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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND ) Docket TE-140414  
TRANSPORTATION COMMISSION, ) Pages 1-16  
) )  
Complainant, ) )  
) )  
v. ) )  
) )  
SEVENTH GENERATION, ) )  
) )  
Respondent. ) )

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PREHEARING CONFERENCE, VOLUME I

Pages 1-16

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

1:34 P.M.

MAY 19, 2014

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A P P E A R A N C E S

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OLYMPIA, WASHINGTON, MAY 19, 2014

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1:34 P.M.

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P R O C E E D I N G S

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JUDGE TOREM: Good afternoon. We'll be on the record. It's a little after 1:30 on Monday, May the 19th, 2014. We're at the Commission's headquarters in Olympia in Room 206.

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This is Docket TE-140414. My name is Adam Torem. I'm an administrative law judge for the Washington Utilities and Transportation Commission.

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This is the case of the UTC versus Seventh Generation, and we're here today for a prehearing conference. We've had a little bit of a discussion off the record just as to the nature and the purpose of today's session and distinguishing it from any further proceedings, including an evidentiary hearing.

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The agenda for today is really to review the complaint. Take appearances for both sides. And I don't see anybody here seeking to intervene, but if there were, we'll take care of that, address any needs for a formal discovery, and if it's right for it, we'll set up a procedural schedule.

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Let me take appearances first for the Commission Staff.

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1 MR. SHEARER: Brett Shearer, Assistant Attorney  
2 General, representing Commission Staff.

3 JUDGE TOREM: And representing Seventh Generation  
4 today?

5 Sir, if you'll pull that microphone close to you, the  
6 little silver button in the middle, if you touch it once, it  
7 should bring on a red light. That means you're going to  
8 broadcast.

9 MR. HARE: Okay.

10 JUDGE TOREM: Yeah. If the red light's on, you're  
11 good.

12 MR. HARE: Yes. My name is David Hare, H-a-r-e --

13 JUDGE TOREM: And so what's --

14 MR. HARE: -- representing Seventh Generation.

15 JUDGE TOREM: Are you the owner of the Company?

16 MR. HARE: I am the owner, yes.

17 JUDGE TOREM: All right. Thank you, Mr. Hare.

18 We always seek at these hearings to see if any other  
19 parties want to intervene or state their interest. I don't see  
20 any.

21 Mr. Shearer, are you aware of any parties that were  
22 seeking to intervene in the Commission's complaint?

23 MR. SHEARER: No, Your Honor.

24 JUDGE TOREM: All right. And my understanding is  
25 when the Commission filed its complaint, it had two different

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1 causes of action. The first was under Revised Code of  
2 Washington 81.70.220. The first cause of action alleges that  
3 Seventh Generation completed some charter bus trips when it did  
4 not hold a certificate from the Commission. It alleged a  
5 violation of 81.70.220, as well as WAC 480-30-086.

6 A second cause of action alleges that the same two  
7 trips were undertaken after Seventh Generation had canceled its  
8 prior certificate, and that's RCW 81.70.260, essentially  
9 performing work after cancellation.

10 Those were the allegations; is that correct?

11 MR. SHEARER: Yes.

12 JUDGE TOREM: And the complaint allows for each of  
13 those four counts up to thousand dollars each in penalties, so  
14 the maximum penalty here that could be imposed is \$4,000; is  
15 that correct, Mr. Shearer?

16 MR. SHEARER: Yes.

17 JUDGE TOREM: All right. Mr. Hare, did you have any  
18 questions about what the complaint was setting out and the  
19 maximum penalty?

20 MR. HARE: I have a question about what I think is  
21 doubling up. I thought I was coming here to work on having done  
22 two charter trips before being granted a permit. I thought that  
23 was the only -- from what I read the only case, but you're  
24 saying that there are two RCWs and that there are two counts on  
25 each one.

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1 JUDGE TOREM: Mr. Shearer, did you want to elaborate  
2 on that?

3 MR. SHEARER: Our understanding is the same as Judge  
4 Torem's. There were two violations under two separate RCWs.

5 JUDGE TOREM: It may be, Mr. Hare, that you can make  
6 an argument, as you say, of "doubling up"; that the two trips  
7 couldn't be counted twice. That's something I have the power to  
8 consider if a penalty is imposed, how much of a penalty should  
9 be imposed and whether, as you say, "doubling up" should be  
10 permitted.

11 So they are saying that there are two different  
12 statutes, both under Title 81.70, and that the allegations, if  
13 proved true, would show you violated both of those statutes.  
14 But I think we're talking about the same two trips that are set  
15 out in the complaint.

16 Now, today, is there any further discovery that the  
17 Commission needs to undertake from the Company?

18 MR. SHEARER: No, not at this time.

19 JUDGE TOREM: And, Mr. Shearer [sic], you said you  
20 came today to find out about information from Staff. I think  
21 when you got the complaint, you may have also gotten a copy of  
22 the investigation?

23 MR. HARE: Yes.

24 JUDGE TOREM: All right. And have you had a chance  
25 to review the investigation?

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1 MR. HARE: Yes.

2 JUDGE TOREM: At this point, you know, if you need  
3 informally to ask for any other additional information or you  
4 want to talk to the Staff's witnesses, you would go through  
5 Mr. Shearer. And if you decided you want to have formal  
6 discovery, we'd have to enter something in the prehearing  
7 conference order. That would mean taking a deposition of  
8 somebody or sending written interrogatories, things that would  
9 happen typically in a more very formal court proceeding.

10 It's available to you if you think you need it, but  
11 I'd have to hear from you today or later on when you realize you  
12 need to use those kinds of formal tools. Otherwise, I can  
13 assure you that Mr. Shearer, as long as you can get ahold of him  
14 by e-mail, voice mail, or otherwise I think would be happy to  
15 set up any discussions you need with Staff, whether today, same  
16 day as our prehearing conference, or at a day convenient to both  
17 of you in the future.

18 Do you think you want to have me to order a formal  
19 discovery now or just stick with the informal?

20 MR. HARE: I'm sorry. I don't know. I haven't  
21 worked my way into this yet.

22 JUDGE TOREM: Let me suggest that we start with the  
23 informal discovery, because that's just as easy as picking up  
24 the phone and talking to somebody.

25 MR. HARE: Okay.

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1                   JUDGE TOREM: It doesn't require you to put your  
2 questions in a special format or to follow any specific rules.  
3 It just says you call Mr. Shearer and say, I want to talk to a  
4 witness about this, a person on Staff, but you go through the  
5 Staff's attorney since they're all represented, okay?

6                   So if you want to talk to, say, Mr. Pratt or  
7 Ms. Young --

8                   MR. HARE: Mm-hm.

9                   JUDGE TOREM: -- Mr. Shearer would arrange that for  
10 you.

11                   Now, if it's something about your company outside of  
12 the bounds of this case and you have a question for Regulatory  
13 Staff, this wouldn't apply.

14                   MR. HARE: Right.

15                   JUDGE TOREM: You could go directly to Staff on  
16 anything else. But about this complaint, it will all go through  
17 Mr. Shearer from this point forward; does that make sense?

18                   MR. HARE: It does. It does. And I don't know  
19 whether this is the time to ask it, but if I disagree with  
20 something that has been put into Ms. Young's summary, how do I  
21 handle that? Do I go to Mr. Shearer to talk with her or do I  
22 talk only with him or...

23                   JUDGE TOREM: My suggestion is you would go through  
24 that report and decide where you have disagreements --

25                   MR. HARE: Mm-hm.



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1                   JUDGE TOREM:  -- and make a discussion with  
2 Mr. Shearer to talk to Ms. Young about it or make  
3 clarifications.

4                   If you're not able to convince Staff that perhaps  
5 there's something of error, then when it comes down to the  
6 hearing date, I would anticipate what would happen is Ms. Young  
7 will be put on to testify about her investigation.  You could  
8 then cross-examine her on the date of the hearing, and then I  
9 would decide the credibility of the evidence presented by  
10 Ms. Young and then your evidence as well, and I would have to  
11 make a finding of fact as to what really happened based on what  
12 she said and based on what you said and any witnesses you  
13 present.

14                   So just because it's in Ms. Young's investigation  
15 doesn't mean I'm going to find that it happened.

16                   MR. HARE:  But the protocol that I'm seeking to  
17 understand here is that I am at liberty to follow up on my  
18 feelings, if you will, or my desire for correction --

19                   JUDGE TOREM:  Yes, you are.

20                   MR. HARE:  -- but I don't do it in this hearing.  I  
21 do it separately and later?

22                   JUDGE TOREM:  Correct.

23                   MR. HARE:  Thank you.

24                   JUDGE TOREM:  Maybe even later today.

25                   MR. HARE:  Yeah.

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1 JUDGE TOREM: All right. So let's talk about what  
2 comes next in this proceedings.

3 Mr. Shearer, as to a procedural schedule, what's the  
4 Commission's position on pursuing its complaint?

5 MR. SHEARER: We would like to set a hearing date for  
6 July 14th.

7 JUDGE TOREM: That is a Monday; is that correct?

8 MS. YOUNG: Yes.

9 MR. PRATT: Yes.

10 JUDGE TOREM: And, Mr. Hare, you indicated you're  
11 coming into your busy season for the Company.

12 MR. HARE: What I know of today, as of today, is that  
13 Tuesdays, Fridays, Saturday-Sundays I'm committed right through  
14 October.

15 JUDGE TOREM: All right.

16 MR. HARE: Outside of that, there's a good chance I  
17 could be. I have no idea what July -- what was it? -- 14th?

18 MR. SHEARER: The 14th, and it's a Monday.

19 MR. HARE: Sounds good so far.

20 JUDGE TOREM: If you've got business on a Monday,  
21 would it be afternoon business or morning business?

22 MR. HARE: If I had, it would be a charter, which  
23 would be away somewhere, so one-day, two-day, three-day. I  
24 don't think there's anything in mid-July, other than the Tuesday  
25 and the rest, so that's all I can say.

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1           JUDGE TOREM: All right. I brought a copy of our  
2 Administrative Law Division calendar, and Monday, the 14th, I  
3 can't speak for this room, but I know I can be available. So  
4 why don't we schedule something for 9:30 in the morning, and  
5 I'll let you know what room it's going to be in.

6           Working backwards from that date, what I typically  
7 like to make sure is that each side exchanges its list of  
8 witnesses and a copy of each exhibit. If you have a document --  
9 it could be anything from a canceled check to a letter, anything  
10 on paper, but those exhibits get exchanged so that there's no  
11 surprises on July 14th.

12           Mr. Shearer will give you a list of any person he's  
13 going to call to testify -- that way you'll know if you should  
14 have talked to them ahead of time -- and a copy of any document  
15 he wants me to consider, presumably including the investigation,  
16 but there may be other supporting documents, and then you would  
17 do the same. Given the July 4th holiday, we could do it at  
18 least a week in advance, but maybe more.

19           Mr. Hare, do you have a preference if I say -- July  
20 3rd is a Wednesday -- that you have that information at least  
21 electronically sent in? That gives us essentially a week and a  
22 half before the hearing. And you could send it in ahead of the  
23 deadline. That's not a problem.

24           MR. HARE: Then I'll say, no, I don't. There is that  
25 huge church conference at Husky Stadium on the 4th, 5th, and

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1 6th, which is certainly taking my time at the moment and would  
2 on those days.

3 And then the 3rd would a Thursday?

4 JUDGE TOREM: Wednesday, the 2nd, and Thursday, the  
5 3rd --

6 MR. HARE: No.

7 JUDGE TOREM: -- are the other dates that we...

8 So Wednesday would be all right, then?

9 MR. HARE: (Nods head.)

10 JUDGE TOREM: What it will give you a chance to do is  
11 double-check anything that Mr. Shearer sends to you and make  
12 sure you send in your materials as well.

13 So let's do, if that works for you, Mr. Shearer,  
14 Wednesday, July the 2nd for witness and exhibit --

15 MR. SHEARER: Yes, that's fine.

16 JUDGE TOREM: Okay. I don't know that there's a  
17 whole lot else I need from the parties today now that we've got  
18 essentially an agreed procedural schedule.

19 Mr. Shearer, did you see any other procedural items  
20 we can cover today?

21 MR. SHEARER: I do not, Your Honor.

22 JUDGE TOREM: And, Mr. Hare, anything else that you  
23 need to ask me? I know you must have some questions for  
24 counsel.

25 MR. HARE: I'm the slow learner in this crowd.

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1 JUDGE TOREM: Well, give yourself a little more  
2 credit.

3 MR. HARE: I can't think of a thing. I really can't.

4 JUDGE TOREM: All right. When I send you the  
5 prehearing conference order, there's a number of filing  
6 requirements and how we do things. Take a look at them, and if  
7 you have questions, feel free to check in with Mr. Shearer, or  
8 if you even want to send me a note by e-mail, that's fine as  
9 well. But copy Mr. Shearer. We're not allowed to talk, me and  
10 you, about the case, or me and Mr. Shearer or Staff without the  
11 other party knowing about the communication.

12 MR. HARE: What are you calling this communication?

13 JUDGE TOREM: You would just send me an e-mail  
14 question about procedure.

15 MR. HARE: Yes, but you're sending me something --

16 JUDGE TOREM: Yes.

17 MR. HARE: -- did you say?

18 JUDGE TOREM: It'll be called a "prehearing  
19 conference order."

20 MR. HARE: Okay.

21 JUDGE TOREM: And it will essentially put down in  
22 writing everything we've covered today and set up the schedule  
23 for these deadlines for July 2nd and the hearing date of July  
24 14th.

25 MR. HARE: Okay.

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1                   JUDGE TOREM: The part that might be foreign to you  
2 is the filing requirements.

3                   MR. HARE: Right.

4                   JUDGE TOREM: When we file documents downstairs,  
5 typically, we send them by e-mail, and you'll see a listing of  
6 everybody. And then we file a hard copy with our Records  
7 Center, where you signed in when you came into the building, and  
8 you'll file an original plus some additional copies. In this  
9 case, anytime you file a document, you need the original plus  
10 three hard copies. One of those is going to go directly to  
11 Mr. Shearer, one of them is going to go Ms. Brown, and another  
12 one is going to come to me, and they'll keep the original in the  
13 filing center.

14                  MR. HARE: Okay.

15                  JUDGE TOREM: So I just want you to make sure you  
16 catch that original plus three; otherwise, they'll be confused  
17 downstairs if it doesn't come in with a requisite number of  
18 copies, and that will be stated in the order as well.

19                  MR. HARE: Okay.

20                  JUDGE TOREM: All right. Well, thank you for coming  
21 down today. We'll be adjourned with the prehearing conference  
22 here at about ten minutes to two.

23                  I'll also get the prehearing conference order out  
24 probably tomorrow, and it will come to the address on file for  
25 Seventh Generation Charters.

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Thank you. We are adjourned.

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(Proceeding concluded at 1:49 p.m.)

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