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

2 JUDGE MACE: Let's be on the record in the
3 matter of the petition of Puget Sound Energy, Inc., for
4 a declaratory order on Schedule 74 and the Schedule 74
5 design agreement between Puget Sound Energy, Inc., and
6 the City of Tumwater. This is Docket No. UE-061626.

7 The matter is set for a prehearing conference
8 today at the offices of the Washington Utilities and
9 Transportation Commission in Olympia, Washington. My
10 name is Theodora Mace. I'm the administrative law
11 judge who has been assigned to this case, and I would
12 like to take the oral appearances of counsel now,
13 beginning with Puget Sound Energy, and Mr. Williams,
14 would you go ahead, please?

15 MR. WILLIAMS: James Williams and Donna
16 Barnett on behalf of Puget Sound Energy.

17 JUDGE MACE: Let me ask you to make a full
18 appearance, which means you will state your address and
19 phone number, fax number, and also your e-mail address.

20 MR. WILLIAMS: I'll do it for myself and let
21 Donna do hers. James Williams, Perkins Coie, 1201
22 Third Avenue, Fortieth Floor, Seattle, 98101-3099.
23 Phone number direct dial is (206) 359-3543. Facsimile
24 is (206) 359-4543. E-mail address is
25 jwilliams@perkinscoie.com.

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1 JUDGE MACE: Ms. Barnett?

2 MS. BARNETT: Donna Barnett at Perkins Coie,
3 the PSE Building, 10885 Northeast Fourth Street, Suite
4 700, in Bellevue, 98004. Phone is (425) 635-1419. Fax
5 is (425) 635-2419, and e-mail is
6 dbarnett@perkinscoie.com.

7 JUDGE MACE: Thank you. Mr. Patton?

8 MR. PATTON: William H. Patton at Foster
9 Pepper, 1111 Third Avenue, Suite 3400, Seattle,
10 Washington, 98101-3299. My telephone number direct is
11 (206) 447-7898. Fax is (206) 749-2108, and e-mail
12 address is pattw@foster.com.

13 JUDGE MACE: Ms. Kirkpatrick, are you
14 listening in today? Are you representing the City as
15 an attorney? What is your status?

16 MS. KIRKPATRICK: I'm the client in this
17 matter, so I'm listening in today.

18 JUDGE MACE: Thank you very much.
19 Mr. Cedarbaum?

20 MR. CEDARBAUM: Robert Cedarbaum, assistant
21 attorney general appearing for Commission staff. My
22 street address is 1400 South Evergreen Park Drive
23 Southwest, Olympia, Washington, 98504. The direct dial
24 telephone is area code (360) 664-1188. My fax is area
25 code (360) 586-5522, and my e-mail is

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1 bcedarba@wutc.wa.gov.

2 JUDGE MACE: Thank you. As I said before,
3 our primary task today is to decide on the specified
4 proceedings that are going to be held pursuant to this
5 petition for a declaratory order. I want to note that
6 I have received both the petition for declaratory order
7 filed by Puget Sound Energy and the complaint, what's
8 styled the complaint for declaratory judgment and
9 return of payments from the City of Tumwater, but I
10 guess I will need to know from the parties what else
11 they propose to do to proceed with this case.

12 MR. WILLIAMS: Your Honor, just to be clear,
13 I think the City's complaint was an attachment to --

14 JUDGE MACE: I'm sorry; you are right. I'm
15 looking at it now and I see that you are exactly right.
16 So we have not received any answer from the City.

17 MR. PATTON: That is correct. It is our
18 understanding through your administrative assistant
19 that that schedule would be established today, and the
20 complaint that was attached to the petition for
21 declaratory relief is not the full complaint. It does
22 not have the attachment.

23 JUDGE MACE: Thank you.

24 MR. CEDARBAUM: Your Honor, one other
25 procedural aspect that we may want to discuss beyond

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1 the petition for declaratory order and the City's
2 response to that would be through some mechanism
3 establishing a factual record upon which the Commission
4 can rule the petition, and the response would not be
5 evidence. They are just allegations at that stage, and
6 so I don't think whether the parties have contemplated
7 a stipulation of fact or whether we need to actually go
8 to hearing and have prefiled testimony or whether
9 anyone actually disagrees with the need for doing any
10 of that. It seems to me that we need to have some sort
11 of factual record upon which the Commission can go
12 forward in determining the merits of the petition
13 itself.

14 JUDGE MACE: Mr. Williams, I will ask you to
15 address that question first and then Mr. Patton.

16 MR. WILLIAMS: Mr. Patton and I have not had
17 an opportunity to discuss that issue. It's a very good
18 question raised by Mr. Cedarbaum, and I think it makes
19 a lot of sense to have certainly a factual record from
20 which a declaratory petition can be addressed.

21 I think that there will be some factual
22 questions that are disputed for which prefiled
23 testimony will be required, but I think, and Mr. Patton
24 may disagree with me, that a lot of the facts probably
25 can be distilled into a stipulation of agreed facts.

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1 JUDGE MACE: Mr. Patton?

2 MR. PATTON: I agree that most if not all of
3 it can be done through a stipulation of facts or
4 through documents that the authenticity of which each
5 party will probably not dispute.

6 JUDGE MACE: Very well. It sounds like it
7 might be beneficial for me to allow the parties to
8 discuss what they would like to see by way of schedule
9 for filing the stipulation and determining what remains
10 in dispute and also so that we would schedule a hearing
11 with regard to those disputed facts and then probably
12 also briefing, posthearing briefing.

13 So I would propose now to adjourn and allow
14 you to discuss that unless you have something else that
15 you wanted to bring before me at this point. No? I
16 propose that we adjourn for approximately 15 minutes,
17 until two o'clock. Would that be enough time?

18 MR. WILLIAMS: How about 2:15, Your Honor.

19 MR. CEDARBAUM: If we are done sooner than
20 that, I can come and find you.

21 JUDGE MACE: We are adjourned until 2:15.

22 (Discussion off the record.)

23 MR. WILLIAMS: This is James Williams of PSE.
24 We just had an off-line conversation with Mr. Cedarbaum
25 and Mr. Patton about the next steps in the matter. I

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1 think we've got consensus that we should, we being the
2 parties, the City of Tumwater and PSE, should work
3 together on what are the stipulated facts that would be
4 presented to the WUTC, and from that point on discuss
5 what hearing date or time, if any, would be required.
6 At this point, we are not sure as to the extent of any
7 prefiled testimony that might be required or even
8 discovery.

9 We think we will have a much better idea
10 after we have consensus on a stipulated set of facts,
11 and what we propose doing is coming back to you on the
12 14th for another prehearing status conference, and we
13 propose filing -- correct me if I'm wrong,
14 Mr. Patton -- filing the stipulation of fact on
15 December 11th.

16 MR. PATTON: That's our goal, yes.

17 MR. WILLIAMS: Yes, goal.

18 JUDGE MACE: I just want to make sure I
19 understand what you just said; that you will file
20 stipulated facts on December 11th and that we would
21 have a status conference on December 14th.

22 MR. WILLIAMS: Correct. The purpose of the
23 status conference then would be to determine what else,
24 if anything, needs to be done to ascertain additional
25 facts, either through prefiled testimony with the

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1 Commission or if discovery might be appropriate.

2 JUDGE MACE: Thank you. Mr. Cedarbaum, did
3 you want to weigh in on this at all?

4 MR. CEDARBAUM: Just to confirm that that was
5 the discussion. It did make sense since the City and
6 the Company can agree to many facts but not all facts
7 and that they weren't sure where their differences are
8 today that we should do this in two stages and have a
9 second prehearing conference to schedule the remainder
10 of the case once it's known what facts are in dispute,
11 if any, and how to handle that, if there are facts in
12 dispute.

13 So the purpose of the December 14th
14 prehearing conference, if you are available, would be
15 to sort of see where the dust settles once the
16 stipulation is filed and schedule the remainder of the
17 case in terms of either prefiled testimony and hearing,
18 if necessary, or if none of that is necessary, just
19 briefing on the stipulation of facts and the legal
20 issues.

21 I would just note for the record that Staff,
22 of course, does not have information as to many of the
23 factual nature of this dispute. We will be relying
24 upon the stipulation of facts and any prefiled
25 testimony that may come before the Commission. Staff

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1 will be determining whether or not it will weigh in on
2 the legal issues that are raised by the case and
3 participate in the briefing at that stage, but probably
4 not in terms of prefiled testimony.

5 JUDGE MACE: Very well. What I see as the
6 Commission's schedule here would allow, as far as I can
7 tell, for a hearing on the 14th. I want to propose
8 that we schedule that prehearing conference for 9:30 in
9 the morning on the 14th. I will have to clear this
10 with the person who does the scheduling, but my most
11 recent copy of the Commission's hearing schedule shows
12 that there should be hearing space available, and I
13 would propose that since it too will be a prehearing
14 conference that we conduct it by telephone. I think
15 that makes the most sense. The parties are free to
16 come to Olympia if they wish to do so, but since it
17 would be a prehearing conference, I don't see any
18 problem with holding the hearing by telephone. Would
19 there be any problem with that?

20 MR. WILLIAMS: No.

21 MR. PATTON: Not from Tumwater's point.

22 JUDGE MACE: What I will do is send out a
23 prehearing conference order that confirms what we've
24 talked about in terms of scheduling, and if there is
25 any problem with a December 14th date, although I doubt

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1 there will be, I will advise the parties before I send
2 out that order so that we can make sure the order
3 conforms to the schedule we actually use. Is there
4 anything else we need to discuss?

5 MR. PATTON: There is, Your Honor. The City
6 of Tumwater has not responded to the petition. My
7 sense is though that it would be more helpful to you if
8 we responded after the stipulation of facts.

9 JUDGE MACE: I'm sorry. I thought you might
10 have discussed that amongst yourselves in that this
11 sort of resolved that, but Mr. Williams, what's PSE's
12 position on that?

13 MR. WILLIAMS: Whatever is easiest for all
14 parties. We think we have a handle on what their
15 answer will be, but I think under the rules, an answer
16 is probably required.

17 JUDGE MACE: I think an answer might be
18 required; Mr. Cedarbaum?

19 MR. CEDARBAUM: We have no objection if the
20 City wants to reply, and that seems like it would help
21 to flush out the issues as well.

22 JUDGE MACE: My understanding is that the
23 City is proposing it would not reply until after the
24 stipulation is filed; is that right, Mr. Patton?

25 MR. PATTON: Yes.

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1 MR. CEDARBAUM: I have no objection to that.

2 JUDGE MACE: Very well. We will postpone
3 addressing the question until the City has replied and
4 address that at the time of the hearing on the 14th.
5 Anything else?

6 MR. PATTON: Should we use the same phone
7 number on the 14th?

8 JUDGE MACE: I will advise you in the
9 prehearing conference order what telephone number to
10 use. I believe it will be the same number, but I want
11 to make sure that there isn't some change between now
12 and the time I send the order out.

13 MR. PATTON: Thank you very much.

14 JUDGE MACE: Thank you very much. We are
15 adjourned.

16 (Prehearing adjourned at 2:03 p.m.)

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