

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

2 JUDGE MACE: Let's be on the record in Docket
3 Number PG-041624. This is the case captioned Washington
4 Utilities and Transportation Commission against Puget
5 Sound Energy. The date is October 21st, 2004, and we're
6 convened at the offices of the Washington Utilities and
7 Transportation Commission in Olympia, Washington.

8 This case involves a complaint filed by the
9 Washington Utilities and Transportation Commission
10 against Puget Sound Energy related to an explosion on
11 September 2nd, 2004, at a house in Bellevue, Washington.
12 An emergency adjudicative proceeding took place on
13 September 15th, 2004, at which time the parties entered
14 an agreed submission that included an action plan to
15 address any immediate danger to the public. Today we
16 are in a prehearing conference to develop procedures to
17 address the non-emergency aspects of this complaint
18 case.

19 My name is Theodora Mace, the Administrative
20 Law Judge who has been assigned to hear this case in
21 place of Judge Ann Rendahl. The parties should be
22 advised that for purposes of an evidentiary hearing in
23 this case, it may be that the Commissioners will be
24 presiding with me, and we need to take that into account
25 in terms of scheduling.

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1 I would like to at this time take the oral
2 appearances of counsel beginning with counsel in the
3 hearing room, and I will start with Puget Sound Energy.

4 MR. WILLIAMS: James Williams, Perkins Coie,
5 on behalf of Puget Sound Energy.

6 JUDGE MACE: Mr. Trotter.

7 MR. TROTTER: Donald T. Trotter, Assistant
8 Attorney General for the Commission Staff.

9 JUDGE MACE: Thank you.

10 And now I would like to turn to counsel on
11 the conference bridge.

12 MS. RIORDAN: This is Lori Riordan, I'm with
13 the Bellevue City Attorney's Office.

14 JUDGE MACE: You're going to have to speak
15 up. We have a reporter in the hearing room, and it was
16 really hard to hear what you just said.

17 MS. RIORDAN: Shall I repeat myself?

18 JUDGE MACE: Would you, please.

19 MS. RIORDAN: Sure. There is Lori Riordan of
20 the Bellevue City Attorney's Office appearing on behalf
21 of intervener Bellevue.

22 JUDGE MACE: Thank you.

23 We have a usual set of agenda items that we
24 work our way through at a prehearing conference like
25 this. The first item after appearances of counsel is

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1 whether or not petitions for intervention have been
2 filed, and I understand that the City of Bellevue's
3 petition to intervene was granted at the September 15th
4 hearing; is that correct?

5 MS. RIORDAN: That is correct.

6 JUDGE MACE: Thank you.

7 Is there anyone else on the conference bridge
8 who wants to enter an appearance today?

9 Thank you, I hear no response.

10 MR. TROTTER: Your Honor, could you also ask
11 if there is anyone in the hearing room.

12 JUDGE MACE: Is there anyone in the hearing
13 room who wishes to enter an appearance today?

14 Let the record reflect that there is no one
15 who has responded to that inquiry.

16 The next item on the agenda has to do with
17 discovery and whether or not discovery will be required
18 in this proceeding.

19 MR. TROTTER: Your Honor, the Staff has
20 already been sending data requests to the company, and
21 they have been responding. And just let me check one
22 moment.

23 It does not appear that the Commission's
24 discovery rule has specifically been invoked, so we
25 would ask that it be invoked.

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1 JUDGE MACE: Very well, I will indicate in
2 the prehearing conference order that the discovery rule
3 will be invoked.

4 And then next whether or not a protective
5 order is desired by the parties; any need for that?

6 MS. RIORDAN: Um --

7 JUDGE MACE: I'm sorry, Ms. Riordan.

8 MS. RIORDAN: Yes, I have been speaking with
9 Steven Seacrest, who is as I understand it in-house
10 counsel for Puget Sound Energy, I had talked to him
11 about the City wanting to get copies of the material
12 they provide to the Commission in their data requests,
13 and he has indicated to me that there are a couple of
14 documents that he did not want to produce directly to me
15 without a protective order. And depending upon the
16 terms of the order Puget Sound Energy might be seeking,
17 I don't have a problem with that. But we have not
18 really formalized this discussion by the City writing a
19 request for Puget Sound Energy giving me an idea of
20 specifically which documents they might want to have
21 covered under protective order and what form of the
22 order they might be seeking.

23 JUDGE MACE: Actually, there is a protective
24 order that the Commission typically enters in cases
25 where material needs to be protected, for example of the

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1 kind that you mentioned. That order can be tweaked to
2 meet the needs of the particular issues and parties in a
3 case, but for the most part there are general terms to
4 the protective order. I can enter that protective order
5 at your request, and if it does not meet your needs as
6 you pursue discovery, we can address that question
7 further.

8 Mr. Williams or Mr. Trotter, do you have
9 anything to add?

10 MR. TROTTER: This is Don Trotter, I would
11 just note the company has filed certain documents under
12 a confidentiality seal pursuant to the statute RCW
13 80.04.095, it would seem to me to make sense that a
14 protective order be issued if that's necessary to allow
15 the City access to certain documents.

16 MR. WILLIAMS: I agree. For now we can take
17 the standard protective order that would ordinarily be
18 issued by the Commission, and to the extent that further
19 modifications are required later, we can address it at
20 that point.

21 JUDGE MACE: Very well then, I will indicate
22 that a protective order will be issued.

23 The next item to tick off on the list of
24 issues or matters that need to be addressed at a
25 prehearing conference has to do with the framing of the

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1 issues in the case, and I'm wondering if I could hear
2 from the parties what the status of the investigation of
3 the incident is at this point. Mr. Williams.

4 MR. WILLIAMS: Yes, Your Honor, Puget Sound
5 Energy is still in the process of evaluating. Experts
6 have been retained for the purpose of doing that.
7 They're in the process of obtaining those reports.

8 JUDGE MACE: Mr. Trotter.

9 MR. TROTTER: Yes, Staff is conducting an
10 investigation. We're doing that through the data
11 request process as well as investigators have been on
12 site and have been evaluating information taken at the
13 site. In addition, the Staff has retained a consultant
14 to assist it in evaluating the safety of the system
15 described in the complaint. But that person was
16 retained only recently and has not been completely
17 available to us yet but will be soon. So I think we are
18 starting that phase of the Staff's investigation.

19 JUDGE MACE: And, Ms. Riordan, what is the
20 City's role so far?

21 MS. RIORDAN: The City's role so far has
22 really been limited to commenting on --

23 JUDGE MACE: Could you speak up just a little
24 bit, please.

25 MS. RIORDAN: Sure. Our role so far has been

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1 limited to commenting on the plan that Puget Sound
2 Energy has put forth and basically collaborating with
3 PSE and mostly with the Commission Staff, Mr. Rathbun in
4 particular, to make sure that our issues have been
5 addressed. We have not at this point taken a stand and
6 aren't prepared at this point to take a stand that we
7 would be hiring our own expert and seeking to admit that
8 kind of testimony.

9 JUDGE MACE: All right, thank you.

10 Are there any issues outstanding that the
11 parties would like to bring to the Commission's
12 attention right now in terms of framing the issues
13 related to this case?

14 MR. TROTTER: I don't think Staff has any at
15 this point. The issues are framed in the complaint
16 relatively concisely and precisely I think, and we don't
17 have anything to add to that at this time.

18 JUDGE MACE: Mr. Williams.

19 MR. WILLIAMS: I agree with Mr. Trotter.

20 JUDGE MACE: And Ms. Riordan.

21 MS. RIORDAN: I agree.

22 JUDGE MACE: All right, thank you.

23 The next item we need to address is a
24 procedural schedule, and I don't know if you have had a
25 chance to talk amongst yourselves about it. If you

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1 haven't, I can give you some time at this point. As I
2 mentioned, it's possible the Commissioners may preside
3 at this hearing with me, so whatever schedule for
4 hearing evolves, we need to take that into
5 consideration. Have you had a chance to talk about
6 scheduling?

7 MR. TROTTER: Yes and no. Yes, we have had a
8 chance to talk, and just based on what you have just
9 heard regarding the status of the investigations, we're
10 not in a position today to set forth a schedule.
11 However, we would ask that with your consent, the
12 Commission's consent, to reconvene this prehearing
13 conference sometime during the week of December 6th,
14 2004, because at that time we believe we may be in a
15 better position to talk about establishing a schedule.

16 At that time we should have the Staff
17 consultant fully up to speed and understand what their
18 needs are for information and have had a chance to talk
19 to the company about when that information would be
20 available to the extent PSE needs to provide it or when
21 it will be available to the extent our own experts will
22 be independently getting that information, so we will be
23 in a much better position at that time to talk about a
24 schedule.

25 Overall I think it is the Staff's goal to

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1 have a very credible defensible presentation of this
2 matter, and while we don't want to protract the
3 proceeding, by the same token we don't want to it to
4 occur too quickly, so we will be in a better position by
5 that week of December 6th to present something to you.

6 JUDGE MACE: Mr. Williams.

7 MR. WILLIAMS: This is consistent with what
8 Mr. Trotter and I discussed before, and Puget has no
9 objection to that.

10 JUDGE MACE: Ms. Riordan.

11 MS. RIORDAN: Mr. Trotter and I spoke about
12 this yesterday, and I also have no objection to
13 proceeding along those lines.

14 JUDGE MACE: Very well, let me take a brief
15 adjournment to look at the Commission's overall schedule
16 and come back to you with some indication whether we
17 could do that or not.

18 We're adjourned briefly.

19 (Recess taken.)

20 JUDGE MACE: My inclination would be to say
21 that I think this proposal would be fine, but I'm going
22 to take it under advisement and perhaps talk to the
23 Commissioners about it to make sure it's all right, and
24 I will advise you in a prehearing conference order what
25 the date would be during that first week of December if

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1 that meets the Commissioners' approval.

2 Am I correct in my understanding that any day
3 that week would be all right with counsel? Anybody have
4 a problem with any day during the week of December 6th
5 through 10th?

6 MS. RIORDAN: It would be, this is Lori
7 Riordan, it would be my preference that it not be Monday
8 the 6th. That is the morning of our last council
9 meeting of the year, and we have our mayor's meeting
10 kind of settled with the agenda on Monday morning, it
11 would be difficult for me to attend.

12 JUDGE MACE: Anyone else have a problem with
13 any day that week?

14 MR. TROTTER: I do not.

15 JUDGE MACE: Mr. Williams.

16 MR. WILLIAMS: The 8th and the 10th are not
17 good just because I promised the State Bar I would teach
18 a CLE on the 10th, and on the 8th I've got a number of
19 matters before judges in King County.

20 JUDGE MACE: So it looks like if it is set
21 for that week it would be the 7th or the 9th, and I will
22 advise you further about that in the prehearing
23 conference order.

24 The prehearing conference order will also
25 give you a lot of information about document preparation

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1 and filing requirements, possibly electronic filing if
2 that's something that becomes appropriate during the
3 course of the proceeding. It will also include a
4 paragraph about alternate dispute resolution. I'm not
5 sure whether that would be appropriate in this case, but
6 the prehearing conference order will advise you about
7 that. If you have any objections to the order, you need
8 to get back with me right away so that any error can be
9 corrected.

10 Is there anything else that the parties want
11 to bring to my attention at this point with regard to
12 the proceeding?

13 MR. TROTTER: I have one item, Your Honor.

14 JUDGE MACE: Go ahead, Mr. Trotter.

15 MR. TROTTER: The company has not filed an
16 answer to the complaint. It's my understanding that the
17 company plans to do so within the next two to three
18 weeks, and we have no objection to that timing, but I
19 just wanted to point that out and make sure we have a
20 common understanding of that issue.

21 JUDGE MACE: Mr. Williams, do you have an
22 idea of when the company will file the answer to the
23 complaint?

24 MR. WILLIAMS: It's as Mr. Trotter stated, it
25 takes a while to work through the process. Part of the

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1 problem is we want to make sure that whatever we stated
2 was consistent with the most current investigation
3 information obviously, so.

4 JUDGE MACE: Would it be appropriate for me
5 to say that I would like to see an answer filed by
6 November 17th?

7 MR. WILLIAMS: I think that's fine.

8 JUDGE MACE: That would give parties enough
9 time to review it prior to the next conference. Of
10 course, if it becomes impossible to meet that date, I'm
11 sure you will advise me and we can make an exception.

12 MR. WILLIAMS: Thank you, Your Honor.

13 JUDGE MACE: Is there anything else?

14 Ms. Riordan, did you have anything else that
15 you wanted to have us address at this point?

16 MS. RIORDAN: I do not.

17 JUDGE MACE: Very well, then we are adjourned
18 until the Commission sets a date for further conference
19 in this case, thank you.

20 (Hearing adjourned at 10:00 a.m.)

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