

00001

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 THE PUBLIC COUNSEL SECTION OF) Docket No. UE-011411
THE OFFICE OF THE WASHINGTON) Volume I
4 ATTORNEY GENERAL,) Pages 1 to 36
)
5 Complainant,)
)
6 v.)
)
7 PUGET SOUND ENERGY, INC.,)
)
8 Respondent.)
)
9 _____)

10 A hearing in the above matter was held on
11 December 11, 2001, at 1:30 p.m., at 1300 South Evergreen
12 Park Drive Southwest, Room 206, Olympia, Washington,
13 before Administrative Law Judge ROBERT WALLIS.

14 The parties were present as follows:

15 PUGET SOUND ENERGY, by STEVEN C. MARSHALL,
Attorney at Law, and by WILLIAM R. MAURER, Attorney at
16 Law, Perkins Coie, LLP, 411 - 108th Avenue Northeast,
Suite 1800, Bellevue, Washington 98004, Telephone (425)
17 453-6980, Fax (425) 453-7350, E-mail
marss@perkinscoie.com.

18 THE PUBLIC, by SIMON FFITCH, Assistant
19 Attorney General, 900 Fourth Avenue, Suite 2000,
Seattle, Washington 98164, Telephone (206) 389-2055,
20 Fax (206) 389-2058, E-mail simonf@atg.wa.gov.

21 THE COMMISSION, by ROBERT CEDARBAUM, Senior
Counsel, 1400 South Evergreen Park Drive Southwest,
22 Olympia, Washington 98504-0128, Telephone (360)
664-1188, Fax (360) 586-5522, E-mail
23 bcedarba@wutc.wa.gov.

24 Joan E. Kinn, CCR, RPR
25 Court Reporter

00002

1 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
2 via bridge line, by IRION SANGER, Attorney at Law,
3 Davison Van Cleve, P.C., 1000 Southwest Broadway, Suite
4 2460, Portland, Oregon 97205, Telephone (503) 241-7242,
5 Fax (503) 241-8160, E-mail mail@dvclaw.com

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

00003

1 P R O C E E D I N G S

2 JUDGE WALLIS: This is a pre-hearing
3 conference before the Washington Utilities and
4 Transportation Commission in the matter of Docket Number
5 UE-011411. This is a complaint filed by the Public
6 Counsel section of the office of the Washington Attorney
7 General against Puget Sound Energy, Inc. This
8 conference is being held pursuant to due and proper
9 notice to all interested persons at Olympia, Washington
10 on December 11 of the year 2001 before Administrative
11 Law Judge C. Robert Wallis.

12 Let's begin by asking for appearances
13 starting with the Complainant.

14 MR. FFITCH: Simon ffitich, Public Counsel,
15 Washington office of Attorney General, 900 Fourth
16 Avenue, Suite 2000, Seattle, Washington 98164.

17 Do you need phone numbers?

18 JUDGE WALLIS: Why don't you state them so
19 that we have those in the record also.

20 MR. FFITCH: All right, the phone number is
21 (206) 389-2055, and our fax number (206) 389-2058, and
22 the E-mail is simonf@atg.wa.gov.

23 JUDGE WALLIS: For the Respondent.

24 MR. MARSHALL: My name is Steve Marshall,
25 Perkins Coie, representing PSE. With me is William

00004

1 Maurer, also Perkins Coie. Our address is 411 - 108th
2 Avenue Northeast, Bellevue, Washington 98004. And the
3 phone number is area code (425) 453-6980, and the fax is
4 same area code 453-7350. And with us also is Mr. David
5 Hoff of Puget Sound Energy.

6 JUDGE WALLIS: Thank you.
7 Commission Staff.

8 MR. CEDARBAUM: Thank you, Your Honor. My
9 name is Robert Cedarbaum, Assistant Attorney General.
10 My business address is the Heritage Plaza Building, 1400
11 South Evergreen Park Drive Southwest, Olympia,
12 Washington 98504. My telephone number is area code
13 (360) 664-1188, the fax is area code (360) 586-5522, and
14 my E-mail is bcedarba@wutc.wa.gov.

15 JUDGE WALLIS: Thank you.
16 For the petitions for intervention.

17 MR. SANGER: This is Irion Sanger appearing
18 on behalf of the Industrial Customers of Northwest
19 Utilities. I'm with the law firm of Davison Van Cleve,
20 1000 Southwest Broadway, Suite 2460, Portland, Oregon
21 97205, phone number (503) 241-7242, fax (503) 241-8160,
22 E-mail mail@dvclaw.com.

23 JUDGE WALLIS: Let me ask at this time if
24 there is any other person in the hearing room or on the
25 bridge line who wishes to appear in a representative

00005

1 capacity in this docket before the Commission.
2 Let the record show that there is no
3 response.

4 Under the Commission's rules, the first order
5 of business in a matter such as this is to consider
6 petitions for intervention. I have before me a written
7 copy of the petition for intervention and would like to
8 ask if there is anything that the petitioners wish to
9 add to that petition.

10 MR. SANGER: Nothing at this time, Your
11 Honor.

12 JUDGE WALLIS: What are the parties' views as
13 to this petition and whether it should be granted or
14 denied?

15 MR. MARSHALL: So long as it doesn't protract
16 the proceedings or add to the complexity, we don't have
17 any objection.

18 JUDGE WALLIS: Thank you, Mr. Marshall.

19 MR. FFITCH: Your Honor, Public Counsel has
20 no objection to the petition.

21 MR. CEDARBAUM: Staff also does not object.

22 JUDGE WALLIS: Very well, there being no
23 objection, the petition is granted. We find nothing in
24 the petition as it is represented that leads us to
25 believe that the participation of this intervener would

00006

1 unduly or inappropriately expand the proceedings.

2 There has been a request to invoke the

3 discovery rule in this proceeding. Is there any

4 objection to that request?

5 MR. MARSHALL: No.

6 JUDGE WALLIS: Let the record show that there

7 is no affirmative response, and the discovery rule is

8 invoked.

9 Is there a request for a protective order in
10 this docket?

11 MR. FFITCH: Your Honor, Public Counsel is
12 not requesting a protective order.

13 MR. MARSHALL: There were certain materials
14 in the merger itself that were under protective order.
15 To the extent that those and documents of like kind are
16 involved in this proceeding, we may have a need for a
17 protective order, so we would request that a protective
18 order be issued.

19 JUDGE WALLIS: Commission Staff, interveners
20 have a view on this?

21 MR. CEDARBAUM: Staff has no objection to the
22 entry of a protective order.

23 MR. SANGER: ICNU has no objection, Your
24 Honor.

25 JUDGE WALLIS: Very well. My suggestion

00007

1 would be in as much as there is a potential need for
2 such an order that we ask the commissioners to enter the
3 order. Nothing will compel any party to use it. If
4 there is no need, then, of course, the Commission does
5 favor the open access to information filed and asks that
6 parties not use the protective order unless it is
7 necessary for the purposes for which it is entered.

8 There's a pending motion filed by Mr. ffitch
9 in this docket to strike certain of the company's
10 defenses as stated in their answer. Let me ask if there
11 is any desire at this time to offer a brief summary or
12 additional argument, supplementary argument, on the
13 record.

14 Mr. ffitch.

15 MR. FFITCH: Your Honor, we don't feel it's
16 necessary to supplement our written motion unless the
17 Bench has questions. We believe that we have stated the
18 bases straightforwardly, and we're prepared to have the
19 Bench rule. Again, unless you have questions or if I
20 need to respond to something the company says here
21 today, I would like to reserve the right to do that.

22 JUDGE WALLIS: Mr. Marshall, Mr. Maurer.

23 MR. MAURER: We feel that our briefs speak
24 for themselves, and unless you have any questions or the
25 commissioners have any questions, we don't feel the need

00008

1 for any additional oral argument today.

2 JUDGE WALLIS: Very well. In light of that,
3 we will rely upon the petition and the answer and will
4 rule based on those documents.

5 MR. FFITCH: Your Honor, if I may just add
6 one thing just so you understand our position.

7 JUDGE WALLIS: Mr. ffitch.

8 MR. FFITCH: We do not object to the
9 company's motion to amend the complaint.

10 JUDGE WALLIS: Thank you.
11 Any other comments?

12 Very well. One question that occurred to me
13 as I examined the complaint and the answer was to
14 question whether there is a need for an oral hearing in
15 this docket or whether the parties believe that it might
16 be conducted upon a paper record, and I would like to
17 ask the parties for their views on this beginning with
18 Mr. ffitch.

19 MR. FFITCH: Your Honor, we would ask the
20 Commission to conduct an oral hearing on this matter.
21 While I understand the basis of your question and I do
22 think there are aspects of this that are certainly
23 amenable to briefing, we think that there is also going
24 to be great benefit to the Commission in hearing
25 directly from witnesses who were involved in the merger

00009

1 case at the time that the matters were presented to the
2 Commission leading to the order that we're basing our
3 claim on. So we think that the hearing we wouldn't
4 anticipate would be extremely lengthy or involved, but
5 the value of having the commissioners able to speak with
6 witnesses and ask questions directly we think is
7 important enough that we would ask the Commission to
8 schedule this for an oral hearing.

9 JUDGE WALLIS: What do you expect would be
10 the topic of the witnesses' testimony?

11 MR. FFITCH: There has, in general, Your
12 Honor, there has been assertions I think on both sides
13 that the interpretation of the merger order requires
14 some understanding of surrounding facts and
15 circumstances and intent of the parties. And while both
16 the company and Public Counsel I think believe that the
17 order speaks for itself, I think both of us have also,
18 the company as well as Public Counsel, have I think
19 pointed to additional factors that support the positions
20 that we're taking, and for that reason.

21 And secondly, I know that the Commission has
22 in prior cases indicated that it wants to understand the
23 context as well as simply the analyzing the literal
24 meaning of the words, if you will. And because the
25 Commission has indicated their willingness to look at

00010

1 these kinds of disputes in that way or a policy of
2 looking at these kind of disputes in that way, I think
3 that we feel it would be important to have an
4 opportunity to have witnesses available to answer
5 questions about the context.

6 JUDGE WALLIS: To my recollection, the
7 Commission has taken the view that once a settlement
8 agreement is adopted in an order, it is the Commission's
9 order and no longer is considered a contract or a
10 document amongst the parties. Would your suggestion be
11 consistent or inconsistent with that view?

12 MR. FFITCH: I apologize, Your Honor, because
13 I don't have the order in mind that I'm thinking of. I
14 believe that what I'm recalling is the Commission's
15 treatment of the issue in the Air Liquide case. Perhaps
16 other counsel can help me here, but that's -- I'm afraid
17 I'm just relying on memory. I wasn't prepared -- I
18 didn't research this coming in in order to answer this
19 question specifically.

20 But I have a clear recollection that the
21 Commission in a prior case has said that they would not
22 limit or preclude testimony about surrounding events and
23 circumstances to explain the nature of an order or an
24 agreement that was adopted in an order. But I
25 apologize, I can't remember the specific order. I could

00011

1 certainly provide that to you by the end of the day.

2 JUDGE WALLIS: I would ask that you do so.

3 Mr. Marshall.

4 MR. MARSHALL: The Complainants, of course,
5 have the burden of proof in this matter, Your Honor.
6 And we have seen no testimony from the Complainants.
7 That has not been filed with this, and of course it's
8 not required to be filed with the Complaint, but it will
9 at some point in the further proceedings today we will
10 have a deadline for having done that. It will be our
11 hope that following that testimony and the discovery of
12 that testimony, we could bring on a motion to dispose of
13 this short of a hearing. But if not and if it's
14 considered necessary for us to offer rebuttal witnesses
15 to whatever witnesses Public Counsel has, then we too
16 think that it may well result in the need for an oral
17 hearing.

18 I might mention the third claim for relief by
19 Public Counsel is that the rates in effect following
20 July 1st of this year are unjust, unreasonable, and
21 excessive. And if that's true, if you believe Public
22 Counsel, I think the amount that they believe is
23 excessive to date is some \$50 Million, and it will
24 thereby increase month by month. So it's not an
25 insignificant amount. It's a very high amount. In

00012

1 fact, if Public Counsel got their way, this would be the
2 biggest rate decrease, 18%, ever seen.

3 So it would be under their third claim for
4 relief nothing more than Public Counsel trying a case on
5 the fairness, justness, and appropriateness, sufficiency
6 of a rate, and with that, all the rate hearing due
7 process issues that go with that, including
8 cross-examination. We don't know, however, what
9 testimony Public Counsel will put on on that, and it may
10 be that by the time we get further down they will
11 abandon that third claim for relief. But at this time,
12 based on what little we see from their complaint, it
13 appears to us that scheduling a hearing, having that
14 available for an oral presentation would be necessary.
15 We wish it were not the case.

16 JUDGE WALLIS: Mr. Cedarbaum, Mr. Sanger, do
17 either of you wish to comment?

18 MR. CEDARBAUM: Just briefly, Your Honor.
19 And before I forget, I believe the case that Mr. ffitich
20 was referencing, and I could be wrong, but I believe it
21 was the -- it was ICNU or certain of those customers
22 against Puget Sound Energy, and it was Docket UE-981410,
23 which involved interpreting Schedule 48's non-firm index
24 pricing mechanism. I believe that's the case or maybe
25 one of the cases that has a similar issue. And the

00013

1 Commission in that situation did examine all the facts
2 and circumstances and testimony and intent of the
3 parties and all those sorts of things in reviewing the
4 evidence and reaching its order.

5 Now my recollection is not clear as to
6 whether or not the Commission reached that point after
7 it found that the tariff was ambiguous, so it could rest
8 on that kind of an issue. But I think Mr. ffitch was
9 right, that the Commission did hold a quite extensive
10 hearing on interpreting a tariff that was essentially a
11 contract between parties and between customers and the
12 company and then was adopted by the Commission in an
13 order.

14 JUDGE WALLIS: Thank you, Mr. Cedarbaum.

15 MR. CEDARBAUM: Then I guess the second point
16 is to the issue, the question that you asked. I think
17 Staff's position is that we would be in agreement with
18 Public Counsel that this case does have, you know,
19 although it involves the interpretation of a settlement
20 agreement adopted by the Commission as part of its
21 order, there is a lot of background and history and
22 perhaps baggage to all of that that the Commission would
23 benefit from hearing about through a hearing. That's
24 not to say that perhaps somewhere along the way motions
25 would be a good idea. I don't know. But I think at

00014

1 least going into this, assuming the filing, pre-filing
2 of testimony by all parties who wish to file and then
3 having a hearing following that would be a good idea.

4 I would also note finally that this
5 Commission in other cases recently has through its
6 public interest powers reached decisions which or
7 indicated that it could reach decisions which it
8 believes could be in the public interest regardless of
9 what agreements or orders it may have reached in the
10 past. And so it may be that the commissioners would
11 want to inquire on subjects that we can't anticipate
12 right now that have -- that are beyond the words of the
13 agreement itself and its orders. So I think in that
14 sense that it would be advisable to have a hearing for
15 that, the availability of that situation as well.

16 JUDGE WALLIS: Thank you, Mr. Cedarbaum.

17 Another question that I had is whether
18 parties believe it might make sense to consolidate this
19 matter with other pending or to be pending matters. I
20 will note that the company has several requests now
21 pending before the Commission relating to a deferral
22 mechanism, relating to a general rate case, and the
23 interim authorization of rates pending the outcome of
24 that proceeding, and that those matters are on the
25 Commission's agenda for action tomorrow.

00015

1 MR. FFITCH: Your Honor.

2 JUDGE WALLIS: Mr. ffitich.

3 MR. FFITCH: I guess I can go first. While
4 we're certainly as cognizant as anybody of the need to
5 try to make some sense out of all these multiple
6 proceedings, we feel pretty strongly that consolidation
7 of this docket with other dockets is not the best
8 approach for a couple of reasons. First of all, we
9 think that from a substantive reason, we do not see an
10 overlap between the issues in this case and those
11 presented in Puget's other filings. The issues really
12 are quite distinct and different. And so there's no
13 efficiencies to be gained in our view from putting them
14 on the same schedule.

15 Secondly, sort of to the contrary, we think
16 that by trying to combine these, or excuse me, the
17 complaint case with particularly deferred accounting or
18 interim cases where the result is most likely to be a
19 delay in or increased difficulty in meeting time lines
20 in those other proceedings, which may have a certain
21 amount of urgency both for the company and the
22 Commission, we are interested in getting our case
23 adjudicated and reaching a decision, but we have a ten
24 month time line, and we are willing to see this case
25 scheduled, and we will get to scheduling in a minute,

00016

1 but we are willing to have this case be scheduled in a
2 way to accommodate the needs of the other matters before
3 the Commission.

4 So in summary, we just don't -- we don't
5 advocate that, and we would ask the Commission not to
6 consolidate it. We don't think it would be a productive
7 approach.

8 JUDGE WALLIS: Thank you, Mr. ffitch.
9 Mr. Marshall.

10 MR. MARSHALL: We also do not believe
11 consolidation would be the best approach, but for quite
12 a different reason. Public Counsel has the burden of
13 proof, and consolidation would tend to, we believe,
14 confuse that central fact in this matter.

15 JUDGE WALLIS: Others wish to comment?
16 Mr. Cedarbaum.

17 MR. CEDARBAUM: Thank you, Your Honor. Staff
18 also does not see the benefit especially in a practical
19 way in consolidation. Consolidation would either tend
20 to slow down the interim proceeding or delay
21 unnecessarily and perhaps unfairly Public Counsel's
22 complaint if it were heard as part of the general
23 proceeding. So the practicalities of it seem like a
24 down side.

25 And secondly, the Commission's rule on

00017

1 consolidation, which is WAC 480-09-610, does allow the
2 Commission to consolidate when it believes that
3 consolidation is appropriate, but the general idea is
4 that you have common issues of fact or principles of
5 law, and I don't see enough of an overlap on fact, laws,
6 or principles that would warrant consolidation.

7 JUDGE WALLIS: Mr. Marshall raised the
8 specter of running a rate case. Is that something that
9 if it does come about we could later consider
10 consolidation?

11 MR. CEDARBAUM: I'm sorry, consolidate the
12 Public Counsel complaint with the general rate
13 proceeding?

14 JUDGE WALLIS: Yes.

15 MR. CEDARBAUM: I suppose you could consider
16 it. I think my point earlier was that this is Public
17 Counsel's complaint, and it's not as complicated as a
18 general rate case. It ought to be able to be litigated
19 and decided before next October. So that's what I meant
20 when I said that I thought it would be unfair to Public
21 Counsel to have it delayed.

22 JUDGE WALLIS: Thank you.

23 Mr. Sanger, do you have anything to add?

24 MR. SANGER: No, Your Honor.

25 JUDGE WALLIS: Very well, let us move on.

00018

1 Public Counsel has distributed a proposed schedule for
2 this docket that calls for Public Counsel filing direct
3 testimony on February 6, PSE and others' responsive
4 testimony to be filed on March 8th, Public Counsel
5 rebuttal on March 29th, hearings to be conducted April
6 30th and May 1st, and briefs to be filed on May 17th.
7 What do the parties think about that schedule?

8 Mr. Marshall.

9 MR. MARSHALL: We would, of course, like to
10 have their testimony much sooner rather than later. It
11 seems that waiting another two months to get testimony
12 seems like a long time to us. This complaint relates
13 back to a July 1st period, and so it just seems to us
14 that that would be an extraordinarily long period of
15 time.

16 The period of time between the time the
17 testimony is filed and our responsive testimony is not
18 very long. I understand from Public Counsel,
19 Mr. ffitch, that he only has two witnesses, and if that
20 were the case, that might be fine. If on the other hand
21 they're going to put on a full case on the
22 reasonableness of the rates from July 1st onward, it
23 seems to me that they would have to call more than two
24 witnesses. And that period of time, just four to five
25 weeks, would not, actually just four weeks, would not be

00019

1 sufficient.

2 Further, I understand because we had a
3 preliminary discussion earlier that Staff may wish to
4 put in testimony between the Public Counsel direct
5 testimony and rebuttal testimony. And if that's the
6 case, we would potentially need that same amount of
7 time.

8 I'm thinking that we would need six to eight
9 weeks to respond if there are more than just two
10 witnesses from Public Counsel. And we would like the
11 same amount of time from Staff if they have more than
12 two witnesses. If they only have two witnesses apiece,
13 we might be able to do it within a somewhat shorter
14 period. But that would be, again, I think it depends on
15 the nature of the testimony, and we haven't seen that.
16 So it's a little bit of a shot in the dark for us to
17 say, yes, four weeks or six or eight weeks would be
18 sufficient.

19 So what we would like to do is to speed up
20 the time for the original submittal of Public Counsel's
21 testimony. Keep the end date. We don't disagree that
22 briefs on May 17th would be fine and the hearing April
23 30 and May 1st would be fine. But if we can speed up
24 the initial submission, that would be preferable.

25 JUDGE WALLIS: Thank you, Mr. Marshall.

00020

1 Mr. Cedarbaum.

2 MR. CEDARBAUM: Your Honor, the general, you
3 know, beginning and end point of the schedule that
4 Mr. ffitich proposed is fine with Staff. I think his
5 point, and he can speak to this more, was we were sort
6 -- he was, I believe, trying to anticipate schedules in
7 both the Puget and Avista interim filings and the
8 general filings and trying to sandwich the sum schedule
9 on his complaint in between, which seems like a good
10 idea.

11 We did, before we went on the record, I
12 indicated to both Mr. Marshall and Mr. ffitich that I was
13 hoping to have Staff file between Public Counsel's
14 direct and the company's direct. Just part of that is
15 really just a practical reason, that it would help us to
16 perhaps cut down testimony than if we were to file on
17 the same day that Public Counsel does. And it just
18 helps us to know what Public Counsel is saying in its
19 testimony so that we can respond to them as well.

20 But at the same time, we recognize then the
21 company has to respond to us and that they should be
22 given a sufficient amount of time for that. I would
23 anticipate that we're only going to have one witness and
24 that the testimony would be relatively short, so I don't
25 think six weeks following our testimony honestly would

00021

1 be necessary.

2 JUDGE WALLIS: How much time would you like
3 to have following submission of Public Counsel's?

4 MR. CEDARBAUM: I was thinking, you know, ten
5 days would probably do it, because obviously we're not
6 going to be sitting and waiting to think or draft our
7 testimony until February 7th. I think it will be more a
8 sense of seeing what Public Counsel has to say,
9 rethinking perhaps what we have done or not, and
10 incorporating things into our testimony to account for
11 that.

12 JUDGE WALLIS: Thank you.

13 Mr. Sanger, do you know if your client
14 expects at least as of this juncture to file testimony?

15 MR. SANGER: I do not know, but I do expect
16 that if we do, it would not be voluminous. It would
17 probably be one witness and similar to Staff's, not a
18 lot of documents. I would also second that
19 Mr. Cedarbaum's proposal of Staff filing after Public
20 Counsel is that we would appreciate to do that as well
21 in that we have not defined what our position is in this
22 case and would want to look at the testimony of Public
23 Counsel and what they're arguing before we present our
24 testimony.

25 JUDGE WALLIS: Mr. ffitch.

00023

1 also want to emphasize the point, however, that this
2 February date has been chosen with that in mind. We are
3 also involved in all of the Avista dockets and all of
4 the Puget dockets, and we are aware that they will be
5 building towards, well, the interim and deferred
6 accounting proportion, excuse me, components of those
7 cases will be pretty active in the first couple of
8 months of the year, and we have selected this particular
9 time for our direct in this case to -- in recognition of
10 the fact that our attorneys and analyst staff and also
11 consultants will be involved in all of those dockets, so
12 we would ask that this not be moved up.

13 As far as building in a little bit more time
14 to accommodate interveners and to accommodate
15 Mr. Marshall's ability to respond, perhaps pushing back
16 the hearings a bit to allow that further into May, we
17 don't have a problem with that.

18 The only other thing I wanted to say on the
19 record is we did have a brief discussion, Mr. Marshall
20 and I, about how many witnesses we're going to have. I
21 don't want to be on the record as committing to only
22 having two witnesses. It's our expectation that we will
23 not have a large number of witnesses. I think I said a
24 couple or a few but -- and that is my expectation, but I
25 didn't want the record left that we were saying two

00024

1 witnesses and no more witnesses. We haven't made a
2 final decision on total number of witnesses yet, and
3 Mr. Marshall suggested that perhaps we're missing the
4 target and we ought to be bringing in a phalanx of
5 folks, so we will take that back to the shop and see if
6 he's right.

7 MR. MARSHALL: Or you could dismiss the third
8 cause of action. That would take care of that.

9 JUDGE WALLIS: One option that the parties
10 have that I will strongly encourage them to pursue is
11 the possibility of preparing an agreed statement of
12 those facts as to which there are no issues so that we
13 can all focus our attention and our efforts on those
14 matters that really are in contest, and we can have
15 before us a context and perhaps some significant facts
16 that are not in contest. That may reduce the need for
17 witnesses, and it may reduce the time necessary for
18 hearing. So I would, if I could, like to get a
19 commitment that the parties will discuss such a
20 possibility at a relatively early stage.

21 MR. MARSHALL: I think that's a wise
22 suggestion. The proceedings relating to the Bonneville
23 Power Administration in particular were quite
24 complicated, and I think that it would be helpful to
25 arrive at an agreement on many of those facts, and I

00025

1 think that we have had some discussions with counsel for
2 Public Counsel about many of the other things that are
3 going on relating to the Bonneville Power Administration
4 residential exchange credits that I don't think there
5 will be any dispute over, and I think we can probably
6 save time there and probably save some time also on some
7 of the things that relate to the merger stipulation and
8 subsequent events.

9 JUDGE WALLIS: Mr. ffitch.

10 MR. FFITCH: Your Honor, we would be happy to
11 commit to attempting to come up with some agreed facts.
12 We will meet with the staff and PSE to do that.

13 MR. CEDARBAUM: That's fine, Your Honor,
14 Staff would like to participate in those discussions.

15 JUDGE WALLIS: Mr. Sanger.

16 MR. SANGER: Likewise that sounds like a
17 reasonable proposal.

18 JUDGE WALLIS: Very well. We certainly
19 appreciate parties' efforts in that direction and
20 commend you for making that commitment.

21 I would like to conclude the discussions on
22 schedule by saying that the general structure of the
23 proposed schedule appears to make sense and that we will
24 do our best to offer the parties at least two weeks
25 following Public Counsel's filing for preparation of

00026

1 filings by Commission Staff and interveners and at least
2 four weeks following that filing before the schedule of
3 a hearing. How close we can come to that goal will
4 depend in part on what else is going on and when it goes
5 on. So again, we will do our best to accommodate the
6 parties' desire for a swift resolution and will do our
7 best to sandwich this into the other matters that are
8 pending in a way that enhances the parties' ability to
9 navigate through this coming year.

10 MR. FFITCH: Your Honor, if I may interject
11 something that's connected with both scheduling and
12 discovery, and that is that we sometimes talk about
13 whether the discovery turn around time that's in the
14 rule is adequate, and we haven't really talked about
15 that. The kind of schedule we're talking about here up
16 front may not immediately call for a shorter turn around
17 time, but in the general, if this case were just by
18 itself, but with all the other cases going on, there may
19 be some reason to think about that. Maybe we could just
20 -- I was going to confer with Mr. Steuerwalt here on our
21 analyst staff and just ask for your indulgence to think
22 about that at least for a minute.

23 JUDGE WALLIS: Very well, let's be off the
24 record for a moment, please.

25 (Discussion off the record.)

00027

1 JUDGE WALLIS: Let's return to the record,
2 please. We left it to discuss some administrative
3 matters regarding discovery and responses to data
4 requests. The parties have agreed that the time for
5 response is ten days for requests that are made prior to
6 the filing of Public Counsel's direct testimony and five
7 business days as to requests that are made following the
8 filing of Public Counsel's direct testimony.

9 The parties have agreed that they will each
10 designate a person to receive the responses to data
11 requests and otherwise. At least in terms of the
12 Commission's communications, we will serve lead counsel
13 if that meets the parties' needs.

14 The docket number of this proceeding will be
15 stated in the subject line of electronic mail
16 communications. Parties will serve data requests
17 simultaneously to all parties even though another party
18 may not have joined in the request formally or made that
19 request. And the electronic service of documents will
20 be used to the extent possible and feasible. And we
21 commend to parties the use of some kind of scanning,
22 whether PDF or otherwise, for documents that may not be
23 susceptible of reduction in text form to electronic
24 documents.

25 Did I catch everything regarding the data

00028

1 requests?

2 MR. FFITCH: Your Honor, I think so, except
3 just to clarify, when you mentioned simultaneous service
4 of data requests, do I understand you to also include
5 responses to data requests?

6 JUDGE WALLIS: Yes.

7 MR. FFITCH: Thank you.

8 MR. CEDARBAUM: There was one, maybe I
9 misheard, but I thought that you said that prior to
10 Public Counsel filing its direct testimony the turn
11 around time was ten days, and I think that it's ten
12 business days; is that correct?

13 JUDGE WALLIS: Yes.

14 MR. FFITCH: The existing rule does apply.

15 JUDGE WALLIS: Correct.

16 MR. MAURER: Your Honor, may I ask, is there
17 a standard for the treatment of confidential information
18 in a data response that's going to be submitted
19 electronically?

20 JUDGE WALLIS: I am not aware of a standard
21 treatment of such documents. In another recent
22 proceeding, I have asked parties to exchange
23 non-confidential documents either by electronic mail or
24 by posting on a web site which is accessible to parties,
25 and I left silent the treatment of confidential

00029

1 information. I suspect that with technology as it is
2 that it may be possible to post such documents to a
3 secure web site that only a limited number of parties
4 have access to, but I am no information services expert
5 by any means but would leave that to the parties to
6 explore.

7 MR. MAURER: So would it be sufficient, Your
8 Honor, to in responding to a data request that has
9 called for the production of confidential information to
10 submit an electronic version indicating that some of the
11 material is confidential and then following up that
12 E-mail with a hard copy that follows the Commission's
13 confidentiality requirements?

14 JUDGE WALLIS: Will that work for parties?

15 MR. FFITCH: That sounds fine. I'm just
16 thinking of timing, Your Honor, that, you know, if the
17 use of regular mail, especially when we get into the
18 five day, five business day time, might slow things
19 down. There is expense with overnight mail, but if we
20 are attempting here to get a very expeditious exchange
21 of materials, I guess I would ask the company, ask if we
22 could at least talk about -- now I guess I would propose
23 that we have the follow-up confidential material come by
24 overnight rather than arrive three or four days later in
25 the vagaries of the U.S. mail, so that's my only concern

00030

1 with that.

2 JUDGE WALLIS: I believe I heard the parties
3 saying earlier that it is not 100% certain that, in
4 fact, any confidential information will play a part in
5 this proceeding, and I am anxious that documents be
6 provided in a time frame that will work for the parties
7 and will not either delay the proceeding or hamper any
8 of the parties in preparing for the proceeding. So
9 Mr. ffitch's proposal does sound appropriate at this
10 juncture, but parties can recognize that as the case
11 develops and as time passes, if circumstances change, it
12 is perfectly acceptable to come back to the Commission
13 with a request or even better yet an agreement as to
14 change in process. Will that work for folks?

15 MR. MAURER: Yes.

16 MR. FFITCH: Yes, thank you, Your Honor.

17 JUDGE WALLIS: Very well.

18 The remaining matter I believe that we need
19 to attend to is a request for clarification on the part
20 of the company.

21 Mr. Marshall.

22 MR. MARSHALL: Yes, thank you, Your Honor.

23 We have one request for clarification of Public
24 Counsel's complaint, which we appreciate your allowing
25 us to address on the record here, and that's the part of

00031

1 the complaint that states that Puget should have
2 adjusted its general rates in some manner that's not
3 specified yet by Public Counsel. And our question for
4 clarification was simply, does Public Counsel claim in
5 its complaint that the general rates to be adjusted were
6 those for the residential and small farm rates referred
7 to in that paragraph Roman Numeral III, I believe it's
8 D, excuse me, A.III.D, or were the general rates that
9 Public Counsel refers to to be rates for all customer
10 classes, commercial, industrial, and others as well as
11 residential and small farm customers? This makes a
12 great deal of difference on how we proceed in doing
13 initial preparation of our response.

14 Public Counsel has known since the Commission
15 entered its order of June 13th of this year whether it
16 would or would not consider making a complaint. I
17 understand that they don't wish to disclose what the
18 rates should be until they file their testimony sometime
19 next year, and it's our belief that with the burden of
20 proof and even with the idea of notice pleading that
21 they should plead with specificity which rates they
22 believe should have been reduced by the company
23 beginning July 1st, and that is a fundamental central
24 fact that needs to be clarified right away if we're to
25 stick with the schedule that's been proposed by Public

00032

1 Counsel.

2 They should be able to do it. They should
3 have been able to do it last July, in fact, last June.
4 There's no reason for delay. I think we would be
5 entitled to that if we brought a formal motion for
6 clarification, but in order to expedite this matter, we
7 think Public Counsel should have thought that through by
8 now and should have an answer ready for the Commission.

9 JUDGE WALLIS: Mr. ffitch.

10 MR. FFITCH: Several quick responses, Your
11 Honor. First of all, we would disagree for the record
12 with every characterization of our thinking, our
13 strategy, our conduct since June of last year with
14 regard to this case. Just for the record, we do not
15 agree with any of the characterizations made by
16 Mr. Marshall.

17 JUDGE WALLIS: You disagree.

18 MR. FFITCH: Secondly, the Commission's
19 procedural rules permit a motion of the type that
20 Mr. Marshall just mentioned. Such a motion was not made
21 and is no longer timely and certainly not, I think,
22 appropriate practice for Mr. Marshall to come to a
23 pre-hearing conference and ask for kind of an informal
24 oral statement from counsel in the nature of
25 clarification of a pleading. The rules very clearly

00033

1 allow that to occur in a much more appropriate fashion.
2 That request was not made. And I just state that also
3 for the record, that we don't waive any objection to the
4 untimely assertion of an oral motion for clarification.

5 My third point, I think perhaps really
6 getting to the gist of things though, is that this
7 complaint is based upon the precise wording of the
8 Commission's merger order, precise wording of an
9 agreement which Puget itself signed using the words
10 general rates, and that is the basis of the complaint in
11 this case. The elucidation of that point and what that
12 means in terms of the adjustments that we're seeking
13 will be contained in Public Counsel's testimony that
14 will be filed on a date to be established by the
15 Commission. The company will then have an adequate
16 period of time to understand the details of Public
17 Counsel's position that lie behind the complaint and
18 will have an opportunity to provide its own responsive
19 testimony.

20 JUDGE WALLIS: Do other parties wish to
21 comment?

22 MR. CEDARBAUM: Yes, Your Honor, just
23 briefly. Staff agrees with the position of Public
24 Counsel that was just stated. The complaint involves
25 interpreting and applying a merger agreement that refers

00034

1 to general rates. That's the term used in the
2 agreement, and so the issue is what does that mean.
3 That seems to me to be an issue to be brought out
4 through testimony and evidence, not necessarily through,
5 you know, defined specifically in the complaint itself.

6 And I guess the question is, well, you know,
7 it's not Staff's complaint, so why do I care. I care
8 because Staff may put on testimony as well as to what
9 that term means according to the schedule that the
10 Commission sets, and I don't think Staff also should be
11 forced today to define what it might mean by the term
12 general rates when it provides that interpretation to
13 the Commission through testimony.

14 JUDGE WALLIS: Mr. Marshall.

15 MR. MARSHALL: Well, again, I think --

16 JUDGE WALLIS: You don't need to repeat
17 anything you said earlier.

18 MR. MARSHALL: Then I won't.

19 JUDGE WALLIS: Very well.

20 MR. MARSHALL: I have stated it before.

21 JUDGE WALLIS: Very well.

22 I will merely note that there has been no
23 formal motion, that there was a request for
24 clarification, the response has been made, it is of
25 record.

00035

1 I did forget to ask Mr. Sanger if he had any
2 comments. If you have any, please state them.

3 MR. SANGER: I will not make any additional
4 comments, but I would agree with the statements of
5 Commission Staff and Public Counsel.

6 JUDGE WALLIS: Thank you very much.

7 Before we conclude, I would like to say that
8 while the precise dates at least of the hearing and post
9 hearing process have not been set, I would ask Public
10 Counsel to meet his proposed deadline of February 6, and
11 I will carry that into the order. And as I indicated,
12 we will provide at least the minimum time frames that
13 were discussed, two weeks for filing of the Staff case,
14 four weeks for filing of rebuttal, and then we will take
15 a look at how that fits in with the overall schedule. I
16 see no advantage if it looks like other scheduling
17 requires that the hearing be held at a later time to
18 hold to relatively short time frames, and we will extend
19 those to allow more thoroughness in the discovery and
20 preparation of testimony.

21 MR. SANGER: Excuse me, this is Mr. Sanger.

22 JUDGE WALLIS: Mr. Sanger.

23 MR. SANGER: Would the two weeks also apply
24 to other interveners?

25 JUDGE WALLIS: Yes.

00036

1 MR. SANGER: Thank you.

2 MR. CEDARBAUM: Your Honor, if I can just
3 add, if it helps the Commission out in scheduling this
4 case, I don't believe, and I probably will regret saying
5 this, but I don't believe that Staff would require a
6 full two weeks, you know, 14 calendar days after
7 February 6. So if it helped out to clip a couple of
8 days off of that, I don't think that's going to be the
9 end of the world.

10 JUDGE WALLIS: Thank you, Mr. Cedarbaum.
11 It's not often we hear parties say that we can cut the
12 time, so it is most appreciated.

13 Is there anything else to come before the
14 Commission at this time?

15 Let the record show that there is no
16 response. I want to thank everybody for attending
17 today, and a pre-hearing conference order will be
18 entered.

19 (Hearing adjourned at 2:50 p.m.)

20

21

22

23

24

25

