

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

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

REPORTED BY: TAYLER RUSSELL, CCR #3358

Buell Realtime Reporting, LLC
1325 Fourth Avenue
Suite 1840
Seattle, Washington 98101
206.287.9066 - Seattle
360.534.9066 - Olympia
800.846.6989 - National
www.buellrealtime.com

A P P E A R A N C E S (continued)

FOR BOISE WHITE PAPER:
JESSE E. COWELL
Davison Van Cleave, PC
333 SW Taylor
Portland, Oregon 97204
(503) 241-7242
Jec@dvclaw.com

FOR SIERRA CLUB:
TRAVIS RITCHIE
GLORIA SMITH
Sierra Club Associate Attorney
65 Second Street, Second Floor
San Francisco, California 94105
(415) 977-5727
Travis.ritchie@sierraclub.org

* * * * *

A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:
MARGUERITE FRIEDLANDER
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive
P.O. Box 47250
Olympia, Washington 98504
(360) 664-1136
Mfriedla@utc.wa.gov

FOR PACIFIC POWER & LIGHT COMPANY:
KATHERINE MCDOWELL
McDowell Racker & Gibson PC
419 SW 11th Avenue
Suite 400
Portland, Oregon 97205-2605
(503) 595-3924
Katherine@mrg-law.com

FOR COMMISSION STAFF:
JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
1400 So. Evergreen Park Drive SW
P.O. Box 40128
Olympia, Washington 98504-0128
(360) 664-1186
Jcameron@utc.wa.gov

FOR PUBLIC COUNSEL:
SIMON FFITCH
Senior Assistant Attorney General
Chief, Public Counsel Division
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104-3188
(206) 464-7744
Simonf@atg.wa.gov

OLYMPIA, WASHINGTON; MAY 27, 2016
11:02 A.M.
--o0o--

JUDGE FRIEDLANDER: All right. We will be
on the record. This is Judge Friedlander here for a
telephonic prehearing conference and Docket UE-152253.
I will be taking appearances over the telecom bridge.
Abbreviated appearances are fine, but do please spell
your last name for the court reporter.
Appearing today on behalf of Pacific Power.
MS. MCDOWELL: Thank you, Your Honor. This
is Katherine McDowell here on behalf of Pacific Power.
My last name is spelled M-c-D-o-w-e-l-l.
JUDGE FRIEDLANDER: Thank you.
And appearing today on behalf of Staff.
MS. CAMERON-RULKOWSKI: Good morning. This
is Jennifer Cameron-Rulkowski, Assistant Attorney
General appearing on behalf of Staff, and my last name
is C-a-m-e-r-o-n, hyphen, R-u-l-k-o-w-s-k-i.
JUDGE FRIEDLANDER: Thank you.
And appearing today on behalf of Public
Counsel.
MR. FFITCH: Good morning, Your Honor.
Simon Ffitch for the Office of Public Counsel, and my

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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

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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?

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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?

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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

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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

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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.

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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

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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

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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

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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.

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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.

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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 _____