

- 6 **Motion to Strike defenses.** On November 16, 2001, Public Counsel filed with the Commission a motion to strike certain of the defenses offered by the respondent, stating reasons for its request. The motion was taken under advisement and a schedule set for its consideration. Other parties also desired the opportunity to join in the motion or to file other dispositive motions. The matter has been briefed; parties declined the opportunity to present oral argument at the prehearing conference, and the question is ripe for decision.
- 7 Public Counsel argues that the answer is flawed, and that defenses may be stricken, because the respondent does not sufficiently support with facts its statement of defenses in its answer. Respondent answers, arguing that such support is unnecessary and is not needed under the authority cited in the motion. It also submits an amended answer and asks leave to amend.
- 8 The Commission's rule, WAC 480-09-425(4), is specific in stating that the Commission will liberally construe pleadings with a view to effect justice and that it will, at every stage of the proceeding, disregard errors or defects in the pleadings that do not affect the substantial rights of the parties.
- 9 Here, we will disregard any defect in the original pleading and will accept the amended answer. The matter appears to be technical in nature; any error offers no prejudice to any party and the correction is appropriate. The motion is denied.
- 10 **Written record, without oral hearing.** The parties discussed the potential desirability of proceeding on a paper record, without a hearing. They oppose such a proposal, feeling that it is necessary to describe understandings and negotiating positions leading to the settlement that the commission adopted. There is Commission precedent for the proposition that all negotiations are subsumed into an order with the Commission's acceptance of an agreement, and that the agreement becomes the Commission's to interpret, without reference to the parties' subjective or secret intentions. There have been special circumstances, however, in which the Commission has allowed evidence as to context and intentions leading to a settlement adopted in an order. Consequently, we do not rule that such evidence would be improper *per se* and will not at this juncture schedule this to be heard only on a paper record. The Commission may find it appropriate at a later stage in the proceeding, however, to ask parties to address why they believe such references to be necessary in this matter.
- 11 **Narrowing of issues, agreement on relevant facts.** The parties agreed to consider presenting an agreed, or partially agreed, statement of facts. They are also asked to discuss preparation of an agreed statement of issues. The parties are encouraged to consider pursuing a settlement of their disputes that might be presented to the Commission. In furtherance of potential agreements, we are setting a prehearing

conference for the purpose of hearing the status of such discussions and for presentation of an agreed statement of facts or statement of agreed facts. The parties committed to discuss and to pursue statements of agreed facts that could reduce the nature and extent of evidence to be presented.

- 12 **Consolidation.** The parties discussed whether it would make any legal or procedural sense to consolidate this docket with one or more other matters involving PSE that are pending. The parties see no necessary linkages of legal or factual issues and see no necessary predicates regarding timing of the result in this matter with regard to other pending matters.
- 13 **Hearing schedule.** The parties agreed in principle upon Public Counsel's proposed schedule for the proceeding. All parties are aware of the volume and significance of other pending matters and the constraints they impose, which may affect the ultimate schedule in this docket. The following schedule is set with regard to parties' preferences and conflicts with other proceedings in which they are appearing or involved. All dates specified are during the year 2002.

Public Counsel files evidence	February 6, 2002
Commission Staff and intervenors file direct evidence	February 20
Prehearing conference for review of agreed statement of facts, and to hear the status of settlement discussions	March 6, 1:30 p.m.
Company files answering direct evidence	March 22
Rebuttal evidence	April 19
Deadline for filing dispositive motions	April 29
Deadline for answers to any such motions	May 14
Deadline for filing exhibits that may be used in the cross examination of another party's witnesses	May 16, 9:30 a.m.
Prehearing conference to mark exhibits and resolve objections and process issues (as needed)	May 16, 9:30 a.m.
Hearing sessions begin (two days expected)	May 22, 9:30 a.m.

Hearing(s) for members of the public

None requested

The schedule for closing briefs, if any, will be determined at a later time.

- 14 **Notice of Prehearing Conference.** The Commission convenes a prehearing conference in this matter on **Wednesday, March 6, 2002**, to address an agreed statement of facts, hear status of settlement discussions, and take up any other procedural matter raised by the parties or the Commission. The conference will be held in Room 206 of the Commission's headquarters office, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington, **at 1:30 p.m.** The Commission asks that parties' representatives appear in person for this conference.
- 15 **Notice of Prehearing Conference.** The Commission convenes a prehearing conference in this matter on **Thursday, May 16, 2002**, to address marking of Exhibits, hear argument on motions and objections to prefiled exhibits, and to consider any other process issues. The conference will be held in Room 108 of the Commission's headquarters office, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington, **at 9:30 a.m.** The Commission asks that parties' representatives appear in person for this conference.
- 16 **Notice of Hearing.** The Commission hereby provides notice that the hearing in this matter will begin at **9:30 a.m. on Wednesday, May 22, 2002**, in Room 206 of the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington.
- 17 **Discovery.** The parties asked the Commission to invoke the discovery rule in this docket. The proceeding is of the sort contemplated in WAC 480-09-480 for the use of discovery to the extent provided for in the rule, and the discovery rule is invoked.
- 18 **Discovery concerns and parameters.** The parties discussed several concerns related to discovery, and reached the following agreements. First, parties will serve all parties with answers to any party's data requests. Second, courtesy copies of non-confidential requests and responses will be sent to parties via electronic mail simultaneously with service of paper copies. Confidential materials will be served by overnight delivery. The volume of confidential materials is expected to be low; if it rises to a level where other arrangements make more sense the parties will discuss the matter and may propose alternate provisions. Third, the deadline for responses is ten business days, consistent with the provisions of WAC 480-09-480, until the direct evidence is filed on February 6. After the filing, the time for discovery responses is reduced to five business days. Fourth, parties will designate a person to receive all data requests, and will advise other parties who that will be.

- 19 **Request for clarification.** PSE requested clarification from Public Counsel of the meaning of the term “general rates” as used in Public Counsel’s complaint. Public Counsel declined to clarify his meaning of the term.
- 20 **Document preparation and process issues.** Parties are directed to Appendix B for instructions relating to documents filed with the Commission. Parties will be expected to comply with these provisions. ***Please note: documents brought directly to the hearing room that have not previously been filed with the Commission’s records center should be handled as follows:*** File the original with the records center and bring the required number of copies to the hearing. Return to the records center any remaining copies after the hearing session, for distribution to staff members who may not have attended the hearing. ***Please provide copies of these documents, as with other documents that you file, on diskette or by electronic mail.***
- 21 **Electronic Mail provisions.** Parties agree to put the docket number of this proceeding in the subject line of every electronic mail message relating to this proceeding.
- 22 **Alternate dispute resolution.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the undersigned at 360-664-1142.

Dated at Olympia, Washington, and effective this 23rd day of January, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge

NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review