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1 KING COUNTY, by DONALD C. WOODWORTH, Senior  
2 Deputy Prosecuting Attorney, 500 Fourth Avenue, Suite  
3 900, Seattle, Washington 98104; telephone,  
4 (206) 296-0430.

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6 KING COUNTY, by THOMAS W. KUFFEL, Senior  
7 Deputy Prosecuting Attorney, 516 Third Avenue, Seattle,  
8 Washington 98104; telephone, (206) 296-9015.

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

2                       JUDGE MOSS: Let's be on the record. Good  
3 morning, everyone. We are convened this morning in the  
4 matter styled Washington Utilities and Transportation  
5 Commission against Puget Sound Energy, Docket Nos.  
6 UE-011570 and UG-011571. The purpose of our hearing is  
7 to take up the matter of a proposed stipulation of  
8 settlement concerning King County and PSE in the  
9 context of the ongoing general rate proceedings.

10                   We are convened at nine o'clock in the  
11 morning, and the purpose of that was to give us a  
12 chance of doing our preliminary work, and the  
13 commissioners are prepared to take the Bench at 9:30,  
14 and we will begin our hearing in earnest at that hour.  
15 I'll just launch into the agenda rather than reviewing  
16 it and start with the appearances, and those that have  
17 given an appearance in this proceeding can just give me  
18 the short form; that is to say, your name, your  
19 affiliation and whom you represent. Those of you who  
20 are entering your appearance for the first time, I ask  
21 that you also give me your address, telephone, fax, and  
22 e-mail information for the record. So let's just begin  
23 down here with the Company.

24                   MR. GLASS: Todd Glass of Heller, Ehrman,  
25 White, McAuliffe, 701 Fifth Avenue, Suite 6100,

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1 Seattle, Washington, 98104; phone, (206) 389-6142; fax,  
2 (206) 447-0849; e-mail, tglass@hewm.com on behalf of  
3 the Company.

4 MR. KUFFEL: Tom Kuffel, K-u-f-f-e-l, deputy  
5 prosecuting attorney representing King County.

6 Actually, I think I may have appeared, but it's been  
7 awhile so I will go ahead.

8 JUDGE MOSS: I think you may have appeared by  
9 the paper filing.

10 MR. KUFFEL: 516 Third Avenue, Seattle,  
11 Washington, 98104; fax number, (206) 296-0181;  
12 telephone number, (206) 296-9015; e-mail,  
13 thomas.kuffel@metrokc.gov.

14 MR. WOODWORTH: I'm Don Woodworth, King  
15 County prosecuting attorney, representing King County.

16 MR. CEDARBAUM: Robert Cedarbaum for  
17 commission staff.

18 JUDGE MOSS: For the record, I had an  
19 exchange of information with Public Counsel's office,  
20 and Mr. ffitich indicated that while he would be in the  
21 building this morning, he did not plan to attend our  
22 session unless called upon and reiterated the point  
23 made in the letter of Public Counsel filed supporting  
24 Staff's comments and position with respect to the  
25 stipulation settlement, and just in sort of FYI, I did

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1 have inquiries from some other counsel in the case to  
2 whom I responded that it was not necessary that they  
3 attend unless they wished to on this one matter, so  
4 I'll just note for the record that it is of no  
5 prejudice to parties who are not present today with  
6 respect to the broader proceedings.

7           It has become something of a standard  
8 practice for us to accept a proposed stipulation of  
9 settlement as a Bench exhibit. I have premarked the  
10 stipulation of settlement for King County as Exhibit  
11 No. 500. I have premarked the PSE/Staff stipulation  
12 PSE's King County settlement as No. 501. And I have  
13 also marked the various responses to the Commission's  
14 Bench requests. King County's responses are No. 502.  
15 PSE's responses are No. 503, and Staff's responses are  
16 No. 504. Are there going to be any additional exhibits  
17 this morning?

18           MR. GLASS: Your Honor, yes. We do have a  
19 few exhibits, actually, five, that we would like to  
20 have available to the commission.

21           JUDGE MOSS: Let's go ahead and hand those up  
22 and we will mark them. This first one you've handed me  
23 is a supplement to your response, Bench Request No. 7?

24           MR. GLASS: Yes, Your Honor.

25           JUDGE MOSS: This will just be made part of

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1 Exhibit 503 then.

2 MR. CEDARBAUM: Is this confidential?

3 MR. GLASS: I do not believe so, but I would  
4 leave that to King County.

5 MR. KUFFEL: No, Your Honor. We also have an  
6 exhibit.

7 JUDGE MOSS: Let's get these first. He has  
8 five. Mr. Glass has handed me a document that bears  
9 the caption, and I'll just shorten it, "Metro King  
10 County CLX statement," and that will be No. 505.  
11 Mr. Glass has handed me a chart entitled, "Metro Renton  
12 Plant, November 2001 hourly kilowatt demand," and that  
13 will be the description of the exhibit which will bear  
14 Exhibit 506.

15 MR. GLASS: For the sake of clarity, this  
16 tabular information here, or actually, in columns is  
17 just the data backing up the previous Exhibit 506.

18 JUDGE MOSS: We'll call it, "Data re: Exhibit  
19 No. 506," and it will be marked as 507. The document I  
20 have now is described as "King County peak loads, time,  
21 and temperature during months of PSE annual system  
22 peaks," and that will carry No. 508.

23 MR. GLASS: That's it, Your Honor.

24 JUDGE MOSS: Mr. Kuffel, you have one for us?

25 MR. KUFFEL: Actually, I have three.



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1           JUDGE MOSS: The first one is entitled,  
2 "Comparison of demand versus daily mean," and that's  
3 going to be marked as Exhibit No. 509. "Average daily  
4 KVA demand versus daily minimum temperature," and that  
5 will be 510. This one, which will be marked as No. 511  
6 entitled, "South treatment plant average hourly  
7 variation of energy usage," and that will be 511.

8           Any other exhibits? Was it the intent of  
9 counsel to make opening statements today?

10          MR. GLASS: A brief one, but I would be happy  
11 to forego it if others are not going to.

12          MR. KUFFEL: I had prepared just a few  
13 introductory remarks.

14          MR. CEDARBAUM: I had not prepared anything.  
15 I will probably pipe in if others do.

16          JUDGE MOSS: I will convey that interest to  
17 the commissioners, and as long as it's consistent with  
18 their preferences, we will allow for that. Once we do  
19 that, we will call and swear in our witness panel. Who  
20 do we have here?

21          MR. GLASS: On behalf of the Company, we have  
22 Jerry Henry, who is sitting here to my right.

23          MR. KUFFEL: On behalf of King County, Kevin  
24 Owens from our Department of Metro Resources.

25          JUDGE MOSS: Staff?

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1           MR. CEDARBAUM: Staff witness is Merton Lott,  
2 who was the witness in the interim phase.

3           JUDGE MOSS: We will allow for a narrative  
4 testimony by the witnesses or any witness who has  
5 prepared comments. We will allow examination if there  
6 is any adversity among the parties of the witnesses.  
7 We will have examination from the Bench, and then we  
8 will conclude with any other business that might come  
9 before us.

10           Is there anything the parties would care to  
11 bring to my attention in the way of a process matter  
12 before I go off the record for a few minutes and take  
13 care of a few housekeeping matters and then summon the  
14 commissioners? Apparently not, so we will be in recess  
15 for 10 to 15 minutes while I get those things done.  
16 Thank you.

17           (Recess.)

18           JUDGE MOSS: We are back on the record. The  
19 commissioners have taken the Bench. I've introduced  
20 the bar and the various witnesses, and we will call our  
21 witnesses and swear them momentarily.

22           Earlier this morning, I did convene with the  
23 parties on the record, and we did mark for  
24 identification a number of exhibits, including No. 500,  
25 which is the stipulation for King County that is the

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1 primary subject matter of our gathering today. I've  
2 marked that as No. 500. I also marked 501, which is  
3 the PSE/Staff stipulation regarding PSE's King County  
4 settlement, and 502 is King County's response to our  
5 Bench request. 503 is PSE's response to the Bench  
6 request, and 504, the Staff response to the Bench  
7 request. It is my usual practice to make such things  
8 Bench exhibits, and absent any objection and hearing  
9 none, those will be admitted as marked.

10 In addition, we have Exhibit Nos. 505 through  
11 508 that were marked for PSE, and Mr. Glass, I'll give  
12 you an opportunity momentarily to lay the foundation to  
13 the introduction of those through your witness, and  
14 similarly, we have Nos. 509 through 511, and I'll  
15 either give Mr. Kuffel or Mr. Woodworth the opportunity  
16 to lay foundation to introduce those through the  
17 witness.

18 The counsel for PSE and King County indicated  
19 that they would like to make a few brief opening  
20 remarks, if that is the pleasure of the Bench. Then  
21 why don't we do that. Mr. Glass?

22 MR. GLASS: Good morning, Your Honor, Madam  
23 Chairwoman, Commissioners. PSE is happy and hopeful  
24 that we have finally presented a solution to the last  
25 of the Schedule 48 customer issues, problems, and

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1 potential claims. King County has been a unique  
2 customer since it went onto Schedule 48, and at the  
3 time of the settlement of the Schedule 48 litigation at  
4 this time last year, King County was not included.

5 In large part, they were not included because  
6 they didn't fit neatly into the class of customers that  
7 was deemed to be large customers, and the solution of  
8 UE-001952, and they were not small customers in that  
9 matter either, so they could not avail themselves of  
10 the choices, and they weren't prepared at that time to  
11 go there.

12 Consequently, when all the other customers  
13 departed Schedule 48 to go different ways, they ended  
14 up on a special contract that was somewhat unique. It  
15 was akin to the small customer special contract that  
16 came out of UE-1952 litigation, but it did not give  
17 them the option, that special contract that was  
18 approved in May of 2001, it did not give them the  
19 option of going the route of Schedule 449 and 448,  
20 which would have given them, in essence, retail access.

21 From that time of May 2001 through October of  
22 2001, they paid \$225 per megawatt hour for their energy  
23 charge. From November 2001 to date, they have paid  
24 \$110 per megawatt hour. To this day, they are still  
25 paying that. This was contemplated that they would

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1 continue to pay this until the end of the next general  
2 rate case, and as you know, this matter is about  
3 bringing about a solution into the general rate case,  
4 so this is the contemplated end of that special  
5 contract, and Section 8 of that special contract  
6 provided at the end of the next general rate case they  
7 will be entitled to elect to return to core service or  
8 go to self-generation.

9           In the intervening time, their  
10 self-generation has not developed to the point that  
11 they could depend completely on that in the near  
12 future, so they have elected to return to core service.  
13 What this stipulation of settlement provides is a  
14 transition from their current special contract to  
15 Schedule 49 in consideration for releases of claims  
16 dating back not only their current special contract but  
17 all the way back to service under Schedule 48.

18           The Company feels it's in the interest to  
19 provide this transition and go this route in order to  
20 finally put to rest all of those claims of the past.  
21 If we believe that the incentives provided to build  
22 self-generation are in the interests of both the  
23 Company, its customers, and King County, and finally,  
24 is in the interest of building better relationships  
25 with its significant customers such as King County. So

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1 we look forward to answering your questions today. I  
2 have with me Jerry Henry, who has been with the company  
3 33 years. He is now manager of the major accounts  
4 group, and he has a number of exhibits that he will  
5 explain when we get to that point. Thank you.

6 JUDGE MOSS: Thank you, Mr. Glass.

7 MR. KUFFEL: My name is Tom Kuffel. I'm a  
8 deputy prosecuting attorney for King County. I too am  
9 pleased to be here. The County is pleased to be here,  
10 and we are appreciative of the expedited time frame  
11 that the commission has taken this matter up.

12 As we mentioned in our comments in support of  
13 the stipulation, the South Treatment Plant is part of  
14 the regional system that treats waste water for about  
15 1.2 million people. On an average day the Renton  
16 Treatment Plant will pump about 115 million gallons of  
17 effluent down a 12-mile pipe that opens up into an  
18 outfall about 650 feet off of deep, about 10 thousand  
19 feet off of the head of the Duwamish.

20 On rainy days, particularly rainy days, which  
21 occur very infrequently, the system is taxed such that  
22 in order to keep that pumping going, we have to fire up  
23 what are called peaking pumps. These peaking pumps are  
24 necessary; otherwise, the combination of sewage and  
25 increased storm water runoff would back up in the city

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1 streets and into homes and businesses. These pumps  
2 serve an important public purpose. What they've also  
3 done though from a rate standpoint is put us in  
4 somewhat of a square peg in a series of round holes,  
5 and as Mr. Glass indicated, that was reflected back in  
6 Schedule 48 when we didn't fit quite into the small  
7 customer status. That stipulation and agreement  
8 contemplated, and as a result, we entered into a  
9 special contract, which is the special contract the  
10 South Treatment Plant is currently on that while it had  
11 stable prices, those prices were still somewhat  
12 reflective of the volatile energy markets from 2000 and  
13 2001.

14           The company in good faith came to us during  
15 the course of this general rate case proceeding. We  
16 have worked together to bring forward what we think is  
17 a stipulation that is thoughtful and equitable, and we  
18 ask that you approve it. To my right is Mr. Kevin  
19 Owens. He is from the King County Department of  
20 Natural Resources. He has a couple of exhibits that he  
21 will be talking about when we get to them. Thank you  
22 very much.

23           JUDGE MOSS: Mr. Cedarbaum?

24           MR. CEDARBAUM: Just briefly, Your Honor, the  
25 Staff did file comments in support of the King County/

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1 Puget stipulation, and those comments were supportive  
2 of the stipulations being presented. Staff does not  
3 oppose the County having early termination of the  
4 special contract that it currently has with Puget and  
5 going on to Schedule 49. We did raise two legal issues  
6 in our comments, one with respect to an April 19th  
7 effective date, and the second with respect to allowing  
8 an exception to the ratcheting mechanism for King  
9 County under Schedule 49. I'm available to answer  
10 questions on those legal issues.

11 We also have Mr. Merton Lott for commission  
12 staff to answer questions about the evidentiary support  
13 that has been presented with respect to that exception  
14 for Schedule 49. He will be available to answer  
15 question on that matter. So just with those brief  
16 comments, that's all I would like to say.

17 JUDGE MOSS: I would say in connection with  
18 one of your remarks relating back to the exhibits, we  
19 did receive the parties' responses to the commission's  
20 Bench request. We all recognize that some of those  
21 questions that were posed were more legal than factual,  
22 and the responses were more in the way of legal  
23 argument than in terms of fact. Those are exhibits of  
24 record. They can be referred to for either purpose as  
25 appropriate, and I think the Bench can easily



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1 distinguish between the two forms of discourse, so I  
2 just wanted to make that remark because I think we will  
3 have a mix today of legal argument, if you will, and  
4 some exploration of the facts.

5           So consistent with that, it would seem  
6 appropriate to swear in the witnesses, and then we will  
7 have the witnesses available to respond to questions as  
8 well as having counsel available when the matter turns  
9 to legal argument.

10           (Witnesses sworn.)

11           JUDGE MOSS: Did any of the witnesses have  
12 prepared statements that they wish to make with respect  
13 to the settlement agreement, or shall we launch  
14 immediately into questions? Mr. Lott?

15           MR. LOTT: On the settlement agreement  
16 stipulation between Staff and the commission, I think  
17 that there is a possibility that one of the phrases,  
18 3.1, may be misunderstood, and I wanted to make sure  
19 that 3.1 is understood properly on Page 2.

20           MR. CEDARBAUM: For the record, this is  
21 Exhibit 501, Your Honor.

22           MR. LOTT: Item 3.1, says, "PSE will bear the  
23 net revenue loss associated with transfer of King  
24 County's load from the special contract --

25           JUDGE MOSS: Let's be off the record.

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1 (Discussion off the record.)

2 JUDGE MOSS: Mr. Lott, you were going to tell  
3 us a correction to 3.1?

4 MR. LOTT: It's not necessarily a correction.  
5 I want to make sure it's understood, because I think  
6 that when related to a response to a Bench request, it  
7 may be a problem. The 3.1 on Page 2 says, "PSE will  
8 bear the net revenue losses associated with the  
9 transfer of King County's load from King County's  
10 special contract to Schedule 49 as set forth in the  
11 King County settlement and not seek to recover such  
12 losses in its rates."

13 That phrase was intended to cover the period  
14 of time only from this settlement going into effect,  
15 whatever date that would be, until the general rate  
16 case went into effect. It was not intended to refer to  
17 any of the conditions, such as the ratchet condition.  
18 So if there is loss revenue associated with the ratchet  
19 applying their limit on how much revenue being charged  
20 to King County, there is no agreement that that reduced  
21 revenue is not going to be born by all loaded  
22 customers.

23 I bring that up because the Company's  
24 response to one of your Bench requests, No. 3.4, says,  
25 "Does any provision of the stipulation potentially

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1 shift cost to PSE or to any other of PSE's customers?"  
2 Staff's viewpoint, and actually the Company's response  
3 as shown in Exhibit 505 would indicate that the Company  
4 will experience revenues less than Schedule 49 by  
5 \$107,000 over a two-year period according to go this  
6 analysis that was presented this morning. It is my  
7 understanding that that lower revenue will be spread to  
8 all other customer classes in the general rate case.

9 CHAIRWOMAN SHOWALTER: How much was that  
10 amount?

11 MR. LOTT: I've never seen this document  
12 before this morning, but the document is Exhibit 505,  
13 and the number is, it's a total towards the top in the  
14 difference column shows \$107,694. It appears to be the  
15 difference over a two-year period of applying the  
16 ratchet, and I ask the Company whether that was right,  
17 and they said yes. This is their exhibit. I've never  
18 seen it before this morning, so they might want to  
19 clarify that, but my point is it would be my  
20 understanding that this \$107,000 over a two-year  
21 period, \$55,000 a year would actually be born by other  
22 customers.

23 CHAIRWOMAN SHOWALTER: So you are trying to  
24 distinguish between the revenue loss or debt on the one  
25 hand between the special contract that King County is

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1 currently under versus going to the new contract or the  
2 new tariff and the new tariff with its adjustment  
3 versus just straight Schedule 49, so that second  
4 comparison is not absorbed by PSE share holders in your  
5 view; is that right?

6 MR. LOTT: That was my understanding. That  
7 was all the comments I had.

8 MR. GLASS: Your Honor, if I might, the  
9 Company does not necessarily disagree with Mr. Lott,  
10 and I was going to go there with the witness and  
11 explain that, but there is no significant disagreement  
12 on this point.

13 JUDGE MOSS: Let me make sure I'm perfectly  
14 clear on this. I think I am. Again, with reference to  
15 Exhibit 505, if I understand correctly, the \$107,694  
16 difference reflects the difference between what would  
17 occur --

18 MR. GLASS: What would have occurred.

19 JUDGE MOSS: The dates are February '00  
20 through January '02, so this figure is really just  
21 suggestive. It's not forward-looking.

22 MR. GLASS: Correct. It's what would have  
23 occurred had this proposal been put in place during  
24 that time frame.

25 JUDGE MOSS: So it illustrates what could

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1 happen in terms of cost shifting if the ratchet aspect  
2 were to be approved.

3 MR. GLASS: Correct.

4 JUDGE MOSS: Mr. Cedarbaum, you have  
5 mentioned that you had a couple of points in your  
6 comments that raise some legal issues with respect to  
7 the settlement, and even though comments by Staff are  
8 nominally in support of the settlement, that does  
9 arguably put you in a position that's adverse, so I  
10 wanted to give you an opportunity, if you wish to  
11 pursue it, to inquire of the witnesses for PSE and the  
12 county, if you choose to do that.

13 MR. CEDARBAUM: Your Honor, part of the  
14 difficulty this morning is that we received these  
15 exhibits just this morning, and I don't know the staff  
16 has had much of a chance to review them, so I think I  
17 would need the opportunity to review them with staff  
18 and decide the answer to your question. I don't want  
19 to prolong this any longer than is necessary. Perhaps  
20 at a break I can do that.

21 JUDGE MOSS: We will take a recess here in a  
22 little bit and that might give you an opportunity to  
23 review that. In the same vein, of course, Staff has  
24 filed its comments, and again, they are arguably  
25 creating an adversary situation, so the other party

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1 should have an opportunity to inquire of Mr. Lott, if  
2 they choose to do so. Do you have any questions at  
3 this juncture, Mr. Glass?

4 MR. GLASS: I think that it will frame it  
5 more clearly to go through, just a suggestion, to go  
6 through King County and the Company's witnesses in  
7 questioning because that I think that will provide the  
8 information upon which we can deal with some of these  
9 other issues.

10 JUDGE MOSS: You have some direct examination  
11 for your witness?

12 MR. GLASS: The only thing I was planning to  
13 do was talk through the five exhibits we brought this  
14 morning, lay the foundation, and have him highlight the  
15 importance of each one and why we brought them.

16 JUDGE MOSS: Mr. Kuffel?

17 MR. KUFFEL: I do not have any specific  
18 direct examination but was probably going to be  
19 following a similar path.

20 JUDGE MOSS: That sounds like it would be  
21 useful for all concerned to have some better sense of  
22 our exhibits and what they show. We'll do that first  
23 and just go ahead and start with you, Mr. Glass.

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1 DIRECT EXAMINATION

2 BY MR. GLASS:

3 Q. Mr. Henry, with regard to the first document,  
4 which was actually a legal size piece of paper with two  
5 blue boxes on it --

6 CHAIRWOMAN SHOWALTER: We need the exhibit  
7 numbers.

8 MR. GLASS: This was actually a supplement to  
9 the UTC Bench Data Request No. 7.

10 JUDGE MOSS: That's part of Exhibit 503, and  
11 I'm going to show you the document. Everybody has  
12 that.

13 Q. (By Mr. Glass) Mr. Henry, with regard to the  
14 supplement to Bench Request No. 7, could you please  
15 tell us who prepared this data and the purpose for  
16 which it has been provided here today?

17 A. It was prepared by my shop, one of the  
18 individuals from my shop, and it was an attempt -- we  
19 had given some other information of all of the other  
20 customers that were under Schedule 49, and it was an  
21 attempt -- and we realized we had not had any  
22 information for Metro King County, so it was basically  
23 providing the same information that we had provided  
24 previously and just added the King County data to that  
25 list, and those are the blue sheets that were

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1 confidential that I think that you should have.

2 Q. What does this data show?

3 A. This data shows the metered KVA, what the  
4 demand charges would be based upon from 1997, 1998, 1999,  
5 2000, and 2001.

6 Q. Could you explain what the word "basis" is,  
7 and you might want to refer to what was put in the  
8 initial response to Bench Request No. 7.

9 A. The basis indicates that for the months of --  
10 this is, in essence, what the demand charge is based  
11 upon, and there are two ways to interpret that. One  
12 would be the actual -- the demand charge is set from  
13 the months of November, December, January, February for  
14 the following year, and if your load during the months  
15 of March through October are lower than the ratchet  
16 that is set at that particular point in time, the  
17 customer would pay the ratchet. If it's higher than  
18 the ratchet, then they would pay their actual cost.

19 So in other words, in the King County set of  
20 data, what it shows is from the months of March through  
21 October, they historically have always paid the  
22 ratchet; in other words, they have always paid a rate  
23 based upon demand that was set during the months of  
24 November, December, January, February.

25 Q. Isn't it true that during the time they've



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1 been on this special contract, they have not actually  
2 paid the ratchet, but rather if one were to look back  
3 at the data and determine whether they had been on the  
4 Schedule 49 whether the ratchet would have applied,  
5 that's the question presented here?

6 A. Yes, you are correct. That is the  
7 information. Looking at this as if they were a  
8 Schedule 49 customer is the way this data was prepared.

9 Q. Mr. Henry, turning your attention to Exhibit  
10 505, could you please tell us who created this data, or  
11 was it prepared under your direction, and what is its  
12 purpose?

13 A. This also was prepared under my direction  
14 with my associates in my department, and King County  
15 had come to us with a proposal to limit the demand to a  
16 proposed cap, and in attempt to try and figure out,  
17 well, what would make sense for that cap based on their  
18 past load, we developed this chart, and as you can see,  
19 what we did is we looked at this several different  
20 ways.

21 Starting at the upper left-hand corner, you  
22 can see there is 24 months. We took February of 2000  
23 to January of 2002, and this was the registered KVA  
24 based on our records, and then you have at the bottom  
25 of the third column of numbers, the first column that

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1 says "registered KVA," we just took an average and  
2 found out their average demand for that period of time  
3 was 11196 KVA. The next column shows the ratchet that  
4 would have existed based on KVA charge. The next  
5 column shows during that period of time just the demand  
6 portion of their energy bill would have been \$831,675.

7           The next series of column is basically the  
8 same information, and in there, we arbitrarily applied  
9 a ratchet of 10, and it would have changed the demand  
10 charge to 723,962 or would have reduced it to about  
11 \$107,694 for that two-year period of time or a little  
12 over \$50,000 a year. We then thought, well, let's take  
13 a look at this some different ways, and in essence, we  
14 took a look at that same period of time, the same  
15 24-month period, but we excluded the months of  
16 November, December, January, February and the average  
17 demand was still 10,000. The second set of rows from  
18 the bottom, we then took a look at those averages in  
19 1999, 2000, and 2001, again, including -- this would be  
20 all months, January, February, through December. You  
21 can see again the demand was in the neighborhood of  
22 10.6, 11,860, 10,409 or an average for those three-year  
23 period of around 10,959.

24           The lower set of rows is, in essence, the  
25 same thing again but excluding the months of November,

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1 December, January, February, and again, for those three  
2 months shows that 9,724, 11,875, 8,160, or 9,920. So  
3 this seems to say to me and to my staff that 10,000  
4 based on just the data, seemed to be an appropriate  
5 number for a cap, and was around pretty much the  
6 average for the demand cap for basically the last three  
7 years.

8 Q. Thank you. With regard to Exhibit 506, could  
9 you please again state who created this chart, describe  
10 why you have chosen November 2001 as a time to focus on  
11 and explain what this chart provides?

12 A. Yes. This also was created by my department,  
13 and we knew that -- it's one thing to know what the  
14 average demand was, but it's more important to know  
15 when does that average demand occur. Intuitively, I've  
16 been around the utility business for a long time and  
17 know that King County Metro's peak tends to occur  
18 during major rain storms. Our peak tends to occur when  
19 it's fairly cold, and typically, if it's below 30  
20 degrees or so, there is not a lot of rain.

21 So intuitively, you can see there is some  
22 possibility that King County Metro's peak would be  
23 somewhat at a different time than our peak, but to try  
24 and figure out what that was, we decided to take the  
25 month of November 2001. That was the system peak that

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1 King County had for the year 2001. In other words, on  
2 November 15th, King County had their maximum peak,  
3 which at that time, the demand at that point was  
4 15,342. The red line shows that that's what PSE's peak  
5 was at that particular point in time, 2,546 megawatts  
6 or 2,546,000 kilowatts. Was also wondering during that  
7 particular month when was PSE's system peak, and so the  
8 red line to the right shows at the time of month when  
9 PSE's system peaked, where we had a system peak of  
10 about a million kilowatts over where we were on  
11 November 15th, on November 29, we had a peak again of  
12 three-and-a-half million kilowatts, and King County had  
13 a peak at that time of only 8,370 kilowatts.

14 It seemed to show us at that point in time  
15 that yes, there is some relationship between the fact  
16 that King County's system peak and PSE's do not -- or  
17 King County Metro's plant peak does not occur at the  
18 same time as PSE's monthly system peak occurs, or even  
19 out system peak for that matter.

20 Q. This next exhibit will be a short one. Could  
21 you confirm that Exhibit 507 is the hourly demand data  
22 for King County during that month of November, 2001?

23 A. The exhibit is not a short one but the answer  
24 is. Yes, it's basically the backup data for the chart.

25 Q. And finally, Exhibit 508, could you please

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1 explain this exhibit, who prepared it, and specifically  
2 detail the colors involved?

3 A. This was also prepared by my shop and others  
4 at PSE. I guess I should give them credit, because  
5 there are a lot of people involved in these. Again,  
6 following the line of thinking from the last couple of  
7 charts, I started to ask the question, well, so we are  
8 looking at November of 2001. What happened to our  
9 system peaks in 2000 and 2002?

10 In fact, this chart, the title of this is  
11 probably somewhat in error in that December of 2001 is  
12 when we actually had an annual system peak. In  
13 November of 2001, the system peak -- let me say this  
14 again. In December of 2000 is when we had an annual  
15 peak, and that's what's shown in the first two lines of  
16 this. The system peak in 2001 was in December, and in  
17 2002 -- obviously, we haven't had the full year so we  
18 don't know when the system peak was, so this is not  
19 necessarily PSE's annual system peaks, except for the  
20 month of December of 2000.

21 Moving on, I went back to December and said  
22 okay, what is King County's hourly peak during that  
23 month, what day during that month, and when did PSE's  
24 system peak occur during that month? What were those  
25 amounts, and then in other words, it does two things.

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1 If you look at the first line, December 1, 2000, it  
2 shows King County's hourly peak. Blue is King County's  
3 plant peak. It occurred at 1 a.m., and temperature was  
4 48 degrees at that point in time, and our system peak  
5 was 2333. That would be in megawatts. On December  
6 11th is when PSE had this system peak, and King County  
7 at that point in time was only at 4.5 megawatts. It  
8 was at five o'clock in the evening, and the temperature  
9 was 34 degrees.

10 November, again, this is basically the same  
11 data that's on the graph. It does show again when  
12 PSE's system peak was and what the temperatures were.  
13 November was a fairly warm month. In November 14th was  
14 when King County's plant peak had 15 megawatts. It was  
15 at three o'clock in the afternoon. The temperature was  
16 55 degrees, and the system peak was at 2546 megawatts.  
17 November 28th was when PSE's system peak was. Again,  
18 their peak was at 8:00. Six o'clock in the evening was  
19 41 degrees.

20 I took a look at January so far this year  
21 where our highest peak was, and our peak was on January  
22 28th. There again, you can see the temperature was  
23 down at 30 degrees. We had a peak of 3817. King  
24 County had their peak on January 7th. The temperature  
25 at that point in time was 52 degrees, and our peak at

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1 that time was just below 2000.

2           So again, it seemed to say to me -- let me  
3 talk about this supporting data. The backup supporting  
4 data if you take a look at this fairly small print, it  
5 shows the entire month. It shows every hour of the  
6 month, and it shows PSE's system peak at that  
7 particular hour, and it shows the temperature  
8 immediately above it, and I tried to mark with the blue  
9 and the green. The blue is King County Metro's peak,  
10 and it shows the time, but it always shows every other  
11 PSE peak for every other hour during that time period,  
12 and the green shows PSE's system peak, and I included  
13 that for basically back up information for the  
14 information ahead of that.

15           It seemed to indicate to us that yes, as King  
16 County had suggested to us, that their peak and our  
17 peak do not coincide. In fact, they are fairly far  
18 apart. They tend to peak when it's a significant rain  
19 storm. That tends to be when there is a significant  
20 southern flow, and the temperature is generally much  
21 warmer.

22           MR. GLASS: Your Honor, at this point, I pass  
23 along to other witnesses or welcome any questions from  
24 anybody.

25           JUDGE MOSS: I wonder if we should offer

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1 these exhibits for admission.

2 MR. GLASS: Your Honor, I offer these  
3 exhibits for admission.

4 JUDGE MOSS: They will be admitted as marked.  
5 Do counsel have any questions concerning the exhibits  
6 before we move on and get the exhibits from King  
7 County, which I think we can probably accomplish and  
8 then we will take our midmorning break?

9 MR. CEDARBAUM: Your Honor, I was hoping that  
10 Mr. Lott, rather than me trying to ask questions of  
11 other witnesses and just trying to save time, if  
12 Mr. Lott could have the opportunity for the direct to  
13 just provide a narrative response to these exhibits and  
14 indicate what is deficient or sufficient about them.

15 JUDGE MOSS: Would you like to do that after  
16 the break, I presume?

17 MR. CEDARBAUM: After the King County witness  
18 and the break.

19 JUDGE MOSS: In terms of questions, I  
20 understand that you want to have Mr. Lott pose some  
21 questions, but this isn't in the nature of a technical  
22 conference?

23 MR. CEDARBAUM: No. I would just ask him  
24 some direct questions similar to what Mr. Glass and  
25 Mr. Kuffel would do with their witnesses.



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1                   JUDGE MOSS: I have no problem with that.  
2 Why don't we see if we can get the remaining exhibits  
3 discussed to the extent they need to be, and then I  
4 think we will take just a short recess.

5

6

7

DIRECT EXAMINATION

8

BY MR. KUFFEL:

9           Q.     Mr. Owens, would you please take a look at  
10 the document marked as Exhibit 509? Are you familiar  
11 with this document?

12          A.     Yes, I am.

13          Q.     Would you please explain who created it and  
14 what its purpose is?

15          A.     The document was prepared by myself, and the  
16 purpose of the document was to take a look on a daily  
17 basis what the relationship was of the Renton South  
18 Treatment Plant's electrical demand, and this is  
19 categorized or plotted here as far as average hourly  
20 demand versus the daily mean temperature in Renton for  
21 that particular day.

22                   The point of the graph was to actually  
23 further on and support what Jerry Henry has just  
24 brought before the commissioners as far as showing that  
25 the actual demand relationship between the temperature

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1 and demand of the plant, and I use the month of  
2 December of 2000 as an indicative month merely from the  
3 fact that that was probably the month we all remember  
4 as far as very volatile prices. It was very cold.  
5 That was kind of the outset of the energy crisis, so I  
6 thought it would be most indicative in utilizing Renton  
7 mean temperature as well.

8           It shows that the demand of the plant does  
9 fairly well track with temperature, and that as Jerry  
10 mentioned, the Renton Treatment Plant sets demand  
11 according to rain fall, and Puget system is also  
12 dependent on weather conditions, and theirs is set by  
13 cold weather. As temperatures dropped, it is very  
14 clear from this graph that the plant demand also drops  
15 off. Again from the premise that it doesn't rain much  
16 below 32 degrees. It has an upturn about mid month.  
17 December 10th through the 13th was an extremely cold  
18 period. It started warming up, but you will also  
19 notice about December 21st, there is a departure in the  
20 two graphs, and that's when King County brought on  
21 emergency generation to start clipping some of the  
22 peaks at the plant. So from December 20th,  
23 comparison-wise, it's because of the on-site generation  
24 that was brought on, but it does show that as  
25 temperatures drop, so does the demand at the plant.

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1 Q. Would you please take a look next as what has  
2 been marked Exhibit 510? Do you recognize this  
3 document?

4 A. Yes, I do.

5 Q. Would you please explain who created it and  
6 what its purpose is?

7 A. This document was also created by myself.  
8 The purpose of this was going back looking at November  
9 of 2001, which was the period of time the King County  
10 would have established a ratchet demand of 19 MVA at  
11 the plant that would have been carried forward into the  
12 following months of March through October, and that  
13 would have set its billing demand, so it was also a  
14 period of time that Puget was looking at as well, so we  
15 tried to correlate our data as far as what was taking  
16 place at our plant with relationship to temperature as  
17 well.

18 The first part of the month from November 1st  
19 through about the 14th, 13th, the plant was currently  
20 processing during that time about 60 million gallons  
21 per day of effluent, and I really need to highlight the  
22 fact that just because its rains, it doesn't mean the  
23 plant is going to peak demand-wise. During the month  
24 of November according to the weather tables, it rained  
25 27 out of 30 days in the month of November of 2001, so

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1 rain isn't a big driver behind it. I really need to  
2 emphasize that this is torrential monsoon rains for a  
3 couple of days, and during that period of the 14th, you  
4 will see the peak as far as demand on the plant where  
5 the average daily KVA demand for that day was upwards  
6 almost of 12,000 KVA. Hourly demand on that particular  
7 day was where he reached the 19 MVA.

8           We were pumping 180 million gallons per day  
9 of effluent at that point in time because of literally  
10 monsoon rains over just a couple period of time, and  
11 that day also happened to be 55 degrees, the warmest  
12 day of the month, which coincides with the rain as  
13 well. Ironically, those particular days, the warmest  
14 day of the month, was also Puget's lowest day, I  
15 believe, according to Jerry, and their other low day  
16 was towards the end of the month where our load  
17 subsided substantially.

18       Q.    Thank you. Lastly, would you please take a  
19 look at the document that's been marked Exhibit 511?  
20 Are you familiar with this document?

21       A.    Yes, I am.

22       Q.    Would you please explain who created it and  
23 what its purpose is?

24       A.    This document was prepared by Carollo  
25 Engineers, who are under contract to King County. They

1 are currently undergoing cogeneration studies for the  
2 Renton South Plant, and it seemed very applicable to  
3 the discussions we were having with Puget at the time  
4 and really demonstrates how the plant operates from an  
5 hourly basis throughout a 24-hour period over the range  
6 of August of 2000 through December of 2000, and when I  
7 first started looking at our daily coincidence and when  
8 Puget was talking about time-of-day rates, I normally  
9 would have thought our peaks at the plant would  
10 coincide directly with their peaks as far as the  
11 morning peak when people are getting up out of bed and  
12 showering and getting laundry going and also  
13 experienced another peak during the evening. That was  
14 my initial impression, but when we looked at the data,  
15 it actually shows there is a four- to six-hour delay  
16 from the time you take a shower to when it finally  
17 reaches the plant in Renton and gets treated as  
18 effluent.

19           This plant serves primarily the east side of  
20 King County, Puget's service territory to the east of  
21 Lake Washington and Lake Sammamish. It's indicative of  
22 showing that during their morning peak over a wide  
23 period of time of the four months we were looking at  
24 that that out demand significantly drops off and plant  
25 demand drops off as they reach their morning peak, and

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1 then in the afternoon, there is less of an effect but  
2 levels out, and actually, we hit our peak at midnight.

3 Q. Thank you.

4 MR. KUFFEL: I would offer these exhibits for  
5 admission.

6 JUDGE MOSS: Objection? Hearing none, 509  
7 through 511 will be admitted as marked. Any inquiry  
8 regarding these exhibits before we take our midmorning  
9 break?

10 MR. GLASS: One quick question if I could.  
11 It might be helpful. Mr. Owens, could you please  
12 explain why the short-term spikes occur specifically as  
13 it related to a specific equipment that's not on very  
14 much?

15 MR. OWENS: In February of 2000, the plant  
16 went through a substantial upgrade to the effluent pump  
17 system. On a normal basis, the plant operates -- when  
18 I was showing that period the first part of November  
19 where it was processing about 60 million gallons a day,  
20 that pumping is done by four 625-horsepower effluent  
21 pumps, and they basically handle the base operation of  
22 the plant, but when it does spike as we saw about  
23 November 14th of 2001, there was a substantial upgrade  
24 of the plant that was completed in February of 2001,  
25 and four 3500-horsepower pumps, which were peaking

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1 pumps, were replaced with four 5000-horsepower pumps,  
2 and they were done over a period of six to eight  
3 months, but the last one was put in place of February  
4 of 2001, and these are done with energy efficient  
5 motors and drives, so as it rains and we reach peak  
6 capacity, these need to be started up and work against  
7 the head in the pipeline that goes out to the Westpoint  
8 Treatment Plant, so that's why they are brought in and  
9 ramped up.

10           So conceivably, the maximum peak at that  
11 plant could be well above 19 MVA, could go up to 24 or  
12 25 MVA. There is a substantial risk if it really  
13 rained a lot harder than what it did on the 14th of  
14 November. That's why we didn't see it in the past, if  
15 you are looking at past billing data, is that the plant  
16 did change substantially as far as an upgrade to handle  
17 the plant if it ever got up to three million gallons  
18 per day, something in that range.

19           JUDGE MOSS: Why don't we go ahead and have  
20 you examine Mr. Lott with respect to the exhibits as  
21 you indicated you might wish to do, Mr. Cedarbaum?

22

23

24                           E X A M I N A T I O N

25 BY MR. CEDARBAUM:

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1 Q. Mr. Lott, do you understand Exhibits 505  
2 through 511 to be evidence provided by the Company and  
3 King County intended to support the change in the  
4 demand ratchet under Schedule 49 for King County?

5 A. That's what it would appear to be, yes.

6 Q. You received these exhibits this morning; is  
7 that correct?

8 A. The ones presented by the Company are  
9 brand-new to me this morning. I've never seen that  
10 information before and possibly the stuff on 506, 507,  
11 I have that. The presentation by King County, at least  
12 on 511 and 509, I know I have, and I think I also have  
13 510. I'm not sure about that. So I've seen the data  
14 that King County has presented before, but I've not  
15 seen a lot of the data presented in Exhibits 505, the  
16 addition to 503, and 508. It's all brand-new this  
17 morning.

18 Q. Just generally speaking and not with respect  
19 to these particular exhibits, but can you explain from  
20 Staff's perspective the type of information that would  
21 be necessary to justify the different ratcheting  
22 mechanism under Schedule 49 and why that information is  
23 important?

24 A. I will start with the "why." One of the  
25 Bench requests that the commission asked said, What is



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1 the purpose of the demand charges, the three options,  
2 and the demand charge in Schedule 49, and I think both  
3 Staff and the Company responded to that request as an  
4 indication that you need to be able to recover the  
5 demand costs of the company over the whole year, and  
6 those demand costs in Staff's response indicated that  
7 there are demand costs directly related to the customer  
8 that you would have even away from the system peak, and  
9 that there are others that are coincidental demand  
10 charges, such as production and some of the  
11 transmission which really are more system-peak based.  
12 If one believes that that's how the demand charges are  
13 designed the way they are, that would imply that using  
14 the winter demand charge as a minimum for the demand  
15 charge during the summer was intended to recover the  
16 coincident peak demand cost of the Company, and that is  
17 my viewpoint, that that's exactly what it's intended to  
18 cover.

19           So the question then would be does King  
20 County fit the mold that requires them to contribute as  
21 heavily to the coincident peak as their seasonal peak  
22 would be, and I think that the evidence that is being  
23 attempted to be supplied by the Company, and even King  
24 County, is an attempt to show that maybe King County  
25 doesn't peak when Puget's system peaks. However, I

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1 don't think that the data that has been provided to us  
2 really fully supports it. The theory is there. I  
3 actually stated the theory to other people.  
4 Apparently, King County had already thought up the  
5 theory because I think they had already presented this  
6 response, so the theory is there that, yes, it does  
7 rain in the Northwest when it's warm, but that's not  
8 always the case, I don't think, and I think that I  
9 would need to see data that is more comprehensive.

10           Generally speaking, the peak year or the  
11 capacity requirements of the Company are quite often  
12 referred to over a 200-hour period during the winter or  
13 to other more extended periods of time than just a  
14 one-hour peak, and what I would have liked to see from  
15 the Company would have been a comparison of King  
16 County's loads during the top 200 peaks during year.  
17 So if we looked at those top 200 hours, did King County  
18 go over 10 megawatts during those times, and therefore,  
19 is there a chance that King County's peaks actually do  
20 contribute to coincident peak of the Company, and  
21 that's the type evidence that I'm looking for.

22           Obviously, when we look at just these one  
23 date items that were presented, one single peaks, King  
24 County was not in amongst -- that was not their big  
25 usage, and again, that would be consistent with the

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1 theory, but the theory -- I would like to see more  
2 evidence to demonstrate that that is the case. Staff  
3 is the not objecting to King County going to Schedule  
4 49 and possibly won't object to them getting a special  
5 contract that limits that to a 10-megawatt winter. I  
6 realize it's not limited to 10 megawatts during the  
7 summer, but you can see the ratchet, really, according  
8 to this revised 503 actually shows that they are  
9 ratcheted every single month during the summer, so it  
10 does limit their summer demand charges in every single  
11 month during that four-year period. There is no  
12 question that we are capping their summer capacity not  
13 necessarily to 10 but something lower than their winter  
14 peak.

15           If I was demonstrated they were peaking  
16 during the Company's peak hours, not hour, then I could  
17 support the concept that they proposed in this  
18 proceeding, and that's what I don't have, and again, I  
19 haven't been able to study the detailed stuff that's in  
20 Exhibit 508, but the information is simply not there in  
21 508 anyway, and the one-hour comparisons of temperature  
22 and the usage by King County, they fit into the theory,  
23 but they are just one-month analysis. That would be  
24 what Staff's problems are with allowing this limitation  
25 on the ratchet to 10 megawatts at this time.

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1 Q. If the information that you would require  
2 were provided by either the Company or the County,  
3 would there be a long process involved by Staff to  
4 review that information?

5 A. I don't think it would take staff very long  
6 to review that.

7 MR. CEDARBAUM: Those are all my questions.

8 JUDGE MOSS: Any cross in connection with  
9 Lott's supplemental direct?

10 MR. GLASS: No cross, but a statement that if  
11 the commission issues a Bench request today, Mr. Henry  
12 has told me that at the earliest, tomorrow afternoon;  
13 at the latest, Wednesday midday, he could have that  
14 data for you.

15 JUDGE MOSS: Sounds like that might be some  
16 data that would be useful for Staff as we go forward  
17 and perhaps for the Bench as well, so why don't we just  
18 treat that as Bench Request No. 8.

19 MR. CEDARBAUM: Just to make sure that the  
20 Company will provide exactly what Staff is looking for,  
21 would it be all right for Staff to have some  
22 discussions with the Company off the record to make  
23 sure that information is appropriate?

24 JUDGE MOSS: Sure. If we need to have any  
25 further description on the record, we can do that after

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1 we come back. Anything else from Mr. Lott? We'll just  
2 take a brief recess until a quarter before the hour by  
3 the wall block.

4 (Recess.)

5 JUDGE MOSS: I just have one quick clarifying  
6 question on Exhibit 502, King County's responses to the  
7 Bench request, and I'm looking at Bench Request 6.1.  
8 The answer there in the second sentence seems to me to  
9 have an underlying assumption that the peak during the  
10 previous November through February period was less than  
11 12 MVA, and I would like to have that assumption  
12 verified.

13 MR. GLASS: Can you please repeat the time  
14 frame?

15 JUDGE MOSS: Is it November through February,  
16 right? Under Schedule 49, the demand ratchet to the  
17 March through October period may be determined on the  
18 basis of the peak experience during the November  
19 through February period, and my question is whether the  
20 penultimate sentence in the response by King County to  
21 No. 6.1 is assuming that during the November through  
22 February period, King County did not peak at an amount  
23 greater than 12 MVA.

24 MR. GLASS: That's correct, Judge Moss.

25 JUDGE MOSS: With that, let's just launch

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1 into questions from the Bench, and we will start with  
2 Chairwoman Showalter, and we can have both questions of  
3 fact or law as the case may be.

4 CHAIRWOMAN SHOWALTER: I have three areas of  
5 inquiry. So you know where I'm going, the first is why  
6 isn't this a special contract, and why isn't it  
7 necessary to file it as a special contract to comply  
8 with the WAC that covers special contracts. The second  
9 area of inquiry is the issue of retroactivity, the  
10 retroactive date on either the tariff application or a  
11 special contract, and the third is what the  
12 justification is for giving the commission a very short  
13 time line to decide the issues, and since those are my  
14 three areas of inquiry, I'll just start on the first  
15 one, and maybe we can go down the Bench on that first  
16 one before moving to the second one.

17 But the first question is, why isn't this  
18 very definition of a special contract, the parties and  
19 the witnesses have just made out the case that King  
20 County is unique, has essential circumstances. In  
21 essence, it seems to me that you are arguing that  
22 Schedule 49 as it is stated should not apply for very  
23 special reasons to King County, and in fact, you are  
24 proposing to add a specific condition or term of  
25 service. To me, that sounds like a special contract,

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1 so why is this not a special contract?

2 MR. GLASS: A few points. The first one is  
3 that Section 8 of the current special contract provided  
4 that at the time of the end of that special contract,  
5 King County could elect to return to core service under  
6 a rate schedule. That is what they elected, and that's  
7 what we are attempting to do.

8 Our interpretation of the accommodation which  
9 is attributed to the unique circumstances is that it's  
10 the application of a rate schedule with regard to that  
11 particular customer, so what we've attempted to do,  
12 perhaps somewhat inartfully in the form, is get King  
13 County onto Schedule 49 with this accommodation. No  
14 other customer is in like circumstances, and we feel  
15 that, or it is our understanding that under the  
16 commission's rules that the utility, especially when it  
17 comes into agreement with a customer, in recognizing  
18 the unique circumstances that is it can make such  
19 accommodation.

20 CHAIRWOMAN SHOWALTER: Under the tariff or a  
21 special contract?

22 MR. GLASS: Either.

23 CHAIRWOMAN SHOWALTER: I would like to hear  
24 from Mr. Cedarbaum on that question.

25 MR. CEDARBAUM: As indicated on the Staff

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1 comments, we agree with you. We believe that certainly  
2 with respect to the demand ratcheting provision that  
3 the County and the Company seek to diverge from the  
4 Schedule 49, a special contract is required. We  
5 indicated in our comments that the best way to do that  
6 would be just to have a special contract with all the  
7 rates, terms, and conditions of service for King  
8 County, and it can look just like Schedule 49 except  
9 for the demand ratchet.

10 A more unusual way to do it would be to have  
11 service under Schedule 49 and then a special contract  
12 limited to demand ratchet, but that leaves a customer  
13 receiving service both under a tariff and a special  
14 contract, which seems unusual. But we agree with you  
15 very specifically that a special contract is required.  
16 If you look at the special contract rule in 480-80-335,  
17 which we passed out before we went on the record,  
18 Section 1 states very specifically that if you have  
19 service provided in a way that states charges or  
20 conditions that do not conform to an existing tariff, a  
21 special contract must be filed.

22 I don't think there is any disagreement in  
23 any respect that with respect to the demand ratcheting  
24 provision that is a different condition of service  
25 which creates a different rate per service under



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1 certain circumstances for King County, and to that  
2 respect, a special contract is required.

3 CHAIRWOMAN SHOWALTER: If that is the case,  
4 then you would have to come to the commission with a  
5 special contract to replace the previous special  
6 contract but also comply with the WAC which requires  
7 you to say why King County is special, in essence,  
8 which you've made a showing today. I don't know that  
9 it does or doesn't measure up, but at least we would be  
10 looking at the question as, is King County special or  
11 unique in a way that requires it not to be on the  
12 general tariff and instead requires a special contract.

13 MR. CEDARBAUM: I think that's also right.  
14 Mr. Lott indicated this morning what additional  
15 information he would require and indicated that he  
16 could turn an analysis around on that fairly quickly.  
17 So we may be close on substance, and the process of how  
18 to do that may not be that problematic. In fact, I've  
19 had a conversation with Mr. Glass off-line as to how  
20 perhaps we could treat a special contract that does  
21 meet that nondiscrimination provision as a compliance  
22 filing, so we may be very close to resolving this, but  
23 we need to see that information.

24 CHAIRWOMAN SHOWALTER: I'm not sure I  
25 understood that last one about a compliance filing.

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1           MR. CEDARBAUM: You indicated your last area  
2 was justification for the short time frame, so it may  
3 be if the information that Mr. Lott is looking for  
4 comes in, maybe Staff's comfort level is greater than  
5 yours, but what I'm saying is Staff is in a position to  
6 review this additional information. Apparently, the  
7 Company can provide it and Staff would be able to turn  
8 that around quickly, get King County under the special  
9 contract with the rates, terms, conditions of service  
10 that they would want, and procedurally, we can do that  
11 in response to the stipulation between Puget and King  
12 County as a compliance filing or with respect to that,  
13 with the special contract being the compliance filing.

14           CHAIRWOMAN SHOWALTER: I see. I still say if  
15 it comes to doing a special contract, there needs to be  
16 a specific conformance with the WAC with statements  
17 like, This is not unreasonable preference because...  
18 and lay it out, and we would have to make those  
19 findings.

20           MR. CEDARBAUM: I agree completely with that.  
21 I probably shouldn't have gotten into the process issue  
22 of how we resolve it if we have that information in  
23 evidence, but Staff is, I think, on all fours with you  
24 about the need for a special contract and the  
25 requirement to justify it under the rule.

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1                   CHAIRWOMAN SHOWALTER: Any other questions on  
2 this special contract?

3                   COMMISSIONER HEMSTAD: Back to the parties,  
4 do you see any impediment to transforming this into a  
5 special contract proposal?

6                   MR. GLASS: Your Honor, I see no impediment  
7 whatsoever. The substance of this deal is more  
8 important to us than the form, and the process should  
9 fall in line, and of course, whatever process is  
10 necessary, we will comply with. We don't see any  
11 problems in complying and providing all the necessary  
12 information under this, but the guiding force of where  
13 we are today is the Company is trying to accommodate  
14 the County's desire to get off of it's current as  
15 quickly as possible, and I think the County might have  
16 some answer with regard to your question as well.

17                   MR. KUFFEL: The only potential impediment I  
18 see actually sort of dovetails with the second point  
19 you made, Your Honor, is I look at 480-80-335, it talks  
20 about the effective date, and it says, In no event, may  
21 a contract become effective on a date that precedes  
22 commission approval. Our position and the position in  
23 this stipulation is to come up with what has been  
24 called a service revision date. That service revision  
25 date is the date of filing. The theory on that is

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1 really that this was a settlement of past claims.

2 CHAIRWOMAN SHOWALTER: Let's just move into  
3 that area, because I find it very difficult to see  
4 either as a special contract or as a tariff any way but  
5 that this is going to be retroactive, but you are  
6 asserting that you have claims and that the claim would  
7 then start the trigger date, and it's true that if you  
8 would filed a complaint with us, then that would be the  
9 date of complaint from which, as a discretionary  
10 matter, we could start to redress.

11 But you've made many references to claims,  
12 and I don't know what they are. I'm not aware of any  
13 claim you've made before this commission. I am aware  
14 of a provision that protected your right to file a  
15 claim, but what claim are we settling here?

16 MR. KUFFEL: The claims are outlined in the  
17 petition to intervene, which was granted on December  
18 20th of 2001. In that petition, the County asserted  
19 three things, two of which relate to the question that  
20 you've presented. One is that the rates that the  
21 County were served under Schedule 48 were unfair,  
22 unjust, and unreasonable, and second, that the rates  
23 that the County is currently paying under the special  
24 contract, which at that time was \$111 per megawatt,  
25 were unfair, unjust, and unreasonable.

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1           CHAIRWOMAN SHOWALTER: As a legal matter, as  
2 an intervenor, does that equal a claim, Mr. Cedarbaum?

3           MR. CEDARBAUM: It may be a claim, but it's  
4 not a complaint. The statutes, I believe, set up very  
5 specific procedural mechanisms for any customer. In  
6 this case, a political body has the right to file a  
7 complaint under 80.04.110, and then if the commission  
8 chooses to under 80.04.220 and it finds that relief is  
9 warranted, it can have that relief retroactive back to  
10 the date the complaint was filed, but that wasn't done  
11 in this proceeding. All the County has done is made  
12 some claims in this petition to intervene and is  
13 seeking to have that be the triggering date for its  
14 relief on the special contract, but that doesn't comply  
15 with the statutory procedures for the complaint  
16 mechanism.

17           CHAIRWOMAN SHOWALTER: So there is that  
18 point, and even if intervention equal a complaint in  
19 some sense, you would be asking us, that data, a tariff  
20 or a special contract, even though you already had  
21 achieved a special contract as an outcome of that  
22 litigation. This is sort of doubly removed from an  
23 actual real complaint. Because we have already entered  
24 into a special contract in resolution of those things,  
25 even though you said it reserved the option to file a

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1 complaint, but such a complaint has never been filed.

2           It seems to me that it would be fairly poor  
3 public policy for us to deviate from a very, very, very  
4 strong antiretroactivity policy in this instance  
5 because (A), there is no complaint; (B), there is  
6 already a special contract; (C), by the way of the  
7 original complaint of ICNU, we found that the rates  
8 were not fair, just, and reasonable because there  
9 wasn't an appropriate hedge mechanism. This  
10 resolution, to get back on a tariff with an adjustment  
11 to it, doesn't relate very well to that. It would be  
12 discretionary with us, in any event, whether we dated  
13 something far back, so there are just sort of many  
14 hurdles. The much more standard and I think sound  
15 policy is everything is prospective without a fairly  
16 strong reason and set of circumstances for it not to  
17 be, unless the time period is short.

18           So this gets back to if your reason for not  
19 going the special contract route is that the special  
20 contract is explicitly must be prospective, I don't  
21 think you are going to get very far, or it's hard for  
22 me to hear the arguments you are going to get very far  
23 on making a tariff retroactive.

24           MR. CEDARBAUM: If I could add one more  
25 aspect to the legal angle on this. The County in one

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1 of the Bench request responses -- it's Exhibit 502,  
2 Bench Request No. 1 -- does indicate that the  
3 commission in its initial notice of hearing in the  
4 underlying general rate case indicated that at issue in  
5 this docket is whether the Company's existing tariffs  
6 produce rates, terms, and conditions for electricity  
7 service that are fair, just, reasonable, and  
8 sufficient.

9           Putting aside whether special contracts were  
10 intended to be included in that sentence, which only  
11 refers to tariffs, that provision of the notice of  
12 hearing still has to only be applied perspectivevely  
13 since under RCW 80.28.020, there is specific reference  
14 that the commission after this type of hearing process  
15 and complaint by "it," which refers to the company,  
16 sets the rates to be thereafter charged. So from both  
17 directions on a legal issue, whether it's a requirement  
18 for a complaint which wasn't filed or the commission's  
19 underlying general rate proceeding, the County on the  
20 effective date, I believe, is not entitled to a  
21 retroactive date.

22           CHAIRWOMAN SHOWALTER: Actually, a third  
23 angle on this is here we are in a general rate case  
24 with all the tariffs at issue, and yet, it appears to  
25 me that the Company and the County want to speed up the

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1 application of the general tariff with respect to King  
2 County and no one else to be modified later in the  
3 general rate case. It's pretty unusual.

4 MR. KUFFEL: We've made the argument. We've  
5 made it in good faith. I can take you through the  
6 theory, but essentially, it's as I stated. This is a  
7 settlement. The Company has agreed to settle those  
8 claims. If you look at Paragraph 5.5 of the  
9 stipulation, you will not find a release of claims  
10 similar to that, at least as to Schedule 48. There is  
11 no document out there in which King County's claims  
12 have been released pursuant to Schedule 48, and this  
13 language in 5.5 looks almost identical to the language  
14 which was in the stipulation with Air Liquide.

15 CHAIRWOMAN SHOWALTER: But they had filed a  
16 complaint.

17 MR. KUFFEL: I understand. Our position was  
18 that the commission preserved our claims under 48 that  
19 when it filed it's own complaint back on December 10th  
20 that that called into the questions of fairness and  
21 reasonableness of the rates and provided the basis for  
22 us to intervene on the bases that we did and upon which  
23 it was granted.

24 CHAIRWOMAN SHOWALTER: My reading of it would  
25 be that the settlement with King County preserved King



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1 County's right to file a complaint, which it has not  
2 yet done, and had you come forward with a complaint a  
3 month ago or two months ago or tomorrow, that right is  
4 still there. Any other questions on this  
5 retroactivity?

6 COMMISSIONER HEMSTAD: I'm trying to get to  
7 your point. In your petition to intervene, did you  
8 anticipate that the essence of a complaint would have  
9 been litigated in the rate case?

10 MR. KUFFEL: Potentially, yes. It has not  
11 gone there, quite frankly, because we have been engaged  
12 in good-faith discussions with the Company for the last  
13 six weeks or so, but in theory, yes.

14 COMMISSIONER HEMSTAD: Mr. Cedarbaum, would  
15 that be an appropriate matter to take up in the general  
16 rate case, that kind of a specific claim against the  
17 Company?

18 MR. CEDARBAUM: I think with respect to the  
19 retroactive effect of it, I think it would not have  
20 been; that there are very specific complaint processes  
21 by statute that need to be followed if a customer is  
22 going to be allowed relief retroactively before a  
23 commission order is issued. Those processes weren't  
24 followed here.

25 COMMISSIONER HEMSTAD: The theory of a rate

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1 case just separates going forward, if that's your  
2 point. This species of complaint or claim is for a  
3 claim retrospectively. Would that be something that  
4 would even be taken up in a rate case?

5 MR. CEDARBAUM: Retrospectively, did you say?

6 COMMISSIONER HEMSTAD: A claim for having  
7 paid rates that were too high.

8 MR. CEDARBAUM: Under a tariff it can be, but  
9 the fix of that can only happen prospectively. Under a  
10 special contract, it's more difficult for me to reach  
11 the conclusion that the commission can without a  
12 complaint actually being filed actually remedy that  
13 either retrospectively or prospectively. That's a  
14 specific contract between a customer and the Company  
15 that the commission has approved under the special  
16 contract rule. So it's difficult for me to see how  
17 that can be resolved absent a complaint and in the  
18 context of the general rate proceeding itself.

19 I know King County has made those allegations  
20 in its intervention and was allowed to intervene, but I  
21 don't know that that necessarily means the commission  
22 was giving its seal of proposal that it would be  
23 allowed to raise those issues, and I suppose relevance  
24 issues could have been addressed at any time the  
25 testimony has been filed.

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1                   JUDGE MOSS: To the extent that there had  
2 been a formal complaint filed, taking some of your  
3 earlier remarks, Mr. Cedarbaum, you were citing us to  
4 the statutory provisions that concern relief and what  
5 relief can be afforded to a party on a retroactive  
6 basis, and I believe you commented, and I believe  
7 correctly, that under our statutes, such relief could  
8 only date back to the date that the complaint was  
9 filed, and I believe there is a case authority on that  
10 as well.

11                   MR. CEDARBAUM: I think you are right, Your  
12 Honor; although, there is a provision in 80.04.220  
13 which has always troubled me, the reparations statute  
14 that says that the commission can basically authorize  
15 relief before or after the filing of the complaint, so  
16 it even says before, which as I said, has always seemed  
17 kind of strange to me. I'm not sure what the  
18 justification is for that, but otherwise, I agree with  
19 your comments completely.

20                   MR. KUFFEL: I have one follow-up. That  
21 actually leads into your third point, which is the  
22 justification. If the commission is not inclined to  
23 agree to that service revision date, then as least from  
24 our standpoint, the sooner we get off of those special  
25 contract rates and onto the Schedule 49 rates, the

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1 better it is for the County. Our sewage ratepayers  
2 have been paying a significant amount for almost 12  
3 months now, so it would be desirable on our part if the  
4 commission -- it's beneficial to us, anyway, and we  
5 understand the burden on this commission, but that's  
6 our perspective.

7 CHAIRWOMAN SHOWALTER: One option is to go  
8 from your current special contract onto Schedule 49,  
9 period, like any other Schedule 49 customer, and that  
10 strikes me as something that might be able to be done  
11 quite quickly. We still have to find that it's  
12 justified to terminate a special contract before its  
13 scheduled date, and ordinarily, that would not happen.  
14 Now here, both sides to the contract are agreeing to  
15 it, so that changes it, so that would be one way.

16 The other way is to come in with a special  
17 contract to replace the other special contract. It  
18 might take a few more days to do it. In either event,  
19 those would be prospective from the date that we  
20 approve either the termination of the first contract  
21 going on the Schedule 49 or the termination of the  
22 first contract going onto another special contract.  
23 Again, I don't want to anticipate a special contract  
24 decision too much because whenever we look at a special  
25 contract, we ask ourselves, Is this really unique? Is

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1 this not unfair discrimination? Who else might come in  
2 and try to claim the same special characteristics, so  
3 is it really that special? We need to go through that  
4 sort of inquiry, but the parties have been arguing  
5 along those lines, not that you are one of the regular  
6 ratepayers that ought to be under Schedule 49 as it's  
7 stated.

8           But shifting to this timing of how long you  
9 are giving us to decide, the original time line that  
10 you provided this commission to decide this case was  
11 very, very short. Now, if the issues are simple and  
12 the need is urgent, we try very hard to be prompt, but  
13 where the issues are not simple -- in fact, on their  
14 face, they appeared to me, anyway, to be contrary to  
15 law -- then giving us whatever it was, five, six, days  
16 to hurry up and do this decision, is really  
17 inappropriate, and so now this date has been scheduled  
18 to this Friday, I think it is, and this is a comment,  
19 not really a question, unless you want to take it as a  
20 question and give justification, but the question is,  
21 why is this so urgent?

22           Obviously, King County has been paying a high  
23 rate, but it's a high rate they agreed to pay through  
24 the end of a rate case, and that happens frequently in  
25 contracts. You enter into a contract. It's a binding

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1 contract if it's out in the legal world or it's a  
2 tariff in this world. Just the fact that it's high is  
3 not a compelling reason or just the fact that it's  
4 higher than it might have been if you renegotiate  
5 something. So we understand that as soon as you have  
6 agreed on something, the benefitting party would just  
7 as soon get right to it, but we do need the time, as I  
8 think our Bench requests and our questions today  
9 reveal, that perhaps the parties have not thought  
10 through all the legal implications of this. So  
11 ordinarily, we should be given some time to take a good  
12 look because that's a protection for the public and for  
13 precedent.

14 MR. KUFFEL: I'm happy to take that as a  
15 comment instead of a question.

16 JUDGE MOSS: Any other inquiry from the  
17 Bench?

18 COMMISSIONER OSHIE: I want to get back  
19 briefly to the ratchet provision in Schedule 49, and I  
20 guess the question is directed to Mr. Glass or  
21 Mr. Henry, but as I understand it, and maybe you can  
22 clarify because I thought that I understood that the  
23 ratchet was set, that the demand charge was set under  
24 Schedule 49 by your hourly peak and end day during the  
25 year, but there was a comment made during the

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1 discussion about what I would call a daily peak, or an  
2 average, if you will, of that daily demand peak for any  
3 particular customer, and maybe we can get that  
4 clarified for the record as to when the demand ratchet  
5 is triggered and what the ceiling is based upon.

6 MR. GLASS: The Schedule 49 has two separate  
7 periods for the demand charge. For the period between  
8 March through October, the demand charge is based upon  
9 a billing demand, which is the higher of three  
10 components, 4,400 KVA, the actual peak billing demand  
11 during that month, or the highest billing demand set  
12 during the previous peak season, which is determined by  
13 during the months of November through February, and  
14 that is what the accommodation that is in this  
15 settlement goes to, that final thing.

16 COMMISSIONER OSHIE: Under your second  
17 option, it's anytime during the month, any minute of  
18 the month, and that's how King County hit the 19 --

19 MR. GLASS: It's during a 15- to 30-minute  
20 interval during a single hour of that hour. If, for  
21 instance, the November through February time frame was  
22 15 MVA or 15,000 KVA, if during a summer month it was a  
23 monsoon and their actual load was 19, it would be 19.  
24 It would not be set by the previous peak season  
25 ratchet.

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1                   COMMISSIONER OSHIE: Let me follow-up with a  
2 question I think Mr. Henry can answer because it deals  
3 with the relationship with your customers from your  
4 position. Is there any reassessment of the ratchet  
5 based on a history of use, or does it -- because it  
6 seems like the way the ratchet works is once it hits a  
7 certain peak, the customer is going to be paying for  
8 that demand peak based on an event that may not be  
9 recurring during their usage during their future usage.

10                   MR. HENRY: That's correct. The way that the  
11 ratchet is set, the way that the demand is set during  
12 those four months, you have to live with that, again,  
13 for the next eight months, so it's fixed. I don't know  
14 of any cases where we've changed that. I do know in  
15 looking at the data for the 49 customers and comparing  
16 that with King County, most 49 customers, in fact all  
17 49 customers, do not have the system peaks that King  
18 County seems to have. All the 49 customers also tend  
19 to be able to make business decisions, and we've had 49  
20 customers that have made a business decision that says  
21 we realize we are going to be setting a ratchet, but we  
22 also realize we are going to be selling a lot of  
23 products, so we are going to run this particular line  
24 during this particular month knowing we are going to  
25 pay that for the rest of the year, for the next



1 eight-month summer period. King County doesn't really  
2 have that option. When it rains, it rains, and there  
3 is no business decision made; whereas I look at the  
4 other 49 customers, they tend to have more an ability  
5 to make a business decision, but even so, they do not  
6 have the significant differences of peak that we see in  
7 King County.

8 COMMISSIONER OSHIE: So King County's demand  
9 could be ratcheted down at the end of the eight-month  
10 period? In other words, there is some reassessment.

11 MR. HENRY: It's an annual assessment. We  
12 look at it for the period November, December, January,  
13 February. That drives the ratchet for the next eight  
14 months, and then at the end of that eight-month period,  
15 the ratchet goes to zero, or there is no ratchet, and  
16 whatever it actually is for November, December,  
17 January, February again.

18 COMMISSIONER OSHIE: Thank you.

19 JUDGE MOSS: If there is nothing further from  
20 the Bench...

21 CHAIRWOMAN SHOWALTER: I think I lost my  
22 question from somewhere. I guess the question in my  
23 mind is what facilitates this process best? As it  
24 stands right now, we will take this under advisement  
25 and give you an answer when we have an answer, and we

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1 need to deliberate about it.

2           It strikes me that the longer we take to  
3 decide these questions, the more pressing you are going  
4 to feel, the more pressed you will feel. So I'm  
5 wondering how to get to the end point, and I think that  
6 the end point that you want to get to is the substance  
7 of what you've agreed to in one form or another, and if  
8 it's a special contract, here's my question -- I  
9 remembered -- one of the things we need to look at, am  
10 I right, Mr. Cedarbaum, is what are the economic  
11 consequences to the ratepayers of a special contract,  
12 and under the current proposal, the Company has agreed  
13 to pick up the difference between the current special  
14 contract and the proposed tariff arrangement, but if  
15 this were a special contract, there, in addition, would  
16 be that question of the 107,000. In other words, if  
17 this operated as a special contract, it would also be  
18 different from the tariff straight out, who picks up  
19 those costs. I don't know whether that's a critical  
20 factor or not, but I know it is a factor that we would  
21 be looking at, wouldn't we?

22           MR. CEDARBAUM: That's correct, Chairwoman.  
23 Looking at the special contract rule under Section  
24 5(c), what's required is a demonstration at a minimum  
25 that the contract charges recover all costs resulting

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1 from providing the service during its term, and in  
2 addition, provide a contribution to fixed costs.

3 I think that's the issue you are looking at,  
4 and there would have to be evidence of that, which is  
5 the subject that we were discussing this morning, and  
6 that will be the subject of the additional Bench  
7 request.

8 CHAIRWOMAN SHOWALTER: So that issue would go  
9 to whether the contract is recovering its cost, it  
10 might still allow, strictly speaking, for a cost  
11 shifting I suppose on the theory that too much costs  
12 being paid originally by King County; is that correct?

13 MR. CEDARBAUM: It's either that -- I'm  
14 looking at the rule that you provided this morning. I  
15 don't see it jumping out at me, but at least in the old  
16 rule, there was a statement that the rate-making  
17 consequences of any special contract acceptance were  
18 not decided as part of the acceptance of a special  
19 contract; that that was really a general rate case  
20 issue, so it could be the issue of who picks up the  
21 107,000 or whatever it is. I guess I would have to  
22 consult with Mr. Lott as to whether we would treat that  
23 in the context of the current general rate case or that  
24 the Company would be at risk for it until the next  
25 general rate case.

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1           CHAIRWOMAN SHOWALTER: Possibly that question  
2 of who does pick up the cost would not necessarily be  
3 answered by our approval of a special contract. It  
4 would be kicked to another proceeding?

5           MR. CEDARBAUM: Either the existing  
6 proceeding, perhaps, or a later proceeding, but I don't  
7 think the commission has to reach a decision on that  
8 particular issue. It can hold the Company at risk for  
9 that cost shift and then resolve it. Again, I'm not  
10 quite sure whether it would be in the context of the  
11 current rate case, if that would be a revenue  
12 requirement issue, or the next general rate case.

13           CHAIRWOMAN SHOWALTER: I think what this is  
14 pointing out is that there is more to approving a  
15 special contract and all of its elements and  
16 consequences than there is to jumping to Schedule 49  
17 straight, period, with no adjustments, and I don't know  
18 what the right answer is here. One maybe is to jump to  
19 that and then figure out the next special contract, but  
20 you would have to be showing at some point that being a  
21 general ratepayer on Schedule 49 is somehow  
22 inappropriate, even though you are ready to go off a  
23 special contract onto Schedule 49.

24           MR. CEDARBAUM: Just a clarification before  
25 Mr. Glass jumps in, the provision of the special

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1 contract rule I was searching for -- I'm sorry. Maybe  
2 Mr. Glass can go ahead.

3 MR. GLASS: I may take it in a slightly  
4 different direction, but thinking off the tops of our  
5 heads on this end of the table and seeking for a  
6 procedural way to get from here to there, and this has  
7 obviously not been discussed with King County until  
8 right now, is that one way to proceed would be to  
9 terminate the current special contract as soon as  
10 possible; to put King County onto Schedule 49 as  
11 written; to work together to come in and meet all the  
12 WAC 480-80-335 conditions, terms, requirements; file  
13 that special contract, and have that come before you  
14 for your consideration as soon as possible.

15 CHAIRWOMAN SHOWALTER: Just one thing on that  
16 mode, normally, I think in a general sense when we have  
17 special contracts and then people want to go back and  
18 be a regular ratepayer, we look pretty carefully at any  
19 reentry fee or anything that would be appropriate. We  
20 don't want to encourage parties to go special when it's  
21 beneficial to be special and back on the rate when it's  
22 beneficial to be on the rate, that kind of thing. I'm  
23 not saying that is the case. I think this is sort of  
24 an unusual set of circumstances, but we need in either  
25 event, special contract or going back onto Schedule 49,

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1 we need to be making the kinds of findings that show  
2 that such an action is justified and is not just, we  
3 are taking advantage of whatever seems most  
4 advantageous at the time, because that is a danger.

5 MR. GLASS: I would note that the special  
6 contract that was approved in May of 2001 specifically  
7 dealt with that issue and dealt with the  
8 come-back-to-service charge issue by saying that at the  
9 end when this contract was done, they could elect to  
10 come back, so that was one of those issues that was  
11 dealt away by the Company at that time, so it would not  
12 be an issue that the Company would be seeking.

13 CHAIRWOMAN SHOWALTER: I just want to point  
14 out it's more than just the Company and the party. I  
15 understand you two have agreed, but we are thinking of  
16 broader precedent, so I think you are correct on this  
17 case. We also approved that special contract.

18 JUDGE MOSS: Being mindful of the time, I  
19 would like to go off the record for a few minutes so we  
20 can confer among ourselves and see where we need to go  
21 from here, so we will be off the record.

22 (Recess.)

23 JUDGE MOSS: Given the hour and some other  
24 commitments, I'm going to do things a little out of  
25 order here, but I want to get to the most essential

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1 parts first while we still have our full Bench present.  
2 We have had an opportunity to chat among ourselves up  
3 here. The commissioners have reached some tentative  
4 conclusions that I want to go ahead and relate.

5           Because of the problems the commission  
6 perceives associated with certain elements of the  
7 proposed stipulation, including the retroactive  
8 effective date or the proposed retroactive date and the  
9 proposal for an exception to one of the provisions of  
10 Schedule 49, a rate schedule of general applicability  
11 with regard to the demand ratchet issue, the commission  
12 would rule from the Bench today that it would not  
13 approve the stipulation as filed.

14           This leaves us with certain options. The  
15 parties could await a formal order from the commission  
16 that would effect such a ruling, and that might be a  
17 matter of a week or two before that could be done  
18 simply because of the current burden of other matters  
19 that are pending before the commission. The parties  
20 would have the option, of course, to let us know today  
21 that they want to withdraw this settlement proposal.  
22 The commission would be inclined to grant leave for  
23 that to occur, and then the parties could perhaps  
24 consider their options which have been discussed today  
25 and perhaps work closely with Staff in further pursuit

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1 of something that would work to capture the substance  
2 of what the parties wish to accomplish but perhaps  
3 implement it in a way that would be more clearly legal  
4 and acceptable on a policy basis.

5           So I think that throws it back to the parties  
6 in terms of what they might prefer, an order in a  
7 couple weeks or the opportunity to withdraw and refile  
8 in a somewhat shorter time frame. In connection with  
9 the second option, we would be able to adopt the record  
10 from the current proceeding. We also have the response  
11 coming into Bench Request 8, which apparently will  
12 provide factual information that will assist the Staff  
13 and the commission as previously discussed, and, of  
14 course, the parties are fully aware if they file a  
15 special contract that they need to comport with the  
16 requirements of WAC 480-80-335, and of course, that  
17 could be done through supplemental testimony, including  
18 the possibility of live testimony or affidavits or what  
19 have you. So let me throw it to the parties very  
20 quickly for a response and see where King County would  
21 be on this, or if you want to have some time to  
22 consider it, you could get back us to us later through  
23 some sort of a brief written submission to let us know  
24 what you are inclined to do.

25           MR. KUFFEL: I think that would be our



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1 preference.

2 MR. GLASS: One quick question. If we wanted  
3 to proceed down the termination of the special contract  
4 in order to go straight to 49, what would be the most  
5 expeditious route from the Bench's perspective?

6 JUDGE MOSS: Mr. Cedarbaum, what would they  
7 need to do?

8 MR. CEDARBAUM: I guess procedurally, we  
9 could consider that or a revision to the stipulation,  
10 and you could just deal with that if you believed you  
11 had enough evidence in the record to support the notion  
12 that the early termination of the special contract has  
13 recovered its costs. I don't think anybody disputes  
14 the fact that Schedule 49 wouldn't be applicable to  
15 King County, so there is not a discrimination issue  
16 there. I think it's just the cost issue.

17 Mr. Lott can speak if we have the time, but I  
18 don't think Staff, subject to the commission approving  
19 its stipulation, would have any objection if King  
20 County just went off the special contract to Schedule  
21 49 as written, and then we dealt with the revision to  
22 the ratcheting mechanism in a different proceeding, and  
23 that could be done through an open meeting process.

24 JUDGE MOSS: As soon as when?

25 MR. CEDARBAUM: I'm reluctant to commit Staff

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1 to anything since who knows what collaborative we are  
2 supposed to be in today or that we are missing, but I  
3 think we are looking at the end of May, beginning of  
4 June time frame.

5 JUDGE MOSS: When is the commission's next  
6 open meeting?

7 MR. CEDARBAUM: I don't know if it's this  
8 Wednesday or the following Wednesday. I guess I would  
9 have to talk to Mr. Lott and the Company about that.  
10 If it was this Wednesday, it could be put on that  
11 agenda and then deferred to a later date that made  
12 better sense, if necessary. I think Wednesday would be  
13 too fast though, but it could be the next Wednesday if  
14 all the evidence is there and the analysis can be done.

15 CHAIRWOMAN SHOWALTER: I think my memory is  
16 that -- I'm looking at Mr. Byers, but I think this open  
17 meeting that's the day after tomorrow is going to be  
18 continued for two more dates following that for other  
19 reasons, so it's an extended open meeting.

20 JUDGE MOSS: It sounds like there is a degree  
21 of uncertainty that makes it evident that we should  
22 give the parties an opportunity to chat among  
23 themselves and clients and get back to us in writing,  
24 so why don't we leave it at that for today's purposes.  
25 Are there any other questions? I have a question on a

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1 fact that I want to ask, but are there any other  
2 questions about process, where we go from here?

3 Just for the record, there is one point I  
4 want to clarify. King County's response to Bench  
5 Request 1.2 indicates that dollar impact in the range  
6 of \$400 to \$500 a day; whereas, PSE's response to that  
7 same Bench request indicates a dollar impact in the  
8 range of \$10,000 to \$15,000 per day, and I think we are  
9 at the point of a nontrivial difference there that  
10 needs to be reconciled, so if could look at Bench  
11 Request 1.2 and tell me what is the right answer?

12 MR. KUFFEL: The PSE figure is the more  
13 accurate one. We had recognized that, Judge Moss, as  
14 an error and submitted an errata e-mail later in the  
15 day last Wednesday or something like that, so the PSE  
16 figure is the more supportive figure. If you've got  
17 specific questions about that figure, I would have to  
18 defer to Mr. Owens.

19 JUDGE MOSS: So Mr. Owens, you would confirm  
20 for the record that the response to Bench Request 1.2  
21 should have been, as stated by PSE, in the range of  
22 \$10,000 to \$15,000 a day?

23 MR. OWENS: That's consistent with our  
24 estimates as well. I think the \$400 to \$500 might have  
25 been an hourly figure that was discussed at some

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1 particular point in time, but that gets to the urgency  
2 as well as far as the impact on our sewer rates.

3 JUDGE MOSS: If it has not been previously  
4 done, I would ask that you reduce that e-mail errata to  
5 a letter to be filed and submitted to me so I can have  
6 it for the record, and I will make it a supplemental  
7 response to the Bench request under the current exhibit  
8 number, which is 502.

9 In addition to that, I'm going to reserve  
10 No. 512 for the PSE response to Bench Request No. 8  
11 that we had enunciated on the record today and which I  
12 understand Staff and the Company had an opportunity to  
13 discuss, and of course, our record will remain open  
14 pending further developments as you all indicate  
15 through your written communications through the  
16 commission. Those should be submitted through the  
17 commission secretary, filed with the record's center,  
18 and they will be bearing this docket number and will be  
19 circulated to the appropriate people.

20 Is there anything further from the Bench?  
21 Anything further from the parties? Thank you all very  
22 much for being here. We appreciate you doing such a  
23 good job on short notice, and we will look forward to  
24 hearing back from you in the near term with respect to  
25 how we might proceed from here. We are in recess.

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(Hearing concluded at 11:47 a.m.)

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