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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

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COMMISSION

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WASHINGTON UTILITIES AND)

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TRANSPORTATION COMMISSION,)

5

Complainant,)

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vs.)

DOCKET NO. PG-060215

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PUGET SOUND ENERGY, INC.,)

Volume I

Pages 1 - 13

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Respondent.)

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A prehearing conference in the above matter

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was held on June 27, 2007, at 1:35 p.m., at 1300 South

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Evergreen Park Drive Southwest, Olympia, Washington,

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before Administrative Law Judge ADAM TOREM.

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The parties were present as follows:

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WASHINGTON UTILITIES AND TRANSPORTATION

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COMMISSION, by DONALD T. TROTTER, Assistant Attorney

18

General, 1400 South Evergreen Park Drive Southwest,

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Post Office Box 40128, Olympia, Washington 98504;

telephone, (360) 664-1186

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PUGET SOUND ENERGY, INC., by SHEREE STROM

21

CARSON, Attorney at Law, Perkins Coie, 10885 Northeast

Fourth Street, Suite 700, Bellevue, Washington 98004;

telephone, (425) 635-1422.

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Kathryn T. Wilson, CCR

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Court Reporter

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P R O C E E D I N G S

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JUDGE TOREM: Good afternoon. It is now about

3 1:36 in the afternoon on Wednesday, June 27th, 2007.

4 I'm Adam Torem, the newest administrative law judge
5 here at the WUTC, and this is Docket PG-060215. This
6 is a prehearing conference in that matter, and our
7 court reporter today is Kathy Wilson of Continental
8 Reporting Services.

9 The purpose of today's prehearing conference
10 is to take appearances of the parties, including anyone
11 who might be seeking to intervene in this matter. It's
12 the Washington Utilities and Transportation Commission
13 versus Puget Sound Energy, and it is a complaint filed
14 seeking a two million dollar penalty.

15 We will clarify the issues set out in the
16 Complaint and discuss a schedule for the hearing.
17 Today it sounds like we are just going to set up the
18 next status conference and discuss a few other
19 procedural matters, so let me ask for appearances.
20 First, I'll take Commission staff.

21 MR. TROTTER: My name is Donald T. Trotter.
22 I'm an assistant attorney general. My address is PO
23 Box 40128, Olympia, Washington, 98504-0128. My phone
24 number is (360) 664-1189. Fax number is (360)
25 586-5522, and my e-mail address is

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1 dtrotter@wutc.wa.gov.

2 JUDGE TOREM: From PSE?

3 MS. STROM CARSON: Yes, Your Honor, I'm
4 Sheree Strom Carson representing Puget Sound Energy.
5 My address is 10885 Northeast Fourth Street, Suite 700,

6 Bellevue, Washington, 98004. Phone is (425) 635-1422.
7 Fax is (425) 635-2422. My e-mail address is
8 scarson@perkinscoie.com.

9 JUDGE TOREM: Let me take the liberty of
10 attempting to summarize what I've seen in the pleadings
11 so far. This was a Complaint filed by Commission staff
12 against Puget Sound Energy on May 23rd, 2007, and it
13 set out three separate causes of action based on a
14 total of 127 separate incidents and alleging a total of
15 209 violations of federal regulation and additional
16 Commission regulations regarding pipeline
17 recordkeeping.

18 In sum, the causes of action allege that PSE
19 through its contractor, Pilchuck Contractors,
20 Incorporated, first failed to follow its own operations
21 and maintenance manual by either failing to have a
22 different person conduct certain follow-up inspections
23 or failing to conduct those inspections within 30 days
24 of the initial inspection or both, and that was alleged
25 to be in violation of 49 Code of Federal Regulations,

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1 CFR, Section 192.605(a).

2 The second cause of action said that PSE
3 through Pilchuck failed to maintain permanent gas leak
4 records with the details required by WAC 480-93-187,
5 and in this case, intentionally included some
6 inaccurate information in its record. The third cause
7 of action said that PSE, again through Pilchuck, failed
8 to maintain appropriate permanent records but instead

9 kept only computer-based summaries in violation of WAC
10 480-93-185.

11 Now, Commission staff contends that the
12 maximum penalty for these alleged violations comes up
13 to a whopping \$5,225,000, and they are seeking instead
14 a lesser penalty but still a large number of two
15 million dollars. They are also seeking an order
16 requiring an independent audit of PSE's records that
17 are produced or maintained by Pilchuck and a
18 requirement that PSE submit a contract or follow the
19 insurance plan.

20 PSE filed an answer to this complaint on June
21 the 12th, 2007. They admitted that Pilchuck on
22 occasion may have failed to follow certain requirements
23 of the ONM manual as well as related follow-up
24 investigations of what they call "phantom leak
25 inspections" and recordkeeping regarding leak

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1 inspections. PSE also admitted that it could not
2 always provide certain copies of leak inspection
3 records at the time of the original Commission audit,
4 but they did note in their answer that they have since
5 located a number of those records.

6 PSE further acknowledged that some Pilchuck
7 employees may have intentionally recorded inaccurate
8 information and in some cases may have deleted or
9 altered information, but even so, PSE's contending that
10 some of the alleged violations have been barred from
11 enforcement by a statute of limitations, and PSE's

12 position, that I have noted, is that penalties sought
13 by the Commission staff is excessive and retributive in
14 nature, not corrective, particularly in light of PSE's
15 good-faith actions to achieve compliance after being
16 alerted to these potential discrepancies with the
17 Contractor's recordkeeping practices.

18 Mr. Trotter, from the Complaint that was
19 filed by your office and what I've said about the
20 Answer, does that generally match up?

21 MR. TROTTER: Generally so. Just a couple of
22 finer appointments, Your Honor. The first cause of
23 action does cite a federal regulation, but the
24 violation is of the state rule that requires them to
25 follow the federal regulation.

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1 And then on the maximum penalty, actually,
2 the amount you quoted was for the penalty based on 209
3 violations. The Complaint goes on in Paragraph 31 to
4 say the maximum would be substantially higher if the
5 impact of continuing violations is concluded. So with
6 those two nuances, I believe you gave an accurate
7 summary understanding both the Complaint and Answer
8 will speak for themselves.

9 JUDGE TOREM: Thank you. Ms. Carson?

10 MS. STROM CARSON: Yes, I think that was an
11 accurate summary of the Answer.

12 JUDGE TOREM: Mr. Trotter, I think in these
13 cases, and correct me if I'm wrong, that the Commission
14 staff as the filer of the Complaint will carry the

15 burden of proof, and the standard would be a
16 preponderance of the evidence in proving each of those;
17 is that correct?

18 MR. TROTTER: That's my understanding, Your
19 Honor.

20 JUDGE TOREM: Ms. Carson, is that your
21 understanding as well?

22 MS. STROM CARSON: That is my understanding.

23 JUDGE TOREM: If we get to hearing, it will
24 be a preponderance standard. I did want to note that
25 we have not received any formal petitions to intervene

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1 or any contact of any kind whatsoever. In our
2 prehearing prehearing discussion, we had some question
3 as to whether Pilchuck would like to intervene, and I
4 believe the parties have agreed I should give a
5 deadline of ten working days from the date of service
6 of this prehearing conference order, so somewhere on or
7 before the 10th, 11th of July will be the deadline,
8 maybe two weeks from today by the time everything is
9 served, and we will give Pilchuck and anybody that
10 might be a party of interest notice for their
11 opportunity to intervene or simply remain a party of
12 interest. Any questions about the intervention issue?

13 Mr. Trotter, you had indicated that today
14 there is a real good possibility of reaching
15 settlement. You've been working hard with Commission
16 staff and PSE down the road and that today we would not
17 be ready to set a complete hearing schedule but instead

18 simply invoke the discovery rule so that everybody is
19 working under Commission procedural rules and also set
20 up a status conference that based on my unavailability
21 in August and early September, we have agreed to set
22 for Thursday, September 20th.

23 So let me go back to Commission staff and ask
24 which discovery rule you would like to invoke, get
25 Ms. Carson's agreement to that and make a record on
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1 that, and then we will move on to the scheduling
2 matter.

3 MR. TROTTER: Your Honor, your understanding
4 is generally correct that we think right now the most
5 we can do is to schedule a status conference. We
6 discussed this briefly off the record, but just so it's
7 on the record, the Company has committed to filing a
8 more detailed answer responding more directly to the
9 specific factual allegations, particularly an
10 attachment that forms the Complaint, and that may take
11 them about a month to do. We think that's a reasonable
12 amount of time.

13 With respect to your statement that the
14 settlement is possible --

15 JUDGE TOREM: Maybe I'm overly optimistic.

16 MR. TROTTER: We have certainly settled a lot
17 of cases and are amenable to working with the Company.
18 We are already talking about working on that issue, but
19 at this point, we really don't know what the prospects
20 are.

21 With respect to the discovery rule,
22 Commission rule WAC 480-07-400(2)(b) identifies four
23 types of adjudicative proceedings in which the methods
24 of discovery in Rule 410 and 415 will be available, and
25 whether or not this case qualifies, I think it does,

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1 but I would ask the parties stipulate that we invoke
2 the procedures -- I guess it's in 480-07-405, 410, and
3 415. Those cover data requests in general and
4 depositions and discovery conferences, and 420 and 425,
5 which covers protective orders and just discovery
6 disputes. So we would like the rubric available to us
7 that we can work under. In case an issue comes up, we
8 can deal with it under those rules.

9 JUDGE TOREM: Ms. Carson?

10 MS. STROM CARSON: Yes, that's fine. I JUST
11 wanted to clarify the timing for the data requests. Is
12 that in the WAC?

13 MR. TROTTER: It is. It's a ten day, and
14 that could be expanded if you notify us and explain
15 there is an issue, and we certainly understand there
16 are summertime issues.

17 MS. STROM CARSON: Then that's fine with the
18 Company.

19 JUDGE TOREM: Then we will make the record
20 now that WAC 480-07-400(2)(b) discovery is available,
21 and the subsequent sections of the administrative code
22 will apply, including the timing, and I trust the
23 cooperative nature between the exchange of documents

24 will travel on without any need for some supervision
25 from our office, at least from the ALD.

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1 Now, if it becomes sometime during the next
2 month that the parties are exchanging documents and it
3 becomes more ripe for settlement discussions, of course
4 the administrative law division can provide another ALJ
5 to help with dispute resolution. Those are explained
6 in the rules. I talked to Judge Rendahl, and she
7 suggested that she would make herself or Judge Moss or
8 Judge Clark available to handle this matter if that
9 becomes appropriate, so please keep that ready if it
10 becomes necessary or helpful to the parties.

11 Anything else on the discovery issues and the
12 potential for settlement to discuss today? Seeing
13 nothing else, then let's move on to the scheduling of
14 this potential status conference.

15 MS. STROM CARSON: One thing I might add,
16 Your Honor. The Company has talked with Commission
17 staff about a preliminary settlement conference, and we
18 are going to work out the timing of that amongst
19 ourselves, probably sometime in August, but for the
20 record, that is our plans to go ahead with some sort of
21 preliminary settlement conference in August.

22 JUDGE TOREM: Excellent. You had talked
23 about the third week in August as the first date
24 proposed, and before we went on the record, I explained
25 that I will be at NARUC so I can learn all about

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1 rate-making cases, and then I'll probably be in South
2 Korea for four or five weeks for the Air Force for my
3 reserve duty. So that would make me unavailable for
4 the date that you have proposed, and while I suggested
5 perhaps another judge could handle the scheduling
6 conference on my behalf, you also indicated that as
7 busy as August might be, then the week of September
8 17th would still be acceptable, and we looked at
9 Thursday, September 20th as a date for the status
10 conference. We haven't made any indication of morning
11 or afternoon or what's preferable. For Staff, that is
12 not an open meeting week.

13 MR. TROTTER: I think anytime that day will
14 suffice, Your Honor.

15 JUDGE TOREM: Coming from Bellevue, does it
16 make any difference?

17 MS. STROM CARSON: I don't think it matters
18 too much. I think any time in fine.

19 JUDGE TOREM: Let's say ten o'clock in the
20 morning, and I'm sure that that should be sufficient
21 for traffic concerns or anything else going on that
22 particular day.

23 We will probably be back in this room unless
24 we have a petition to intervene or there is some
25 greater interest and the case develops between now and
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1 then. Then we would probably move upstairs.

2 You had suggested, Mr. Trotter, that that
3 August date might be a good time to informally have the

4 parties meet for your own mini status conference or
5 perhaps the settlement conference. If there is
6 anything else that you want to make part of the record,
7 would you send that in the form of a letter indicating
8 what else has come up or any other issues to be raised
9 at this status conference. I don't think there will be
10 any objection from our division if it's an agreed
11 letter saying let's take up these other issues on the
12 record on September the 20th.

13 MR. TROTTER: That's fine, Your Honor.

14 JUDGE TOREM: Any other questions in the case
15 that we need to address today for procedural matters?

16 MR. TROTTER: One item we mentioned off the
17 record was the protective order. I think the parties
18 do not see a need for one today, but obviously, any
19 party can move for such an order if and when the need
20 arises.

21 JUDGE TOREM: We will just preserve that. If
22 it turns out, Ms. Carson, that any of the documents you
23 are providing require a protective order or some kind
24 of -- I don't want my absence to delay the exchange of
25 information -- then certainly, and Judge Rendahl is the

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1 chief judge here, let her know that there is something
2 we can take up out of order, and certainly if it comes
3 up before the 3rd of August, I'll be here to handle it
4 if something comes up before then.

5 MR. TROTTER: If an issue comes up that needs
6 ALJ attention after August 3rd, we should address that

7 to Judge Rendahl?

8 JUDGE TOREM: I would think so. She will
9 figure out if she's best equipped to handle that, or if
10 she's waiting to determine if it goes to hearing that
11 she needs to be the review judge or somebody else
12 handles it, then let her know the issue has come up,
13 and I will let her know what we've talked about today
14 and sort that out. Then for Commission staff, is there
15 anything else to address this afternoon?

16 MR. TROTTER: Not that I can think of, Your
17 Honor.

18 JUDGE TOREM: For PSE?

19 MS. STROM CARSON: I have nothing, Your
20 Honor.

21 JUDGE TOREM: That was more efficient than
22 possible. We are adjourned.

23 (Prehearing conference adjourned at 1:50 p.m.)

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