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EXHIBIT NO.

MARKED

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ADMITTED

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

2 JUDGE WALLIS: This hearing will please come  
3 to order. This is a hearing in the matter of  
4 Commission Docket No. UG-041515. It is a hearing  
5 convened to hear the presentation of a proposed  
6 settlement agreement at Olympia, Washington, on October  
7 22, the year 2004, before the commissioners, Chairwoman  
8 Marilyn Showalter, Commissioners Richard Hemstad and  
9 Patrick Oshie, and myself, Administrative Law Judge C.  
10 Robert Wallis.

11 The order of the proceeding today will begin  
12 with the taking of appearances, and we will ask counsel  
13 to introduce yourselves and state the party that you  
14 are representing. If there is any change in the  
15 information previously stated of record at the  
16 prehearing conferences, please state that. Otherwise,  
17 you need not repeat it. Can we begin with the Company,  
18 please?

19 MR. MEYER: Appearing for Avista, David  
20 Meyer, and I will just give you the short form of the  
21 introduction.

22 MR. FINKLEA: Ed Finklea from the law firm  
23 Cable Huston appearing on behalf of the Northwest  
24 Industrial Gas Users.

25 MR. EBERDT: Charles Eberdt for The Energy

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1 Project.

2 MR. CROMWELL: Robert Cromwell on behalf of  
3 Public Counsel.

4 MR. TRAUTMAN: Gregory J. Trautman, assistant  
5 attorney general for Commission staff.

6 JUDGE WALLIS: Thank you very much. The  
7 parties have presented three documents to be received  
8 in evidence today. They are the statements for Avista  
9 of Kelly Norwood; for Commission staff of Ken Elgin,  
10 and for the Industrial Gas Users of Paula Pyron. I am  
11 marking those as Exhibit Nos. 1, 2, and 3 respectfully.

12 MR. MEYER: Your Honor, consistent with past  
13 practice, perhaps it would make sense to also mark  
14 copies of the settlement agreement, and I have extra  
15 copies and I could distribute those at this time.

16 JUDGE WALLIS: Very well. I'm marking the  
17 proposed settlement agreement as Exhibit 4 for  
18 identification, and included in that, did you intend  
19 that the proposed tariff pages be marked as well within  
20 that document?

21 MR. MEYER: No. They are noted as  
22 Attachment C, and I think that should suffice. I have  
23 extra copies if anyone should need them, but I suspect  
24 not. I offer the admission of Exhibit 4.

25 JUDGE WALLIS: Any objection? Very well.

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1 Exhibit 4 is admitted. At this time, let me inquire  
2 whether the parties contemplate that the witnesses  
3 would be presented as a panel.

4 MR. MEYER: Yes, that's our intended  
5 approach.

6 JUDGE WALLIS: Would the witnesses step  
7 forward to the witness stand, please?

8 COMMISSIONER OSHIE: Judge Wallis, if I could  
9 have a moment before we get started, I just want to  
10 make a disclosure to the parties, and if there is an  
11 objection to address that, but as part of this  
12 settlement, there is an identification of a certain  
13 cost to the company to the Gas Technology Institute,  
14 and through NARUC, I am a member of the Public Interest  
15 Advisory Committee of the GTI, or the Gas Technology  
16 Institute.

17 PIAC, as it's referred to, is not involved  
18 with the management of the company. We do not make  
19 management decisions. We do not get involved in the  
20 financing of the company, but we do serve as a sounding  
21 board for primarily, at least in this instance and my  
22 association with it, for responding to its particular  
23 interest in new technologies that are brought to the  
24 market, and I guess you could say the regulators' view  
25 of the gas market generally and the impact of new

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1 technologies and perhaps new procedures or methods by  
2 which they would be implemented.

3 So I just want to make sure the parties  
4 understood that going forward, and if there are any  
5 objections of the parties of me hearing this matter  
6 because of my affiliations with the PIAC of the GTI,  
7 you have the opportunity now to state such.

8 JUDGE WALLIS: Let me ask if there are any  
9 objections.

10 MR. MEYER: We have no objection.

11 MR. FINKLEA: No objection.

12 MR. EBERDT: No objection.

13 MR. CROMWELL: No objection.

14 MR. TRAUTMAN: No objection.

15 JUDGE WALLIS: Thank you, Commissioner Oshie.  
16 Would the witnesses please come forward to the witness  
17 stand?

18 (Witnesses sworn.)

19 JUDGE WALLIS: Let's proceed in order to  
20 identify and qualify the witnesses and deal with their  
21 statements, the documents marked for identification as  
22 Exhibits 1, 2, and 3.

23 MR. MEYER: Thank you, Your Honor. I'll  
24 start. For the Company, Mr. Norwood, would you please  
25 state your name and your employer?

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1           MR. NORWOOD: Kelly Norwood. I'm the vice  
2 president of state and federal regulations for Avista  
3 Utilities.

4           MR. MEYER: Have you prepared what has been  
5 marked for identification as Exhibit 1 consisting of  
6 your testimony?

7           MR. NORWOOD: Yes, I have.

8           MR. MEYER: Do you have any changes or  
9 corrections to make to that?

10          MR. NORWOOD: No.

11          MR. MEYER: So if I were to ask you the  
12 questions that appear in that prefiled testimony, would  
13 your answers be the same?

14          MR. NORWOOD: Yes, they would.

15          MR. MEYER: With that, I move for the  
16 admission of Exhibit No. 1.

17          JUDGE WALLIS: Is there objection? Let the  
18 record show there is no objection and Exhibit 1 is  
19 received. Staff?

20          MR. TRAUTMAN: Good afternoon, Mr. Elgin.

21          MR. ELGIN: Good afternoon.

22          MR. TRAUTMAN: Could you please state your  
23 name for the record?

24          MR. ELGIN: Kenneth L. Elgin, E-l-g-i-n.

25          MR. TRAUTMAN: What is your position with the



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1 Utilities Commission?

2 MR. ELGIN: I'm employed by the Commission's  
3 regulatory services division as its case strategist.

4 MR. TRAUTMAN: Have you prepared what's been  
5 marked for the record as Exhibit 2?

6 MR. ELGIN: Yes, I have.

7 MR. TRAUTMAN: Does that consist of your  
8 testimony together with two accompanying exhibits, also  
9 marked KLE-2 and KLE-3?

10 MR. ELGIN: Yes.

11 MR. TRAUTMAN: Were these all prepared by you  
12 or under your supervision?

13 MR. ELGIN: Yes.

14 MR. TRAUTMAN: Are they true and correct to  
15 the best of your knowledge?

16 MR. ELGIN: Yes.

17 MR. TRAUTMAN: Are there any changes you  
18 would make to those exhibits?

19 MR. ELGIN: No.

20 MR. TRAUTMAN: I would move for the admission  
21 of Exhibit 2.

22 JUDGE WALLIS: Is there objection? Let the  
23 record show there is no objection, and Exhibit 2 is  
24 received.

25 MR. FINKLEA: Good afternoon. I'm Ed Finklea

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1 for the Industrial Gas Users. Ms. Pyron, are you  
2 testifying in this proceeding today and have you  
3 prefiled what's been marked for identification as  
4 Exhibit 3?

5 MS. PYRON: Yes, and it's Paula E. Pyron,  
6 P-y-r-o-n.

7 MR. FINKLEA: Your position is...

8 MS. PYRON: I'm the executive director of the  
9 Northwest Industrial Gas Users.

10 MR. FINKLEA: What's been marked as Exhibit  
11 3, which consists of what was premarked as PEP-1-T and  
12 then an attachment as PEP-2, was that testimony that  
13 was prepared by you or under your supervision?

14 MS. PYRON: Yes, it is.

15 MR. FINKLEA: Are there any corrections or  
16 additions to the testimony?

17 MS. PYRON: No, there are none.

18 MR. FINKLEA: If I asked you all the same  
19 questions today, would your answers be the same?

20 MS. PYRON: Yes.

21 MR. FINKLEA: I would move for the admission  
22 of Exhibit 3.

23 JUDGE WALLIS: Are there any objections? Let  
24 the record show there is none, and Exhibit 3 is  
25 received.

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1           As a preliminary matter, I would like to  
2 confirm that the Energy Project and Public Counsel  
3 remain opposed to the immediate implementation and to a  
4 temporary implementation of the rates pending  
5 resolution of the proceeding.

6           MR. CROMWELL: That is correct.

7           MR. EBERDT: Correct.

8           JUDGE WALLIS: So the witnesses are available  
9 for examination. There is no further direct; is that  
10 correct?

11           MR. MEYER: Your Honor, no further direct.  
12 Although, if the Commission would find a few  
13 introductory comments by Mr. Norwood in support of the  
14 settlement to be helpful, we could provide those at  
15 this time.

16           CHAIRWOMAN SHOWALTER: I think we would.

17           MR. NORWOOD: Thank you. I'm sure you've  
18 probably had an opportunity to read the settlement  
19 agreement and the testimony that's been offered, so  
20 what I would like to do is drill down one more level  
21 and give you a little more background for the case  
22 before you and the settlement agreement itself. So I  
23 would like to turn to Attachment A of the settlement  
24 agreement, which basically provides the high-level  
25 numbers that are before you today.

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1           On Attachment A, you can see there are quite  
2 a few numbers here, and I'm not going to go through  
3 them in any detail, but I would like to give you a feel  
4 for what's being represented here. If you notice at  
5 the top, it says 12 months ended December of 2003. The  
6 column that's labeled "B" represents the results of  
7 operations for the Company during that 12-month period,  
8 so those are the actual results for the period. The  
9 NOI is net operating income for that actual period.  
10 Rate base is the monthly average rate base for that  
11 period.

12           Then as you look down the page, you can see a  
13 number of adjustments, and these adjustments, for the  
14 most part, are adjustments that have been previously  
15 presented to the Commission and ruled on by the  
16 Commission in terms of what you would do to your actual  
17 results of operations to normalize them for decisions  
18 made by the Commission in prior orders as well as to  
19 normalize them for abnormal conditions, like warmer  
20 weather or colder weather and so on, one-time events,  
21 that you would normally take out to determine the need  
22 for rate relief on a normalized basis.

23           As you can see, the Adjustments B through G  
24 on the rate base side, the reduced rate base by the  
25 deferred federal income tax, that's a situation where

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1 we pay less taxes than what's collected from customers,  
2 so we reduce the rate base and give customers the  
3 benefit of the use of the money the Company has, and  
4 that's based on prior orders of the Commission. So in  
5 normalizing the rate base, we've reduced it from 147  
6 down to 131 million, and that's based on the typical  
7 normalizing adjustments.

8           On the revenue side, which is the NOI column,  
9 the line that's labeled "H" is revenue normalization  
10 and gas cost adjustments. What that does is it  
11 increases net operating income at one million 273,  
12 which had the effect of actually reducing our revenue  
13 requirement, and the reason that adjustment is made is  
14 weather was warmer than normal during 2003. By  
15 normalizing to normal weather, we would receive more  
16 revenue, and so that would reduce our revenue  
17 requirement.

18           There is a number of other adjustments here  
19 that you can see and that I won't go through, but you  
20 end up with a restated total of eight million 105 as  
21 the normalized net operating income. There is a couple  
22 of adjustments here that I should probably note. Item  
23 "Q" is labeled WUTC staff audit adjustments where Staff  
24 came over to the Company and went through our books to  
25 take a look at the expenses during the review period,

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1 and they made a number of adjustments there. One  
2 example was advertising where they excluded those  
3 dollar amounts from the normalized amount, and Item "V"  
4 is another one, depreciation and correcting adjustment,  
5 where we had an entry in 2003 that was in error. The  
6 Company had included that as a pro forma adjustment,  
7 but Staff felt it should be a normalizing adjustment  
8 since it's a one-time thing, so that was also moved up  
9 into a normalizing adjustment.

10           What you don't see on here are any pro forma  
11 adjustments, where normally in a case when you look at  
12 a test period in this case, it's a historical test  
13 period of 2003. We know that labor dollars have  
14 changed since 2003. We know what the increases were  
15 for 2004. Normally, you would pro form those in and  
16 put them in the case, which we did in our original  
17 filing. Insurance cost is another one where we have  
18 new insurance policies and premiums. Those were  
19 included in our original filing, but for settlement  
20 purposes, the signing parties have agreed to eliminate  
21 all of the pro forma adjustments.

22           So as you get down to the bottom of section  
23 --

24           COMMISSIONER HEMSTAD: If I could break in,  
25 would you spend a little more time with these other

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1 adjustments on the revenue side, like Items "N," "O,"  
2 and "R," and "T"?

3 MR. NORWOOD: Yes. "N" is the federal income  
4 tax adjustment, and as you go through and normalize  
5 your revenue, for example, from the actual to what  
6 would occur under normal weather, you are going to have  
7 a different level of revenue, so your income taxes will  
8 be different so that normalizes that.

9 "O" is restate debt interest. In this case,  
10 the Company has agreed to a certain rate of return. In  
11 that rate of return is imbedded some interest costs.  
12 Those interests costs are deductible for tax purposes,  
13 and so what we are doing here is adjusting the tax  
14 benefit, in essence, to a different level of interest  
15 deduction, and again, that's an adjustment that you  
16 always see, the normalizing adjustment. This  
17 particular restate debt interest is based on the rate  
18 of return that the parties have agreed to.

19 Eliminating accounts receivable, in a prior  
20 Commission order, the Commission ordered that the fee  
21 that we pay when we sell our accounts receivable to  
22 clients and companies is a method of borrowing. A  
23 prior Commission order ruled those costs should be  
24 eliminated from the cost, so this is consistent with  
25 that. You see a positive number there, \$81,000. A

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1 positive number adds back to our net operating income,  
2 which reduces our revenue requirement.

3           Item "T," restate excise or franchise taxes.  
4 The City of Spokane has a franchise fee, and in the  
5 past, that has been included in our costs collected  
6 from all customers, but that fee goes away in September  
7 of this year, so last month, that franchise fee went  
8 away, so we want to exclude then those expenses, so  
9 that also reduces our revenue requirement in this case.

10           COMMISSIONER HEMSTAD: Thank you.

11           MR. NORWOOD: To finish this up then, you can  
12 see at the bottom, pro forma rate base. Pro forma  
13 shouldn't be there. It's really only the restated  
14 numbers. It's 131 million dollars. The rate of return  
15 that the signing parties have agreed to is 8.68  
16 percent. As you read in the testimony, the Company had  
17 proposed 9.86 percent. So the Company has agreed to a  
18 rate of return much lower than what we had originally  
19 filed, and that is for settlement purposes.

20           The net operating income would be 11 million  
21 450 is what the Company would require for that rate of  
22 return of 8.68. The adjusted net operating income that  
23 we looked at before in that first column is 8 million  
24 105, so the revenue deficiency is 3.3 million. If you  
25 gross it up by the convergent factor for income taxes



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1 and other miscellaneous revenue items, you end up with  
2 the revenue requirement that's before you today in the  
3 settlement agreement. Current business revenues are  
4 139 million, which would result in a revenue increase  
5 of 3.87 percent in this case.

6           The reason I go through this is to point out  
7 what we filed was a pretty straightforward case, and I  
8 believe that's why the other parties to the case,  
9 meaning Staff and NWIGU and Avista, were able to come  
10 to a settlement agreement relatively early in the case  
11 because of how straightforward the case was. In terms  
12 of getting to a settlement relatively quickly, the  
13 Company agreed to give up some things, like pro forma  
14 adjustment and the higher rate of return, because the  
15 relatively low rate of return in order to implement  
16 rates sooner.

17           As I mentioned, Staff has conducted their  
18 audit to review these numbers, so I think that's the  
19 essence of the case before you is a relatively simple  
20 case where there were some concessions made to get to a  
21 result, and in our view as we look forward then, I  
22 believe the signing parties, and I'll not speak for  
23 Ms. Pyron or Mr. Elgin, but in terms of further process  
24 here, we don't believe that it's administratively  
25 efficient to spend a lot of time processing the case to

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1 get to a result which we don't think will be too  
2 dissimilar from the numbers we've presented to you.  
3 I'll stop there.

4 JUDGE WALLIS: Do the other witnesses wish to  
5 add to Mr. Norwood's statements?

6 MR. ELGIN: No, Your Honor.

7 MS. PYRON: No, Your Honor.

8 JUDGE WALLIS: Are there questions from the  
9 nonsettling parties? Mr. Cromwell, would you like to  
10 go first?

11 MR. CROMWELL: Your Honor, Public Counsel has  
12 no questions for the panel as it has not had a  
13 sufficient opportunity to develop the case in this  
14 proceeding.

15 JUDGE WALLIS: Mr. Eberdt?

16 MR. EBERDT: I have no questions for the  
17 panel, Your Honor.

18 JUDGE WALLIS: For the commissioners, do you  
19 have questions?

20 CHAIRWOMAN SHOWALTER: Well, I have a  
21 question pertinent to the motion that you have brought,  
22 and so I think my questions for you are as fact and  
23 policy witnesses, not as lawyers, so some of this may  
24 flop over to a later stage, but we have in front of us  
25 a partial settlement in the sense that it's a subset of

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1 the parties. It's contested by two parties. Those  
2 parties are requesting more time to litigate the  
3 contested aspect of the case.

4           You've brought a motion that should we agree  
5 to that delay, or delay may not be the right word, but  
6 agree to some extension of time to conduct that case  
7 that you recommend jointly, I believe, that we approve  
8 the rates pursuant to the settlement subject to refund.  
9 I take it you are familiar with the case that we've  
10 just issued in Verizon, and my factual question is  
11 this: I read in Mr. Norwood's testimony at Page 11  
12 that actual rates of return for Avista's Washington  
13 natural gas business continued to be well below what  
14 would be considered to be a reasonable rate of return,  
15 but I don't find anywhere in here that absent relief,  
16 the Company is in extreme circumstances or emergency  
17 circumstances of the type that was discussed in the  
18 Verizon case; is that correct?

19           MR. NORWOOD: I think the circumstances here  
20 are much different than in the Verizon case. It's my  
21 understanding in that case, that company unilaterally  
22 requested interim relief, is my understanding. In this  
23 particular case, the Company filed a case, a request  
24 for an increase, and what we have is a partial  
25 settlement agreement among the parties to present to

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1 you not a unilateral request by the Company, so in that  
2 sense, I think it's very different.

3           You have parties who have recognized that the  
4 case is relatively straightforward. There have been  
5 some concessions made in terms of return of equity,  
6 rate of return, as well as no pro forma adjustments in  
7 a case where I think the circumstances are much  
8 different than in the other case. So I don't think  
9 it's a one-to-one comparison with this case and the  
10 other.

11           CHAIRWOMAN SHOWALTER: This is where this  
12 issue may slop over to the lawyers, because my next  
13 question would be what standard should this commission  
14 be using, but my first question was a factual one.  
15 That is, should this commission decide that the  
16 standard of review is no interim relief or no temporary  
17 relief unless the Company is in some kind of extreme  
18 financial straits, do you agree that is not the facts  
19 in front of us?

20           MR. NORWOOD: I believe that is not the facts  
21 in front of us today.

22           CHAIRWOMAN SHOWALTER: I would like to ask  
23 Mr. Elgin the same question.

24           MR. ELGIN: Those are not the facts in front  
25 of us today. The cases, are, in my mind, on opposite

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1 ends of the spectrum. The issue of emergency and  
2 interim rate relief is not before you. The issue  
3 before you is fair, just, and reasonable rates.

4 CHAIRWOMAN SHOWALTER: I'll ask you then as a  
5 policy witness, are you suggesting that we in this case  
6 should be applying a different standard for granting  
7 short-term rate subject to refund that a different  
8 standard applies in this case as then applied in  
9 Verizon's case?

10 MR. ELGIN: No, ma'am. What I'm suggesting  
11 is that -- if I could have you turn to my testimony on  
12 Page 4.

13 JUDGE WALLIS: Mr. Elgin, could you move that  
14 microphone just a little closer, please?

15 MR. ELGIN: Is that better? What the  
16 standard that we are suggesting is similar to the  
17 standards that the Commission does on a regular basis,  
18 and that is make a finding that there is a revenue  
19 deficiency and how much that revenue deficiency is to  
20 provide adequate compensation for the Company to  
21 deliver natural gas service in the State of Washington,  
22 and the analogy that I've seen in many occasions is in  
23 water company cases.

24 The water company will make a filing, and  
25 within the 30 days of the normal statutory notice

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1 period, Staff will do some type of analysis, and  
2 sometimes, it will make a recommendation within that  
3 30-day period to allow the company to file rates at  
4 revised levels. Sometimes the staff says, "Well, we  
5 haven't had quite enough time to get the audit done,"  
6 so the Commission will suspend the operation of the  
7 tariff. The Commission does not issue a notice of  
8 hearing and one or two open meetings later has come  
9 back and completed its audit and makes a recommendation  
10 to the Commission to approve rates at a certain level,  
11 and I think that's what we have here. We have a  
12 very -- I would use the euphemism "clean case."

13 I've looked at the Company's historical book  
14 returns. I've looked at the their evidence in their  
15 case, and we've basically stripped down the case to  
16 restating adjustments, as Mr. Norwood described  
17 earlier. We applied a fair rate of return and are  
18 recommending rates under the traditional findings that  
19 you make under 80.28 that these rates are fair, just,  
20 and reasonable today. That's the structure of the  
21 settlement today. It has nothing to do with interim  
22 rate relief or any of those standards.

23 CHAIRWOMAN SHOWALTER: I understand the  
24 proposed settlement. You would have the Commission  
25 resolve the case with permanent rates that are fair,

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1 just, and reasonable. However, there are two parties  
2 that are contesting that. So the question is, what  
3 kind of time do they need to conduct their litigation  
4 of the case, and I'm saying, if we determine that that  
5 length of time goes past November 1st, I want to focus  
6 on the question of interim relief. My understanding is  
7 that you have recommended, let's call it short-term  
8 relief, but this is a general rate case, is it not?

9 MR. ELGIN: Right.

10 CHAIRWOMAN SHOWALTER: So what is being  
11 proposed is rates pending the outcome of the final  
12 litigation subject to refund.

13 MR. ELGIN: Right.

14 CHAIRWOMAN SHOWALTER: So my question is what  
15 standard should this commission be applying when  
16 deciding whether to grant the motion or not?

17 MR. ELGIN: I'm saying it's the same  
18 standard. Under my reading of the case law and what  
19 gave rise to the Commission's authority to grant  
20 interim relief is the Puget Sound Navigation case  
21 where the court said the power to suspend is also the  
22 power to grant any kind of rate on a temporary basis  
23 subject to refund. It's a discretionary item on the  
24 part of the Commission.

25 So if that's the route you chose to go, my

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1 reading, and again, the attorneys can respond to that,  
2 but your power to suspend also gives rights to an  
3 implied power to put in rates subject to additional  
4 process or whatever that you would feel is reasonable  
5 to accommodate the interests of Public Counsel and the  
6 Opportunity Council. I think that would be the way I  
7 would view it.

8 CHAIRWOMAN SHOWALTER: So is the difference  
9 between this case and Verizon that Staff is concurring  
10 in the interim rate?

11 MR. ELGIN: No, ma'am. In this case, Staff  
12 is concurring in a rate that we think meets the test of  
13 fair, just, and reasonableness. We think as a matter  
14 of discretion because you have proposed tariffs under  
15 suspension, you could put those rates into effect  
16 subject to refund pending whatever process in the  
17 future you would contemplate in terms of providing  
18 Public Counsel and its opportunity to put on a case and  
19 however you would want to decide that case on the  
20 merits.

21 CHAIRWOMAN SHOWALTER: We'll ask the lawyers  
22 later, but would any of the other panelists like to  
23 address that question?

24 MR. NORWOOD: I would like to take one more  
25 shot at it. The discussion about interim rates and



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1 subject to refund, in my view, and again, I'm not the  
2 attorney, but putting rates into effect and having some  
3 kind of process after that subject-to-refund context, I  
4 don't think implies or automatically leads to interim  
5 rate relief or the financial exigencies there.

6 In the 23 years I've been involved in this,  
7 my understanding is there is flexibility on the part of  
8 the Commission to make the choices to put rates into  
9 place that are fair, just, and reasonable, and if there  
10 is a desire to have more process, there is an  
11 opportunity to do both, to put the rates in place and  
12 also to provide more process.

13 CHAIRWOMAN SHOWALTER: Do you think this  
14 would be considered to be interim relief?

15 MR. NORWOOD: No.

16 CHAIRWOMAN SHOWALTER: Why not?

17 MR. NORWOOD: Not in the context of the  
18 financial exigent issue. It's an issue of where you  
19 have parties who have looked at the case and have  
20 decided that there is a need for rate relief and that  
21 the timing is appropriate to put rates into place now.

22 CHAIRWOMAN SHOWALTER: What I'm getting at is  
23 in each, there is a general rate case. In each, under  
24 the assumption of my question, there is litigation that  
25 would produce a final outcome at this some point. In

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1 each, the Company is asking for a temporary rate  
2 subject to refund. Now, the difference is, here, two  
3 parties have joined the Company, but two have not, and  
4 I'm having trouble seeing why that is a distinction  
5 that makes a difference, and that's really what I'm  
6 asking.

7 MR. NORWOOD: And I think the circumstances  
8 here have led two other parties to join and say it's  
9 appropriate to implement rates now.

10 MS. PYRON: If I may speak from the Northwest  
11 Industrial Gas Users' perspective that the date  
12 November 1st was part of the negotiated process in the  
13 overall compromise of the settlement that's presented  
14 to you. So while NWIGU wasn't one of the moving  
15 parties, it is not opposing the settlement rates in the  
16 event that you find that we think the Commission has  
17 the discretion to do so because it was an integrated  
18 part of the settlement, and from an overall policy  
19 perspective, we think that the Commission always has  
20 that discretion, but this is not the same thing. It's  
21 determination of the merits. I agree with Mr. Norwood  
22 in that it's not the same as the financial dire  
23 circumstances test applicable to interim rates, and the  
24 subject-to-refund condition is absolutely necessary for  
25 our nonopposition.

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1           CHAIRWOMAN SHOWALTER: So in your view, if  
2 there is a partial settlement, meaning some parties  
3 agree, some don't, this commission can use a different  
4 test for rates pending final outcome of the general  
5 rate case, then it can, if there is only one party, the  
6 Company, asking for that relief on the same terms.

7           MS. PYRON: It's dependent upon the  
8 circumstances as to each case, and in this case on this  
9 record, no pro forma adjustments, the negotiations, the  
10 merits of what is in front of you that you would be  
11 placing, if, in fact, you put the settlement rates in  
12 place in order to allow additional time for process,  
13 it's distinct, discretionary ability of the Commission  
14 to do so. Not the same as interim rates, and  
15 obviously, there will be legal arguments.

16           CHAIRWOMAN SHOWALTER: Thank you.

17           COMMISSIONER HEMSTAD: I have no questions of  
18 the panel. I have questions of the attorneys.

19           COMMISSIONER OSHIE: I have a couple of  
20 questions, and I'll refer to Page 3 of the settlement  
21 agreement, what's been marked Paragraph 9. This really  
22 is a question to the panel, of course, but I think  
23 Ms. Pyron and Mr. Elgin are more focused on this. Does  
24 the settlement agreement as it spreads equally the  
25 increase among all classes, does it exacerbate any

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1 existing conditions, any disproportionality between the  
2 classes that now exists?

3 MR. ELGIN: No, sir, it does not. The intent  
4 of this is to move the classes more towards parity with  
5 respect to class cost of service.

6 COMMISSIONER OSHIE: And Ms. Pyron, that's  
7 your understanding and your agreement to that as well?

8 MS. PYRON: Yes. Each party may approach a  
9 cost-of-service analysis differently, but in this case,  
10 we would agree that the result is one of all classes  
11 being within a reasonable range, and that's why that  
12 provision in the settlement agreement has been  
13 acceptable to us.

14 COMMISSIONER OSHIE: Thank you.

15 COMMISSIONER HEMSTAD: I do have a question  
16 of Public Counsel as a factual matter here. Did you,  
17 in your representative capacity, participate in the  
18 settlement discussions?

19 MR. CROMWELL: One moment. What I can tell  
20 you is that Matthew Steuerwalt, a policy analyst in  
21 Public Counsel, participated in the settlement  
22 conference scheduled by Judge Wallis at 9:30 a.m. on  
23 October 5th.

24 COMMISSIONER HEMSTAD: But did you not  
25 participate in the negotiation of the settlement that

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1 is in front of us or Mr. Steuerwalt.

2 MR. CROMWELL: I guess my caution is one more  
3 relating to the evidentiary prohibitions regarding  
4 confidentiality of settlement discussions, but what I  
5 can tell you is that Commission staff kept our office  
6 informed that there were discussions taking place early  
7 on in this case and that Mr. Steuerwalt represented  
8 Public Counsel at the formal discussion that occurred  
9 in October.

10 I would have to consult with Mr. Steuerwalt  
11 if he had any substantive negotiation of specific  
12 comments that are reflected in this document that is  
13 before you, and it's not my knowledge that he did.

14 COMMISSIONER HEMSTAD: I'm not asking as to  
15 whether you or he agreed to with any parts of the  
16 settlement. I'm simply asking if there is  
17 participation in those discussions.

18 MR. CROMWELL: It's my understanding there  
19 were discussions on October 5th, which Mr. Steuerwalt,  
20 I presume, would have participated in.

21 COMMISSIONER HEMSTAD: Thank you.

22 COMMISSIONER OSHIE: I have one more question  
23 just to follow up on that Paragraph 9 for the panel.  
24 In there, there is an agreement to increase the basic  
25 charge from \$5.00 to \$5.50 for the customers in the

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1 residential and small commercial classes, and there was  
2 an explanation in Mr. Elgin's testimony with regard to  
3 that, and I will quote from it: "Moving the customer  
4 charge to \$5.50" -- this is at Page 15, Lines 7 through  
5 10 -- "Moving the customer charge to \$5.50 is  
6 consistent with the margin increase for the class, and  
7 it would be the same as Puget Sound Energy's current  
8 customer charge."

9 Can you explain that, Mr. Elgin, or frankly,  
10 any members of the panel, the justification for the  
11 increase and the basic charge, and why is it important  
12 that it be similar to Puget Sound Energy's customer  
13 charge?

14 MR. ELGIN: Quickly, that's not important.  
15 The reference in this testimony is to say that it's  
16 similar to what is out there with respect to other gas  
17 distribution companies.

18 If you turn to the settlement document, sir,  
19 and it's the Appendix B, Page 1, if you look in the row  
20 that says, "percentage increase in margin per therm,"  
21 the rate spread is 14.3 percent increase. So a 50-cent  
22 increase on a \$5 basic charge is ten percent, so what  
23 you are trying to do is just maintain the existing  
24 percentage increases in the rate components that  
25 contribute to the Company's ability to recover its cost

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1 to service.

2           So that's what I meant by saying it's  
3 consistent with the margin increase. So one option you  
4 have is to put it in a commodity, all 13 percent, but  
5 since the settlement also deals with a PGA that's  
6 pending and coinciding that, it was reasonable to also,  
7 in my mind, increase the basic charge by ten percent at  
8 the same time. It was a good compromise, and the  
9 reference to Puget was it's not out of bounds with what  
10 else is out there with respect to what the Commission  
11 has approved, and that was the reference to that  
12 comment.

13           COMMISSIONER OSHIE: Thank you for your  
14 explanation.

15           MR. NORWOOD: I can make a comment on that  
16 particular item also. In terms of the overall  
17 settlement agreement itself, it was negotiated as a  
18 package, and our proposal in the case was to increase  
19 the basic charge, but that particular element, just  
20 from the Company's perspective, is not a make-or-break  
21 item.

22           COMMISSIONER OSHIE: Thank you, Mr. Norwood.

23           JUDGE WALLIS: Any further questions from the  
24 Bench?

25           MR. TRAUTMAN: Your Honor, can I make one

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1 request? Mr. Cromwell had responded to questions about  
2 the extent of participation of Public Counsel in the  
3 negotiations. I believe Mr. Elgin was involved in  
4 those discussions. I think it would help complete the  
5 record if Mr. Elgin could indicate his knowledge of  
6 those at that participation.

7 JUDGE WALLIS: Is there objection to that?

8 COMMISSIONER HEMSTAD: I'll ask Mr. Elgin  
9 that question.

10 MR. ELGIN: Yes, sir. The day after the  
11 suspension, the Commission issued its order  
12 suspending -- that Staff had conversations with  
13 Mr. Norwood and Mr. Faulkner about the framework and  
14 the principles we should use to solve and pursue in  
15 this case, and on that day was the first contact I made  
16 with Public Counsel and the gas users because I would  
17 have anticipated that those two parties would have been  
18 active intervenors in the case, and then the following  
19 day, we set the spreadsheet that provided the  
20 foundation for the analysis or the audit.

21 Then subsequent to that, we've had several  
22 conversations with Mr. Cromwell and various members of  
23 his staff and experts. So in my mind, I believe Public  
24 Counsel has had an opportunity to participate in the  
25 settlement negotiations and has been fully informed and



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1 had opportunity to influence the outcome, and it was  
2 ultimately culminated on the October 5th settlement  
3 conference that is part of the Commission's prehearing  
4 conference order.

5 JUDGE WALLIS: Mr. Cromwell, Mr. Eberdt, do  
6 you have any follow-up questions?

7 MR. CROMWELL: No, Your Honor. I would  
8 certainly, for the record, express my appreciation for  
9 the courtesy and communication that Mr. Elgin made with  
10 our office in this regard.

11 MR. EBERDT: I have none, Your Honor.

12 JUDGE WALLIS: Very well. Are there any  
13 further questions at all of these witnesses? Let the  
14 record show that there is no affirmative response, and  
15 the witnesses are excused from the stand at this time.  
16 Let's be off the record momentarily while the witnesses  
17 step down.

18 (Discussion off the record.)

19 JUDGE WALLIS: The next step in our  
20 discussions this afternoon will be to address the  
21 questions relating to implementation, timing of the  
22 implementation of the rate increase and whether it may  
23 be put into effect in one form or another as soon as  
24 November 1st.

25 The parties have addressed that through

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1 briefs. Mr. Eberdt did not submit a brief and has  
2 asked the opportunity to make some comments at this  
3 time.

4 MR. EBERDT: Thank you. I'm dumbfounded  
5 here.

6 CHAIRWOMAN SHOWALTER: We can ask you  
7 questions if you want to.

8 MR. EBERDT: I'm not sure I want to go there.  
9 The Energy Project's concerns in this whole case, it's  
10 hard for me to separate them out from the whole case or  
11 the question of the date itself, so I'll just jump in,  
12 and if it's not exactly appropriate, I apologize.

13 The Energy Project's concerns about this case  
14 have to do with the fact that this increase, on top of  
15 the recent PGA increase, has really affected Eastern  
16 Washington, and this utility has done a very good job  
17 in the last few years of actually trying to assist us  
18 in preventing people from losing power, from not being  
19 able to afford power. They've also run some  
20 energy-efficiency programs as well.

21 The problem is that we cannot keep pace with  
22 the rate increases that are happening, and I just want  
23 to give you a couple examples. If we take the Spokane  
24 area, the average gas cost for a low-income home energy  
25 assistance program person that is involved in our

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1 assistance programs is \$653 a year. This settlement,  
2 on top of the recent PGA, would mean to maintain that  
3 same level of consumption, that family has to come up  
4 with another \$104 they don't have.

5           If we look at just the people who have been  
6 involved in the Spokane area in both the excellent  
7 program the Utility is running, the low-income  
8 assistance program, and the federal LIHEAP program, in  
9 a given year, there is somewhere between three and four  
10 thousand households that receive those funds. When we  
11 just apply that average increment to those households,  
12 we are talking over \$340,000 that these people do not  
13 have, so we have a real concern about that impact on  
14 these households.

15           We also know that the number of people we  
16 serve is much less than the number of people that are  
17 impacted that are going to feel this same pinch. If I  
18 were to be generous about the number of people we  
19 serve, I would probably say we serve less than a third  
20 of those who are eligible. At the same time, we also  
21 know that the bottom bracket, those that are living in  
22 the zero to 50 percent of the federal poverty level,  
23 are already carrying an energy burden over 19 percent  
24 of their income.

25           CHAIRWOMAN SHOWALTER: This is not evidence

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1 we are listening to. I take it you are providing a  
2 sort of offer of proof of what would happen to litigate  
3 this case? This is not an open hearing. So you are  
4 telling us what about this settlement or your proposed  
5 litigation?

6 MR. EBERDT: Where I think I'm going with  
7 this is the impact is significant in regard to  
8 implementing the rate increase at all, but also in  
9 terms of the date, the November 1st date, not only is  
10 this a tough impact, but that November 1st date is the  
11 beginning of the heating season for all of these  
12 households. That just increases the strain incredibly  
13 over the next several months as opposed to some other  
14 date that is later down the road.

15 It seems to me that instituting -- I don't  
16 know what we are supposed to call it, whether it's an  
17 interim or short-term or whatever kind of rate increase  
18 it is if it's not a permanent rate increase, at this  
19 time is really a big disadvantage for these households,  
20 and the other factor that comes into play here for us  
21 is that the low-income population tends to be much more  
22 mobile than the general population. So if it were, in  
23 fact, to be a case where you decided subsequently that  
24 the rate that was set in the interim was too high,  
25 there is a good chance a lot of these people won't be

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1 there to see any refund. I guess that should probably  
2 be all I say at this point because I'm not absolutely  
3 sure that I'm speaking on point.

4 One other thing to say simply is that we were  
5 informed of the prospect of a settlement within a few  
6 minutes of getting intervenor status in this case. I  
7 understand that one does not direct questions for  
8 discovery until one is an intervenor. So I don't feel,  
9 much as some of the signing parties do feel, that there  
10 has been sufficient time for us to develop our  
11 discovery. I don't think three-and-a-half weeks is  
12 sufficient. Thank you.

13 JUDGE WALLIS: Any other opening comments?  
14 Let's move to questions from the Bench.

15 CHAIRWOMAN SHOWALTER: I would like to ask  
16 Mr. Trautman about short-term relief subject to refund,  
17 let's call it. I fail to see a distinction between  
18 what was called interim relief in the Verizon case and  
19 the type of relief that's being requested in this case.  
20 Should there be more time awarded to litigate the case.  
21 What is the distinction, if any, that you see, and not  
22 using terms and terminology but in function.

23 MR. TRAUTMAN: Thank you, Your Honor. As was  
24 mentioned by the witnesses on the panel, I do think a  
25 significant distinction is the fact that in Verizon, it

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1 was a unilateral request by a single party for interim  
2 relief in a case in which it is highly disputed whether  
3 any relief should be granted at all, and none of the  
4 other parties have come to any agreement on that issue.

5 CHAIRWOMAN SHOWALTER: I want to stop you  
6 there. What I hear you saying is that in a contested  
7 proceeding, a general rate case contested proceeding,  
8 which this is and that was, the difference is maybe the  
9 weight that we are supposed to accept for purposes of  
10 interim rates because more than one party agrees or  
11 there is a broader basis for us to impose the interim  
12 rates subject to relief?

13 MR. TRAUTMAN: I believe that's a significant  
14 factor that there are in this case three of the major  
15 parties, after having an opportunity to review the  
16 Company's case and after Staff did conduct an audit of  
17 the Company's case --

18 CHAIRWOMAN SHOWALTER: All right. So we  
19 have, say, a basis to believe that these rates are  
20 fair, just, and reasonable. Why is that the standard  
21 that we should be employing for interim rates subject  
22 to relief in light of the Verizon case, which says  
23 emergency standard, not just this is fair, just, and  
24 reasonable, but you've made a stronger showing that you  
25 really, really need the money. That is my problem.

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1           MR. TRAUTMAN: I understand, Your Honor, and  
2 I do very much, and I have read the decision as well as  
3 Your Honor's dissenting opinion several times. I would  
4 also point out that, and I realize it's a dissenting  
5 opinion, but I do recognize that you had pointed out  
6 that there might be situations and that in your view  
7 the majority might agree that there were two situations  
8 in which it might be distinguishable from the Verizon  
9 set of facts.

10           One situation that you mentioned was the open  
11 meetings situation where no one objected to a temporary  
12 rate subject to refund pending full adjudication, and  
13 the second situation, which comes closer to what we  
14 have here, was a contested -- you phrase it as an  
15 interim rate proceeding in which all of the objective  
16 information is the same, and I should add, in your  
17 first situation, there was also no dire financial  
18 straits. You say a contested rate proceeding in which  
19 all the objective information is the same, but a single  
20 party objects to the interim rate. Now granted, we  
21 have two parties that have objected, but we have three  
22 parties that agree with the settlement.

23           And I think the door is open in the Verizon  
24 case because at the outset, the majority opinion first  
25 does cite to the Puget Sound Navigation case as the

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1 foundation for the basis for interim relief that the  
2 Commission has broad powers to award the leave, quote,  
3 when its needs are justified. Then it later points out  
4 that even factors that are applied are neither at  
5 formula for interim relief nor the only factors that  
6 the Commission can consider.

7 I think the other overriding point in this  
8 case is that it is not a case of the complexity, and  
9 it's not a case of the complexity that it was involved  
10 in in Verizon. That is one of the reasons why we were  
11 able to achieve a settlement. The issues that are in  
12 play, in our view, are far fewer than those that have  
13 been outlined.

14 CHAIRWOMAN SHOWALTER: But I just fail to see  
15 why those distinctions make a difference; that is, why  
16 is there a different standard that this commission  
17 should be using in this case than the other case? That  
18 is, you are granting and all the parties are granting,  
19 there is no emergency need in this case. So you have  
20 to be arguing that in one set of circumstances, it is  
21 correct to insist on a showing of emergency need a la  
22 Verizon, but in this set of circumstances, we, the  
23 Commissioners, distinct from the parties, need not  
24 insist on that, and both are a general rate case,  
25 interim relief subject to refund in a contested



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1 adjudication. The sole distinction being there are  
2 more parties on the Company's side than the other, but  
3 why would that make a difference because it's a  
4 contested case?

5 MR. TRAUTMAN: I can't --

6 CHAIRWOMAN SHOWALTER: I can certainly see if  
7 we were applying the same standard, we might find it  
8 more convincing to us that whatever standard we employ  
9 had been met, because after all, we had evidence from  
10 three parties, not one, and we might trust the evidence  
11 more just because of the nature of it being simpler,  
12 but that's different than what standard of review we  
13 are employing, and I really haven't heard why it is in  
14 this case we can grant interim relief subject to refund  
15 based on a fair, just, and reasonable standard, I  
16 think, you are advocating.

17 MR. TRAUTMAN: Correct.

18 CHAIRWOMAN SHOWALTER: Whereas in the Verizon  
19 case, we determined we had to find -- we, the  
20 Commission determined. I did not. The Commission  
21 determined it had to find emergency need.

22 MR. MEYER: Your Honor, may I chime in and  
23 perhaps further elaborate? Obviously, we've all read  
24 the recent Verizon order, and if you will allow me just  
25 a few minutes to elaborate on this argument, I think I

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1 will get to the nub of the question that apparently  
2 troubles you.

3 I would like to make three points. First of  
4 all, and I think this is obvious to all that this  
5 request for implementation of rates on November 1 is  
6 moot -- it's a nonissue, it's a nonquestion -- if this  
7 commission were to otherwise approve the settlement  
8 agreement prior to that time. That's understood. And  
9 the purpose for the joint motion was to provide a  
10 procedural avenue to this commission should it decide  
11 on due-process grounds that further proceedings were  
12 required.

13 Second point, the law -- and I'll elaborate  
14 on this in a moment. The law allows the Commission to  
15 do what the joint movants request --

16 CHAIRWOMAN SHOWALTER: You mean the  
17 implementation of -- you are talking about approving  
18 the settlement?

19 MR. MEYER: Approving the settlement on  
20 due-process grounds, or in the alternative, on the  
21 subject-of-refund issue, putting the rates in effect on  
22 November 1 subject to refund.

23 The controlling precedent that was cited time  
24 and time again in prior emergency rate orders was a  
25 Puget Sound Navigation case. That was cited again by

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1 the majority as the predicate for its legal basis, if  
2 you will, for emergency rate relief, and that case  
3 really stands for the proposition that implicit in the  
4 Commission's general powers is the authority to provide  
5 relief subject to refund.

6           Interestingly enough in that Puget Sound  
7 Navigation case, to the best of my knowledge, that was  
8 not predicated on a showing of emergency rate relief.  
9 The Court in that case noted that the Commission staff  
10 had done some audit work and made some preliminary  
11 assessments and so forth, but there is no attempt there  
12 to promote that process as a solution to financial  
13 exigency, so it's an interesting context in which that  
14 legal argument arose.

15           So the reason there is not so much debate  
16 around this issue of refund, authority, putting rates  
17 into effect subject to refund, is not that the law  
18 doesn't allow you to do it. It does, but it's a  
19 question of how you as a Commission chooses to exercise  
20 that authority.

21           That takes us then to the PNB case. It takes  
22 us to the Verizon case, and having read that Verizon  
23 decision of yours over and over again, the subject was  
24 exhaustively treated, and I thought it was well  
25 reasoned by both the majority and the dissent. I think

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1 there is a way to harmonize or reconcile the two  
2 positions. The point there, and I will elaborate on  
3 this in just a minute, is that in -- and this is a real  
4 distinction. This is not a question of semantics,  
5 whether we call this interim relief or some other  
6 animal. It's what's the nub of what was at stake when  
7 the request was brought before you. In the typical  
8 interim request, it's almost always, to the best of my  
9 knowledge, a unilateral act by a company based on  
10 showing financial exigency.

11           The first order of business for Staff and for  
12 the other parties and for the Commission is to  
13 determine not whether rate relief in the final instance  
14 is appropriate under the merits, but rather is there,  
15 in fact, financial exigency. Has the company  
16 unilaterally demonstrated that it is at such peril that  
17 it needs immediate rate relief. The Staff is not  
18 attempting to answer that question when it does its  
19 audit work on an interim rate request. It is simply  
20 examining the company's financials.

21           So the threshold is different. There is a  
22 different threshold that has to be crossed when we are  
23 dealing with what this commission has traditionally  
24 viewed as interim rate relief. Is there financial  
25 peril. Here, we have a settlement, and it's more than

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1 just a settlement. It's more than just a settlement by  
2 not one, two, but three parties. It's more than that.  
3 The real distinction here is that we've crossed a  
4 different threshold.

5 We have never pretended that this case is  
6 about financial exigency. What we are telling you is  
7 this case is about a staff and other parties who have  
8 done their audit work on the merits, on the merits of  
9 the case. Not whether there is some interim need to  
10 get us over the hump, to get us to the point where  
11 later on in the process, we have time to talk about the  
12 merits. We've gone straight to the merits.

13 Staff has done its audit work. NWIGU has  
14 done its audit work. On the merits, they would finally  
15 resolve this docket, put it into this docket, because  
16 they are satisfied that this settlement agreement is in  
17 the public interest. Fundamental distinction. It has  
18 nothing to do whether this is denoted an interim  
19 request or early implementation. That's semantics, a  
20 difference of substance, a difference in kind, not  
21 degree.

22 CHAIRWOMAN SHOWALTER: The difference is two  
23 of the parties in a contested case, in addition to the  
24 Company, have satisfied themselves on the merits that  
25 this is fair, and I see that difference. Why it's a

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1 difference that makes a difference in this commission's  
2 standard eludes me, because it is still a contested  
3 case. From the other parties' point of view, Public  
4 Counsel and SNAP in this case, it's just a contested  
5 case. They want more time to -- a different issue is  
6 how much time they need, but from their point of view,  
7 they contest the case as much as if Staff was on their  
8 side.

9 MR. MEYER: But that's a different question.  
10 That's the question of due process that I'm happy to  
11 address in a moment, because that takes us into whether  
12 or not apart, apart from whether or not this commission  
13 were to implement the rate subject to refund -- Leave  
14 that question off to the side -- has there been  
15 sufficient due process afforded them in this process to  
16 allow this commission at this time to approve the  
17 settlement.

18 CHAIRWOMAN SHOWALTER: That's a good  
19 question.

20 MR. MEYER: That's a good question. But may  
21 I finish my rather extended discussion on this whole  
22 interim-rate-relief-subject-to-refund question, because  
23 again, I want to harmonize, the best I can, the views  
24 of the majority and your dissent in the Verizon  
25 decision.

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1           I think I've tried to make the point that  
2 there is nothing in the law based on case law precedent  
3 that would prevent you as a commission from doing what  
4 we are asking you to do if you choose to exercise your  
5 discretion. So then the question I think you've  
6 repeatedly posed is yes, but what's the standard? How  
7 do we go about exercising that discretion and that  
8 standard?

9           In a final analysis, is the end result one  
10 that results in rates that are just and reasonable  
11 under the circumstances of the case. Circumstances in  
12 this case is you've got a staff. You've got NWIGU,  
13 both of which have completed their audit work on this  
14 case. Both are satisfied that given the merits, on the  
15 merits, they are prepared to put this case to bed.

16           We've talked at length about how this is a  
17 streamlined filing. There are no pro forma  
18 adjustments, how the Company agreed to what would  
19 otherwise have been a litigated Staff position on cost  
20 of capital. There are aren't issues, given the  
21 circumstances of this case, that require further  
22 elaboration.

23           In the majority's own opinion at Page 10,  
24 they noted as to standards that the PNB factors are not  
25 standards. The PNB factors are not standards, and the

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1 Commission should remain open to consider the unique  
2 circumstances of the case, and then I believe,  
3 Chairwoman Showalter, at Page 59, you appropriately --  
4 this is in your dissent -- express concern over an  
5 overly constricted view that could force, quote, a  
6 variety of sensible regulatory mechanisms whereby  
7 revenues or rates are increased, temporarily or  
8 otherwise, without completing a general rate case or  
9 otherwise a finding of financial exigency.

10 CHAIRWOMAN SHOWALTER: Yes, I think those are  
11 all reasonable. I don't know how that can be squared,  
12 or the question you have to answer is, why is it not  
13 arbitrary and capricious for us to approve interim  
14 rates subject to refund in this case using a different  
15 standard and having denied them in the Verizon case  
16 using a higher standard?

17 MR. MEYER: Because again, the showing is for  
18 a different purpose. In the Verizon case, the showing  
19 to demonstrate financial exigency. In this case, the  
20 showing is to demonstrate that sufficient attention has  
21 been paid to the merits. The parties have addressed  
22 the merits of the case and are ready for final  
23 disposition.

24 In the Verizon case, whenever you argue for  
25 interim relief on financial grounds, you are a long way



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1 from completing the case. There hasn't been the audit  
2 work around that. That's not this case. We are not  
3 even going over that threshold. We are over a  
4 different threshold, and that is, have you done your  
5 work? Are you satisfied it's a clean case? Is it a  
6 sensible resolution, and we are there.

7 CHAIRWOMAN SHOWALTER: Three of the parties  
8 are there.

9 MR. MEYER: Yes, three of the parties are  
10 there.

11 COMMISSIONER HEMSTAD: Obviously, there are  
12 other views here, and I want to state what I think the  
13 distinction is in the procedural environment wherein we  
14 find ourselves.

15 I essentially agree with the distinction that  
16 Mr. Meyer has described. In the Verizon case with the  
17 request for interim relief, we never did get to the  
18 merits of the fair, just, reasonable, and sufficient  
19 rates, and the question to the majority in that  
20 decision was, were they entitled to, was there any kind  
21 of exigent or emergency need.

22 Here, I take it, the parties in offering the  
23 settlement are asking the Commission to find there is  
24 sufficient evidence of record to conclude that the  
25 settlement will constitute a fair, just, and reasonable

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1 rates on the merits. The question then is what is the  
2 status of parties in the settlement who are not  
3 agreeing to that?

4           There may be different ways of legally  
5 describing this, but I translate that into were we to  
6 accept the settlement premise that the proposed rate is  
7 a rate that is fair, just, reasonable, and sufficient,  
8 it would have to be subject to the due-process rights  
9 of nonagreeing parties to be able to proceed to make a  
10 case or to present evidence in order that they have  
11 been adequately heard.

12           I translate that into something like what  
13 could be called a rebuttal of presumption that the  
14 settlement rate is fair, just, reasonable, and  
15 sufficient subject to being able to be rebutted by the  
16 parties. You can't even call them dissenting parties  
17 because the position is that they have not had adequate  
18 time to review the matter. So not so much at this  
19 point time even dissent but simply an opportunity to  
20 present their case.

21           It seems to me that squares quite clearly the  
22 difference between the Verizon standard and here, where  
23 especially with the Staff having done an audit, and the  
24 Company and Staff and a significant consumer party  
25 recommending a settlement, not a black-box settlement,

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1 but a settlement, I assume, where we would be expected  
2 to make some kind of a finding that the record is  
3 sufficient under the legal conclusion on the merits.  
4 That's how I square the difference.

5           So in that circumstance, how do you deal with  
6 the issue of the due-process rights, and it can be done  
7 one of two ways. One is as proposed, and I think this  
8 is discretionary with the Commission, to put into  
9 effect an interim rate subject to refund if the party  
10 has carried now the shifted burden of, in effect, the  
11 rebuttal of presumption, or in the alternative, asking  
12 how much time is required for the nonagreeing parties  
13 to make their case, and it seems to me that would be  
14 something very substantially less than the 11-month  
15 requirement, in what seems to me to be a relatively  
16 simple proceeding.

17           And the question for us is whether were we to  
18 impose an interim rate, then I suppose we could be more  
19 relaxed on the time for the nonagreeing parties. If we  
20 don't impose an interim rate subject to refund, then  
21 the pressure would be on the settling arrangements,  
22 including at least the argument that in part agreed  
23 upon in the context that it would be your right more  
24 rapidly that we would expect it to be treated on an  
25 expedited basis.

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1                   COMMISSIONER OSHIE: To that end, I have a  
2 question for you, Mr. Eberdt, and that is, do you  
3 expect, does the Energy Project expect to be sponsoring  
4 a witness in this case? If not, how do you propose to  
5 analyze this case and be able to feel satisfied that  
6 your due-process requirements have been met?

7                   MR. EBERDT: That's an excellent question.  
8 We've actually had a tough time finding a lawyer to  
9 work on this. I'm not sure exactly whether we would be  
10 able to sponsor a witness at this time. If it were  
11 possible, as we've done in at least one other case, we  
12 would talk with Public Counsel about sharing a witness.

13                   The question of capital and rate spread and  
14 all of those things are a level of expertise that I  
15 certainty don't carry, and I will defer to people who  
16 are more expert in those areas, and certainly, the  
17 Public Counsel's experts have always carried that, so  
18 we've tended to defer to their opinions in those ways.  
19 That would be my answer to that.

20                   COMMISSIONER HEMSTAD: It seems to me the  
21 ultimate standard, what we have to decide in the rate  
22 case, are rates, however determined, fair, just,  
23 reasonable, and sufficient, and everything else is a  
24 subsidiary to that.

25                   The classic interim rate circumstance is you

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1 never get to that issue, and you are looking at, in the  
2 very preliminary environment, the Company is in a  
3 circumstance where it needs money, and that let's you  
4 off the hook of having to determine the ultimate  
5 question because you are addressing the question of  
6 whether the Company can meet its legal obligations as a  
7 public service company to its customers, and I think  
8 everyone agrees that's not the case here, but we have a  
9 proposal that arguably is in front of us for a  
10 determination that the rate is fair, just, reasonable  
11 and sufficient.

12 MR. EBERDT: May I make a comment on that,  
13 sir?

14 COMMISSIONER HEMSTAD: Mr. Eberdt?

15 MR. EBERDT: Clearly, I'm not real adept at  
16 the legal distinctions that are being made here, and I  
17 can only say this sort of bluntly. It seems to me what  
18 you are always charged with is determining whether the  
19 rates are fair, just, and reasonable. Mr. Meyer is  
20 arguing that you should make that decision based on the  
21 merits of what's already been presented to you in this  
22 case to set an interim or short-term rate.

23 But, in fact, what has been presented to you  
24 is only part of the picture at this point because  
25 Public Counsel certainly hasn't and I haven't, and as

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1 you mentioned, shifting the weight of proof the other  
2 way around, if you set an interim rate, then it sort of  
3 bears on us to prove that it's wrong. If I'm daunted  
4 by this whole process to begin with, I'm really daunted  
5 by that.

6 COMMISSIONER HEMSTAD: I understand your  
7 statement isn't as a lawyer, but ultimately, that  
8 doesn't seem to me to shift the burden of proof. What  
9 it's saying is, is there additional evidence that can  
10 be put in front of us that would lead us to a  
11 conclusion that the burden is not met by the Company.

12 MR. EBERDT: Where I was going with this is  
13 if, in fact, you are -- it's sort of like putting you  
14 in a position of prejudging that it is fair, just, and  
15 reasonable before the complete picture has been given,  
16 and in that case, and if it were, in fact, not to be  
17 ultimately determined incorrect that that rate, is it  
18 fair, just, and reasonable to expect all the  
19 ratepayers, especially the low-income ratepayers, to be  
20 paying this money to the utility at a time when they  
21 can't. That seems to be a very important policy  
22 distinction.

23 COMMISSIONER HEMSTAD: I think in our  
24 majority opinion in Verizon, we actually emphasized  
25 that point of the significance or the impact of an

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1 interim rate on consumers such as those that you  
2 represent. But here we have in front of us a set of  
3 audited books by the Staff that have the responsibility  
4 to balance the interests of ratepayers and shareholders  
5 with the Company ultimately concurring.

6 MR. CROMWELL: If I may? I won't repeat the  
7 arguments that I've made in my briefs. I'll leave  
8 those for your consideration. I would like to address  
9 the framework of questions and issues that the  
10 Chairwoman has presented and that the other  
11 Commissioners have presented this afternoon.

12 I don't apprehend that anyone before you  
13 today is seeking to overturn Puget Sound Navigation or  
14 the conclusions regarding the Commission's authority  
15 found in that decision. I think the question properly  
16 is as to interim rates, what standard should this  
17 Commission apply. Clearly, it is Public Counsel's  
18 position that the PNB standard, if you will, and the  
19 factors that it contains, is the correct one to apply.  
20 I think also our position would be that the number or  
21 identity of parties to a partial settlement should not  
22 change the standard that the Commission applies when it  
23 faces an interim rate request.

24 COMMISSIONER HEMSTAD: Let me pose a  
25 hypothetical to you. Not this case, but let's take a

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1 case -- it could even be a more complex case.

2 Say there are a dozen parties, but the 13th  
3 party disagrees saying they haven't had adequate time  
4 yet or they disagree with each issue on the merits  
5 itself. Is there no circumstance that would justify  
6 proceeding with a new rate while giving the dissenting  
7 party ultimately its theoretical entitlement to put on  
8 a case?

9 MR. CROMWELL: I would not say there is no  
10 circumstance, given the limited facts in the  
11 hypothetical that you just now posed on the record. I  
12 don't believe that interim rate relief would be  
13 warranted in the circumstances you just described,  
14 which I believe are much more limited.

15 I can certainly come up with a hypothetical  
16 whereby -- well, we need not even have a hypothetical.  
17 The Commission could look back at this Company's last  
18 rate case where it sought interim rate relief. It's my  
19 recollection that that matter was ultimately resolved  
20 by settlement, but let's say one of the parties to that  
21 had not settled and had stayed out. It's Public  
22 Counsel's position that in such circumstances, the  
23 Commission must afford that nonsettling party a  
24 reasonable opportunity and a meaningful opportunity, I  
25 should say, to be heard on the issues that are before



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1 the Commission, including the opportunity to conduct  
2 discovery, present evidence, rebut the evidence  
3 presented by the settling parties, and if briefing is  
4 appropriate, then brief the matter.

5           What I see as an instructive former case of  
6 this commission would be the DEX proceeding that was  
7 before you in the preceding year wherein the Commission  
8 and Staff did not settle. The circumstances are  
9 different in that the settlement that occurred occurred  
10 many months after the commencement of the proceeding,  
11 so substantial discovery had already occurred.  
12 Testimony had actually already been filed.

13           In that case, the Commission staff were  
14 afforded the opportunity to revise their testimony,  
15 file, essentially, rebuttal testimony to the  
16 settlement, avail themselves of the opportunity to have  
17 a hearing, to cross-examine the settling party  
18 witnesses, and to brief the matter to the Commission.  
19 Mr. Trautman and I were before you in a representative  
20 capacity in that proceeding. So I think that is an  
21 interesting case to counterpoint to the procedural  
22 protections that the Commission staff would now have  
23 you follow in this case, which we feel are inadequate.

24           Again, it is our position that the PNB  
25 standard or test, if you will, it is the proper

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1 standard to apply in an interim rate request, including  
2 the type presented before you now, because if you look  
3 at the factors involved, the first factor is adequacy  
4 of hearing. It's clearly our position that we have not  
5 yet been afforded an adequate. The second factor,  
6 whether one wishes to look at financial hardship -- I  
7 apologize -- financial need, gross hardship, or gross  
8 unfairness.

9 COMMISSIONER HEMSTAD: I think we are quite  
10 familiar with that.

11 MR. CROMWELL: Far more so than am I, I  
12 confess. Regardless of which of those three prongs in  
13 the second factor one wishes to follow, there appears  
14 to be no party before you claiming to have met them.

15 COMMISSIONER HEMSTAD: I think everyone  
16 agrees to that.

17 MR. CROMWELL: So it is our position that the  
18 parties before you today who propose the settlement  
19 have presented to you inadequate policy reasons for  
20 implementing an interim rate, have presented inadequate  
21 factual reasons and inadequate legal argument as to why  
22 an interim rate should be allowed in this proceeding.

23 COMMISSIONER HEMSTAD: Let me ask this  
24 question of counsel. Is it your view that with the  
25 settlement, are you requesting that this commission

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1 find, based on the settlement, that the proposed rates  
2 are fair, just, reasonable, and sufficient?

3 MR. FINKLEA: I'll start. Yes, that's the  
4 Industrial Gas Users' position that the settlement  
5 could be approved, and you would have fair, just, and  
6 reasonable rates at the end of the day, number one, and  
7 number two, that this is a gray area, as we readily  
8 admit.

9 We are not a movant for the temporary rates,  
10 but we do not oppose the temporary rates. Our  
11 organization takes very seriously any utility's request  
12 for interim rate relief. We think it is different in  
13 kind than what Avista is moving for today because some  
14 of the things we've already discussed, that it's not  
15 the Company's filed case with them asking as the party  
16 that's filed a case, Give us the number that we've  
17 asked for, and we are not responding to a company  
18 saying that there is exigent circumstances. We are not  
19 Verizon or the one that we lived through with Olympic,  
20 lest I remind us of something that at least five of us  
21 in the room would really like to forget.

22 COMMISSIONER HEMSTAD: In which the interim  
23 rate was ultimately not approved.

24 MR. FINKLEA: That's correct, and we had to  
25 live through the result of how do you ever get those

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1 refunds and bankruptcy proceedings, and I, of all the  
2 people in this room, take most seriously, perhaps, all  
3 of the problems that interim rates pose in the real  
4 world, having lived through a situation where a utility  
5 not only was granted them, but they went bankrupt  
6 before they refunded them.

7           COMMISSIONER HEMSTAD: Let me ask the next  
8 question of you. Do all counsel agree that the  
9 nonagreeing parties have a due-process right to put on  
10 their case?

11           MR. FINKLEA: It's our thought, and what we  
12 stated in our legal memorandum, is that the process  
13 itself has been opened to all the parties, and it  
14 becomes a matter of degree. If we were here five  
15 months into the process, would we be in a different  
16 position than if we were two months into the process.  
17 That's part of what we have wrestled with. My sense is  
18 that it's within your discretion today to approve the  
19 settlement as it is put forward.

20           COMMISSIONER HEMSTAD: And thereby terminate  
21 the proceeding?

22           MR. FINKLEA: Correct. It's within your  
23 discretion to do that.

24           COMMISSIONER HEMSTAD: You are comfortable,  
25 we can do that without violating, ultimately, the

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1 due-process arguments from the nonagreeing parties  
2 here?

3 MR. FINKLEA: Well, our sense is that the  
4 process has been enough, particularly because of the  
5 hearing today, because you have hearing procedures for  
6 contested settlements, and the nonsettling parties have  
7 been provided opportunities today to contest the  
8 settlement.

9 If you decide that you can't go there, then  
10 where I see the bright line in my own mind is that why  
11 you would be granting the temporary rates that would be  
12 a distinction with a difference between the situation  
13 you would be in today and the situation you are  
14 normally in where a utility says, Give us interim  
15 relief because we are in dire financial straits.

16 The reason you will be doing it is to afford  
17 the nonsettling parties more process, and if the reason  
18 for granting the temporary relief is to give  
19 nonsettling parties more process, then you would be  
20 acting within your discretion to manage your contested  
21 case for a different reason.

22 COMMISSIONER HEMSTAD: Do you think Public  
23 Counsel and Mr. Eberdt's client is entitled to more  
24 process?

25 MR. MEYER: I'll respond to that. The short

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1 answer is yes, they have been afforded sufficient due  
2 process given the circumstances of this case, and that  
3 does require elaboration, because you see precedent all  
4 over the map. You saw a different precedent cited in  
5 briefs of Public Counsel and the Company, which simply  
6 points to the basic proposition that everything in this  
7 regard is unique to the facts and circumstances of the  
8 case before the Commission.

9           That having been said, the courts in this  
10 state cited in my brief recognize that due process is  
11 an intensely practical matter dependent on the  
12 circumstances. What are the circumstances? So far, I  
13 haven't told you anything new. What are the  
14 circumstances here?

15           The case was filed August 20th. There was a  
16 prehearing conference September 23rd. At that time, a  
17 follow-on settlement conference was set for October  
18 5th. Public Counsel, the Energy Project were in  
19 attendance at that prehearing conference. They didn't  
20 object to the setting of the settlement conference.  
21 They didn't say, We were not ready for that. It was  
22 set. They attended, and long before they got there on  
23 the 5th, they were aware of the principles that had  
24 been discussed as part of the settlement.

25           I think today, Mr. Cromwell indicated, in his

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1 words, that they were kept informed early on in this  
2 case. There is no question of notice at all in this  
3 case. And likewise, the Energy Project participated in  
4 ongoing settlement discussions. It was not until  
5 Monday of this week that we received our first data  
6 requests from Public Counsel, nearly two months into  
7 the case, and several weeks after, they were aware the  
8 settlement discussions were ongoing.

9           So there is no question of notice here. So  
10 what is a meaningful opportunity to be heard? This  
11 hearing is the best example of a meaningful opportunity  
12 to be heard. Judge Wallis at the last prehearing  
13 conference, if my recollection is correct, inquired of  
14 the parties who will be presenting witnesses today.  
15 NWIGU said yes. Staff said yes. The Company said yes.  
16 As I recall, Public Counsel indicated they would not  
17 be. They could have but did not present a witness  
18 today who could have taken the stand and said, Look,  
19 I've had a chance to review the filing of the Company's  
20 case. I've had a chance to review the settlement. I  
21 have these five or six issues that cause me sufficient  
22 concern that this settlement ought to be rejected or  
23 that there ought to be further proceedings. All we  
24 have is argument of the counsel.

25           They had a meaningful opportunity they could

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1 have availed of today, and they haven't done it. We  
2 have yet to hear anything from Public Counsel other  
3 than a plea for more time, anything that suggests they  
4 have particular issues and specifically so, and that  
5 they need, for whatever their reasons might be, more  
6 time to build on their case.

7           Simply to provide Public Counsel or any party  
8 with additional time in the event that they might  
9 determine, after further study of the case, that they  
10 have issues, that's not an argument that justifies  
11 upsetting, as a matter of public policy, a reasoned  
12 settlement entered into by NWIGU, who is not  
13 complaining about lack of due process. They did their  
14 discovery. It's not complained of by Staff. They  
15 completed their audit, so there is sufficient  
16 protection.

17           But the real reason we filed the joint  
18 motion, and this maybe brings all the strands of this  
19 discussion together, hopefully, is to provide a path to  
20 resolve this case that honors the objectives of  
21 everyone and provides the necessary protection so that  
22 if this commission, contrary to what I've just said, if  
23 this commission decides there hasn't been enough due  
24 process to date, build in more due process, but in the  
25 meantime, don't undo the good work that has been done



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1 by way of this settlement reached by the three parties  
2 on the merits of the case. The interests of all are  
3 satisfactorily protected given the circumstances of  
4 this case.

5 MR. TRAUTMAN: I don't want to belabor the  
6 points or repeat what Mr. Meyer has said. I concur  
7 entirely his remarks. I concur the due process,  
8 according to the case law, does vary with the  
9 circumstances of the case, and in this case, Staff  
10 believes Public Counsel, along with the other parties,  
11 have had significant process.

12 There has been notice. Other parties have  
13 worked together, have done the audit, have looked at  
14 the books, including NWIGU, including Staff, have been  
15 able to review those matters and arrive at a settlement  
16 of what counsel has had opportunities to participate  
17 and have been kept fully apprised, and in fact, no data  
18 requests were issued until the beginning of this week.  
19 So of the process that has been afforded, much of it  
20 has not been used, but it is our opinion that due  
21 process has been afforded to Public Counsel, and so we  
22 would concur with the positions of Avista and NWIGU.

23 CHAIRWOMAN SHOWALTER: Mr. Cromwell, I have a  
24 question for you. This commission can allow to go into  
25 effect at open meetings rate increases. Let's assume

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1 one of a small magnitude for the moment. Our open  
2 meetings can be contested in the sense that there can  
3 be parties at the open meeting objecting to it, and yet  
4 after hearing everyone, if we feel satisfied with  
5 things, we can allow the tariff to go into effect, and  
6 it doesn't strike me that the fact that there simply is  
7 an adjudication should change that.

8           So, for example, perhaps we have some doubts,  
9 so we suspend it for hearing. If at a certain later  
10 point in time in the adjudication we are similarly so  
11 satisfied, why shouldn't we be able to, and for that  
12 matter, why couldn't the Company just withdraw its  
13 whole case, come back on an open meeting in this  
14 posture.

15           So it doesn't seem to me that it's the  
16 adjudication stature that should make the difference.  
17 However, my question was premised on a small increase,  
18 because we do have a rule that, in general, if the  
19 increase is going to be very large, we say, This is a  
20 general rate case. It will be adjudicated.

21           So my real question to you is, is that what  
22 makes the difference? In other words, because we put  
23 these into adjudication mode rather readily that  
24 suddenly that means more process is required? That  
25 means a different standard, as you advocate, is

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1 required for interim rate relief subject to refunds?  
2 I'll really struggling with what makes the difference  
3 in this case versus other cases?

4 MR. CROMWELL: It's our position that  
5 suspending the matter and setting it for hearing,  
6 essentially establishing an adjudication, as you  
7 described, does make a difference in terms of the  
8 due-process rights of parties before the Commission.

9 It's our position that when we come to a  
10 prehearing conference and note our appearance pursuant  
11 to state law, or when an intervenor files a motion for  
12 intervention that is then granted, that at that time,  
13 both the Commission's authority, in terms of conducting  
14 adjudications, as well as the more general provisions  
15 of the Washington Administrative Procedure Act that  
16 govern adjudications by stating -- and comes into play,  
17 and that does, if you will, create an establishment of  
18 the due-process right before a state agency.

19 I certainly don't disagree with your summary  
20 of the Commission's authority in an open-meeting  
21 context, and I'm assuming you are referring to the WAC  
22 regarding the three percent or greater rate increase  
23 request in the filings that require attention to such a  
24 request, but it is our position that when an  
25 adjudication is established and parties then appear

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1 before the Commission that that adjudication, the  
2 status of that adjudication as an adjudication under  
3 state law does vest parties with due-process rights.

4 I would like to briefly note one thing  
5 regarding discovery in this matter. If the commission  
6 considers that issue dispositive, I would be happy to  
7 entertain a Bench request where we can document the  
8 dates the discovery was issued. However, I would  
9 simply state that discovery was issued by Public  
10 Counsel shortly after this discovery rule was issued in  
11 the Commission's prehearing conference order consistent  
12 with our practice in matters that come before the  
13 Commission that are adjudicated.

14 Mr. Trautman mentioned it in his legal  
15 memorandum, and Mr. Trautman mentioned it orally, and  
16 Mr. Meyer mentioned it orally a moment ago, our  
17 processing of this case has been consistent with our  
18 practice before the Commission and consistent with the  
19 resources available to us as a party before the  
20 Commission.

21 (Discussion off the record.)

22 JUDGE WALLIS: Let's take a recess.

23 (Recess.)

24 JUDGE WALLIS: Mr. Cromwell and Mr. Eberdt,  
25 in the best of all worlds, if the matter is either

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1 fully contested or if you are fighting against a  
2 settlement, what is the minimum time that you would be  
3 required to proceed?

4 MR. CROMWELL: The procedural schedule that  
5 we would prefer is the one that I gave to you at the  
6 last prehearing conference.

7 JUDGE WALLIS: I understand that's your  
8 preference. However, that is really the functional  
9 equivalent of the schedule in the case that we've just  
10 been discussing with the Verizon case, which has a  
11 multiplicity of the issues and total lack of unanimity  
12 on most of them. This appears, according to the  
13 testimony of the witnesses that we had today, to be  
14 either simpler, or in the words of one of them,  
15 cleaner, and should not require that length of time.

16 MR. CROMWELL: I guess I'm at a bit of a  
17 disadvantage in that I do not know the scope of the  
18 discovery that the experts we've retained, what that  
19 scope will be. I know they've sent out their initial  
20 data requests, and I should compliment the Company on  
21 their more than timely response thereto.

22 I think that if we had the opportunity to do  
23 discovery until roughly the end of December, the  
24 holiday period, have our responsive testimony filed at  
25 that time, I can hypothesize that that might be

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1 sufficient. I frankly do not know and hesitate to  
2 offer an opinion without having a better sense of the  
3 scope of discovery necessary. I certainly don't  
4 contest the veracity of Mr. Elgin and his conclusions.  
5 I simply don't have a basis for expressing an opinion  
6 regarding them.

7 JUDGE WALLIS: Mr. Elgin and Mr. Finklea's  
8 client both engaged in informal discovery as opposed to  
9 the exchange of data requests. That does seem to  
10 reduce the amount of time. If it comes to that,  
11 Mr. Meyer, would your client be willing to afford the  
12 same courtesies to Public Counsel's expert as to the  
13 experts of Staff and the gas users?

14 MR. MEYER: Absolutely. It benefits all if  
15 we can informally resolve questions.

16 JUDGE WALLIS: I understand that that  
17 doesn't, in a contested setting, afford the paper trail  
18 that you would be looking for, but it strikes me that  
19 it could afford a fast path to a paper trail on the  
20 issues that are significant to you.

21 MR. CROMWELL: I agree that there may be a  
22 point where that could be useful. For example, if  
23 Mr. Dittmer wanted to call Mr. Herschcorn (phonetic)  
24 and just talk through some questions that he had about  
25 Mr. Herschcorn's testimony or some accounting item that

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1 he had identified, and I appreciate the Company's offer  
2 to facilitate that type of discussion.

3 I can say that if the Company's future data  
4 responses are as timely as the ones I just received, I  
5 don't see that the paper trail aspect of it is going to  
6 be a very great problem. In all likelihood, it's going  
7 to be more a question of the experts' processing of the  
8 data they receive, developing opinions, consulting with  
9 us regarding that and then formulating the testimony  
10 that they might then file with the Commission.

11 JUDGE WALLIS: Did I hear you say that a  
12 filing might reasonably be expected in December?

13 MR. CROMWELL: I would hope that that would  
14 be possible, yes. I was thinking just before the  
15 holidays.

16 JUDGE WALLIS: If that is the case here,  
17 Mr. Meyer, it comes down to the question of whether the  
18 parties are jointly defending an agreed result or  
19 whether the parties are back to square one in terms of  
20 the ensuing issues. If the settlement is no longer a  
21 factor, then we would not only have Public Counsel  
22 filing on that schedule but the other parties as well.

23 MR. MEYER: Just as to that December filing,  
24 that would fit within Scenario No. 2. Scenario No. 2,  
25 as I understand it, is where rates go into effect

0119

1 subject to refund November 1, and we create some  
2 additional process by which Public Counsel can explore  
3 the settlement and present its case. Because in that  
4 regard, I would think that under Option 2, an  
5 additional three months from today's date would be  
6 sufficient to bring a close to this proceeding.

7           That would allow, essentially, a month and a  
8 half for Public Counsel and The Energy Project to file  
9 their case; that is to say, just before the holidays;  
10 for the settling parties under that scenario to file  
11 whatever responsive testimony, and then presumably, if  
12 we are filing testimony and going that route, and  
13 whatever further hearing you want on that and still  
14 have a decision on the settlement itself, up or down,  
15 so to speak, within a three-month period from today's  
16 date. So that is consistent and that would work for  
17 us.

18           JUDGE WALLIS: I did bring a copy of a  
19 calendar showing Commission obligations, and it does  
20 appear that January 19 and 21 would be available as  
21 hearing dates. So if the filing from Public Counsel  
22 were to occur, say, on December 22nd, and if others  
23 filed rebuttal testimony on January 12th, we could go  
24 to hearing -- I'm corrected. It appears it is not  
25 available the 21st, so it would be the 19th.



0120

1           MR. CROMWELL: Your Honor, it's my  
2 recollection that it was the Qwest unfiled agreements  
3 case that had the 21 blocked out as a provisional  
4 hearing date if needed. That case also has the 10th  
5 through 14th currently scheduled with the 21st as the  
6 overflow or the as-needed date, if that's of some  
7 assistance.

8           CHAIRWOMAN SHOWALTER: Are you involved in  
9 that case?

10          MR. CROMWELL: I am.

11          CHAIRWOMAN SHOWALTER: So what is the status  
12 of that? Have any of the days been removed from the  
13 hearing calendar?

14          MR. CROMWELL: Not to my knowledge.  
15 Although, I think it's fair to say in a global sense, a  
16 number of parties involved in that proceeding has  
17 declined significantly, so to the degree, that  
18 facilitates a shorter hearing. If I were to guess, I  
19 would guess that the 10th through the 14th might be  
20 sufficient.

21          CHAIRWOMAN SHOWALTER: So that we have the  
22 21st after all probably.

23          MR. CROMWELL: I would hesitate to contradict  
24 Judge Rendahl's decision to reserve that date, being  
25 notoriously pessimistic about the speed of hearings.

0121

1                   COMMISSIONER HEMSTAD: Under the scenario we  
2 are discussing, if the settling parties continue to  
3 hold their common position, would it require more than  
4 one day?

5                   MR. MEYER: Not from our perspective.

6                   MR. FINKLEA: I wouldn't think so.

7                   MR. EBERDT: I wouldn't think so.

8                   MR. TRAUTMAN: I think not.

9                   MR. CROMWELL: I don't know.

10                  COMMISSIONER HEMSTAD: I assume Public  
11 Counsel will have a witness, a witness, and maybe some  
12 kind of response.

13                  MR. CROMWELL: I would anticipate we would  
14 have one or two witnesses. We have two retained. It's  
15 a question of the scope of what issues those witnesses  
16 address in their testimony, how extensive the  
17 cross-examination would be, the inquiry from the Bench.

18                  JUDGE WALLIS: I take it at this point we are  
19 not foreclosing the possibility that Public Counsel  
20 might join the settlement.

21                  MR. CROMWELL: I would never foreclose such a  
22 possibility. Although, I suppose I should inform the  
23 Commission there is a distinct possibility I might not  
24 be before you on that date in that my wife is expected  
25 to give birth on January 11th, which might materially

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1     impair my appearances before this commission.

2                   COMMISSIONER HEMSTAD:  She can surely delay  
3     that.

4                   MR. CROMWELL:  I'll allow you to make that  
5     phone call, Commissioner Hemstad.  I think she's  
6     actually at this point hoping for an earlier rather  
7     than later arrival.

8                   CHAIRWOMAN SHOWALTER:  We are not setting  
9     anything, because that was one of the different options  
10    we might go down, so we are just getting a sense of  
11    what's possible right now.

12                   JUDGE WALLIS:  You initially mentioned the  
13    opportunity for briefing.

14                   MR. CROMWELL:  I would request the  
15    opportunity for briefing after hearing.

16                   JUDGE WALLIS:  On what time frame?

17                   MR. CROMWELL:  Assuming that we impose upon  
18    our court reporter for a speedy turnaround, I would ask  
19    for at least a week and a half, preferably two.

20                   JUDGE WALLIS:  So briefs on Friday the 28th  
21    or Monday the 31st?

22                   MR. CROMWELL:  Of the two, I would request  
23    the 31st.

24                   JUDGE WALLIS:  And would simultaneous briefs  
25    be appropriate?

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1           MR. MEYER: My more fundamental concern, this  
2 takes us outside the three-month window by which we  
3 were agreeable to this process, a three-month date for  
4 issuance of the decision by the Commission.

5           JUDGE WALLIS: If in this option the Company  
6 is enjoying the benefit of rates subject to refund,  
7 would the difference of a relatively short period of  
8 two or three weeks make a material difference in your  
9 position?

10          MR. MEYER: Not a week or two.

11          CHAIRWOMAN SHOWALTER: You mean a week or  
12 two, two is okay with you?

13          MR. MEYER: Yes, two is okay.

14          JUDGE WALLIS: If we drop back to square one,  
15 what schedule would the parties desire?

16          MR. CROMWELL: "Square one" being scenario...

17          JUDGE WALLIS: Square one being no  
18 settlement.

19          MR. CROMWELL: I will reiterate my request  
20 for the schedule that I proposed at the prehearing  
21 conference.

22          JUDGE WALLIS: Mr. Finklea?

23          MR. FINKLEA: It still strikes me it could be  
24 done sooner than the full ten-month suspension. I  
25 didn't come today with a schedule in mind under

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1 Scenario 1, but I would just observe that it still  
2 would be a far less complicated case than a normal  
3 proceeding that takes ten months.

4 JUDGE WALLIS: Mr. Trautman?

5 MR. TRAUTMAN: I would agree with that.

6 JUDGE WALLIS: Mr. Eberdt, we haven't  
7 inquired of you given your earlier comments but  
8 certainly invite your thoughts.

9 MR. EBERDT: I'll defer to the degree of  
10 expertise at the table.

11 MR. FINKLEA: I do have one cautionary word  
12 on scheduling. If there is no settlement, we don't  
13 know what the Company's position would be on weather it  
14 would just resort back to it's filed case, and if it  
15 did, we would have a more contentious docket than we  
16 would have if the settlement would go forward.

17 JUDGE WALLIS: I think it appears that unless  
18 the settlement is accepted and allowed to go into  
19 effect or the Commission allows rates pending a  
20 decision on the settlement that we would, in fact, need  
21 to come back to another prehearing conference to  
22 establish an appropriate schedule. Is that consistent  
23 with the parties' views?

24 MR. TRAUTMAN: Yes, it is.

25 MR. FINKLEA: Yes.

0125

1 MR. MEYER: Yes, Your Honor.

2 JUDGE WALLIS: Is there anything else that  
3 should come before the Commission at this time?

4 MR. MEYER: Nothing, thank you.

5 JUDGE WALLIS: Very well. Thank you all for  
6 attending today. The argument has been well presented  
7 and very thoughtfully considered, and an order will be  
8 entered as soon as the Commission is comfortable that  
9 it has made a perfect decision under the circumstances.

10 (Hearing concluded at 4:00 p.m.)

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