

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) DOCKETS UE-151871 and
PUGET SOUND ENERGY,) UG-151872
Respondent.)

PREHEARING CONFERENCE, VOLUME I

Pages 1 - 47

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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1 OLYMPIA, WASHINGTON; JANUARY 5, 2016

2 9:29 A.M.

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4
5 JUDGE KOPTA: Let's be on the record in
6 Dockets UE-151871 and UG-151872, captioned Washington
7 Utilities and Transportation Commission versus Puget
8 Sound Energy. We are here for a prehearing
9 conference. My name is Gregory J. Kopta. I am the
10 administrative law judge who is assigned to preside
11 over this proceeding.

12 Let's begin by taking appearances. I believe
13 we have notices of appearances for most counsel. If
14 so, then all you need to do is give me your name, law
15 firm, if applicable, and the party you are
16 representing.

17 And let's start with the Company.

18 MS. CARSON: Good morning, Your Honor.
19 Sheree Strom Carson with Perkins Coie, representing
20 Puget Sound Energy. Also here with me today is David
21 Steele from Perkins Coie representing Puget Sound
22 Energy.

23 I just want to note, on the master service
24 list, David ended up being listed as petitioner's
25 counsel, I believe. If that could be corrected, we

1 would appreciate it.

2 JUDGE KOPTA: Okay. All right. We'll
3 do that. Thank you.

4 For Staff?

5 MS. BROWN: Sally Brown, Senior
6 Assistant Attorney General, and Christopher Casey,
7 Assistant Attorney General. We are here on behalf of
8 Commission Staff.

9 JUDGE KOPTA: Thank you.

10 Public Counsel?

11 MR. FFITCH: Good morning, Your Honor.
12 Simon ffitich, Senior Assistant Attorney General,
13 appearing on behalf of the Public Counsel office.

14 JUDGE KOPTA: Thank you.

15 And the intervenors. Let's begin with
16 Mr. Goltz, since you are sitting in front of me.

17 MR. GOLTZ: Thank you, Your Honor.
18 Jeffrey Goltz, Cascadia Law Group, appearing for the
19 petitioners Sheet Metal and Air Conditioning
20 Contractors' National Association, Western Washington
21 Chapter.

22 JUDGE KOPTA: And I believe we have two
23 other folks that have filed petitions to intervene.
24 Are you on the phone? Let's begin with the Washington
25 State HVAC Contractors Association.

1 MR. KING: Jim King with Washington
2 State HVAC Contractors Association.

3 JUDGE KOPTA: Would you come up, please?

4 MR. KING: (Complies.)

5 JUDGE KOPTA: Go ahead and speak into
6 the microphone.

7 MR. KING: James King with the
8 Washington State HVACCA.

9 JUDGE KOPTA: Okay. Thank you.

10 And for Sunrun, Inc.?

11 MR. WIEDMAN: Good morning, everyone.
12 This is Joseph Wiedman with Keyes, Fox & Wiedman, for
13 Petitioner Sunrun.

14 JUDGE KOPTA: And does anyone else wish
15 to make an appearance?

16 Hearing none, that seems to be the group we've
17 got this morning.

18 All right. Well, the first order of business
19 is the petitions to intervene. As I mentioned, the
20 Commission has received three such petitions from
21 Sunrun, Washington State HVAC Contractors Association,
22 and the Sheet Metal and Air Conditioning Contractors'
23 National Association of Western Washington. We're
24 going to have to come up with some shorter ways of
25 referring to those parties if they are allowed to

1 intervene.

2 I have received and reviewed the petitions and
3 the responses, as well as the reply. I grant the
4 motion to consider the reply.

5 Is there anything more that any of the parties
6 want to discuss on the proposed petitions?

7 Staff, do you have any position on those
8 petitions?

9 MS. BROWN: Oh, absolutely. We
10 absolutely have a position on the petitions, but I
11 thought that it would be more appropriate to hear from
12 the Company first.

13 JUDGE KOPTA: I am open to whomever
14 wants to speak. Since they have already said
15 something and you haven't said anything, I thought I
16 would give you the opportunity to say something.

17 MS. BROWN: Okay. We will say
18 something.

19 I would like to turn it over to Christopher
20 Casey at the outset, and then I am quite certain that
21 I will have something more to say. Commission Staff
22 strongly opposes the interventions, in light of the
23 Cole decision.

24 MR. CASEY: Staff cannot support the
25 interventions due to applicability of the Cole -- the

1 Washington State Supreme Court case, Cole, and because
2 the intervenor stated no interest which falls within
3 the Commission's jurisdictional concern. Staff
4 believes you would be hard-pressed to find a Supreme
5 Court case that more directly applies to the laws and
6 facts, particularly in terms of the issue of
7 intervention.

8 We do want to note that we believe PSE
9 overstated Cole with respect to some of the other
10 matters, aside from the intervention issue. And the
11 petitions make clear that the intervenors' interest in
12 matters is outside of the jurisdictional concern, it
13 is not -- they bring up interests that the Commission
14 could not use to base its decision on, and as a result
15 it would confuse the record.

16 In terms of -- we also have several things to
17 say about the response by the Air Conditioning
18 Association. One, we think they have confused the law
19 in several areas. For instance, the Energy
20 Independence Act in no way concerns air conditioning
21 associations, that the Energy Independence Act applies
22 to qualifying utilities. Those are consumer- and
23 investor-owned utilities with more than 25,000
24 customers, and it is qualifying utilities who are
25 directed to pursue all available cost-effective

1 conservation. Cost-effective there is -- is about
2 cost-effective to the system and ultimately to the
3 customers of that system and of that utility.

4 We believe that the Association has very much
5 overstated that concern. We also believe that they
6 have -- the Catch-22 that they talk about, they have
7 also confused the complaint statute and how that would
8 work.

9 I will leave it there for now.

10 MS. BROWN: Thank you, Your Honor.

11 I would add only that the Commission should
12 not undermine the validity of Cole as a sound
13 decision, nor should the Commission be intimidated
14 into granting these petitions for intervention in the
15 face of a threat of an appeal.

16 It is undisputed that the Commission's
17 authority here over intervention is broad, permissive,
18 and discretionary; however, it's more than that. As
19 the Court in Cole stated, and I'm quoting here, Since
20 the Commission had neither expressed or implied
21 authority to examine the institute's contentions --
22 that's the Oil Heat Institute -- its denial of the
23 Institute's petition to intervene was both proper and
24 reasonable. "Proper," as in right and correct.

25 All the hopeful intervenors here argue about a

1 robust competitive landscape, the potential, quote,
2 competitive imbalances, end quote, both of which the
3 Court in Cole stated were not within the jurisdiction
4 or concern of the Commission.

5 Finally, in denying the petitions for
6 intervention, the Commission wouldn't be -- the
7 Commission would be in no way, quote/unquote,
8 artificially confining the participants to just a few
9 parties. To the contrary, the Commission would be
10 complying with state law.

11 And so for those reasons we would strongly
12 urge the Commission to uphold the validity of the Cole
13 decision in this case. This is -- you've heard of --
14 this is a really bad joke. You have heard of Coke
15 Classic; this is Cole Classic. Really, truly, I mean,
16 it is Cole incarnate. And so I would strongly urge
17 the Commission to uphold the sanctity of the Cole
18 decision.

19 Thank you.

20 JUDGE KOPTA: Thank you.

21 As I read that decision, it was simply
22 upholding the Commission's exercise of its discretion.
23 Are you reading that decision differently?

24 MS. BROWN: I was just referring to the
25 language of the Court in its decision affirming the

1 Commission's digression in the area of intervention.
2 And that's also evidenced in the Commission's own rule
3 regarding interventions.

4 In this particular case, the Court not only
5 said that it was reasonable in its exercise of its
6 discretion, it was proper in the exercise of its
7 discretion. So from that I conclude that the Court
8 thought that the Commission's decision was ultimately
9 correct on the merits of intervention, as opposed to
10 the discretionary nature of intervention.

11 JUDGE KOPTA: So if it had gone the
12 other way, if the Commission had granted the
13 intervention, is it your position that that would have
14 been contrary to state law?

15 MS. BROWN: No. And we likely wouldn't
16 have a Cole decision.

17 JUDGE KOPTA: Unless the other side
18 appealed.

19 MS. BROWN: Thank you.

20 JUDGE KOPTA: Mr. Casey, it looks like
21 you want to say something else.

22 MR. CASEY: I would just add that the
23 Cole decision concluded that the -- excuse me, I'm in
24 the wrong part -- that the Commission correctly
25 determined that it had no authority to consider the

1 effect of a regulated utility upon a nonregulated
2 business.

3 I think really what is at issue here is when
4 we -- when the Commission considers the public
5 interests, it is -- the public interest is
6 characterized by the public service laws. If the
7 parties bring up concerns that are outside the
8 jurisdictional concerns of the public service laws,
9 they are going to confuse the record, both for the
10 Commissioners, for the Commission, and potentially for
11 judges on appeal, who are not the same type of
12 technical experts that the Commission is. And so I
13 believe that's why the Court found that it was proper
14 to deny the intervention.

15 JUDGE KOPTA: Okay. Do you anticipate
16 issues concerning the market for these types of
17 equipment that PSE is proposing to lease will be at
18 issue in this docket?

19 MR. CASEY: What do you mean by "the
20 market"?

21 JUDGE KOPTA: Well, I mean if they are
22 proposing to lease certain equipment -- as I read what
23 PSE has stated, they said that this is going to meet
24 an unmet need. Doesn't that mean that we will be
25 looking at the market for those types of equipment in

1 this docket?

2 MR. CASEY: I certainly think we will be
3 evaluating the Company's statements and -- and the
4 Company's ability to provide a service that -- that
5 provides a net benefit to customers. We will be
6 evaluating whether -- so we will be evaluating their
7 ability to participate in the market. That is
8 different.

9 The stated interests were essentially how PSE
10 would affect the interests of these -- of contractors
11 of these various businesses. That is beyond the
12 jurisdictional concern of the Commission, according to
13 Cole.

14 JUDGE KOPTA: Well, my concern is if we
15 are going to be talking about the market, I don't know
16 that Staff has expertise in the market in these types
17 of equipment, and PSE has only an interest in its own
18 equipment leasing prospect. How are we going to know
19 what the rest of the market looks like if we don't
20 have market participants being allowed to participate
21 in this proceeding?

22 MS. BROWN: Well, Your Honor, the same
23 way we gather information in other contexts, we can
24 find the expertise. The Commission Staff can find the
25 expertise that it needs.

1 JUDGE KOPTA: And why would we do that
2 if we've got people that want to -- that are already
3 participants that want to be part of this proceeding?

4 MS. BROWN: Well, the participants --
5 well, the hopeful participants are at liberty to file
6 comments, or if they wanted to make themselves
7 available to Commission Staff or the other -- or the
8 true parties to the proceeding and offer information.
9 I don't imagine Commission Staff would have any
10 objection to that.

11 JUDGE KOPTA: That's not quite the same
12 thing as providing an evidentiary basis for looking at
13 the market, though, it is?

14 MS. BROWN: I would agree with you, Your
15 Honor.

16 JUDGE KOPTA: Okay. Thank you.

17 Mr. ffitich, does Public Counsel have a dog in
18 this fight?

19 MR. FFITCH: Your Honor, as a matter of
20 generally policy, the Public Counsel Office support
21 generally a liberal interpretation or a liberal
22 exercise of the Commission's discretion on
23 intervention. We agree with Staff, that in general
24 the Commission has broad discretion in this area. We
25 think that in general, the better approach is to allow

1 the intervention and then impose restrictions as
2 necessary to deal with concerns about burdening the
3 record, issues that are irrelevant and other matters
4 that would be inappropriate for intervenors to raise,
5 rather than to just preclude participation. We do
6 think in this case it may well be helpful, given the
7 issues raised about market conditions and about the
8 nature of the service, to have broader participation.

9 JUDGE KOPTA: Okay.

10 MR. FFITCH: We do not object to the
11 petitions.

12 MS. CARSON: Your Honor, if I might have
13 a word?

14 JUDGE KOPTA: I was going to come to you
15 next, Ms. Carson.

16 MS. CARSON: Thank you very much.

17 I just wanted to point out that PSE has made
18 the point that there is an unmet need in market. We
19 think that's certainly true, that there is partial
20 market failure in terms of appliances that have
21 reached the end of their useful life and there are
22 barriers to bringing in new energy efficient
23 appliances. That's certainly a benefit of this.

24 But if we look at the Cole decision, if we
25 look at Washington statutes, if we look at the past

1 practice of PSE and other regulated utilities for the
2 past decades, leasing is an accepted activity of a
3 regulated company like PSE. And Cole makes that
4 point, that leasing appliances is within the
5 jurisdictional authority of a regulated utilities.

6 PSE has had rental programs going on for
7 decades. In fact, in Cole it was rental of water
8 heaters and other natural gas appliances. And then
9 the statutes contemplate that rates, including rental
10 rates, will be just, fair, reasonable and sufficient.
11 There is ample authority that PSE may enter into these
12 leasing tariffs. The fact that there is an unmet
13 need, while a helpful fact, I don't think that's what
14 this case should turn on, based on the authority in
15 statute and case law and in practice.

16 JUDGE KOPTA: Okay. Now, as I
17 understand it, PSE used to have a similar type of
18 program that had discontinued in 2000; is that
19 correct?

20 MS. CARSON: It was no longer open to
21 new customers because of some issues with how that
22 program was set up, and so this program has been
23 designed to address those issues and to make sure that
24 those same -- same problems don't arise. But there
25 continue to be many customers, I believe 35,000

1 customers, on water heater rental programs, is my
2 understanding. So it is still active, it just has not
3 been open to new customers for several years.

4 JUDGE KOPTA: And does that have
5 anything to do with the viability of the program in
6 light of other market conditions?

7 MS. CARSON: No, I don't -- that's not
8 my understanding. My understanding is it has more to
9 do with just the structure of how the rental was set
10 and it was not a -- there was not necessarily an end
11 to the rental rate. I am probably getting beyond my
12 factual knowledge here and we would have to go to
13 subject matter experts on this. It's not my
14 understanding it's because of the developments in the
15 market. There always have been contractors and the
16 availability to purchase these from nonregulated
17 companies, as well as from PSE.

18 JUDGE KOPTA: Okay. I didn't want to
19 get into a long, substantive discussion, I was just
20 wanting to explore that point to the extent that you
21 had any knowledge of it.

22 Mr. Goltz?

23 MR. GOLTZ: Yes, thank you. I will be
24 brief because we articulated our concerns in our reply
25 and in our petition.

1 Let me emphasize a couple things. First, this
2 is a fairly significant proceeding, as teed up by the
3 Company. In their first advice letter, they said
4 initially we are starting off with rentals of or
5 leases of appliances, furnaces, hot water heaters, but
6 it later could be expanded to solar collectors,
7 vehicle equipment, and other things. So this
8 initiates or revitalizes an issue about how a
9 regulated utility is going to participate in a market
10 that is for the most part unregulated and how that
11 will interact, and ultimately what is the best way to
12 implement state policies either for the Energy
13 Independence Act for conservation or for our policies
14 on facilitating distributed generation of electricity.

15 So in their filing, they said it was a --
16 there is a predicate to this whole thing, which is
17 there is an unmet need, Ms. Carson said a partial
18 market failure. Now, that's an allegation that the
19 existing participants in the market are not doing
20 their job, are not up to it, or it is not working.
21 That put that at issue.

22 In the Commission Staff memorandum, they
23 said -- they make it very clear on Page 2, Staff is
24 also concerned that the Company will enter an
25 apparently robust competitive market. So Commission

1 Staff is concerned about the impact on an existing
2 market. The Commission, when it issued a suspension
3 order, also indicated that they were looking at these
4 other alternatives.

5 This is an issue raised by Puget, emphasized
6 by the Staff, acknowledged by the Commission. I just
7 don't understand how, then, one can say that the
8 Commission has no jurisdictional interests in these
9 issues. It does. This is the exact issue that the
10 market participants are raising, and it may help the
11 proceeding along that SMACNA Western Washington is
12 undertaking.

13 Also, I think it is important to go back to
14 what the law is. The law here is governed by the
15 Administrative Procedure Act and governed by the
16 regulation. The Administrative Procedure Act says
17 intervention is appropriate, we are authorized by
18 another provision of law. The Commission has adopted
19 a rule that allows intervention where there is a
20 substantial interest or there is -- it is in the
21 public interest. Under either prong of that, I think
22 SMACNA qualifies.

23 And the issue really is, I mean, to go to
24 probably the second prong, public interest, is it
25 really appropriate -- as I think Your Honor was

1 getting at, really appropriate to analyze the existing
2 market, analyze the impact of these new ideas into the
3 market without listening to, getting information from
4 the market and the intervenors? And so instead of, as
5 Mr. Casey suggested, that it would -- this would
6 confuse the record, to the contrary, I think it is
7 essential to the record to make this -- to make this
8 clear.

9 And another point, just to conclude, as I
10 mentioned at the tail end of our reply, you know, this
11 is -- and I think what the -- what Your Honor should
12 consider is what's the best way to make this decision.
13 I mean, this is not just -- it's not just another
14 lease program, we already have 25,000 existing, we're
15 just going to add a few more. As they pointed out in
16 our initial filing, this is potentially a much larger
17 issue than that.

18 So what's the best way for the Commission to
19 go about and make that decision? Is it to confine it
20 to the Company and the Commission Staff and Public
21 Counsel, or is it better to hear from other people
22 that have an interest in this, that have information
23 to provide in this, and will help facilitate and I
24 hope expedite the decision by the Commission in this
25 matter?

1 JUDGE KOPTA: All right. Thank you.

2 MR. WIEDMAN: Your Honor, this is Joe
3 Wiedman for Sunrun. At some point I would like to
4 speak on this issue also.

5 JUDGE KOPTA: Yes, I have you on my
6 list.

7 MR. WIEDMAN: Okay.

8 MR. KING: In my association, Washington
9 State HVAC Contractors --

10 JUDGE KOPTA: Is your microphone on?
11 The red light needs to be on.

12 MR. KING: (Complies.)

13 JUDGE KOPTA: There you go.

14 MR. KING: For my association, the
15 Washington State HVAC Contractors Association, we
16 would endorse everything that SMACNA has said, and
17 point out that although the Company is alleging market
18 failure, they have yet to demonstrate that. In fact,
19 the Company has made a lot of allegations about the
20 market in their failings. And to exclude those of us
21 who have knowledge of the market is going to be to
22 short the Commission of the knowledge they need to
23 make decisions.

24 The other point that hasn't been made, that we
25 want to make, is we participated to this point in what

1 is a woefully inadequate tariff filing, quite frankly
2 would argue an improper filing. This is a policy
3 matter that should be addressed by rule, and there
4 should have been a petition for rulemaking, not a
5 tariff filing.

6 A petition for rulemaking would have allowed
7 broad public participation. To exclude those of us
8 with an interest in this -- and the Commission will
9 remember the number of people that turned out at the
10 November 13th meeting, with an interest, and that was
11 just a small part of those who are interested -- is to
12 short-circuit state public policy about the
13 adoption -- creation and adoption of public policy.

14 This is well beyond just a tariff filing, well
15 beyond something that just affects PSE. It affects
16 everybody in the state of Washington, in all
17 territories of regulated utilities. It is a
18 fundamental question of does the Commission even have
19 the authority to allow a regulated utility to go in
20 under the cover of regulation, into a competitive and
21 free market. There are a lot of issues that need to
22 be raised and considered.

23 We participated in this approach, and have
24 agreed to, under the belief that it is the quickest
25 way to get to a reasonable conclusion. However, if we

1 are going to be excluded from participation, we are
2 going to argue that this should come to an end and
3 rulemaking should begin, which will take a much
4 lengthier time to do, but would be more appropriate
5 under both the Administrative Procedures Act -- and
6 perhaps this should not even be in front of the
7 Commission, but the Company should have gone to the
8 legislature, which convenes at noon next Monday, to
9 deal with an issue of such public policy. Or we can
10 try to work through this in this forum, if we are
11 allowed to participate.

12 JUDGE KOPTA: All right. Thank you,
13 Mr. King.

14 Mr. Wiedman?

15 MR. WIEDMAN: Thank you, Your Honor.

16 I would wholeheartedly echo the last speaker's
17 comments. I have to admit, I was mystified to see
18 what is, in my mind, a request to begin what could
19 possibly be a very expansive program done as a mere
20 tariff filing. And then, you know, I am not sure if
21 it should be a petition for rulemaking or somewhere
22 else, but I would strongly echo that.

23 And, quite honestly, even if we are granted
24 intervention, it is hard for me to see how this
25 process could be managed without the taking of

1 testimony and other sorts of issues, given the types
2 of issues that have been put in play by the Company.

3 As other speakers have noted, you know, the
4 argument that there is sort of market failure, or not
5 fully realizing public benefits, I think that goes to
6 the core of the public policy issues that are at play
7 in this docket, such as leveraging of monopoly power,
8 administrative burden on the Commission from
9 overseeing such a broad and expansive program. And
10 those types of issues I think need to be discussed and
11 would be strengthened by having a broader set of
12 intervenors, that apparently is typically the case on
13 what are usually smaller sorts of tariff filings.

14 I think that goes to the core of why the Cole
15 case, in my mind, is completely inapplicable here.
16 That case was -- one, involved the Commission's
17 exercise of its discretion to deny somebody
18 intervention. And the Court is merely saying, yes,
19 that makes sense, they have the discretion to do so.
20 But on the underlining facts of that case, you had
21 essentially what was a very small set of programs that
22 would have been put in play. That's completely at
23 odds with the underlying facts of what is being
24 requested here. I think that is germane to whether or
25 not the decision in Cole is, quite frankly,

1 applicable.

2 I think in general, also as has been noted in
3 the sheet metal folks' filing, this case really does
4 deeply impact a provision of the Energy Independence
5 Act, have to meet those provisions for all
6 cost-effective conservation. So that again brings us
7 back to a broader public policy discussion. That's
8 not merely about just the leasing programs that the
9 State of Washington has seen before, that's not this
10 type of application.

11 And then just briefly I would note that the
12 Commission has in many instances granted intervention
13 to parties that may be competitors to a utility, or
14 potential competitors to a utility, in order to
15 develop a more full record. A primary example of that
16 is UTC v. PacifiCorp, from February 14, 2013, where
17 the Commission declared that it had a strong interest
18 in seeing a record that was fully developed, with as
19 much participation as possible, so the Commission
20 could have a record to weigh its decision upon.

21 I think that goes directly to some of the
22 statements made by Staff about possibly burdening the
23 record or confusing the record. I have full
24 confidence Your Honor can control parties and what
25 they are able to present in order to shape a record

1 that is relevant to the decisions that need to be
2 made. I don't see anything in any intervenors' filing
3 that I think would be outside of the scope of this.
4 Market impacts have been recognized by both Staff and
5 the Commission as something that needs to be
6 discussed.

7 So, you know, Sunrun would be perfectly
8 willing to continuously work with all parties to
9 ensure that any participation we do -- we do engage
10 in, you know, would be relevant to this docket. It's
11 not our intention to file things that we don't think
12 are relevant. We've got lots of issues going on
13 around the country. This one is just extremely
14 profound for us because it raises those monopoly
15 issues.

16 I will leave it at that. Thank you.

17 JUDGE KOPTA: Mr. Wiedman, is your
18 company in the market for water heaters or furnaces or
19 heat pumps?

20 MR. WIEDMAN: No. Our concern with the
21 case is that it -- that PSE has clearly indicated that
22 they want to move into solar storage and batteries as
23 part of this authorization. We feel that needs to be
24 discussed a lot more deeply than just a mere sentence
25 in a filing.

1 JUDGE KOPTA: Well, my understanding in
2 looking at the filing is that some of the solar-type
3 equipment is listed as some future products that have
4 been discussed. I don't know that there is any
5 indication in the filing that that's -- that those are
6 things that PSE is proposing at this point in this
7 docket to lease. Is your understanding different than
8 that?

9 MR. WIEDMAN: Well, that was a concern
10 that we had. The way I read that is that the filing
11 may potentially be authorizing them to offer those
12 services in the future, or that that request may be
13 being made as part of a deeper conversation. They can
14 say, Here is what we plan to offer now, but authorize
15 us to offer these other products and services in the
16 future. If that is clarified very clearly, you know,
17 I would certainly be happy to circle around with my
18 client and say is this a place we want to be. If it's
19 just about hot water heaters, I have a hunch they
20 would say no, but I would have to ask.

21 That's what got our attention, was that it
22 appeared to us that the request was potentially
23 broader than just what is on the table right now.
24 Sort of get it all squared away, and then in the
25 future, people make the decision, we don't have to

1 come back to the Commission. That's how we read the
2 application. Maybe we just read it wrong.

3 JUDGE KOPTA: Well, as I read this, any
4 expansion of this program, should it be authorized,
5 would need to come through another tariff revision,
6 which would again tee up before the Commission that
7 particular issue. That would be in the future, not in
8 this proceeding. I will clarify --

9 MR. WIEDMAN: Maybe I --

10 JUDGE KOPTA: -- that with Ms. Carson.

11 MR. WIEDMAN: I'm sorry.

12 MS. CARSON: That's correct, Your Honor.

13 JUDGE KOPTA: All right.

14 MR. WIEDMAN: So I think, Your Honor --
15 not to interrupt, I'm sorry, but it's hard to tell who
16 may be talking -- if there was a clarification made on
17 the record that that was the case, and that any future
18 expansions would be, you know, sort of reviewed on
19 their own merits with no prejudice, as far as there's
20 already a program underway, so sort of the wheels are
21 greased, I think we would be comfortable with where
22 things are headed in this conversation.

23 JUDGE KOPTA: All right. I don't know
24 if Ms. Carson is going to give you quite that
25 extensive representation. My understanding is that

1 certainly an issue of whether the program could be
2 expanded to include solar-type equipment would be at
3 issue in a future proceeding. If that were our joint
4 understanding, would that satisfy your client at this
5 point?

6 MR. WIEDMAN: I would need to talk with
7 them, but I believe that to be the case. My complete
8 understanding is that we are worried about the solar
9 aspects of this. She is not here, I can't ask her,
10 but that is my belief. I can get back to you maybe,
11 if you want, via e-mail, even within the course of
12 this docket, if I text her now.

13 JUDGE KOPTA: Okay. Thank you.

14 Anything further on this issue from any of the
15 parties?

16 Ms. Carson.

17 MS. CARSON: Thank you, Your Honor.

18 Hearing these three proposed intervenors speak
19 now, I think just demonstrates that the issues will be
20 expanded beyond what the Commission should address in
21 this proceeding if they are allowed to intervene.

22 The Cole case makes it clear that there is not
23 a public interest, that the Commission is authorized
24 by statute to address in terms of a competitor's
25 business interest, a nonregulated competitor's

1 interest. The Commission -- the public interest that
2 the Commission addresses is the interest of the
3 customers of the regulated utility.

4 Similarly, there is not a substantial interest
5 that the Commission is authorized to address here.
6 And the Energy Independence Act is just a red herring
7 in this case. As Staff pointed out, that applies to
8 regulated utilities. If anything, this tariff will
9 promote the pursuit of all cost-effective conservation
10 by allowing additional energy efficient appliances to
11 be used by more customers in PSE's service territory.
12 It has nothing to do with these unregulated
13 businesses.

14 And the Commission certainly is able to, and
15 has for the past several years, set up a process for
16 regulating companies' regulated utilities, to make
17 that sure they meet the requirements of the Energy
18 Independence Act. So that -- using that statute as a
19 basis for public interest just doesn't make sense.

20 JUDGE KOPTA: Okay.

21 Anything further?

22 MS. BROWN: Thank you, Your Honor.

23 MR. WIEDMAN: Your Honor, if I could
24 just respond to that.

25 MS. BROWN: Well --

1 MR. WIEDMAN: The Company keeps going
2 back to what I believe is a very narrow focus on, you
3 know, unregulated businesses versus regulated
4 businesses and the impact on those.

5 I think Sunrun's filing has been very clear
6 that our interests extend to the overall functioning
7 of that market and its need to be robust. That does
8 directly impact utilities' customers, as the provision
9 of the products and services that these competitive
10 companies offer are the very ones necessary to meet
11 the Energy Independence Act. If that market is harmed
12 by the Company's entry and leveraging of its monopoly
13 status in any way, then we may have a live issue.

14 Again, the speaker immediately brought up the
15 issues that are in play, as if they are factually
16 correct, that it may promote the provisioning of these
17 services. That's a big "may." That's exactly what
18 needs to be illuminated, and market participants are
19 uniquely able to offer that information to the
20 Commission in a way that is much more efficient than
21 having to wait for an active party to bring them to
22 the table. They can bring themselves to the table
23 today. We are here today wanting to be involved.

24 JUDGE KOPTA: All right. Thank you.

25 MR. KING: Your Honor, I would also like

1 to follow up on that.

2 Again, the Company is making allegations about
3 what the market is rather than demonstrating facts.
4 The reality is, in the last 15 years or more, these
5 market participants have brought in the energy
6 efficient appliances into the marketplace. The
7 Company foregoed these opportunities 15 years ago
8 because they could not successfully compete against
9 us. Our theory is -- what someone is indicating, on
10 one hand, is that we have no doubt that the Company
11 could do tremendous damage to the market before their
12 failure became evident again.

13 We are the ones who have the knowledge and we
14 are the ones that have actually been accomplishing
15 energy efficiency, when they have been leaving
16 15-year-and-longer older appliances in the marketplace
17 and have actually been promoting energy inefficiency.
18 This needs to be brought to the table.

19 The other point is that we have taken a
20 deep -- a dive into deep waters here, in terms of
21 policy in this narrow rate filing, as someone has
22 indicated, all the other things that are included, and
23 yet the decision here may set the precedent. Okay.
24 They have talked about a vehicle charging station.
25 Does that mean next they will get into the leasing of

1 electric cars because it follows from?

2 We are looking at some tremendous precedent
3 and we don't have large participation. This process
4 needs to go back to policymaking, not a narrow tariff
5 filing.

6 JUDGE KOPTA: All right. Thank you.

7 Staff. Mr. Casey.

8 MR. CASEY: I would just add that Staff
9 agrees that there are important issues of law and
10 policy in this case, and there is past precedent and
11 potential to set future precedent, which is very
12 important. There are -- these are important issues
13 that the public service laws require us -- require the
14 Commission to address.

15 For the most part, what I am hearing from the
16 potential intervenors are tangential issues that fall
17 outside of those concerns. Again, Staff's -- Staff's
18 interest and concern here is to illuminate the
19 appropriate analyses that should come -- that the
20 public service laws require, not extra jurisdictional
21 concerns about competition, anticompetitive behavior,
22 things that no party has been able to point to a
23 public service law that states that this should be
24 something that the Commission looks at, evaluates, and
25 bases the decision on.

1 Thanks.

2 JUDGE KOPTA: Okay.

3 MR. CASEY: Thank you.

4 JUDGE KOPTA: All right. Our rule is
5 very broad in terms of who is allowed to intervene.
6 Someone either with a substantial interest or whose
7 participation would be in the public interest, the
8 Commission generally allows to participate. As I read
9 Cole, is it upholding the Commission's exercise of
10 discretion. It isn't saying that that was the only
11 resolution the Commission could have had of that
12 particular issue that came before it.

13 I think under the circumstances here, as I
14 read this pleading, as well as Staff's open meeting
15 memo and the Commission's order, the market is at
16 issue in this proceeding. I am not willing at this
17 point to exclude the opportunity for parties that are
18 market participants who can provide firsthand
19 information to provide evidence on that particular
20 issue. I will be careful in terms of the scope of
21 that participation, as Public Counsel suggested, but I
22 think that the public interest in this case would
23 benefit from the participation of participants who are
24 actually in the market at the moment.

25 I grant the petitions of the Washington State

1 HVAC Contractors Association, and the Sheet Metal and
2 AC Contractors' National Association of
3 Western Washington. I deny the petition of Sunrun
4 because I don't think that the equipment that that
5 company provides is at issue in this docket. If and
6 when that is presented in a future docket, they can
7 participate at that time.

8 So that is the ruling at this point. And we
9 will go on to the other issues in this prehearing
10 conference.

11 The next on my list is --

12 MS. CARSON: Your Honor, could I clarify
13 one issue?

14 JUDGE KOPTA: Yes, you may.

15 MS. CARSON: Are you making a ruling
16 that Sunrun may intervene in a future proceeding that
17 hasn't been filed yet or is that open to be addressed
18 at that future proceeding?

19 JUDGE KOPTA: That would be open to be
20 addressed at that future proceeding.

21 MS. CARSON: Thank you.

22 JUDGE KOPTA: I am simply saying in this
23 proceeding, I am denying their participation. If they
24 wish to participate in some hypothetical future, then
25 they would need to deal with that at that time.

1 MS. CARSON: Thank you.

2 JUDGE KOPTA: You're welcome.

3 These dockets were not officially
4 consolidated. Is there any reason why they should not
5 be consolidated?

6 Ms. Carson?

7 MS. CARSON: The gas and electric
8 dockets?

9 JUDGE KOPTA: Yes.

10 MS. CARSON: No, there is no reason not
11 to consolidate them.

12 JUDGE KOPTA: Okay.

13 Anything from Staff on that?

14 MS. BROWN: (Shakes head.)

15 JUDGE KOPTA: All right. No.

16 We will consolidate them as part of the
17 prehearing conference order in this docket.

18 Discovery. I am assuming the parties want to
19 have the discovery rules available. They will be
20 available.

21 Do we need a protective order?

22 MS. CARSON: Your Honor, I believe that
23 we will need a protective order. It is possible that
24 we will need a protective order with highly
25 confidential provisions. PSE is in the process of

1 receiving bids for -- from an RFP to help determine
2 what -- with contractors and partners who will work
3 with them on this. Some of those individuals are
4 members of these organizations that have been granted
5 intervention. There would be concerns potentially
6 about various contractors' bids being available to
7 other contractors, as well as PSE's pricing model
8 being available to competitors. There may be a need
9 for highly confidential provisions in the protective
10 order.

11 JUDGE KOPTA: And having participated in
12 a number of dockets involving competitors, I am not
13 surprised that that might be necessary. I don't have
14 any problem with that.

15 Anyone have an objection to entering a
16 protective order that has also highly confidential
17 provisions in it?

18 MR. GOLTZ: I don't have an objection,
19 Your Honor. I am a little bit unclear about what
20 Ms. Carson just said about the confidentiality of
21 their pricing model. As I read the tariff as
22 currently envisioned, the prices are blank and there
23 is a reference to -- and then you go to an appendix
24 and there is a reference to a model. I think that
25 tariffs are designed to be transparent so people can

1 actually look at it and figure out what the prices
2 are.

3 If she is saying that the price sheet will be
4 blank, there is a reference to a model on file with
5 the Commission and that's unavailable, then I don't
6 know where the transparency is. I don't think that
7 impacts whether or not to have a protective order. It
8 is just a little bit of like -- maybe we -- we may
9 need to -- not just to automatically assume that the
10 pricing model is highly confidential.

11 JUDGE KOPTA: And I am not making that
12 assumption. I am at this point simply allowing for
13 the entry of a protective order that has highly
14 confidential provisions in it. At such time as
15 someone, PSE, designates something as highly
16 confidential, then that will be up to those who have
17 signed the protective order to bring to our attention,
18 if they believe that that's not properly designated.

19 MR. KING: Your Honor, I think the other
20 consideration we would like to just raise at this
21 point is, are we going to have assertions by the
22 Company of agreements they are reaching or things
23 going on with perhaps some of our association members
24 that are contrary to things we were told by our
25 association members that are in -- or have attempted

1 to enter some of those discussions are backed out. I
2 think that's going to be a part of the discussion we
3 have to have about the market viability. Do they
4 really have partners, quite frankly? And we do not
5 want to see the Company hiding behind confidentiality
6 when there are issues that have to be put on the table
7 openly and transparently.

8 JUDGE KOPTA: Mr. King, you are going to
9 be able to participate. You may sign the protective
10 order, you will see what the Company files, and you
11 can make that argument if and when the issue arises.

12 Electronic service. The Commission is in the
13 process of converting to serving documents
14 electronically. I am asking now that all parties
15 consent to electronic service if the Commission
16 determines that that is how it is going to serve.

17 Can I get a yes from everyone?

18 MR. GOLTZ: Yes.

19 MR. KING: I prefer e-mail over all the
20 paper anyway.

21 MS. BROWN: Yes.

22 MR. GOLTZ: Please.

23 JUDGE KOPTA: Okay. Thank you.

24 Last but not least, a schedule. The
25 Commissioners will not be sitting on this evidentiary

1 portion of the hearing. We have a suspension
2 deadline, as I calculate it, of September 17th of
3 2016, which does not give us very much time to have
4 hearings and then allow for a review of my initial
5 order, unless the Company wants to extend the
6 suspension deadline.

7 Have you all discussed scheduling?

8 MS. CARSON: PSE has sent out a proposed
9 schedule to Staff and Public Counsel. I understand
10 that Staff has some concerns about that. It might be
11 helpful to break and talk about a schedule.

12 JUDGE KOPTA: I am thinking that that
13 will be necessary.

14 MS. BROWN: One other thing, Your Honor.
15 Commission Staff anticipates filing a motion in limine
16 in this case, then, in light of your rules granting
17 the petitions for intervention. I anticipate that
18 without such a motion and a ruling on a motion, this
19 case will blow up into areas that the Commission
20 perhaps should not be addressing by Commission order.
21 I am concerned about the Commission's jurisdiction.

22 I just want to alert the Commission to that
23 fact. Thank you.

24 JUDGE KOPTA: All right. Thank you.

25 Let's go off the record so that you can have

1 those scheduling discussions.

2 We will be off the record.

3 (A brief recess.)

4 JUDGE KOPTA: Let's be back on the
5 record after the break to discuss scheduling. I now
6 turn to the parties to let me know what you have
7 agreed on.

8 Ms. Carson.

9 MS. CARSON: Okay. We have an agreed
10 schedule. We would like to start with a couple of
11 early settlement conferences. The week of January 19
12 and February 1, settlement conferences.

13 JUDGE KOPTA: Okay.

14 MS. CARSON: Not the entire week, but
15 we'll figure out a date. Hopefully not the entire
16 week.

17 On February 17, PSE will file revised tariffs.
18 February 25, PSE will file supporting testimony.
19 May 20th, Staff, Public Counsel, intervenors
20 responsive testimony. June 3, PSE files rebuttal
21 testimony.

22 We didn't agree to -- we didn't talk about the
23 revised discovery cutoff date, but we would request
24 there be a discovery cutoff.

25 Then we have a hearing set for June 22 to 23.

1 Initial briefs, July 12th. Reply brief, July 19th.
2 And we are anticipating like a seven- to ten-page
3 limit on that, so it would be very limited in scope.

4 MR. CASEY: A ten-page --

5 MS. BROWN: We didn't --

6 MR. CASEY: We didn't agree to a page
7 limit.

8 MS. CARSON: Okay. No page limit, then.
9 One week. Go for it.

10 Our aspirational hope for the initial order
11 would be August 15th, or sometime around then, which
12 would be about two months after the hearing, with a
13 Commission order by October 15th.

14 MR. CASEY: And we also discussed moving
15 the effective date two months, to October 17th.

16 JUDGE KOPTA: Well, that would be one
17 month.

18 MR. CASEY: Oh, one month.

19 JUDGE KOPTA: September 17th.

20 MS. CARSON: Was it filed September 17th
21 or --

22 JUDGE KOPTA: Effective date on the
23 tariff is November 17th of 2015. Ten months from that
24 date would be September 17th.

25 MS. CARSON: Okay. So it's one month.

1 MR. CASEY: So, I'm sorry, one month.

2 JUDGE KOPTA: All right. I will need to
3 look at my calendar to make sure that those dates work
4 for me for a hearing. At this point I don't know why
5 they wouldn't.

6 I would like a letter from you, Ms. Carson,
7 formally agreeing to extend the effective date of the
8 tariff, or the suspension date, however you want to
9 phrase it. Probably best to say that we extend the
10 suspension deadline to October 17th, 2016, just so we
11 have a formal agreement by the Company that that's
12 acceptable.

13 MS. CARSON: Okay.

14 MR. FFITCH: (Indicating.)

15 JUDGE KOPTA: Yes.

16 MR. FFITCH: I'm sorry to interrupt.

17 JUDGE KOPTA: Mr. ffitch.

18 MR. FFITCH: Your Honor, we did not
19 discuss altering the discovery response deadlines, I
20 think just through an oversight. I just wanted to
21 raise that with other parties at this point. I would
22 propose that, as is fairly standard, we would go to
23 seven business days after May 20th, after the Public
24 Counsel, Staff, intervener testimony, and then five
25 business days after PSE rebuttal.

1 JUDGE KOPTA: Is that acceptable to the
2 other parties?

3 MR. GOLTZ: Yes.

4 MR. CASEY: Yes, Your Honor.

5 MS. CARSON: Okay. So my understanding
6 is that the data request response time would go to
7 seven business days on May 20th; is that right?

8 MR. FFITCH: Correct.

9 MS. CARSON: And then to five business
10 days when PSE files its rebuttal testimony?

11 MR. FFITCH: Right.

12 MS. CARSON: Okay. PSE agrees with
13 that. We do request that the discovery cutoff be
14 seven days before the hearing.

15 MR. FFITCH: That's fine with Public
16 Counsel.

17 MR. CASEY: That's acceptable to Staff
18 as well.

19 MR. GOLTZ: That's fine.

20 MR. KING: Fine.

21 JUDGE KOPTA: Okay.

22 What about if Staff, Public Counsel, or one of
23 the intervenors has testimony that they want to file
24 in response to another party's May 20th testimony?
25 Did you contemplate that and decide that that was not

1 going to be an option or that you would have to
2 request leave?

3 MS. CARSON: It's fine with PSE to allow
4 cross-answering testimony at the same time as
5 rebuttal. That's typical in these cases.

6 JUDGE KOPTA: Okay. Before I included
7 that on the schedule, I just wanted to make sure that
8 that was contemplated by the parties.

9 MR. GOLTZ: That's fine.

10 MR. FFITCH: Yes, Your Honor. I think
11 it was understood.

12 JUDGE KOPTA: Okay. All right. I think
13 that would be fine.

14 Again, subject to looking at my calendar to
15 make sure that that hearing date and the hearing room
16 are available -- so two days you think would be
17 sufficient if we go to hearing?

18 All right. Then that's what we will do.

19 I will be entering a prehearing conference
20 order hopefully by the end of this week. It will be a
21 little longer than usual. Given our discussion
22 earlier today, you may want to hold off on your motion
23 in limine until you read my order.

24 MS. BROWN: Very well.

25 JUDGE KOPTA: And do we have anything

1 else that we need to discuss today?

2 Hearing nothing, we are adjourned. Thank you.

3 (Proceedings adjourned 11:33 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Sherrilyn Smith, a Certified
Shorthand Reporter in and for the State of Washington,
do hereby certify that the foregoing transcript is
true and accurate to the best of my knowledge, skill
and ability.

SHERRILYN SMITH