

1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION

3
4 WASHINGTON UTILITIES AND)
5 TRANSPORTATION COMMISSION,)
6 Complainant,) DOCKETS UE-072300 and
7 vs.) UG-072301
8 PUGET SOUND ENERGY,)
9 Respondent.)

10 PREHEARING CONFERENCE, VOLUME I

11 Pages 1 - 45

12 ADMINISTRATIVE LAW JUDGE DENNIS J. MOSS
13

14 9:30 A.M.
15 JANUARY 22, 2016

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1 OLYMPIA, WASHINGTON; JANUARY 22, 2016

2 9:30 A.M.

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4
5 JUDGE MOSS: Good morning, everybody.
6 My name is Dennis Moss, I am an administrative law
7 judge with the Washington Utilities and Transportation
8 Commission. We are convening this morning in the
9 matter styled Washington Utilities and Transportation
10 Commission v. Puget Sound Energy, Dockets UE -072300
11 and UG-072301 (consolidated).

12 I refer to this as the docket that keeps on
13 giving. I have been managing this proceeding for lo
14 these many years. The prehearing conference order in
15 this case will be Order 27. In light of this, and in
16 light of my age, I have discussed with the Judge Kopta
17 that I intend this to be the last proceeding in this
18 docket number. I just want to put people on notice
19 that if there is any need for further petitions or
20 what have you with respect to this subject matter, it
21 will need to be filed in a new docket. Of course,
22 whatever conclusion we reach in this proceeding,
23 perhaps will be the compliance filing in this docket,
24 but that will be -- the last thing we see will be a
25 compliance letter, then. So I just wanted to give

1 everybody a heads-up on that.

2 This is PSE's request for permanent
3 modifications to the Company's Service Quality Index
4 No. 3, which is System Average Interruption Duration
5 Index, popularly known as SAIDI, its acronym.

6 I want to start by taking appearances. We
7 will begin with the Company.

8 MS. CARSON: Good morning, Your Honor.
9 Sheree Strom Carson with Perkins Coie representing
10 Puget Sound Energy.

11 JUDGE MOSS: Thank you.

12 And Public Counsel?

13 MS. GAFKEN: Good morning. Lisa Gafken,
14 Assistant Attorney General, appearing on behalf of
15 Public Counsel.

16 JUDGE MOSS: All right. Ms. Gafken,
17 thank you.

18 And on behalf of Staff?

19 MR. CASEY: Good morning, Your Honor.
20 Christopher Casey, Assistant Attorney General, on
21 behalf of Commission Staff.

22 MR. O'CONNELL: And good morning, Your
23 Honor. Andrew J. O'Connell, Assistant Attorney
24 General, appearing on behalf of Staff.

25 JUDGE MOSS: All right. Mr. O'Connell,

1 I think this is your first time before me. Welcome.

2 MR. O'CONNELL: Thank you, Your Honor.

3 JUDGE MOSS: Mr. Casey, I am previously
4 acquainted with you in other proceedings. As one
5 generation passes another comes in.

6 I am reminded that I -- of course, I have
7 reached a lot of -- I mentioned the fact I am getting
8 a little older, I also am inclined to tell war
9 stories. I am reminded here, I think it was one of
10 very the first appearances I ever made in my career at
11 the Federal Energy Regulatory Commission. The
12 proceeding, at the time I joined it, had been going on
13 for 14 years. The judge in the case, when I came in
14 and entered my appearance, sort of went like this, and
15 leaned over to me. He said, Oh, it's to be expected
16 the new generations of lawyers would cut their teeth
17 on this proceeding. It was a mildly embarrassing
18 moment, but things got better after that. We actually
19 managed to conclude the case in another three years.
20 Anyway, those were fun times, I guess.

21 We are here for a prehearing conference, and
22 we have Staff and Public Counsel. Are there any
23 others who wish to intervene in this proceeding,
24 perhaps on the conference bridge line?

25 Hearing nothing, no one apparently wishes to

1 enter an appearance from the conference bridge line,
2 so let's find out what it is we need to do in this
3 docket.

4 We have, as I have said, Staff and Public
5 Counsel that oppose the petition. There may have been
6 some informal activities to this point in time.
7 Somebody tell me what's going on.

8 MS. CARSON: Yes, Your Honor, we have
9 had some discussions about the schedule. We have kind
10 of reached some tentative agreement, although not
11 complete agreement on that.

12 JUDGE MOSS: Okay.

13 MS. CARSON: I guess I should say from
14 PSE's perspective, there is a couple of issues that I
15 would like to raise --

16 JUDGE MOSS: Okay.

17 MS. CARSON: -- that relate to the
18 schedule and the petition in general.

19 The first issue is that this is -- this
20 petition is to set the metric that PSE will be judged
21 by and potentially could face penalties for in 2016,
22 and yet 2016 has begun, we don't know what the metric
23 will be, and with the proposed schedule that seems to
24 work with everyone's schedule this year, we won't know
25 what the metric is until the year is over. That is a

1 problem from PSE's perspective.

2 PSE has raised with the other parties these
3 due process concerns and that PSE isn't -- is not
4 acceptable to PSE to go back to an old metric that was
5 in place before the new OMS was installed, which is
6 what is being proposed by the other parties. PSE
7 thinks it is appropriate to have a waiver of penalties
8 during this year, when it is not known yet what the
9 metric will be that it will be judged by. That's the
10 first issue.

11 The second issue is that there is just -- I
12 guess I should say as background, and as set forth in
13 the petition, there was significant collaboration that
14 went on before this petition was filed between PSE,
15 Public Counsel, and Staff. PSE did significant
16 research, there were studies done, there was input
17 from Staff and Public Counsel about what should be
18 done, but in the end there was not agreement.

19 At this point in time, Staff and Public
20 Counsel are wanting PSE to do additional research,
21 which, from PSE's perspective, is not possible, is not
22 helpful, is not reasonable, and so we have had
23 discussions about that. You know, it's kind of, to a
24 large degree, the same discussions that have been
25 going on for several months before this petition was

1 filed. There is just -- what Staff and Public Counsel
2 are wanting is to compare outages pre-OMS installation
3 and post-OMS installation. That's just not data that
4 PSE has available.

5 Anyway, what we have decided and agreed to do
6 is -- and I think all the parties are in agreement
7 with this, is to try to spend about a month
8 collaborating to see if there is any agreement that
9 can be reached about whether additional research is
10 needed, and if so, what it is. And if we reach
11 agreement, we would report back to the Commission on
12 what that additional research would be so that there
13 wouldn't be any moving targets, everybody would have
14 agreement on what needs to be done.

15 If there is not agreement, and in fact PSE
16 thinks what other parties want isn't possible, then we
17 need to come back and have that discussion with you to
18 settle it.

19 That's what we're proposing in the schedule,
20 is to start with that initial collaborative
21 opportunity and see if any agreement can be reached.

22 JUDGE MOSS: All right. I'm debating
23 whether to separate those issues for response or to
24 have response to both.

25 Let's go ahead and have your responses to

1 both. We'll have Ms. Gafken go first.

2 MS. GAFKEN: I wonder if perhaps it
3 might be more efficient to start with Staff and
4 then --

5 JUDGE MOSS: It works for me. I was
6 just being polite.

7 MS. GAFKEN: Thank you.

8 JUDGE MOSS: Mr. Casey.

9 MR. CASEY: Thank you, Your Honor.

10 So first to the issue of the benchmark, PSE's
11 need to know the benchmark for 2016. I guess to start
12 we have a question for PSE, that we are unclear of,
13 and that would be whether -- because they characterize
14 this as a due process issue for them. We are unsure
15 of how knowing their score would affect their
16 performance throughout the year. Is that -- will your
17 performance throughout the year be different based on
18 what your score is?

19 JUDGE MOSS: That was a question that
20 occurred to me, too, Ms. Carson. I would assume that
21 PSE would always do its best. That being the case,
22 knowing this one way or the other shouldn't affect
23 what the actual outcome is, in terms of your
24 performance.

25 MS. CARSON: I agree that PSE will

1 always do its best, but there are additional things
2 that PSE may be able to do. I mean just from a
3 fundamental fairness perspective, to face penalties
4 when you don't know what the standard is that you are
5 facing penalties for seems to have some serious
6 problems.

7 JUDGE MOSS: I may not regard them to be
8 quite as serious as you do, and I think Staff and
9 Public Counsel don't either, but I will give that some
10 more thought.

11 I am not making any decision on this point. I
12 think Mr. Casey does raise a valid question, and as I
13 have said, it is a question in my mind as well. If
14 PSE is doing its best, within reasonable bounds, then
15 it seems to me the time to ask for a waiver would be
16 if we set a standard and it turns out that PSE has
17 fallen short of that standard. That would be the time
18 to come in and say, well, we would like a waiver
19 because here is what we did, and we made this
20 extraordinary effort, or we made this great effort, or
21 whatnot. It is sort of asking me to prejudge here
22 something, and it's difficult to do.

23 MS. CARSON: I guess I would just like
24 to say that, you know, I think there is always more
25 you can do. I mean there is, I guess, unlimited

1 resources that you can bring in to deal with outages,
2 but it's like a cost-benefit analysis as well. You
3 know, if you have a big storm and you are facing
4 multimillion-dollar penalties, you know, maybe you
5 bring in many, many more resources to help with that
6 than what you would normally do. I don't know, I am
7 not the subject matter expert here.

8 JUDGE MOSS: Sure.

9 MS. CARSON: You know, it seems to me
10 that the Company ought to know what the standard is if
11 they are facing penalties for not meeting the
12 standard.

13 JUDGE MOSS: Well, I will give that some
14 additional thought. Your point is well taken.
15 Clearly, the Company has the ability to balance the
16 resources it devotes against what it may face in terms
17 of penalties. It may be that the Company's
18 determination of what constitutes a maximum reasonable
19 effort results in the Company falling short in the
20 event you described.

21 All these are factual questions, of course.
22 This is one of the difficulties I face sitting here
23 today. We, of course, do not have crystal balls. I
24 wish that we did, but we don't, and so we don't know
25 what is going to happen.

1 All right. I think that sort of -- we have
2 had that sort of discussion now. Does that help in
3 any way?

4 MR. CASEY: Somewhat. I would say -- I
5 would take note of the fact that PSE filed this
6 petition on November 30th, both Staff and Public
7 Counsel submitted answers to that petition in a timely
8 fashion, and quickly thereafter the Commission
9 scheduled a prehearing conference, which is where we
10 are now. And so this has been moving along in a
11 timely fashion. You know, the issue of not knowing a
12 benchmark should have been apparent to the Company
13 when it submitted its petition. So not having a
14 benchmark, there is somewhat a -- a problem of its own
15 creation. I guess we would like to say that we hope
16 the benchmark is not something that the Company just,
17 you know, becomes what -- what the Company slips to,
18 in terms of its own performance. We really do hope
19 that the Company is doing its best always going
20 forward.

21 Staff cannot support a waiver of penalties and
22 just having a reporting. I believe Staff would
23 support having the old benchmark put in place, that's
24 the 136 minutes, and that is the benchmark that would
25 have been -- we would automatically revert to if the

1 Company did not file for an extension or submit a
2 petition. So with that said...

3 JUDGE MOSS: Let me ask a question. As
4 I said, I have been managing this case for a long
5 time. Perhaps I have lost track, but my recollection
6 is that at this juncture we are operating under an
7 extension of some previously set metrics that we
8 extended them two or three times, as I recall.
9 Perhaps the last one was a several-year extension,
10 that I recall. Does that have a sunset date or is
11 that just an open-ended sort of a thing?

12 MR. CASEY: There was a sunset date. So
13 that -- there was a temporary benchmark put in place
14 that was originally supposed to be there for four
15 years. It got extended twice, for a year at a time.
16 Essentially the mechanics -- this was established in
17 Order 17 in this docket, that we would automatically
18 revert back to the prior benchmark, unless the Company
19 either filed for an extension or filed a petition to
20 reexamine the benchmark.

21 JUDGE MOSS: Is this documented in the
22 orders?

23 MR. CASEY: Yes, Your Honor.

24 JUDGE MOSS: Okay. Well, I will take a
25 look at those orders to be sure.

1 This is one of the things the Company may
2 face. I think of it in terms, for example, of rates
3 that a company is authorized and has on file at any
4 given time. Unless and until we change those rates,
5 they remain effective rates. I am thinking in terms
6 of, well, there may be something similar here that we
7 would -- principle that we would apply. Unless and
8 until this is -- the Company does successfully change
9 this, we are sort of proceeding as we were.

10 And there is a flip side to this. As I said,
11 you and I both expect the Company to do its best. I
12 think that's a reasonable expectation. At the same
13 time, if the Commission says, well, we are waiving the
14 penalties right up front, well, then, that might
15 result in PSE calling in fewer resources than it
16 otherwise would in the event of a major storm or
17 something like that. That's a decision that will be
18 made, as they say, on the ground at the time.

19 I would not want to set up a situation that
20 might encourage someone in the structure of PSE's
21 storm damage response team deciding, well, instead of
22 bringing in a thousand people from adjoining states,
23 we will bring in 500. So you see there is a flip side
24 to it.

25 MS. CARSON: I understand your point. I

1 do think it is important to look at the context of
2 this and to recognize that -- my understanding is that
3 PSE is the only of the three investor-owned utilities
4 that has penalties associated with SAIDI metrics.

5 JUDGE MOSS: This all came about as part
6 of a settlement, didn't it, originally?

7 MS. CARSON: It did.

8 JUDGE MOSS: Yeah.

9 MS. CARSON: It was part of a settlement
10 with -- with the merger.

11 JUDGE MOSS: Yeah.

12 MS. CARSON: So -- but I think to think
13 that penalties are absolutely required or that PSE and
14 other utilities aren't going to perform unless they
15 have penalties over their heads, you know, isn't
16 consistent with how other utilities are being treated
17 by the Commission.

18 JUDGE MOSS: I don't see an unfairness
19 problem there. I have to be blunt with you. I mean,
20 this is something the Company agreed to in connection
21 with the merger agreement and that agreement continues
22 to control. The fact that we don't do it for the
23 other utilities does not mean that the Commission is
24 in any way treating PSE unfairly.

25 Again, I place some faith in the Company's

1 good faith in doing what it needs to do. Having said
2 that, I think I also place faith in the Commission's
3 ability to assess the facts as they evolve and
4 determine at that point in time whether PSE's effort
5 was adequate under certain circumstances, and say,
6 well, yes, we think the penalty should be waived in
7 this instance, or reduced, or whatever the appropriate
8 outcome might be. I have confidence in the
9 Commission's ability to do that. I suppose it would
10 still be coming before me, since this is my docket,
11 and I know I am a reasonable person. I feel some
12 confidence in that, and I would encourage the Company
13 to feel that too.

14 I would not, from this bench, grant the
15 waiver. It is something that I would discuss with the
16 Commissioners before I acted. I would probably advise
17 them along the lines of what I am saying at this
18 moment; that is, we should wait and see and be
19 reasonable with the Company, considering whatever
20 circumstances are before us. And maybe we won't have
21 any major storms, maybe that's going to all be back
22 East. We can certainly hope so. D.C. can unbury
23 itself in due course, but it has no effect on our
24 operations out here.

25 All right. So we will sort of put that to one

1 side for now, if that's all right. If it becomes a
2 major -- let's also let this month -- I perfectly
3 agree with and am supportive of the idea of a
4 continuing collaborative effort. That might indeed
5 lead to a full settlement of the case. I mean, this
6 is the sort of thing that frankly kind of begs for
7 settlement, but that, of course, is a give-and-take
8 process and requires negotiation and concessions on
9 both sides in order to work. We will see how that
10 unfolds.

11 That does bring us, then, to the second
12 question, in my mind. Maybe we can go to the
13 question, which is this question of studies.
14 Ms. Carson used strong language. She said it's
15 neither reasonable nor possible for PSE to perform
16 this work. Does Staff or Public Counsel have some
17 reason to doubt that?

18 MR. CASEY: Staff acknowledges that the
19 analysis we are looking for requires time and effort
20 and that it's difficult. I think one of the things
21 that -- my understanding, one of the worries of the
22 Company, which is one that Staff can very much
23 appreciate, is the idea that they will undergo this
24 time-consuming, effort-consuming analysis, and then
25 Staff and Public Counsel will just say -- pick it

1 apart, and at the end of the day it won't be used. We
2 understand that concern.

3 Let me provide a little bit of background on
4 specifically what we are looking for. We are trying
5 to understand -- we are trying to be able to make an
6 apples-to-apples comparison of the benchmark, pre-OMS
7 and -- or performance pre-OMS and performance
8 post-OMS. The Outage Management System, for the
9 record.

10 The situation there is pre-OMS, the
11 performance underreported the amount of customers that
12 were affected. After OMS, we know exactly how many
13 customers are affected. What we are looking for is
14 how can we understand how this pre-OMS number should
15 relate to post-OMS. Specifically, the study that
16 Staff is looking for is it wants the Company to
17 examine outages on the same circuit, similar outages,
18 pre and post. We need to do a number of those to
19 see -- to get a reliable comparison.

20 This is something that the Company has
21 undertaken. They talk about it in their petition, but
22 they use it as just an anecdotal example to
23 demonstrate that the shift could be large. We believe
24 that the Company needs to do the same analysis enough
25 times so that we get a reliable comparison between the

1 pre-OMS and post-OMS number of customers affected.

2 So with that background, what we are hoping we
3 can do is sit down, talk, and come to an agreement as
4 to how this analysis would be conducted so that once
5 we have a result from it, we are not all disputing the
6 reliability of that result, or how much faith and
7 trust we can put into that result. That's really what
8 we are looking for. We believe that that can be done.

9 JUDGE MOSS: Does the Company believe
10 that can be done?

11 MS. CARSON: Not really. It sounds very
12 reasonable, but when you look at the data that is
13 available and the way the circuits work and outages
14 work, it just doesn't really work that way.

15 The Company was able to find one or two
16 examples where you could find outages on the same
17 circuit that look similar. First of all, there is a
18 limited number of outages on the same circuit both
19 before and after. Even when there is outages on the
20 same circuit, the circumstances can be very different
21 between the two outages, so they are not really an
22 accurate comparison.

23 You can have outages in different locations on
24 the circuit that affects their customer count.
25 Circuits can be miles long. If the outage is near a

1 substation, you know, that makes a difference. And
2 you don't know where the outages occurred, it's my
3 understanding, on the old system. There's a lot of --
4 there was a lot of guesstimating going on by people
5 with knowledge, but it's quite different from the
6 information that you have now.

7 And then it's a dynamic situation. The
8 circuits change over time, the number of customers who
9 are actually included on a circuit change. Obviously,
10 PSE's business process has changed with the different
11 Outage Management Systems.

12 While it sounds easy to compare outages on
13 circuits, with the limited data that is available from
14 pre-OMS, it is really not feasible and you are not
15 going to get statistically significant information.
16 You are not going to get enough information because I
17 don't think there is enough outages on the same
18 circuits that you are even going to get what you want.

19 JUDGE MOSS: Well, I am not an engineer,
20 but even I can see the difficulties that you have
21 described in a technical sense.

22 Mr. Casey, you mentioned a desire to have an
23 apples-to-apples comparison. I can certainly
24 understand the desire to have that. On the other
25 hand, I can accept the proposition that it is

1 impossible to get that, just because of the things
2 Ms. Carson described. These are very, as you know --
3 as we all know, these are very complex systems. From
4 an engineering perspective, they are dynamic, and so
5 to get the sort of pre and post -- gosh, I wish I
6 could mediate this case, I can see a path already.

7 It does seem to me that there -- you know,
8 let's don't put on blinders here. I think it may be
9 necessary for you to spend some of your time in this
10 first -- this preliminary effort to further your
11 collaborations and think outside the box. Maybe there
12 are some other perspectives to take on the whole
13 matter. You know, maybe memories go back to how these
14 measures were originally set however many years ago.
15 072, that's a long time ago. Well, you say it goes
16 back to the merger.

17 MS. CARSON: Uh-huh.

18 JUDGE MOSS: That was, you know, what,
19 six years ago, seven years ago, something like that.
20 I forget, 2009.

21 MS. CARSON: 2007, it was actually filed
22 in.

23 JUDGE MOSS: It was concluded, as I
24 recall, on December 31st, 2009. Yes, I recall the
25 circumstances very clearly.

1 MS. CARSON: Me too.

2 JUDGE MOSS: Painfully.

3 Anyway, putting that aside. I don't want to
4 be discouraging to either side here, I just see
5 some -- I do see some difficulties. I understand the
6 desire to do good and be accurate and so forth. I can
7 see that achieving statistical significance with this
8 sort of thing could be a real challenge.

9 I was struck again by the comment that
10 Ms. Carson made early on. Saying it's not reasonable
11 is one thing, saying it's not possible is another. I
12 don't hear that very much. We can't do that, Judge
13 Moss. Well, people don't say that very much, so I
14 take it seriously. I have to think we need to take it
15 seriously.

16 I think if PSE could do it in what it
17 considered to be a meaningful way, it would do it,
18 because this could mean millions of dollars to the
19 Company, even in this first year, in concept at least.

20 I obviously can't order the Company to do
21 something sitting here today. All I can do is open up
22 this opportunity for you all to try to work that piece
23 of it out. I encourage that. Again, I encourage you
24 to think beyond the idea of getting the sort of direct
25 measures that you could compare because of the --

1 simply the difficulties of doing it.

2 MR. CASEY: Staff appreciates that and
3 Staff looks forward to engaging with the Company on
4 this topic a little bit further. Staff will certainly
5 keep an open mind in terms of what is possible and
6 alternate possibilities. We would also like to have a
7 better understanding of the facts around the
8 challenges and how extreme those challenges actually
9 are before we give up on an analysis that, if could be
10 reliably produced, we feel is quite critical,
11 especially given that the stated purpose of the
12 service quality program was to provide mechanisms to
13 assure customers that they will not experience
14 deterioration in quality of service.

15 This is really -- you need to be able to
16 compare the service before and after to understand
17 whether or not they were experiencing the
18 deterioration in service quality.

19 JUDGE MOSS: But in a sense you are not
20 really going to be able to do that, based on what you
21 all are telling me, as I sit here today, that the
22 pre-OMS reporting was underreporting the situation, so
23 you don't really have good pre-OMS data. The whole
24 thing was predicated -- the whole program was
25 predicated on -- I'll just put it bluntly, on less

1 than fully satisfactory numbers and data.

2 I don't recall how -- whether we ever even
3 knew, at the bench, how exactly the parties came up
4 with the metrics they did. I think the metrics have
5 actually changed a little bit over time, too. I
6 believe I wrote those orders, too. I don't recall
7 having a great amount of detail concerning the
8 changes, but we did have agreement to those changes.
9 You know, it didn't matter as much. If you all are in
10 agreement, then I trust the ability of Staff and
11 Public Counsel to work with the Company and arrive at
12 a reasonable result, which is the same sort of thing I
13 expect here, and hope for here, I should say.

14 It seems to me that we are in a better
15 position today to come up with some reasonable metrics
16 than we were back in 2007 or in subsequent periods
17 when we didn't have this new elevated level of data
18 that we have now.

19 When I say think outside the box, for example,
20 you can say, okay, if the measure before on the
21 inadequate numbers was -- was, let's just say ten, and
22 based on our new numbers and so forth it looks like
23 that ought to be twelve, or it ought to be eight, or
24 whatever -- and I realize these numbers don't relate
25 to anything. I'm just saying, looking at the better

1 data now. What's a reasonable -- let's just ask the
2 question, what's a reasonable measure, good customer
3 service or adequate customer service.

4 And you all -- there may be some differences.
5 I expect there would be in that regard. If you take
6 that perspective on it, just not worrying so much
7 about comparing pre and post, but focusing on, well,
8 what's -- what's the nature of the game today, where
9 are we today with this better data.

10 How long has this OMS been up and running?

11 MS. CARSON: It was installed in 2013.

12 JUDGE MOSS: Okay. So you've got a
13 couple years of experience with it, and we had a
14 pretty good storm this year. I guess there's probably
15 some data being produced from that.

16 You can at least look at some post-OMS data
17 for a reasonable period of time and say, well, here's
18 what we are seeing, what do we now think, what do
19 we -- Staff and Public Counsel, what do we now think
20 of as reasonable. Just focusing on that, not worrying
21 about what it was back in 2007, when -- it was part of
22 a bigger package back then, too, let's don't forget.
23 There were a lot of moving parts in that case. There
24 may have been a compromise made that was trading off
25 one thing against another that had no particular

1 relationship.

2 Anyway, I am just throwing out ideas here. I
3 don't mean to dictate your process, in terms of your
4 informal processes and efforts to get this resolved.
5 I think if you take that view of it, that might be a
6 good way to get to a solution. At least it's an idea
7 worth considering.

8 MS. GAFKEN: As you described it, it's
9 somewhat what the parties are considering or
10 contemplating. Again, we are looking for something
11 that is a good measure of what reliability should be
12 and what level of service customers are receiving, and
13 making sure that that service isn't being degraded
14 [sic] over time and that all the things are in order.
15 So being able to compare the data and work with the
16 data. The Company is the holder of that data.

17 I think the parties will work together well,
18 and we will be able to come to a conclusion about what
19 further research needs to happen and under what
20 methodology.

21 JUDGE MOSS: To your knowledge,
22 Ms. Carson, does the Company have information for the
23 pre-OMS period that gives it a good sense, a reliable
24 sense of how inaccurate the reporting was?

25 I see heads behind you nodding in the

1 negative.

2 (Discussion off the record.)

3 JUDGE MOSS: You can repeat that for the
4 record, Ms. Carson, if you would.

5 MS. CARSON: The question was do we
6 have --

7 JUDGE MOSS: Do you have good data for
8 the pre-OMS period, in terms of how much the numbers
9 were off?

10 MS. CARSON: How much --

11 JUDGE MOSS: You were underreporting.
12 For example, you said the Company was underreporting
13 because of the lack of good data. I am just
14 wondering, if you know, was that -- what the order of
15 magnitude at least that that was, or if you
16 know precise numbers or what level of information you
17 have.

18 MS. CARSON: I don't know that that's
19 something the Company is able to quantify. I would
20 defer to others on that.

21 JUDGE MOSS: I'm sure Staff has looked
22 into this.

23 MR. CASEY: Your Honor, that is exactly
24 the purpose of the analysis we are looking for. I
25 think everybody understands that pre-OMS underreported

1 the amount of customers. The question is, there
2 was -- performance was evaluated in a certain way and
3 there was a benchmark. Now performance will be
4 evaluated a different way, with more accurate
5 technologies, and we are looking for a benchmark that
6 is relative in a similar manner. The very purpose of
7 the study we are looking for is to understand how much
8 underreporting was going on.

9 I just would also like to say for the record
10 that Staff, in its conversations, discussing this over
11 the summer -- there's a number of them that has
12 occurred over the past year. Staff's understanding
13 was always that this study would be difficult,
14 laborious, but not impossible.

15 JUDGE MOSS: Okay. Do you have more
16 information on that?

17 MS. CARSON: Well, I guess I would just
18 point to the examples that we had in the petition,
19 where we were able to analyze an outage on a circuit
20 where pre-OMS, it was estimated that five customers
21 were out of service and post-OMS, installation the
22 number of customers that should have been reported was
23 255. I mean, that's a big difference.

24 JUDGE MOSS: Yes, it is.

25 MR. CASEY: And Staff would -- I mean,

1 that is the analysis that Staff is looking for, but
2 Staff is looking for more than one.

3 JUDGE MOSS: Sure.

4 MR. CASEY: Enough to see if we can get
5 past just an anecdotal example and to something that
6 is a reliable measure of the magnitude of the change.

7 MS. CARSON: But then we do get back
8 into the problem of finding outages on the same
9 circuits that are equivalent outages and all of the
10 things that I have mentioned before.

11 JUDGE MOSS: Well, it may be that
12 something short of precision will serve in the sense
13 that if the Company can analyze with any reasonable
14 certainty the relative numbers, and if they are
15 typically, for example, off by two orders of
16 magnitude, as what you just described, then -- I think
17 that's two orders of magnitude, from single digits to
18 hundreds and triple digits. Anyway, that's very
19 significantly off. Well, if they are all that very
20 significantly off, that tells you something important.

21 If, on the other hand, there is considerable
22 variation -- so just having that raw data would be
23 helpful, I would think, in terms of looking at the
24 issue or the issues.

25 I do, again, appreciate that it may be

1 difficult to draw something that rises to the level of
2 statistical significance. Nevertheless, I imagine the
3 Company wants to be forthcoming in just providing the
4 data and these folks can do with it what they want.
5 They have good analysts as well. I see we have one
6 who has joined us this morning. Of course, PSE's
7 engineers would also -- I would hope the engineers and
8 technical folks would be involved in these
9 conversations, and say, well, you know, here is the
10 data, but take into account this, that, whatever is
11 relevant.

12 MS. CARSON: Absolutely.

13 JUDGE MOSS: And I don't know. I mean,
14 again, I'm not an engineer. I aspired to be an
15 engineer, but it just didn't quite -- math was not by
16 long suit.

17 Okay. So I think we will -- we haven't really
18 thoroughly discussed what our plans are from a process
19 perspective. I do see the value in this preliminary
20 period.

21 Do we want to go ahead and set a schedule for
22 other things or wait until this period is completed
23 and then reconvene in a second prehearing conference?
24 We can do that. Whichever you all prefer.

25 MS. CARSON: PSE is fine with that

1 approach. Staff has prepared a potential schedule.
2 We have a few issues with it. We can go either way.

3 JUDGE MOSS: What do you think,
4 Mr. Casey, should we go ahead and set something today,
5 or can we wait a month, or should we wait a month?

6 MR. CASEY: Our preference would be to
7 get something on everybody's calendars before those
8 calendars get filled up with other matters.

9 We acknowledge that, you know, whether or not
10 this analysis ends up being conducted may cause us
11 to need to reconsider the schedule going forward in
12 another month or so, but it would be Staff's
13 preference to at least get something on the calendar.
14 We also believe having something there might help
15 discussions along in a manner that -- you know, the
16 discussions, you know, hit some roadblocks, it seems
17 like, over the summer, before there was a full process
18 in place. That would be our preference.

19 JUDGE MOSS: Calling to mind one of my
20 favorite quotes from Boswell, the prospect of the
21 hangman's noose does wonderfully concentrate the mind.
22 Perhaps having this sort of Damocles hanging is a good
23 idea. We can go ahead and set a schedule.

24 Do you have something in writing that I can
25 look at while we discuss this? I understand the

1 Company has some issues, or do we want to just talk
2 about it?

3 MR. CASEY: I do have copies.

4 JUDGE MOSS: Just a starting point. If
5 you have something in writing, we can just use it as a
6 starting point for discussion, and then the Company
7 can tell me what its issues are. I even had a current
8 ALD calendar printed out.

9 All right. Do you have this, Ms. Carson?

10 MS. CARSON: Yes.

11 JUDGE MOSS: Okay. So tell me what
12 concerns you have.

13 MS. CARSON: Well, first of all, we
14 would -- my first concern is how it is characterized
15 in Box No. 1, method for pre/post-OMS analysis. I
16 think it's -- you know, it's considering whether it
17 can be done. I mean, I don't want it to be a done
18 deal that there has to be additional research. If we
19 can agree on research, that's fine, but we are not
20 committing that absolutely more research has to be
21 done. We are going to have a collaborative process to
22 consider if and when there will be additional
23 research -- or if and how, I guess I should say. If
24 there will be additional research and how it will be
25 done. I guess I would like that phrased a little

1 differently.

2 JUDGE MOSS: I will stop you there for a
3 second. What I -- you know, taking my judicial
4 perspective on things, I see that as a matter to be
5 resolve by me, if necessary. What I would put in here
6 is what we would -- if we reconvene at that point,
7 February 18th, or a date around that time, it would be
8 for the purpose essentially of resolving a discovery
9 dispute. While I don't like to resolve discovery
10 disputes, I am prepared to do so. Of course, I would
11 want to hear the details from all of you at that time.
12 I am sure I will do the right thing.

13 We will modify this first box, the
14 description, a little bit. Just leave it to me to do
15 something appropriate there --

16 MS. CARSON: Okay.

17 JUDGE MOSS: -- that will capture what I
18 think is the right procedural step.

19 MS. CARSON: We are thinking that we may
20 need more time beyond February 18th.

21 JUDGE MOSS: Okay. What date would you
22 suggest?

23 MS. CARSON: February 25.

24 JUDGE MOSS: That's a little over a
25 month from today.

1 MR. CASEY: I will be traveling to my
2 wedding.

3 JUDGE MOSS: Well, congratulations.

4 MR. CASEY: I know my fiancée would have
5 a problem with that.

6 JUDGE MOSS: Are you going on a long
7 honeymoon? Not to be too personal, but...

8 MR. CASEY: Hopefully that will be
9 decided this weekend or the weekend after. If we did
10 go on a honeymoon, it wouldn't be immediately
11 following the wedding, it would be several weeks
12 later.

13 JUDGE MOSS: Okay. So perhaps between
14 the wedding and the tentative honeymoon plans.

15 So what date would work for you in that time
16 frame?

17 MR. CASEY: After March 1st. The first
18 week or two of March.

19 JUDGE MOSS: All right. Ms. Carson, is
20 there a date in there that works for the Company?

21 I see the Company will be here on March 4th
22 for the integrated resource plan.

23 MR. CASEY: Staff has just told me that
24 that might take all day, or a long period of the day.

25 JUDGE MOSS: Okay. Maybe that's a bad

1 idea to try to combine them.

2 MS. GAFKEN: Perhaps the week of
3 March 7th?

4 JUDGE MOSS: I don't want to slip too
5 much. I was actually going the other way, thinking
6 perhaps March 3rd, if that would work.

7 MS. CARSON: March 3rd.

8 JUDGE MOSS: Okay. Let's make that
9 March 3rd, then.

10 Well, I have been doing this for 18 years and
11 I have set schedules around a lot of events and dates
12 and so forth. This is my first wedding, so I feel
13 honored adjusting the schedule to accommodate your
14 matrimonial plans, Mr. Casey.

15 MR. CASEY: Thank you, Your Honor.

16 JUDGE MOSS: Public comment hearing.
17 What's being contemplated there?

18 MS. CARSON: PSE had a question about.
19 It seems highly unusual to do this when there is no
20 rate increase.

21 JUDGE MOSS: I'm looking at you,
22 Ms. Gafken.

23 MS. GAFKEN: Actually, both Staff and
24 Public Counsel thought this would be a good thing to
25 have in the schedule, acknowledging that this is not a

1 rate case, and that's usually where we see these
2 public comment hearings take place. This is about
3 service reliability. We believe that customers have a
4 perspective on that, outside of the perspective that
5 even I can bring through whatever witness I might
6 present, and also Staff and the Company. When you
7 hear directly from the customer, that does provide
8 additional insight and a different perspective than
9 the formal parties can bring.

10 JUDGE MOSS: Well, I have a couple of
11 issues. One is that I do not expect the Commissioners
12 are going to want to sit on this particular
13 proceeding, and will trust me to preside and either do
14 an initial order or on waiver take it to them for a
15 proposed final order. Typically, we have public
16 comment hearings when the Commissioners are sitting.

17 Also, we do have opportunities for members of
18 the public to comment, that are very convenient in
19 this electronic age of cyber communication. And, of
20 course, they can send a postcard as well, for the
21 technologically challenged. I think these are
22 adequate avenues. You know, the oral public comment
23 hearings are nice when we can make them -- when we can
24 maximize their utility, which, in my mind, is when the
25 Commissioners are hearing it directly.

1 I think we will not have a public comment
2 hearing. I am not inclined to schedule a public
3 comment hearing in this matter. We will make clear,
4 of course, that public comment is invited. I think
5 Public Counsel has, in the past, been effective, and
6 Staff as well, in getting that. We usually have
7 dozens, if not hundreds, of written comments in a rate
8 case. I would expect a reasonable volume in a case
9 such as this because it does involve service quality.

10 MS. GAFKEN: Perhaps we can make an
11 effort to maximize written comments that we hear from
12 the public, because a lot of times it doesn't
13 necessarily --

14 JUDGE MOSS: And it wouldn't -- it
15 certainly wouldn't trouble me if there was a -- could
16 there be a customer notice that this proceeding is
17 going on, or something like that, Ms. Carson, that
18 would perhaps better communicate to the public that
19 this is an issue that is before the Commission? Is it
20 something that could be done as a bill insert? I know
21 those are costly.

22 MS. CARSON: I don't know. I would have
23 to talk with people.

24 JUDGE MOSS: Check on that. Work with
25 Public Counsel and Staff to see what we can do. So

1 that will be an aspirational thing. I won't put
2 anything in the order about it.

3 All right. Now, the next date we have down
4 here is for Company direct. We have just slipped the
5 first date by a couple, three weeks. What about --
6 how does that implicate the Company direct testimony
7 date?

8 MS. CARSON: We are fine with the
9 May 11th date.

10 JUDGE MOSS: Okay.

11 MS. CARSON: We have concerns with how
12 this is worded. First of all, I mean, the Company has
13 a very detailed petition that it has filed. It may
14 elect to have an affidavit where a witness accepts the
15 facts as true and correct, rather than filing
16 testimony. We didn't want to rule that out. I have
17 discussed that with Staff.

18 The other issue is just this parenthetical
19 including pre/post-OMS analysis. Again --

20 JUDGE MOSS: That's not in what I am
21 looking at.

22 MS. CARSON: Okay. Is that gone now?

23 MR. CASEY: Yeah, I took it out this
24 morning.

25 MS. CARSON: Okay. Thank you.

1 JUDGE MOSS: It says, Company direct
2 testimony.

3 MS. CARSON: Okay.

4 JUDGE MOSS: That's all it says.

5 I think that, you know, proceeding with an
6 affidavit is fine, just so we understand that the
7 affiant is available for cross-examination at the time
8 of hearing, if there is one, which is a concern that
9 these folks have and that I would have.

10 Okay. Response testimony. The date should be
11 acceptable to everybody, since that's your proposal
12 and the Company doesn't need to change the earlier
13 date.

14 Rebuttal is still good, I presume?

15 MS. CARSON: We actually would request
16 it be September 9th.

17 JUDGE MOSS: Okay. I'm okay with that.
18 Is everybody else okay with that?

19 MS. CARSON: Two weeks for rebuttal is
20 very difficult.

21 MS. GAFKEN: Public Counsel is fine with
22 that change.

23 MR. CASEY: Staff as well.

24 JUDGE MOSS: Okay.

25 And then we probably should move the discovery

1 cutoff date by a week, then, because of course there
2 may be some postrebuttal discovery that needs to take
3 place. Let's move that to the 21st. That's a
4 Wednesday.

5 And then the cross-examination exhibits.
6 Okay. The evidentiary hearing you have down here for
7 September 28th. I think we better slip both of these
8 dates, the cross-examination exhibits date and the
9 evidentiary hearing date by a week. Does that make
10 sense to everybody?

11 Okay. So September 28th for the exhibits.

12 Where does that put us on the hearing?

13 October --

14 MR. CASEY: October 5.

15 JUDGE MOSS: October 5th?

16 MR. CASEY: Yes.

17 JUDGE MOSS: Do the parties feel the
18 need to have two rounds of briefing in this case? We
19 used to give out one round of briefing.

20 What do you think, Ms. Carson? Reply briefs
21 only if necessary, something like that?

22 MS. CARSON: That would be fine, if
23 necessary. I mean, it seems like it might not be
24 necessary, but sometimes there are surprises in
25 briefs.

1 JUDGE MOSS: I think by making it on a
2 necessity basis, what we encourage by that, in my
3 experience, is that we don't get repetitious briefs,
4 which is something I like to avoid. Let's just -- we
5 won't put a date for reply briefs. I will just put
6 reply briefs if necessary.

7 Yes, I agree, sometimes there is a surprise,
8 but it will be something where you -- you won't bring
9 it forward unless there is a prefatory comment
10 demonstrating how it surprised you, that will be
11 convincing to me.

12 MS. GAFKEN: I do have a quick question
13 about that. So my preference is probably for one
14 round of briefs. We should be able to say all we need
15 to say in that initial brief. If we do reply briefs,
16 if necessary, would that be incumbent on the parties
17 to petition for a reply brief, would that be the
18 process?

19 JUDGE MOSS: I don't want to set it in
20 stone.

21 MS. GAFKEN: Right.

22 JUDGE MOSS: My suggestion is that if
23 you can, in a reply brief, have some prefatory
24 statement that explains why this issue took you by
25 surprise, that would be adequate to me, without a

1 separate motion essentially saying the same thing with
2 more words. I think you all are all -- I know you all
3 are skilled lawyers and intelligent people. You know
4 that you are not going to pull the wool over my eyes.
5 I know a new issue when I see one. I am just going to
6 place my faith in you to not bring forward a reply
7 brief unless you need to. That's why I feel
8 comfortable doing this sort of thing in the procedural
9 schedule. If you were less experienced counsel I
10 might feel differently. I don't. There you go.

11 Initial order date. Well, of course order
12 dates are always aspirational. If we have briefs on
13 October 26th, I would expect to have an order before
14 the end of the year, certainly.

15 MR. CASEY: Your Honor, because we
16 slipped the hearing date a week and we are likely not
17 going to have reply briefs, should we move the initial
18 brief one week out as well?

19 JUDGE MOSS: Four weeks instead of
20 three. Is that okay? I will still have the order out
21 before the end of the year, trust me.

22 We are looking at November the 1st, I guess;
23 is that right?

24 MR. CASEY: November 2nd.

25 JUDGE MOSS: November 2nd. Okay.

1 I don't know what else will be going on at
2 that time. I do know that PSE is going to be filing a
3 general rate case sometime before April 1st this year,
4 because they are required to do so under an order. I
5 will be presiding in that case. So depending exactly
6 when PSE files that case, I'm not sure, I may be very
7 busy in November, or I may be more relaxed, or I may
8 be looking forward to the fact that I can be
9 collecting Social Security on December 1st, if I so
10 choose.

11 I will certainly do my best to get an order
12 out by the end of the year. And even with the
13 November 2nd date, I think that's a reasonable thing
14 to expect. I am accustomed to working through the
15 holiday season. It seems like it's my fate. Since
16 I've been at the Commission, we have had some sort of
17 major process going on during that time. It will work
18 out.

19 Is there anything else we need to talk about
20 today?

21 All right. It seems that there is not.
22 Thank you all very much for being here. I hope we set
23 up a process that will perhaps lead to the more ideal
24 solutions that we sometimes achieve through the
25 negotiation process and through the adjudicative

1 process. I am certainly prepared to conduct a second
2 form of process to completion if needed. In any
3 event, I look forward to bringing the matter to
4 conclusion one way or another and closing this docket
5 forever.

6 Thanks very much, folks.

7 MR. CASEY: Thank you very much, Your
8 Honor.

9 MS. CARSON: Thank you.

10 (Proceedings adjourned 10:27 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,
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SHERRILYN SMITH