

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) Docket No. UE-152253
PACIFIC POWER & LIGHT COMPANY,)
Respondent.)

TELEPHONIC PREHEARING CONFERENCE, VOLUME VI

Pages 417-433

ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

11:02 a.m.

May 27, 2016

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1 OLYMPIA, WASHINGTON; MAY 27, 2016

2 11:02 A.M.

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5 JUDGE FRIEDLANDER: All right. We will be
6 on the record. This is Judge Friedlander here for a
7 telephonic prehearing conference and Docket UE-152253.
8 I will be taking appearances over the telecom bridge.
9 Abbreviated appearances are fine, but do please spell
10 your last name for the court reporter.

11 Appearing today on behalf of Pacific Power.

12 MS. MCDOWELL: Thank you, Your Honor. This
13 is Katherine McDowell here on behalf of Pacific Power.
14 My last name is spelled M-c-D-o-w-e-l-l.

15 JUDGE FRIEDLANDER: Thank you.

16 And appearing today on behalf of Staff.

17 MS. CAMERON-RULKOWSKI: Good morning. This
18 is Jennifer Cameron-Rulkowski, Assistant Attorney
19 General appearing on behalf of Staff, and my last name
20 is C-a-m-e-r-o-n, hyphen, R-u-l-k-o-w-s-k-i.

21 JUDGE FRIEDLANDER: Thank you.

22 And appearing today on behalf of Public
23 Counsel.

24 MR. FFITCH: Good morning, Your Honor.

25 Simon Ffitch for the Office of Public Counsel, and my

1 last name is spelled F as in Frank, double F, i-t-c-h.

2 JUDGE FRIEDLANDER: Thank you.

3 Appearing today on behalf of Boise White
4 Paper.

5 Perhaps Mr. Cowell is not on the line.

6 Appearing today on behalf of the Energy
7 Project.

8 Appearing today on behalf of the Sierra
9 Club.

10 MR. RITCHIE: Good morning, Your Honor.

11 Travis Ritchie on behalf of Sierra Club. R-i-t-c-h-i-e,
12 and...

13 MS. SMITH: Gloria Smith, S-m-i-t-h.

14 JUDGE FRIEDLANDER: Thank you.

15 And I have already been alerted that the
16 Northwest Energy project will not be attending today.
17 So are there any other parties or persons on the
18 teleconference bridge that wish to put in an appearance?
19 All right. Hearing nothing, we will go forward.

20 This telephonic prehearing conference is to
21 discuss some procedural issues that came to light given
22 the cross-examination list I received this past Tuesday
23 I believe -- no, Wednesday. That I received on
24 Wednesday. So it's my understanding that the Company
25 intends to cross-examine two witnesses on confidential

1 information; is that correct, Ms. McDowell?

2 MS. MCDOWELL: That is correct, Your Honor.

3 JUDGE FRIEDLANDER: Okay. So we need to
4 discuss procedure for closing the hearing, then. We've
5 done it in the past. I think for this one, we will also
6 have to go into a closed session, which means that we
7 will need to clear the room of any parties or persons
8 that have not signed confidentiality agreements as the
9 confidential information is the Company's. And as the
10 ALJs do not receive nor do we wish to receive the
11 confidential agreements between the parties, I am going
12 to rely on you, Ms. McDowell, to let me know, A, when
13 you need -- when you're going to be presenting -- or
14 when we need to break into closed session and, also, B,
15 whether or not the room has been cleared of any
16 nonconforming parties or persons.

17 MS. MCDOWELL: We can do that, Your Honor.
18 And I assume that you'll be monitoring the bridgeline or
19 is that something that --

20 JUDGE FRIEDLANDER: Actually, I believe we
21 are going to have to shut the bridgeline down.

22 MS. MCDOWELL: Okay.

23 JUDGE FRIEDLANDER: Because --

24 MS. MCDOWELL: So you'll just be surveying
25 the room, then?

1 JUDGE FRIEDLANDER: Yes, there's no way for
2 the Commission to verify who is on the line and whether
3 or not they've signed the confidentiality agreement. So
4 what -- we'll end up having to shut it down, which is a
5 good note for the parties, that if they do have
6 witnesses participating in the hearing, observing the
7 hearing, or what have you, that they are going to be
8 disconnected.

9 We can make the section of the transcript
10 which will contain the confidential information
11 segregated from the rest of the transcript, and it won't
12 be made available on the Commission's website along with
13 the public version. It will be sequestered, if you
14 will.

15 Are there any other safeguards that the
16 parties would suggest or are aware of that they'd like
17 to raise at this point?

18 MS. CAMERON-RULKOWSKI: Your Honor, this is
19 Jennifer Cameron-Rulkowski. I -- we did not anticipate
20 that we will have any confidential cross -- specifically
21 confidential cross for Mr. Dalley. However, it's likely
22 that there will be confidential material in the
23 cross-examination of the the other Company witnesses.

24 JUDGE FRIEDLANDER: So you're talking about
25 Mr. Teply, Ms. Crane, and Mr. Link?

1 MS. CAMERON-RULKOWSKI: That's correct. And
2 so what I might suggest is that we proceed with
3 cross-examination of Mr. Dalley and then close the
4 hearing at that point.

5 JUDGE FRIEDLANDER: Okay. So you -- Staff
6 has estimated that it will take 15 minutes to
7 cross-examine Mr. Dalley, and you're saying right now
8 that Staff does not anticipate confidential information
9 involved in that cross-exam; is that correct?

10 MR. FFITCH: Great, thank you.

11 MS. CAMERON-RULKOWSKI: That's correct, Your
12 Honor.

13 JUDGE FRIEDLANDER: Okay. What I am
14 thinking is, then, because this is a fairly big
15 modification to the estimates and the chart that I
16 received on Wednesday, why don't you go ahead and modify
17 your cross-exam estimates, Ms. Cameron-Rulkowski, and
18 let me know how much of the estimated time you've
19 reserved for the other three witnesses there would be
20 confidential examination.

21 MS. CAMERON-RULKOWSKI: Your Honor, I would
22 be happy to do that, but I don't believe that I can. In
23 the testimony, there are confidential numbers and
24 materials sprinkled throughout. And so I anticipate
25 that cross-examination questions and quite possibly

1 answers will switch between confidential and
2 nonconfidential material. And that it is not -- that I
3 am -- I don't think that I can actually say this chunk
4 is going to be nonconfidential and this chunk will be
5 confidential.

6 JUDGE FRIEDLANDER: Okay. So perhaps, then,
7 if it's interwoven as you say, we should just -- I will
8 just count on it being completely confidential to be on
9 the safe side.

10 MS. CAMERON-RULKOWSKI: I think that would
11 be safe.

12 JUDGE FRIEDLANDER: Okay.

13 MR. RITCHIE: Your Honor, this is Travis
14 Ritchie for Sierra Club. I think we are in the same
15 position where we can try to block things out a little
16 bit, but we've looked at our cross for Mr. Teply,
17 Ms. Crane, and Mr. Link, and there is confidential
18 information that could come out throughout the cross for
19 each of those witnesses.

20 JUDGE FRIEDLANDER: Okay. So are you
21 suggesting -- because yours are -- your estimates are a
22 bit bigger than Staff's. Are you suggesting that the
23 entire session of your cross-examination for each of
24 these three witnesses be confidential?

25 MR. RITCHIE: I think we could probably move

1 it around so that, you know, we can block off maybe a
2 quarter of it that was nonconfidential, but I think on
3 the safe side --

4 MS. SMITH: Hang on just one sec.

5 MR. RITCHIE: One moment, Your Honor. Let
6 me confer with my co-counsel for a moment.

7 JUDGE FRIEDLANDER: Certainly.

8 MR. COWELL: Your Honor, this is Jesse
9 Cowell on behalf of Boise. Sorry for calling in late,
10 but while we had a pause, I just wanted to let you know
11 I am on the line.

12 JUDGE FRIEDLANDER: Okay. Thank you. And
13 for the court reporter, who I don't believe was the
14 court reporter for our hearing, our evidentiary hearing
15 in May, could you spell your last name?

16 MR. COWELL: Certainly. Cowell,
17 C-o-w-e-l-l.

18 JUDGE FRIEDLANDER: And in case it wasn't
19 referenced, Mr. Cowell is representing Boise White
20 Paper.

21 MR. RITCHIE: Your Honor, this is Travis
22 Ritchie again. Sorry for having to confer. I think on
23 the safe side, we probably have to assume that the full
24 block of time would be -- would contain confidential
25 information.

1 JUDGE FRIEDLANDER: Okay. That's fine. I
2 will leave it up to you and Staff to revise the chart
3 and send it to me. I don't know if this means you need
4 more time, you need less time, what have you. I will
5 note that adding up the time, unless my math is
6 incorrect, we're already looking at 7 hours plus; is
7 that correct? You all anticipate approximately 7 hours
8 of cross-examination for the evidentiary hearing next
9 week?

10 MS. CAMERON-RULKOWSKI: That matches my math
11 total as well.

12 JUDGE FRIEDLANDER: Okay. I am not hearing
13 anything else, so I assume that's correct. So please
14 provide me with an update with numbers and indications
15 that these segments will be -- need to be placed in
16 confidential confines sometime prior to the close of
17 business today.

18 MS. MCDOWELL: Your Honor, this is Katherine
19 McDowell on behalf of Pacific Power, and we did endeavor
20 to split ours up 45 and 15. Those were pretty, you
21 know, high-level estimates and really we will try to
22 group all of our nonconfidential cross at the beginning
23 or the end so we can do it that way, but it may be -- I
24 just want to say that we may have some of the same
25 issues that you're hearing from Staff about the

1 interwoven nature of going in and out of cross.

2 So that's, you know -- I think we will
3 probably want to begin or end with a block of
4 confidential information, you know, closed hearing,
5 confidential hearing, and then, you know, move to that
6 for a particular part of our testimony that we think is
7 not going to raise confidential information.

8 JUDGE FRIEDLANDER: Okay. So it may be best
9 to err on the side of caution with the Company as well
10 and just have the segment closed unless you can pick out
11 any specifics that would be excluded as nonconfidential
12 questioning. Obviously, the State has a -- and the
13 Commission, as well, are public agencies and we try to
14 have information available to the public on a large
15 basis. This, however, doesn't look like it's going to
16 be possible for a great deal of the testimony and the
17 cross-examination on Wednesday of next week.

18 Mr. Cowell, you are the only other party who
19 intends to cross-examine any witness. You've reserved
20 five minutes. I assume as it's not designated
21 confidential, you may end up being the only party
22 questioning in a nonconfidential session; is that
23 correct?

24 MR. COWELL: That's correct, Your Honor.

25 JUDGE FRIEDLANDER: Okay. So there's no

1 changes to your plans?

2 MR. COWELL: That's correct.

3 JUDGE FRIEDLANDER: Okay. Thank you.

4 So that's pretty much what I had and what I
5 needed to discuss with the parties in anticipation of
6 next week's evidentiary hearing for the limited purpose
7 of the supplemental testimony. Is there anything we
8 need to discuss procedurally before we adjourn?

9 MS. CAMERON-RULKOWSKI: Your Honor, I just
10 wanted to flag the fact that we do have a highly
11 confidential protective order in place in the case as
12 well, and the subset of parties who have signed that
13 protective order is more limited than those who have
14 signed the regular confidential protective order.

15 I don't know -- we don't expect to have any
16 questioning on the -- related to the highly confidential
17 protective order, but maybe the other parties do. So I
18 just wanted to flag that we may have a second tier of
19 complexity related to this confidential information.

20 JUDGE FRIEDLANDER: Point taken. Thank you.

21 So are there any other parties on the line
22 currently who anticipate at least a potential for
23 examination of highly confidential information?

24 MS. SMITH: Yes, Sierra Club. We will
25 probably spend about five to ten minutes on the highly

1 confidential information. We see that Staff also filed
2 testimony related to that highly confidential
3 information. If they were to go first and ask questions
4 about it, we may not need to, but we anticipate having
5 some questions on the highly confidential.

6 JUDGE FRIEDLANDER: Ms. Cameron-Rulkowski?

7 MS. CAMERON-RULKOWSKI: I don't anticipate
8 having questions on highly confidential, but I am not
9 100 percent sure.

10 JUDGE FRIEDLANDER: Okay. Thank you.

11 And I echo Ms. McDowell's comments that this
12 is another level altogether. When the information has
13 been designated as highly confidential, it adds another
14 complexity in restricting the individuals who will be
15 present in the room and, again, Ms. McDowell, I will be
16 relying primarily on you to let me know that certain
17 individuals or parties have not signed a highly
18 confidential agreement.

19 MS. MCDOWELL: So -- and we're happy to
20 provide that information, and we will just need, you
21 know, the signal from counsel that they may intend to go
22 there --

23 JUDGE FRIEDLANDER: Absolutely.

24 MS. MCDOWELL: -- by the information
25 received.

1 JUDGE FRIEDLANDER: So I will expect Staff
2 and Sierra Club to work with the Company during the
3 hearing and let all of us know when to anticipate this
4 closed session -- potential for highly confidential
5 information in the closed sessions.

6 MS. CAMERON-RULKOWSKI: Certainly.

7 JUDGE FRIEDLANDER: Is there anything else?

8 MR. FFITCH: Your Honor, this is Simon
9 Ffitch. I just wanted to confirm the start time of the
10 hearing next week.

11 JUDGE FRIEDLANDER: Yes, it's nine -- I
12 believe 9:30.

13 MR. FFITCH: Okay.

14 JUDGE FRIEDLANDER: Is it 10:00? Let me
15 check. I am getting word that it may be 10:00. It's
16 9:30.

17 MR. FFITCH: All right.

18 JUDGE FRIEDLANDER: Now, that said, it may
19 be necessary, once I get the cross-exam estimates, to
20 move that up to 9 o'clock. Are the parties amenable to
21 doing so should the cross-exam estimates warrant --
22 warrant an earlier start time?

23 MS. MCDOWELL: This is Katherine McDowell
24 for Pacific Power. Yes, we are.

25 MS. SMITH: Sierra Club supports that.

1 JUDGE FRIEDLANDER: Okay. And Mr. Cowell?

2 MR. COWELL: Yes, Boise would prefer coming
3 in early than staying late. Thanks, Your Honor.

4 JUDGE FRIEDLANDER: Okay. Good to know.

5 All right. I do have the motion to strike
6 or in the alternative, the motion for live rebuttal
7 testimony filed by Pacific Power. I have the responses
8 in opposition. I will be ruling on that most likely
9 later this afternoon.

10 Is there anything else before we adjourn?

11 All right. Thank you. We're adjourned. I
12 will see you all in person on Wednesday.

13 MR. COWELL: Thank you, Your Honor.

14 MS. MCDOWELL: Thank you.

15 MS. CAMERON-RULKOWSKI: Thank you.

16 JUDGE FRIEDLANDER: Thank you.

17 MS. SMITH: Thank you.

18 (Hearing adjourned at 11:19 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Russell, 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.

Tayler Russell, CCR