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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 KIMBERLY-CLARK TISSUE COMPANY,) Docket No. UG-990619
) Complainant,) Volume II
5 v.) Pages 11-221

6 PUGET SOUND ENERGY, INC.,)
) Respondent,)

8 _____)

9

10 A hearing in the above matter was
11 held on November 1, 1999, at 10:06 a.m., at 1300
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge KAREN CAILLE.

14

15 The parties were present as
16 follows:

17 KIMBERLY-CLARK TISSUE COMPANY, by
18 Carol S. Arnold, Attorney at Law, Preston, Gates &
19 Ellis, 701 Fifth Avenue, Suite 5000, Seattle,
Washington, 98104, and HOWARD L. SHARFSTEIN, Attorney
at Law, 1400 Holcomb Bridge Road, Roswell, Georgia,
30076.

20

21 PUGET SOUND ENERGY, by Andree G.
22 Gagnon and James M. Van Nostrand, Attorneys at Law,
Perkins Coie, One Bellevue Center, 411 108th Avenue
N.E., Suite 1800, Bellevue, Washington 98004.

23

24 BARBARA SPURBECK, CSR
25 COURT REPORTER

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1 JUDGE CAILLE: Let's go on the record.
2 This is the evidentiary hearing in Docket Number
3 UG-990619, a complaint proceeding brought by
4 Kimberly-Clark Tissue Company against Puget Sound
5 Energy Company -- Energy, Incorporated. Today is
6 November the 1st, and we are meeting in the
7 Commission's offices in Olympia. May I have the
8 appearances for the record, please?

9 MS. ARNOLD: Carol S. Arnold, for Preston,
10 Gates & Ellis, for Kimberly-Clark.

11 MR. SHARFSTEIN: Howard Sharfstein, I'll
12 give the court reporter a card, with Kimberly-Clark
13 Corporation.

14 MS. GAGNON: Andree G. Gagnon, representing
15 Puget Sound Energy, Inc., with Perkins Coie.

16 MR. VAN NOSTRAND: James M. Van Nostrand,
17 with Perkins Coie, also representing Puget Sound
18 Energy.

19 JUDGE CAILLE: Let the record reflect there
20 are no other appearances. Ms. Arnold, at this time,
21 would you like to call your first witness?

22 MS. ARNOLD: Thank you, Your Honor. Mr.
23 David Faddis.

24 JUDGE CAILLE: And Mr. Faddis, generally we
25 sit over here. And before you sit, I'm going to

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1 swear you in.

2 MR. FADDIS: Sure.

3 Whereupon,

4 DAVID J. FADDIS,
5 having been first duly sworn, was called as a witness
6 herein and was examined and testified as follows:

7 JUDGE CAILLE: Thank you.

8 MS. ARNOLD: Your Honor, am I correct that
9 we just need one copy for the court reporter and the
10 bench?

11 JUDGE CAILLE: And Ms. Arnold, I think what
12 I will do is I'm going to read in the exhibits, since
13 I'm familiar with them and how I've described them,
14 and then I'll let you proceed.

15 Mr. Faddis is sponsoring the following
16 exhibits, and they are identified as follows:
17 Exhibit T-1 is the direct testimony of Mr. Faddis.
18 Exhibit 2 is his DJF-1 exhibit. Exhibit 3 is his
19 DJF-2 exhibit. Exhibit 4 is his DJF-3 exhibit.
20 Exhibit 5 is his DJF-4 exhibit. And Exhibit 6 is the
21 DJF-5 exhibit. You may proceed, Ms. Arnold.

22 MS. ARNOLD: Your Honor, at this time, we
23 would like to state that Exhibit 5, which is DJF-4,
24 will be withdrawn. Prior to the hearing, Counsel for
25 Puget and Kimberly-Clark stipulated that the

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1 discrepancy in the dates of the penalty between the
2 complaint and the testimony is not material. The
3 complaint makes an allegation about a penalty
4 assessed for December 29th, and Exhibit 4 was put in
5 the record to show that that was information that was
6 provided by Puget, and the parties have stipulated
7 now that there was no penalty for the gas day of
8 December 29th, and so Exhibit DJF-4, which is Exhibit
9 5, is no longer material.

10 And I think that we also stipulated off the
11 record that we would not physically remove it from
12 the record or change the exhibit numbers, just to
13 avoid administrative confusion.

14 JUDGE CAILLE: All right, thank you.

15 D I R E C T E X A M I N A T I O N

16 BY MS. ARNOLD:

17 Q. Mr. Faddis, will you state your full name
18 and business address, please?

19 A. David J. Faddis, 2400 Federal Avenue,
20 Everett, Washington.

21 Q. And what is the area in which you will
22 testify?

23 A. I'm the facility manager for
24 Kimberly-Clark's operation in Everett, Washington,
25 and I will be responding along those lines.

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1 Q. Do you have in front of you a copy of the
2 prefiled direct testimony of David J. Faddis, along
3 with Exhibits 2, 3, 4, and 6?

4 A. Yes, I do.

5 Q. Was the testimony and exhibits prepared by
6 you or at your direction and under your supervision?

7 A. Yes.

8 Q. If you were to testify today, would your
9 testimony be the same as what has been designated
10 prefiled direct testimony of David J. Faddis?

11 A. Yes, it would.

12 MS. ARNOLD: Your Honor, at this time, we
13 would move into evidence Exhibits T-1, 2, 3, 4 and 6.

14 JUDGE CAILLE: Are there any objections?

15 MS. GAGNON: Yes, there are, Your Honor.
16 First, for the record, has the record yet indicated
17 that Mr. Faddis is deleting the testimony or not
18 sponsoring the testimony regarding the withdrawn
19 exhibit? That would be at page five, lines 17
20 through 20. That would be our first.

21 MS. ARNOLD: Oh, Your Honor, we would
22 stipulate that lines -- it's actually not 17; the
23 answer begins at 18 through 20 -- pertain to the
24 exhibit that is withdrawn, and that is not material,
25 relevant testimony.

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1 MS. GAGNON: And further, PSE objects to
2 what has been marked as Exhibit 2, Exhibit 3, and
3 Exhibit 4. And I'd like to deal with Exhibit 3
4 first. This is essentially a completely unreliable
5 document. It is a handwritten document. The author
6 has not been identified. It appears to be filled
7 with statements that cannot be connected with
8 specific individuals. In fact, it relies on
9 statements that are clearly not individuals connected
10 with Puget Sound Energy. There's been no
11 demonstration that the people who made these
12 statements were authorized to do so by the company,
13 and there is absolutely no foundation that's been
14 laid for this document or it has not been
15 authenticated. So this document would not be
16 appropriate to be admitted for the truth of the
17 statements asserted therein. As to exhibit --

18 JUDGE CAILLE: Counsel, maybe -- let's take
19 these one at a time.

20 MS. GAGNON: Sure.

21 JUDGE CAILLE: Ms. Arnold, do you have a
22 response to --

23 MS. ARNOLD: Yes, Your Honor. This
24 exhibit, as the numbers in the lower right-hand
25 corner indicate, was provided by Puget Sound Energy

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1 from their business records. It is marked with a
2 Puget Sound Energy logo, it is dated and signed. So
3 we have no reason to believe that this document is
4 not authentic, that it is not an authentic business
5 record kept in the ordinary course of business by
6 Puget Sound Energy.

7 MS. GAGNON: Your Honor, if I may be heard
8 briefly?

9 JUDGE CAILLE: Yes.

10 MS. GAGNON: The fact that Puget Sound
11 Energy produced something does not mean that Puget
12 Sound Energy has stipulated that it is an authentic
13 business record. The data request requested certain
14 pieces of information. If documents have that
15 information, they were provided whether they were
16 handwritten notes, personal notes, logs. Puget Sound
17 Energy provided all information.

18 And as to the signature, I fail to find
19 that on this statement, and despite Ms. Arnold's
20 characterization of this document, even if it were a
21 business record, the fact that there are statements
22 in here that are made by third parties who
23 potentially are unconnected with Puget Sound Energy
24 makes it completely unreliable.

25 MS. ARNOLD: Well, if the bench feels that

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1 it's necessary to do so, we would request the
2 opportunity to subpoena, I guess, Diana Otto to
3 testify as to its authenticity.

4 MS. GAGNON: We have no objection to that.

5 MS. ARNOLD: But I would not think that
6 would be necessary, Your Honor.

7 JUDGE CAILLE: All right. Let me --

8 MS. ARNOLD: It will -- excuse me. I
9 didn't mean to interrupt.

10 JUDGE CAILLE: Yes.

11 MS. ARNOLD: Some of the information in it
12 will be reflected -- I think is reflected in the
13 testimony of another one of the Kimberly-Clark
14 witnesses.

15 JUDGE CAILLE: All right.

16 MS. GAGNON: That doesn't -- I'm sorry.
17 That doesn't establish its reliability, Your Honor.

18 JUDGE CAILLE: I understand. I think I'll
19 go ahead and hear argument on the other two, because
20 I feel I need to re-read this exhibit. Why don't you
21 go ahead with your next objection.

22 MS. GAGNON: Yes, Your Honor. With Exhibit
23 2, this clearly is not a business record of Puget
24 Sound Energy. This appears to be a record from the
25 Commission. Again, it contains numerous statements

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1 that were made by third parties. And at the very end
2 of the -- at the third page of the exhibit, it says,
3 Note, PSE's e-mail response is deemed confidential at
4 this time, since it was not cleared by management.

5 Again, this document has not been adopted
6 by PSE's management, and as such, would not fall
7 under any of the hearsay exemptions that exist, and
8 it's not a business record of PSE. So PSE would
9 again object to admission of this document into the
10 record as proof of the -- or as truth of the matters
11 stated therein.

12 JUDGE CAILLE: Ms. Arnold.

13 MS. ARNOLD: Yes, Your Honor. This
14 document was faxed from the Commission to
15 Kimberly-Clark. If it's necessary to authenticate
16 this, I suppose the person from the Commission who
17 faxed it can authenticate it, but I think Mr.
18 Faddis's testimony is sufficient that this document
19 is part of Kimberly-Clark's business record related
20 to this. It was received by Mr. Cameron, Bryan
21 Campanaro, who's in Georgia, and I don't want to
22 bring Mr. Campanaro out to authenticate it, but I
23 think that Mr. Faddis's testimony that this is part
24 of Kimberly-Clark's business record and was received
25 from the Commission by Kimberly-Clark is sufficient.

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1 JUDGE CAILLE: All right. Any --

2 MS. GAGNON: No further response. Just the
3 last objection.

4 JUDGE CAILLE: That would be to Number 4?

5 MS. GAGNON: Yes. Again, Your Honor, PSE
6 would object to this document because it appears to
7 contain statements made by third parties, some of
8 whom are completely unconnected to Puget Sound
9 Energy, and some of whom are simply unidentified.
10 Again, there's no way to know whether this document
11 has been approved by PSE management. I don't believe
12 that Kimberly-Clark has sponsored the testimony of
13 Ms. Bork, and I, again, I would object to them --
14 this document being admitted to prove the truth of
15 the matter within the statements themselves.

16 JUDGE CAILLE: Ms. Arnold.

17 MS. ARNOLD: Your Honor, I must say, I've
18 never quite experienced this, where the utility is
19 denouncing its own documents. This document was
20 produced by Puget Sound Energy. It is an e-mail from
21 a Puget Sound Energy employee to the Commission, and
22 there's no reason to think that it is not an
23 authentic and genuine document.

24 MS. GAGNON: Your Honor.

25 JUDGE CAILLE: Yes.

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1 MS. GAGNON: I did not object to
2 authenticity on this document. The main issue are
3 the statements within the documents. Typically, if
4 you have statements, you test those statements with
5 the person who made them under oath. You don't just
6 assume that they are true and accurate, and the rules
7 of evidence have been constructed around that theory.

8 In particular, these documents, and this is
9 all of them, have hearsay within hearsay within
10 hearsay. So there has been no attempt to establish
11 who made these statements and whether they're true or
12 not, and I don't believe that they are admissible.

13 MS. ARNOLD: Well, Your Honor, in the first
14 place, the Commission is not bound by the rules of
15 evidence, and the rules for admissibility of
16 documents are considerably looser. And when the
17 utility produces a document, I think that we can
18 assume that it has the requisite guarantee of
19 trustworthiness. The issue that appears in this
20 e-mail is a thread that appears throughout Puget's
21 documents --

22 MS. GAGNON: Objection, Your Honor.

23 MS. ARNOLD: -- and that appears and will
24 be and was included in the testimony of one of the
25 Kimberly-Clark witnesses. And that is a specific

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1 issue that keeps reappearing.

2 MS. GAGNON: Objection, Your Honor.

3 MS. ARNOLD: And I don't want to --

4 MS. GAGNON: Ms. Arnold is arguing her
5 case.

6 JUDGE CAILLE: Excuse me.

7 MS. ARNOLD: -- influence the bench
8 improperly or do anything improper here, but these
9 documents came from Puget. They're printouts from
10 Puget's e-mail. And for Puget to stand here today
11 and say, We don't know anything about this document
12 is -- I've never seen anything like that at the
13 Commission.

14 JUDGE CAILLE: All right. Did you have
15 something you wanted to say?

16 MS. GAGNON: Just for the record, I believe
17 Ms. Arnold is completely mischaracterizing my
18 argument.

19 JUDGE CAILLE: All right. This is what
20 we're going to do. I'm going to hold my ruling in
21 abeyance. We'll go ahead with Mr. Faddis's
22 testimony, and I will -- after a break, I will make
23 the ruling, all right. You may proceed. So go ahead
24 and -- well, I'll tell you what. I'll just make the
25 ruling right now. I'm going to allow the documents

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1 in, but pending my review, I believe Ms. Gagnon's
2 arguments about hearsay within hearsay within hearsay
3 are valid. And although the Commission does treat
4 hearsay a little more leniently than the civil courts
5 do, I will take these exhibits and give them the
6 weight I feel appropriate.

7 So if I find that there are statements in
8 there that I find that are not reliable or that I
9 cannot rely upon because they are triple hearsay, I
10 will give them their weight in accordance with that.
11 All right. So the ruling is that your objection is
12 overruled, Ms. Gagnon, and those exhibits will be
13 allowed in, subject to my previous comments. All
14 right.

15 MS. ARNOLD: Mr. Faddis is available for
16 cross-examination.

17 C R O S S - E X A M I N A T I O N

18 BY MS. GAGNON:

19 Q. Good morning, Mr. Faddis.

20 A. Good morning.

21 Q. You are currently the mill manager of the
22 Kimberly-Clark Everett facility is that correct?

23 A. That's correct.

24 Q. And you were not the mill manager of the
25 Everett facility during December 1998; is that

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1 correct?

2 A. That's correct.

3 Q. And that would have been a Mr. Michael
4 Holcomb?

5 A. Correct.

6 Q. And you did not actually become mill
7 manager of the facility until Mr. Holcomb retired in
8 May of 1999; is that correct?

9 A. I became the facility manager April 19th,
10 but on or about May of '99, that's correct.

11 Q. And so you were not at the Everett facility
12 during the period from December 24th through December
13 28th, 1998, were you?

14 A. No, I was not.

15 Q. And your testimony about the weather during
16 December 19th through the Christmas holiday is not
17 based on your personal knowledge of the weather
18 conditions; is that correct?

19 A. That is correct.

20 Q. Now, according to Kimberly-Clark, during
21 this same time period, partial or complete freezing
22 conditions were experienced with the bark feed at the
23 Everett facility and at numerous suppliers; is that
24 correct?

25 A. My understanding is that the early part to

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1 middle of December did have some severe cold weather,
2 but that the weather tended to warm up towards the
3 24th of December, to the point where freezing
4 temperatures had abated and it had begun to rain.

5 Q. And your understanding, again, is not based
6 on your personal knowledge; is that correct?

7 A. That is correct.

8 MS. GAGNON: Okay. At this time, I'd like
9 to hand the witness -- we haven't pre-marked these,
10 but PSE's Data Request Number 14 and Kimberly-Clark's
11 response. It's Kimberly-Clark's response to PSE's
12 Data Request Number 14 of the --

13 JUDGE CAILLE: Ms. Gagnon, is this one of
14 the cross exhibits?

15 MS. GAGNON: Yes.

16 MR. VAN NOSTRAND: Number 143, Your Honor.

17 JUDGE CAILLE: Thank you, 142?

18 MR. VAN NOSTRAND: 143.

19 MS. ARNOLD: Your Honor, I'm sorry, I don't
20 have these numbered. If we could just have -- here
21 we go.

22 JUDGE CAILLE: Okay. Maybe during the
23 break, we could do some numbering.

24 MS. GAGNON: Yes, Your Honor.

25 JUDGE CAILLE: All right.

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1 Q. Now, I've handed you what is
2 Kimberly-Clark's response to a PSE data request, and
3 isn't it correct that the response states that
4 partial or complete freezing conditions were
5 experienced for all days during the period from
6 December 19th to the 28th at the Everett facility and
7 at numerous suppliers?

8 A. I'd like to have a moment to review this.

9 Q. Sure.

10 MS. ARNOLD: There seems to be two
11 responses to PSE Data Request Number 14.

12 MS. GAGNON: I'm looking at the bottom.
13 There were several sets of data requests, and this
14 set is identified at the bottom.

15 JUDGE CAILLE: How about if we go off the
16 record a minute.

17 (Discussion off the record.)

18 JUDGE CAILLE: Let's go back on the record.

19 And Ms. Gagnon, you may proceed.

20 Q. Okay. Now, before you you have Exhibit
21 143; is that correct?

22 A. That's correct.

23 Q. You had a chance to review that exhibit?

24 A. Yes, I have.

25 Q. And isn't it correct that this exhibit,

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1 which Kimberly-Clark provided, states that partial or
2 complete freezing conditions were experienced for all
3 days during the period from December 19th to the
4 28th, 1998, at the Everett facility and at numerous
5 suppliers?

6 A. I think you have to take it in context with
7 the matter that is under consideration. Freezing
8 conditions typically are around 32 degrees
9 Fahrenheit. Bark fuel or hogged fuel is a solid, and
10 so it is going to freeze slower and thaw slower than
11 the ambient air. So even though the ambient air
12 temperature may have increased to a level where it
13 was not freezing, the fuel piles and the fuel that
14 was stored in those trucks would be much slower to
15 respond.

16 Q. But all I'm saying is didn't Kimberly --
17 all I'm asking you to answer is whether the bark feed
18 was still frozen, and this is, according to
19 Kimberly-Clark, from December 19th, to December 28th,
20 1998.

21 MS. ARNOLD: There's no objection, but
22 that's what he was answering.

23 THE WITNESS: I'll restate it. I believe
24 that there were conditions, as you pointed out
25 earlier in my testimony, that I was not present.

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1 From what I've heard from my deputies on site, their
2 recollection of the system was that there were
3 various degrees of freezing throughout the fuel
4 source piles. The primary concern dealt with the
5 transport of that fuel to our conveyor system, that
6 the trucks that actually carried that hog fuel had
7 frozen chips in it and it couldn't get the chips --

8 MS. GAGNON: I'm going to object. This is
9 non-responsive to the question.

10 JUDGE CAILLE: Ms. Gagnon, could you state
11 the question again. And Mr. Faddis, if you can,
12 would you precede your explanation with a yes or a
13 no?

14 THE WITNESS: Yes, ma'am.

15 JUDGE CAILLE: Answer the question with a
16 yes or a no, and if you feel there's further
17 explanation, then you can provide that.

18 THE WITNESS: Certainly.

19 Q. According to Kimberly's response to PSE's
20 data request, there were partial or complete freezing
21 conditions experienced for each day between December
22 19th to the 28th during the 1998 year at the Everett
23 facility and at numerous bark feed suppliers; is that
24 correct?

25 A. Yes, there were varying degrees of material

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1 that was frozen throughout the time, primarily
2 preceding the 24th. A general thaw began to occur on
3 the 24th and thereafter to the point where systems
4 began to be able to come back on line.

5 MS. GAGNON: Your Honor, at this time I
6 would offer Exhibit 143 into evidence.

7 JUDGE CAILLE: Is there any objection?

8 MS. ARNOLD: No objection.

9 JUDGE CAILLE: Then 143 is admitted.

10 Q. Now I'm handing you an exhibit marked as
11 C-146. If I could -- once you have a chance to look
12 through it, if you could go to -- I'm sorry, I've
13 handed you the wrong exhibit. I should have handed
14 you Exhibit 165. There we go. Now, after you've had
15 a second to look at that, if you could go to the
16 second page of the exhibit.

17 A. Okay.

18 Q. And this is a memo from Mr. Hunter to a Mr.
19 Ronish; is that correct?

20 A. It appears so, yes.

21 Q. And Mr. Hunter works for Kimberly-Clark; is
22 that correct?

23 A. That's correct.

24 Q. And in 1995, Mr. Hunter worked for
25 Kimberly-Clark's predecessor, Scott Paper; is that

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1 correct?

2 A. That's correct.

3 Q. Okay. Could you read paragraph four of the
4 memo? It appears on the first page of the memo.

5 A. Yes.

6 MS. ARNOLD: Your Honor, I would object to
7 any further questions on this memorandum unless Puget
8 lays a foundation that Mr. Faddis has any knowledge
9 or information about these events that took place
10 four years before he arrived at the plant. His name
11 is not on the memo anyplace.

12 MS. GAGNON: Well, Your Honor, I think that
13 the lawsuit has been brought by Kimberly-Clark, who
14 is a company. They've put Mr. Faddis on the stand,
15 and I believe that he can testify to documents that
16 are produced by or have been produced by
17 Kimberly-Clark, to the extent that the document
18 exists. I'm not asking Mr. Faddis to determine
19 whether or not Mr. Hunter actually believes any of
20 these items.

21 MS. ARNOLD: Well, Your Honor, I would
22 point out that the Bates number at the bottom
23 indicates this was actually produced by Puget, so my
24 objection stands.

25 MS. GAGNON: The document was created by a

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1 Kimberly-Clark employee, and the response to Data
2 Request Number 25 establishes that.

3 JUDGE CAILLE: All right. I am going to
4 allow the witness to testify with respect to this
5 exhibit as much as he can, to his knowledge. And I
6 will, again, give this the appropriate weight. So
7 I'm sorry, Ms. Arnold, your objection is overruled.

8 Q. Could you go ahead?

9 A. Yes, you asked if I would read paragraph
10 four. Can I get clarification on this document? I
11 believe, as this is titled, it deals with the pulp
12 mill separation. Prior to the merger between the
13 Scott Paper Company and Kimberly-Clark, there was an
14 analysis done to actually separate the pulp mill from
15 the rest of the facilities, and these were meetings
16 conducted with many local suppliers to determine what
17 would be required in order to isolate the pulp mill
18 from the ongoing operation.

19 Paragraph four reads, The existing gas
20 supply system is capable of supplying approximately
21 1,000 (sic) cubic feet per hour to the Scott Paper
22 mill down to temperatures of 45 degrees Fahrenheit
23 only. At lower temperatures, gas curtailment may be
24 required. Upgrades to that capability are planned by
25 WNG in the future, but are not yet scheduled.

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1 Q. Now, Mr. Faddis, would you characterize 45
2 degrees Fahrenheit as extreme cold?

3 A. I would not characterize 45 degrees
4 Fahrenheit as extreme cold.

5 Q. And if we could go up to the cc: list, are
6 there a number of individuals on the cc: list who are
7 currently at Kimberly-Clark?

8 A. Approximately eight of them are, to my
9 knowledge.

10 Q. And could you list them, please?

11 A. Gary Allen, Alex Hood, Jon Jacobs, Mary
12 Johanson, Jerry Miller, Dave Pranghofer, Kirk
13 Johnson, Brian Martin.

14 MS. GAGNON: Thank you. Your Honor, at
15 this time, PSE would offer Exhibit 165 into the
16 record.

17 JUDGE CAILLE: All right. I don't know
18 about you folks out there, but when Mr. Faddis read
19 this, he read this number four at 1,000, I believe,
20 and it's one million.

21 THE WITNESS: One million, excuse me.

22 JUDGE CAILLE: I just want to make sure I
23 had the same. Is there any objection to admission?

24 MS. ARNOLD: Yes, we do object that there's
25 been inadequate foundation, that it is not relevant

00037

1 because it pertains to conditions at the plant in
2 June 1995, and because this witness has no knowledge
3 about the contents or the circumstances under which
4 the memo was written.

5 JUDGE CAILLE: Any response?

6 MS. GAGNON: Well, I don't want to repeat
7 myself. I think I provided a response to part of
8 that objection, but I think that there's no reason
9 for this document not to go in, at least for notice
10 purposes, that Kimberly-Clark was on notice -- or
11 excuse me, Scott Paper was on notice from 1995, that
12 there were certain limitations with serving them, and
13 to the extent conditions have changed, PSE witnesses
14 have testimony about what changes have occurred from
15 1995 until now.

16 JUDGE CAILLE: All right. The objection is
17 still overruled, and as I stated before, I will give
18 this its due weight.

19 Q. Now, Mr. Faddis, you testified that in
20 December 1998, Kimberly-Clark was taking service from
21 PSE under Rate Schedule 57; is that correct?

22 A. I have not testified to that today. In the
23 deposition, I believe that we did make a comment
24 towards it.

25 Q. If I could -- do you have your testimony

00038

1 before you?

2 A. Yes.

3 Q. If you could look at page four, lines one
4 through four?

5 A. Yes. Yes, in my deposition, I did
6 acknowledge that.

7 Q. Okay. Well, would that be true today?

8 A. Yes.

9 Q. And are you familiar with Rate Schedule 57?

10 A. Yes, I'm fairly familiar with Rate Schedule
11 57. My understanding of that contract is it's a
12 contract of service agreement, where the whole intent
13 of the contract is to provide service to an end user.
14 And part of the whole complaint that Kimberly-Clark
15 has is that we have, in good faith, entered into an
16 agreement, and yet service was disrupted.

17 Q. I'm sorry, I hate to do this to you, to cut
18 you off, but I'm just going to have to object and say
19 this is completely non-responsive. Really, all I
20 wanted to know was whether you were familiar with
21 Rate Schedule 57, and if you could -- I mean, I'm
22 assuming from your answer that you are. Would that
23 be correct?

24 A. I believe it would be correct. I can't
25 attest to your assumption, but I am fairly familiar

00039

1 with Rate Schedule 57.

2 Q. Okay. And is there anywhere in Rate
3 Schedule 57 that states that curtailment of
4 interruptible customers can only occur during periods
5 of extreme cold?

6 MS. ARNOLD: Your Honor, I think this is an
7 objection, but I think there's a confusion here, and
8 I'd like Counsel to place in front of Mr. Faddis the
9 document she's talking about. I think Mr. Faddis is
10 referring to the service agreement and I think she's
11 referring to Rate Schedule 57. I think it would be
12 helpful if she placed the document in front of Mr.
13 Faddis.

14 MS. GAGNON: Your Honor, I can get a copy
15 of Rate Schedule 57, but I have to object. This is
16 Mr. Faddis's testimony. If he's not familiar with
17 Rate Schedule 57, then that's fine, but I'm happy to
18 put the tariff in front of him.

19 JUDGE CAILLE: Is Rate 57 one of the
20 exhibits?

21 MS. GAGNON: I believe it's actually an
22 exhibit to Mr. Owens' testimony.

23 MS. ARNOLD: Yes, it is.

24 MS. GAGNON: So we could get a copy. This
25 would be Exhibit 29, Your Honor.

00040

1 Q. Mr. Faddis, are you familiar with the
2 document that you're looking at?

3 A. I have not seen this document. I'm
4 familiar with the context of the document through
5 discussions and briefing with members of my staff.

6 Q. But you understand that Kimberly-Clark is a
7 customer of PSE's taking service under Rate Schedule
8 57?

9 A. That is correct.

10 Q. Okay. But so you wouldn't have any idea of
11 whether Rate Schedule 57 limits curtailment of
12 interruptible customers to periods of extreme cold,
13 would you?

14 A. Could you repeat that question?

15 Q. Sure. You wouldn't have any idea of
16 whether Rate Schedule 57 limits curtailment of
17 interruptible customers to periods of extreme cold;
18 is that correct?

19 A. My understanding is that curtailment -- I'm
20 trying to answer yes, but I'm trying to define that.
21 My understanding is that the curtailment can be on
22 grounds other than simply extreme cold due to system
23 inoperability or inavailability of supply.

24 Q. But you don't know what that document says
25 about the terms and conditions under which

00041

1 curtailment could occur; is that correct? You stated
2 you weren't familiar with it.

3 A. Not in detail.

4 Q. Now, you testify that Puget's contract with
5 Kimberly-Clark permits curtailment, as necessary, in
6 order to manage its distribution system; is that
7 correct?

8 A. Yes.

9 Q. And that contract doesn't say that
10 curtailment of Kimberly-Clark can only occur during
11 periods of extreme cold, does it?

12 A. No, it does not.

13 Q. Now, in response to the question why didn't
14 Kimberly-Clark shut down the plant from December 24th
15 to December 28th, you testified that the only time
16 the plant is shut down is for annual scheduled
17 maintenance or for emergencies, and that the plant
18 cannot be safely shut down in less than 20 to 24
19 hours notice; is that correct?

20 MS. ARNOLD: Could we have a page and line
21 reference?

22 MS. GAGNON: Sure. Page five, lines nine
23 through 13.

24 THE WITNESS: Yes, that is correct. We
25 are, at times, though, forced into shutting down

00042

1 beyond our control, but typically we try not to shut
2 down due to safety concerns.

3 Q. Now, isn't it correct that Mr. Walton was
4 notified the morning of December 24th, 1998, that
5 there would be no more fuel oil deliveries through
6 the weekend?

7 A. Again, I was not present on the site. My
8 understanding is that Kimberly-Clark was notified
9 that fuel was going to be in shortage.

10 Q. Is it your testimony that there wasn't
11 sufficient notice for Kimberly-Clark to begin
12 shutting down the morning of December 24th, so that
13 by the morning of December 25th, Kimberly-Clark would
14 be safely shut down?

15 A. To answer your question, I would say yes,
16 that is our position. However, again, we are a
17 business that serves customers, and for us to shut
18 down infers that we will not be able to provide a
19 service to the customers that we treat. And we
20 obviously had commitments to our customers to run
21 throughout the holiday season in order to provide
22 them a product that they had requested.

23 Q. Well, I understand that, but you testify
24 that one of the reasons you didn't shut down was
25 because the plant cannot be safely shut down in less

00043

1 than 12 to 24 hours notice. But isn't it correct
2 that if Mr. Walton knew on December 24th that the
3 plant could shut down 24 hours later, that would have
4 been possible? I mean, you had enough notice; is
5 that correct?

6 A. Physically possible. Practically, no.

7 Q. Now, Mr. Faddis, it is Kimberly-Clark's
8 decision to operate its Everett facility 24 hours a
9 day, 365 days a year; is that correct?

10 A. That's correct.

11 Q. And wouldn't it be fair to say that it was
12 Kimberly-Clark's decision to contract 14,000 therms
13 of firm transportation under Rate Schedule 57?

14 A. Yes, that would be very fair. That's the
15 base amount that's required in order to keep our
16 tissue mill functional, not our pulp mill.

17 Q. Now, you testified that you were told that
18 Puget failed to lift the curtailment on December
19 24th, 1998, because of small distribution problems,
20 uncertain weather forecasts, and the logistics
21 involved in reading Rate Schedule 86 meters over
22 Christmas weekend; is that correct?

23 A. That is correct.

24 Q. And would the basis for that testimony be
25 your exhibit -- I believe it's 2. Yes.

00044

1 MS. ARNOLD: Could you give us the
2 reference to that testimony?

3 MS. GAGNON: Sure. It is page two, lines
4 16 through 20.

5 THE WITNESS: The answer to the question is
6 yes, Exhibits DJF-1 through 3 reflect the basis for
7 that statement.

8 Q. Well, if I could just direct your attention
9 to DJF-1, which has been marked Exhibit 2, and if we
10 could just go to the last page of that exhibit, it's
11 page five, and if you could just read the comment
12 after "Note."

13 A. PSE's e-mail response is deemed
14 confidential at this time, since it was not cleared
15 by management.

16 Q. Now, you did not call Puget management to
17 verify the information in this response, did you?

18 A. No, I did not.

19 Q. Okay. And your testimony also states that
20 the absence of personnel to do the meter reading was
21 an elective decision on Puget's part; is that
22 correct?

23 A. That is correct.

24 Q. And the basis for your belief that PSE
25 management made a decision not to send out meter

00045

1 readers over the Christmas weekend would be these
2 exhibits we've discussed? That would be Exhibits 2,
3 3 and 4.

4 A. Correct, primarily -- I have to read the
5 exhibit, but it was primarily the response that was
6 given to Mr. Walton when he called the Gas Control
7 Center and --

8 Q. I'm sorry --

9 A. He was given --

10 Q. -- to cut you off again, but I'm really
11 just asking you about these exhibits. If you could
12 just refer to Exhibit 3, which yours is marked DJF-2,
13 your handwritten notes.

14 A. Okay.

15 Q. Do you know who wrote these notes?

16 A. Firsthand, no. I assume, from the
17 examiner's name at the top, that that was Diana Otto.

18 Q. Do you know if Ms. Otto works for Puget
19 Sound Energy, Inc.?

20 A. I would assume she does, based on the fact
21 that this is PSE's letterhead.

22 Q. And did you speak with anyone from PSE
23 management to confirm whether the management decided
24 not to send out meter readers over Christmas weekend
25 because the company was being sensitive to employees'

00046

1 holiday plans?

2 A. I personally did not. Mr. Walton, as I
3 understand, did contact representatives from PSE and
4 was told that they did not have meter readers
5 available to read the lines.

6 MS. GAGNON: I'm going to object and do a
7 motion to strike, since that is actually not
8 contained in Mr. Walton's testimony.

9 JUDGE CAILLE: I'm sorry, could the court
10 reporter please read back the question and the
11 response of the witness?

12 (Record read back.)

13 MS. GAGNON: Your Honor, I think if you
14 review Mr. Walton's testimony, that statement is
15 nowhere in that testimony. In fact, that statement
16 is nowhere made by any witness in this matter, except
17 in reliance upon a document.

18 JUDGE CAILLE: Any response, Ms. Arnold?

19 MS. ARNOLD: Yes. If I could just have a
20 minute, Your Honor.

21 JUDGE CAILLE: All right.

22 MS. ARNOLD: Your Honor, I cannot put my
23 finger on it right now, but I believe that we will
24 find it in the record. If we could give you a
25 supplemental response after I've had a chance to look

00047

1 at it?

2 MS. GAGNON: I'm sorry, Your Honor. All
3 this witness said was that Mr. Walton testified to
4 that. Mr. Walton's testimony is only four pages
5 long, and it is not in there.

6 JUDGE CAILLE: My review of Mr. Walton's
7 testimony just now, too, didn't --

8 MS. ARNOLD: Well, I can't find it in Mr.
9 Walton's testimony. I don't think it is in Mr.
10 Walton's testimony, but I believe it is in the record
11 someplace else.

12 JUDGE CAILLE: Well, if it's in the record
13 someplace else, I will -- if you could point that out
14 to me later.

15 MS. ARNOLD: I will do that.

16 JUDGE CAILLE: But the objection is to Mr.
17 Walton's testimony. If it isn't there, it isn't
18 there.

19 MS. ARNOLD: I think it's not in Mr.
20 Walton's. I think that's correct.

21 JUDGE CAILLE: Okay. The objection is
22 sustained.

23 Q. Now, in looking again at the handwritten
24 notes, which are in Exhibit 3 to your testimony,
25 that's, again, DJF-2.

00048

1 A. Yes.

2 Q. Now, you don't know if the person who took
3 these notes was part of PSE management; is that
4 correct?

5 A. That's correct.

6 Q. And you don't know whether the person who
7 took these notes confirmed any of this information
8 with the individuals from PSE management who
9 participated in the curtailment decisions in 1998; is
10 that correct?

11 A. That is correct. I trust the PSE
12 management team had folks answer their phones that
13 were capable of recording information and processing
14 that through their management team.

15 MS. GAGNON: I'm just going to object to
16 the extent that this has not been -- that the witness
17 has characterized this as a document that he can't
18 testify to.

19 Q. Now, you also testify about
20 Kimberly-Clark's conduct during the December 1998
21 curtailment, but your testimony is not based on any
22 personal knowledge of those events; is that correct?

23 A. That is correct.

24 Q. Now, you testified that Kimberly-Clark
25 purchased natural gas under a contract with Duke

00049

1 Energy in December of 1998; is that correct?

2 A. That is correct.

3 MS. GAGNON: Now, Your Honor, I'm going to
4 show the witness a confidential exhibit. There are
5 members here from PSE, but I'm not going to discuss
6 any of the provisions in this agreement that have
7 been marked confidential, so there shouldn't be any
8 testimony. But I can ask -- I'm putting this in to
9 identify it, and I can ask our witnesses to go, if
10 Ms. Arnold would prefer that.

11 MS. ARNOLD: What's the exhibit number?

12 MS. GAGNON: C-146.

13 MS. ARNOLD: I think the reason this is
14 marked confidential is because it contains pricing
15 information. And if the cross-examination can be
16 done in such a way that the pricing information isn't
17 made part of the record, I don't think it's necessary
18 for --

19 JUDGE CAILLE: All right.

20 MS. ARNOLD: -- people to leave.

21 MS. GAGNON: Yes.

22 JUDGE CAILLE: You may proceed, Ms.

23 Gagnon.

24 Q. Mr. Faddis, I'm handing you what's been
25 marked for identification as C-146.

00050

1 Q. Now, this is Exhibit A to the gas sales
2 agreement between Duke Energy and Kimberly-Clark; is
3 that correct?

4 A. I believe it is, yes.

5 Q. Okay. And this agreement would include the
6 pricing provisions for gas that Kimberly-Clark
7 purchased from Duke Energy in December of 1998;
8 correct?

9 A. That is correct.

10 MS. GAGNON: At this time, I'd like to
11 offer C-146 into the record.

12 JUDGE CAILLE: Is there any objection?

13 MS. ARNOLD: No objection.

14 JUDGE CAILLE: Then C-146 is admitted.

15 Q. Now, you testify that Kimberly-Clark paid
16 PSE \$58,194 -- and I'll go to your testimony to get
17 the decimal right --.3952 for unauthorized usage of
18 gas at a sales tariff rate. And that would be on
19 page five at the bottom of the page.

20 A. Yes, that is correct.

21 Q. Now, is it your understanding that this is
22 the gas sales tariff rate under Rate Schedule 41?

23 A. Yes, I believe that is correct.

24 Q. And are you aware that Rate Schedule 57
25 requires PSE to charge this amount to you for penalty

00051

1 overrun volumes?

2 A. Yes.

3 Q. And are you aware that this charge includes
4 commodity gas cost, demand gas cost, refunds of prior
5 gas cost, in addition to a distribution charge?

6 A. Yes, I'm aware that there are various
7 charges that are affixed to that rate.

8 Q. And do you know that you were not charged
9 for distribution cost for penalty volumes under the
10 regular Schedule 57 rate?

11 A. Yes.

12 MS. GAGNON: I have no further questions.

13 JUDGE CAILLE: I might have a question.

14 THE WITNESS: Yes, ma'am.

15 JUDGE CAILLE: But let me ask Counsel
16 first. When we began this morning, there was an
17 exhibit withdrawn because there was some discrepancy
18 about the penalty amount, and I'm about to ask this
19 witness what the penalty amount is, because I think
20 it's important for the record that we have that
21 amount. Is he going to be able to answer that?

22 MS. ARNOLD: I don't know that he can.

23 JUDGE CAILLE: He's not the appropriate
24 witness?

25 MS. ARNOLD: His Exhibit Number 5 is a copy

00052

1 of the Puget Sound Energy bill. And from that bill,
2 at page eight of 11 of the bill, you can see the
3 total amount of the penalty at \$2 per therm.

4 JUDGE CAILLE: All right. This is the
5 amount that you folks have stipulated to?

6 MS. ARNOLD: We have. In order to get the
7 whole picture, you have to look at page 10 of 11.
8 Kimberly-Clark is not objecting to the \$2 per therm
9 penalty that was charged for December 21st.

10 JUDGE CAILLE: Oh, I see.

11 MS. ARNOLD: Or for Gas Day December 24th.
12 And I don't think we have performed an exact
13 calculation of what those amounts are at \$2 per
14 therm, but I think that we agree that that is the
15 amount of the penalty that's at issue.

16 MS. GAGNON: Yes, it would be the -- it
17 would be Gas Days 25, 26, 27 and 28. And just so
18 that we're clear, these are the therms that were
19 consumed, but in addition to that, whatever penalty
20 therms there are, there's also municipal tax and
21 other costs that are added to that. But I think
22 we're in agreement that it is these therms that are
23 in question.

24 JUDGE CAILLE: All right. And can someone
25 point me to the number, direct me to that number.

00053

1 MS. GAGNON: Oh, the numbers? Yes, Your
2 Honor. If you look under the penalty column --

3 JUDGE CAILLE: Are we on page 10?

4 MS. GAGNON: Yes, we are. And if you go to
5 the penalty column, you'll see the third non-zero
6 entry in there is 41067.1.

7 JUDGE CAILLE: Yes.

8 MS. GAGNON: Okay. That correlates to Gas
9 Day 25. So if we added that number and then the
10 number below it, 47, and it's not a great copy, and
11 then the 57 and then the 12, and that would be the
12 total penalty volumes that are at issue.

13 JUDGE CAILLE: All right. Thank you very
14 much.

15 MS. ARNOLD: We agree.

16 JUDGE CAILLE: Thank you. Is there any
17 redirect?

18 R E D I R E C T E X A M I N A T I O N

19 BY MS. ARNOLD:

20 Q. Just a couple of questions regarding
21 Exhibit 165, which is a memorandum dated June 1995.

22 A. Yes.

23 Q. Mr. Faddis, are you aware of whether there
24 have been changes in the equipment at the Everett
25 mill since June 1995?

00054

1 A. I would imagine there have been changes to
2 the equipment. I can't specifically state what they
3 would be.

4 Q. Has there been a new boiler installed since
5 that time?

6 A. We did start up the Number 14 Boiler, but I
7 think this was post that startup, I believe. I
8 believe that boiler started up in '92. I'd have to
9 have some of my staff report on that. I can't recall
10 the exact date, but we are routinely substituting new
11 forms of equipment for equipment that becomes
12 obsolete or is no longer serviceable, and oftentimes
13 we would try to strive for process efficiency at the
14 same time, so it would not be too much out of bounds
15 to say that it probably has changed substantially
16 since that time.

17 MS. ARNOLD: Thank you. That's all.

18 JUDGE CAILLE: All right.

19 MS. GAGNON: No.

20 JUDGE CAILLE: Mr. Faddis, you're excused.
21 Thank you very much. It looks like we'll have enough
22 time for Mr. Owens before we break for lunch.

23 MS. ARNOLD: We would call Mr. Tom Owens.

24 May Mr. Faddis be excused?

25 JUDGE CAILLE: Yes.

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1 Whereupon,

2 JAMES T. OWENS,

3 having been first duly sworn, was called as a witness
4 herein and was examined and testified as follows:

5 JUDGE CAILLE: I am now going to identify
6 the exhibits that Mr. Owens is sponsoring. Exhibit
7 T-11 is the direct testimony of Mr. Owens; T-12, the
8 rebuttal testimony; T-13, supplemental testimony.
9 Exhibit 14 is Mr. Owens' curriculum vitae.

10 Exhibit 15 is his Exhibit JTO-2; Exhibit 16
11 is his Exhibit JTO-3; Exhibit 17 is his Exhibit
12 JTO-4; Exhibit 18 is his Exhibit JTO-5; Exhibit 19 is
13 his Exhibit JTO-6; C-20 is his Confidential Exhibit
14 JTO-7; C-21 is his Confidential Exhibit JTO-8-A; C-22
15 is his Confidential Exhibit JTO-8-B; Exhibit 23 is
16 his JTO-9.

17 Exhibit 24 is his JTO-10-A Exhibit; Exhibit
18 25, JTO-10-B; Exhibit 26, JTO-10-C. And that C is
19 not confidential, a confidential designation.
20 Exhibit 27, JTO-11; C-28 is his confidential exhibit
21 JTO-12. Exhibit 29 is his JTO-13. And those are the
22 designations of his exhibits.

23 D I R E C T E X A M I N A T I O N

24 BY MS. ARNOLD:

25 Q. Will you state your full name and business

00056

1 address, please?

2 A. My name's James T. Owens, Post Office Box
3 308, Orcas, Washington.

4 Q. And what is the subject matter of your
5 testimony this morning?

6 A. I'm going to testify about Puget's
7 curtailment in December of 1998.

8 Q. Mr. Owens, do you have in front of you a
9 copy of what has been marked Exhibit T-11, which is
10 your direct testimony, and also Exhibits T-12, T-13,
11 T-14, T-15?

12 JUDGE CAILLE: Excuse me. The only ones
13 that are designated T are the ones that are
14 testimony.

15 MS. ARNOLD: Sorry. I've got too many Ts.

16 Q. Let's start that question all over again.
17 Do you also have in front of you Exhibits 14, 15, 16,
18 17, 18, and 19?

19 A. I haven't been keeping track of how you've
20 renumbered these things. I have T-11, 12 and 13.

21 Q. Okay.

22 A. And I have various JTO exhibits.

23 Q. All right. Let's just go through them to
24 make sure that you have everything. Do you have in
25 front of you JTO-1, which is Exhibit 14?

00057

1 A. Is that with the direct testimony?
2 Q. Yes.
3 A. Yes.
4 Q. JTO-2, which is Exhibit 15?
5 A. Yes.
6 Q. JTO-3, which is Exhibit 16?
7 A. JTO-3, yes.
8 Q. JTO-4, which is Exhibit 17?
9 A. Yes.
10 Q. JTO-5, which is Exhibit 18?
11 A. Yes.
12 Q. JTO-6, which is Exhibit 19?
13 A. Yes.
14 Q. JTO-7, which is C-20?
15 A. Yes.
16 Q. JTO-8-A, which is C-21?
17 A. Yes.
18 Q. JTO-8-B, which is C-22?
19 A. Yes.
20 Q. JTO-9, which is Exhibit 23?
21 A. Yes.
22 Q. JTO-10-A, which is Exhibit 24?
23 A. Yes.
24 Q. JTO-10-B, which is Exhibit 25?
25 A. Yes.

00058

1 Q. JTO-10-C, which is Exhibit 26?

2 A. Yes.

3 Q. JTO-11, which is Exhibit 27?

4 A. Yes.

5 Q. JTO-12, which is Exhibit C-28?

6 A. Yes.

7 Q. And JTO-13, which is Exhibit 29?

8 A. Yes.

9 Q. Was this testimony and exhibits prepared by
10 you or under your direction and supervision?

11 A. Yes, it was.

12 Q. If you were to testify today, would your
13 testimony be the same as what you have identified as
14 Exhibits T-11, T-12, and T-13?

15 A. Yes.

16 MS. ARNOLD: Your Honor, we would move the
17 admission of Exhibits T-11 through Exhibit Number 29
18 into evidence.

19 JUDGE CAILLE: Is there any objection?

20 MS. GAGNON: Yes, Your Honor. I do have an
21 objection to what has been marked as Exhibit 17 and
22 Exhibit 18. I'll deal with Exhibit 17 first, because
23 18 will just be a renewal of a past objection.

24 JUDGE CAILLE: All right.

25 MS. GAGNON: If you look at Exhibit 17,

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1 this is -- if you look at what's contained within
2 this e-mail, this is not a Puget Sound Energy, Inc.
3 business record, and then there's some handwriting on
4 the side of it, which, of course, we have no idea
5 whose handwriting that is.

6 I would say that this document is
7 completely unreliable. There is no -- it contains
8 statements by individuals totally unconnected with
9 PSE, and then the handwritten notes, of course, could
10 have been made by anybody. I think that, you know,
11 Counsel does have an obligation to establish who made
12 these statements before they are relied on to -- for
13 the truth of the matter asserted in them.

14 I think, in particular, if you go to the
15 first paragraph, I mean, this appears to be a
16 complaint by another company, who then makes
17 statements about what he has heard from PSE
18 employees. And that individual is not here today. I
19 think that this is -- that there are really almost no
20 circumstances under which this particular document
21 should be admitted into evidence.

22 JUDGE CAILLE: Ms. Arnold.

23 MS. ARNOLD: Yes, Your Honor. This
24 document, as the number at the bottom right
25 indicates, was produced by Puget Sound Energy. This

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1 document, we presume, comes from the company's
2 business records that were kept in the ordinary
3 course of business. Mr. Owens, as an expert, is
4 entitled to rely on documents that appear in the
5 utility's files. Whatever weight the bench decides
6 to afford to these documents should be accorded to
7 them, but these documents, that say the same thing
8 over and over again, appeared in the company's files
9 and cannot be disregarded.

10 MS. GAGNON: I'm going to just object, Your
11 Honor, to the characterization that these appeared
12 over and over again. Many of these documents appear
13 to be copies of documents which are being attached
14 over and over again, so there is also the way in
15 which these documents are being characterized by
16 having them attached to more than one witness'
17 testimony. And I would, again, object for the record
18 to that characterization.

19 JUDGE CAILLE: Your objection is noted.

20 MS. ARNOLD: Well, Your Honor, in addition,
21 I would add that the particular one that we're
22 looking at appears to be an e-mail from the WUTC, and
23 to that extent, it is also a document of the
24 Commission.

25 JUDGE CAILLE: All right. I am going to

00061

1 allow this, again, with the understanding, though,
2 that it will be given due weight.

3 MS. GAGNON: Your Honor, I'll just briefly,
4 for the record, renew the same objection I made for
5 Exhibit 4 to Exhibit 5. I'm sorry, to Exhibit 18.
6 It's the same document, but I -- but the objection's
7 already been made on the record, so --

8 MS. ARNOLD: This one, again, I would point
9 out, is from the company's records. It appears on
10 its face to be an e-mail from Puget Sound Energy to
11 the Commission, and we would argue that it contains
12 the guarantees of reliability and trustworthiness
13 that warrant its admission into evidence.

14 MS. GAGNON: Your Honor.

15 JUDGE CAILLE: Ms. Gagnon, you said this
16 was previously -- this is the same --

17 MS. GAGNON: I believe, unless I'm
18 incorrect, I thought it was the same -- it's the same
19 exhibit that was attached to Mr. Faddis's testimony
20 as Exhibit 4.

21 JUDGE CAILLE: Yes, it does seem to be the
22 same exhibit. The ruling -- I'm ruling consistent
23 with my previous one, with the caveat that I will
24 accord it due weight.

25 MS. ARNOLD: Thank you.

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1 MR. VAN NOSTRAND: Your Honor, with respect
2 to Mr. Owens's testimony, I would like your
3 permission to perform a preliminary voir dire of this
4 witness with respect to his qualifications as an
5 expert.

6 JUDGE CAILLE: You may.

7 MR. VAN NOSTRAND: Thank you, Your Honor.

8 V O I R D I R E E X A M I N A T I O N

9 BY MR. VAN NOSTRAND:

10 Q. Good morning, Mr. Owens.

11 A. Good morning.

12 JUDGE CAILLE: Excuse me just a moment. I
13 don't think I've ruled on the admissibility of the
14 exhibits, so let me do that. Exhibits T-11 through
15 29 are admitted into evidence.

16 MR. VAN NOSTRAND: Thank you, Your Honor.

17 JUDGE CAILLE: And you may go ahead, Mr.

18 Van Nostrand.

19 Q. Mr. Owens, if you'll recall, we spent some
20 time in your deposition reviewing your background and
21 qualifications, which you provided in this
22 proceeding. Do you recall that?

23 A. Yes, I do.

24 Q. In particular, Exhibit 147, which was your
25 response indicating your qualifications.

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1 If I may approach the witness, Your Honor?

2 JUDGE CAILLE: Yes.

3 Q. Do you recall that document, Mr. Owens?

4 A. Yes, I do.

5 Q. And in the course of your deposition, we
6 established, did we not, that you have never worked
7 for a gas distribution utility?

8 A. No, I have not worked for a gas
9 distribution utility.

10 Q. And none of your professional experiences
11 involved managing a local gas distribution system?

12 A. No, I have not managed a gas distribution
13 system.

14 Q. And in fact, your background is in nuclear
15 engineering; is that fair to say?

16 A. No, it's not. My background is in natural
17 gas transportation, gas purchasing, gas strategy, and
18 many other things.

19 Q. Are you a licensed professional engineer in
20 the state of Washington?

21 A. No, I'm not.

22 Q. You were originally licensed as an engineer
23 in the state of California?

24 A. That's correct.

25 Q. That was as a nuclear engineer?

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1 A. That's correct.

2 Q. And you don't have any particular
3 experience with respect to PSE's gas distribution
4 system; is that correct?

5 A. No, I don't know -- I don't have any
6 experience with PSE's gas distribution system.

7 Q. And the only familiarity which you would
8 have obtained is by reviewing the PSE responses to
9 the data requests in this proceeding?

10 A. For the specifics of PSE's system and what
11 was going on, what I relied on was PSE's data that
12 they provided.

13 Q. And in your professional experience, have
14 you ever participated in the process and management
15 of a curtailment of interruptible gas customers?

16 A. No.

17 Q. If we could turn to your supplemental
18 testimony, which has been marked as Exhibit T-13, you
19 indicate that in your service in the U.S. Navy, you
20 worked with compressible gas and fluid systems. Do
21 you see that in the testimony?

22 A. Where is it?

23 Q. Page two, lines one to two.

24 A. I see it.

25 Q. And that your service in the Navy included

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1 operation of high, medium and low-pressure steam,
2 pressure reduction, steam turbines, high-pressure
3 water and other systems; is that right?

4 A. That's correct.

5 Q. You go on to state that these systems
6 operate on principles similar to those of the Puget
7 gas distribution system; is that right?

8 A. That's right.

9 Q. How many miles of distribution main are
10 involved in these various systems, which you refer to
11 in your testimony?

12 A. Much less.

13 Q. And do these systems involve distribution
14 of gas?

15 A. Natural gas?

16 Q. Yes.

17 A. No.

18 Q. We're talking about steam and water; is
19 that right?

20 A. We're talking about air, steam, and water,
21 some compressible fluids, for instance, steam, and
22 air, and some non-compressible fluids, like water.

23 Q. And how many customers were served from
24 these systems?

25 A. The people of the United States of America.

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1 Q. How many customers is that?

2 A. I have no idea. This is the United States
3 Navy.

4 Q. Well, let's take one particular system.
5 Just what particular system are you talking about
6 when you refer to these various high, medium and
7 low-pressure systems?

8 A. Those systems provided propulsion for Navy
9 ships. That's what they were doing.

10 Q. We're talking about a system which is
11 contained within one Navy vessel?

12 A. That's right.

13 Q. So there is, like, one output. There's one
14 entity which was entitled to withdraw the output from
15 that system; is that right?

16 A. The entity that benefited was the ship, and
17 the ship was the ship. It was the ship.

18 Q. And in terms of the inputs into the system,
19 you knew, when the ship left port, how much of the
20 product you had to work with; right?

21 A. We created the product along the way.

22 Q. You had complete control over the quantity
23 of the product?

24 A. Which product?

25 Q. Whatever's within your system that you're

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1 talking about in your testimony?

2 A. The point -- my point that I'm trying to
3 make is that the basic principles of dealing with
4 compressible fluids and fluid flow are the same.
5 It's the principles I'm talking about. I'm not
6 talking about the miles of pipe.

7 Q. And did those systems involve a lack of
8 control over the amount of input that you had on
9 those systems? For example, in a local gas
10 distribution company, you understand that Puget has
11 some limited control over the inputs to that system?

12 A. I understand that Puget is supplied by
13 Northwest Pipeline, and certainly you don't have
14 control over that, other than your contractual
15 rights. I could technically argue that we had
16 similar problems, but it's not -- I mean, we're
17 running a nuclear ship that -- I could get into a lot
18 of nuclear stuff on whether or not we had enough
19 fuel.

20 Q. And this portion of your testimony is based
21 on your experience from 1966 through 1970, with the
22 U.S. Navy?

23 A. That's correct.

24 Q. And did those particular systems involve an
25 analysis of weather forecasts to anticipate demands

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1 upon the system?

2 A. No, it did not.

3 Q. Did the weather have any impact whatsoever
4 on how those systems operated?

5 A. Yes, it did.

6 Q. How?

7 A. The temperature of the water surface was
8 very important to us.

9 Q. And did the weather have any impact on the
10 demands which would be placed upon that system?

11 A. Yes, it did. I mean, if we needed more
12 cooling, we would have to create more energy to cool
13 with it. But it's --

14 Q. Were you able to forecast accurately the
15 demands that were made upon those systems?

16 A. No.

17 Q. And again, we're talking about one
18 customer, one --

19 A. One ship.

20 Q. One ship?

21 A. Mm-hmm.

22 Q. And were there different demands placed
23 upon those systems in terms of the qualities such as
24 what we have here, such as interruptible service
25 versus firm service? Was there one type of service

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1 provided?

2 A. There was -- the service we had to provide
3 was what the ship required, and we had orders of
4 priority of service, depending on the battle
5 conditions of the ship. So there were more loads --
6 some loads that were certainly much more important
7 than others. For instance, fire control systems.

8 MR. VAN NOSTRAND: Your Honor, thank you
9 for allowing me to perform that preliminary voir
10 dire. Based on those answers, based on the
11 deposition testimony, which is marked as Exhibit 168,
12 of Mr. Owens, Puget Sound Energy objects to those
13 portions of Mr. Owens's testimony where he purports
14 to offer expert opinion.

15 We'll make it clear, I think Mr. Owens has
16 a lot of extensive experience in the electric utility
17 industry and no doubt could be a qualified expert
18 witness on many matters involving the operation of an
19 electric utility, but he's demonstrated no expertise
20 whatsoever to comment on the matters on which he is
21 addressing in his testimony and to draw expert
22 conclusions on those matters in this testimony.

23 As he stated, he's never worked for a gas
24 distribution company, never been involved in the
25 management of a local gas distribution system. He

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1 has no particular experience with PSE's gas
2 distribution system, and in his professional
3 experience, he has never participated in the process
4 and management of a curtailment of interruptible gas
5 customers.

6 When this issue was raised in Puget's
7 responsive testimony, questioning Mr. Owens's
8 qualifications, we now get a recitation of his
9 experience in the nuclear Navy from over 30 years
10 ago, which did not involve the movement of natural
11 gas or service of hundreds or thousands of customers
12 or managing of thousands of miles of a distribution
13 system or accommodating the lack of control over
14 inputs and outputs in managing that system.

15 And in particular, when we questioned in
16 his deposition certain portions of his testimony
17 where he offers expert opinions on a utility
18 providing service at a safe, adequate, efficient,
19 just and reasonable, he indicated in response that
20 the initial draft of his testimony was prepared by
21 Ms. Arnold, and he couldn't recall which of those
22 words were included in that original draft and which
23 weren't.

24 And there are several conclusory statements
25 in his testimony where he is offering expert opinion.

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1 I think the vast majority of his testimony we don't
2 object to on those grounds. He is certainly
3 qualified to sponsor exhibits and make certain
4 comments about those exhibits, but where he crosses
5 over the line and offers opinions of an expert,
6 there's been no basis established for his
7 qualifications.

8 He's clearly being offered as an expert
9 witness. It's been established at the time of his
10 deposition he hadn't talked to anybody at
11 Kimberly-Clark or not even visited the Kimberly-Clark
12 facility, so his testimony must stand alone as that
13 of an expert, and there has not been the
14 qualifications established to substantiate that.

15 And I can identify those portions of the
16 testimony which we seek to have excluded, but it's
17 wherever Mr. Owens's testimony goes beyond fact and
18 states conclusory statements based on that of an
19 expert, and it's not proper, given the lack of
20 foundation for this expert's qualifications. Thank
21 you, Your Honor.

22 JUDGE CAILLE: Ms. Arnold.

23 MS. ARNOLD: Yes, may I redirect the
24 witness first?

25 JUDGE CAILLE: Sure.

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1 MS. ARNOLD: Well, first of all, let me
2 make a comment and then do the redirect, just to give
3 it some focus. I'm not sure which parts of Mr.
4 Owens' testimony that Mr. Van Nostrand is referring
5 to, but he's being offered as an expert generally in
6 two areas. One is on adequacy of utility service,
7 and two, is a review of certain technical data, which
8 Puget produced. So I will redirect him on those two
9 areas.

10 MR. VAN NOSTRAND: Want me to clarify, Your
11 Honor, what areas we're talking about? I don't
12 believe we have any problem with his commenting on
13 particular technical matters, to the extent he's just
14 reviewing and sponsoring exhibits and stating facts
15 as to those exhibits.

16 It's more the former point raised by Ms.
17 Arnold, where he comments on the adequacy of a
18 utility service and whether or not Puget performed up
19 to its obligations to serve.

20 MS. ARNOLD: Okay.

21 MR. VAN NOSTRAND: I can identify the
22 specific portions that we're seeking to strike, if
23 that would be helpful.

24 JUDGE CAILLE: Why don't you go ahead and
25 identify those, and maybe we could take a short break

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1 and you can review those. Would you need to?

2 MS. ARNOLD: I don't think that would be
3 necessary, no.

4 JUDGE CAILLE: So you don't need us to
5 identify them right now?

6 MS. ARNOLD: Well, no, he can identify
7 them, but I don't think I need to take a break to
8 review them.

9 JUDGE CAILLE: Okay. You may proceed, Mr.
10 Van Nostrand.

11 MR. VAN NOSTRAND: Thank you, Your Honor.
12 Page one, line 21, where it begins, In my opinion.

13 MS. ARNOLD: Are you on the direct?

14 MR. VAN NOSTRAND: I'm on the direct,
15 sorry. This is the direct.

16 JUDGE CAILLE: This is Exhibit T-11?

17 MR. VAN NOSTRAND: T-11, yes, Your Honor.

18 JUDGE CAILLE: Page one -- I'm sorry.

19 MR. VAN NOSTRAND: Line 21, sentence
20 beginning, In my opinion, through page two, line two.
21 Then page two, line 17, through page two, line 21.

22 MS. ARNOLD: What was that again?

23 MR. VAN NOSTRAND: Page two, line 17,
24 beginning, In my experience as a utility employee,
25 through line 21, which would end with the word

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1 curtailments. I believe the sentence after that is
2 simply a fact. So we're just talking about the
3 opinions.

4 Page three, lines one and two. Page three,
5 lines eight through ten, beginning with the sentence,
6 However. Page three, line 20, beginning with, Yes,
7 in my opinion, through page four, line two. Then
8 it's all the way to page eight, lines 12 through 17.
9 Page nine, lines one through 10. Page 10, lines 11
10 through 14.

11 If we could turn to the rebuttal testimony,
12 which is Exhibit T-12, page 10, line seven, through
13 page 11, line five.

14 Then, the supplemental testimony, which is
15 Exhibit T-13, page one, lines 15 through 18,
16 beginning with the sentence, As I testified earlier.
17 And page four, lines 15 to 23. Page five, lines five
18 and six, beginning with the sentence, Puget had an
19 obligation, that sentence. And page five, lines 16
20 through 18, the sentence beginning, In my opinion.

21 Those would be the portions where we
22 believe Mr. Owens is providing expert testimony and
23 opinion without adequate foundation.

24 R E D I R E C T E X A M I N A T I O N
25 BY MS. ARNOLD:

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1 Q. Mr. Owens, you stated that you have
2 represented customers, natural gas transportation
3 customers. How recently have you performed that kind
4 of representation?

5 A. I'm currently doing that for several
6 utilities.

7 Q. How long have you been representing natural
8 gas transportation customers?

9 A. Since 1991.

10 Q. Will you describe the type of work that you
11 do for natural gas transportation customers?

12 A. These are mostly power generation plants,
13 and so they have a perhaps variable demand in looking
14 for gas supplies and portfolios of gas and gas
15 transportation and need a varying load.

16 Q. Do your clients use interruptible
17 transportation more than firm transportation?

18 A. Yes, they do.

19 Q. Do they use interruptible transportation on
20 an almost exclusive basis?

21 A. I'd say the majority of it is
22 interruptible.

23 Q. In the course of representing these
24 clients, have you had the opportunity to observe what
25 you consider to be adequate interruptible service?

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1 A. Well, I'm experienced with what
2 interruptibility is in the industry, and I think any
3 customer would really like to have it less
4 interruptible, but in the industry, if you're buying
5 interruptible service, that's what you get.

6 Q. Have you had occasion to reach an opinion
7 as to what is acceptable level of interruptibility?

8 A. I've discussed with clients what I thought
9 interruptibility -- what risks they're taking with
10 interruptible service, but in a formal proceeding,
11 I'm not given an opinion of what that is.

12 Q. Do you feel that you're qualified to make
13 an opinion as to what's adequate utility service in
14 the area of natural gas transportation?

15 A. Yes.

16 Q. And why?

17 A. I've been doing this a long time, and
18 that's a very important factor for my clients and for
19 the utility that I work for, when it was burning gas,
20 as to what kind of service it was getting.

21 Q. Is that important to your clients today?

22 A. Yes, it is.

23 Q. Now, in arriving at your opinion, you
24 reviewed certain technical information. You reviewed
25 the output of pen gauges; is that correct?

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1 A. That's correct.

2 Q. And you reviewed the output of remote
3 telemetry units; is that correct?

4 A. Yes, I did.

5 Q. Now, you have a master's degree in
6 engineering; is that correct?

7 A. That's correct.

8 Q. Was there anything unique about the
9 readings from the pen gauge outputs and the readings
10 from the remote telemetry units that you felt you
11 weren't able to handle?

12 A. No, that's kind of the main reason I put in
13 the stuff about the Navy. It's the same principles.
14 We had gauges, we dealt with pressures, we dealt with
15 temperatures. It's the same principle science.

16 Q. Are these difficult principles of
17 engineering, dealing with pressures and temperatures?

18 A. No.

19 Q. You also have a degree in mathematics?

20 A. Yes, I do.

21 Q. Does analysis of this type of data require
22 understanding of mathematics?

23 A. Pretty basic mathematics.

24 Q. Is it pretty basic engineering, also?

25 A. Yes.

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1 Q. Without going into the reasons for your
2 statement, one of the sentences that Counsel pointed
3 out is you stated, In my opinion, Puget provided less
4 than acceptable quality of service for a public
5 utility between December 24 and December 28. Can you
6 tell us what in your background you believe qualifies
7 you to make a statement as to what is or isn't
8 acceptable quality of service?

9 A. Yes. I worked for Portland General
10 Electric for 17 years in various capacities, and I
11 worked -- I've worked for the last -- since 1991 for
12 a number of different utilities. And if you work for
13 a utility, it's -- you begin to understand the
14 requirements and the concepts of service. It's a
15 public service company. So I had a lot of experience
16 with that concept.

17 Q. You also made the statement, that Counsel
18 pointed out, When the distribution system capacity
19 exceeds the capacity needed to meet firm loads,
20 service to curtailed customers should be restored.
21 What in your background qualifies you to make a
22 statement as to when interruptible service should be
23 restored?

24 A. I believe that -- well, what in my
25 background. Experience in an electric utility, you

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1 know. We, at Portland General Electric, we would
2 lose customers due to ice storms, due to all kinds of
3 stuff, and it was a mandatory thing that we restore
4 those customers just as soon as we could.

5 Q. Do you feel, based on your experience, that
6 you're qualified to make this same sort of statement
7 about restoration of service to interruptible
8 customers?

9 A. Yes, interruptible or firm customers. We
10 were getting customers back on line as rapidly as
11 possible.

12 Q. Another statement that you made that
13 Counsel pointed out was you said, in your opinion,
14 Puget's decision to continue the curtailment was not
15 in line with a utility's obligation to provide
16 service to its customers. What in your background,
17 if anything, qualifies you to opine on the extent of
18 the utility's obligation to provide service,
19 particularly to interruptible customers?

20 A. Work at Portland General Electric. We had
21 interruptible customers and we did everything we
22 could to not interrupt those customers. And when
23 they were interrupted, as soon as we could bring them
24 back on line, we did. It's 17 years of working for a
25 utility.

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1 Q. Do you have any occasion to advise your
2 current interruptible gas customers on what quality
3 and level of service can be expected?

4 A. Yes, I can. I do -- when a customer elects
5 an interruptible contract, they're very interested in
6 how much risk they're taking, and that risk has to be
7 looked at and they need to understand what that risk
8 is.

9 MS. ARNOLD: That's all. Thank you, Your
10 Honor.

11 JUDGE CAILLE: Did you want to respond to
12 Mr. Van Nostrand's comments, as well, or did you just
13 want this redirect to stand as --

14 MS. ARNOLD: Frankly, I'm at a loss, Your
15 Honor. I mean, this witness has almost 30 years
16 experience in the utility business, both on the gas
17 side and the electric side, for firm customers and
18 interruptible customers. He's got a master's degree
19 in engineering. I have a hard time thinking there's
20 any merit to Puget's concerns here. But I suppose,
21 again, the bench can weigh the witness's testimony as
22 she sees fit.

23 JUDGE CAILLE: Mr. Van Nostrand, my
24 understanding is that you are objecting to Mr.
25 Owens's testimony as an expert with respect to

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1 adequacy of utility service. Is that --

2 MR. VAN NOSTRAND: Adequacy of -- ability
3 to comment as an expert on the management of a
4 curtailment of interruptible customers by a natural
5 gas distribution company. The whole definition of an
6 obligation of utility to serve is defined in this
7 case by the tariffs. This is an interruptible
8 customer, they've made a conscious economic decision
9 to get second-rate service at lower prices, and the
10 issue is management of a curtailment of interruptible
11 customers by a natural gas distribution utility.

12 And in Mr. Owens's deposition, we had the
13 issue come up, Were you ever in a position to advise
14 on whether or not a curtailment was proper? No.
15 He's never been in the position where he's commented
16 on the adequacy of a utility's service with respect
17 to curtailment by a natural gas utility to an
18 interruptible customer. I'm not talking about
19 experience in the utility industry generally. My
20 God, I could be an expert, if that was the standard.
21 We're talking about operations of a gas utility
22 company in managing a curtailment.

23 And Mr. Owens has never worked for a gas
24 distribution company, has never been involved in the
25 process, management, or implementation of a

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1 curtailment plan, and has had very limited experience
2 even opining on that on behalf of customers who take
3 service from natural gas distribution companies.

4 JUDGE CAILLE: Yes, Ms. Arnold.

5 MS. ARNOLD: Can I just respond to that?

6 Really, the heart of the issue before the Commission
7 is what is the utility's obligation to its
8 interruptible customers. And I think everyone would
9 agree that there is an obligation. If the company
10 just cut off transportation service in the middle of
11 July for no reason at all, I think everybody would
12 agree that's not adequate service. There's some
13 spectrum here.

14 And Mr. Owens is certainly qualified to
15 testify on this. As a matter of fact, if most of the
16 individuals involved in this curtailment were brought
17 before the Commission, we would find that every one
18 of them, with about three exceptions, their entire
19 experience has been with an electric utility,
20 including, I think, Counsel's. I mean, this
21 distinction between electric utility and gas utility
22 is irrelevant when we're talking about what is a
23 public utility's obligation to serve. Particularly,
24 what is its obligation to serve its interruptible
25 customers.

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1 And to an extent, it's a legal issue. But
2 to the extent that it's an industry standard type of
3 issue, Mr. Owens is certainly qualified to testify on
4 it.

5 MR. VAN NOSTRAND: It is largely a legal
6 issue, Your Honor, and that's why the statements in
7 Mr. Owens's testimony are so objectionable. He's
8 basically testifying as the ultimate fact, and that's
9 only permissible if you have qualifications as an
10 expert.

11 All these other witnesses are not being
12 offered to the Commission as experts. They were
13 there at the time. They know the facts and
14 circumstances. Mr. Owens has not even been to the
15 Kimberly-Clark facility and, prior to this morning,
16 probably didn't even talk to any of the
17 Kimberly-Clark folks. Those witnesses are being
18 offered on facts; this witness is being proffered as
19 an expert. That requires a standard of
20 qualifications and experience which qualifies him to
21 provide expert testimony to this Commission.

22 JUDGE CAILLE: Did you have anything more
23 you wanted to say, Ms. Arnold?

24 MS. ARNOLD: No.

25 JUDGE CAILLE: I think, at this point,

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1 we'll take a lunch break. I'm going to think about
2 this over lunch. And why don't we return at 1:15.
3 All right. Thank you. We're off the record now.

4 (Lunch recess taken.)

5 JUDGE CAILLE: Let's go back on the record.
6 We are reconvened after a luncheon recess, and I now
7 am going to make a ruling on the motion to strike
8 portions of Mr. Owens's testimony, the portions where
9 he is giving his expert opinion.

10 I have decided that I will not strike those
11 portions of his testimony. And while I appreciate
12 the arguments made by Puget with respect to his
13 expertise with respect to curtailment of gas --
14 interruptible gas transportation experience, I feel
15 that he has the background generally to offer some
16 insights. And I will give his testimony, with
17 respect to his opinions, the weight I think it should
18 be afforded, considering his expertise. So with
19 that, the motion to strike is denied.

20 MR. VAN NOSTRAND: Thank you, Your Honor.

21 C R O S S - E X A M I N A T I O N

22 BY MR. VAN NOSTRAND:

23 Q. Mr. Owens, I think before the break I
24 handed you Exhibit 147. Do you recognize that as
25 your response to Data Request One of the second set?

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1 A. Yes, I do.

2 Q. And that's your background and
3 qualifications?

4 A. Yes, it is.

5 MR. VAN NOSTRAND: Your Honor, I'd move the
6 admission of 147.

7 MS. ARNOLD: No objection.

8 JUDGE CAILLE: Then Exhibit Number 147 is
9 admitted into evidence.

10 Q. And Mr. Owens, I'm handing you a transcript
11 of your deposition, which has been marked for
12 identification as Exhibit 168. Do you recognize that
13 as the transcript from our deposition?

14 A. Yes, I do.

15 Q. And I believe Ms. Arnold has previously
16 filed with the Commission corrections to that
17 deposition. And that document, with those
18 corrections, is that true and correct, to the best of
19 your knowledge?

20 A. I don't know whether this one has the
21 corrections in it or not.

22 Q. That does not. I was taking that document
23 together with what Ms. Arnold filed and treating that
24 as one exhibit.

25 JUDGE CAILLE: That would be fine. That's

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1 what I've done with my exhibit. I've appended it to
2 the transcript.

3 MS. ARNOLD: Thank you, Your Honor. I
4 think the witness's copy may not have it appended, so
5 it's confusing.

6 THE WITNESS: No, this isn't the correct --
7 this doesn't have the corrections. There weren't a
8 lot of corrections.

9 Q. You are aware of those corrections that
10 were made?

11 A. Pretty much, yeah. I sent Carol the
12 corrections.

13 Q. Okay. So with those corrections included
14 as part of that exhibit, would that be a corrected
15 transcript of your deposition?

16 A. Yes, it would.

17 MR. VAN NOSTRAND: Your Honor, I would move
18 the admission of 168, together with the errata sheet.

19 MS. ARNOLD: No objection.

20 JUDGE CAILLE: Exhibit 168 is admitted into
21 evidence.

22 MR. VAN NOSTRAND: Thank you.

23 Q. Mr. Owens, I just had some questions. If
24 you could turn to your supplemental testimony, which
25 is T-13, the very last paragraph on page five, and

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1 I'm also going to be referring you to Exhibits 17 and
2 18, as well, which were pre-marked as JTO-4.

3 A. Okay.

4 Q. They would have accompanied your direct
5 testimony.

6 A. I've got JTO-4.

7 Q. And JTO-5, which is Exhibit 18?

8 A. I've got that.

9 Q. Now, you state in your supplemental
10 testimony that a management decision had been made
11 not to call in the meter readers over the Christmas
12 weekend and take them away from their families. Do
13 you see that in your supplemental testimony?

14 A. Yes, I do.

15 Q. In support of that statement, you refer to
16 JTO-4, which is Exhibit 17; is that correct?

17 A. Yeah.

18 Q. Okay. Do you have that document in front
19 of you?

20 A. That would be JTO-4?

21 Q. Yes.

22 A. Yeah, I have that.

23 Q. Could you please describe your
24 understanding of what this document is?

25 A. It's an e-mail from Molly Bork -- or to

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1 Molly Bork from d-o-t-t-o.

2 Q. And the e-mail address for d-o-t-t-o?

3 A. WUTC Washington gov.

4 Q. Now, Mr. Faddis testified this morning
5 that, to his understanding, Ms. Otto was a PSE
6 employee. Is that your understanding, as well?

7 A. No, I don't know who -- I don't know
8 whether she is or not, but it would look like she is
9 from the address.

10 Q. A PSE employee or a WUTC?

11 A. WUTC.

12 Q. WUTC employee. And do you know what the --
13 the handwriting on the right-hand side of Exhibit 17,
14 do you know whose handwriting that is?

15 A. No, I don't.

16 Q. And the statement in there, which you quote
17 in your testimony, They had been given holiday
18 status, in the first paragraph, do you see that?

19 A. Yes, I do.

20 Q. And what's the source of that statement?

21 A. This e-mail.

22 Q. Have you done any investigation to
23 determine whether or not that statement arises from a
24 decision of PSE management?

25 A. No, this is just another document, one of a

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1 number of documents that I read that have statements
2 about what was going on at the time and the status of
3 the meter readers, basically.

4 Q. And this e-mail was written by this Diane
5 Otto, Diana Otto, with the WUTC?

6 A. It's from her.

7 Q. Did you make any effort to determine whose
8 handwriting and whose notes are on the right-hand
9 side of this document before you offered it as an
10 exhibit?

11 A. No, I was relying on the typed words when I
12 was looking at it.

13 Q. So as far as you know, this could be Diana
14 Otto's handwriting, as well?

15 A. I'm not a handwriting expert. I don't know
16 whose it is. It could be anybody's.

17 Q. If you could turn to Exhibit 18, which is
18 JTO-5, could you please identify your understanding
19 of what this document is?

20 A. It's another e-mail -- the is the e-mail
21 from Molly Bork to d-o-t-t-o at the WUTC.

22 Q. And the excerpt which you are citing in
23 your testimony, I guess, is the reference on page two
24 of that exhibit, not calling the meter readers over
25 the weekend and take them away from their families;

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1 is that right?

2 A. That's right.

3 Q. Do you know whether Molly Bork is part of
4 the PSE management?

5 A. No, I don't know whether she is or not.

6 Q. When you make these statements in your
7 testimony about meter readers not being called over
8 the weekend, do you have anything to indicate it was
9 a management decision, other than Exhibits 17 and 18?

10 A. Those are the main things I relied on, so
11 that's it.

12 Q. There's no other document, other than
13 Exhibits 17 and 18, to support your testimony that it
14 was a Puget management decision not to call the meter
15 readers out?

16 A. Those are the main ones. There could have
17 been others, but these were the main ones.

18 Q. What others?

19 A. I don't recall. I looked at a whole pile
20 of documents and depositions and those sort of
21 things.

22 Q. If you had evidence, wouldn't you be citing
23 evidence as part of this portion of your testimony?

24 A. I was trying to cite the main ones.

25 There's all kind of documents that talk about what

00091

1 was going on at Puget as the curtailment began and as
2 the curtailment proceeded. This is just some of
3 those documents.

4 Q. Do you know whether Molly Bork -- did you
5 ever talk to Molly Bork?

6 A. No.

7 Q. Do you know whether she participated in any
8 of the decisions associated with managing the
9 curtailment?

10 A. No.

11 Q. Did you do any independent investigation as
12 to Exhibit 18 to determine whether or not it was a
13 management decision or not?

14 A. No, I just looked at these documents.

15 Q. So you don't know whether it was a
16 misunderstanding by Molly Bork as to what the
17 decision was with respect to the meter readers?

18 A. Well, given the number of these statements
19 coming from several sources, you know, it's just that
20 several -- several different independent things.
21 They're talking about this decision or what was going
22 on.

23 Q. But you understand that all those separate
24 documents which you are citing all have the same
25 source and that there are just many other people

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1 commenting on the same documents?

2 MS. ARNOLD: Objection. There's no
3 foundation for that question.

4 MR. VAN NOSTRAND: Nor is there a
5 foundation for his statement which I'm probing.

6 MS. ARNOLD: We don't know that they're all
7 commenting on the same document.

8 JUDGE CAILLE: Mr. Van Nostrand, is there

9 --

10 MR. VAN NOSTRAND: I could ask another
11 question.

12 JUDGE CAILLE: Yes, please.

13 Q. Is that your understanding, Mr. Owens, that
14 the various references are from other sources, a
15 variety of sources?

16 A. There's two e-mails here, and one is from
17 Molly Bork and the other is from WUTC, d-o-t-t-o.
18 There's two e-mails there discussing what was going
19 on.

20 Q. You're talking about Exhibits 17 and 18?

21 A. Right.

22 Q. Any other sources other than these two?

23 A. Well, there might have been something in
24 some of the depositions by K-C employees, discussions
25 of conversations with gas dispatchers, but I don't

00093

1 recall specifically what they were.

2 Q. This would have been the deposition
3 testimony of K-C employees --

4 A. Kimberly-Clark.

5 Q. -- of Puget management decisions?

6 A. No, on what was said with regard to meter
7 readers.

8 MR. VAN NOSTRAND: I don't have any further
9 questions, Your Honor.

10 JUDGE CAILLE: Pardon me?

11 MR. VAN NOSTRAND: No further questions.

12 JUDGE CAILLE: Thank you. Redirect.

13 MS. ARNOLD: No, I have no redirect.

14 JUDGE CAILLE: All right. Mr. Owens,
15 you're excused. Thank you.

16 THE WITNESS: Thank you.

17 JUDGE CAILLE: And Mr. Walton will be next?

18 MS. ARNOLD: Yes. Your Honor,

19 Kimberly-Clark calls Mark Armstrong.

20 MS. GAGNON: Mr. Walton.

21 MS. ARNOLD: Oh, I'm sorry, Mr. Walton.

22 Sorry. Sorry, Mr. Walton.

23 Whereupon,

24 EARL "SKIP" WALTON,

25 having been first duly sworn, was called as a witness

00094

1 herein and was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. ARNOLD:

4 Q. Didn't mean to forget you. Would you state
5 your full name and address, business address for
6 the record, please?

7 A. Earl "Skip" Walton, 2600 Federal Avenue,
8 Everett, Washington.

9 Q. Mr. Walton, do you have a copy of the
10 prefiled direct testimony of Earl "Skip" Walton
11 before you?

12 A. Yes, ma'am.

13 Q. That is the document that's been marked
14 Exhibit T-31. Was that testimony prepared by you or
15 at your direction and under your supervision?

16 A. Yes, ma'am.

17 Q. If you were to testify today, would your
18 testimony be the same?

19 A. Yes, ma'am.

20 MS. ARNOLD: Your Honor, we move the
21 admission of Exhibit T-31 into the record.

22 JUDGE CAILLE: Any objection?

23 MS. GAGNON: No, Your Honor.

24 JUDGE CAILLE: Exhibit T-31 is admitted
25 into evidence. And Ms. Gagnon?

00095

1 MS. ARNOLD: Mr. Walton's available for
2 cross-examination.

3 MS. GAGNON: Thank you.

4 C R O S S - E X A M I N A T I O N

5 BY MS. GAGNON:

6 Q. Good afternoon, Mr. Walton.

7 A. Good afternoon.

8 Q. Do you recall having your deposition taken
9 in connection with this proceeding?

10 A. Yes, I do, ma'am.

11 MS. GAGNON: Your Honor, may I approach?

12 JUDGE CAILLE: Yes.

13 Q. I am handing you Exhibit 167. Do you
14 recognize these as excerpts from that deposition
15 transcript?

16 A. Yes, ma'am, I do.

17 Q. Okay. And if you could just flip to the
18 back, I believe your set of corrections are also
19 attached to the exhibit, is that correct -- prior to
20 the exhibits. I think one page further back.

21 Attached to the main -- nope, attached to the main
22 transcript.

23 A. This document?

24 Q. No, there should be a correction sheet at
25 the back.

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1 A. Yes.

2 Q. Okay. And you provided these corrections
3 to the transcript?

4 A. Yes, ma'am.

5 MS. GAGNON: Okay. Your Honor, at this
6 time, I would move these excerpts into evidence.

7 JUDGE CAILLE: Is there any objection?

8 MS. ARNOLD: No objection.

9 JUDGE CAILLE: Then Exhibit 167 is admitted
10 into evidence.

11 Q. Now, Mr. Walton, you've testified that
12 you're the power asset operations leader at the
13 Kimberly-Clark Tissue Company's Everett pulp and
14 paper mill; is that correct?

15 A. Yes, it is.

16 Q. And that was the position you held in
17 December 1998?

18 A. That's correct.

19 Q. And in this position, you make daily
20 forecasts of natural gas for that facility?

21 A. That's also correct.

22 MS. GAGNON: Now, at this time, Your Honor,
23 I want to introduce or show to the witness a
24 confidential document, and I'm actually going to ask
25 for the amount given in that, so I think that, at

00097

1 this time, Puget employees need to leave. It's going
2 to be very brief.

3 MS. ARNOLD: Which number is this?

4 MS. GAGNON: This would be C-151.

5 (The following testimony is contained in a
6 separate and confidential record.)

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1 Q. Now, but during this time, the time period
2 between December 24th and January 4th, 1999, you only
3 had firm transportation for PSE for 1,400 MMBtus; is
4 that correct?

5 A. That's correct. That's per our contract.

6 Q. And that would be approximately 14,000
7 therms?

8 A. Yes, ma'am.

9 Q. Now, I'm going to hand you what's been
10 marked as Exhibit 139. And attached to the PSE data
11 request is a memorandum. If you could just take a
12 look at that?

13 A. Yes, ma'am.

14 Q. Do you recognize this document?

15 A. Yes, I'm the author of this document.

16 Q. Okay. And you prepared this document to
17 essentially document the events that took place
18 during the December 1998 curtailment; would that be
19 correct?

20 A. That's correct.

21 Q. Now, on the second page of the memo, the
22 sixth paragraph down, you have written, Under the
23 guidelines we have, if natural gas supply pressure
24 was jeopardized due to Number 14 boiler being on
25 natural gas, a request would have been made to shut

00103

1 down one or several tissue machines; is that correct?

2 A. Yes, it is.

3 Q. Now, are these guidelines the operating
4 priorities that Mr. Armstrong refers to in his direct
5 testimony?

6 A. That I do not know.

7 Q. Well, would these operating priorities be
8 to burn penalty gas, if necessary, unless doing so
9 would cause problems on the natural gas system?

10 A. Our guidelines would be to ensure mill
11 stability, yes, we would burn penalty gas.

12 Q. Okay. And were these guidelines
13 established before Mr. Armstrong left for his
14 vacation on December 24th, 1998?

15 A. These are guidelines that we work under
16 throughout business days.

17 Q. And they were in effect over that holiday
18 weekend?

19 A. Yes, ma'am, as on any workday.

20 Q. And now, you note that, in the memo, that
21 there was a low supply of hog fuel going into the
22 holidays, and that's on the first page. And I
23 believe you can find that in the fourth paragraph
24 down.

25 A. Yes, ma'am. With the conditions of that

00104

1 week, our primary goal was to have sufficient hog
2 fuel to get us through the holiday season, but due to
3 various circumstances, it did not take place.

4 Q. Now, hog fuel is also referred to as wood
5 waste?

6 A. Yes, ma'am.

7 Q. And wood waste is the primary fuel for the
8 Number 14 boiler; is that correct?

9 A. That's correct.

10 Q. Now, the maximum capacity for that boiler
11 is about 2,000 tons for a 24-hour period?

12 A. Yes, ma'am. That is if we're able to
13 attain optimum firing conditions, yes, 2,000 tons.

14 MS. GAGNON: At this time, I'd move 139
15 into evidence.

16 MS. ARNOLD: No objection.

17 JUDGE CAILLE: 139 is admitted into
18 evidence.

19 Q. Now, at the beginning of the curtailment on
20 December 19th, the wood waste fuel pile was about
21 half full; is that correct?

22 A. Yes, ma'am, but the goal was to have piled
23 that at a much higher level.

24 Q. And a full fuel pile is approximately 6,000
25 wet tons; is that correct?

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1 A. No, it's more like nine or 11,000.

2 Q. So it would be nine or 11,000 wet tons?

3 A. Yeah. And we do not have a precise
4 measurement. That is open to judgment.

5 Q. Okay. Well, let me provide to you Exhibit
6 153. And this is a data response that was provided
7 by Kimberly-Clark to --

8 MS. ARNOLD: What exhibit number? Excuse
9 me.

10 MS. GAGNON: 153.

11 Q. -- to Puget Sound Energy. And the data
12 request asks, Please provide the amount of wood waste
13 in tons contained in the fuel pile when it is at full
14 load. If the exact amount of wood waste is not
15 known, provide an approximate amount. If you could
16 just look at the response?

17 A. Yes, ma'am.

18 Q. So now, this response states that --
19 Kimberly-Clark responds that the on-site wood waste
20 fuel pile contains approximately 6,000 wet tons when
21 full. Do you agree with that?

22 A. As I stated before, we do not have a
23 calculate way of determining how much fuel is on the
24 pile, as far as tonnage, and it's open to
25 interpretation.

00106

1 Q. And so is it your testimony that it's
2 possible that, in fact, there could be 9,000 wet tons
3 when full?

4 A. Yes, ma'am. It also depends on the season.

5 MS. GAGNON: Okay. At this time, I'd ask
6 to move 153 into evidence.

7 MS. ARNOLD: No objection.

8 JUDGE CAILLE: Exhibit 153 is admitted into
9 evidence.

10 Q. Okay. Now, at the beginning -- I'm sorry.
11 Let me just find my place. Now, your memo -- if you
12 go back to look at 139, which is your memo, now, your
13 memo states that you purposefully cut back on the
14 wood-firing rate of the Number 14 boiler to reduce
15 the risk of running out completely; is that correct?

16 A. We were curtailed on wood-firing one, yes,
17 so it minimized the amount of natural gas that we had
18 to use to co-fire. And also, due to the time of the
19 year, the moisture content of the wood fuel caused us
20 to curtail the wood-firing rate, also.

21 Q. Okay. Handing you what's been marked as
22 Exhibit 154, now, this exhibit -- well, according to
23 this data request, the amount of wood waste available
24 during the period -- this provides the amount of wood
25 waste during the period from December 24th to

00107

1 December 28th, 1998. And according to this, on
2 December 24th, Kimberly stated that it had 18,375 wet
3 tons available for use. Now, is that correct?

4 A. I have no way of determining if these
5 numbers are correct or not. Our hog fuel is paid by
6 volume and not by weight.

7 Q. Well, I understand that, but at least
8 according to the company's response, you had
9 approximately -- well, depending on how you judge it,
10 three to four times as much wood waste as what a full
11 pile would be; isn't that correct?

12 A. I was not involved with the inventory
13 calculations of these numbers, so I can't swear to
14 that.

15 Q. But aren't you the person at Kimberly-Clark
16 who is responsible for the Number 14 boiler?

17 A. Yes, I am.

18 Q. And although your responsibilities may not
19 be to purchase fuel, wouldn't it be your
20 responsibility to know how much fuel would be
21 available for that boiler?

22 A. We're told, on a weekly basis, on what the
23 forecast is for fuel deliveries, and that's by our
24 wood supplier, Mr. Jim Short. So I have an idea of
25 the forecast coming in, but -- and if there are any

00108

1 fluctuations to that, it's governed by the level on
2 the fuel pile itself.

3 Q. So on December 24th, did you confirm how
4 much wood waste there was available to fuel the
5 Number 14 boiler?

6 A. I determined our wood inventory by going
7 out and physically taking a look at the pile.

8 Q. And did you do that on December 24th, 1998?

9 A. On December 24th, 1998, I did not do that.

10 Q. And were you not at the site that day?

11 A. That's correct.

12 Q. Okay. Were you on vacation on that day?

13 A. No, but I was on Christmas holidays.

14 Q. But you weren't at the site?

15 A. That's correct, but we do have an on-call
16 person who works for the utility department, and that
17 person's -- one of their accountabilities is to
18 monitor fuel inventory. Any inefficiencies are
19 relayed to myself.

20 MS. GAGNON: Okay. Now, at this time, I'd
21 move Exhibit 154 into evidence.

22 MS. ARNOLD: No objection.

23 JUDGE CAILLE: Exhibit 154 is admitted into
24 evidence.

25 Q. Now, I'm going to hand you what's been

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1 marked as Exhibit 155. If you could just take a look
2 at that. And this data request provides the number
3 of tons of wood waste which were consumed by the
4 Number 14 boiler on each of the days, December 24th,
5 1998, to December 28th, 1998; is that correct?

6 A. Yes, that's what this document indicates.

7 Q. Okay. And over that Christmas weekend,
8 were you monitoring the amounts of wood wastes that
9 were consumed by the Number 14 boiler?

10 A. Personally, I was not.

11 Q. So someone else was doing it at that time?

12 A. That's correct, ma'am.

13 Q. So you did not make the determination,
14 based on the availability of say 18,000 tons of fuel,
15 available fuel, whether you needed to limit your
16 consumption to these amounts, did you?

17 A. What I do, ma'am, was --

18 Q. Well, sir, I don't want to cut you off. I
19 just want to find out whether you actually did that?

20 A. What I do, ma'am, is I post written
21 guidelines for the operators to obtain product.

22 JUDGE CAILLE: Excuse me.

23 THE WITNESS: These are guidelines that the
24 operators --

25 JUDGE CAILLE: Mr. Walton, I'm sorry.

00110

1 THE WITNESS: Yes, ma'am.

2 JUDGE CAILLE: I'm going to ask that you
3 try to answer the question with a yes or no, and then
4 follow it with an explanation, if you feel there's an
5 explanation. So listen carefully to the questions
6 and respond, and then provide an explanation.

7 THE WITNESS: Yes, Your Honor.

8 MS. GAGNON: Would it be possible to have
9 the question re-read?

10 JUDGE CAILLE: Would the court reporter
11 please read back the question?

12 (Record read back.)

13 THE WITNESS: And that would be for
14 beginning the 24th?

15 Q. Yes.

16 A. No, I did not. But I need to add that our
17 usage was forecasted in my written guidelines for the
18 operators.

19 MS. GAGNON: Okay. I'd now move Exhibit
20 155 into evidence.

21 MS. ARNOLD: No objection.

22 JUDGE CAILLE: Exhibit 155 is admitted into
23 evidence.

24 Q. Now, on the morning of December 24th, 1998,
25 you learned that the last fuel delivery for your fuel

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1 oil supplier was going to be at 6:30 p.m. that night;
2 is that correct?

3 A. That is correct. And that was the day
4 after our fuel supplier verbally agreed and said they
5 could meet our fuel needs for the holiday weekend.

6 Q. Yes. And your fuel supplier was PN
7 Industrial Fuels?

8 A. Yes, Pacific Northern.

9 Q. And they told you that the earliest they
10 could guarantee another load was December 28th at
11 noon?

12 A. Yes, ma'am. That is correct.

13 Q. Okay. Now, when you learned this
14 information, you did not attempt to get another fuel
15 supplier; is that correct?

16 A. That's correct, ma'am. My experience over
17 the years of trying to attain equipment or
18 commodities after business hours or during weekends
19 told me that it would be very unlikely I'd be able to
20 acquire 43,000 gallons of diesel for four straight
21 days, trying to arrange this on Christmas Eve day.

22 Q. But wasn't it the case that Mr. Buffum,
23 who's, I'm assuming, the owner of PN Industrial
24 Fuels, the reason he couldn't provide you with oil
25 was not because he didn't have fuel oil; is that

00112

1 correct?

2 A. That is correct. The reasoning he told me
3 is his truckers were running out of hours that they
4 could be on the road.

5 Q. So it wouldn't be that you had an
6 understanding that there was a shortage of fuel oil
7 over the weekend; is that correct?

8 A. As far as Pacific Northern?

9 Q. No, as far as any oil supplier. You didn't
10 have any knowledge that there was a shortage of fuel
11 oil?

12 A. No, ma'am.

13 Q. Okay. Now, to your knowledge, did anyone
14 else at Kimberly-Clark contact any fuel oil suppliers
15 for the December 24th to December 28th, 1998 time
16 frame?

17 A. To my knowledge, no.

18 Q. Okay. And I'll hand you Exhibit 158. If
19 you could just take a look at that. Now, doesn't
20 that data request indicate that no one else from
21 Kimberly-Clark contacted any fuel suppliers over that
22 weekend?

23 A. To the best of my knowledge, yes.

24 MS. GAGNON: Okay. And I'd move 158 into
25 evidence.

00113

1 MS. ARNOLD: No objection.

2 JUDGE CAILLE: Exhibit 158 is admitted into
3 evidence.

4 Q. Now, your fuel supplier had told you that
5 he could guarantee another delivery on December 28th
6 at noon; is that correct?

7 A. That's correct, ma'am.

8 Q. And you did not arrange for delivery of
9 that fuel oil; is that correct?

10 A. That's correct, ma'am. With the delivery
11 -- with delivery supposedly arriving at noon and the
12 curtailment ending at five p.m. that night, the
13 transition from natural gas fuel to diesel fuel on
14 Number 14 boiler takes quite some time. It's not an
15 easy task. So my thinking behind not having that
16 delivery arrive is we would only gain maybe one or
17 two hours.

18 Q. Okay. Now, I'd like to, if I could find my
19 copy of the exhibit -- excuse me, Your Honor. 149.
20 I've got it, okay. Now, if I could just direct your
21 attention to page three of this exhibit, it's the
22 third page.

23 MS. ARNOLD: What one?

24 MS. GAGNON: 149.

25 MS. ARNOLD: 149 doesn't have one.

00114

1 JUDGE CAILLE: Ms. Gagnon, this actually is
2 PSE Data Request Number Two and PSE Data Request
3 Number Three in this exhibit.

4 MS. GAGNON: Yes, and there's --

5 JUDGE CAILLE: An attachment?

6 MS. GAGNON: Yes, of two memos. But it
7 should all be one exhibit.

8 JUDGE CAILLE: Yes.

9 MS. GAGNON: Do you have that as one?

10 Q. Now, if you'd take a look at the third
11 page, do you recognize this?

12 A. Yes, ma'am. I'm the author of this
13 document.

14 Q. Okay. And this is a memorandum that you
15 wrote to the utilities personnel on December 26th,
16 1996; is that correct?

17 A. That's correct.

18 Q. And would the utilities personnel have
19 included Mark Armstrong?

20 A. Yes, this document's posted in the control
21 rooms.

22 Q. Okay. And now, this memorandum is the
23 utility's operating plan for that day?

24 A. That's correct, ma'am.

25 Q. And according to this memo, you are

00115

1 restricting gas usage to 8,000 MMBtus?

2 A. Yes, ma'am. And in the document here, it
3 says that there is an impending possibility of an
4 entitlement.

5 Q. And if you could just go down to the fifth
6 paragraph, and if you could just read that, please?

7 A. There's currently 24,000 gallons of diesel
8 fuel on site. We do have the capacity to store
9 100,000. I tried unsuccessfully to order more diesel
10 fuel this afternoon. We'll order more first thing
11 tomorrow morning.

12 Q. And if I direct you to turn, then, to the
13 next memo, which is dated December 27th, 1996, do you
14 recognize this?

15 A. Yes, I do.

16 Q. And what is it?

17 A. This is a copy of the operator guidelines
18 for the following day, December 27th.

19 Q. And if I can direct your attention to the
20 fifth paragraph down, on this day, you ordered 50,000
21 gallons more of diesel fuel; is that correct?

22 A. By this document, yes.

23 Q. Okay. But due to the bad weather, not many
24 fuel trucks were available at the time; was that your
25 understanding?

00116

1 A. The term fuel trucks refers to wood waste
2 fuel trucks, not diesel trucks.

3 Q. Ah, okay, all right. So at this time,
4 prior to the -- well, prior to the December 1998
5 curtailment, at least on one occasion, you did have
6 difficulty getting fuel when you requested it from
7 your supplier; is that correct? Based on these
8 documents?

9 A. Wood fuel, yes.

10 Q. No, I'm talking about oil -- I'm talking
11 about diesel. If you go back on the 26th, it says, I
12 tried unsuccessfully to order more diesel fuel this
13 afternoon.

14 A. All right.

15 Q. So at least according to this, on one
16 occasion, you had difficulty getting fuel when you
17 requested it from your supplier; is that correct?

18 A. Yes, ma'am.

19 MS. GAGNON: I'd move Exhibit 149 into
20 evidence.

21 MS. ARNOLD: No objection.

22 JUDGE CAILLE: Exhibit 149 is admitted into
23 evidence.

24 Q. Now, you testified that, on December 24th,
25 at about two p.m., you spoke with a gas dispatcher at

00117

1 Puget?

2 A. Yes, ma'am, but I believe I spoke to him
3 for the first time in the morning of December 24th.

4 Q. But at least in your testimony, I believe
5 you refer to just this conversation. It says -- in
6 your testimony, you testified to just this
7 conversation; is that correct?

8 A. Yes, ma'am.

9 Q. Okay. And you testified that the
10 dispatcher did not object to Kimberly-Clark using
11 penalty gas; is that correct?

12 A. That's correct. I had several
13 conversations with PSE personnel.

14 Q. But the dispatcher -- now, just directing
15 your attention to this one phone call, which is
16 what's in your testimony, the dispatcher did not tell
17 you that you could go ahead and burn penalty gas; is
18 that correct?

19 A. That's correct. He understood our having
20 to burn, and there were no objections on his part.

21 Q. But he didn't tell you that you could go
22 ahead and burn penalty gas; is that correct?

23 A. He did not deny us the use of the natural
24 gas.

25 Q. I'm just asking you if he -- if he told you

00118

1 that you could go ahead and do that. I understand
2 the other information you're giving me. I'm just
3 trying to get an answer to that question.

4 A. He did not say we could not use the natural
5 gas.

6 Q. Well, sir, all I want you to do is answer
7 the question, and that is, did he tell you you could
8 go ahead and use penalty gas?

9 A. No, ma'am.

10 Q. Okay. And if you could just go back to
11 Exhibit 139, which is your memo from December 28th.
12 And if you could go to the second paragraph and just
13 read that. It's on the first page of the memo. If
14 you could just read that?

15 A. Out loud?

16 Q. Out loud, thank you.

17 A. Yes. This curtailment means the user must
18 stop using any natural gas, except what is called
19 firm gas, which is negotiated and under contract with
20 PSE. The Everett site's firm gas allotment is 1,400
21 MMBtus, or 14,000 therms, per day, which is just
22 enough for the five tissue machines.

23 Q. So at the time that you spoke to the
24 dispatcher, you understood that these were the
25 requirements of the curtailment; is that correct?

00119

1 A. Yes, ma'am, and under normal circumstances,
2 we would have honored that curtailment.

3 Q. Now, shortly after you spoke to the
4 dispatcher, you received a call from the person you
5 identify as Randy in your testimony?

6 A. That's correct, ma'am.

7 Q. Okay. And isn't it correct that Randy told
8 you that you were still under curtailment and that if
9 you elected to burn gas above the restricted levels,
10 Kimberly-Clark would be in violation of the
11 curtailment clause within Rate Schedule 57?

12 A. Yes, ma'am. After that conversation with
13 Randy, I did understand that, yes, one, the
14 curtailment was not being lifted; two, there was --
15 it was still forecasted to last until December 28th;
16 and three, there was no objection to us continuing
17 burning gas.

18 Q. Now, did the person that you referred to as
19 Randy tell you that you could go ahead and burn
20 penalty gas?

21 A. In those words, no.

22 Q. Now, you testified that if you had not used
23 non-firm gas to fire the boilers beginning on
24 December 24th, there would have been safety risks at
25 the facility; is that correct?

00120

1 A. There would be increased risk, yes.

2 Q. Okay. And if you had shut down the tissue
3 machines, would there still have been safety risks at
4 the facility?

5 A. Shutting down the -- yes, ma'am. Shutting
6 down the tissue machines would have been our next
7 step if natural gas pressure was to become an issue.

8 Q. Now, it's true that the 1,400 MMBtus that
9 can be used for the tissue machines can also be used
10 for the Number 14 boiler; is that correct?

11 A. That's correct. That 14,000 therms, it's
12 for the site usage.

13 Q. Okay. So let's take a minute. If you can
14 go back and look at your data request, which provides
15 the total amount of wood waste that's available --
16 was available to the facility over the period of
17 December 24th to December 28th. That's Exhibit 154.

18 A. Yes, ma'am.

19 Q. So would the 1,400 MMBtus available --
20 assuming that you had shut down the tissue machines,
21 would the 1,400 MMBtus available and the amount of
22 wood waste that has been identified in Exhibit 154,
23 would you have been able to do a controlled shutdown
24 of the boilers on December 24th, 1998?

25 A. Yes, ma'am, but I need to add that, in a

00121

1 controlled shutdown, it takes approximately 12 to 18
2 hours to shut the site down. And in fact, we would
3 exceed more than the firm amount for a controlled
4 shutdown.

5 Q. So you would need actually more than the
6 1,400 MMBtus and the wood waste that you had on site
7 in order to accomplish a controlled shutdown?

8 A. That's correct, ma'am. We have, when the
9 pulp mill is at full production, we have eight
10 digesters, which are cooking wood chips. Each
11 digester is four stories tall. Each digester holds
12 100 tons of wood chips. Each digester holds 26,000
13 gallons of sulfur dioxide acid. And it's extremely
14 important, when we have a shutdown, that we do it in
15 a controlled manner, to relieve pressure, to reduce
16 risk of safety, environmental.

17 Four days ago, we had the unfortunate
18 opportunity to experience an emergency shutdown,
19 which we had a control problem with our computers and
20 we lost both of our big boilers. The entire mill was
21 down within 10 minutes. We had sulfur dioxide, very
22 high concentrations, in the Number 14 boiler. Our
23 operators were wearing half-face respirators, trying
24 to protect themselves and to stabilize the equipment.

25 Q. Okay. Now, if we could just go back now to

00122

1 the December 24th time period in 1998, you did not
2 mention any safety risk to the PSE gas dispatcher you
3 spoke with on December 24th, did you?

4 A. I do not believe I did, ma'am.

5 Q. And when you spoke to Randy, you did not
6 mention any safety risk to him; is that correct?

7 A. No, ma'am, because they were not impending.

8 MS. GAGNON: Okay. I have no further
9 questions.

10 JUDGE CAILLE: All right. Ms. Arnold,
11 redirect.

12 MS. ARNOLD: Just a few.

13 R E D I R E C T E X A M I N A T I O N

14 BY MS. ARNOLD:

15 Q. Mr. Walton, you were asked about Exhibit
16 154. Do you still have that in front of you?

17 A. Yes, ma'am.

18 Q. Do you know whether the inventories listed
19 on here include the Riverside site?

20 A. I do not know that, ma'am.

21 Q. If they included the Riverside pile, it
22 would be higher than what's just at the
23 Kimberly-Clark Mill; is that right?

24 A. That's correct.

25 Q. Exhibit 155 shows the amount of wood waste

00123

1 that was consumed by the boiler on certain days. Do
2 you have that in front of you?

3 A. Yes, I do, ma'am.

4 Q. Is there any reason why that boiler is
5 limited in how much moisture-laden wood waste it can
6 use?

7 A. The boiler was designed to be able to reach
8 full wood-firing load with 60 percent moisture of
9 wood fuel by weight, but one of the flaws of the
10 boiler, for air flow control, prevented this from
11 happening. During the winter months, when we
12 received very wet fuel, and if we exceed 55 percent,
13 the boiler becomes very unstable. And to stabilize
14 it, we have to back down on the wood-firing and we
15 have to co-fire with auxiliary fuel.

16 Now, these weights that are indicated on
17 here, A through E, these weights are calculated by a
18 weightometer, which weighs the amount of fuel that's
19 going to the boiler. In the summer months, you could
20 get more fuel per these numbers, so these numbers
21 here indicate very wet fuel.

22 Q. Look at Exhibit 149. Do you still have
23 that there?

24 A. Yes, ma'am.

25 Q. I'd like you to look at the memos that were

00124

1 written in December 1996, those two memos that are
2 attached. Do you see that?

3 A. Yes, ma'am.

4 Q. The memo dated December 26th, you said, I
5 tried unsuccessfully to order more diesel fuel this
6 afternoon. Will order more first thing tomorrow
7 morning. On December 27th, can you tell from your
8 memo if you were able to successfully order more
9 diesel fuel?

10 A. Yes, the second statement states, I have
11 ordered 50,000 gallons more diesel fuel.

12 Q. Now, I think you said that the sentence,
13 Not many fuel trucks are available at this time,
14 refers to wood waste trucks; is that correct?

15 A. I believe it does, ma'am.

16 Q. Does Kimberly-Clark, on an ordinary basis,
17 when it goes to diesel, have the diesel trucked in
18 and put in the day tank?

19 A. No, ma'am. Our energy source strategy,
20 which has been very successful to date, we -- our
21 primary fuels are spent sulfite liquor for Number 10
22 boiler and wood waste for Number 14 boiler. Our
23 fallback auxiliary fuel is natural gas, and then our
24 third choice for fallback would be diesel fuel.

25 Q. How is the diesel normally stored if it's

00125

1 not brought in by truck to the day tank?

2 A. We currently have a temporary storage area,
3 which consists of five storage tanks. Each are rated
4 at 20,000 gallons, but in reality, they may hold
5 18,000 gallons. In October, those five storage tanks
6 were contaminated by caustic, which was inadvertently
7 unloaded into our fuel oil storage area.

8 MS. GAGNON: Your Honor, I'm just going to
9 object. I think it's going well beyond the scope of
10 direct and well beyond this witness's testimony.
11 This is well beyond whether those particular diesel
12 trucks could get there or not. Now he's testifying,
13 I believe, as to an event that occurred sometime in
14 September or October of 1998, which another witness
15 has covered in this case.

16 MS. ARNOLD: Your Honor, Counsel asked him
17 several questions about the diesel trucks not getting
18 through, and I think he's entitled to explain the
19 role of the diesel trucks in Kimberly-Clark's backup
20 fuel strategy.

21 JUDGE CAILLE: I think he can testify to
22 that, but I do want to caution the witness and
23 Counsel to try to keep close to the scope of cross
24 and the direct testimony -- the witness's direct
25 testimony. I'll overrule the objection at this time.

00126

1 MS. GAGNON: Yes, Your Honor.

2 Q. Just briefly explain.

3 A. Due to the fact that our primary hold
4 storage tanks were inoperable, we were forced to run
5 off our D storage tank, which is a 14,000-gallon
6 tank. We had arranged for Pacific Northern to
7 offload directly into that tank, and the boiler fires
8 directly off that tank. So we had scheduled
9 9,000-gallon deliveries -- I can't recall the time,
10 every six, eight hours, something like that. And
11 that was a plan that was set up and felt very
12 confident that we had in place when I left the site
13 on December 23rd.

14 Q. Counsel asked you, Mr. Walton, if you had
15 tried to find a substitute for Pacific Northern when
16 they told you on the 24th that they couldn't deliver,
17 and you said no. Approximately how many gallons of
18 diesel was Pacific Northern supposed to be
19 delivering?

20 A. The total would have been 43,000 gallons
21 per 24-hour period, four days. Excuse me. It was
22 for during the entire time of the curtailment that
23 this plan was in place.

24 Q. If you had tried to call another fuel
25 supplier, would you have had any means of providing

00127

1 payment or security for payment on Christmas Eve?

2 A. I myself, I would have had to written an
3 emergency purchase order.

4 MS. GAGNON: I'm going to object. This is
5 so beyond the scope of cross-examination, Your Honor.

6 JUDGE CAILLE: Ms. Arnold.

7 MS. ARNOLD: Counsel asked him if he had
8 arranged for -- if he tried to find another trucking
9 company to truck in the fuel, and I'm just asking him
10 one of the reasons why he didn't.

11 JUDGE CAILLE: All right. The objection is
12 overruled. The witness may respond.

13 THE WITNESS: Could you please repeat the
14 question?

15 MS. ARNOLD: I'll just withdraw the
16 question, let it go.

17 JUDGE CAILLE: All right.

18 Q. Now, you talked about controlled shutdown.
19 Is it possible to do a controlled shutdown at the
20 mill on diesel?

21 A. Only on Number 14 boiler.

22 Q. It is possible to shut the 14 down on
23 diesel; is that correct?

24 A. Yes, ma'am, but it is not possible to shut
25 down the Number 10 boiler on diesel. Does not have

00128

1 the capability.

2 Q. Now, you said that you talked to somebody
3 at Puget Sound Energy named Randy?

4 A. Yes, ma'am. I don't recall if that was the
5 person's first name or last name.

6 Q. And did you discuss with him shutting down
7 the tissue machine if there were pressure problems?

8 A. I did not tell him that in those words, but
9 I did convey to him, and he did understand that if we
10 were jeopardizing the pressure in the system, that
11 Kimberly-Clark would take further steps.

12 Q. Did anyone tell you that you would be
13 notified if Kimberly-Clark's usage was causing
14 pressure problems?

15 A. Yes, ma'am.

16 Q. What exactly were you told?

17 A. I can't remember word-for-word, but the
18 intent was that if the system experienced
19 low-pressure problems, that the major users would be
20 notified, of which Kimberly-Clark is one of those
21 major users.

22 MS. ARNOLD: That's all I have. Thank you.

23 JUDGE CAILLE: Any re-cross?

24 MS. GAGNON: Your Honor, if you could just
25 indulge me for one moment, I'll check and see.

00129

1 R E C R O S S - E X A M I N A T I O N

2 BY MS. GAGNON:

3 Q. Mr. Walton, you recall being deposed in
4 this matter. We've just discussed that; correct?

5 A. Please repeat the question.

6 Q. Do you recall being deposed in this matter?
7 We had a deposition?

8 A. Oh, yes, ma'am. Yes, ma'am.

9 Q. Okay. And at the time you were asked, On
10 December 24th, 1998, did you contact someone at PSE
11 dispatch to tell them that Kimberly-Clark was going
12 to consume gas? And your response was, Yes, ma'am.
13 And in response to the question, And what do you
14 recall about what you said, if anything, to that
15 dispatch, your answer was, The only thing I could say
16 that would be exact was that our operational needs
17 were going to require us to go above firm gas. Isn't
18 that correct?

19 A. That is correct, ma'am.

20 MS. GAGNON: No other questions.

21 JUDGE CAILLE: Anything further, Ms.
22 Arnold?

23 MS. ARNOLD: No, Your Honor. I would like
24 to place into the record Exhibit Number 1 to Mr.
25 Walton's deposition. I noticed that Puget put in

00130

1 some of the exhibits, but not all of them.

2 MS. GAGNON: In fact, we only put in
3 certain designated portions, so if you have other
4 things that you are interested in adding, you should.

5 MS. ARNOLD: I just want to add that one
6 exhibit. We can do it now or later.

7 JUDGE CAILLE: Is there any objection to
8 that?

9 MS. GAGNON: No, no objection.

10 JUDGE CAILLE: All right. Let me see what
11 we'll call that. We'll mark that as 32.

12 MS. ARNOLD: Okay, thank you.

13 JUDGE CAILLE: And Exhibit 32 is admitted
14 into evidence. And if you could provide me with
15 three copies and one for the court reporter. And it
16 was Exhibit 1 to Mr. Walton's deposition?

17 MS. ARNOLD: Yes.

18 JUDGE CAILLE: All right. Would you folks
19 like to take a break before the next witness, or we
20 can continue.

21 MS. ARNOLD: A break would be fine.

22 MS. GAGNON: Break would be fine.

23 JUDGE CAILLE: Let's take a ten-minute
24 break.

25 (Recess taken.)

00131

1 JUDGE CAILLE: Back on the record. After a
2 brief break, we are now ready to call the next
3 witness.

4 MS. ARNOLD: Kimberly-Clark calls Mark
5 Ericson. Excuse me, Mark Armstrong. Mark Ericson is
6 somebody else in Olympia.
7 Whereupon,

8 MARK ARMSTRONG,
9 having been first duly sworn, was called as a witness
10 herein and was examined and testified as follows:

11 MS. ARNOLD: Excuse me just a minute, Your
12 Honor. I'm trying to find this.

13 JUDGE CAILLE: Quite all right.

14 D I R E C T E X A M I N A T I O N

15 BY MS. ARNOLD:

16 Q. Mr. Armstrong, would you state your full
17 name and business address, please, for the record?

18 A. My name is Mark E. Armstrong, 2600 Federal
19 Avenue, Everett, Washington.

20 Q. Mr. Armstrong, you have before you the
21 direct testimony of Mark E. Armstrong, which has been
22 marked Exhibit Number T-41. You have the rebuttal
23 testimony of Mark E. Armstrong, which has been marked
24 Exhibit T-42, and you should have before you Exhibit
25 MEA-1, which has been marked Exhibit Number 43, and

00132

1 Exhibit Number MEA-2, which has been marked Exhibit
2 Number 44. Were those testimonies and exhibits
3 prepared by you or at your direction and under your
4 supervision?

5 A. Yes, they were.

6 Q. If you were to testify today, would your
7 testimony be the same?

8 A. Yes, it would.

9 Q. And what is the subject matter of your
10 testimony?

11 A. The subject matter of my testimony is the
12 complaint we have filed against Puget Sound Energy
13 regarding the December 1998 natural gas curtailment.

14 MS. ARNOLD: Thank you. Your Honor, we
15 move for the admission of Exhibits T-41, T-42, 43 and
16 44 into evidence.

17 JUDGE CAILLE: Any objection?

18 MS. GAGNON: No objections, Your Honor.

19 JUDGE CAILLE: Then Exhibits T-41, T-42, 43
20 and 44 are admitted into evidence.

21 MS. ARNOLD: Mr. Armstrong is available for
22 cross-examination.

23 C R O S S - E X A M I N A T I O N

24 BY MS. GAGNON:

25 Q. Mr. Armstrong, you testified that you're

00133

1 currently the utilities team leader at
2 Kimberly-Clark; is that correct?

3 A. Yes.

4 Q. And you've been in that position for
5 approximately three years?

6 A. Approximately, yes.

7 Q. And so you were in that position during the
8 December 1998 curtailment?

9 A. Yes, I was.

10 Q. And in December of 1998, Kimberly-Clark had
11 arranged for firm transportation of 14,000 therms of
12 gas per day with PSE; is that right?

13 A. Yes.

14 Q. And you testified that approximately 1,400
15 MMBtus of natural gas per day is needed to operate
16 the drying hoods in three of the tissue machines; is
17 that correct?

18 A. That's correct.

19 Q. And again, 1,400 MMBtus would be 14,000
20 therms?

21 A. Correct, approximately.

22 Q. Now, in December of 1998, you understood
23 that if Puget Sound Energy curtailed Kimberly-Clark,
24 Kimberly-Clark could only continue to consume 1,400
25 MMBtus of gas; is that correct?

00134

1 A. I understood that if Puget Sound Energy
2 curtailed us to the 1,400 MMBtus firm, that we could
3 not burn gas without payment of penalty.

4 Q. Well, you were deposed in relation to this
5 matter, weren't you?

6 A. Yes, I was.

7 Q. And at the time of your deposition, let me
8 just go to it, on page 49, lines one through five, I
9 asked you, Now, if Kimberly-Clark is curtailed, do
10 you know what amount of gas they can continue to
11 consume? You answered, Yes. I asked, What is that?
12 And you said 1,400 MMBtus per day. Is that correct?

13 A. That's correct. When I answered that, I
14 took you to mean at what amount could we continue to
15 consume without penalty.

16 Q. I see. You were given the opportunity to
17 make changes to this deposition, were you not, Mr.
18 Armstrong?

19 A. Yes, I was.

20 Q. And you did not elect to make a change to
21 that portion of your testimony, did you?

22 A. No, I didn't.

23 Q. Now, according to --

24 JUDGE CAILLE: Excuse me. Just for the
25 record, that exhibit number is 166.

00135

1 MS. GAGNON: I'm sorry.

2 JUDGE CAILLE: I don't think you mentioned

3 it.

4 Q. Yes, okay. Now, according to your
5 testimony, you have secondary and backup fuel sources
6 for two reasons. The first reason you provided was
7 that, as a continuously operating system, the
8 facility requires substantial lead time to shut down,
9 is that correct, for the first reason?

10 A. Yes.

11 Q. And the second reason you give is that fuel
12 sources are subject to potential interruption or
13 curtailment; correct? I can give you a cite to your
14 testimony, if that's what you'd like. It's page
15 three, lines 11 through 12.

16 A. That's correct. That's what I testified
17 to.

18 Q. And you testified that, in your view,
19 Kimberly-Clark was adequately prepared for this
20 curtailment with the knowledge that the diesel fuel
21 bulk tank system was adequately cleaned up and
22 prepared for use; is that right?

23 A. Yes, I testified to that. As I think Mr.
24 Walton mentioned, our energy sourcing strategy is to
25 fuel the mill entirely on wood and spent sulfite

00136

1 liquor. Natural gas is a backup fuel in the event of
2 loss of one of those primary fuels. And diesel,
3 number two diesel oil is a backup for that natural
4 gas on Number 14 and two of our other boilers. And
5 given that, and given the size of the storage
6 facility, approximately, it's a 100,000-gallon
7 storage facility tankage-wise, but it will hold about
8 80,000 gallons. Given that amount of fuel, we felt
9 -- and the knowledge or the belief that that system
10 was operable going into the curtailment, we felt well
11 prepared to handle any options that -- or any
12 contingencies that came at us.

13 Q. And it's true, that Boiler Number 10 --
14 well, strike that. It's true, though, that around
15 December 18th or December 19th, you learned that that
16 fuel system was not available to you, is that
17 correct, the bulk storage system?

18 A. Yes, I learned that the bulk storage
19 system, we were unable to pump from it into our day
20 tank or our running tank.

21 Q. And you knew that approximately on the 18th
22 of December; is that correct?

23 A. Let's see. The 18th was Friday. Yeah, on
24 or about there.

25 Q. Now, isn't it true that the Number 10

00137

1 boiler uses spent sulfite liquor as a fuel, with
2 natural gas as a backup fuel?

3 A. That's correct.

4 Q. And isn't it correct that shutting down
5 Boiler Number 10 requires the use of natural gas?

6 A. Yes, it is, to safely shut it down, as Mr.
7 Walton indicated earlier, to be able to gas down the
8 digesters and handle the SO2 gas that comes off of
9 the digesters, we need to be able to transition that
10 boiler to a fossil fuel and then bring the boiler
11 down with fossil fuel.

12 Q. And for the Number 10 boiler, though, that
13 fossil fuel is natural gas; correct?

14 A. Yes, it is.

15 Q. I'm handing you what's been marked as
16 Exhibit 161. In response to a data request,
17 Kimberly-Clark stated that it requires approximately
18 2,000 MMBtus to shut down the Number 10 boiler, and
19 that takes approximately 18 hours. Would you agree
20 with that?

21 A. Yes, I would. It is an approximate number.
22 I'm the one who generated this number. We do not
23 have exact measurement of how long this takes, so it
24 could be less than that, easily.

25 Q. But you cannot use a fuel oil in place of

00138

1 these 2,000 -- approximate 2,000 MMBtus, can you?

2 A. No.

3 MS. GAGNON: At this time, I'd move 161
4 into evidence.

5 MS. ARNOLD: No objection.

6 JUDGE CAILLE: Exhibit 161 is admitted into
7 evidence.

8 Q. Now, isn't it correct, then, that in
9 December 1998, Kimberly-Clark had firm transportation
10 for only 1,400 MMBtus for gas per day, that
11 Kimberly-Clark did not have enough firm
12 transportation for all the gas that the Number 10
13 boiler requires to shut down; isn't that correct?

14 A. I wouldn't say that's exactly correct. As
15 I mentioned, the number 2,000 MMBtus to shut the
16 boiler down is very much an estimate. In the data
17 request, it asked, If exact number is unknown,
18 provide an approximate number. As Mr. Walton
19 testified earlier, our first move would be to shut
20 the tissue machines down and capture the --

21 Q. I'm sorry, I don't want to cut you off, but
22 all I asked was if you had sufficient natural gas
23 through firm transportation to shut down the Number
24 10 boiler. So is it your testimony that you can do
25 that on 1,400 MMBtus of gas per day?

00139

1 A. I was attempting to get to that answer.

2 Q. Okay. Sorry.

3 A. I'm sorry. As Mr. Walton had previously
4 testified, our first move would be to place the
5 tissue machines on a curtailment and, in effect,
6 capture the 1,400 MMBtus that we had firm for them
7 and use that in the boiler itself. It's a matter of
8 speculation as to whether we could get the Number 10
9 boiler fully off-line within that 1,400 MMBtus.

10 Q. Okay.

11 A. And again, that would be on a controlled
12 situation.

13 Q. Yes.

14 A. In the event that an emergency situation
15 warranted itself, we could, in fact, go down faster.

16 Q. Now, in your direct testimony, you provide
17 the following example of a fuel interruption. You
18 say spent -- you say, for example, spent sulfite
19 liquor supply can run short in the winter because the
20 pulping operation is susceptible to freeze-up due to
21 the amount of water used; is that correct?

22 A. That's what I testified to, yeah.

23 Q. If there's a spent liquor fuel
24 interruption, isn't it true that the Number 10 boiler
25 would require natural gas to continue operation?

00140

1 A. That's correct.

2 Q. Okay. And during the December 1998
3 curtailment, a situation developed where generation
4 of spent sulfite liquor was impacted and the Number
5 10 boiler began co-firing with natural gas; is that
6 correct?

7 A. I can't recall. I think, as I mentioned in
8 my -- yes, that's correct. What I wanted to say is
9 that the boiler -- as I mentioned in my deposition,
10 the boiler is constrained due to two factors. The
11 first is the availability of spent sulfite liquor.
12 The second is the available -- or the capacity of our
13 acid absorption system that the boiler gases feed
14 into. And I would guess 90 percent of the time that
15 the boiler is constrained, it is due to lack of acid
16 storage capability on the exhaust side of the boiler;
17 not liquor supply.

18 Q. I'm handing you what's been marked as
19 Exhibit 160. In response to a data request,
20 Kimberly-Clark estimated the amount of natural gas
21 consumed by the Number 10 boiler on the 25th of 1998
22 through the 28th of 1998. If you could just go to
23 the second page of this exhibit and read, starting
24 with the 25th, how many MMBtus were consumed by the
25 Number 10 boiler for each day?

00141

1 A. On the 25th, we consumed 360 MMBtus; the
2 26th, 707; the 27th, 1,395; and the 28th, 349.

3 MS. GAGNON: Okay. Your Honor, I'd move
4 Exhibit 160 into evidence.

5 MS. ARNOLD: No objection.

6 JUDGE CAILLE: Exhibit 160 is admitted into
7 evidence.

8 Q. Now, regarding the Number 14 boiler, you
9 testified that the primary fuel is wood waste, the
10 secondary fuel is natural gas, and the backup fuel
11 source is the number two diesel oil; is that correct?

12 A. Yes.

13 Q. And in your deposition, you testified that
14 Kimberly-Clark doesn't typically meet all of the fuel
15 needs of its Number 14 boiler because of possible
16 fuel interruptions; is that correct?

17 A. Yes, I did. You have to understand a bit
18 about Number 14 boiler. Number 14 boiler is a brand
19 new boiler, and it was built in 1995. And as Mr.
20 Walton indicated in his testimony earlier, the boiler
21 has certain operating difficulties that we are in the
22 process of fixing and correcting, and one of those
23 operating difficulties is its ability to stay on wood
24 reliably. We have invested a significant amount of
25 money in the last two years, three years, actually,

00142

1 and are quite a bit higher up on that reliability
2 curve.

3 But my testimony reflected the fact that we
4 had what we refer to as learning curve on startup of
5 the boiler, where we had interruptions of either the
6 fuel handling systems or the ash handling systems
7 from the boiler that could cause us to go off wood.

8 Q. I'm handing you Exhibit 165. And you were
9 asked in a data request what you meant by those
10 possible fuel interruptions that you've described,
11 and you provided a list that identified 12 possible
12 interruptions; is that correct?

13 A. Yes.

14 Q. And could you just read through that list?

15 MS. ARNOLD: Is this 165?

16 MS. GAGNON: Yes.

17 THE WITNESS: Possible fuel interruptions
18 include, but are not limited to breakdown of the hog
19 fuel pile bulldozer; pluggage of the under pile
20 stoker reclaimer system; pluggage of the fuel scalper
21 screens; pluggage of various transition chutes from
22 conveyor to conveyor; mechanical breakdown of any of
23 the fuel conveyors or fuel system components;
24 electrical breakdown of any of the fuel conveyor
25 drive systems; mechanical breakdown of the fuel feed

00143

1 system to the boiler; electrical malfunction of the
2 fuel feed system to the boiler; mechanical breakdown
3 of the Kablitz, that's K-a-b-l-i-t-z, grate system;
4 slag development on the drying grate; failure of any
5 component of the ash handling system from the boiler;
6 and failure of any component of the bag house system.

7 MS. GAGNON: Thank you. I believe I
8 misstated the number of that exhibit. It would be
9 Exhibit 164.

10 JUDGE CAILLE: Okay.

11 MS. GAGNON: At this time, we move Exhibit
12 164 into evidence.

13 MS. ARNOLD: No objection.

14 JUDGE CAILLE: Exhibit 164 is admitted into
15 evidence.

16 Q. Now, in your experience, the Number 14
17 boiler requires more natural gas in the winter than
18 in the summer; is that correct?

19 A. Yes, over the operating life of the boiler.
20 As I mentioned, it's a brand new boiler in '95, and
21 as Mr. Walton indicated earlier, we are still dealing
22 with its inability to sustain a stable combustion at
23 the 60 percent moisture fuel, and therefore we are
24 sometimes forced into co-firing fossil fuel to
25 maintain combustion stability.

00144

1 Q. And would it be fair to say that, at some
2 point in early December, you knew that Kimberly-Clark
3 might not be able to get the supply of wood waste
4 that it had gotten before December 1998?

5 A. Yes, it would be fair to say that. Prior
6 to December of 1998, or actually, prior to about
7 mid-year -- excuse me, prior to December of 1998, our
8 fuel sourcing strategy for the boiler to get through
9 the winter months included purchases of hog fuel that
10 we brought in from British Columbia by way of
11 ocean-going barge, and that, in fact, was our fuel
12 sourcing strategy through the winter. The land-based
13 fuel that we get for the boiler, obviously, for
14 obvious reasons of our weather, the fuel sources are
15 significantly reduced, the land-based fuel. That's
16 specifically land-clearing debris and various
17 sawmill.

18 Sometime in the fall of '98, the company,
19 for environmental reasons, specifically having to do
20 with wood fuel coming from the coastal rainforest and
21 old growth in British Columbia, opted to cease
22 bringing material from British Columbia that we could
23 not certify as being from -- not being from old
24 growth or rainforest. That strategy -- that
25 environmental strategy caused us to have to not be

00145

1 able to source the boiler fuel for the winter of '98
2 from these Canadian barges, and so therefore put us
3 into somewhat of a deficit in -- with not a lot of
4 other options.

5 Q. So at the beginning of the curtailment, you
6 were aware that wood waste supplies were low; isn't
7 that correct?

8 A. They were lower than I would have liked to
9 have seen them.

10 Q. Now, you testified that Kimberly-Clark
11 received a continuous, but reduced supply of wood
12 waste throughout the curtailment; is that correct?

13 A. Yes.

14 Q. Okay. I'm handing you what's been marked
15 as Exhibit 156. In a response to this data request
16 in Exhibit 156, Kimberly-Clark has actually stated
17 that zero wet tons of wood waste were delivered to
18 the Everett facility from the 24th through the 26th,
19 so I guess my question is the delivery was not
20 continuous through the curtailment, as you've
21 testified; isn't that correct?

22 A. Continuous every day, no. As Mr. Walton
23 testified earlier, or as you questioned Mr. Walton
24 earlier, we have two hog fuel piles, one pile inside
25 the mill and another pile at a satellite facility we

00146

1 own and refer to as Riverside. We accept deliveries
2 at that facility ahead of holidays. And in a sense,
3 we stockpile. And the purpose of that stockpile is
4 to be able to get -- to be able to run through the
5 holidays when the suppliers that we receive from are
6 simply shut down.

7 And we do not track that internal transfer
8 as a delivery. We simply shuttle it from one pile to
9 the other. It's our own people and our own trucks.
10 So these numbers reflect the actual purchased
11 receipts that we received on those dates.

12 Q. But you weren't at the facility on the 24th
13 through the -- you weren't at the facility from the
14 24th through the 26th; isn't that correct?

15 A. I was not, no.

16 MS. GAGNON: I'd move 156 at this time.

17 MS. ARNOLD: No objection.

18 JUDGE CAILLE: Exhibit 156 is admitted into
19 evidence.

20 Q. Now, you testified that on approximately
21 December 18th, 1998, you contacted Mr. Buffum, of
22 Pacific Northern Fuel Corporation, to change the
23 delivery arrangement for the fuel oil deliveries; is
24 that correct?

25 MS. ARNOLD: Could you give us a page

00147

1 reference?

2 MS. GAGNON: Sure. It's page seven, 14
3 through 15.

4 THE WITNESS: Yes, I testified to that.

5 Q. And this was in response to the fact that
6 the caustic had solidified in the piping system of
7 the backup diesel fuel system; is that correct?

8 A. That is correct.

9 Q. Okay. And you testified that PN's
10 suspension of fuel oil deliveries after December 24th
11 surprised you; is that correct?

12 A. Again, could you give me a line reference?

13 Q. Sure. Page eight, line ten.

14 A. Yes, I testified to that.

15 Q. And you further testified that it was
16 reasonable to rely on PN; is that correct?

17 A. Yes, I did. PN had -- they were the
18 supplier for diesel fuel oil as long as I've been in
19 my position and, in fact, somewhat prior to that, and
20 they'd always been a reliable supplier.

21 Q. Now I'm going to hand you Exhibit 149. And
22 if you could go to the December 26th, 1996 memo,
23 that's the third page, I believe. If you look at
24 paragraph five, isn't it correct that, in December
25 1996, PN was not available to provide the fuel when

00148

1 requested?

2 MS. ARNOLD: Excuse me. Where are you?

3 MS. GAGNON: I'm sorry. One, two, three,
4 four, five.

5 MS. ARNOLD: Is this the December 27th
6 memo?

7 MS. GAGNON: Nope, it's the December 26th
8 memo.

9 THE WITNESS: That's what Mr. Walton's memo
10 says. I think something that I'd like to interject
11 is that just prior to this, Scott Paper Company had
12 been purchased by Kimberly-Clark Corporation, and we
13 were in the process of putting in place
14 Kimberly-Clark's purchasing systems, and under Scott
15 Paper's purchasing systems, we had a little bit more
16 liberal ability to call vendors and write purchase
17 orders later.

18 And as I recall this incident, Mr. Walton
19 was having difficulty. Again, it's December 26th,
20 remember. He was having difficulty with the purchase
21 orders -- you know, getting the purchase order system
22 so that he could get a delivery into the mill, and
23 that's exactly the reason why, in subsequent years,
24 especially in '98, we sat down with the vendor ahead
25 of time, established a specific delivery contract.

00149

1 MS. GAGNON: Your Honor, I'm just going to
2 try to end this, since we've gone well beyond the
3 question itself.

4 Q. I think you've answered the question.

5 Thank you. Isn't it true that there's always some
6 risk that a supplier will not be able to deliver?

7 A. I don't know how to answer that question.

8 Q. Well --

9 A. That's a rather global question.

10 Q. Well, you work with -- I mean, we could use
11 this example here or we could use PN's example. I
12 mean, isn't there always a risk that a supplier won't
13 deliver?

14 A. Yeah, there's risks in everything we do in
15 life.

16 Q. Yep.

17 A. We try to manage those risks.

18 Q. That's exactly right. And isn't it correct
19 that if you don't have fuel oil, approximately 3,500
20 MMBtus of natural gas would be required to shut down
21 the Number 14 boiler?

22 A. If we had no fuel oil on site, correct.

23 Q. And that takes approximately 18 hours; is
24 that correct?

25 A. Yes.

00150

1 Q. Now, at some point before December 24th,
2 1998, you had a discussion with Mr. Walton about
3 burning penalty gas versus shutting down the
4 production of the facilities in Everett; is that
5 correct?

6 A. As I recall, yes, there was -- it's a
7 little confusing, because there was transition
8 between Mr. Walton coming back from vacation, I
9 believe, and myself getting ready to go out on
10 vacation. There was a number of other staff members
11 involved in those discussions. I'm relatively
12 confident that -- I'm quite confident that I had that
13 discussion with Mr. Walton, yes.

14 Q. And this discussion was in response to
15 concerns about liquor supplied to the Number 10
16 boiler and diesel on the Number 14 boiler?

17 A. Again, give me the content of the
18 discussion.

19 Q. Well, I'm referring to the discussion that
20 you just described, and this is not a question based
21 on your testimony. I'm just asking you, this
22 discussion that you had with Mr. Walton was in
23 response to concerns about liquor supplied to the
24 Number 10 boiler and diesel on the Number 14 boiler?

25 A. Again, you're asking me to cite some

00151

1 specifics of a conversation I'm not exactly -- I
2 don't have it written down anywhere. I'm getting a
3 little mixed up here.

4 Q. Okay. Well, I could actually -- I haven't
5 provided you with -- let's see if this is in the
6 designated portion of your deposition. This is 166,
7 Exhibit 166. It is in here. I can give you this and
8 then you can go right to the page.

9 A. That would help. Okay. At the time of
10 your deposition, I'll direct you to the page. It's
11 58, lines 12 through 15, and I asked you if -- did
12 you -- and did Mr. Walton discuss this determination
13 with you? And you stated, We had discussed prior to
14 the fact the operating priorities that we would run
15 to if, in fact, we had a condition of either loss of
16 liquor on the Number 10 boiler or loss of diesel or
17 wood on the Number 14 boiler.

18 A. Yes, that's what's in my deposition.

19 Q. Right. So was the discussion that you had
20 with Mr. Walton in response to concerns about liquor
21 supplied to the Number 10 boiler and diesel on the
22 Number 14 boiler?

23 A. It was in response to -- yes, it was in
24 response to concerns of the stability of that liquor
25 supply and the plans that we had put in place to

00152

1 ensure that it would, in fact, stay on liquor. And
2 also, in the event if we were to have any difficulty,
3 other difficulty with our diesel supply system, any
4 technical difficulties.

5 Q. During your discussion with Mr. Walton, you
6 established the operational priorities for the
7 facility?

8 A. I either established them or reviewed them.
9 As he mentioned before, they're not different than
10 we run 365 days a year.

11 Q. These operational priorities were based on
12 your analysis of the cost of lost production if
13 Kimberly-Clark shut down the tissue machines in the
14 mill compared to the cost of penalty gas; is that
15 correct?

16 A. Yes.

17 Q. And when you refer to penalty gas, you're
18 referring to the gas that Kimberly-Clark would
19 consume during the curtailment in excess of 1,400
20 MMBtus?

21 A. Yes.

22 Q. And at the time, you knew that the penalty
23 gas was \$2 a therm; is that correct?

24 A. Yes, I knew that.

25 Q. Okay. Now, I'm going to try to find my

00153

1 exhibit. It's Exhibit 131, so everybody can take
2 that exhibit. Now, those operating priorities were
3 to keep the facility operating and to burn penalty
4 gas, if necessary, when doing so -- if doing so would
5 not interfere or cause problems on the natural gas
6 system; is that correct?

7 A. Yes, the first priority is to keep the
8 facility running, and the second -- if the gas
9 company would allow us, we would burn penalty gas.
10 If they wouldn't, because of the system problems, we
11 would curtail or shut the mill down.

12 Q. Now, I've handed you Exhibit 131. If you
13 could just take a look at that. And do you recognize
14 this?

15 A. Yes, I do.

16 Q. And what is it?

17 A. It's a document that I am asked to fill out
18 once a year to PSE regarding gas usage information,
19 curtailment and entitlement personnel and
20 certification of our backup systems.

21 Q. Okay. And this is your signature at the
22 bottom?

23 A. Yes, it is.

24 Q. And this was the date, 11/3/98, that you
25 signed the document?

00154

1 A. Yes, it was.

2 Q. And if you could just read the -- under the
3 certification section, there are three paragraphs.
4 If you could just read the second paragraph?

5 A. I understand that, during periods of
6 curtailment, there will be no natural gas available
7 for use, except that amount previously contracted for
8 on a firm use basis.

9 MS. GAGNON: Okay. I'd move that 131 be
10 entered into the record.

11 MS. ARNOLD: No objection.

12 JUDGE CAILLE: Exhibit 131 is admitted into
13 evidence.

14 Q. Now, when you signed this certification,
15 wasn't it clear that, during the curtailment,
16 Kimberly-Clark was limited to consuming 1,400 MMBtus
17 of firm gas per day?

18 A. I understood, when I signed this, that we
19 -- if penalty gas was not available, that we could be
20 limited to the 1,400 MMBtus; correct.

21 Q. That wasn't -- well, that wasn't the
22 question I asked you, but -- I asked you, wasn't it
23 clear, during the curtailment, that Kimberly-Clark
24 was limited to consuming 1,400 MMBtus, and I guess
25 the answer to that question is no. But there's

00155

1 nothing in here that states that Kimberly-Clark can
2 consume penalty gas to maintain its operation; is
3 that correct? In this document, in Exhibit --

4 A. No, it does not say that.

5 Q. Okay. And at the time you established
6 these operational priorities, you did not review the
7 service agreement between Kimberly-Clark and Puget
8 Sound Energy to determine whether Kimberly-Clark was
9 entitled to take penalty gas; is that correct?

10 A. No, I did not.

11 Q. Now, during the curtailment, you did not
12 speak with Mr. Walton about the potential for safety
13 risks in the event of a mill shutdown, did you?

14 A. I don't recall that specific conversation,
15 no.

16 Q. Okay.

17 A. Your Honor, if I could go on to say, Mr.
18 Walton and myself have both worked in and shut this
19 mill down probably 20, 30 times, and he and I work
20 closely and we're both implicitly aware of the
21 hazards that are involved in shutting this facility
22 down. That's our job, to manage those hazards, and
23 so a direct conversation is not necessary.

24 Q. I'm just -- I mean, you actually answered
25 the question. You didn't actually have a

00156

1 conversation with him, did you?

2 A. No.

3 Q. Now, I'm handing you Exhibit 159. If you
4 could just take a look at it. Do you recognize this?

5 A. Yes, I do.

6 Q. And this is a letter that Mr. Brian
7 Campanaro drafted; is that correct?

8 A. Yes, that's what the response states.

9 Q. And you reviewed and commented on this
10 letter; is that correct?

11 A. I reviewed and commented on certain
12 portions of it, yes.

13 Q. And this letter is a complaint against
14 Puget Sound Energy, correct, by Kimberly-Clark?

15 A. Yes.

16 Q. And would it be fair to say that you were
17 trying to get the Commission Staff to agree to the
18 fact that the assessment penalties were not
19 justified?

20 A. I'm not sure I'm qualified to state the
21 intent of the letter. I was not the primary author,
22 nor am I the signature individual at the end of the
23 letter.

24 Q. Well, according to your deposition at page
25 98, and you probably don't have that in front of you,

00157

1 because I wasn't interested in relying on that, but I
2 will -- I can get you a copy of your whole
3 deposition, so you can see it. Here you go. If
4 you'd take a minute to get to page 98.

5 And if you'll look at lines 22 to 25, at
6 the time I asked you this same question in your
7 deposition, you did feel that it was a fair
8 assessment; is that correct?

9 A. Yes, that's what I said in my deposition.

10 Q. Now, if you'll look at this letter, take a
11 minute to look through it, there's nothing in this
12 letter about safety risks if Kimberly-Clark was not
13 able to burn penalty gas, is there?

14 A. No, there isn't.

15 MS. GAGNON: Okay. Your Honor, at this
16 time, I would move that 159 be entered into the
17 record.

18 MS. ARNOLD: No objection.

19 JUDGE CAILLE: Exhibit 159 is admitted into
20 evidence.

21 Q. Okay. Now, you did not attempt to
22 communicate with anyone at Puget Sound Energy, Inc.
23 at any time from the evening of December 23rd, 1998,
24 until five o'clock on December 28th, 1998; is that
25 correct?

00158

1 A. Myself?

2 Q. Yourself, yes?

3 A. No, I was not in the mill.

4 Q. You were on vacation from the 24th to the
5 28th?

6 A. That's correct.

7 Q. Okay. Now, paragraph seven of the
8 complaint that Kimberly-Clark filed in this case
9 alleges that at approximately two p.m. on December
10 24th, Kimberly-Clark attempted to communicate to PSE
11 management to request relief from the curtailment due
12 to problems with its alternate fuel supply, and that
13 PSE management did not respond to Kimberly-Clark's
14 telephone call. You did not attempt to call
15 management at that time; isn't that correct?

16 A. No, I did not.

17 Q. And isn't it true that Skip Walton was the
18 only person from Kimberly-Clark who attempted to call
19 PSE management on December 24th?

20 A. That is my understanding, yes.

21 Q. And according to Mr. Walton's direct
22 testimony, he received a call from Puget management
23 on December 24th; isn't that correct?

24 A. Yes, as I've read his testimony, yes.

25 Q. Now, you testified that on Friday morning,

00159

1 December 18th, 1998, you were notified by a phone
2 call from Duke Energy that there was a strong
3 potential for a gas entitlement based on a weather
4 forecast; is that right?

5 A. Yes.

6 Q. And after that call from Duke, you
7 testified that you attempted to contact
8 Kimberly-Clark's Puget account representative; is
9 that correct?

10 A. Yes.

11 Q. And according to your testimony, you left
12 messages requesting information as to the status of
13 that entitlement; is that right?

14 A. Yes, that's what I testified to.

15 Q. Now, you testified that later that same
16 morning you called requesting the same information
17 from Gas Control; is that correct? I can give you
18 the --

19 A. Yes, I believe I said that.

20 Q. Okay. And according to your testimony, the
21 gas controller told you that he had been instructed
22 by Puget management not to talk to you regarding the
23 status of the entitlement; is that correct?

24 A. Yes, I can't remember his exact words, but
25 they were not free to give out the status of the

00160

1 impending entitlement.

2 Q. Isn't it possible that at the time you were
3 making these calls, Puget management had not yet made
4 the decision to call the entitlement?

5 A. That may be possible. I have no knowledge
6 of what Puget management was doing.

7 Q. But it is possible. Now, isn't it possible
8 that -- I'm sorry, and in your experience, doesn't
9 official notice of an entitlement come by red fax
10 alert and direct call to one of the people on that
11 interruptible personnel list, which was Exhibit 131?

12 A. Yes, it does.

13 Q. Isn't it true that at about five or 5:30
14 p.m. on December 18th, Kimberly-Clark received a red
15 fax alert from PSE notifying Kimberly-Clark that they
16 were going to be entitled the next day?

17 A. Yes, about -- I think the exact time was,
18 like, 5:18, and what we had been looking for was --
19 as Mr. Walton testified, there's certain preparations
20 we have to put in place, and we were attempting to
21 determine the likelihood of a entitlement so that we
22 could go ahead and schedule the extra people to stay
23 over. It was a Friday evening going into a, you
24 know, a holiday-type season, and I needed to know, as
25 a manager, whether that was -- the likelihood of that

00161

1 occurring, so I could schedule appropriate personnel.

2 Q. Well, is it your understanding that, under
3 Rate Schedule 57, PSE is required to make management
4 available prior to providing official notice of an
5 entitlement or a curtailment?

6 A. Again, I'm not an expert on Rate Schedule
7 57, but past practice with Washington Natural Gas and
8 then PSE was that we had that sort of dynamic
9 conversation, and they were more than comfortable in
10 sharing their potential plans with us.

11 Q. Well, is it your understanding that, under
12 the service agreement between PSE and Kimberly-Clark,
13 that PSE is required to make management available
14 prior to giving official notice of an entitlement or
15 a curtailment?

16 A. I don't believe that, in the service
17 agreement, it stipulates anything of that nature. I
18 was going on past practice.

19 Q. Well, now, prior to this curtailment, was
20 Kimberly-Clark a Schedule 57 customer, to your
21 knowledge?

22 MS. ARNOLD: Your Honor, we'll stipulate
23 that Kimberly-Clark's a Schedule 57 customer.

24 Q. Well, I'm just asking to -- Mr. Armstrong
25 has testified about PSE's past practice, and I'm

00162

1 trying to ascertain whether Kimberly-Clark was a
2 Schedule 57 customer at the time that Mr. Armstrong's
3 testifying about past practice.

4 A. In all the time frame I'm referring to, to
5 my knowledge, we have not changed our rate schedule
6 around interruptible gas.

7 Q. So prior to 1995, is it your testimony that
8 Kimberly-Clark was a Rate Schedule 57 customer?

9 A. I would have to look prior to '95. I don't
10 know.

11 Q. So you do not know whether Kimberly-Clark
12 was taking service under Rate Schedule 57 at that
13 time?

14 A. I'm not sure exactly when that schedule was
15 implemented, no.

16 Q. Now, the complaint alleges that PSE did not
17 advise Kimberly-Clark of any distribution problems
18 during the period in the vicinity of the
19 Kimberly-Clark Everett mill, and there is no evidence
20 of any such problem. And Kimberly-Clark was asked to
21 explain what it meant by the vicinity of the mill; is
22 that -- do you recall that?

23 A. Yes, I recall that question.

24 Q. Okay. And that's Exhibit 142. If you
25 could just read the response on Exhibit 142?

00163

1 A. The main gas line that supplies gas to the
2 Kimberly-Clark meter's directly east of the Everett
3 facility.

4 Q. So can you tell us geographically where the
5 endpoint is on that -- you testified that the meter,
6 it goes from the meter directly east of the Everett
7 facility, so where is the endpoint, in geographical
8 terms, of the vicinity you're describing in your
9 complaint?

10 A. Are you talking about the terminal where
11 the gas comes into the mill?

12 Q. No, I'm talking about what you mean when
13 you say with regard to the -- I'm sorry, I'm talking
14 about what do you mean when there were no problems in
15 the vicinity of the Kimberly-Clark Everett mill?

16 A. I do not have specific knowledge of the
17 piping systems outside of our meter. I only know
18 them from reference, talking with gas dispatchers.
19 Numerous times over the years I've been involved with
20 PSE dispatch, as far as discussions of setting both
21 the supply pressure to the mill and the mill's
22 internal pressures.

23 Q. I guess the question is can you identify
24 geographically what that vicinity is?

25 A. I believe I just said, in the response,

00164

1 it's directly east of the Everett facility, so
2 somewhere out east of our property line. And I don't
3 exactly know where the pipe is.

4 Q. And you don't know where the endpoint is;
5 is that correct?

6 A. I know it heads north towards the Marina.
7 That's about the end of my knowledge of the pipe.

8 MS. GAGNON: Okay. I would move Exhibit
9 142 into evidence.

10 MS. ARNOLD: No objection.

11 JUDGE CAILLE: Exhibit 142 is admitted into
12 evidence.

13 MS. GAGNON: Your Honor, this is a
14 confidential exhibit, and so I would have the Puget
15 Sound Energy people leave at this time.

16 JUDGE CAILLE: All right.

17 MS. ARNOLD: What number is this?

18 MS. GAGNON: I'm sorry, it's C-152.

19 (The following testimony is contained in a
20 separate and confidential record.)

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00172

1 Q. We're almost done. Now, you testified that
2 Mr. Donahue does not accurately characterize
3 Kimberly-Clark's motive for not purchasing more than
4 1,400 therms of firm transportation; is that correct?

5 MS. ARNOLD: Could you give us a number?

6 Q. Yes, that would be in your rebuttal
7 testimony, page two, lines one through four.

8 A. Which line was that?

9 Q. Lines one through four, rebuttal testimony.

10 A. Sorry, my lines are lined differently. One
11 through four is the top of the page.

12 MS. ARNOLD: I think she's on the rebuttal
13 testimony.

14 THE WITNESS: That's what I have. My
15 answer to that question is in lines 10 through 22 on
16 my paper.

17 Q. It is? Okay. I'm going to read you the
18 testimony as it appears on mine, so we can be clear
19 that we're talking about the same thing. The
20 question is, Does Mr. Donahue accurately characterize
21 Kimberly-Clark's motive for not purchasing more than
22 14,000 therms of firm transportation service from
23 Puget? And you answered, No. Are we talking about
24 the same testimony?

25 A. I'm sorry, I was on page one and you're on

00173

1 page two.

2 Q. Yes, okay.

3 A. Yes, it does.

4 Q. Okay. And Mr. Donahue testifies that one
5 factor in Kimberly-Clark's motive for choosing to
6 rely on such a small percentage of firm gas might be
7 cost. Is it your testimony that cost is not a factor
8 in Kimberly-Clark's operating strategy?

9 A. Cost is a factor. We are a competitive
10 business, and our job is to produce energy for as low
11 a cost as we can produce it for our tissue and pulp
12 manufacturing operations. As I mentioned earlier,
13 our fuel sourcing strategy for the mill is to burn
14 all wood on Number 14 boiler, burn all liquor on
15 Number 10 boiler, and purchase 1,400 MMBtus of firm
16 gas for the loads in the mill that we view as firm.
17 And those are the three tissue machine drying hoods
18 that we previously mentioned. We do not view the
19 natural gas on the boiler as an everyday event or as
20 firm energy. We, in fact, view that as interrupt --
21 our strategy is to not burn natural gas at all.

22 Q. I understand that. Mr. Armstrong, are you
23 typically able to run the Number 14 boiler without
24 any natural gas at all?

25 A. As I mentioned earlier, it's on a learning

00174

1 curve.

2 Q. I'm sorry, sir. Just please answer the
3 question.

4 A. Typically, I would say yes. I was in the
5 mill yesterday and Number 14 boiler was running --

6 Q. On a daily basis over a year, how much of
7 the time can you operate the Number 14 boiler without
8 natural gas?

9 A. I can't exactly characterize that, but --
10 it's somewhat of a guess right now what that number
11 is. It might be as high as 75 to 80, 75 percent of
12 the time.

13 Q. Without natural gas?

14 A. Correct.

15 Q. Let me just -- never mind. You graduated
16 from the University of Washington in 1978; isn't that
17 correct?

18 A. Yes, it is.

19 Q. And since your graduation until now, you've
20 worked for Kimberly-Clark or its predecessor, Scott
21 Paper Company; is that correct?

22 A. Yes, I have.

23 Q. And would it be fair to say, then, your
24 entire professional career has been working with
25 Scott Paper or Kimberly-Clark?

00175

1 A. Postgraduate professional. I held various
2 engineering intern positions prior to graduation.

3 Q. But from 1978 until today?

4 A. From 1978 to today, my whole career is with
5 Scott Paper and Kimberly-Clark; correct.

6 Q. Now, you testified the expected peak on
7 Monday, December 28th, 1998, is not a valid reason
8 for Puget's decision to continue the curtailment; is
9 that correct?

10 A. That's what I testified to, yes.

11 Q. That testimony is not based on any
12 experience you have in managing a gas distribution
13 system, is it?

14 A. No, it's not. It's based on experience I
15 have with managing gas curtailments inside our mill
16 with Puget Sound Energy and Washington Natural Gas,
17 its predecessor.

18 Q. But you have no experience in managing a
19 gas distribution system; is that right?

20 A. Not from the gas supply side, no.

21 Q. And you have no experience managing Puget's
22 gas distribution system, in particular; is that
23 correct?

24 A. No, I do not.

25 Q. That testimony is not based on your

00176

1 interpretation of Rate Schedule 57; is that correct?

2 A. I -- that testimony, it's not based on my
3 interpretation of Rate Schedule 57; it's based on my
4 experience --

5 Q. You've already --

6 A. -- in managing curtailments.

7 MS. GAGNON: Thank you. You've already
8 testified to that. At this time, I would actually
9 offer 166, because I believe I failed to do that
10 earlier. And those would be the excerpts from Mr.
11 Armstrong's deposition testimony.

12 MS. ARNOLD: No objection.

13 MS. GAGNON: And then there was one other
14 exhibit that I had failed to enter, and that's
15 Exhibit 157, and so at this time I would move that
16 exhibit into evidence, also.

17 JUDGE CAILLE: 157. Is there any objection
18 to 157?

19 MS. ARNOLD: No objection.

20 JUDGE CAILLE: Okay. Just for my own
21 housekeeping here, am I correct there are several
22 exhibits that haven't been admitted, or have I just
23 neglected to put an A for admitted in my column? I'm
24 looking at Exhibit 132. Let's see. Are these -- are
25 these the cross for --

00177

1 MS. GAGNON: There were some that weren't

2 --

3 MR. VAN NOSTRAND: 132 through 138 were not
4 offered, Your Honor.

5 JUDGE CAILLE: Okay, thank you. That
6 helps. And 140 and 141?

7 MR. VAN NOSTRAND: I don't believe those
8 were offered, either, Your Honor.

9 MS. GAGNON: I don't believe I -- I'll
10 quickly look through and make sure. No, I think --

11 JUDGE CAILLE: You know what, why don't we
12 take a break and I'll work with you on this. We
13 should have time for one more witness today, I would
14 think.

15 MS. ARNOLD: Your Honor, I'd be glad to
16 start with Mr. Hogan, but I do have a little redirect
17 for Mr. Armstrong.

18 JUDGE CAILLE: I'm sorry, forgive me.

19 MS. ARNOLD: He's our last witness.

20 JUDGE CAILLE: Why don't you do your
21 redirect now and we'll take a break and then figure
22 out the exhibits.

23 MS. ARNOLD: I was going to say, it might
24 expedite things if I got the copies made for the
25 bench for the cross-examination witnesses with the

00178

1 exhibit numbers on them, so we can handle the
2 cross-examination a little more smoothly if I do
3 that, because I know the bench needed another copy.

4 JUDGE CAILLE: Yeah, I have a copy myself
5 that I already have marked, but I do need another
6 copy for the official file.

7 MS. ARNOLD: Okay. Also, I realized I
8 don't have a set for the court reporter.

9 JUDGE CAILLE: All right. Are you
10 suggesting that we wait until tomorrow to begin Mr.

11 --

12 MS. ARNOLD: Hogan? I think Mr. Hogan's
13 your first witness. Mr. Armstrong's our last
14 witness. I want to redirect Mr. Armstrong.

15 JUDGE CAILLE: Yes, okay. Let's do the
16 redirect of Mr. Armstrong and see where we end up
17 time-wise, and then I need to go over these exhibits
18 with you, Counsel, to make sure we've covered
19 everything that's been admitted.

20 R E D I R E C T E X A M I N A T I O N

21 BY MS. ARNOLD:

22 Q. Mr. Armstrong, Counsel asked you a question
23 about the fuel for the Number 14 boiler, and I
24 believe that you said its primary fuel is wood; is
25 that correct?

00179

1 A. Yes.

2 Q. And its backup fuel is fossil fuel; is that
3 what you said?

4 A. Fossil fuel backs up the wood. Like we
5 indicated, we have two choices, natural gas or number
6 two diesel oil.

7 Q. So am I correct, then, that the Number 14
8 can operate on diesel fuel?

9 A. It can operate on full load at diesel fuel;
10 correct.

11 Q. Can you shut the boiler down on diesel
12 fuel?

13 A. Yes, we can.

14 Q. So would it be correct that the Number 14
15 can operate with no natural gas at all as long as
16 there's diesel available?

17 A. That's correct.

18 Q. Now, I think, in answer to Counsel's
19 question, you said that Kimberly-Clark realized, on
20 December 18th, that the bulk fuel was not available;
21 is that correct?

22 A. Yeah, I think we said on or about that time
23 frame.

24 Q. On or about the 18th. And at what point
25 did you make the arrangements for the deliveries by

00180

1 truck?

2 A. Immediately upon discovery of that fact.

3 Q. Was Kimberly-Clark able to stay within the
4 curtailment limit from that point until the truck
5 deliveries failed?

6 A. For boiler gas, yes. There was an
7 exception on, I believe it was the 21st, and that was
8 our -- actually, the paper machine drying hoods
9 consumed somewhat more than the 14,000 therms, but
10 for boiler gas, either on Number 14 or Number 10,
11 from the onset of the curtailment through the failure
12 of the diesel fuel supply, we burned no gas.

13 Q. And was that other amount 229 therms that
14 exceeded --

15 A. I think that's the number that sticks in my
16 head.

17 Q. Otherwise, you stayed within the 14,000
18 limit?

19 A. Yeah, that was due to -- I'm not sure
20 exactly what the tissue machines were doing, but they
21 must have, for some reason, used more gas. I haven't
22 investigated that.

23 Q. Now, do you still have 149, Exhibit 149 up
24 there?

25 A. Yes.

00181

1 Q. This is the one that says, Response to PSE
2 Data Request Number Three, and it's got two memos
3 attached to it.

4 A. Yes.

5 Q. I think you were being asked about the
6 December 26th memo. She asked you about the fifth
7 paragraph down. Do you see that?

8 A. Yes.

9 Q. And she asked you about where it says, I
10 tried unsuccessfully to order more diesel fuel this
11 afternoon. Will order more first thing in the
12 morning.

13 You started to say that Kimberly-Clark, as
14 a result of this, changed its purchase strategy for
15 diesel?

16 A. Well, as I mentioned, we were adapting from
17 Scott Paper purchasing methods to Kimberly-Clark
18 purchasing methods. And without speculating,
19 Kimberly-Clark's purchasing systems are run out of
20 Neenah, Wisconsin, and there's a time delay that we
21 have to deal with for purchasing agents, and my sense
22 is that Mr. Walton was struggling with the difficulty
23 of getting the purchase order written on the spot.

24 To counter-act that, we later decided that
25 we would, rather than write a purchase order on the

00182

1 spot because of Kimberly-Clark's procedures, that we
2 would have all of that negotiated up front with a
3 supplier. So we negotiated all the terms and
4 conditions and the pricing and the delivery
5 schedules, et cetera, and actually cut a purchase
6 order to a supplier, so all we had to do was pick a
7 telephone up.

8 Q. This supplier you're talking about is
9 Pacific Northern?

10 A. Correct.

11 Q. So you actually had a contract with Pacific
12 Northern in December of 1998; is that right?

13 A. That's correct.

14 Q. Do you know if they'd ever failed you
15 before?

16 A. To my knowledge, they had not. And we
17 purchased significant quantities of fuel from them.

18 Q. Your deposition is Exhibit Number 166, and
19 Ms. Gagnon asked you about page 58, I believe. Page
20 58. Do you have that? It's --

21 A. Yes, I have it.

22 Q. Okay. At line 23, in your deposition, you
23 said, We were very clear in our priorities that if
24 Puget Sound Energy informed that they were unable to
25 sustain gas volumes due to pressure or supply

00183

1 constraints on their systems, then we would curtail
2 the mill. What did you mean by that?

3 A. Kimberly-Clark's not in the business of
4 causing difficulty to the outside world. We're a
5 long-term player in the Everett waterfront, and we're
6 not -- so we're quite concerned about our position in
7 the community. And we would -- and it was very clear
8 in our operating priority that both myself and Mr.
9 Walton had the authority to begin shutting the mill
10 down immediately, if, in fact, any disturbances were
11 brought or were on the gas system that were reported
12 to us.

13 And I think he's testified the specifics of
14 that, we would immediately begin shutting tissue
15 machine operations down to reduce -- instantly reduce
16 the gas load, and then, as conditions warranted, we
17 would continue curtailing most likely the pulp mill,
18 we would shut that down, to shut the recovery boiler
19 down, and then eventually bring the power boiler
20 down.

21 Q. Was Kimberly-Clark ever notified that there
22 were pressure problems due to your use of gas?

23 MS. GAGNON: I'm going to object. This
24 witness has no personal knowledge of this at all.
25 Mr. Armstrong was not at the facility.

00184

1 JUDGE CAILLE: Response?

2 MS. ARNOLD: Oh, sorry. I was waiting for
3 him to answer. I guess it's late in the day. Well,
4 Mr. Armstrong and Mr. Walton both testified that
5 they're on the same team, and Counsel has asked Mr.
6 Armstrong quite a few questions about that whole
7 subject, and he seems to be quite well-informed on
8 that, so I think he's entitled to explain what his
9 understanding is.

10 JUDGE CAILLE: I'm afraid it's gotten quite
11 late in the day, too, and I've now lost the question
12 in my mind. Could the court reporter read back the
13 question for me?

14 (Record read back.)

15 JUDGE CAILLE: I'm going to let the witness
16 answer this question, if it's within your knowledge.

17 THE WITNESS: What's within my knowledge is
18 the discussions I've had with Mr. Walton and the rest
19 of my operating staff, including my operators, who
20 would have been most likely the people who received
21 the first phone call, and at no time during any of
22 those discussions has anyone indicated to me they
23 received any notification whatsoever.

24 JUDGE CAILLE: Okay.

25 Q. Counsel asked you several questions about

00185

1 your testimony, I guess in your deposition, where you
2 said the fact that the peak on December 28th was not
3 a reason for curtailment during the long holiday
4 weekend. And you said your answer was based on
5 experience. Can you explain what you meant by based
6 on experience?

7 MS. GAGNON: I'm going to object. This was
8 asked and answered.

9 MS. ARNOLD: I don't think it was. I think
10 Counsel cut him off. I don't think he got a chance
11 to finish his answer.

12 JUDGE CAILLE: Well, rather than belabor
13 this, I'll let the witness answer the question.

14 THE WITNESS: Yes, over the course of my
15 tenure in the boiler -- in the utilities operation,
16 I've had numerous situations where we've been in need
17 of gas entitlement or gas curtailment. More
18 frequently gas entitlement. And I've personally been
19 party to discussions with gas control around managing
20 that morning peak load. We're very aware of that.
21 We're very aware that that can be a concern,
22 depending on weather, depending on different factors,
23 and we have, in fact, demonstrated, over our history,
24 our ability to react to their needs on load reduction
25 during those time frames.

00187

1 short-term releases, or short-term relief from gas
2 curtailment, such as maybe the 25th through the 27th
3 or 28th, we can take that time to reposition our
4 liquor and our acid inventories using the fossil fuel
5 that we're -- using the gas on the recovery boiler as
6 a substitute for the liquor for a short period of
7 time. We can reposition those inventories and get
8 them into a position where we can easily get through
9 their requested curtailment.

10 Q. For a short period?

11 A. For -- it gives us -- in layman's terms, we
12 can catch our breath and get the liquor tanks higher
13 and the acid tanks lower, so that if -- when we go
14 back to full liquor firing, then we're consuming
15 liquor and building acid.

16 Q. My question is is this something that can
17 be done for a few hours at a time?

18 A. Yes.

19 MS. ARNOLD: Okay. If I could just have a
20 minute, I think I might be through. Okay, thank you.
21 That's all my questions.

22 MS. GAGNON: Very briefly, Your Honor.

23 JUDGE CAILLE: Yes.

24 R E C R O S S - E X A M I N A T I O N

25 BY MS. GAGNON:

00188

1 Q. To your knowledge, was Puget Sound Energy
2 aware of your company policy of using penalty gas
3 until told to stop due to pressure problems?

4 MS. ARNOLD: I'm going to object to the
5 question. I don't think it's phrased clearly.

6 JUDGE CAILLE: Does the witness understand
7 the question?

8 THE WITNESS: I think so.

9 JUDGE CAILLE: Okay.

10 THE WITNESS: The only knowledge I have of
11 that is Mr. Walton's direct testimony on his
12 discussions with both gas control and Randy Lewis, I
13 think his name was, in which he informed them of our
14 intent to burn penalty gas if their systems would
15 allow. Does that answer the question?

16 Q. I believe it -- you yourself never called
17 -- I believe you testified that this policy has been
18 -- was in place prior to that curtailment?

19 A. The answer is no, I did not communicate
20 that to PSE. Mr. Walton did.

21 Q. Well, are you saying that Mr. Walton
22 communicated that there was a policy in effect at
23 Kimberly-Clark?

24 A. I can't say what he said. I don't know if
25 he said a policy or --

00189

1 MS. GAGNON: Your Honor, I have one exhibit
2 that was not produced earlier. It would be a
3 cross-examination exhibit. I actually don't need to
4 ask the witness any questions about it, but I don't
5 have copies of it, because it came up during Mr.
6 Armstrong's redirect. So I would be happy to show it
7 to Counsel and then show it to the witness and --
8 JUDGE CAILLE: That would be fine.
9 MS. GAGNON: I'll just rely on it in
10 briefing.
11 MS. ARNOLD: You don't intend to ask any
12 questions?
13 MS. GAGNON: No questions. Well, just that
14 it be moved into evidence.
15 MS. ARNOLD: I have no objection.
16 JUDGE CAILLE: Let's mark this as 169,
17 because it is a cross exhibit.
18 MS. GAGNON: Yes, it's -- I'm sorry, just
19 so you know, it's a confidential exhibit.
20 JUDGE CAILLE: So it would be C-169?
21 MS. GAGNON: Yes.
22 MS. ARNOLD: What data request is it?
23 MS. GAGNON: It's Puget's Sixth Data
24 Request, and it's Response Number One to that. So
25 it's --

00190

1 JUDGE CAILLE: All right. Counsel, you'll
2 provide me with copies tomorrow?

3 MS. GAGNON: Yes, I will. And --

4 JUDGE CAILLE: Do you have anything?

5 MS. GAGNON: I have no further questions,
6 Your Honor.

7 JUDGE CAILLE: All right. The witness is
8 excused.

9 THE WITNESS: Thank you, Your Honor.

10 JUDGE CAILLE: And oh, wait a minute.

11 Maybe I'd better not excuse you. I have a question.

12 Exhibit Number 5, remember the one that was
13 withdrawn? Is that an exhibit that you did? I don't
14 have it down as offered or admitted.

15 MS. GAGNON: That was the one to Mr.
16 Faddis's testimony originally?

17 JUDGE CAILLE: Yes.

18 MS. GAGNON: It wasn't necessary to use it.
19 Mr. Armstrong provided the information, so we didn't
20 rely on that.

21 JUDGE CAILLE: So I'm just going to mark
22 that off my list of exhibits. Okay. Now, and it's
23 probably good for counsel for Kimberly to be here,
24 too, because I need -- then we'll all know what the
25 exhibits are that are in evidence with respect to

00191

1 Puget's cross. I show that 132 through 138 have not
2 been offered.
3 MS. GAGNON: That is correct.
4 JUDGE CAILLE: 140, 141.
5 MR. VAN NOSTRAND: Correct.
6 JUDGE CAILLE: How about 144?
7 MS. GAGNON: That has not been offered,
8 Your Honor.
9 JUDGE CAILLE: Okay. 145.
10 MS. GAGNON: We're just going through them.
11 No, that's not been offered, Your Honor.
12 JUDGE CAILLE: 148. 148 has been offered?
13 MS. GAGNON: No, I'm checking to see if it
14 has been. No, that has not been offered.
15 JUDGE CAILLE: 150.
16 MS. GAGNON: No, that has not been offered.
17 MR. SHARFSTEIN: Excuse me, Judge, do your
18 records show 149 has been offered?
19 JUDGE CAILLE: Yes, mine does. C-151.
20 MS. GAGNON: It has been offered.
21 JUDGE CAILLE: It has been offered.
22 MS. GAGNON: Yes.
23 MS. ARNOLD: Your Honor, would it help to
24 identify that as 149-A and B? There seems to be two
25 149s.

00192

1 JUDGE CAILLE: That's Data Request Two and
2 Three, plus a memo. I listed it as just one.
3 MS. ARNOLD: Oh, okay.
4 JUDGE CAILLE: Okay. So 151 has been
5 offered. 162, that's PSE's Data Request Number 14.
6 MR. SHARFSTEIN: Your Honor, was 153
7 offered and entered?
8 JUDGE CAILLE: Yes, offered and admitted.
9 MS. GAGNON: Now, I'm sorry, you were
10 asking about which exhibit, Your Honor?
11 JUDGE CAILLE: 162.
12 MS. GAGNON: No, that has not been offered.
13 JUDGE CAILLE: And 163.
14 MS. GAGNON: No, that has not been offered.
15 JUDGE CAILLE: Okay.
16 MS. GAGNON: Oh, although -- no, I'm sorry,
17 Your Honor. Well, actually, we should probably take
18 the opportunity to put it in.
19 JUDGE CAILLE: Okay.
20 MS. GAGNON: Since the witness is still
21 here.
22 JUDGE CAILLE: That's 163 --
23 MS. GAGNON: Yes.
24 JUDGE CAILLE: -- that we're talking about?
25 Okay.

00193

1 MS. GAGNON: Yes, this is 163.

2 MS. ARNOLD: We have no objection to that.

3 JUDGE CAILLE: All right. Exhibit 163 is
4 admitted. Okay, thank you. You're excused, Mr.
5 Armstrong. Thank you for coming. Let's go off the
6 record.

7 (Recess taken.)

8 Whereupon,

9 TIMOTHY J. HOGAN,

10 having been first duly sworn, was called as a witness
11 herein and was examined and testified as follows:

12 JUDGE CAILLE: Before you introduce Mr.
13 Hogan, I'll just go ahead and read the exhibits into
14 the record as they've been marked. Exhibit T-81 is
15 the direct testimony of Mr. Hogan; Exhibit T-82 is
16 the supplemental testimony of Mr. Hogan; and Exhibit
17 83 is his exhibit TJH-1.

18 MR. VAN NOSTRAND: May I proceed, Your
19 Honor?

20 JUDGE CAILLE: Yes, go ahead.

21 D I R E C T E X A M I N A T I O N

22 BY MR. VAN NOSTRAND:

23 Q. Mr. Hogan, could you state your name and
24 spell it for the record, please?

25 A. Timothy J. Hogan. Last name is spelled

00194

1 H-o-g-a-n.

2 Q. And you're employed by Puget Sound Energy?

3 A. Yes, I am.

4 Q. And what is your current position with
5 Puget Sound Energy?

6 A. Vice President of System Operations.

7 Q. And prior to the merger, you were with
8 Washington Natural Gas Company?

9 A. Yes, I was.

10 Q. Do you have before you what's been marked
11 for identification as Exhibit T-81?

12 A. Yes, I do.

13 Q. Do you recognize that as your direct
14 testimony offered in this proceeding?

15 A. Yes.

16 Q. Do you have any additions or corrections to
17 make to that exhibit?

18 A. I have one correction. On page one, line
19 18, it indicates I became chief operating officer and
20 executive vice president of Washington Natural Gas in
21 1996. In fact, I became chief operating officer and
22 executive vice president of Washington Natural Gas in
23 August of 1985.

24 Q. Ninety-five?

25 A. Ninety-five, excuse me.

00195

1 Q. Thank you. Do you also have before you
2 what's been marked for identification as Exhibit
3 T-82?

4 A. Yes, I do.

5 Q. Do you recognize that as your prefiled
6 supplemental testimony filed in this case?

7 A. Yes.

8 Q. If I asked you the questions set forth in
9 T-81 and T-82 today, would your answers be the same
10 as set forth therein?

11 A. Yes.

12 Q. Do you also have before you what's been
13 marked for identification as Exhibit 83?

14 A. Yes, I do.

15 Q. And do you recognize that as your exhibit
16 accompanying your prefiled testimony?

17 A. Yes.

18 Q. Was that prepared under your direction or
19 supervision?

20 A. Yes.

21 Q. It's true and correct, to the best of your
22 knowledge?

23 A. Yes.

24 MR. VAN NOSTRAND: Your Honor, I'd move the
25 admission of Exhibits T-81, T-82 and 83.

00196

1 JUDGE CAILLE: Is there any objection?

2 MS. ARNOLD: No objection.

3 JUDGE CAILLE: Exhibits T-81, T-82 and 83
4 are admitted into evidence.

5 MR. VAN NOSTRAND: Mr. Hogan is available
6 for cross-examination.

7 JUDGE CAILLE: Ms. Arnold.

8 C R O S S - E X A M I N A T I O N

9 BY MS. ARNOLD:

10 Q. Good afternoon, Mr. Hogan.

11 A. Good afternoon.

12 Q. Mr. Hogan, when your deposition was taken,
13 you appeared on behalf of Puget Sound Energy as the
14 person most knowledgeable about Puget's decision to
15 extend the curtailment beyond December 25th, 1998.
16 Are you, in fact, that person?

17 A. Yes, I am the person who approved the
18 parameters under which the continuation of the
19 curtailment would occur, and so yes, I'd characterize
20 myself as fitting that criteria.

21 Q. Just to get calendar framework here, I
22 frankly tried to find a December '98 calendar to blow
23 up so we could use it for reference, and couldn't.
24 Will you accept, subject to check, that December 24th
25 was Thursday?

00197

1 A. Yes.

2 Q. Christmas was Friday?

3 A. Yes.

4 Q. Saturday was the 26th?

5 A. Yes.

6 Q. Sunday, the 27th?

7 A. Yes.

8 Q. Okay. And you were the person who decided
9 to extend the curtailment from December 25th forward;
10 is that right?

11 A. I am the officer who approved the
12 parameters under which the curtailment would
13 continue, yes.

14 Q. Now, the curtailment, I believe, began on
15 December 19th; is that correct?

16 A. Yes.

17 Q. It was called for five p.m. on December
18 19th?

19 A. That's my recollection, that it was called
20 for at five p.m. on the 19th.

21 Q. And am I correct that the decision to call
22 a curtailment was made on Friday, December 18th?

23 A. The scope of the curtailment called for on
24 Saturday was broader in scope than what was
25 anticipated on the preceding day.

00198

1 Q. On the 18th, were you talking about an
2 entitlement?

3 A. No.

4 Q. Talking curtailment?

5 A. We were talking about a curtailment on the
6 preceding day, Friday.

7 Q. But you weren't going to curtail Schedule
8 86; is that right?

9 A. The scope of the curtailment was not as
10 great, from a customer standpoint and geographically.

11 Q. You were going to curtail customers just
12 south of the ship canal; is that right?

13 A. Customers south of the ship canal were
14 covered in the anticipated curtailment, as we talked
15 about it on Friday.

16 Q. On Friday, the 18th?

17 A. Correct.

18 Q. And then, on the 19th, you decided to
19 curtail all interruptibles, right, except 86?

20 A. On Saturday, the 19th, we decided that it
21 would be necessary to curtail all customers, all
22 interruptible customers that day.

23 Q. Including Schedule 86?

24 A. Including Schedule 86.

25 Q. Now, isn't it true that the meters of

00199

1 Schedule 86 customers have to be read prior to a
2 curtailment?

3 A. It's not a requirement that the meters be
4 read. It's a practice so that we understand issues
5 around consumption through the curtailment period.

6 Q. And it's the company's practice to read the
7 Schedule 86 meters before the curtailment ends;
8 right?

9 A. Yes, it is.

10 Q. Now, isn't this so that you can find out
11 whether the Schedule 86 customers used gas during the
12 curtailment period or not?

13 A. That's the principal reason, yes.

14 Q. They don't have to have telemetry at their
15 facility, do they?

16 A. Rate Schedule 86 customers are not required
17 to have telemetry.

18 Q. Schedule 87 customers are required to have
19 telemetry, are they not?

20 A. Yes.

21 Q. And Schedule 57 customers are required to
22 have telemetry?

23 A. Yes.

24 Q. So the only customers whose meters need to
25 be read at the beginning and end of their curtailment

00200

1 are Schedule 86; is that right?

2 A. Well, telemetry allows you also to read
3 meters, so all those interruptible customers have
4 their meters read in advance and at the end of the
5 curtailment period.

6 Q. Is the difference, then, with the Schedule
7 86, that you actually have to send a meter reader out
8 to their premises to read the meter, whereas you
9 don't for the other interruptibles?

10 A. If we have telemetry available, then we are
11 not required to send a meter reader to physically
12 look at the meter.

13 Q. Right. Now, on the 18th and 19th, you
14 participated in several meetings to discuss whether
15 or not to call a curtailment; is that correct?

16 A. That's correct.

17 Q. And you attended those meetings, Gary
18 Swofford (phonetic) attended at least one of those
19 meetings, didn't he?

20 A. I believe he was present for both meetings,
21 either in person or by telephone.

22 Q. What's Mr. Swofford's title, or what was it
23 in December of '98?

24 A. I'm not sure I can get you the precise
25 title, but it was vice president of customer

00201

1 operations, or something to that effect.

2 Q. Is he an officer of the company?

3 A. Yes, he is.

4 Q. What was your title in December '98?

5 A. Vice president of system operations.

6 Q. And are you an officer of the company?

7 A. Yes, I am.

8 Q. And you were in December '98?

9 A. Yes, I was.

10 Q. Was Sue McLean at those meetings in
11 December 18th and 19th?

12 A. Yes, she was.

13 Q. What's her title?

14 A. Are you asking today or at that point in
15 time?

16 Q. At that point?

17 A. Again, I don't know that. I know -- I
18 don't recall her exact title. It had to do with vice
19 president of planning.

20 Q. Is she a vice -- was she a vice president
21 at that time?

22 A. Yes.

23 Q. Was she an officer of the company?

24 A. Yes.

25 Q. Mr. Verge Hoffkamp (phonetic) was at those

00202

1 meetings the 18th or 19th, was he not?

2 A. I don't believe he was.

3 Q. Okay. There were quite a few other people
4 involved in the meetings on December 18th and 19th,
5 weren't there?

6 A. There were a number of people involved,
7 yes.

8 Q. And what factors did you consider in
9 deciding to go call the curtailment on the 18th or
10 19th?

11 A. In evaluating the situation to determine
12 whether a curtailment is appropriate, a large number
13 of different variables enter into the decision-making
14 process, and we've identified, in our data response
15 to Request Number Four, those criteria that we
16 evaluate in order to determine the appropriateness of
17 a curtailment, and I can read those to you, if you'd
18 like.

19 Q. Sure.

20 A. The criteria include the estimated loads of
21 all customers, including adjustments for particular
22 day and time of day; supply and transportation
23 requirements of customers; actual and estimated
24 temperatures, both locally and regionally; weather
25 forecast, both local and regionally; recent and

00203

1 current weather conditions, including but not limited
2 to snow cover, cloud cover, wind and precipitation;
3 conditions of the distribution system; distribution
4 system limitations; requirements of all applicable
5 statutes, rules, regulations and tariffs; maintaining
6 service to firm sales customers; past experience with
7 the distribution system and customer use;
8 communications with customers; the ability to
9 communicate with customers; distribution system
10 models and safety requirements.

11 Q. Now, you're a lawyer; is that correct?

12 A. I am a lawyer by training, yes.

13 Q. And your training is in business and
14 finance; is that correct?

15 A. I have training by the job in both business
16 and financial matters, yes.

17 Q. You don't have training in engineering, do
18 you?

19 A. I'm not an engineer.

20 Q. And you're not a distribution system
21 technical person, are you?

22 A. What do you mean by technical?

23 Q. Well, I withdraw that. Take that question
24 back. You're not an engineer. I'd like you to tell
25 us what specific details you remember about the

00204

1 decision on December 18th to call the curtailment
2 with respect to the loads that the company was
3 expecting?

4 A. I'm sorry, I don't understand your
5 question.

6 Q. You said one of the criteria was the
7 estimated loads that you expected. That was one of
8 the criteria that you used to decide whether to call
9 a curtailment. What do you recall about the loads,
10 expected loads?

11 A. The weather, at that point in time, was
12 forecasted to be quite severe. And with that, I
13 don't recall the specific detail with respect to the
14 forecast of load, but that the loads we anticipated
15 would not allow us to maintain service to our firm
16 customers without a curtailment.

17 Q. Do you recall what the actual weather was
18 at the time that you made the decision to call the
19 curtailment?

20 A. What do you mean, the actual weather?

21 Q. Do you remember what the weather was? Was
22 it freezing or what?

23 A. What date are you talking about?

24 Q. On December 18th, when the decision to call
25 a curtailment was made?

00205

1 A. I don't recall what the specific
2 temperature was on that day.

3 Q. I'd like to refer you to Exhibit PAR-2. Do
4 you have exhibits for witnesses other than yourself?

5 A. I don't believe so.

6 Q. This is one of Mr. Riley's exhibits, and it
7 has been marked Exhibit 103. Do you see the top
8 column of numbers that says gas day forecasts?

9 A. I don't see any line that says gas day
10 forecast.

11 Q. Sorry. It says gas day low temperatures.
12 Do you see that chart?

13 A. Yes.

14 Q. Can you tell from that chart what the
15 24-hour forecast was on December 19th?

16 A. Would you please repeat the time?

17 Q. December 19th.

18 A. And the --

19 Q. Twenty-four hour forecast?

20 A. Twenty-four hours. This indicates a
21 forecast of 18 degrees.

22 Q. Can you tell us what the 48-hour forecast
23 was on December 19th?

24 A. Again, I have no independent knowledge of
25 this, but the document indicates 22 degrees.

00206

1 Q. And what was the 72-hour forecast on
2 December 19th?

3 A. Twenty-four degrees.

4 Q. And does it show you the actual temperature
5 on December 19th?

6 A. Yes, it does.

7 Q. What was the actual?

8 A. This reports it to be 18 degrees at
9 Sea-Tac.

10 Q. Would you agree that these forecasts and
11 actual temperatures confirm your recollection that
12 temperature and forecast was one of the factors you
13 considered in approving the curtailment on December
14 19th?

15 A. Insofar as the forecast was for very cold
16 weather, yes.

17 Q. Now, you said another factor in deciding
18 whether to call a curtailment was conditions on the
19 distribution system. Do you recall any specifics of
20 the information that was presented to you on December
21 19th of -- about the conditions on the distribution
22 system?

23 A. The information we had on December 19th was
24 that the weather conditions were more severe than
25 anticipated and were happening more quickly than had

00207

1 been anticipated. And our modeling information
2 indicated that the weather would create significant
3 -- would create significant problems for us if we did
4 not initiate a curtailment.

5 Q. Now, at page five of your direct testimony,
6 at lines 13 to 16, you say --

7 A. I'm sorry, would you repeat where you're --

8 Q. Uh-huh. Direct testimony, page five, lines
9 -- well, it's actually 14 through 16. You say, in a
10 situation where curtailment is part of a planned
11 response to a forecasted weather event, senior
12 management would be involved in reviewing any
13 operational plans and authorizing any curtailment
14 action. Do you see that?

15 A. Yes, I do.

16 Q. Now, do you consider yourself as part of
17 that senior management?

18 A. Yes, I do.

19 Q. And you were, in fact, involved in
20 authorizing the curtailment on December 19th, weren't
21 you?

22 A. Yes, I was.

23 Q. Now, in your direct testimony at page six,
24 line 19, you discuss the decision to continue the
25 curtailment after December 24th. Do you see that?

00208

1 A. Where are you referring to?

2 Q. Line 19?

3 A. Yes.

4 Q. You say, On December 24th, I was the
5 individual from senior management who was involved in
6 conference call meetings with Paul Riley and others
7 to determine whether the curtailment should be
8 continued after December 24th. Do you see that?

9 A. Yes, I do.

10 Q. That was a conference call meeting with Mr.
11 Riley on the 24th, wasn't it? It wasn't a
12 person-to-person meeting?

13 A. Correct.

14 Q. And that meeting took place in the morning,
15 didn't it?

16 A. I can't remember what time of day it took
17 place.

18 Q. Around noon?

19 A. Again, I can't remember what time it took
20 place.

21 Q. If you testified in your deposition it was
22 around noon, would that be correct?

23 A. If you'd point me to my deposition.

24 Q. I was afraid you were going to ask that.

25 Well, let's just leave that. I'll see if I can find

00209

1 it later. Do you remember who else was on that
2 conference call besides yourself and Paul Riley?

3 A. There were two conference calls that took
4 place on that day.

5 Q. Yes.

6 A. Which one are you referring to?

7 Q. The first one, Paul Riley, Linda Strand,
8 Elaine Caspar. Verge Hoffkamp was involved in at
9 least one of the phone calls, and I can't recall
10 whether it was the first one or the second one. And
11 there may have been other people involved in that
12 first phone call, but those are the people I remember
13 sitting here today.

14 Q. And was the decision reached in that first
15 phone call to continue the curtailment after December
16 24th?

17 A. The first phone call identified the
18 situation we were experiencing, and Mr. Riley gave me
19 his recommendation that the curtailment be continued.
20 I believe we had a number of other items we needed to
21 discuss, and that was the reason for the second call.
22 And so we were still addressing the issue during the
23 second conference call.

24 Q. And now, at page eight of your direct
25 testimony, from lines nine through 11, you said, We

00210

1 reviewed the forecast, the state of the distribution
2 system, estimated peak on Monday, and the parameters
3 under which curtailment would continue. Do you see
4 that?

5 A. Yes, I do.

6 Q. What do you mean by the parameters under
7 which the curtailment would continue?

8 A. The -- strike that, excuse me. What I
9 meant -- what I indicate there is that we identified
10 certain parameters under which, if actual conditions
11 fell within those parameters, then the curtailment
12 would continue.

13 Q. What parameters were you -- are you talking
14 about?

15 A. The need to maintain service to our firm
16 customers, and also conditions of the system.

17 Q. Well, in particular, what conditions of the
18 system did you consider to be parameters under which
19 the curtailment would continue?

20 A. Well, there were a number involved. Icing
21 conditions that we were experiencing on some of our
22 facilities, the weather forecast we were receiving,
23 the number of complaints registered by our customers.

24 Q. And those were the parameters that you
25 would --

00211

1 A. There may have been others. Those are some
2 of the parameters.

3 Q. And who did you say Linda Strand is?

4 A. Linda Strand works in our customer service
5 area.

6 Q. Now, on page nine, at line 19 or 20, you
7 mention her. And the question is, Did you discuss
8 the availability of meter readers to work on the
9 weekend of December 26th and 27th, during either of
10 your conference calls. And you say, The issue may
11 have been raised by Mrs. -- Ms. Strand.

12 Now, my question is was Ms. Strand raising
13 the question of whether there would be meter readers
14 available to read the Schedule 86 meters over the
15 holiday weekend?

16 A. I'm sorry, would you repeat the question?

17 Q. Was the issue that she raised whether there
18 would be meter readers to read the meters of the 86
19 customers, Schedule 86 customers?

20 A. I wouldn't characterize it that way. I'd
21 characterize it as being there to address the ability
22 to have meter readers working over the weekend.

23 Q. Now, this meeting took place on the 24th,
24 which was Thursday; right?

25 A. That's correct.

00212

1 Q. So the 25th would have been Christmas?

2 A. That's correct.

3 Q. Was that what Ms. Strand was asking about,
4 whether there'd be meter readers on Christmas?

5 A. Ms. Strand was not asking questions. She
6 had management responsibility for meter readers and
7 was there to address the ability to have meter
8 readers available. Since we concluded that the
9 curtailment needed to continue so long as the
10 parameters we experienced were actually met, there
11 was no need to call for a resumption of service to
12 those customers.

13 Q. Do you consider Linda Strand to be
14 management?

15 A. I believe her title is manager, so yes, she
16 is a level of management.

17 Q. Did Ms. Strand mention that it would be
18 nice for the meter readers to have the holiday with
19 their family?

20 A. I don't recall her phrasing it in that way,
21 nor do I recall that that was a substantive issue
22 with respect to the decision-making process we were
23 going through on the 24th. What we were trying to
24 decide on the 24th was the duration of curtailment
25 that would be appropriate.

00213

1 Q. Well, I understand that, but when she
2 raised this meter reader issue, did she mention that
3 the meter readers should be off for the holiday, to
4 be with their families?

5 A. The work involved in a utility requires the
6 employees perform services when the services are
7 needed. And in my experience of over 20 years with
8 the utility, if services are required of employees,
9 they're made available to perform those services, so
10 our customers can continue to be served.

11 Q. In any event, on the 24th, it was decided
12 to continue the curtailment; is that right?

13 A. We, on the 24th, established parameters
14 under which curtailment would continue, yes.

15 Q. And then, on the 24th, Christmas Eve, you
16 went home from work early; is that correct?

17 A. I don't recall what time I left the office
18 on the 24th.

19 Q. Were you in the office on the 25th?

20 A. No, I was not.

21 Q. And on the 25th, you had no conversations
22 with anyone about the curtailment; is that correct?

23 A. Not with any company personnel.

24 Q. And on the 26th, now, this would have been
25 a Saturday, you were at home and not at the office;

00214

1 is that correct?

2 A. I believe that's correct.

3 Q. And you had no conversations with anybody
4 on December 26th about the curtailment; is that
5 correct?

6 A. I believe that's correct.

7 Q. And on the 27th, this is Sunday, you were
8 at home and not at the office; is that correct?

9 A. Yes.

10 Q. And you had no conversations with anyone on
11 the 27th about the curtailment; is that correct?

12 A. That's correct.

13 Q. At page ten of your testimony, lines 21
14 through 25, you say that Mr. Riley, who was the day
15 system manager, gas, continued to monitor the
16 curtailment situation over December 24 to December
17 28. Do you consider Mr. Riley to be senior
18 management?

19 A. No, I do not.

20 MS. ARNOLD: Thank you. That's all my
21 questions.

22 JUDGE CAILLE: I'd like to ask just a
23 couple of questions, Mr. Hogan.

24 E X A M I N A T I O N

25 BY JUDGE CAILLE:

00215

1 Q. Just to follow-up on Counsel's questions
2 about the meter readers, do you know, were those
3 individuals working a normal schedule that weekend,
4 and by that, I mean, as opposed to people were not
5 on, for, like a holiday schedule? Were the same
6 number of people available for meter reading that
7 weekend and that -- I mean the 25th, 26th?

8 A. Let me try and answer that in a couple of
9 ways. There were meter readers who worked on the
10 26th, and I believe also on the 25th. What their
11 normal schedule is for working over weekends, I do
12 not know. Had there been a need to deploy meter
13 readers, we could have contacted the necessary meter
14 readers to perform the work that was necessary. And
15 that's, again, part of the job. When called upon,
16 one is expected to perform.

17 Q. Do you know when Puget did start reading
18 Schedule 86 customers?

19 A. I believe that occurred on Monday, December
20 28th.

21 Q. There are statements in some e-mails in
22 exhibits that we have -- were referred to earlier
23 today about the decision not to send out meter
24 readers over the Christmas weekend, since they had
25 worked overtime the weekend before. What can you

00216

1 tell me about these statements? They appear to be
2 made by PSE's staff.

3 A. I think the statements are clearly
4 incorrect and wrong and do not -- and are not
5 supported by our work experience, nor the
6 expectations of management concerning any of our
7 operational staff. Winter conditions often require
8 unusual and long hours of service to continue the
9 maintenance of service to our customers, and that is
10 priority number one. And in my experience, there's
11 never been any question about what is priority number
12 one with respect to sacrificing time over the
13 holidays or imposing on an individual's after-hour
14 time, that when the job requires it, you're there and
15 are performing.

16 Q. It appears that these communications were
17 with Staff here at the UTC. Then, is the Staff at
18 UTC being given incorrect information?

19 A. I'm not clear on the status of the
20 communication that contained that reference to the
21 Utilities and Transportation Commission. I'm
22 concerned that the information wasn't thoroughly
23 checked out prior to having an initial discussion
24 with Staff. And I don't know what the nature of that
25 discussion was intended to be, whether it was

00217

1 intended to be a final position or was some
2 preliminary information.

3 Q. All right. Was it Mr. Riley's
4 responsibility to contact you if he thought there
5 should be an end to -- or if the conditions had
6 changed and he thought that there should be an end to
7 the curtailment?

8 A. Absolutely. As in my position with
9 Washington Natural Gas Company, it was not uncommon
10 at all to contact me at any hour of the day to
11 address an operational situation. Mr. Riley was
12 involved in the operations under Washington Natural
13 Gas Company, and there's no question in my mind that
14 if Mr. Riley felt it was appropriate to contact me
15 over that holiday weekend, he would not have
16 hesitated to contact me.

17 JUDGE CAILLE: Okay. That concludes my
18 cross. Do you have any follow-up that you wanted to
19 ask from mine? Otherwise, I'll --

20 MS. ARNOLD: No.

21 JUDGE CAILLE: Any redirect?

22 MR. VAN NOSTRAND: Just a few questions,
23 Your Honor. Thank you.

24 R E D I R E C T E X A M I N A T I O N
25 BY MR. VAN NOSTRAND:

00218

1 Q. Mr. Hogan, you mentioned your availability
2 to Mr. Riley over this holiday period, and Ms.
3 Arnold focused on the lack of conversations on the
4 25th, 26th and 27th. Is it your testimony that you
5 were available for communication with Mr. Riley over
6 this period within those parameters that you
7 described earlier?

8 A. Yes.

9 Q. And that would explain why there were no
10 communications on the 25th, 26th, and 27th between
11 you and Mr. Riley?

12 A. Yes, the conditions we were actually
13 experiencing were consistent with the range of
14 conditions we anticipated experiencing, and
15 therefore, the decision with respect to the
16 resumption of service did not need to be revisited.

17 Q. Back to the meter readers for just a
18 second. Was the decision by PSE management to extend
19 the curtailment beyond the 24th related to the
20 availability of meter readers?

21 A. No.

22 Q. Do you have any explanation at all for how
23 the statements described by Judge Caille in the
24 e-mails, how those statements would come to be in
25 those e-mails?

00219

1 A. Again, the only thing I can come up with on
2 that front is that it was an effort to provide some
3 preliminary information that had not been fully
4 checked out, and possibly by someone who wasn't
5 experienced in the issues surrounding curtailment
6 situations.

7 Q. Was Molly Bork a party to any of your
8 meetings on 18th, 19th, or your conference calls on
9 the 24th?

10 A. No, she was not.

11 MR. VAN NOSTRAND: If I may approach the
12 witness, Your Honor?

13 JUDGE CAILLE: You may.

14 Q. I've handed the witness a copy of exhibit
15 -- what's been marked for identification as Exhibit
16 133. Mr. Hogan, do you recognize that as the
17 response to Data Request Number Four, to which you
18 referred earlier?

19 A. Yes, I do.

20 MR. VAN NOSTRAND: Your Honor, I'd move the
21 admission of Exhibit 133.

22 JUDGE CAILLE: Is there any objection?

23 MS. ARNOLD: I'm sorry, I don't -- what's
24 133?

25 MR. VAN NOSTRAND: It was pre-marked this

00220

1 morning.

2 MS. ARNOLD: Oh, no, I have no objection.

3 Sorry.

4 JUDGE CAILLE: All right. Then Exhibit 133
5 is admitted.

6 MR. VAN NOSTRAND: I have no further
7 questions, Your Honor.

8 JUDGE CAILLE: All right. Anything
9 further, Ms. Arnold?

10 MS. ARNOLD: Just one question.

11 R E C R O S S - E X A M I N A T I O N

12 BY MS. ARNOLD:

13 Q. When you said the conditions we were
14 actually experiencing were consistent with the
15 parameters, you were relying on Mr. Riley or somebody
16 else to tell you that, were you not? You don't have
17 the engineering expertise to know if the parameters
18 were consistent or not, do you?

19 A. Mr. Riley was the person who was monitoring
20 the condition of the system, the pressures, the
21 temperature forecast, those details, yes.

22 MS. ARNOLD: Thank you.

23 JUDGE CAILLE: Anything further? All
24 right. Then the witness is excused. Thank you.

25 THE WITNESS: Thank you.

00221

1 JUDGE CAILLE: Okay. We will begin
2 tomorrow morning at nine o'clock. Thank you all for
3 doing such a good job today, and we'll see you
4 tomorrow. We're off the record.

5 (Proceedings adjourned at 4:57 p.m.)

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