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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

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COMMISSION

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WASHINGTON UTILITIES AND)

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TRANSPORTATION COMMISSION)

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Complainant,)

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vs.)

DOCKET NO. UE-100177

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PUGET SOUND ENERGY)

Volume I

8

Respondent.)

Pages 1 - 35

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A prehearing conference in the above matter

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was held on April 1, 2010, at 1:32 p.m., at 1300 South

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Evergreen Park Drive Southwest, Olympia, Washington,

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before Administrative Law Judge MARGUERITE FRIEDLANDER.

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The parties were present as follows:

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WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by FRONDA WOODS, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504;
telephone, (360) 664-1225.

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PUGET SOUND ENERGY, by SHEREE STROM CARSON,
Attorney at Law, Perkins Coie, 10885 Northeast Fourth
Street, Suite 700, Bellevue, Washington 98004;
telephone, (425) 635-1422.

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PUBLIC COUNSEL, by SIMON J. FFITCH (via
bridge), Senior Assistant Attorney General, 800 Fifth
Avenue Suite 2000, Seattle, Washington 98104;
telephone, (206) 389-2055.

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Kathryn T. Wilson, CCR

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Court Reporter

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1 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
2 by IRION A. SANGER (via bridge), Attorney at Law,
3 Davison Van Cleve, 333 Southwest Taylor, Suite 400,
4 Portland, Oregon 97204; telephone, (503) 241-7242.

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6 NORTHWEST ENERGY COALITION, by DANIELLE
7 DIXON, Senior Policy Associate, 811 First Avenue South,
8 Suite 305, Seattle, Washington 98104; telephone, (206)
9 621-0094.

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

2 JUDGE FRIEDLANDER: Good afternoon. My name
3 is Marguerite Friedlander, and I'm the administrative
4 law judge presiding. Today is April 1st, 2010,
5 approximately 1:30. We are here at the Washington
6 Utilities and Transportation Commission in the matter
7 of PSE's ten-year achievable conservation potential and
8 biennial conversation target report.

9 This is a prehearing, and the purpose of the
10 prehearing this afternoon is to take appearances,
11 address petitions for intervention, and we've received
12 two of those, to discuss the issues lists which were
13 received on Monday, and to set the procedural schedule.
14 So let's go ahead and start by taking appearances.
15 Appearing today on behalf of Staff?

16 MS. WOODS: Good afternoon, Your Honor. I'm
17 Fronda Woods, assistant attorney general representing
18 the Commission staff.

19 JUDGE FRIEDLANDER: We will need your name,
20 address, telephone number, fax number, and e-mail
21 address.

22 MS. WOODS: I'm Fronda Woods, assistant
23 attorney general. My address is 1400 South Evergreen
24 Park Drive Southwest, PO Box 40128, Olympia,
25 Washington, 98504-0128. My telephone number is area

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1 code (360) 664-1225. The fax number is area code
2 (360) 586-5522, and my e-mail address is
3 fwoods@utc.wa.gov.

4 JUDGE FRIEDLANDER: Appearing today on behalf
5 of PSE?

6 MS. STROM CARSON: Good afternoon, Your
7 Honor. I'm Sheree Strom Carson with Perkins Coie
8 appearing on behalf of PSE. My address is the PSE
9 Building, 10885 Northeast Fourth Street, Suite 700,
10 Bellevue, Washington, 98004-5579. Phone number is
11 (425) 635-1422; fax, (425) 635-2422, and my e-mail
12 address is scarson@perkinscoie.com.

13 JUDGE FRIEDLANDER: Appearing today on behalf
14 of Public Counsel?

15 MR. FFITCH: Good afternoon, Your Honor,
16 Simon ffitich, senior assistant attorney general, Public
17 Counsel office of the attorney general, and the street
18 address, 800 Fifth Avenue, Suite 2000, Seattle,
19 Washington, 98104-3188; phone, (206) 389-2055; fax,
20 (206) 464-6451; e-mail, simonf@atg.wa.gov.

21 JUDGE FRIEDLANDER: With that, let's go ahead
22 and get to the persons who have filed petitions for
23 intervention starting with Northwest Energy Coalition.

24 MS. DIXON: Good afternoon. This is Danielle
25 Dixon with the Northwest Energy Coalition. My address

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1 is 811 First Avenue, Suite 305, Seattle, Washington,
2 98104. Phone number at the office is (206) 621-0094;
3 fax, (206) 621-0097, and e-mail is
4 danielle@nwenergy.org.

5 JUDGE FRIEDLANDER: Appearing today on behalf
6 of Industrial Customers of Northwest Utilities?

7 MR. SANGER: Irion, I-r-i-o-n, Sanger,
8 S-a-n-g-e-r. I am with the law firm of Davison Van
9 Cleve. Address is 333 Southwest Taylor, Suite 400,
10 Portland, Oregon, 97204; phone number, (503) 241-7242;
11 fax number, (503) 241-8160. E-mail is mail@dvclaw.com.

12 JUDGE FRIEDLANDER: So Mr. Sanger, just for
13 the record, you said your e-mail address was
14 mail@dvclaw.com?

15 MR. SANGER: Yes.

16 JUDGE FRIEDLANDER: With that, let's go
17 ahead, and first I should make sure there is nobody
18 else on the conference bridge. Hearing nothing, let's
19 go ahead and get into these petitions for intervention,
20 starting with the Northwest Energy Coalition. I've
21 reviewed the petition, and is there anything else that
22 you would like to add, Ms. Dixon?

23 MS. DIXON: Nothing I can think of at this
24 time.

25 JUDGE FRIEDLANDER: Staff, did you have an

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1 objection to the petition?

2 MS. WOODS: No objection, Your Honor.

3 JUDGE FRIEDLANDER: PSE?

4 MS. STROM CARSON: No objection, Your Honor.

5 JUDGE FRIEDLANDER: What about Public

6 Counsel?

7 MR. FFITCH: No objection to the petition,

8 Your Honor.

9 JUDGE FRIEDLANDER: Having reviewed the

10 petition finding that there is substantial interest in

11 the subject matter and that the participation is in the

12 public interest, I will go ahead and grant that

13 petition.

14 Now turning to the Industrial Customers of

15 Northwest Utilities, is there anything you wanted to

16 add, Mr. Sanger?

17 MR. SANGER: Not at this time, Your Honor.

18 JUDGE FRIEDLANDER: As far as Staff, do you

19 have any comments on the petition?

20 MS. WOODS: No comments, no objections, Your

21 Honor.

22 JUDGE FRIEDLANDER: PSE?

23 MS. STROM CARSON: No objections.

24 JUDGE FRIEDLANDER: Public Counsel?

25 MR. FFITCH: No objection, Your Honor.

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1 JUDGE FRIEDLANDER: I do find having read the
2 petition that there is substantial interest in the
3 subject matter and that granting the petition would be
4 in the public interest, so I will grant that petition.

5 Now, the notice that was sent out for today's
6 prehearing conference did indicate that I wanted
7 everybody to get together and file a joint issues list.
8 I ended up receiving two lists. So I'm just wondering,
9 there was a hint that there might be some further
10 discussions. I'm just wondering now whether or not
11 those discussions have taken place and whether or not
12 we've narrowed down some of the issues and the
13 differences that may exist.

14 MS. STROM CARSON: Your Honor, we did have
15 further discussions, I believe, on Tuesday. We had a
16 conference call. We, I think, made some progress in
17 terms of understanding each other's positions, but I
18 don't believe that we've narrowed down the list any
19 more than what was filed on Monday.

20 JUDGE FRIEDLANDER: Does anybody else have
21 any further comment, or does that adequately capture
22 what's been going on with the parties?

23 MS. DIXON: I think that captures it.

24 JUDGE FRIEDLANDER: It's my understanding
25 from the open meeting on March 11th that this could be

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1 a multistage case where the first stage we would be
2 dealing with would be legal issues. The question I
3 guess I have for Staff at this time is if the
4 Commission resolves the threshold legal issue from the
5 March 11th meeting; i.e., which edition to use, the
6 fifth or the sixth, is that something that will address
7 the factual issues in this case as well? Would that
8 resolve all of Staff's concerns?

9 MS. WOODS: We haven't had a full discussion
10 on that, Your Honor. The brief discussion that we have
11 had suggests that resolution of threshold legal issues
12 could make further proceeding unnecessary.

13 MR. FFITCH: Your Honor, I think I would
14 agree with Staff that the answer to that question is
15 still a bit unclear, partly because we've been thinking
16 of this in terms of the full list of issues presented
17 by the Company, and the answer to your question sort of
18 differs depending on which question you are looking at.

19 However, with regard to the questions that
20 you just posed, which is can the Company pick the fifth
21 plan or not, I think our view would be that there would
22 still be further issues even if that is resolved;
23 specifically whatever number the Company presents,
24 whether that number is in compliance with the ultimate
25 statutory standard, which to paraphrase is that the

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1 target has to establish achievable cost-effective,
2 reliable, feasible energy efficiency for the filing
3 company. So the simple question of whether they are
4 permitted to select the fifth plan in our view doesn't
5 resolve that ultimate question by itself.

6 JUDGE FRIEDLANDER: But you would agree,
7 Mr. ffitch, that the Commission decided at the March
8 11th meeting to set this matter for hearing to address
9 Staff's concern, which was that PSE had not provided
10 enough information; correct?

11 MR. FFITCH: Yes.

12 JUDGE FRIEDLANDER: PSE, what was your
13 understanding of, I guess, the way that the case would
14 go procedurally?

15 MS. STROM CARSON: It was PSE's
16 understanding -- it was actually PSE that said that
17 there were threshold legal issues that needed to be
18 decided before this could go forward, and the
19 Commission seemed to agree with that and think it was
20 an appropriate way to go.

21 In that light and as requested, we prepared
22 the list of threshold legal issues that the Company
23 sees needs to be addressed, and as to whether or not
24 those are dispositive and from a legal perspective went
25 into the case, that's a bit hard to say, but from PSE's

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1 perspective, I think it makes sense to, and I believe
2 Mr. DeBoers said this at the open meeting, it makes
3 sense to go forward with the threshold legal issues,
4 have those decided, and then very likely, the parties
5 can work something out. Maybe there needs to be a new
6 filing; maybe not, but it's likely that issues can be
7 resolved after these threshold legal issues are
8 decided.

9 So I guess from our perspective, PSE
10 requested to have issues decided. We've set forth the
11 issues. We would like to go through that stage and
12 then see if anything more really needs to be done in
13 terms of a hearing.

14 JUDGE FRIEDLANDER: Given that and given
15 Public Counsel's response as well as Staff's response,
16 I guess I should ask Northwest Energy Coalition if they
17 had any other understanding procedurally of whether or
18 not there were additional issues that had to be
19 addressed besides the legal issues.

20 My understanding from March 11th open meeting
21 was that there was the legal issue as to the fifth or
22 sixth plan being used, and I know that PSE has
23 identified multiple other legal issues that they would
24 like addressed as well. Is that Northwest Energy
25 Coalition's understanding, that there were threshold

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1 legal issues that needed to be addressed in the hearing
2 situation and then anything else would be put off at
3 this stage? In other words, we are having motions for
4 summary determination on the legal issues, and then
5 addressing anything that may come up factually at that
6 point?

7 MS. DIXON: That was our understanding based
8 on Mr. DeBoers's request at the hearing on March 11th.
9 We had also raised one potential legal issue of
10 consistency at the end of January filing with what was
11 put forward at the end of December, and so that is not
12 the fifth versus sixth plan issue but a separate legal
13 issue, so we had assumed there would be resolution of
14 the various legal issues in this motion.

15 There are some issues as the parties were
16 discussing prior to today's prehearing conference that
17 there is a sort of a mix of legal and factual around
18 such as public participation in the final target that
19 was set forth by PSE, and I guess maybe a lack of
20 clarity as to how exactly that particular issue could
21 or would be resolved in this particular motion.

22 Is this something where the sole focus is on
23 legal? Is there some assumption with regard to the
24 facts, or do we basically say that type of issue may be
25 resolved following these initial threshold legal

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1 issues? I think there is still some uncertainty in our
2 discussions the other day as to how that would be taken
3 care of.

4 JUDGE FRIEDLANDER: Did you have anything you
5 wanted to add, Ms. Carson?

6 MS. STROM CARSON: Yes. I would like to add
7 in respect to the issue about factual disputes, as with
8 any motion for summary determination, if a party thinks
9 there are facts in dispute, they can demonstrate that
10 there are facts in dispute, and summary determination
11 shouldn't be granted.

12 From a big-picture perspective, many of the
13 objections, if not all of the objections that the other
14 parties had towards PSE's legal issues really appear to
15 be more arguments, perhaps, against summary
16 determination at all or against PSE's position on the
17 legal issues.

18 JUDGE FRIEDLANDER: Thank you for adding
19 that.

20 MR. FFITCH: Your Honor, this is Simon
21 ffitich.

22 JUDGE FRIEDLANDER: Yes, go ahead.

23 MR. FFITCH: I'm sorry to interrupt. I guess
24 I wanted to add my thought on this sort of bigger
25 procedural question, I answered your question initially

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1 kind of narrowly. We look at the case at this point as
2 having an initial phase of legal issues and then
3 potentially a subsequent phase that would then move on
4 to the adjudicative hearing in some form or the rest of
5 the adjudicative process in some form, and within that
6 sort of two-phased framework, we would propose or
7 recommend that the Commission adopt a schedule for the
8 legal issues up front and then defer a decision about
9 how to address remaining issues, because it is somewhat
10 unknown until an order comes out on the legal issues at
11 which point we would -- I would assume the Bench would
12 set a prehearing conference, and then we could then get
13 a much clearer reading on whether there were remaining
14 issues that needed to go to the hearing and adopt a
15 schedule for that. Within that framework, we are
16 certainly open to sort of streamline procedures for
17 that second phase, but that's how I think we would view
18 a way to get all the questions answered.

19 Then with respect to this last discussion
20 about motions for summary determination, I guess our
21 observation would be in that first phase, we just need
22 to decide whether, in fact, we are dealing with motions
23 for summary determination or just straight legal
24 issues, some of which are not necessarily dispositive,
25 and I think maybe we just need to kind of work through

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1 the issues list a bit to see what's in there.

2 Some of them I don't think are truly motions
3 for summary determination or involve this question of
4 mixed questions law and fact, but I think all of that
5 is sort of a determination within the first phase,
6 within the legal phase, and the main impact of whether
7 you are dealing with summary determination or not I
8 think is perhaps on the schedule that we adopt or
9 recommend for the first phase.

10 If we are simply talking about straight,
11 clean legal issues, the one-week briefing schedule that
12 was mentioned in the prehearing order seems manageable.
13 If we are talking about motions for summary
14 determination where parties may need to submit
15 declarations, more factual material, we would recommend
16 building in a little bit more time into that schedule.

17 JUDGE FRIEDLANDER: Thank you. I know that
18 ICNU was not a signatory to the issues list, so I guess
19 I should ask at this point what your take on this is.

20 MR. SANGER: We don't have a strong opinion
21 on the issues list as provided. I think both the
22 issues lists raise appropriate legal issues -- most of
23 the questions were favorable one way or the other. We
24 think both issues lists adequately raise the issues in
25 this proceeding.

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1 JUDGE FRIEDLANDER: It seems to me then that
2 as I stated before, this is going to be a multistage
3 proceeding. My one concern with that is that with a
4 multistage proceeding, we are going to be taking a good
5 deal of time, and this is a biennial plan. We are
6 already a quarter of the way through the first year, so
7 plans are supposed to be preparatory for action, and
8 it's a little difficult to do that if you are going to
9 be a good deal through the plan before you can even
10 start implementation.

11 I think given that concern though, there are
12 these legal issues that have to be addressed, so I
13 think it would be best to have some kind of briefing
14 schedule on the legal issues. I don't think it makes
15 sense though to give you a briefing schedule without
16 some kind of clarity as to what issues you are going to
17 be addressing, and it doesn't appear that there is a
18 consensus on which legal issues are going to be handled
19 in a brief for the Commission.

20 As I stated before, having been at the March
21 11th meeting, I know that the legal issue of which
22 edition of the plan to use is the fundamental issue for
23 PSE, and Staff certainly has some factual or some other
24 issues involving information that they were not able to
25 gather from PSE. I guess at this point, we should

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1 discuss which legal issues the briefs are going to
2 encompass.

3 MS. STROM CARSON: Your Honor, if I might
4 just address your earlier statement, I don't think you
5 can necessarily characterize that one issue as the
6 fundamental issue for PSE. I think there are other
7 issues that are equally important, one in terms of
8 whether PSE and other utilities have either the right
9 to use either the IRP or Conservation Counsel's plan is
10 certainly another legal issue that's important to PSE
11 and is at issue here.

12 We are happy to walk through these, but
13 again, because PSE is the party who is the moving
14 party, the party who requested that these legal issues
15 be addressed, it might make sense for PSE to file its
16 motion addressing the legal issues. Other parties have
17 an opportunity to respond to those issues, and then PSE
18 has an opportunity to reply.

19 I am concerned about we sometimes have had in
20 the past simultaneous filings of motions that cover the
21 same issues or almost the same issues, and then we have
22 responses to those, and it seems like kind of a messy
23 process and repetitive process because people are
24 basically doing the same briefing for their initial
25 filing as well as their response to everyone else's

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1 brief, so it might make sense for PSE as a moving party
2 to move forward with these.

3 I think the key other legal issue that the
4 other parties had was do you read the statute and the
5 WACs together as a whole, and that's an argument that
6 they are free to make, obviously, in response to
7 whatever legal issues PSE has. I think they will have
8 the opportunity to do that, but just for judicial
9 efficiency, it seems it might make sense for PSE to be
10 the one who files the motion that the legal issues and
11 let the parties respond.

12 JUDGE FRIEDLANDER: Just for clarity, what
13 type of motion are you proposing that PSE would file?
14 Mr. ffitich had said earlier that a motion for summary
15 determination might not be prudent given the fact that
16 that there are additional factual issues that may need
17 to be addressed and also that some of the legal issues
18 may not be dispositive in the first place. So what
19 type of a motion were you advocating?

20 MS. STROM CARSON: A motion for summary
21 determination under the rules 480-07-380(2) says that a
22 party may move for summary determination of one or more
23 issues. So it doesn't mean that it will be dispositive
24 of the whole case. It's issues that need to be
25 addressed from a legal perspective before we can move

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1 forward, so I think it maybe is a matter of semantics,
2 but a motion for summary determination can address
3 threshold legal issues.

4 In terms of the factual issues, I don't see
5 anyone needing to martial a lot of facts. I think it
6 would just come down to if the other parties believe
7 the public participation process involves more than
8 what's on the record, they can say that and point to
9 additional facts that might be relevant as you would do
10 in any summary judgment motion that say there are other
11 facts that need to be brought to the attention of the
12 fact-finder; for example, these type of facts, and so
13 summary determination isn't appropriate. So I think
14 summary determination is exactly what we are looking at
15 here.

16 JUDGE FRIEDLANDER: Thank you. Mr. ffitich,
17 did you have anything that you wanted to add?

18 MR. FFITCH: Well, Your Honor, I think that
19 if there is going to be motions for summary
20 determination on multiple issues from the Company, my
21 first thought is that the one-week briefing schedule
22 that was proposed by the Bench is not adequate. I
23 think as we talk at the prehearing today, it appears
24 that the Bench had in mind that one fundamental issue,
25 which is more amenable to a one-week turned around, so

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1 if we are going to be looking at motions for summary
2 determination, I think we need to anticipate a little
3 bit more time for parties to respond.

4 In terms of the Company's proposal to add a
5 reply round, we would recommend that -- the
6 Commission's rules do not provide for an automatic
7 right of reply to answers to motions or responses to
8 motions. The dispositive motion rule, summary
9 determination rule, which is 480-07-380, only speaks
10 about responses, and we would propose that the standard
11 approach under the rules apply, which is after seeing
12 the responses Puget wants to file replies, feels there
13 is a need, they can file a motion for permission to
14 file the reply. Adding other reply rounds just builds
15 more time unnecessarily into the proceeding.

16 MS. STROM CARSON: Your Honor, if I might
17 address that, I disagree with Mr. ffitich about the
18 interpretation of 480-07-380. While it's true it
19 expressly addresses the opening motion and response, it
20 also says that in considering a motion, the standards
21 applicable to a motion under CR-56 apply, and CR-56, of
22 course, allows for reply or rebuttal.

23 In fact, it would be a very unusual
24 procedural setting to have nonmoving parties given an
25 opportunity to respond to the motion but the moving

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1 party never having a chance to respond to the response,
2 and we see that in the hearing that there is always a
3 chance for rebuttal. The moving party and the party
4 with the burden of proof always has the opportunity for
5 a reply or rebuttal. So the fact that the rules don't
6 specifically say anything about a reply I don't believe
7 means that a reply is not allowed given that reference
8 to CR-56.

9 I think actually the reason why the filing
10 and the response are called out here is they differ
11 from CR-56. The timing is different. Instead of a
12 28-day time period before the hearing, it's a 30-day
13 time period for filing, and then there is 20 days for
14 the response, which again is different from CR-56. So
15 my reading of it is that the rules for Superior Court
16 CR-56 applies except for how they've spelled it out
17 differently here in the WAC.

18 JUDGE FRIEDLANDER: Thank you. Is there
19 anyone else who wants to weigh in on the discussion?

20 MS. WOODS: Your Honor, first I would like to
21 comment on Puget's request that it file a motion and
22 the other parties respond. Staff is prepared to file a
23 motion at least on one of the issues that Puget has
24 identified and would request the opportunity to do
25 that.

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1 On the timing, I agree with Mr. ffitich, and
2 on the discussion with respect to CR-56, I would point
3 out that that rule includes substantive standards as
4 well as procedural provisions. It provides that if the
5 documents filed on the motion demonstrate that there is
6 no genuine issue of material fact, then the moving
7 party is entitled to a judgment of law, then the motion
8 shall be granted. As I read WAC 480-07-380, that's
9 what it's referring to.

10 JUDGE FRIEDLANDER: Anyone else?

11 MS. DIXON: I think my only comment would be
12 with regard to the timing. I think the other issues
13 have been well covered, and I guess that would be a
14 comment while we expressed concern at the March 11th
15 hearing with regard to having this process go forward
16 quickly so that there was not uncertainty remaining
17 with PSE -- I will say that, of course, because you did
18 approve PSE's tariff for this year, so PSE is under way
19 in doing it's energy efficiency programs and is moving
20 forward, so it's not as if there is a hiatus in place
21 until we resolve this case, which is a good thing.

22 So given that, I would say having a little
23 bit of extra time for doing the motions would probably
24 be beneficial, certainly from the Energy Coalition's
25 perspective where we have limited resources.

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1 JUDGE FRIEDLANDER: Mr. Sanger, did you have
2 anything you wanted to add?

3 MR. SANGER: No, Your Honor.

4 JUDGE FRIEDLANDER: It seems like we are
5 going to be getting multiple motions then. I want
6 everybody to have an opportunity who is going to need
7 one to file motions for summary determination. So the
8 question then becomes, I guess, how many bites at the
9 apple you guys are going to get. I think that since
10 it's not just PSE that's going to be filing a motion,
11 it would also be Staff, that they are a little bit
12 concerned about getting an opportunity to file a
13 response; is that right, Ms. Woods?

14 MS. WOODS: Your Honor, I'm not requesting
15 the opportunity to file a reply brief.

16 JUDGE FRIEDLANDER: Then I misunderstood. In
17 cases that I have handled before when parties file
18 motions for summary determination, I tend to like more
19 information rather than less, and I think it helps the
20 trier of fact to have more information, so I will allow
21 the filing of responses to the replies. However, we
22 are going to be on a fairly short time frame here. I
23 think it's better that we conduct this as swiftly as
24 possible.

25 I guess we can start talking about schedule

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1 since everything is sort of interconnected anyway,
2 whether we are filing motions or replies or responses.
3 We need to get the calendars and start looking at when
4 this is going to be feasible. Mr. ffitch, you added
5 that probably the suggested April 5th and April 12th
6 deadlines were not going to be doable. Did you have
7 other suggestions that you wanted to raise?

8 MR. FFITCH: Thank you, Your Honor. I wasn't
9 specifically referring to the 5th. I would defer to
10 other parties whether that filing date is okay, but
11 perhaps recommend Friday 16th as the date for parties
12 to respond to the initial motions or Monday the 19th,
13 and then the reply would be perhaps the 28th of April.

14 JUDGE FRIEDLANDER: Thank you.

15 MR. SANGER: Your Honor, we are talking about
16 the -- I'm a little confused about exactly what we are
17 supposed to be filing, and that may help me.

18 JUDGE FRIEDLANDER: Did you mention the 8th?

19 MR. SANGER: I'm a little bit confused about
20 what we will be filing on these motions, and I wanted
21 to get a little clarity on that. For example, PSE has
22 proposed an issues list, and my question is what are we
23 supposed to be filing on these motions?

24 For example, Puget has raised a number of
25 legal issues. Is everyone supposed to be filing their

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1 opinions on those issues that we want to identify in
2 the first round and then respond to other parties in
3 the second round? I'm a little confused about what we
4 are supposed to be filing in each time period.

5 JUDGE FRIEDLANDER: I see Ms. Carson going
6 for the microphone.

7 MS. STROM CARSON: What I would recommend is
8 the parties who wish to file motions for summary
9 determination on these legal issues or others would
10 file in the initial round, which is April 5th, I guess,
11 and some parties may wish to wait and then respond to
12 PSE's and I guess Staff's motions for summary
13 determination, and so then that second date, April 16th
14 or April 19th, if that's what we go with, would be the
15 opportunity to respond to the motion for summary
16 determination on these legal issues that PSE raised and
17 any other legal issues raised by other parties.

18 So for ICNU, you may not want to file
19 anything initially and then you may want to respond to
20 other people's motions.

21 MR. SANGER: That's helpful.

22 JUDGE FRIEDLANDER: Mr. Sanger, I can only
23 tell you about how I've handled cases in the past. I
24 certainly can't tell you what to file or how to address
25 anything.

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1 In the past, parties have filed motions for
2 summary determination. Parties who have not filed
3 those motions have then filed subsequent responses to
4 the motions either in favor of or opposed to the
5 original motions, and then the movant files a reply to
6 the responses. Is that helpful, Mr. Sanger?

7 MR. SANGER: Yes, that's helpful.

8 JUDGE FRIEDLANDER: So now that Mr. ffitch
9 has proposed a schedule, I guess I want to know what
10 the other parties feel about that. Let's go ahead and
11 start with Staff first.

12 MS. WOODS: Mr. ffitch's proposal is fine;
13 thank you.

14 JUDGE FRIEDLANDER: And what about PSE?

15 MS. STROM CARSON: The proposal is fine for
16 PSE.

17 JUDGE FRIEDLANDER: Northwest Energy
18 Coalition?

19 MS. DIXON: I guess I would ask if the 5th
20 could be changed to the 6th considering it's only a few
21 days from now and right after the Easter weekend.

22 JUDGE FRIEDLANDER: Does anybody have a
23 problem with changing the 5th to the 6th? I take it
24 then Northwest Energy Coalition is anticipating the
25 potential for filing a motion for summary

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1 determination.

2 MS. DIXON: Yes, we are.

3 JUDGE FRIEDLANDER: I don't have a problem
4 with it myself. One day more or less is not going to
5 make a difference at this point. Staff, did you have
6 any concerns about that?

7 MS. WOODS: No concerns, Your Honor.

8 JUDGE FRIEDLANDER: Public Counsel?

9 MR. FFITCH: That makes very good sense. It
10 might also make sense to use Monday the 19th as the
11 response date rather than the 16th and keep the 28th as
12 the final reply date.

13 JUDGE FRIEDLANDER: And PSE, did you have any
14 comments on that, the 6th?

15 MS. STROM CARSON: That's fine.

16 JUDGE FRIEDLANDER: Mr. Sanger for the
17 Industrial Customers of Northwest Utilities?

18 MR. SANGER: Those proposed schedules are
19 fine.

20 JUDGE FRIEDLANDER: At this point, that would
21 allow for seven days for parties to review the
22 responses, and then for the Company, I guess, to review
23 the responses and file a reply. The days are fine with
24 me. I guess then I'll go ahead and issue a prehearing
25 conference order indicating that these are the dates

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1 that will be in place for the motions for summary
2 determination.

3 Given that these are legal issues, typically
4 we ask at prehearing conferences whether the parties
5 are going to need discovery or need some kind of
6 protective order in place. Is there any need for a
7 protective order in this instance given that these are
8 legal issues?

9 MR. FFITCH: Your Honor, we had intended to
10 ask that the discovery rule be invoked. There is the
11 suggestion from the Company that they are going to be
12 asking for summary determination, which means that
13 there may be some factual matter presented, and there
14 are ultimate factual questions. If we go beyond the
15 legal round into a hearing round, it would be more
16 efficient if we could at least have the option of doing
17 discovery starting immediately. We are not sure what
18 we are going to do there yet, but just in terms of
19 efficiency, it seems to make sense.

20 MS. STROM CARSON: Your Honor, from PSE's
21 perspective, in the past, we have been bombarded with
22 data requests from other parties, in particular Public
23 Counsel, and I don't see that from an efficiency
24 standpoint it would be helpful. If we are in a stage
25 of the proceeding where we are addressing legal issues,

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1 it seems like we address legal issues first. We don't
2 anticipate throwing out factual issues, just laying out
3 the facts as they are in filed documents, so we would
4 request that the discovery phase not start until we are
5 we completed with the legal issue phase.

6 JUDGE FRIEDLANDER: Does anybody else wish to
7 address the issue of invoking the Commission's
8 discovery rules, or I guess that's pretty much we are
9 not addressing the protective order at this point.

10 MR. SANGER: ICNU would support Public
11 Counsel invoking the discovery rule.

12 MS. STROM CARSON: Regarding a protective
13 order, we don't see a need for a protective order.
14 Although, if the discovery rule is invoked and there is
15 a need for it, we would reserve the right for a
16 protective order to be put in place.

17 JUDGE FRIEDLANDER: That's a possibility. My
18 understanding of this phase of the case was that this
19 was going to address solely legal issues, and certainly
20 as Ms. Carson has stated previously, the way to defeat
21 a motion for summary determination is to state factual
22 issues that are in play that will prevent a
23 determination on a motion for summary determination.

24 I had anticipated holding another prehearing
25 conference once the motions for summary determination

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1 had been addressed that would determine at that point
2 whether or not we needed to go forward with a hearing.
3 I am inclined to allow the parties to invoke the
4 discovery rule for the simple fact that that is the way
5 to defeat a motion for summary determination.

6 But I would hasten to add that this is the
7 legal phase. This is not the point to where the
8 parties argue about numbers. This is not the point
9 where if parties are going to go forward and determine
10 X,Y,Z number. So invoking the discovery rules does not
11 necessarily mean at this phase that the parties will be
12 conducting discovery. That can be at the later phase.

13 Mr. ffitch though, your comment has troubled
14 me a bit in that I guess it would appear that -- maybe
15 you should explain it a little further what your
16 intention for this phase was, because my understanding
17 from having conducted our discussion was that this
18 would be solely for the legal issues to be decided.
19 Was that not what we had agreed?

20 MR. FFITCH: Well, Your Honor, I guess I
21 would agree with that, but my concern, and actually I
22 would also agree with your comment that because Puget
23 has now made clear that these are going to be motions
24 for summary determination, which by definition, and
25 they've referenced CR-56, but by definition, it appears

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1 they are going to make assertions that certain facts
2 are not in dispute.

3 So in order to give ourselves the ability to
4 respond to that, we need to at least have the option of
5 asking factual discovery. I don't anticipate that we
6 are going to be issuing barrages of discovery on this
7 kind of a time frame, but I think we at least need to
8 have the option of doing that in light of the way the
9 motions are going to be presented. Otherwise, I think
10 we are placed at an unfair procedural disadvantage.

11 We certainly aren't going to abuse the
12 process, and if the Company feels they've been unfairly
13 buried with frivolous or burdensome discovery, they can
14 seek relief.

15 MS. STROM CARSON: I think the rules do give
16 us the opportunity to seek, if the discovery rule is
17 going to be invoked, to seek limitations on the amount
18 of discovery, and I think that would be appropriate in
19 this case. We have very short time frames to respond,
20 and if the Company is spinning its wheels trying to
21 respond to data requests instead of responding to the
22 legal issues that others raise in their motions, it's
23 going to be a problem.

24 Also from what I'm hearing from Mr. ffitich, I
25 think we probably will need a protective order in

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1 place. In other cases, we've been hit with over 800
2 data requests; if you count sub parts, close to 2,000,
3 so we know what it's like to get 50 or 100 data
4 requests at one time and have to respond to them in one
5 or two weeks, and that just brings everything grinding
6 to a halt. With this kind of briefing time frame, we
7 can't have that.

8 MR. FFITCH: Your Honor, I think that's an
9 unreasonable and unfair characterization of our
10 position. Ms. Carson is referring to a
11 150-million-dollar rate case which is still pending
12 before the Commission. These are really unwarranted
13 accusations and sort of predicting that we are not
14 going to act in good faith here.

15 I would remind my colleague here on this
16 call, this is actually a significant matter. This is a
17 threshold case under the important statewide I-937
18 initiative. This is the first time Puget has made a
19 compliance filing under that, and the Commission has
20 determined as an initial matter that there are so many
21 questions about that filing that it needs to be set for
22 hearing. So this is not a routine, simple ministerial
23 matter. This is a matter of significance for state
24 conservation policy, and it's a matter with a lot of
25 complex issues in it.

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1 The first round here is going to focus on
2 legal issues, but this is not a trivial,
3 inconsequential, routine small matter.

4 JUDGE FRIEDLANDER: I was going to ask if
5 anybody else had anything that they wanted to add, but
6 I'm almost afraid. I certainly understand what both
7 Public Counsel and Puget Sound Energy are saying, and I
8 assume and will take for granted that all parties are
9 going to be on their best behavior no matter what. I
10 will go ahead and issue the standard protective order
11 unless you need the highly confidential.

12 MS. STROM CARSON: I don't believe we do,
13 Your Honor.

14 JUDGE FRIEDLANDER: I will also go ahead and
15 note in the prehearing conference order that the
16 discovery rules have been invoked. I do, however, ask
17 that it be handled judiciously, discovery if there is
18 any, because this is a time frame that I would like to
19 stick to, and I will look very seriously and very
20 critically at any requests to extend this time frame
21 because this does need to be completed in a fairly
22 swift but thorough manner. I will go ahead and note
23 the discovery rules have been invoked and issue the
24 protective order also.

25 Is there anything I've missed that the

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1 parties have raised that they would like me to address
2 at this point?

3 MR. FFITCH: This is Simon ffitch.

4 JUDGE FRIEDLANDER: Certainly.

5 MR. FFITCH: I hesitate to get into this, but
6 I would like to ask for some guidance on the legal
7 issues if I may on a couple of points, and Staff and
8 Northwest Energy Coalition may want to weigh in on this
9 because I'm reading from the joint filing.

10 What I would request is that we get
11 clarification, approval from the Bench that the parties
12 are free to address the additional issue that is set
13 forth in Paragraph 3 of our filing, specifically the
14 overarching legal issue that Puget Sound Energy's
15 filings in this docket are to be addressed and applied
16 in light of all of the applicable statutes, the Energy
17 Independence Act and the Commission's WAC's, so we
18 would respectfully request that it be clear that we are
19 permitted to address that issue in our filings.

20 And secondly, I wanted to address the public
21 participation question, which Puget has included on its
22 list, and what we have said in our filing in
23 Paragraph 8 is that we believe that public
24 participation is not appropriate for this round because
25 it's a factual dispute. I think that's been resolved.

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1 As I understand the Bench's rulings at this point,
2 Puget is free to bring that forward as a dispositive
3 motion and we can respond to it accordingly; although,
4 we believe there are factual disputes.

5 What we say in our filing is if that issue is
6 going to be included and Puget is going to be permitted
7 to go forward with that issue, we would like to include
8 the question, which is listed in Paragraph 8, of
9 whether the Commission can reject the target filings on
10 the basis that the public participation was
11 insufficient. So again, we would respectfully request
12 that the Bench make clear that we can address that
13 issue in the legal round.

14 JUDGE FRIEDLANDER: Did anybody have any
15 responses, comments that they would like to bring up
16 with regard to what Mr. ffitch has asked? Okay. My
17 response, Mr. ffitch, is that you are certainly free to
18 address anything that you wish in your pleadings.

19 I would note that the Commission doesn't
20 necessarily have to answer it. If it is a factual
21 issue that we would like to address at a different
22 time, or if what you have raised is not part of this
23 phase, then it may mean that we don't take it up at
24 that time or we have another prehearing conference at
25 which we will work on the issues at that point.

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1 MR. FFITCH: Thank you, Your Honor. That's
2 helpful. Our simple concern was that we found that the
3 Company's issue list was just rather narrowly stated,
4 and we wanted to be clear that we could respond by
5 addressing other related relevant issues that we saw in
6 the case.

7 JUDGE FRIEDLANDER: Yes, related relevant
8 issues can certainly be addressed, and does that answer
9 your question?

10 MR. FFITCH: Yes. Thank you, Your Honor.

11 JUDGE FRIEDLANDER: So I think we have a
12 schedule now of April 6th will be the deadline to file
13 motions for summary determination. April 19th will be
14 the deadline for the parties to file responses to those
15 motions, and April 28th will be the deadline for PSE or
16 any movant to file replies to the responses.

17 So at this point, is there anything further
18 that the parties wish to address? Any other issues
19 procedurally that we should handle at this time?
20 Hearing nothing, when submitting documents, I would
21 appreciate it if the parties submitted an original and
22 12 copies. If there is nothing more, this prehearing
23 conference is adjourned. Thank you.

24 (Prehearing adjourned at 2:27 p.m.)

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