

Witness - 08/03/2016

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the)
 Petition of)
 PUGET SOUND ENERGY.) DOCKET No. UG-151663
 For (i) Approval of a)
 Special Contract for)
 Liquefied Natural Gas)
 Fuel Service with Totem)
 Ocean Trailer Express,)
 Inc., and (ii) a)
 Declaratory Order)
 Approving the)
 Methodology for)
 Allocation Costs Between)
 Regulated and)
 Non-regulated Liquefied)
 Natural Gas Services)

HEARING, VOLUME IV

PAGES 130 - 149

ADMINISTRATIVE LAW JUDGE DENNIS MOSS

Taken at 1300 South Evergreen Park Drive Southwest

Olympia, Washington

DATE TAKEN: AUGUST 3, 2016

REPORTED BY: SARAH BINGHAM, CCR 3388

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A P P E A R A N C E S (Continued)

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1 OLYMPIA, WASHINGTON; AUGUST 3, 2016

2 1:30 P.M.

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4 JUDGE MOSS: Afternoon, everybody. My name
5 is Dennis Moss. I'm an administrative law judge at the
6 Washington Utilities and Transportation Commission. We
7 are convened this afternoon in the matter styled -- in
8 the matter of petition of Puget Sound Energy for
9 approval of a special contract for Liquefied Natural Gas
10 Fuel Service with Totem, T-o-t-e-m, Ocean Trailer
11 Express, Inc. and a declaratory order approving the
12 methodology for allocating costs between regulated and
13 non-regulated liquefied natural gas services. Our
14 docket number is UG-151663.

15 I want to begin today, before taking
16 appearances, by acknowledging Mr. Trotter's presence and
17 thanking him for being present. I -- I ask that he be
18 invited today. He's been working with you all, I know,
19 as a mediator. And we'll perhaps have a report from him
20 on his view of the status of affairs momentarily.

21 Before we get to that, though, we'll go
22 through the business of taking short form appearances
23 and we'll start with the Company. Mr. Kuzma?

24 MR. KUZMA: I'm Jason Kuzma on behalf of
25 Puget Sound Energy.

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1 JUDGE MOSS: All right. And let's just go
2 to Mr. Kuzma's right there, with some staff.

3 MR. ROBERSON: Jeff Roberson on behalf of
4 Commission staff.

5 MR. SHEARER: Brett Shearer on behalf of
6 Commission staff.

7 MR. BROOKS: Tommy Brooks, Cable Huston, for
8 the Northwest Industrial Gas Users.

9 JUDGE MOSS: Okay, Mr. Brooks.

10 And in the back row, have any counsel in the
11 back row? No, I don't think so.

12 So those of you on the Bridge Line?
13 Mr. Finklea?

14 MR. FINKLEA: Yes, Ed Finklea for the
15 Northwest Industrial Gas Users.

16 JUDGE MOSS: And let's see. Mr. Pepple?

17 MR. PEPPLER: Good afternoon. Tyler Pepple
18 for the Industrial Customers of Northwest Utilities.

19 JUDGE MOSS: And for anyone who wasn't here
20 when I said it before, Ms. Gafken, for the public
21 counsel, is in another proceeding upstairs. We're down
22 in room 139 today. And Mr. Shearer has agreed to speak
23 for her, at least initially. And if we need her, she
24 can be summoned.

25 So is there anyone else on the telephone who

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1 wishes to enter an appearance on behalf of a party? I
2 wasn't sure if we covered all bases or not, but I think
3 we actually do have everybody.

4 All right. So we are here for our status
5 conference, once delayed until today because of a
6 scheduling problem that I had, frankly. I appreciate
7 you all being willing to accommodate that. And I think
8 maybe -- I think I should, unless parties tell me to the
9 contrary, ask Mr. Trotter if he wants to give me a brief
10 report on the mediation?

11 MR. TROTTER: I'd be glad to, your Honor.
12 Should I just go ahead?

13 JUDGE MOSS: Sure. Please do.

14 MR. TROTTER: First, thank you for inviting
15 me. It's a pleasure to be here. As you know, the
16 parties agreed to a mediation. I assume they did so
17 because they thought there was a good chance of a
18 successful outcome. As you know, confidentiality is a
19 critical part of mediation, so my comments are going to
20 be very general. I'm not going to refer to any party in
21 particular because I need to honor that forever, I
22 guess.

23 JUDGE MOSS: I understand, and I'm not
24 asking for a substantive report, just a status.

25 MR. TROTTER: Good. So we've had, I think,

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1 four or five what I would consider mediation sessions.
2 And then I have -- during one of those sessions, I had
3 spoke to parties one-on-one. And then over the last few
4 days, I've been speaking to parties one-on-one to try to
5 gauge the status of things.

6 At the beginning, our first two days in a
7 row, we were able to clear what I thought was a major
8 roadblock to a successful mediated outcome.

9 And let me digress for a moment. Everyone
10 knows that a successful mediated outcome still has to
11 come to the Commission for approval.

12 JUDGE MOSS: Sure.

13 MR. TROTTER: But my focus is that first
14 step.

15 JUDGE MOSS: Sure.

16 MR. TROTTER: The parties have retained --
17 agreed to retain consultants, and have agreed on the
18 consultants to help with some of the analysis of the
19 numbers. And their report is going to be due August
20 19th. And I have no reason to believe it won't be but,
21 you know, things happen. The consultants were agreed to
22 by all parties. And I have no role in that process.
23 They will be making an oral presentation to the parties
24 on the 26th to answer any and all questions -- of
25 August -- answer any and all questions about what they

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1 have analyzed.

2 So I think that will be cathartic in a number of
3 ways, but none of us can predict what they will come up
4 with. So there have been, from time to time, as in any
5 negotiation or mediation, some conduct or behavior that
6 may not be as productive as it should be. And I usually
7 in the one-on-one sessions called people out on this,
8 and I'll continue to do so, so I don't expect to win a
9 popularity contest at the end of this process. At the
10 same time, I know everyone here and I respect everyone
11 here, and I think things are proceeding as well as can
12 be expected with a couple of caveats. And let me get
13 right to those.

14 There are -- there's one significant barrier, I
15 think, at this point that I can mention because it's not
16 substantive, and that is time. As I know the Company
17 has some time restrictions if this project is going to
18 go forward that we don't want this process to time it
19 out. But that's going to put pressure on the parties
20 soon to, you know, really focus and work hard to see if
21 something can be achieved here in a mediated context.
22 That's -- that's a -- that's going to be an issue for --
23 for the parties.

24 The other is because of the report due on the
25 19th, there has been some reluctance on some parties'

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1 behalf to -- to work on other issues in the meantime.
2 Because the consultants aren't going to address every
3 issue. So -- so some parties are less than
4 enthusiastic, I guess is a better way of putting it, in
5 terms of others in terms of trying to work on those
6 issues in the meantime.

7 I have worked with people to try to convince
8 them to -- that they need to really work hard on this.
9 And we don't know what the 19th is going to show, but
10 let's see what we can do in the meantime, otherwise,
11 there's going to be more pressure. And I think I've
12 been successful in that, but because that is ongoing as
13 we speak, I don't -- and I think we'll have a
14 conversation about that after this status conference is
15 over. I don't really know how that's going at this --
16 at this point. But it has my attention and I'll do what
17 I can to push that forward.

18 So it's my belief -- and you'll ultimately be
19 hearing from, I assume, all the parties.

20 JUDGE MOSS: Yes.

21 MR. TROTTER: But it's my belief that people
22 are still dedicated to this effort. And I've given you
23 the kind of the caveats or the warning signs that I see.
24 But we have -- I think it's fair to say we have made
25 substantial progress, but we still have a long way to

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1 go.

2 JUDGE MOSS: All right. Well, that was a
3 very informative status report, Mr. Trotter, and I
4 appreciate it. And I'm glad it didn't -- didn't end
5 with, "We've reached an impasse." It sounds like the
6 parties are still making diligent efforts. And of
7 course, I've been encouraging that throughout this
8 process, as you all know. And you-all have all
9 participated, I'm sure, in good faith.

10 But I do want to hear from you, and if you
11 have some suggestions for how we go forward in terms of
12 time and so on and so forth, and I'll have some
13 thoughts, considering the things Mr. Trotter had to say,
14 certainly, at the end. And I'm going to have some
15 things to say to you individually as we go on.

16 So Mr. Kuzma, for the Company?

17 MR. KUZMA: From Puget's perspective, we
18 concur with pretty much everything Mr. Trotter has said.
19 The one concern we do have is timing. We need this --
20 this is -- up until recently, this was one of several
21 items that needed to be resolved. We've gotten to the
22 point now where the Shoreline permits have been
23 adjudicated in Puget's favor. Also, you know, the core
24 of engineers and their -- their processes are
25 concluding. So this is the very last element of the

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1 process and -- and necessary to go forward.

2 And we're just frankly at a place where we
3 need to start construction, particularly in water work.
4 There's a fish window that we need to be out of the
5 water by mid-February. So we need to really begin
6 construction in earnest in October to -- to make sure
7 that we get the work done by that fish window, otherwise
8 we'll be in a situation in which we will effectively
9 lose a considerable amount of time and almost put the
10 project back another year, and then some of the issues
11 related to that as far as peaking service need and then
12 also the -- the potential for liquidated damages on the
13 TOTE contract.

14 So that's frankly our biggest issue, is
15 that, you know, we think that the parties have been
16 working in good faith. We think that we've made some
17 progress. The delay on behalf of, you know, getting the
18 consultant up to speed, you know, contributed to that.
19 But hopefully that can be pushed through relatively
20 quickly.

21 So we're hoping that, you know, everybody
22 would make a good faith effort to try to, you know, see
23 if we can reach settlement, frankly, by Labor Day, if
24 it's possible. And that would give the Commission some
25 time to consider any settlement and, you know, make its

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1 determination in sufficient time to allow construction
2 to begin.

3 JUDGE MOSS: Okay. What's the date for
4 Labor Day?

5 MR. KUZMA: Oh, I -- September 7th I think
6 or so. You know, if we could -- we were looking at
7 September 4th as a date that we would all try to -- in
8 good faith try to work towards. That would -- you know,
9 hopefully then we could turn around and file it -- if we
10 reach agreement, we could then turn around and file
11 something with Company.

12 JUDGE MOSS: All right. Very good. Staff?

13 MR. SHEARER: Staff would largely agree with
14 Mr. Trotter's assessment. We are optimistic about the
15 mediation process, and we agree we've made material
16 progress, especially recently. We're not quite as
17 optimistic of the dates that Mr. Kuzma just mentioned,
18 of Labor Day, because that would be only a week from the
19 time the consultants present their report. Our proposal
20 would be something along the lines of mid to late
21 September --

22 JUDGE MOSS: Okay.

23 MR. SHEARER: -- to have something settled
24 or to come back to the Commission.

25 JUDGE MOSS: Okay. And then can you tell me

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1 what Ms. Gafken's view of this world is?

2 MR. SHEARER: The same as mine.

3 JUDGE MOSS: Same as yours?

4 MR. SHEARER: Mid to late September
5 preference, to have a little bit of time to review that
6 consultant's report, because we frankly don't know what
7 it's going to look like, how long it's going to be,
8 those sorts of things.

9 JUDGE MOSS: Okay. All right. Mr. Finklea,
10 anything from you? I'm sorry, Mr. -- I'm sorry. Mr.
11 Brooks is in the room so I'm going to go to him first.

12 MR. FINKLEA: Mr. Brooks can handle it.

13 JUDGE MOSS: Yeah, Mr. Brooks is in the
14 room.

15 MR. BROOKS: And would prefer to defer to me
16 anyway.

17 JUDGE MOSS: I'm sorry. I was looking at my
18 notes and I forgot. I always forget to look at Counsel
19 table.

20 MR. FINKLEA: I enjoy being quiet.

21 MR. BROOKS: I don't have any statements
22 that are different from any of the parties. I think,
23 you know, we appreciate that the other parties were
24 willing to go with this kind of consolidated expert
25 approach that, frankly, allowed us to, you know, stay as

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1 engaged as we're -- as we are. It's, I think, the
2 discussion of what the -- that outside expert was going
3 to look at was -- was good in crystallizing the issues
4 as well. And so it was just even having that
5 discussion, I think, helped the overall process.

6 When we were sitting before the Commission,
7 you know, I was asked about the time frame, and I
8 expressed some hesitancy even -- you know, there was
9 going to be a status conference in late July, seemed
10 very aggressive. So, you know, we understand there's
11 still this time constraint. We're not surprised by it.
12 This is a -- you know, a big thing to bite off and chew
13 off and try to digest.

14 But so I think, you know, until we get that
15 report from the consultants and it really crystalizes
16 our understanding of things, we're sort of -- I guess
17 we're just waiting for that to happen.

18 JUDGE MOSS: Mm-hm. Okay. Mr. Pepple?

19 MR. PEPPLE: Yeah, I would concur with the
20 other parties. You know, I've been interested in this
21 in particular mainly to the merger commitments. And I
22 think when we joined the proceeding, you know, a lot of
23 it was sort of based on sort of questions about how
24 commitments would apply, and I think the mediation and
25 Mr. Trotter's role has helped a lot to sort of clarify

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1 how that would work.

2 I'm not willing to say that we're, you know,
3 at a place of agreement yet, but I think we're closer
4 than we were at the beginning and I certainly, you know,
5 see the possibility for agreement there.

6 JUDGE MOSS: All right. Anybody else want
7 to -- have anything else? Okay. So it sounds to me
8 that what I need to resolve for you today, since you're
9 not in agreement among yourselves, is the date by which
10 this process needs to be concluded. Right? Is that
11 what I need to do?

12 MR. KUZMA: Yes.

13 MR. SHEARER: Yes.

14 JUDGE MOSS: Well, being the kind of guy
15 that I am, I'm going to suggest that we compromise. The
16 4th, by the way, is a Sunday and, of course, the 5th is
17 a holiday. So knowing that PSE's lawyers will be
18 working on Saturday and Sunday and the holidays, and
19 others of course may wish to work as well, although I
20 know that's more of a feature of private practice than
21 it is public service.

22 But -- so I think -- I think we should set
23 the 9th, which is the end of that week, which
24 coincidentally falls on the date the reply briefs are
25 due and the proceeding that kicked us out of 206 today.

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1 So that would -- I think that strikes an appropriate
2 compromise.

3 It does push the parties -- there is another
4 matter that I'll address, and Mr. Trotter mentioned,
5 that there was some -- perhaps disagreement is too
6 strong of a word -- about working on issues that are not
7 related to the consultant's work in the interim. And I
8 think that should be done. So, you know, I don't want
9 to inject myself into this process to the point of
10 stating dates or something like that, but what I would
11 like for you all to do, after we're finished here today,
12 is talk with Mr. Trotter and -- and work out some kind
13 of a little schedule, at least on the back of an
14 envelope, and try to get those other issues out of the
15 way before the consultant. And then I assume the
16 consultant's report is going to be sort of a
17 crystallizing factor in terms of any significant hurdle
18 that may need to be overcome or that cannot be overcome.

19 And so we know that by the 9th, then that
20 should allow time. And, you know, I can do my best, of
21 course, to expedite things within the Commission
22 structure once we have something in writing in terms of
23 if there is a negotiated agreement and, of course,
24 supporting material. Perhaps a consultant's report
25 would be something that would be shared with the

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1 Commission --

2 MR. KUZMA: Sure.

3 JUDGE MOSS: -- to crystalize our thinking
4 about things as well. Then we can push that along.

5 I have a number of other things on my plate
6 right now but, you know, we've been working with this
7 for a long time and I think it deserves priority. And I
8 will certainly work within the ALD at the Commission to
9 do what I need to do to make sure that this is taken
10 care of with all due dispatch if we get as to the point
11 of something that's -- can be agreed.

12 Now, if we can't, we can't, and that's
13 unfortunate all around, perhaps. But, you know,
14 Mr. Trotter's working hard. So I know you won't win any
15 popularity contests at the end. I've been in your
16 shoes, and I never did either, but I always got paid and
17 that was the important thing. Okay.

18 So any questions, any thoughts anybody wants
19 to share? Pretty well -- is that all we need to do
20 today?

21 All right. Well, thank you all very much.
22 I appreciate --

23 MR. PEPPLER: Judge Moss, this is Tyler
24 Pepple. I think just -- what I think is a fairly minor
25 procedural issue, which is just that I assume you've

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1 filed our late -- filed position to intervene in the
2 docket.

3 JUDGE MOSS: Okay.

4 MR PEPPLE: It -- that hasn't been granted
5 yet. I assume that no party objects to it, but I
6 thought that now would be a good time to address it.

7 JUDGE MOSS: Well, there's no objection and
8 your motion's granted. How about that?

9 MR. PEPPLE: Thanks. Appreciate it.

10 JUDGE MOSS: You need it in writing?

11 MR. PEPPLE: Well, I just wanted to make
12 sure that we had party status was all.

13 JUDGE MOSS: Well, I'll make sure that
14 that's officially recognized here in the Commission.
15 And, yeah, I -- we've just been sort of operating on
16 that basis because, by opening up the old merger
17 business, you know, we had to notice all the parties in
18 that case. So in a sense, your party status there just
19 sort of carries over, really. But I do appreciate that
20 you went through the step of a petition to intervene and
21 your right to ask me about it today. Thank you. All
22 right.

23 MR. PEPPLE: Thanks. I appreciate that.

24 JUDGE MOSS: Yes, yes. Okay.

25 Any other matters, procedural or otherwise?

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All right. Well, again, thank you all very much, and carry on.

MR. KUZMA: Thank you.

MR. TROTTER: I think we're off the record.

JUDGE MOSS: Yeah, let's be off the record.

(Hearing concluded at 1:50 P.M.)

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF KING

I, Sarah Bingham, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the HEARING, on August 3, 2016, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of August, 2016.

Sarah Bingham, CCR

My Commission expires:
NOVEMBER 2016