheet number 194, and I
8 want to take care of that housekeeping matter today
9 while we're here, and then we'll have any closing
10 remarks at that point.

11 So any questions about the agenda?

12 All right, let's have our appearances, and we
13 will be begin with the company.

14 MS. DODGE: Thank you, Your Honor, Kirstin
15 Dodge with Perkins Coie for Puget Sound Energy, Inc.

16 MR. SANGER: Irion Sanger with Davison Van
17 Cleve on behalf of ICNU.

18 MR. KURTZ: Mike Kurtz for Kroger.

19 MR. FINKLEA: Ed Finklea on behalf of the
20 Northwest Industrial Gas Users.

21 JUDGE MOSS: Let's just go on around the
22 table, Mr. ffitch.

23 MR. FFITCH: Simon ffitch for Public Counsel.

24 MR. CEDARBAUM: Robert Cedarbaum for
25 Commission Staff.

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1 JUDGE MOSS: All right, and then we will just
2 proceed to the first row behind there, start on my
3 right, your left, go ahead.

4 MS. ENDEJAN: Judy Endejan here for
5 intervener Seattle Steam.

6 MS. DIXON: Danielle Dixon for Northwest
7 Energy Coalition and Natural Resources Defense Counsel.

8 MS. ARNOLD: Carol Arnold, Preston, Gates, &
9 Ellis, for Cost Management Services, Inc., and the
10 Cities of Auburn, Burien, Bellevue, Des Moines, Federal
11 Way, Maple Valley, Redmond, Renton, SeaTac, and Tukwila.

12 JUDGE MOSS: For those who missed the private
13 joke there, I told Ms. Arnold that she was going to have
14 to recite those from memory today.

15 MS. KIRKPATRICK: Traci Kirkpatrick with
16 Davis Wright Tremaine on behalf of the Seattle Times
17 Company.

18 MR. ROSEMAN: Ron Roseman on behalf of The
19 Energy Project, The Opportunity Counsel, and The
20 Multi-Service Center.

21 JUDGE MOSS: And, Mr. Roseman, I understand
22 that Mr. Eberdt is on the teleconference bridge line,
23 are you there, Mr. Eberdt?

24 MR. EBERDT: Yes, sir.

25 JUDGE MOSS: Thank you.

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1 MR. CAMERON: Good afternoon, I'm John
2 Cameron with Davis Wright Tremaine appearing here for
3 AT&T Wireless.

4 MS. RACKNER: Good afternoon, I'm Lisa
5 Rackner with Ater Wynne on behalf of WorldCom, Inc.

6 MR. WOODWORTH: I'm Don Woodworth, King
7 County Prosecutor's Office on behalf of King County, and
8 I'm joined today by my colleague Tom Kuffel.

9 JUDGE MOSS: Thank you.

10 MR. FURUTA: Norman Furuta on behalf of the
11 Federal Executive Agencies.

12 MS. THOMAS: Elizabeth Thomas, Preston,
13 Gates, & Ellis, on behalf of petitioner for intervention
14 Sound Transit.

15 JUDGE MOSS: And, Ms. Thomas, you have not
16 previously entered an appearance?

17 MS. THOMAS: No, I'm sorry, my mailing
18 address is 701 Fifth Avenue, Suite 5000, Seattle,
19 Washington 98104, E-mail address is
20 ethomas@prestongates.com.

21 JUDGE MOSS: And, Ms. Arnold, I don't
22 remember if you mentioned the City of Burien, their
23 petition is pending, isn't it?

24 MS. ARNOLD: Yes, Your Honor.

25 JUDGE MOSS: And you are their

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1 representative?

2 MS. ARNOLD: Yes, I am.

3 JUDGE MOSS: Okay, good.

4 All right, anybody else in the room who
5 wishes to enter an appearance?

6 Are there any on the teleconference bridge
7 line who wish to enter an appearance today? Mr. Eberdt,
8 I have already noted you are on the line, anyone else?

9 MS. WESTBY: This is Elizabeth Westby, I'm
10 here on behalf of the Cogeneration Coalition of
11 Washington.

12 JUDGE MOSS: All right, and Ms. Westby, you
13 may have heard me earlier note that the Cogeneration
14 Coalition of Washington as I understand is now a
15 signatory.

16 MS. WESTBY: Yes, they are, I'm glad you
17 received that.

18 JUDGE MOSS: All right.
19 Anybody else for an appearance?

20 All right, let me ask in terms of the --
21 well, I will get to that in a minute.

22 We do have, as I mentioned to you, late filed
23 petitions to intervene pending, one by Sound Transit,
24 and that was filed on March the 11th, and then we have
25 one by the City of Burien filed on March 20th. The

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1 procedural order in this proceeding, the one governing
2 things at this juncture, provides for a three day turn
3 around for any opposition to such motions. None was
4 received with respect to either motion. The Commission
5 has taken the matter under advisement and will grant the
6 petitions to intervene on the same basis as those
7 recently granted for the City of Maple Valley and
8 another city whose names escapes me at the moment. But
9 at any event, those petitions to intervene were granted,
10 late filed petitions to intervene granted, on the
11 condition that the parties would participate on a going
12 forward basis, which essentially is going to be the
13 general phase of the proceeding. So I will draft
14 appropriate language into whatever the Commission's next
15 order is in this matter.

16 I mentioned that there is an ex-parte matter
17 that I wish to put on the record, or I should say
18 potential. On March the 21st, 2002, an E-mail was
19 received at the Commission directed to the attention of
20 the three commissioners from an individual by the name
21 of apparently Faith N. Klaus, K-L-A-U-S, and the subject
22 line indicates Bank of America Securities, F Klaus, re
23 Puget Energy 3-21-02. I personally have not read this
24 document, but I understand that it does involve some
25 analysis of the settlement agreement that has been filed

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1 and a report of an analyst's conference that, of course,
2 the commissioners nor myself nor anybody on our side of
3 the ex-parte wall, of course, has not listened in or
4 read anything about that. Faith Klaus is not a party
5 nor is Bank of America Securities a party to the
6 proceeding. Nevertheless, some could construe this
7 communication to be an ex-parte contact, and therefore
8 we will make it a matter of record in the proceeding,
9 and any party who wishes to may respond to it. I should
10 have brought copies, we will perhaps take care of that
11 before the end of the day.

12 All right, I think that brings us,
13 Mr. Cedarbaum, to the point where we would ask you to
14 give the --

15 (Discussion on the Bench.)

16 JUDGE MOSS: Actually, I will just jump ahead
17 to that. I had it a little later in the agenda, but I
18 will go ahead and do it now, I have been reminded by the
19 commissioners. As far as the exhibits are concerned,
20 you all who participated in the interim rate hearing a
21 week or two ago, whenever it was, may recall that we had
22 an Exhibit 1-B, a Bench exhibit, that included the
23 Moody's and Standard & Poor's reports, periodic reports
24 on Puget Sound Energy over a period of time. I can't
25 recall exactly when the time period began but up to and

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1 including the day of the hearing. There have now been
2 some subsequent additions to that series of reports, if
3 you will. And, in fact, I have one from Standard &
4 Poor's dated March 20th, 2002, and one from Moody's
5 bearing that same date, and those will be added to
6 Exhibit 1-B and will become part of that exhibit. So if
7 those are otherwise not available to you, we can make
8 copies available to you. I had them put in my notebook
9 today.

10 (Discussion on the Bench.)

11 JUDGE MOSS: Mr. Cedarbaum, before I turn to
12 you and we begin, I did want to say that we're not
13 anticipating having opening statements from counsel
14 today, just a brief introduction and presentation of the
15 settlement, if you would. And we want, of course, to
16 hear from the witnesses primarily, and we will give
17 counsel an opportunity for closing remarks. We think
18 that would probably be the most useful way to proceed.
19 So if you have anything more elaborate planned, perhaps
20 you could hold it until the end and we could hear that
21 then. Of course, any important information you want to
22 give us in terms of a road map so to speak, that would
23 be helpful. But why don't you go ahead and present the
24 settlement agreement, and we will mark it as an exhibit.

25 MR. CEDARBAUM: Thank you, Your Honor. I did

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1 have some comments that I will -- think I will just wait
2 until the end. That might be more useful at that point.
3 I just want -- let me make a couple of points though
4 before we turn to the stipulation itself.

5 The first is that I did want to express our
6 appreciation to the Commission for giving us the time
7 and the opportunity to enter into negotiations which
8 resulted in the stipulation. After an enjoyable week of
9 hearings in the interim case in February, if we had been
10 having to write a brief and negotiate at the same time,
11 I think that would have been unwieldy, and we appreciate
12 the extensions of time that we received to allow for the
13 negotiations.

14 Secondly, I wanted to express our
15 appreciation to Judge Wallis. He did act as a
16 facilitator in the case, and as usual, that was a very
17 helpful addition to our process, and so he deserves a
18 great amount of credit for that. We appreciate his
19 involvement very much.

20 The third point which I was going to go
21 through was to describe the process that we used in
22 reaching the stipulation, but perhaps it's better just
23 to wait until the end and get into that. We did file a
24 memorandum in support of the stipulation, which
25 hopefully explained from our point of view the key

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1 points as to why we think the stipulation should be
2 adopted as being in the public interest, and I don't
3 want to go through that, just repeat what it says, or go
4 through the stipulation and repeat what it says.

5 The stipulation though does I think break
6 down into basically three different categories of
7 agreements. The first category would have to do with
8 rate relief in the interim proceeding, and that's the
9 \$25 Million amount which would be collected during the
10 three months April through June of 2002. The second
11 category involves substantive issues with respect to the
12 general rate case, thus the cost of capital agreement on
13 return on equity and equity ratio, the 11% ROE and 40%
14 equity ratio and also the equity tracking mechanism that
15 would increase the company's equity ratio up to about
16 40% by the end of 2005. And the third category of the
17 agreement involves general rate case procedural items,
18 which is a number of collaboratives that we have agreed
19 to engage in to resolve all remaining issues in the
20 general rate case, issues involving rate spread, rate
21 design, revenue requirements, and all other more
22 specialized interests, for example, energy conservation,
23 low income, the cities' interests with respect to
24 underground facilities, that sort of thing.

25 So we do have a panel of witnesses, witnesses

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1 from the company, Staff, Public Counsel, and
2 Mr. Schoenbeck is sort of double duty here as witness
3 for ICNU and the Northwest Industrial Gas Users.
4 Perhaps at this time it's just best to turn to questions
5 to the panel.

6 I would though at this time ask that the
7 stipulation be marked as an exhibit for identification
8 and if we could just offer that in by stipulation.

9 JUDGE MOSS: Sure, I think we will, if I've
10 got it right, and I do have the exhibit list here, I
11 believe it will be number 465. If anybody wants to
12 correct me on that, otherwise that's going to be the
13 number.

14 All right, 465, and is there any opposition
15 to it being admitted as an exhibit?

16 Hearing no opposition, it will be admitted as
17 marked.

18 MR. CEDARBAUM: Your Honor.

19 JUDGE MOSS: Go ahead.

20 MR. CEDARBAUM: There were two other things
21 perhaps to get to before we get to the panel. There
22 were some parties to the stipulation who have expressed
23 to me the desire to make a brief opening statement. I
24 don't know if your comments at the beginning would now
25 cause them to wait until the end or not. At least I

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1 didn't want to pass them by without them having that
2 chance.

3 JUDGE MOSS: We do need to hear if there are
4 additional parties supporting the stipulation actively
5 and also, of course, whether there are any opposing. I
6 suppose we could safely presume that any who did not
7 speak in one direction or the other neither support nor
8 oppose. It's important to know I think at the outset if
9 any other, we've got the Cogeneration Coalition of
10 Washington, for example, that is now signatory, and so
11 that would mean that we would have to, I would assume,
12 we would amend the list of participating parties to
13 include any who become signatories. And, of course,
14 that is spelled out at pages 1 and 2 of the settlement
15 stipulation, so we would simply need to amend it I guess
16 is the right way to put it to include the Cogeneration
17 Coalition of Washington.

18 Let me ask if there are other parties present
19 who actively support or intend to become signatories.

20 Yes, sir, and do please come up and use the
21 mike.

22 MR. ROSEMAN: Ron Roseman representing The
23 Multi-Service Center, The Energy Project, and The
24 Opportunity Council. We would become a signatory to the
25 stipulation and would like to reserve some comments at

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1 the conclusion about our view on this stipulation.

2 JUDGE MOSS: All right, thank you,
3 Mr. Roseman.

4 Anybody else?

5 All right, there being no one else stepping
6 forward in support, do we have anyone who is here to
7 oppose the proposed settlement stipulation?

8 Apparently there are none. All right, I
9 think then we are to the point where we should call our
10 panel, and I would like to use the four chairs here on
11 what is to you the right-hand side of the table and for
12 me the left-hand side of the table, so if we could,
13 Mr. Schoenbeck is already well situated, and we have two
14 more witnesses coming.

15 All right, let me ask you all, having just
16 let you sit down, if you would all please rise and raise
17 your right hands.

18
19 Whereupon,

20 MERTON LOTT, DONALD SCHOENBECK, KIMBERLY
21 HARRIS, and MATT STEUERWALT, having been first duly
22 sworn, were called as witnesses herein and were examined
23 and testified as follows:

24

25 JUDGE MOSS: Thank you, please be seated.

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1 Now I would like to ask, having called you
2 and sworn you, whether any of the witnesses has a
3 narrative opening bit of testimony that they would offer
4 in support of the settlement stipulation or an
5 explanation of any part of it or whether we would
6 proceed directly to questions, any of you?

7 MR. CEDARBAUM: Your Honor, if I can just
8 note for the record, Mr. Lott and Mr. Schoenbeck were
9 witnesses in the interim case, but neither Ms. Harris or
10 Mr. Steuerwalt were, and perhaps if they could just
11 state their names and who they are just for the record.
12 Otherwise, I don't think we'll know.

13 JUDGE MOSS: We all know everybody, but it's
14 probably a good idea to have it in the record, thank
15 you, Mr. Cedarbaum.

16 So, in fact, why don't we start and have each
17 witness introduce himself for the record.

18 Mr. Lott.

19 MR. LOTT: Yes, my name is Merton Lott with
20 the Washington Utilities and Transportation Commission.

21 MS. HARRIS: Kimberly Harris, Puget Sound
22 Energy.

23 MR. STEUERWALT: Matt Steuerwalt with the
24 Public Counsel section of the Attorney General's Office.

25 MR. SCHOENBECK: Don Schoenbeck, a consultant

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1 to industrial electrical customers and gas users today.

2 JUDGE MOSS: Thank you very much. All right,
3 and we have no narrative statements forthcoming, so I
4 think that will bring us in, and since we have no
5 opposition, the inquiry will be from the Bench. And we
6 have done one or two of these in the past and typically
7 find that it's most useful to simply proceed through the
8 settlement stipulation page by page, and various of the
9 commissioners may have questions on individual pages or
10 I may have some questions, and we will just proceed.

11 And we may have an opening remark or two,
12 turn to Chairwoman Showalter for that.

13 CHAIRWOMAN SHOWALTER: Yes, I want to say
14 before asking more specific questions that it's very
15 clear that this settlement agreement was the product of
16 a high degree of cooperation and hard work. You just
17 don't get to a settlement like this with the number of
18 parties here and the number of issues involved without a
19 lot of work, and you're all to be commended for it.
20 It's also very encouraging and very welcome for the next
21 stage of the process.

22 That said, this settlement agreement is
23 unusual in that it is an agreement on some interim
24 elements which are fairly straightforward and clear but
25 also some elements of the general rate case, the full

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1 import of which is not completely visible until the
2 other parts of the rate case have been filled out. And
3 so I am -- so there is a necessary provisional quality
4 to it, and I'm going to be asking some questions about
5 that mainly designed to figure out what is really being
6 agreed to here and what really can't be agreed to in
7 some overall sense pending the general rate case.

8 JUDGE MOSS: All right, we're ready then to
9 proceed with our questions. Page 1 merely contains
10 prefatory language, and so I think we will turn then
11 immediately to page 2 and see if we have any questions
12 there.

13 Page 3?

14 And I believe we can move quickly on to page
15 4.

16 CHAIRWOMAN SHOWALTER: Well, I will start,
17 and I'm really going to start right where I just left
18 off. And I'm looking at lines 3 through 9. No, I
19 should have put my glasses on first. I'm looking at --
20 I'm actually, my first question is on line 31. Does
21 anyone have something before that point?

22 All right, well, then moving to lines 31, et
23 cetera, this is a statement that the company will remove
24 the electric real time pricing mechanism and the
25 associated electric hedge option, and I'm confident that

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1 the parties know what they mean by that, but I think it
2 would be useful to get the witnesses to state what they
3 mean. And in particular, I think I'm less interested in
4 what's being moved off the table than what remains on
5 the table. In other words, I took this to mean that the
6 real time pricing, and I am not sure that's the correct
7 term, but either real time, day ahead, but the finest
8 increment of the general rate proposal in terms of the
9 mechanism was being removed, but that that leaves time
10 of use pricing, and on what time increment, monthly, I'm
11 not sure. So can you address that question of what is
12 being eliminated and what is being preserved.

13 MS. HARRIS: I will address the question,
14 Chairwoman. The actual portion that the company came to
15 the table with was to remove the real time pricing
16 mechanism and the hedge option that was part of the
17 power cost tracking mechanism. The company is still
18 very supportive of real time pricing and would also like
19 to come in maybe at a later time in a different
20 proceeding and propose a real time pricing mechanism or
21 a hedging option for the customers. We still believe in
22 the real time pricing mechanism. What we thought was
23 that at this time as part of the general rate case with
24 some public policy concerns that maybe this wasn't the
25 best time to implement such a mechanism.

1 So as far as the stipulation is concerned,
2 what we have done is to remove it off the table for the
3 time being as part of the general rate case, and it was
4 agreed upon by the parties that we could come in at a
5 later date and have a special proceeding to look at a
6 real time pricing mechanism or maybe a hedge option.

7 Time of use is dealt with a little bit later
8 on in the stipulation, but the time of use mechanism
9 stays in place as it is in place today.

10 CHAIRWOMAN SHOWALTER: It stays in place as
11 something that the general rate case can still consider,
12 that is time of use pricing?

13 MS. HARRIS: Yes, and time of use -- time of
14 use pricing also is to be considered later in a
15 collaborative. There are some issues that the parties
16 would like to discuss on the time of use program and
17 further implementation of the time of use program.

18 CHAIRWOMAN SHOWALTER: Okay. And then when
19 it says the removing the associated electric hedge
20 option, that means the hedge option that's associated
21 with real time pricing or an alternative to real time
22 pricing?

23 MS. HARRIS: If you remember, the power
24 tracking mechanism that we filed as part of the general
25 rate case had two what we called customer choices. You

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1 could choose the real time pricing mechanism, which
2 contained the customer could choose to engage in real
3 time pricing and to in some way engage in the volatility
4 of the market, or the customer could choose a hedging
5 option, which would be a flat hedge, but it was a
6 customer's choice in the power tracking mechanism.
7 Those two mechanisms have been removed from the general
8 rate case. And in essence what we did was the company
9 came in and said let's for purposes of settlement remove
10 our tracking mechanism and start with maybe in lines of
11 an Avista tracking mechanism. We are still very
12 concerned with the power tracker, but we were trying to
13 simplify the procedure for the general rate case.

14 CHAIRWOMAN SHOWALTER: All right. But then
15 as for time of use pricing, we don't have that in front
16 of us, what the rates might be, and one possible
17 scenario could be that time of use rates are one thing
18 and a flat rate has some increment added to it, which
19 one could call a hedge, on the grounds, should it be
20 proven, that time of use pricing is beneficial to the
21 group or there is some reason not to have the overall
22 revenue effects of time of use pricing versus flat rate
23 the same, in other words, that they may have
24 differential effects on the overall benefit. This is
25 not in front of us, of course.

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1 My only question to you here is, this on line
2 34, the only thing that you're removing, which line, 37,
3 the only thing you're removing is the cost associated
4 with the hedging option that's associated with the real
5 time pricing element as distinct from something that
6 might be associated with time of use pricing.

7 MS. HARRIS: Yes, that's correct.

8 MR. LOTT: That's not 100% correct. We're
9 also, the company has also removed additional costs
10 associated with their option for the real time pricing,
11 which is -- which had modifications on a day-to-day
12 basis, therefore they had to upgrade their system, and
13 there were costs included in the rate case not just for
14 the hedging, but there was also costs in addition to the
15 real -- to the time of use pricing, there were
16 additional costs to implement the real time pricing.

17 CHAIRWOMAN SHOWALTER: Right.

18 MR. LOTT: And those costs are also gone.

19 CHAIRWOMAN SHOWALTER: I understand that,
20 that's number 2 and 3. But as for number -- as for the,
21 well, that was, excuse me, number 1 and 3, and but as
22 for number 2, the electric hedge option is some -- is an
23 option that is an alternative to only the real time
24 portion as opposed to the time of use portion; is that
25 correct?

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1 MS. HARRIS: Yes, the removal of the hedges
2 is dealing with the real time portion and the power cost
3 tracker, right.

4 CHAIRWOMAN SHOWALTER: And, Mr. Steuerwalt,
5 do you agree with that?

6 MR. STEUERWALT: The hedges that were removed
7 here were specific costs that the company had put into
8 the general rate case to pay for, in effect, the option
9 that customers who would have chosen that as opposed to
10 the dynamic pricing option, and so those costs, and I
11 think we could probably find someone to pull this
12 specific adjustment out of the rate case if that was
13 what the issue was, were, in fact, taken out.

14 I want to be a little careful about the
15 notion that somehow there's a way to build in an
16 additional set of hedge costs for customers who are on
17 what is an existing flat rate today, because I think if
18 you look at the language in Paragraph 10 where we talk
19 about the revenue requirement of the case, we don't
20 contemplate Puget coming back with a bunch of additional
21 revenue requirement items.

22 CHAIRWOMAN SHOWALTER: No.

23 MR. STEUERWALT: So with that caveat, I think
24 yes.

25 CHAIRWOMAN SHOWALTER: But given the revenue

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1 requirement being established, we haven't got before us
2 today the potential differential effects on group
3 benefits I will call them of time of use pricing versus
4 flat rate, and I just want to be clear what's being
5 removed and what isn't. And as I see it, that rate
6 design or what the rates would be or will be for time of
7 use versus flat are not before us and are not
8 particularly precluded one way or the other by this
9 agreement other than we will get to the opt in, opt out
10 issue, but that's a different issue.

11 MR. STEUERWALT: I think if you -- I think
12 you're correct, and I think if you look at page 5, lines
13 34 through 38, we specifically reserve the rate design
14 question for time of use pricing.

15 CHAIRWOMAN SHOWALTER: Okay.

16 MR. STEUERWALT: To bring before you.

17 CHAIRWOMAN SHOWALTER: All right, thank you.
18 Anybody else on this page?

19 COMMISSIONER HEMSTAD: I think I understand
20 item 3 at line 37 and that full sentence. Perhaps one
21 or more of you could try your hand at a narrative
22 description of what that is intended to cover.

23 MR. LOTT: The item 3 states that the \$5
24 Million common costs related to implementation of the
25 real time pricing mechanism and proposed gas hedging and

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1 monthly purchased gas adjustment. What that implies is
2 in the rate case there was \$5 Million associated with
3 the implementation of those two programs that were
4 included in the pro forma statements that are currently
5 before you in the general rate case. The agreement is
6 that those costs will be removed and have been removed
7 from the calculation of the revenue requirements shown
8 on the top of page 5. So there were rate base items and
9 expense items that were pulled out. Those were costs
10 that were common costs with the electric side, and they
11 were pulled out of the allocation portion, the allocated
12 portion to the gas side. Did not reduce the revenue on
13 the gas side.

14 COMMISSIONER HEMSTAD: And here natural gas
15 hedging has nothing to do with the pass through costs of
16 gas to customers on the gas side of the company's
17 operations?

18 MR. SCHOENBECK: The company, in making their
19 filing, the company on a rate design basis gave both the
20 gas customers and the electric customers the same choice
21 where they could either elect a more real time or
22 dynamic pricing option versus electing the hedge option.
23 But when the company derived their revenue requirement,
24 they did it differently for the two different utilities.
25 On the electric side, they had included approximately

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1 \$57 Million worth of actual hedge costs, and then if the
2 customer elected the real time pricing option, there was
3 a credit to their bill. But on the gas side, when they
4 developed the gas revenue requirement, though they had
5 determined a proxy value of about \$15 Million of gas
6 hedge costs --

7 COMMISSIONER HEMSTAD: 15?

8 MR. SCHOENBECK: \$15 Million, those were not
9 included in the revenue requirement. So if a customer
10 would have elected the gas hedge option, it would have,
11 in fact, been a surcharge on top of the rate. So that's
12 why it's a little awkward here. Where on the electric
13 side you eliminated the customer information cost
14 upgrades and the estimate of hedge costs, but you did
15 not need to do that on the gas side, because the gas
16 hedge costs were not included in the proposed revenue
17 requirement. That would have been a surcharge onto the
18 rate of any customer that had elected the gas hedged
19 option.

20 COMMISSIONER HEMSTAD: Thank you.

21 JUDGE MOSS: All right, I think that
22 completes our questions on page 4. Let's go to page 5.

23 CHAIRWOMAN SHOWALTER: My first question
24 begins at line 28. Does anyone have something before
25 that?

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1 We can come back to it if so. This is the
2 section that seems to say that the time of use rates for
3 new customers will be opt in, meaning the default will
4 be set at flat rates for new customers and they can
5 choose to opt in to time of use prices. First, can
6 someone confirm, is that the correct interpretation?

7 MR. STEUERWALT: Yes, if by what you mean by
8 new customers is customers who aren't on the current
9 pilot.

10 CHAIRWOMAN SHOWALTER: Right, that you can be
11 an --

12 MR. STEUERWALT: It's not just a --

13 CHAIRWOMAN SHOWALTER: -- old Puget customer,
14 but if you are not on time of use now, if your meter
15 became eligible and you became eligible, then you would
16 have to elect affirmatively to opt into time of use
17 pricing.

18 MR. STEUERWALT: You're right.

19 CHAIRWOMAN SHOWALTER: Okay. My question on
20 this one is, we don't have in front of us what the time
21 of use rates are or the flat rates, and we don't have
22 either the foundation for what the rates ought to be or
23 whether time of use rates have beneficial effects or
24 not. Let's take one scenario. Supposing it is shown
25 that time of use rates have a beneficial effect on the

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1 group I will say. That is either time of use customers
2 succeed in shifting their use from on peak to off peak,
3 or perhaps just as important, time of use customers use
4 less electricity period, and thereby benefit not only
5 themselves but everyone else. If it's shown, and I'm
6 not saying it has been shown, that's one of the problems
7 here, if that is shown, then why would the default be
8 set at flat rates? What is the answer to that question?
9 In other words, what -- this is a bit of a pig in a poke
10 that we're buying here because we're -- we seem to be
11 acceding to the default being set one way, but we don't
12 know what the foundation for the rates, flat or time of
13 use, or what those rates are. We don't have that in
14 front of us. So what do we do if we determine that time
15 of use rates are generally beneficial?

16 MR. LOTT: Chairman, I'm not going to answer
17 the question about strictly on the opt in, but I do --
18 and I heard you ask the question earlier, and I think
19 it's in your answer, I mean in your question, and that
20 is that in the design of the rates, the rate spread or
21 the rate design within a class, if there are benefits
22 associated with that and if there is a cost of service
23 benefit associated with time of use rates and if it can
24 be demonstrated, then I would agree with your own
25 question that you asked earlier that the rates for time

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1 of use should represent that benefit that exists there
2 and --

3 CHAIRWOMAN SHOWALTER: Okay, but --

4 MR. LOTT: -- and they have designed a rate
5 spread even within a class has not been decided here.

6 Now you also asked a question about --

7 CHAIRWOMAN SHOWALTER: Let me follow up on
8 that.

9 MR. LOTT: Okay.

10 CHAIRWOMAN SHOWALTER: Let me follow up on
11 that. Supposing then we say that, all right, in that
12 case, those who go on flat rates ought to be paying a
13 little bit of a premium. If that were the case, why
14 would we set as a default for people the less beneficial
15 rate with the premium as opposed to the more beneficial
16 rate without the premium?

17 MR. LOTT: Well, first of all, I'm not going
18 to, again, I don't want to -- somebody else's opt in is
19 more on the opt in issue. This is a settlement. I
20 would rather have that party try to explain the opt in.
21 But even from my own standpoint, if you have a rate that
22 we said the rates would be more beneficial for, we would
23 have lower rates, but it probably wouldn't be lower
24 rates on a time of day. In other words, if the customer
25 has the same usage pattern as another customer in the

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1 other schedule, whether the person went time of use or
2 went flat rated, if a person had the same pattern of
3 usage, you would expect they should end up paying a
4 similar price. Just because they switched to a schedule
5 that created benefits doesn't mean that they should get
6 a benefit if they don't do anything associated with the
7 creation of that benefit. In other words, if I switch
8 over but never change my usage, unless my usage was
9 already beneficial to the system because I was a night
10 time user only, but assume I'm a typical pattern
11 residential customer, if I switch over to time of use,
12 even if it showed the time of use as a benefit, I
13 shouldn't be getting benefits if it's not modifying my
14 usage, because I'm not the one creating the benefits
15 associated with the time of use.

16 CHAIRWOMAN SHOWALTER: Well --

17 MR. LOTT: The time of use would be driving
18 me to a different pattern. What I'm suggesting by lower
19 pricing is that the average price for time of use on a
20 commodity basis or on a total bill for the same
21 consumption should probably be lower if there's benefits
22 in time of use. In other words, if people move their
23 usage and actually lower the cost on the system, that
24 people that participate in moving their usage should get
25 lower prices in total. And the design of the time of

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1 use should be there to reward people that cost the
2 system less, not people that just happen to choose a
3 schedule and now get lower pricing because they changed
4 schedules even though their usage is exactly the same
5 under the normal usage. And again, somebody who
6 happened to be all night time, yes, they would get a
7 benefit, but I think you got to be careful about saying
8 that everybody that switches over to time of use creates
9 benefits for the system. It's the time of use schedule
10 creates benefits for the system because it makes
11 customers, I would assume, it's making customers change
12 their usage pattern, thereby saving the system costs.

13 CHAIRWOMAN SHOWALTER: Well, I think I'm not
14 sure I understood you, but I think what this gets at is
15 you can look at this at an individual level or sort of a
16 macro level. And the individual level is that you want
17 the particular rates in question to be fair, and then
18 whoever is subject to those rates pays accordingly. But
19 that doesn't get at the macro level, which is what is
20 the overall effect of a rate design. For example, we
21 have inverted rates, we have seasonal rates, and we
22 don't say to people, well, you don't have to pay, you
23 can pay a flat rate for the summertime and the
24 wintertime. We have a differential rate, in part
25 because we say it's fair, in part because we say it

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1 encourages conservation.

2 So the question we don't have in front of us
3 unfortunately is, if it turns out that time of use has
4 some of those same characteristics, which is what the
5 parties should be showing and the company was directed
6 to show last May and last September, then it is
7 questionable to me why we would take something that was
8 shown to be beneficial and set the default the other
9 way.

10 Now you can set the default the other way but
11 at a high enough price that you think it encourages
12 people to switch, but that, as we know, most people
13 don't switch off of whatever they're put on, and so we
14 are having to decide what's in the public interest here,
15 and what we're being asked to decide is that opt in is
16 in the public interest without knowing the other pieces.
17 This gets back to what I think is just a necessary
18 aspect of this settlement. It simply has to be
19 provisional, because its other pieces aren't filled out
20 yet.

21 MS. HARRIS: Chairwoman, I agree with many of
22 your questions that you're asking, and I think that the
23 difficulty was that we didn't ask these questions during
24 the settlement. We were not dealing with rate design
25 issues or rate spread issues or even if you read the

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1 paragraph very closely, there's many questions on the
2 time of use program that has been left for the
3 collaborative.

4 As far as the opt in questions, the
5 consideration for opt in and opt out did not include any
6 of these factors that you're asking today, and this type
7 of degree, I believe that these questions need to be
8 answered, they need to be addressed, and they may be
9 best addressed in a proceeding just looking at time of
10 use, just looking at real time pricing, and addressing
11 the benefits, the costs, and the mechanisms that we
12 would like to pursue in the public policy outside of the
13 rate case.

14 CHAIRWOMAN SHOWALTER: I guess that would be
15 one alternative. However this settlement decision comes
16 out and however the general decision comes out, we could
17 schedule a review and analysis of the information to
18 tell us what to do next. That is what I thought we were
19 doing last May and last September so that by now, by
20 this coming May, we would have a good solid body of
21 evidence that we could analyze to actually tell us are
22 there benefits; if there are benefits, are they greater
23 than the costs of the program.

24 MR. STEUERWALT: Let me take a stab at this.
25 I guess I'm not yet ready to concede the premise of your

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1 question, and I understand your question is a
2 provisional one, what ought we do if indeed we prove
3 benefits. And I guess I'm starting from the position of
4 we haven't proven benefits, and we ought to proceed as
5 if we're going to face that question. And, in fact, we
6 set up to face that question both in looking at the rate
7 design and the notification issue for the people that
8 are currently on the pilot, but also for looking at some
9 of the other values that are inherent in this.

10 And I would say that this Commission has
11 always done a very good job of not just looking at cost
12 and cost causation as a way of making rates, but you
13 factor in some other things as well. One of the things
14 that I think you factor in to good public policy is rate
15 stability and rate predictability, and those things are
16 important to customers as well as just the system
17 benefits.

18 Now I think we will get a record on what
19 benefits, if any, come out of the existing TOU pilot,
20 and I think we will have a very good conversation in
21 this collaborative with these parties and some other
22 parties who like the program about what to do with the
23 rate differential going forward and what to do with
24 those customers that are currently on the program.

25 This is a settlement of a whole range of

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1 issues of which this is a fairly important issue from a
2 broader than even the Commission's public policy
3 perspective for the Attorney General's Office, and so
4 that opt in is a very serious consumer protection and
5 privacy issue beyond our work in front of you, and so
6 that, you know, that influences our decisions as well.

7 CHAIRWOMAN SHOWALTER: What is the privacy
8 issue in front of us?

9 MR. STEUERWALT: There are not privacy issues
10 in front of you. There are privacy issues in other
11 forms where opt in is an important one. I should have
12 made that more clear.

13 CHAIRWOMAN SHOWALTER: Yes, and I noticed the
14 statement that there's some -- I don't see the
15 relationship at all other than the use of the words opt
16 in or opt out. The only common theme is where do you
17 set a default, where do you put most people. And if in
18 the telecommunications area we think we set the default
19 on the side of protecting an individual privacy, the
20 good being protected there is privacy. Here in rate
21 cases, it has always been, rate design has always been
22 an issue of the overall effects on the system of rate
23 design, in addition to fairness.

24 The question of rate stability, I want to
25 probe that one a minute, I take it that there's no one

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1 who thinks that you can't have time of use pricing
2 combined with, in Avista it's called the comfort
3 program, I forget what it's called here, stable monthly
4 rates. In other words, the rate can be differential,
5 which doesn't mean the bill has to go up and down. The
6 bill can be stabilized. So is that correct?

7 MS. HARRIS: I believe that -- and that's
8 under the current plan as well.

9 CHAIRWOMAN SHOWALTER: Is the collaborative
10 expected to be completed before the end of the general
11 rate case?

12 MR. STEUERWALT: Yes.

13 CHAIRWOMAN SHOWALTER: Okay, so there are a
14 bunch -- a lot of pieces of this that are yet to be
15 collaborated on, but one piece that we are being asked
16 to approve now before the rest of those pieces fall into
17 place is that there's the default switch is on opt in.

18 MR. STEUERWALT: Yes.

19 CHAIRWOMAN SHOWALTER: All right, thank you.

20 MR. FFITCH: Your Honor, may I be heard
21 although I'm not on the panel on the opt in issue for
22 Public Counsel?

23 (Discussion on the Bench.)

24 JUDGE MOSS: Let's reserve that for later,
25 Mr. ffitich. I think we have some more questions on this

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1 too.

2 MR. FFITCH: I will make a note.

3 JUDGE MOSS: Thank you.

4 MR. FFITCH: For the closing.

5 JUDGE MOSS: Appreciate it.

6 COMMISSIONER HEMSTAD: I just wanted to
7 pursue the question of will the company have in hand for
8 the purposes of that collaborative an effective data
9 study that will illuminate this issue?

10 MS. HARRIS: The company has been working on
11 the cost benefit analysis as far as the general rate
12 case, and we will have all of that data available as far
13 as the collaborative.

14 MR. STEUERWALT: And I believe that there's
15 some of that data, initial evaluation is in part of the
16 work papers of Peter Fox Perner for the -- I think it's
17 the winter portion of the pilot program, and that's part
18 of what we were relying on when we came to this
19 agreement.

20 COMMISSIONER HEMSTAD: And that's part of the
21 record now?

22 MR. STEUERWALT: I don't know that.

23 MS. HARRIS: I'm not sure if it's part of the
24 -- it's part of the general rate case filing as part of
25 data requests and information that we have been

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1 gathering.

2 JUDGE MOSS: Is this the document that
3 recently was addressed with respect to confidentiality
4 being removed?

5 MS. HARRIS: I believe so, yes.

6 JUDGE MOSS: All right, so we can readily
7 identify that document from that filing. I wonder if we
8 would want that to be part of the record at this stage.

9 (Discussion on the Bench.)

10 JUDGE MOSS: Any more questions on page 5?

11 MS. HARRIS: I would like to note that if the
12 collaborative, the way that the settlement has been
13 drafted, the collaboratives are to be addressed and
14 resolved by May 31st. At that time I believe any
15 decisions or any work that's been part of the
16 collaborative then would be in front of the Commission
17 in the June time frame. So, in fact, we will have the
18 time within the general rate case to revisit the time of
19 use and the time of use collaborative. Outside and
20 outside of this general rate case, then we would have
21 the opportunity to bring in a separate proceeding on
22 real time pricing and time of use as well. And the
23 other portion or the other -- the portion that comes
24 into play here is that we do have the pilot program is
25 also terminating within this time frame, so we have

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1 quite a few proceedings and mechanisms going on with
2 time of use, and it's fairly unclear how they are all
3 going to fit in together, but this will be in front of
4 the Commission again.

5 COMMISSIONER HEMSTAD: Have the parties in
6 coming to the agreement in paragraph 11 considered the
7 issue where we will now have the current approximately I
8 believe 300,000 customers are proceeding on an opt out
9 basis and other customers as they come into the system
10 will be on an opt in basis in the context of whether
11 that's discriminatory?

12 CHAIRWOMAN SHOWALTER: Or arbitrary?

13 MS. HARRIS: Those are very good questions.
14 We did not look at that as far as the settlement as far
15 as the discriminatory or arbitrary impacts of this.

16 CHAIRWOMAN SHOWALTER: I think you have
17 covered this, but in any event, what I hear you saying
18 is that by the time it gets to a Commission decision in
19 the general rate case, whether that be based on a
20 settlement or based on evidence, we should have in the
21 record a foundation for whatever the time of use rates
22 will be and whatever the flat rates will be.

23 MS. HARRIS: Yes, that's correct. The
24 stipulation -- I think what we are trying to do with
25 time of use here is really to tee up the issue as part

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1 of the collaborative process rather than -- because we
2 had the time of use pilot program and we had the real
3 time pricing mechanism, and then we had the ongoing
4 questions on time of use, we have agreed here to put
5 this all, wrap it into a collaborative process and deal
6 with it here at least in negotiation and settlement, and
7 it will be back in front of the Commission.

8 JUDGE MOSS: I think I would like to just
9 elaborate on that. Chairwoman Showalter used the word
10 foundation, and I think of that in terms of evidence.
11 Is one of the outcomes from the collaborative process,
12 is it anticipated to be some body of information that
13 will support whatever results might be put forth as the
14 result of the collaborative effort, or is the idea just
15 to present the result?

16 MR. LOTT: Judge, I would suspect that in the
17 collaboration is done and the settlement or any
18 settlement that comes before you that it's going to be
19 necessary for the parties to put together enough
20 evidence either through the record the company has
21 already predistributed or through other -- some other
22 documents to support the case. Otherwise I don't know
23 how you can make your decision and support that
24 decision. So there would be some evidence that would
25 have to be presented to you in some fashion similar to

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1 what's been done in other collaboratives or just by
2 marking the exhibits that have already been
3 predistributed along with certain other documents, but
4 what those would be is a good guess.

5 JUDGE MOSS: Sure, okay, thank you, Mr. Lott.

6 Anything else on page 5?

7 6?

8 CHAIRWOMAN SHOWALTER: On Paragraph 13, this
9 is especially the last sentence there, it says the 11%
10 return on equity takes into account the development and
11 implementation of a PCA as described below. And below
12 it says, the parties are going to work toward PCA, and
13 if they don't settle, they will have a litigation
14 schedule that gets to a PCA by a certain date. And what
15 if either, well, what if we don't agree on PCA, or what
16 if the Commission doesn't order one, or what if the
17 nature of whatever it orders, you know, is a little tiny
18 PCA or a great big fat PCA, how does that affect this
19 11% ROE?

20 MS. HARRIS: This sentence actually was
21 drafted I guess to differentiate the settlement proposal
22 from that of the Avista settlement proposal in that an
23 11.16 ROE was agreed upon, but there was language in
24 there that the parties were free to argue for either a
25 lower or higher based off of if there was a tracking

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1 mechanism. Here what we had agreed to was an 11% ROE
2 assuming that there would be a tracking mechanism and
3 agreed to the collaborative process as far as the extent
4 of such tracking mechanism.

5 CHAIRWOMAN SHOWALTER: I mean I don't want to
6 discourage the parties at all from moving toward a PCA,
7 I think that they should act on the tentative basis they
8 have gone so far, but is there no difference between the
9 most minimal shifting of risk to the customers, which
10 could be called a PCA, and a hefty shift of risk to the
11 customers, which would be a more aggressive PCA?

12 MS. HARRIS: The company is relying on I
13 guess page 8, line 31, where it says an appropriate that
14 -- well, line 29 through 31, shares the risk of power
15 costs variations between customers and shareholders is
16 appropriate. We are relying on that language and the
17 appropriateness of the either collaborated or litigated
18 PCA on relying on that 11% ROE.

19 CHAIRWOMAN SHOWALTER: All right, but this
20 gets to this piece being in this settlement agreement
21 and the rest of the picture being filled out later. The
22 Commission is asked to approve this 11%. I guess what
23 it would mean is if down the line the PCA either isn't
24 there or looks very different than what some party
25 thought, it's a little too late to undo the settlement

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1 agreement if we approve it. But perhaps it's not too
2 late to amend it in light of whatever we arrive at at
3 the general.

4 MS. HARRIS: Well, I believe that the
5 company's position would be that the 11% includes a PCA
6 of some appropriate mechanism. If there was no PCA,
7 then I believe that this settlement stipulation wouldn't
8 be quite what we had relied on or bargained for. As far
9 as the extent of the cost sharing or the mechanism and
10 PCA itself, we have relied on the collaborative and the
11 litigation process before the Commission. I think it
12 would be a different question though, and it is a good
13 question, as far as if there's no PCA, would the company
14 be agreeable to the 11%, and I don't think that's part
15 of the bargain and part of our thought process in
16 signing the stipulation.

17 CHAIRWOMAN SHOWALTER: Okay, so as I see it,
18 this is a vision that the parties have, and part of the
19 vision is 11%, the other part of the vision is a PCA,
20 you haven't filled out the PCA, you hope you do, we hope
21 everything goes well, but if it doesn't, it necessarily
22 I think means that this one part you're asking us to
23 approve has got to be evaluated in light of whatever
24 everyone or we arrive at at the end.

25 MR. STEUERWALT: I think Ms. Harris points to

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1 the right language back on page 8 in paragraph 22. The
2 parties have agreed in essence among themselves that
3 we're going to try to get to a PCA that properly shares
4 the risk and is an appropriate PCA. And if we can do
5 that, we will bring you one that we think properly
6 shares the risk for an 11% ROE and is appropriate for
7 the circumstances, and we will ask you to approve that.

8 The circumstances that I think you foresee
9 are more likely to come up in a litigated solution where
10 we can't all agree on what is the proper sharing of risk
11 and the appropriate way to treat that, and what we will
12 probably ask you to do is to rule on that basis and not,
13 you know, assuming -- to rule on that basis assuming the
14 11% ROE and not to rule on some other basis and then
15 revisit the ROE, if that more clearly states how we
16 expect it to go forward.

17 JUDGE MOSS: Just to be sure I'm perfectly
18 clear on this, the idea then is that the allocation of
19 the risk will be based at least in part on an
20 understanding of an 11% ROE as opposed to an allocation
21 of risk being set independently of that idea and then a
22 determination on the basis of the allocation as to what
23 the appropriate return on equity is.

24 MS. HARRIS: I think, yeah, I think what
25 Mr. Steuerwalt is developing here is that if we could

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1 not agree in the collaborative, probably the hearing
2 would be something along the lines of everyone's
3 interpretation of a fair and adequate sharing mechanism,
4 and then we would leave the determination of that
5 mechanism to the Commission.

6 JUDGE MOSS: We have jumped around a little
7 bit, but I believe we were on page 6. Do we still have
8 some additional questions there?

9 Page 7 then?

10 CHAIRWOMAN SHOWALTER: Well, on Paragraph 17,
11 I want to make sure I understand, allowed to do what?
12 It seems to say that no party will attempt to amend or
13 alter the equity capital ratio mechanism, but there's no
14 -- this promise that you are making to one another isn't
15 for any particular period of time, it's just as we would
16 do any order, it's for now until whenever. But in
17 addition, the company is allowed to bring a general rate
18 case. Is one way to read this paragraph that the
19 company can not seek to alter this capital equity ratio
20 mechanism unless at the same time it is bringing a
21 general rate case which thereby opens up all the other
22 issues that might be pertinent to a general rate case?

23 MR. STEUERWALT: I think you have read it
24 correctly. I think what we anticipated was this
25 mechanism is a mechanism by which all the parties are

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1 comfortable that the company is financially healthy and
2 viable and is investing in itself at the same time it's
3 providing excellent service to the customers and that
4 this would stay in effect until such a time as the
5 company came in for general rates, but that they would
6 not seek to mitigate this commitment without seeking to
7 bring rates before you so that we can all look at what's
8 going on with the company.

9 CHAIRWOMAN SHOWALTER: So they can't try to
10 amend this piecemeal, it would have to be all the
11 elements of a rate case would have to be in front of us?

12 MR. STEUERWALT: Correct.

13 CHAIRWOMAN SHOWALTER: But at the same time,
14 if they wanted to bring a general rate case just because
15 they needed a general rate increase, this particular
16 piece of it may or may not be of concern to the company;
17 is that also true?

18 MS. HARRIS: I would like to I guess put a
19 finer point of clarification on this. I think first and
20 foremost this is not proposed as a rate plan, and this
21 is not a rate moratorium, so this is not a stay out
22 time, because we talk a lot about we have this tracking
23 mechanism and it gives a certain date and a certain
24 level that we are to achieve by that date. But it is in
25 no way a rate plan, a rate moratorium, or a stay out

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1 period.

2 Secondly, for some parties, it was very, very
3 important that they had this tracking mechanism was
4 automatic, so that in effect the numbers would be filed,
5 we would look at the equity ratio at that point, and
6 that that tracking mechanism was automatic. There was
7 no proceeding or filing or petition or complaint that
8 was made in front of the Commission, and that was very
9 important.

10 On the other side, what was very important
11 for the company is the ability to come to this
12 Commission and bring in filings in the ordinary course
13 of business, and we are getting into a period where
14 resource balance and resource issues and we very well
15 may be in front of the Commission looking at whether to
16 buy, whether to build, where to provide resources in our
17 obligation to serve, and that's very important to the
18 company that we have the ability to come to the
19 Commission and make those filings.

20 So this paragraph is trying to somehow
21 address both concerns of the parties so that the rate
22 mechanism goes into effect automatically, but it does
23 not stop our ability to come to the Commission and ask
24 for rate relief in the ordinary course.

25 So to look at it, is it only a general rate

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1 case, I would say no. I mean as far as this does not
2 preclude us from coming in for a general rate case, but
3 it also does not preclude us from coming in in the
4 ordinary course if there was some catastrophic event or
5 if there is a resource issue and so forth. And we are
6 trying to identify and differentiate between the rate
7 merger rate plan and the stay out provision of the
8 merger rate plan.

9 COMMISSIONER HEMSTAD: Let me offer a
10 hypothetical. Let's assume in sometime in 2004 for
11 whatever reasons the company thinks it is going to be
12 unable to meet the scheduled 36% equity ratio. It would
13 be a remedy for, a remedy, a procedural way to proceed
14 to address it would be to file a general rate case and
15 with that then would reopen those increases for
16 reconsideration in effect.

17 MS. HARRIS: The general rate case would in
18 effect impact this settlement. I guess at that point,
19 the company would have to weigh the benefits and the
20 burdens of filing a general rate case for that purpose.

21 COMMISSIONER HEMSTAD: My point only is the
22 general rate case would at least theoretically reopen
23 that question if the company wanted to reargue it in
24 effect.

25 MS. HARRIS: Yes, it would.

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1 JUDGE MOSS: Okay.

2 MR. LOTT: I just -- I would just agree with
3 what Kimberly said. I mean the Staff would agree that
4 the company at any time can file a general rate case,
5 and that general rate case could ask to remove this
6 tariff schedule from the --

7 COMMISSIONER HEMSTAD: But with a general
8 rate case, all bets are off?

9 MR. LOTT: With the Commission's approval of
10 that.

11 COMMISSIONER HEMSTAD: I understand.

12 JUDGE MOSS: Okay, and the witnesses are
13 nodding in affirmance in response to Commissioner
14 Hemstad's last question.

15 Anything else on page 7?

16 Page 8?

17 CHAIRWOMAN SHOWALTER: On Paragraph 20, it
18 eludes to collaborations for each identified
19 collaborative process. Have you identified these
20 separate processes somewhere in this agreement?

21 MS. HARRIS: I think the ones that we are
22 referring to are the -- below on -- on the same -- on
23 page 8 where it's power cost mechanism, revenue
24 requirement, rate spread, and rate design. There are --
25 there are certain -- and then the -- it follows along

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1 the lines of specific issues. The collaborative process
2 I think is still in development, but there were certain
3 processes that we identified that would occur.

4 JUDGE MOSS: Do I recall correctly that the
5 parties have something in here about somehow consulting
6 with the Administrative Law Judge regarding
7 establishment of a schedule for all of this by April the
8 1st?

9 MR. CEDARBAUM: I don't know if it's
10 appropriate for anyone but witnesses to jump in here or
11 not.

12 JUDGE MOSS: Mr. Cedarbaum, you're probably
13 going to call me and set it up, so you may as well
14 answer.

15 MR. CEDARBAUM: In Paragraph 21, we did
16 indicate that we would consult the Administrative Law
17 Judge for a litigation schedule.

18 JUDGE MOSS: Oh.

19 MR. CEDARBAUM: If one became necessary.

20 With respect to scheduling of collaboratives,
21 we actually had planned to meet as a group after this
22 hearing and to start that process. There's nothing
23 specific other than the end points for the
24 collaboratives in the stipulation. We still need to
25 meet and come up with a schedule for those

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1 collaboratives to actually happen to talk about doing --
2 starting that process today.

3 CHAIRWOMAN SHOWALTER: So it's each issue or
4 each set of issues to be identified. I didn't miss
5 anything, you are going to identify appropriate issues
6 for their own collaboratives and proceed for each
7 identified issue on some kind of schedule?

8 MS. HARRIS: Yes. There were certain -- I
9 mean there are certain -- I think when we were drafting
10 this -- identified collaboratives I think were the power
11 cost tracker and the rate design. The reason why I say
12 that this is still in development, the company is ready,
13 willing, and able to collaborate and negotiate each
14 identified issue in this general rate case, and we have
15 opened -- it is an open invitation as far as intervening
16 parties, and there may be some other intervening parties
17 into the general rate case. I'm hoping that all of
18 those issues will be identified very soon, but we are
19 taking this collaborative process very seriously, and as
20 it develops over time, whether it be a formal process or
21 negotiations, we are going to negotiate with each party.

22 CHAIRWOMAN SHOWALTER: Okay. For example,
23 the issue with the cities and perhaps Sound Transit, I
24 take it that might be a separate tract for a separate
25 collaborative, is that --

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1 MS. HARRIS: Yes.

2 CHAIRWOMAN SHOWALTER: -- the type of thing
3 you mean here?

4 MS. HARRIS: Yes. But what's interesting is,
5 in fact, we have had some discussions along those lines,
6 but then a collaborative process with the cities on the
7 7071 issues may also somehow impact or fold into the
8 revenue requirement and rate design type issues, so we
9 may have several collaborative process or processes
10 going on, but somehow they all have to be interrelated
11 and work together toward settlement.

12 CHAIRWOMAN SHOWALTER: Okay.

13 JUDGE MOSS: All right, more on the joys of
14 complex litigation later. All right, anything else on
15 page 8?

16 Page 9 then?

17 CHAIRWOMAN SHOWALTER: My only question is
18 down on line 43. It says, electric rate spread and
19 design shall be based on, that's what I want to ask you
20 about, based on the net rate in effect July 1, 2001.
21 Can someone just explain to me what that means?

22 MR. STEUERWALT: Am I doing this one too?

23 CHAIRWOMAN SHOWALTER: What does based on
24 mean?

25 MR. STEUERWALT: The company's tariffs for

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1 say Schedule 7 and basic residential rate right now have
2 a rate, a credit from the exchange, and a net rate. The
3 cost of service study that they filed in the case is
4 based on the rate without the residential exchange
5 credit. So what we're saying is we're going to start on
6 a cost of service basis from the net rate and not the
7 rate, because that reflects the rate that's actually on
8 customers' bills that's in the tariff right now. So
9 that's all that that implicates. It's not a revenue
10 issue.

11 CHAIRWOMAN SHOWALTER: Okay. But regardless
12 of what the base, what it is based on, ultimately we
13 need to get to a rate that is --

14 Mr. STEUERWALT: fair, just, and reasonable.

15 CHAIRWOMAN SHOWALTER: -- Fair, just, and
16 reasonable and fair vis-a-vis other classes of customers
17 as well.

18 MR. STEUERWALT: And we think that this
19 settlement will facilitate that exact thing happening.
20 So from starting from that point, we think we're going
21 to be able to actually resolve electric rate spread and
22 rate design from that basis.

23 CHAIRWOMAN SHOWALTER: Mr., I was about to
24 say Mr. Kroger.

25 JUDGE MOSS: Mr. Kurtz.

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1 CHAIRWOMAN SHOWALTER: Mr. Kurtz, will you be
2 part of that discussion?

3 MR. KURTZ: Yes, we intend to be.

4 CHAIRWOMAN SHOWALTER: Thank you.

5 JUDGE MOSS: Page 9 completed then?

6 Page 10?

7 11?

8 CHAIRWOMAN SHOWALTER: Paragraph 29 is about
9 Weyerhaeuser and a Special Contract, and as I read this,
10 it looks to me like an FYI. In other words, for your
11 information, we're developing a Special Contract, we
12 will present it to you later for your approval later,
13 and its foundation and the factual justification will be
14 shown to you later. There's nothing that we are
15 approving in this agreement other than the fact that the
16 parties are doing this procedurally. Is that right?

17 MR. LOTT: Staff and Public Counsel are
18 agreeing not to protest the Special Contract if it meets
19 the requirements. The Commission is not agreeing to
20 anything with respect to that Special Contract.

21 CHAIRWOMAN SHOWALTER: Okay.

22 MR. SCHOENBECK: But it does have the
23 critical aspect of it though as well to get the Special
24 Contract done as soon as possible so it can go into
25 effect as of the 1st of May.

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1 CHAIRWOMAN SHOWALTER: But as for the merits
2 of any of this, it is anticipated that that will be on
3 the April 10th open meeting?

4 MR. SCHOENBECK: That's correct.

5 JUDGE MOSS: All right, nothing more on page
6 11?

7 Then page 12, and it would appear that this
8 is getting us into more of the boiler plate type
9 provisions, so carrying through to the end there, 13 and
10 the one sentence on 14.

11 Other questions from the Bench?

12 CHAIRWOMAN SHOWALTER: We have made the
13 attorneys stay silent this whole time.

14 JUDGE MOSS: We're going to give them a
15 chance here in just a minute.

16 COMMISSIONER HEMSTAD: This may come up in
17 the further comments from the attorneys, but at least I
18 will flag it now. And that is in Paragraph 36 where it
19 talks about each participating party reserves the right
20 to withdraw from the settlement stipulation seven days
21 from the date of the Commission's order, that poses some
22 procedural or timing issues that you might want to
23 comment on in the time frames for which you are
24 requesting the Commission action and the filing of
25 tariffs and the issue of a withdrawing party and what

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1 kind of circumstance that would present for the ongoing
2 proceeding.

3 JUDGE MOSS: Okay, do we have any other
4 exhibits to be introduced while we have our witnesses?

5 Apparently not. All right then, we did
6 reserve time for closing statements by counsel.
7 Mr. Cedarbaum, you started us off, let me ask if counsel
8 discussed among themselves what order would be
9 appropriate or --

10 MR. CEDARBAUM: We hadn't anticipated closing
11 statements, so we hadn't anticipated what order they
12 would take.

13 JUDGE MOSS: Well, we can use the same order
14 as opening, it is an option, but I know several counsel
15 have indicated, Mr. ffitich has something he wants to
16 tell us about and perhaps other counsel as well. So why
17 don't we just start with you, Mr. Cedarbaum, did you
18 have something you would like to tell us in closing?

19 MR. CEDARBAUM: Yes, let me make a few
20 points. And we did, as I said at the beginning, file
21 the memo in support of the stipulation, so I won't
22 repeat any of that. Obviously the ultimate questions
23 for the Commission are whether the settlement, approval
24 of the settlement is in the public interest, and with
25 respect to the interim rate case, whether that

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1 settlement would result in rates that are just, fair,
2 reasonable, and sufficient. From Staff's perspective, I
3 will speak to that, I think we would recommend that the
4 Commission render a decision of yes on each of those
5 questions.

6 With respect to the interim rate relief,
7 there is a large record on that case after a week of
8 hearings. The Staff recommendation was for a \$42
9 Million increase in interim rates spread over a longer
10 period of time than we have agreed to on the settlement,
11 but it's within the ball park of what Staff presented as
12 being a reasonable amount of interim rate relief. So
13 from the Staff's perspective, the \$25 Million is very
14 definitely within a range of justness and reasonableness
15 that would meet the statutory standards.

16 With respect to the agreements on return on
17 equity and equity ratio, those are, you know, obviously
18 to some extent negotiated numbers. We did though from
19 Staff's perspective consult with our own cost of capital
20 expert that we hired for the case and got confirmation
21 from him that that was -- those were fair numbers and
22 reasonable numbers. We also took into light that the
23 Commission had just issued or accepted a settlement on
24 ROE for Avista of 11.16, different companies but
25 obviously that's still within that range, so we do feel

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1 comfortable that the return on equity and equity ratio
2 settlement are ones that would reach a fair and
3 reasonable result.

4 With respect to the equity tracker, that was
5 obviously a very important issue to Staff in the interim
6 case because we felt that the company's reduction in its
7 equity ratio was a primary reason for the financial
8 difficulties that it had encountered, and so we feel
9 that this is definitely a move in the right direction
10 with self executing mechanisms for enforcement of that,
11 and so we feel that that's also a very fair and
12 reasonable result.

13 The final point just then is sort of on the
14 settlement in general is that with respect to all the
15 collaboratives, I mean there's a lot of work to be done,
16 there's no doubt about that. And we have, you know,
17 whether we will be saving ourselves work rather than
18 creating more work, I'm inclined to think that we're
19 probably creating ourselves more work but maybe less
20 work for you. But we did enter into our negotiations in
21 the interim case I think in a very sincere atmosphere of
22 cooperation amongst the parties that engaged in that
23 process. We then opened it up, and we actually always
24 had in mind that we would have to open it up to the rest
25 of the remaining -- remaining general rate case parties.

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1 And when we did that, I think that spirit of cooperation
2 continued. So, you know, no results are guaranteed here
3 for these collaboratives, but I think Staff is confident
4 that we're going to have a very good attempt at
5 resolving a lot of issues, if not all the issues, in
6 that continued spirit of cooperation.

7 With respect to specific issues that have
8 come up this morning just leaving aside the general
9 issues on the settlement, there were questions about
10 time of use, and, you know, there were some very good
11 questions on time of use and issue questions that
12 perhaps we didn't deal with directly, but one issue had
13 to do with the potential discriminatory nature of opt in
14 for new customers versus opt out for existing customers.
15 And I think it's important to remember that when the
16 Commission first allowed Puget Sound Energy to establish
17 time of use rates, it did so in the context of the
18 merger rate plan. And at that time, there were some
19 rate increases that were going to be levied upon some
20 customers, so we had that legal problem about rates
21 going up during a rate plan other than the programmed
22 increases, those 1% increases that we had agreed to in
23 the rate plan. So in order to get around that legal
24 problem, we all agreed that we made it an opt out
25 program. We could do that within the context of the

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1 time period of the rate plan, so we got past that legal
2 issue. That I don't think means that we're locked into
3 that forever from a discrimination point of view. It
4 was a pilot program, still is a pilot program. It was
5 opt in, opt out because of some legal requirements. I
6 don't think that if we then have opt in for additional
7 customers that we're running up against a discrimination
8 issue. So I guess maybe that's all I should say about
9 that. I think it's an important issue, but I think we
10 can address it.

11 With respect to the Chairwoman's questions
12 about, well, why have opt in be the default if it's for
13 policy reasons or rate design reasons it's not a good
14 idea. There are some provisions in the settlement that
15 say that part of the collaborative will be setting up or
16 determining requirements for notification of customers.
17 And although I don't think this answers your question
18 completely, perhaps it would help, that if we were to
19 find out through the rate design collaborative that,
20 well, opt in really is a better approach for whatever
21 reasons, we could certainly look towards beefing up
22 those notification problems so that -- notification
23 procedures so that customers would really understand and
24 know that if they want to get on the program, they have
25 to opt in and it's -- it has the following advantages

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1 and lists them. So again, I don't think that answers
2 all of your questions, but perhaps it provides some kind
3 of a -- some kind of a fix for if we were to run into
4 that problem how we could try to fix it.

5 Finally on Paragraph 36 that Commissioner
6 Hemstad asked about, we are asking the Commission to
7 issue an order so that rates would go in -- interim
8 rates would go into effect by April 1, which isn't too
9 far from now, but hopefully the Commission can
10 accommodate that. If the Commission were to change or
11 reject any material portion of the settlement and a
12 party were to opt out, I think what we had anticipated
13 or at least what I would offer as a suggestion on how to
14 resolve that procedurally is that we -- my understanding
15 is that we have suspended hearings to cross examine the
16 company's direct case in April, but I understand that
17 through other cases coming off the Commission schedule
18 there could still be perhaps time at the beginning of
19 May for cross examination of the company. So if a party
20 were to opt out of the settlement agreement and so all
21 bets are off and we have to go back into litigation on
22 the general rate case, we would be in a position of
23 briefing to you the interim case, which we could do, we
24 would be in the position of cross examining the
25 company's direct case, which I think there's time in May

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1 to do that, and then we would just pick up the schedule
2 the way it is now, which is I think the Staff and
3 interveners file June 17th, and we just keep going. So
4 I think the process is in place for a default if we need
5 it, which I think we all hope we don't need it.

6 Thank you.

7 JUDGE MOSS: Let me pursue that point with
8 you, Mr. Cedarbaum, it's near and dear to my heart. The
9 settlement stipulation provides for an order from the
10 Commission one way or the other by this Friday. It also
11 provides that the company will file tariff sheets on
12 this Friday and that those tariff sheets would have an
13 effective date of April 1, which I believe would be the
14 following Monday, all of which is within the seven days
15 clearly. So as a practical matter, let us suppose that
16 the Commission enters an order on Friday at 3:00 in the
17 afternoon approving the settlement agreement with a
18 condition, and the company files at 3:05 its tariff
19 sheets, and the Staff files at 3:07 its letter
20 indicating that it has reviewed the tariff sheets and
21 finds them to be in compliance with the Commission's
22 order, and the Commission then at 3:30 in the afternoon
23 issues an order, or enters an order rather, approving
24 the compliance filing so the rates can go into effect on
25 Monday at 12:01 a.m., what happens to the parties' right

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1 to opt out who is dissatisfied with that condition that
2 the Commission imposed?

3 MR. CEDARBAUM: I don't know, that's a
4 question I don't think we thought about. I suppose if
5 it happened that quickly, well, I guess if the
6 Commission is approving the settlement, then there is no
7 reason for a participating party -- that would be only
8 parties who are participating, so-called participating
9 parties, can get out of the settlement if the Commission
10 doesn't accept the settlement, but if you're saying the
11 Commission has accepted the settlement, then --

12 JUDGE MOSS: But we imposed a condition that
13 somebody found to be a material change. That was part
14 of my hypothetical. That's my concern. And, you know,
15 I'm not trying to create a problem here, I'm just trying
16 to anticipate and see what to do if something such as I
17 described should eventuate.

18 MR. CEDARBAUM: We hadn't anticipated that
19 problem, and I'm not sure other than through some sort
20 of post order process, petition for reconsideration or
21 something like that, that we could address that.

22 I would say though with respect to the
23 tariffs that you mentioned, which is where I thought
24 actually you were going in your question, that the Staff
25 has been working with the company to develop those

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1 tariffs, and we think -- I think they will be in a
2 position of being able to provide these even before
3 Friday with the Commission so that if it happens that
4 fast on Friday, there would be tariffs ready to go.

5 But as to your real question that you asked
6 me, which I wasn't thinking about, you have identified a
7 problem, potential problem.

8 MS. DODGE: Judge Moss, may I chime in on
9 this one?

10 JUDGE MOSS: Yes, you may.

11 MS. DODGE: There has been a little bit of
12 discussion that we know that we can not ask -- we can
13 ask the Commission to rule within a certain time period,
14 but obviously there are other obligations and matters
15 before the Commission, and so there has been some
16 discussion that, for example, if the Commission were
17 unable to rule within the proposed time period and say
18 interim rates only went into effect April 7th instead of
19 the 1st, that then they would continue for the full
20 three months that were anticipated and would end on the
21 7th of the subsequent month as opposed to being somehow
22 compressed into a shorter time period. So I think that
23 that has come across at least the radar screen among
24 folks who were developing the tariff sheets and that one
25 possibility might be that in the I think unfortunate

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1 event that the Commission were to want to do something
2 to the settlement that might bring this into play, we
3 may just need to look at having enough time to ascertain
4 whether that's going to be a problem.

5 MR. CEDARBAUM: Your Honor, I personally
6 haven't been involved in those discussions, and they may
7 very well have happened. Perhaps I can just ask Staff
8 during a break and maybe we can file a letter with the
9 Commission that Staff is agreeable to that sort of
10 process if it were to come up. The other possibility I
11 suppose would be that the company still collect \$25
12 Million additional revenue by the end of June, but it
13 may not start until April 7th rather than going past
14 June or whatever that -- whatever three months from --

15 JUDGE MOSS: I understand.

16 MR. CEDARBAUM: -- from the date would be.

17 MS. DODGE: We better sort this out.

18 JUDGE MOSS: Yeah, I think we, you know, we
19 do have to be concerned about what happens once we
20 scramble the eggs and be prepared for that condition, no
21 matter how slight, could be thought by someone to be
22 material, and that could come up.

23 So, Mr. Lott, do you have something?

24 MR. LOTT: I just want to make certain that
25 one of the agreements that I kind of wanted to bring up

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1 earlier that is not explicit in the interim agreement is
2 when company and I were talking last week along with the
3 other parties, and that is what is the \$25 Million, is
4 it just an estimate of what the company is going to get
5 or does the company get \$25 Million, and the agreement
6 is that it is \$25 Million. If they come up a little bit
7 long, it will be given back. If it comes up a little
8 bit short, they will get the extra dollar somehow.
9 Therefore, it's the rates that we're agreeing to
10 whatever the, you know, the interim are just an estimate
11 of achieving that 25, and ultimately the company will
12 achieve the 25 via refund or a surcharge at the end of
13 this time period. And that is something that's not
14 really explicit in the settlement agreement, but when we
15 were discussing the settlement agreement, what it meant,
16 that's what we agreed to last Friday amongst all the
17 parties I believe that were originally signed on plus
18 some others. And so I just want to make that clear is
19 that there is a -- so if it takes a couple of extra days
20 to go into effect because of some problem, it still
21 would be \$25 Million. The rates would go into effect
22 and somehow the extra dollars would be collected beyond
23 July 1.

24 JUDGE MOSS: I wonder if the parties might
25 wish to develop some amendatory language or emendatory

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1 language that would capture this concept. I suppose an
2 alternative to that would be for the Commission to
3 develop such language in its order, but it does seem to
4 me that if that is the agreement among the parties, it
5 does need to be captured and reflected in the
6 appropriate documentation, whether that be your
7 settlement agreement which the Commission might accept
8 and adopt or through independent language in the order
9 itself, but it does seem to me it would need to be
10 addressed one way or the other if not both.

11 CHAIRWOMAN SHOWALTER: Well, speaking for
12 myself, I think we have just heard it here but also on
13 page 3, line 39, that's how I read it. It says, the
14 company will file tariff schedules to effect collection
15 of PSE of \$25 Million in the interim electric rate
16 relief. And, well, I guess I take it back, that says
17 will terminate on June 30th. But all it would mean is
18 that the rate would have to be higher if it were going
19 to terminate on June 30th. But personally I think with
20 this clarification, we know that well enough if there is
21 no disagreement that what you mean is the \$25 Million
22 amount.

23 MS. DODGE: I think it was -- that was the
24 idea is in the settlement.

25 CHAIRWOMAN SHOWALTER: Right.

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1 MS. DODGE: It's just a question of the
2 mechanism of or the language of the tariff sheet was
3 what brought it up, and people did refer back to the
4 agreement, and we're clear that the agreement says it.

5 CHAIRWOMAN SHOWALTER: But you haven't filed
6 the tariff sheet yet, so whenever you file the tariff
7 sheet, whatever day it is, it will be calculated to try
8 to achieve \$25 Million.

9 COMMISSIONER HEMSTAD: I think we understand
10 the issue well enough to deal with it in the order.

11 JUDGE MOSS: All right, then I think
12 Mr. ffitch probably has some words to share with us.

13 MR. FFITCH: Thank you, Your Honor.
14 Mr. Cedarbaum's really done a good job, I think, of
15 covering the waterfront, so I won't belabor a lot of
16 these points. We're very happy to be supporting this
17 settlement. We see major benefits for consumers,
18 obviously very significant reductions in the interim
19 rate increase, significant reductions in the potential
20 rate increase ahead in the general rate case.

21 The equity tracker mechanism is a core
22 provision for us. We think that is very important,
23 because it is really -- represents the company agreeing
24 to take some steps on its own to address some of the
25 issues that we saw in the interim and move to a stronger

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1 financial position. And that, of course, ultimately
2 means that rate payers can hope that they're not going
3 to be looked at again to help out in future situations
4 of financial weakness that might result from capital
5 structure problems. So we think this is a very
6 important component. And we are also pleased with the
7 company's agreement to the strong language, sort of the
8 commitment in the agreement to really stand by the
9 agreement of the tracking mechanism and the rate
10 reduction incentive mechanism without coming in and
11 asking for modifications of those. That's an important
12 element of this settlement from our point of view.

13 I think one specific thing I wanted to
14 address, Mr. Cedarbaum already waded into the time of
15 use issue, and I also wanted to address that question a
16 bit. I think first of all the opt in versus opt out
17 component of the time of use program is really an aspect
18 of the question of whether time of use is mandatory or
19 not. At the present time, it is not a mandatory
20 program. Essentially what has happened in this
21 settlement is that Puget has agreed that they are not --
22 no longer proposing a mandatory time of use program,
23 that time of use will be optional. Once you have
24 reached the point of deciding, as I think we have in
25 this settlement, that time of use is optional, you then

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1 have to decide how customers exercise that option. And
2 again, what we have agreed to and what Puget has agreed
3 to with us in this proceeding is that on a going forward
4 basis, new customers will exercise that option through
5 the opt in type of a choice mechanism.

6 I want to follow up on something
7 Mr. Cedarbaum -- that Mr. Steuerwalt said about why opt
8 in is important to us. We don't view the choice between
9 opt in and opt out as kind of a neutral mechanistic
10 determination. Mr. Steuerwalt mentioned the Attorney
11 General's policy on opt in. We believe very strongly,
12 and so does the Attorney General's office as a whole,
13 that when customers have to make choices about services
14 of any kind, including electricity service and products
15 which they are purchasing, that customers should not be
16 placed in a position of signing up for a service or
17 purchasing a product through their own inaction. The
18 so-called negative check off problem.

19 This is a problem throughout all aspects of
20 consumer protection, and we see it as an issue in this
21 particular situation as well. We don't believe it's
22 appropriate for customers to sign up for a type of
23 electric pricing through their own inattention,
24 inaction, misunderstanding, whatever reason it might be.
25 We believe that's an inappropriate way for customers to

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1 be brought into a program. We think it is far more
2 desirable and appropriate that customers fully
3 understand the choice and then take an affirmative
4 action based on the information which they have been
5 able to acquire to try out a new form of electricity
6 pricing or whatever the other choice might be. In this
7 case we're talking about electricity pricing. So that
8 is a really critical component of our agreement here on
9 time of use.

10 We are going to be discussing many other
11 aspects of the time of use program with the company, as
12 Ms. Harris has explained, that's going to be part of the
13 collaborative, including the types of notice that both
14 opt out and opt in customers would receive to help them
15 make this decision.

16 One of the questions I think came up was
17 basically if time of use is really a beneficial program,
18 if it's good for the people who sign up for it and good
19 for everybody else, then why should you be able to opt
20 in, why shouldn't you just be defaulted onto the
21 program. I have partially answered that question by I
22 think showing why we believe opt in is just better for
23 consumers as a matter of principle, but I think there's
24 another point to be made too, and that is that while we
25 -- while policy makers and companies can decide that on

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1 an aggregate basis something looks like a benefit, and
2 perhaps the numbers show that there's some benefit, we
3 believe that the individual customer is going to be
4 affected differently by the program and should make the
5 individual decision about whether for them the time of
6 use program is a better choice.

7 And we're comfortable that we can work with
8 Staff and the company and other interested parties to
9 make sure they get that information to make that
10 decision. As far as we're concerned, there's nothing
11 contingent about that part of the agreement. That is an
12 agreement that the company has made with us, it's a
13 critical component of the agreement from our point of
14 view, and we would expect to see that in the final time
15 of use program that eventually gets adopted after the
16 general rate case collaborative and litigation ends.

17 On the discrimination question, Mr. Cedarbaum
18 has already addressed that. I just would make one other
19 point, and that is that we would actually prefer that
20 all the customers be on an opt in basis. However, as a
21 practical matter, many of the customers are already on a
22 pilot program, have already received opt out
23 information. Many of them, if you accept the opt out
24 mechanism and you're sort of giving it the benefit of
25 the doubt today and not going back through our old

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1 debates, those customers have chosen to be on the plan.
2 To go back and reimpose opt in on those people, in
3 effect to take them off the plan and tell them that they
4 then have to make a decision we think would be sort of
5 an unwise choice. It would be disruptive to customers
6 and confusing, and we think that provides a reasonable
7 basis for making a distinction between customers who are
8 already on the pilot program and already living under an
9 opt out regime versus new customers who would be coming
10 in on an opt in basis. So I think that's another reason
11 why I'm not sure there's a significant discrimination
12 problem under the statute.

13 I think that's all the comments that I have,
14 thank you.

15 JUDGE MOSS: Okay, Mr. Finklea, anything?

16 MR. FINKLEA: I will just make a couple of
17 observations. This is predominantly a settlement on the
18 electric side. This is the first case since the two
19 companies have merged, and our association recognizes
20 the particular challenges of collaborating on both gas
21 and electric issues at the same time, and we think that
22 the settlement sets out a process that should
23 efficiently allow us to do that. And you note that
24 there are time differences between when the electric and
25 the gas issues are to be settled. We're very hopeful

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1 that the process can be conducted in an efficient manner
2 for those that are more interested in the gas side than
3 the electric. We recognize that that's a particular
4 challenge, but we think that everyone is committed to
5 seeing to it that we meet that challenge, but we're
6 otherwise supportive.

7 JUDGE MOSS: Thank you, Mr. Finklea.

8 Mr. Kurtz.

9 MR. KURTZ: Thank you, Your Honor. My client
10 strongly believes this is a very good deal for rate
11 payers, and it is somewhat surprising that actually the
12 company also feels it's a good deal for itself. This is
13 really one of those rare cases of a win-win situation.
14 Look where this case started, the interim case. The
15 company was asking for \$171 Million over seven months,
16 they're going to get \$25 Million over three months. In
17 the general case they were asking for 45% pro forma
18 equity and a 14% return, they're going to get 11% on
19 equity and 40% pro forma capital structure, 40% equity
20 pro forma. Those are substantial benefits to rate
21 payers.

22 The very complicated hedging, real time
23 pricing, which was going to be a very difficult issue,
24 is now off the table, and what you've got instead is a
25 more customary power cost, net power cost tracker, which

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1 has become somewhat widely accepted here in the West
2 because of the power crisis, but it's not unusual or
3 unique at all. A lot of states have the same process
4 through the fuel adjustment clause where purchase power
5 and off system sales, revenues, and costs are run
6 through that, so that's not -- this is -- that's a good
7 turn.

8 The other thing, and this hasn't been brought
9 up, through the interim case there was a lot of
10 testimony on the company was going to be downgraded to
11 junk, the State of Washington was going to be not black
12 marked but put into the Moody's and the Standard &
13 Poor's and the Valueline as a bad regulatory climate
14 type jurisdiction. None of that will occur at least for
15 the time being with the adoption of the settlement, so
16 that's a positive.

17 Last week, I'm sure everyone is aware, the
18 company in reliance I believe on the settlement being
19 submitted cut their dividend very substantially. If the
20 Commission were to approve, not approve or approve with
21 substantial conditions throwing this thing into turmoil
22 where somebody could opt out of the settlement and the
23 settlement has no effect, that Paragraph 36, then you're
24 really going to get into the financial question mark
25 area that I don't think anybody -- is in anybody's best

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1 interests. Maybe the company was optimistic or
2 precipitous in cutting their dividend in reliance on
3 simply submitting the settlement, but that is a fact on
4 the ground now, and if the settlement were somehow taken
5 off the table, I think it would cause -- it could cause
6 financial consequences.

7 Let me just comment on a couple of -- several
8 of the things, the time of use issue. Even if the time
9 of use is a superior rate in theory, my understanding of
10 the settlement is you would be preapproving the opt in
11 instead of opt out, but as with all aspects of rate
12 making, nothing is permanent. I'm not suggesting that
13 we would want to go back on any deal, but that is not a
14 permanent situation. Mr. Cedarbaum pointed out that if
15 it is a good rate, the customer notice issues, people
16 can be made aware of it, you can get people voluntarily
17 opting in. This was an important issue to Public
18 Counsel and certainly if it were to be modified could
19 cause them to consider whether or not they wanted to
20 withdraw from the settlement. They would at least have
21 that option.

22 On the power cost tracker, there were
23 statements made seeming to indicate that it was a
24 shifting of risk to rate payers from the company, and in
25 some sense that's true, but it doesn't have to be true.

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1 A power cost tracker could be positive or negative to
2 rate payers and the same for the company. A power cost
3 tracker could go up if purchased power costs go up, or
4 it could go down if off system sales increase. So this
5 could be, properly designed, I don't think you can say
6 it's detrimental to rate payers. It could go either
7 way. It could result in rate decreases or rate
8 increases. And that, the jury is still out, because we
9 don't have a power cost tracker yet, but to conclude
10 initially that it's going to be a shifting of risk I
11 think is premature right now, at least --

12 CHAIRWOMAN SHOWALTER: It is a shifting of
13 risk. You don't know which way the risk will run,
14 negative or positive, but it is a shifting of risk.

15 MR. KURTZ: Perhaps that's more accurate, but
16 you don't know which way it's going to run, it could be
17 a benefit to customers, so it isn't necessarily a bad
18 thing.

19 The other thing about the power cost tracker
20 is the company is going to be hard pressed to meet these
21 equity goals, not goals, they're requirements, if they
22 don't have the certainty of knowing that they're going
23 to be -- there's going to be some relief, immediate
24 relief, if purchased power costs go way up, because they
25 can not plan, I don't believe any utility could plan

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1 financially with that big of an unknown out there.

2 The other thing is, and this was commented
3 on, the 11% return on equity is conditioned on the power
4 cost tracker, and this is another benefit. It does
5 allow -- it is a -- it's a reduction of system wide risk
6 I would say. Now perhaps you're right, it is a shifting
7 of risk, but it could go positive or negative, but it's
8 all tied up, it's all as a package I would say. The
9 Commissioner Hemstad question about this idea of, well,
10 the company could file for a general rate case during
11 the period when they're supposed to be building up their
12 capital, their equity portion of the capital and somehow
13 undo that, there is a very strong regulatory hammer I
14 think you have right now to prevent that. Right now the
15 rates under this deal would be set at a pro forma 40%
16 equity capitalization. If there was a new rate case
17 during this interim and you used the actual equity
18 capitalization, you would get a much lower -- you would
19 get a lower revenue requirement. So even if the company
20 tried to use the general rate case out as a way to get
21 around the 2% penalty, they could experience a rate
22 reduction in any event if you used actual capitalization
23 rather than pro forma.

24 The question about the April 1 effective date
25 and the seven day period for customers, if you change

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1 this agreement for customers to essentially nullify the
2 agreement, that would I believe cause a, it's obvious, a
3 lot of confusion and a lot of very much financial
4 uncertainty for Wall Street, et cetera. There are ways
5 to get around that, compressing the \$25 Million into
6 instead of 90 days 80 days, et cetera, but hopefully you
7 won't have to deal with that, because hopefully this
8 agreement will be approved as filed. It isn't -- it
9 isn't a divestiture of the Commission's jurisdiction to
10 simply approve an agreement that's been hammered out.
11 There is still -- the vast majority of the work still
12 needs to be done on the general rate case and all of the
13 gas work essentially, so approving this agreement is not
14 rubber stamping and divesting authority. There are
15 certain approvals and the nature of preapprovals
16 embedded in this, but there are, on balance I think at
17 least, reasonable considering what the Commission is
18 dealing with.

19 When a commission -- when this Commission
20 approves -- looks at a settlement, it doesn't have to be
21 perfect obviously for it to receive your approval, and
22 it doesn't have to be exactly the deal that any one of
23 you would have negotiated had you been at the bargaining
24 table. You can imagine there was a lot of give and take
25 over many hours. The question really is, is it within

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1 the zone of reasonableness, and it clearly is, I think,
2 and if it is, it should be approved.

3 And I think the approval will start this
4 process on a continuation of the negotiation that we're
5 on. If it's -- if it's approved -- if it's not approved
6 or it's approved with significant conditions, you run
7 the risk of throwing the entire general rate case
8 settlement process off track, because then what
9 incentive do the parties have to continue negotiating if
10 the first deal wasn't approved. So there is a -- there
11 is a risk to that.

12 The company came into this settlement process
13 saying that with the new CEO they are going to engage in
14 negotiation, they want to improve regulatory
15 relationships, they want to improve customer
16 relationships, and they have been true to their word.
17 They have negotiated in good faith, they have made a lot
18 of concessions, and they have handled this process very
19 well. Approving this interim, this current settlement
20 agreement I think gives them time to make the rest of
21 the process work. If you don't approve it, you're
22 really throwing that into risk.

23 There was an interesting article, and I
24 hesitate -- I almost hesitate to pull it out because
25 it's a little bit interesting, but there was an article

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1 in the Wall Street Journal today about the change in the
2 corporate, in the legal general counsel at Microsoft,
3 and I thought, well, we've got two major Washington
4 state companies here, and I thought it was interesting.
5 What this article talks about is the change in
6 Microsoft's philosophy of going from litigation to
7 negotiation, and it's -- and I don't know if it's
8 coincidental that Puget goes to the same management
9 seminars, but that's the track that they're on. And I
10 think that that whole process should be encouraged. Let
11 me just read it, just a small excerpt from it, because
12 it is interesting. It says:

13 Mr. Smith, the new general counsel,
14 officially secedes Bill Newcomb as
15 general counsel at Microsoft when the
16 company's long time attorney steps down
17 at the end of June. Many have been
18 wondering what this changing of the
19 legal guard will bring. As Microsoft's
20 new main legal point man, a post he has
21 held unofficially since January,
22 Mr. Smith says he hopes to herald an era
23 of settlements begun by Mr. Newcomb. He
24 wants to promote internally and
25 externally the kind of Microsoft that

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1 would rather cooperate than fight.

2 I think it's appropriate and I just say this,
3 and this is -- and I will end my comments on this light
4 note, if Mr. Gates can agree to a cooperative process in
5 the big issues that they face, certainly the Commission,
6 at least in this interim phase, can give the process a
7 chance to work and approve the settlement.

8 Thank you.

9 JUDGE MOSS: Mr. Kurtz.

10 Ms. Endejan, do you have anything for us?

11 MR. STEUERWALT: Your Honor, if it would be
12 helpful I would be, if you're done with the panel, I
13 would be happy to vacate my --

14 JUDGE MOSS: Happy to leave, is that what
15 you're offering, Mr. Steuerwalt?

16 MR. STEUERWALT: Access to a microphone.

17 JUDGE MOSS: I see what you're offering, that
18 would probably be helpful.

19 MR. STEUERWALT: And apparently a chair might
20 be useful.

21 JUDGE MOSS: Ms. Endejan, you may have
22 Mr. Steuerwalt's seat, and we thank him for his
23 graciousness.

24 MS. ENDEJAN: Thank you.

25 JUDGE MOSS: No, he is leaving the room.

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1 MS. ENDEJAN: Scared him away.

2 I will be very brief. I am here today
3 representing intervener Seattle Steam, and we want to
4 echo the support for the stipulation that has been set
5 forth in the previous comments. Seattle Steam is very
6 interested in getting on with the process of starting
7 the collaboratives and intends to participate fully in
8 with respect to collaboratives that deal with the gas
9 issues, and that's a particular concern to us. We would
10 encourage you to support and -- support the
11 collaborative process and to approve the stipulation.

12 Thank you.

13 JUDGE MOSS: Thank you, Ms. Endejan.

14 I see Ms. Arnold has already moved up to the
15 table and Ms. Dixon perhaps will join her up there, and,
16 Ms. Arnold, why don't you go ahead since you're already
17 in place.

18 MS. ARNOLD: Thank you, Your Honor. We have
19 two concerns about the settlement having to do with the
20 collaboratives that are going forward. The concerns
21 have to do with preserving some modicum of due process
22 here, which of course involves giving notice and an
23 opportunity to be heard.

24 First of all, as to the parties, we
25 understand -- I understand from talking informally to

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1 the participating parties that the collaboratives will
2 be open to all interveners and that the interveners can
3 participate in whichever collaborative seems to be
4 useful and that they won't be limited to a particular
5 collaborative.

6 For example, the cities, as the Bench knows
7 and the Commission knows, are concerned with the right
8 of way, the relocation underground conversion schedules,
9 but in the event that there is some impact of those
10 negotiations on the revenue requirement, the cities
11 would also like to sit in at least on part of the
12 revenue requirement collaboratives, so we hope that the
13 Commission's order will clarify what I understand is the
14 intent of the parties to keep this an open process, but
15 sometimes the language isn't always that clear.

16 For instance, at page 9, lines 22, it says:

17 The participating parties may address
18 issues outside of the order set forth
19 above if it is deemed efficient to do so
20 by all impacted parties.

21 Now as the Commission knows and the
22 Administrative Law Judge knows, sometimes new issues
23 develop as discussions take place. It happens in
24 hearings and it certainly happens in settlement
25 discussions, so if some issue that isn't particularly --

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1 isn't specifically identified in the order comes up, we
2 understand that that issue can be addressed by a
3 collaborative and that you don't have to -- I mean that
4 one party can't somehow say, well, we're impacted and we
5 don't want that issue discussed.

6 So generally as to the parties, we hope that
7 the collaboratives will be kept open to all the parties
8 and all issues as they arise. And I don't think that --
9 I think that's the intent of the participating parties,
10 and I think if the Commission's order says that clearly,
11 that isn't going to be a material change, it just
12 clarifies.

13 CHAIRWOMAN SHOWALTER: Well, I guess I would
14 like to ask a little bit about that, because my initial
15 reaction would be that in general the Commission doesn't
16 dictate settlement discussions, and we don't get
17 involved in that end. Basically any party is free to
18 talk to any other or not to. And when a settlement
19 agreement of some number of parties or all the parties
20 is presented to us, at the same time it is presented to
21 all the other parties. That is there would always,
22 always be an opportunity for any party to comment on a
23 proposal that it had either not been a part of or had
24 thought it hadn't been as much a part of as it wanted to
25 be. But generally speaking, we are pretty hands off

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1 about how parties talk to one another, and it would be a
2 different kind of animal if we were to institute, you
3 know, collaboratives or settlement talks.

4 And I guess I'm wondering out loud I guess
5 whether it really isn't preferable to let the parties
6 find their way. It will, of course, be a major problem
7 if some number of parties try to settle something where
8 another party has an important stake, and they would do
9 that at their peril, because if it got in front of us
10 and that party had major issues with that proposed
11 settlement, they might have to go back to square one.

12 MS. ARNOLD: The order as it -- or the
13 stipulation as it stands is -- does, in fact,
14 institutionalize the collaboratives, because it sets
15 them up, it states what the issues are, it states who
16 can participate and in what. So to an extent it already
17 does that. But I think everyone here is in general
18 agreement with the Commissioner that -- with the
19 Chairwoman that hopefully these are open to all the
20 parties, and all parties can participate. And I think
21 it would be great if the order said that, just
22 reaffirming the general principles.

23 The second area that we're concerned about is
24 the cities, and I think there's something like 12 cities
25 now are interveners, the cities are parties, but the

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1 citizens and the businesses in those cities are not
2 parties, and we have had -- heard some concern expressed
3 that the public is being excluded from the process
4 because of the way the collaboratives are set out in the
5 stipulation and will be blessed by the Commissions order
6 approving the stipulation. The public has no
7 opportunity to get involved in the process in a very
8 meaningful way. At the very minimum, the public
9 hearings that are now scheduled are set for the time
10 after the collaboratives are over. The electric
11 collaboratives are supposed to end on May 31st with the
12 rates in effect July 1, and the gas collaboratives are
13 supposed to end July 31 with the rates in effect
14 September 1, and the public hearings aren't scheduled
15 until late August and September. So hopefully the
16 public will have some opportunity to have some
17 meaningful input. Ideally the public would not be
18 excluded from the collaborative meetings. I understand
19 that normally a settlement negotiation is more a
20 confidential thing, but here this is the whole ball of
21 wax is the collaboratives, and to the extent that the
22 collaboratives are open to members of the public even to
23 observe, even if they don't actually participate, it
24 would be useful.

25 CHAIRWOMAN SHOWALTER: Well, let me ask, on

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1 that point, it's always been my thought that first
2 Mr. ffitch and the Office of Public Counsel is the
3 representative of the public, and then our Staff is the
4 representative of the public interest, which in some
5 ways is broader than just the small customers, that
6 they, in fact, are parties here, so I really hadn't
7 focused on the settlement agreement, to tell you the
8 truth, as seeking approval of some kind of structured
9 collaborative. I looked at this more as the parties
10 telling the Commission, and we're working on the general
11 as well, you know, here are some pieces of the general,
12 and we're working on the rest, and that I personally,
13 unless you want to inform me otherwise, do not see this
14 collaborative process that's going out there as any kind
15 of substitute for the ultimate due process that must be
16 afforded the parties.

17 And we do have a public hearing, you know,
18 for the members of the public to come to, and we also
19 only receive any proposal, you know, as a public
20 document and hold a hearing like the one we're having
21 today. So the more you characterize this as an
22 alternate formal proceeding, the more uncomfortable I'm
23 getting. And I would just like to hear from any of the
24 other parties whether we think we're substituting the
25 ultimate due process with some, you know, back room

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1 negotiations. I don't see it that way.

2 MR. CEDARBAUM: I don't either.

3 With respect to the first question of
4 Ms. Arnold's as to whether or not all parties in the
5 case are invited and able to participate in all
6 collaboratives, that's true. There's no one -- no party
7 will be barred at the door from entering into a
8 collaborative on some issue that they may not have a
9 direct and immediate interest in. They can still
10 participate.

11 With respect to the issue about due process,
12 I also agree that we're -- these collaboratives are
13 going to be in the nature of a
14 negotiation/collaborative. They're going to be
15 settlement discussions. And they will be, you know,
16 presumably subject to confidentiality strictures and
17 things like that, but that whatever emerges from that
18 will be a signed settlement agreement that will be
19 presented to the Commission. And parties who -- parties
20 to the general rate case and members of the public at
21 some public hearing that will need to be scheduled will
22 have an opportunity to comment either for or against
23 that settlement agreement that emerges from a
24 collaborative if one does. So that's where the rights
25 are protected, and I think that's what's necessary to be

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1 done, and that will be done. So I agree with you,
2 Chairwoman Showalter, I think that we're setting up a
3 process that we will engage in in good faith with all
4 parties welcome, and all parties will have the -- and
5 members of the public will have the opportunity to
6 comment on what emerges from that process.

7 CHAIRWOMAN SHOWALTER: And that further any
8 party who has or hasn't participated in any
9 collaborative is free to oppose any product and seek to
10 continue the litigation.

11 MR. CEDARBAUM: That's right, I mean this is
12 -- that's exactly right, whatever -- these
13 collaboratives, negotiations will be convened, and it
14 may be that all parties will reach agreement on an
15 issue, or it may be that only some parties will reach
16 agreement on an issue, and whoever does not reach
17 agreement will have an opportunity to comment if a
18 settlement on that issue is presented to the Commission.
19 I think we have also anticipated again that the -- there
20 will be public hearings on the general rate case at some
21 point in time before rates go into effect, not after
22 rates go into effect, and members of the public will be
23 given the opportunity to comment on whatever
24 stipulations have or have not been presented to the
25 Commission at that time.

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1 COMMISSIONER HEMSTAD: Perhaps it has been
2 covered, but I would just emphasize, it seems to me that
3 in the context of an adjudication, the collaborative
4 process is another way of saying you can have settlement
5 negotiations, and it would seem to me they are
6 privileged, and I don't see how you could do that and
7 then have them publicly announced and then allow anyone
8 who wishes to attend without violating the privileged
9 nature of the conversation that would go on.

10 JUDGE MOSS: Okay, Ms. Arnold, did you have
11 anything else for us?

12 MS. ARNOLD: No, thank you, and I appreciate
13 Mr. Cedarbaum's assurances about the stipulation.

14 JUDGE MOSS: Thank you.

15 Before we proceed to others, how many other
16 counsel wish to have a closing statement?

17 We have several. I think for the sake of no
18 other if for the sake of Ms. Kinn, I would like to take
19 a short recess so that she can stand and stretch and so
20 forth, so why don't we take a ten minute recess until 5
21 before the hour by the wall clock.

22 (Recess taken.)

23 JUDGE MOSS: We're going to hear from
24 Ms. Dixon next and Mr. Sanger after that, and then we'll
25 just do our continued tag team of the two chairs here

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1 and hear from all of you who wish to speak.

2 Ms. Dixon.

3 MR. FFITCH: Excuse me, Your Honor.

4 JUDGE MOSS: I'm sorry, Mr. ffitch, you
5 reminded me through a very overt signal that I was going
6 to pick up, you had a comment on the last point that was
7 being discussed, and I promised you that you would have
8 that opportunity. Go ahead.

9 MR. FFITCH: Thank you, Your Honor, I
10 appreciate the indulgence from Ms. Dixon. I just wanted
11 to add a thought or two to the last discussion, which
12 actually did mention Public Counsel. I wanted to I
13 think support Ms. Arnold's request for the ability to
14 participate in all collaboratives and also echo
15 Mr. Cedarbaum's comment that that is the intention of
16 the parties, that that be an available option for all
17 the other parties to participate.

18 Also support the notion of appropriately
19 timed public hearings. I think that what that means is
20 to be determined. We've got -- we've actually agreed to
21 look at the litigation schedule and the schedules in
22 general within the next week or so and try to schedule
23 those hearings, and I think there should be an
24 opportunity for public hearings. I think the question
25 of public participation directly in the collaboratives

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1 is a difficult one. I tend to agree with the practical
2 problems of that. I think that the collaboratives are
3 perhaps not workable if they're turned into open
4 proceedings as opposed to confidential settlement
5 discussions. So I would be happy to talk with
6 Ms. Arnold more about that idea, but my initial reaction
7 is that the way to get the public input on the
8 settlement process or the issues in the case is through
9 the kinds of public hearings and public comment that the
10 Commission has been providing for.

11 The final comment I want to make is that I
12 think that designing or making it -- making it possible
13 for parties to participate effectively in the settlement
14 process in front of the Commission is important. While
15 it is true that parties who are not participating can
16 come in at the end after a settlement has been carefully
17 crafted and object and even seek to litigate, as a
18 practical matter, that is simply not an effective way
19 for parties to participate before the Commission. And I
20 think that because this is a public agency and a public
21 process, because in many cases such as this one the
22 whole collaborative process is presided over by an
23 administrative law judge, I think there's an extra --
24 kind of an extra burdon to make sure that all the
25 parties to the case feel like they have really got an

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1 opportunity to participate in the settlement discussions
2 and are not waiting until the very end to make an
3 ineffectual plea after a big complicated settlement has
4 been arrived at, when as a practical matter, their voice
5 is not going to be very effective. So that's all I
6 wanted to say on the topic, and I appreciate the
7 opportunity to speak.

8 JUDGE MOSS: Thank you, Mr. ffitch.

9 All right, Ms. Dixon, why don't we go ahead
10 with your closing remarks.

11 MS. DIXON: Thank you, and I'll keep this
12 very brief. Intervenors Northwest Energy Coalition and
13 Natural Resources Defense Counsel is a participating
14 party in the stipulation. I just wanted to express our
15 support for the substance of the stipulation as well as
16 for the process that's been established to resolve or in
17 the alternative to litigate remaining issues in the
18 general rate case. If the Commission approves this
19 stipulation, and we certainly encourage you to do so, we
20 plan to participate in several of the collaboratives
21 including the ones on energy efficiency, time of use
22 rates, power cost adjustment, and low income energy
23 services. Although we envision the next two months
24 being insanely busy with all of these collaboratives,
25 our intent and our hope is to resolve these issues

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1 through negotiations by the end of May, as contemplated
2 in the stipulation.

3 And just to respond to one thing that you
4 have heard now from Ms. Arnold, Mr. Cedarbaum,
5 Mr. ffitch, in terms of the public hearings, I would
6 point you to page 13, paragraph 35, lines 13 through 17,
7 where the participating parties have agreed to support
8 the scheduling of public hearings prior to general rates
9 going into effect, and that was very important to us and
10 to several other parties. We fully support that and
11 plan to ask the Commission to be able to schedule some
12 public hearings related to these negotiations or to the
13 litigation as it goes forward.

14 And that's all I have.

15 JUDGE MOSS: Thank you, Ms. Dixon, and before
16 we go on to Mr. Sanger, it's beginning to strike me that
17 we probably ought to be thinking in terms of scheduling
18 a pre-hearing conference fairly soon to discuss
19 scheduling issues so that we can accomplish some of the
20 tasks that are set forth in here in terms of I think an
21 April 1st date for a litigation schedule if it becomes
22 necessary, that sort of thing, so we will want to take
23 that up at the end of today, talk about having that
24 conference.

25 Okay, Ms. Dixon, if you will retire, someone

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1 else can take your place, and, Mr. Sanger, we can go
2 ahead with your statement.

3 MR. SANGER: Thank you, Judge Moss. ICNU
4 participated in the settlement discussions and supports
5 the settlement stipulation. ICNU has many of the
6 concerns with the PSE case as many of the other parties
7 did, and ICNU also supports the settlement stipulation,
8 and we don't need to go into the details of all the
9 different aspects of it.

10 Thank you.

11 JUDGE MOSS: Thank you, Mr. Sanger.

12 Mr. Roseman.

13 MR. ROSEMAN: Yes, thank you. The Chairwoman
14 when she started off this meeting, she said she thought
15 this was a weird settlement.

16 COMMISSIONER HEMSTAD: No.

17 MR. ROSEMAN: Excuse me, maybe not.

18 CHAIRWOMAN SHOWALTER: I don't think I used
19 the word weird. I think I did use the word unusual
20 because of its combination of interim and general
21 elements.

22 MR. ROSEMAN: Okay, well, then let me take my
23 characterization, which I do think it is a weird
24 settlement negotiation and unusual, and I say that
25 because it is asking the parties to reach settlement on

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1 some major, major issues without having resolution about
2 who will pay, which customers will pay, what effect will
3 it have on low income and the elderly, what kind of
4 programs can be developed to ameliorate that. Those are
5 just some issues that make it difficult for us, and
6 therefore our late assention to the settlement to try to
7 sort out what will -- will this be good for our clients
8 and at this stage without even understanding later on
9 what benefits can go to them to help deal with this
10 increased rate case.

11 I also would like to support what Mr. ffitich
12 said about participation in the process. While due
13 process certainly is afforded when one is able to stand
14 before the Commission and make an argument about an
15 issue, but in a complex settlement, if you're outside of
16 the process or at the end of the process and ultimately
17 just receive the agreement, you're left with the role of
18 trying to torpedo something that is moving full speed
19 ahead when you could have had a much more, I guess, you
20 could have contributed to the ultimate result if you had
21 been involved as the process moved along. So I
22 certainly agree with Mr. ffitich and Ms. Arnold in that
23 regard, and I am hopeful that these collaborations will,
24 in fact, not just be a discussion about the issues but
25 hopefully will reach a resolution of the issues so that

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1 we can come back and present a package that has all the
2 parts to it.

3 Thank you.

4 JUDGE MOSS: Thank you.

5 Mr. Furuta.

6 MR. FURUTA: Thank you, Your Honor,
7 Commissioners. Norman Furuta for the Federal Executive
8 Agencies. We have been unable to sign on to the
9 stipulation. I should point out that the FEA has no
10 objections to the substantive provisions set forth in
11 the stipulation, but we have been unable to sign because
12 of our concerns with regard to scheduling of how events
13 in the collaborative processes are going to take place,
14 and also in the event that some or all of the issues are
15 unable to be resolved, what's to become of the formal
16 procedural schedule. We understand that parties are
17 going to be attempting to discuss either after this
18 hearing today or very shortly thereafter, perhaps
19 tomorrow, in an attempt to resolve some of those
20 scheduling issues and to set up more formally some
21 schedule.

22 We do have -- Federal Executive Agencies does
23 have a number of concerns that we were going to raise
24 during the general rate case phase, and if we are going
25 to have to attempt to resolve them through participation

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1 in the collaborative processes, that raises a level of
2 concern on our part that we may not be able as fully to
3 participate simply because of the logistics involved.
4 Both my witness and I are both out of state, and it may
5 be more difficult if the collaborative processes are
6 spread out over a number of weeks. But we hope that we
7 can resolve some of these concerns with the other
8 parties and perhaps at a later date may be able to
9 formally sign on.

10 Thank you.

11 JUDGE MOSS: Perhaps the wonders of modern
12 communications technology will lend a hand and assist in
13 the process. I did see some nods suggesting that
14 parties are going to work with you on that, Mr. Furuta.

15 MR. FURUTA: Thank you.

16 JUDGE MOSS: Mr. Cameron.

17 MR. CAMERON: Yes, sir. I'm here today for
18 AT&T Wireless. We did not participate in Phase I,
19 neither the hearing nor the discussions. Being Special
20 Contract customers, those proceedings didn't have the
21 impact on us as they did on other customers. I would
22 like to thank Mr. Cedarbaum and Ms. Harris for their
23 time in explaining questions we had about the process,
24 the stipulation. We signed the stipulation not because
25 it affected us regarding Phase I issues, but because we

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1 have some history now of dealing with the company in
2 resolving rate issues. We began with the Schedule 45,
3 worked through that process through a shorter not
4 entirely unpleasant collaborative process to come up
5 with a rate that we take service under right now, the
6 Special Contract rate. We decided -- the company
7 decided to weigh in proactively, sign the stipulation,
8 and anticipate the day we participate in the
9 collaborative on the issues of concern to us as high
10 load factor, high voltage customers. MCI WorldCom has
11 decided to participate as well, you granted their
12 intervention. Together we will be working through the
13 collaborative on the issues of concern to us.

14 Thank you.

15 JUDGE MOSS: Thank you.

16 Are there other counsel who wish to make a
17 statement? If so, come forward.

18 I'm not going to miss you, Ms. Dodge, don't
19 worry.

20 Other intervener counsel?

21 Apparently not, so that does bring us to you,
22 Ms. Dodge.

23 MS. DODGE: Thank you, Your Honor. I think
24 quite a bit has been said about the settlement
25 stipulation, and I think I will just be brief rather

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1 than going over points that have already been covered.
2 But first just wanted to thank the Commission and Your
3 Honor for being able and willing to schedule a hearing
4 and hear the settlement stipulation and also to consider
5 the compressed time schedule that we have asked for in
6 terms of getting rates in effect assuming that the
7 stipulation is approved in about seven days I guess.

8 We do hope that the Commission approves the
9 settlement without conditions so that we don't have a
10 need for everybody to assess, you know, what are we
11 going to do then. And it's not always pretty in these
12 processes, but I think that everyone has come to the
13 table, we have worked very hard to get everyone
14 comfortable with a document that could be presented and
15 supported. There was no opposition today, which I think
16 is significant with a case with this many parties
17 involved, and the company is ready and willing and eager
18 to move forward now and not backwards, to move forward
19 into collaboration, negotiation, in order to deal with
20 all of the parties and all of the issues, make sure
21 people have an input along the way so that these issues
22 are addressed in a way that hopefully in the end
23 everyone will be able to come to consensus on and in a
24 manner that there are benefits to the company and all of
25 its customers.

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1 JUDGE MOSS: Okay, thank you, Ms. Dodge.

2 Anything further from the Bench in regards to
3 the settlement stipulation?

4 (Discussion on the Bench.)

5 JUDGE MOSS: All right, we have a number of
6 housekeeping matters, and then perhaps we will have some
7 closing remarks from the Bench before we go off the
8 record for the day.

9 And the first matter that I have is the
10 question of the Commission's authorization for the
11 filing of substitute first revised sheet number 194 that
12 was filed on March 14th, 2002, and the proposal is that
13 that sheet be allowed to be considered in the context of
14 Docket Numbers UE-011570 and UG-011571, and Commission
15 authorization is required for that in light of the
16 Commission's complaint and order suspending the tariff
17 filing in this proceeding. I will just note for the
18 record that the Commission approved substitute original
19 sheet number 194 on a less than statutory notice basis
20 in Docket Number UE-020268 effective March 14, 2002, and
21 that was to reflect an increase in the residential
22 exchange credit passed through to customers. And so
23 that of necessity brought on the filing of substitute
24 first revised sheet 194 in the pending rate case. And
25 so the Commission in the interest of the orderly

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1 processing of its business will approve and authorize
2 the filing of substitute first revised sheet number 194
3 in the pending dockets.

4 A couple of other procedural matters. We
5 have at this juncture suspended the procedural schedule
6 to the extent of the hearings that were slated for April
7 2nd, I believe. The next date after those hearings was
8 I believe a June 17th date on which some testimony was
9 to be filed. I don't therefore see any particular hurry
10 about suspending the remainder of the procedural
11 schedule, but in connection with that, it does strike me
12 that we probably need to have a get together among the
13 parties to discuss our procedural schedule. Now the
14 collaboratives you all can work out among yourselves how
15 you wish to schedule those, I don't need to be involved
16 in that. But I do need to be involved with you in
17 discussing dates for any litigation that may be
18 necessary. And it seems to me that the parties also are
19 interested in having that schedule in place as a what if
20 sort of a contingency type schedule. Sometime the week
21 of April 2nd or 1st, can I hear from the parties on that
22 just quickly? I can set that on short notice, but I
23 just --

24 MR. CEDARBAUM: I think, Your Honor, the
25 stipulation, I don't recall the exact paragraph, calls

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1 for us to consult with you and to come up with a
2 schedule by April 1st.

3 JUDGE MOSS: Yeah, that seems kind of --

4 MR. CEDARBAUM: Which would be we would
5 consult with you this week.

6 JUDGE MOSS: Frankly, I've got a lot to do
7 this week, Mr. Cedarbaum. I'm not so sure that will
8 work out. That's why I was thinking next week.

9 MR. CEDARBAUM: I don't think Staff would
10 find it to be a material change if you were to change
11 that particular paragraph to have that April 1st date be
12 some --

13 JUDGE MOSS: Could we slip that a couple of
14 days and maybe do that next week?

15 MR. CEDARBAUM: That would be fine with us.
16 And we could also, if you would like, we're going to
17 have, I don't want to complicate our collaborative
18 scheduling meeting any more.

19 JUDGE MOSS: Right.

20 MR. CEDARBAUM: But we could try to come up
21 with a proposed schedule for you and present it to you
22 at a pre-hearing conference.

23 JUDGE MOSS: Okay, well, let's do work on
24 that, but we'll push that into next week, and I will
25 notice a schedule and make the appropriate room

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1 reservations and so forth, and so we will work on that
2 together.

3 MR. FFITCH: Your Honor, just a brief
4 comment, Public Counsel is not available on April 1st.

5 JUDGE MOSS: Not trying to fool me, are you,
6 Mr. ffitch?

7 I'm glad everybody laughed at that, it was
8 pretty corny really.

9 All right, one other small matter, if you
10 need a transcript of today's proceedings, be sure to let
11 the reporter know at the conclusion of the proceeding.

12 And with that, I think that's all I have to
13 say today except thank you all very much, but I do think
14 we may have some closing remarks from one or more of the
15 commissioners, so I will turn the floor over.

16 CHAIRWOMAN SHOWALTER: Thank you to all the
17 parties, the witnesses and their lawyers, for all the
18 thought and work and cooperation that went into
19 developing the settlement agreement and for the very
20 thoughtful testimony and arguments that you presented
21 today. We take your requests seriously both on the
22 substance of it to approve the settlement agreement and
23 also to try and do it with really top speed. We will
24 try to digest it and deliberate and deliver within the
25 time period you have requested, and I'm hopeful that we

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1 will be able to do that. Thank you.

2 COMMISSIONER HEMSTAD: I just would like to
3 echo the remarks of the Chairwoman when she opened here
4 today. I frankly was both impressed and I would say
5 surprised when I read the settlement that the parties
6 had arrived at because of its scope and the dealing with
7 a lot of quite complex issues. And in translation, that
8 means that a lot of people have spent a lot of heavy
9 time and productive time in addressing these questions,
10 and I simply in the sense of we will see where we go
11 ourselves here with this, but I want to applaud the
12 efforts that all of you have made to try to deal with
13 these issues in a way that ultimately ought to benefit
14 both customers and the company.

15 JUDGE MOSS: I believe that concludes our
16 comments from the Bench, and so again thank you all very
17 much, and we will be off the record.

18 (Hearing adjourned at 4:25 p.m.)

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