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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) Docket U-110808
PUGET SOUND ENERGY, INC.,) Pages 1-19
Respondent.)

PREHEARING CONFERENCE, VOLUME I
Pages 1-19
ADMINISTRATIVE LAW JUDGE PATRICIA CLARK

1:30 P.M.

DECEMBER 19, 2011

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

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A P P E A R A N C E S

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* * * * *

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OLYMPIA, WASHINGTON, DECEMBER 19, 2011

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1:30 P.M.

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P R O C E E D I N G S

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JUDGE CLARK: Good afternoon. It's approximately

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1:30 p.m., December 19, 2011, in the Commission's hearing room

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in Olympia, Washington. This is the time and the place set for

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a prehearing conference in the matter of the Washington

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Utilities and Transportation Commission versus Puget Sound

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Energy, given Docket No. 110808. Patricia Clark, Administrative

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Law Judge for the Commission, presiding.

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This matter came before the Commission on October 26,

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2011, when the Commission filed a complaint against Puget Sound

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Energy alleging as many as 515 violations of a Commission order

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and seeking a penalty of up to \$1,000 for each alleged

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violation. On November 15, 2011, Puget Sound Energy filed its

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answer to the complaint.

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By notice issued on November 21, 2011, the Commission

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designated this as the date, time, and place for this prehearing

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conference.

22

Before we get started, I want everyone to be advised

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that we have two individuals who are appearing telephonically

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via the bridge line. Whenever we have individuals appearing via

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the bridge line, it's necessary for everyone to speak a little

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1 more loudly than you might ordinarily and perhaps a little bit
2 more slowly than you would ordinarily, and address your comments
3 directly into the microphone, please.

4 For those individuals who are appearing on the bridge
5 line, it is necessary for you to identify yourselves before you
6 speak.

7 I'm going to take appearances of all individuals
8 present, although not all individuals have yet been granted
9 intervention.

10 I'll start with appearances for the Commission Staff.

11 MS. BROWN: Thank you, Your Honor. Sally Brown,
12 Senior Assistant Attorney General, appearing on behalf of
13 Commission Staff.

14 JUDGE CLARK: And appearing on behalf of Puget Sound
15 Energy?

16 MS. BARNETT: Donna Barnett, appearing on behalf of
17 PSE. I'm from Perkins Coie. And with me today from the company
18 is Kathy Barnard, Director of State Regulatory Affairs.

19 JUDGE CLARK: Thank you. Appearing on behalf of
20 Public Counsel?

21 MR. FFITCH: Good afternoon, Your Honor. Simon
22 ffitich, Senior Assistant Attorney General, for the office of
23 Public Counsel.

24 JUDGE CLARK: Thank you. And appearing on behalf of
25 the Energy Project?

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1 MR. ROSEMAN: Thank you, Your Honor. This is Ronald
2 Roseman. I'm an attorney, and I'm representing The Energy
3 Project.

4 JUDGE CLARK: Thank you. All right. The first
5 preliminary matter I would like to address is petitions to
6 intervene.

7 Does any individual wish to present an oral petition
8 to intervene in this matter?

9 MR. ROSEMAN: Yes, Your Honor. This is Ronald
10 Roseman again.

11 The Energy Project has been very active in appearing
12 before the Commission in cases where the position of the
13 Commission could have an impact on low-income customers. In
14 this complaint, the point in issue is compliance with the prior
15 obligation rule.

16 Many of the customers that we believe take advantage
17 of the -- know take advantage of this rule during difficult
18 financial times are low-income customers and customers who go to
19 local community action agencies for assistance with their
20 utility bill.

21 So the compliance with what we consider one of the
22 most important consumer rules is of importance to The Energy
23 Project and to the customers The Energy Project represents.

24 JUDGE CLARK: All right. Is there any objection to
25 the intervention on behalf of The Energy Project?

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1 MS. BROWN: No, Your Honor.

2 MS. BARNETT: No.

3 MR. FFITCH: No.

4 JUDGE CLARK: All right. Hearing none, the petition
5 to intervene on behalf of The Energy Project is granted. The
6 Energy Project met the standard in WAC 480-07-355.

7 MR. ROSEMAN: Thank you, Your Honor.

8 JUDGE CLARK: You're welcome.

9 The only other matter I really have on my agenda is
10 procedural schedule.

11 Are there any other preliminary matters the parties
12 would like to address before we proceed to work that out?

13 MS. BROWN: We would like to invoke the discovery
14 rule, please.

15 JUDGE CLARK: The Commission will make its discovery
16 rules available pursuant to WAC 480-07-360.

17 MS. BROWN: Thank you, Your Honor.

18 JUDGE CLARK: Any other preliminary matters?

19 MS. BARNETT: Nothing.

20 JUDGE CLARK: All right. What I ordinarily do on
21 behalf of a procedural schedule is allow the parties the
22 opportunity to attempt to work out a procedural schedule
23 informally and wonder if you'd had an opportunity to discuss a
24 schedule prior to this morning -- or this afternoon's prehearing
25 conference.

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1 MS. BROWN: We haven't, Your Honor, but I have a --
2 developed a framework, so I'm hopeful that we will be able to
3 agree to a schedule.

4 JUDGE CLARK: All right. Then what I'm going to do
5 is take a recess until further call and allow you to work on
6 that procedural schedule.

7 If you need any help or assistance regarding
8 potential dates, please feel free to call me in my office.

9 We are at recess until further call.

10 MS. BROWN: Thank you.

11 MS. BARNETT: Thanks.

12 (A break was taken from 1:37 p.m.
13 to 2:00 p.m.)

14 JUDGE CLARK: All right. We're back on the record.

15 Have the parties had an adequate opportunity to
16 confer regarding a procedural schedule?

17 MS. BROWN: We have.

18 JUDGE CLARK: And you were able to reach agreement?

19 MS. BROWN: Yes.

20 JUDGE CLARK: All right. If you could provide me
21 with that schedule, I would appreciate it.

22 MS. BROWN: Okay. Today, of course, is the date of
23 the prehearing conference, 12/19/11.

24 The Company has agreed to file initial testimony on
25 April 3, 2012. Staff, Public Counsel, and Intervenor will file

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1 direct testimony on May 3, 2012. The Company will file its
2 responsive testimony on June 1, 2012.

3 JUDGE CLARK: I'm sorry. Again?

4 MS. BROWN: June 1 --

5 JUDGE CLARK: Thank you.

6 MS. BROWN: -- 2012.

7 JUDGE CLARK: Thank you.

8 MS. BROWN: And Staff, Public Counsel, and Intervenor
9 will file rebuttal testimony on July 6, 2012.

10 And we currently have scheduled the settlement
11 conference for July 18, 2012, but we are open to having a
12 settlement conference earlier than that.

13 As far as the following prehearing conference date,
14 we'll defer to you, Your Honor. And also with regard to the
15 hearing days, we'll also defer to you. We think it's premature
16 at this point to establish dates for simultaneous initial and
17 answering briefs.

18 The only other point the Staff would like to make is
19 that -- and the Company is aware of this -- it has agreed that
20 the Company's initial presentation is in no way going to limit
21 Commission Staff's presentation.

22 JUDGE CLARK: All right. And if you could repeat the
23 portion about the hearing?

24 MS. BROWN: We have not decided on hearing dates or
25 briefing dates.

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1 JUDGE CLARK: Either one?

2 MS. BROWN: No.

3 JUDGE CLARK: Okay. And I would concur that
4 basically the schedule seems to be reasonable, given the number
5 of issues involved and the process involved in this case, and I
6 will adopt the schedule as proposed by the parties.

7 I do think, however, given how crowded the
8 Commission's calendar gets, that it would be a good idea to
9 establish dates for an evidentiary hearing today. And I can
10 certainly offer some of those up to you that are available.

11 I concur that at this juncture, it probably is
12 premature to establish process for briefing, but I'm not worried
13 about that. It doesn't involve anything other than a filing, so
14 that can be established sometime later.

15 MS. BROWN: So the Commissioners will be sitting on
16 this case?

17 JUDGE CLARK: I do not know if the Commissioners will
18 be sitting on this case or not.

19 MS. BROWN: But you're concerned about your calendar?

20 JUDGE CLARK: I'm concerned about my calendar, and
21 I'm also concerned about room availability. For some reason, we
22 seem to be competing with a number of other sources for the
23 hearing rooms in this building now, so I would like to have that
24 date reserved. If it ends up that we don't need an evidentiary
25 hearing for any reason, that's fine, but I would like to at

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1 least have that date confirmed on the calendar.

2 All right. So the last date I have that the parties
3 agreed with is a settlement conference on July 18th, although I
4 understand that there may be settlement discussions sometime
5 prior to that.

6 Would it be unreasonable to set the hearing in this
7 matter for approximately one month after that date?

8 MS. BROWN: Which date are you referring to, Your
9 Honor?

10 JUDGE CLARK: July 18th. So I would be looking at a
11 hearing the week of August the 13th or August the 20th. Both
12 weeks are free.

13 MS. BROWN: Okay. August 20th. That -- the week of
14 August 20th?

15 JUDGE CLARK: The week of August 20th. We don't
16 ordinarily start hearings on a Monday.

17 MS. BROWN: Well -- and the only other concern I
18 have -- and I will raise it if it becomes an issue in this -- is
19 that Commission Staff is going to be filing its rebuttal case on
20 July 6th. And I don't want, you know, discovery propounded
21 daily or weekly into the ground until August 20th, but that's
22 not likely to occur.

23 JUDGE CLARK: Okay. We can do that in a minute.

24 Do you have an opinion on a hearing?

25 MS. BARNETT: Yeah, either one.

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1 JUDGE CLARK: All right. August 21st, does that work
2 for everyone?

3 MS. BROWN: Yes.

4 MS. BARNETT: Yes.

5 JUDGE CLARK: Mr. Roseman?

6 MR. ROSEMAN: Yes, it does.

7 JUDGE CLARK: Mr. ffitch?

8 MR. FFITCH: Yes, Your Honor. That is fine.

9 JUDGE CLARK: All right. And then we'll go back to
10 Ms. Brown's comment regarding discovery.

11 Ordinarily, the Commission's -- if my memory serves
12 me correctly, the Commission's rules provide for ten-day
13 responses. I usually cut that to five-day responses for the
14 last phase of testimony, the last round of testimony.

15 So until responsive -- let's see. Until Company
16 responsive testimony, June 1st, and then the turnaround would be
17 five days.

18 MS. BARNETT: I'm fine with that.

19 MR. ROSEMAN: So, Your Honor, you're saying after
20 June --

21 JUDGE CLARK: All right. Is that you, Mr. Roseman?

22 MR. ROSEMAN: Yes. I'm sorry.

23 You're saying after June 1st, then there's the
24 five-day turnaround for discovery; is that correct?

25 JUDGE CLARK: Yes. Ordinarily that's what I do after

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1 responsive testimony, whatever -- whichever party happens to
2 have that filing deadline.

3 MS. BROWN: Well, I -- and this is Sally Brown for
4 Commission Staff.

5 I don't think that that's going to be necessary,
6 given that our hearing date is not going to be until August 21.
7 So it's not -- I would defer to the Company. I'm not troubled
8 by that.

9 I'm more troubled by the fact that it may leave it
10 open for the Company to be sending an inordinate number of data
11 requests to Staff following Staff's rebuttal filing from July 6
12 through August 21. And that's what I would not want to see
13 occur.

14 JUDGE CLARK: All right. Well, I did not --

15 MS. BROWN: And if it becomes a problem, I will bring
16 it to Your Honor's attention.

17 JUDGE CLARK: Yes. I was going to say I would not
18 like to see that occur, but I would also not like to see that
19 occur to the Company, either.

20 MS. BARNETT: Exactly.

21 JUDGE CLARK: So I was going to say if anyone sees
22 that discovery is in some manner getting out of hand in terms of
23 either quantity or scope of discovery, I expect that you will
24 bring it to my attention.

25 MS. BROWN: Yeah. That's the biggest gap here,

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1 though, is from July 6 through August 21 in terms of interval.
2 That's just what I'm meaning.

3 JUDGE CLARK: All right. Well, if that becomes a
4 problem, let me know, and we will leave open the issue of
5 post-hearing briefing.

6 All right. Do the parties have any other matters
7 they wish to have addressed?

8 MR. FFITCH: Your Honor, this is Simon ffitch for
9 Public Counsel.

10 I did just want to make a statement to advise the
11 Bench that we -- while we are interested in this issue, prior
12 obligation is an issue of -- an ongoing issue for Public
13 Counsel. We haven't made a final determination about whether we
14 will be filing testimony in the case and exactly what our level
15 of involvement will be, so we will be making that decision as
16 the case develops.

17 JUDGE CLARK: All right. And I anticipate that if
18 you do not meet any of these deadlines, that you will be
19 advising the Commission prior to that deadline that you will not
20 be filing testimony.

21 MR. FFITCH: That's correct, Your Honor.

22 JUDGE CLARK: Great. The only other procedural
23 matter I have is the number of copies that need to be filed, and
24 this docket will need an original plus five.

25 And I don't have anything further that should be

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1 addressed.

2 Is there any other matter that should be addressed on
3 the record this afternoon?

4 MS. BROWN: I just want to inquire as to a protective
5 order.

6 JUDGE CLARK: I'm sorry?

7 MS. BROWN: I wanted to inquire as -- to the Company
8 as to whether it thinks it needs to request a protective order
9 or not.

10 MS. BARNETT: I don't think so at this time. If we
11 see that some of the data requests are -- might cross that, then
12 we'll make a motion. But I don't think we'll need it.

13 I would ask that if we can have electronic filing on
14 the due dates followed by paper submittals the following
15 business day?

16 JUDGE CLARK: Yes. The Commission's rules do permit
17 you to electronically file in the docket.

18 If you're making an electronic filing, it has to be
19 made by three p.m. on the filing date, followed by a hard copy
20 actually received by the Commission no later than noon the
21 following business day.

22 And as always, the Judge gets a courtesy electronic
23 copy of all the filings, and my e-mail address will be in the
24 prehearing conference order.

25 MR. FFITCH: Your Honor, Simon ffitch with one other

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1 housekeeping matter.

2 May we be permitted to provide names of staff to be
3 included on the electronic service list so that the parties will
4 be able to use that for service of electronic documents?

5 JUDGE CLARK: Yes, with one proviso.

6 The Commission's Rule WAC 480-07-360, I think,
7 provides that the parties may designate one counsel and one
8 representative.

9 And in September of this year, the director of the
10 Administrative Law Division also notified all parties that the
11 service and courtesy list in a proceeding will be limited to one
12 attorney and one representative.

13 So with that proviso, you certainly may, and I would
14 encourage you to get me the e-mail address of whomever you would
15 like to receive that courtesy copy expeditiously, because I
16 anticipate that the prehearing conference order will be issued
17 very quickly.

18 MS. BROWN: Your Honor, may we provide the e-mail
19 address for Sharon Wallace's account now?

20 JUDGE CLARK: You can provide it actually now, or you
21 can provide it, you know, by e-mail.

22 MS. BROWN: Well, let's just get it done.

23 JUDGE CLARK: Okay.

24 MS. WALLACE: Good afternoon. This is Sharon
25 Wallace.

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1 JUDGE CLARK: No. Just --

2 MS. WALLACE: Oh, I'm sorry.

3 JUDGE CLARK: -- wait a minute. Just a minute.

4 All right. Yes, Ms. Wallace?

5 MS. WALLACE: Sharon Wallace with Commission Staff.

6 My e-mail address is S. Wallace -- that's s-w-a-l-l-a-c-e -- at
7 utc.wa.gov.

8 JUDGE CLARK: All right.

9 MS. BROWN: Thank you.

10 JUDGE CLARK: Thank you. And for Puget Sound Energy,
11 I have listed as counsel Donna L. Barnett, and I'm not sure if
12 I'm saying this correctly, Tom DeBore?

13 MS. BARNETT: That's correct.

14 JUDGE CLARK: All right. Mr. ffitch, do you know the
15 name of an individual you would like to designate now?

16 MR. FFITCH: I would prefer to e-mail it to you. I
17 believe it's going to be Carol Williams, our lead legal
18 assistant.

19 On this matter, Your Honor, I -- we had understood
20 and had read the notice in September to establish two lists, the
21 master service list, where, as you indicated, there's the
22 attorney and one party representative, and then also a courtesy
23 electronic distribution list, which is a separate -- a separate
24 list.

25 And I was referring to the second one where there's a

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1 bit more latitude, I believe, allowing parties to add additional
2 staff people to receive -- to receive copies electronically.

3 In this case, I think as a practical matter, we're
4 just -- it's probably going to have the one staff person,
5 however, as far as I know right now.

6 JUDGE CLARK: Well, as a practical matter, I'm going
7 to allow one staff person, so I think that that should be more
8 than sufficient with both counsel, and I think that is complying
9 with both the letter and the spirit of the rule and the
10 directive by the director of ALD.

11 Mr. Roseman --

12 MR. FFITCH: Thank you, Your Honor.

13 JUDGE CLARK: Excuse me, Mr. ffitch.

14 Mr. Roseman, do you have an individual that you would
15 like to designate to receive a courtesy copy?

16 MR. ROSEMAN: Yes, I do, Your Honor. The person is
17 Chuck, C-h-u-c-k, underscore, a blank, then underscore, Eberdt,
18 E-b-e-r-d-t, at o-p-p-c-o --

19 JUDGE CLARK: I'm sorry. You need you to repeat that
20 last part.

21 MR. ROSEMAN: Okay.

22 JUDGE CLARK: O?

23 MR. ROSEMAN: O-p-p-c-o --

24 JUDGE CLARK: Okay.

25 MR. ROSEMAN: -- dot, org, o-r-g.

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1 JUDGE CLARK: All right. Thank you.

2 MR. ROSEMAN: Thank you.

3 JUDGE CLARK: All right. Anything further?

4 MS. BROWN: I don't believe so.

5 JUDGE CLARK: All right. Hearing nothing, we are
6 adjourned.

7 MS. BROWN: Thank you.

8 MS. BENNETT: Thank you.

9 MR. ROSEMAN: Thank you, Your Honor.

10 (Proceeding concluded at 2:15 p.m.)

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3 STATE OF WASHINGTON)
4 COUNTY OF KING) ss

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter
7 and Notary Public in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and accurate to
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal
11 this 28th day of December, 2011.

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SHELBY KAY K. FUKUSHIMA, CCR

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18 My commission expires:
19 June 29, 2013

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