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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,)
5 Complainant,)
6 vs.) DOCKET NO. U-061239
7 PUGET SOUND ENERGY, INC.,) Volume I
8 Respondent.) Pages 1 - 17
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10 A prehearing conference in the above matter
11 was held on November 6, 2006, at 3:10 p.m., at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge C. ROBERT
14 WALLIS.

15
16 The parties were present as follows:

17 WASHINGTON UTILITIES AND TRANSPORTATION
18 COMMISSION, by JENNIFER CAMERON-RULKOWSKI, Assistant
19 Attorney General, 1400 South Evergreen Park Drive
Southwest, Post Office Box 40128, Olympia, Washington
98504; telephone, (360) 664-1186.

20 PUGET SOUND ENERGY, INC., by SHEREE STROM
21 CARSON (via bridge line), Attorney at Law, Perkins
22 Coie, 10885 Northeast Fourth Street, Suite 700,
Bellevue, Washington 98004-5579; telephone, (425)
635-1422.

23 PUBLIC COUNSEL, by JUDITH KREBS, Assistant
24 Attorney General, 800 Fifth Avenue, Suite 2000,
Seattle, Washington 98104; telephone, (206) 464-6595.

25 Kathryn T. Wilson, CCR

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

2 JUDGE WALLIS: This prehearing conference
3 will please come to order. This is a conference in the
4 matter of Commission Docket U-061239, which is a
5 complaint by the Washington Utilities and
6 Transportation Commission against Puget Sound Energy,
7 Inc., relating to activities involving the release of
8 information, the alleged release of information by the
9 Company to a marketing company.

10 This conference is being held in Olympia,
11 Washington, on Monday, November 6th, of the year 2006.
12 My name is Robert Wallis, and I'm the presiding
13 administrative law judge today.

14 With that introduction, let's have
15 appearances for the record beginning with the
16 Commission, please.

17 MS. CAMERON-RULKOWSKI: On behalf of Staff,
18 Jennifer Cameron-Rulkowski, assistant attorney general.
19 The address is 1400 South Evergreen Park Drive
20 Southwest, Olympia, Washington, 98504. The telephone
21 is area code (360)664-1186. Fax is area code
22 (360)586-5522. E-mail is jcameron@wutc.wa.gov.

23 JUDGE WALLIS: For the Respondent?

24 MS. CARSON: On behalf of Puget Sound Energy,
25 this is Sheree Strom Carson with Perkins Coie. The

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1 address is 10885 Northeast Fourth Street, Suite 700,
2 Bellevue, Washington, 98004; phone number,
3 (425)635-1422; fax, (425)635-2422, and e-mail address
4 is scarson@perkinscoie.com.

5 JUDGE WALLIS: Thank you. For Public
6 Counsel?

7 MS. KREBS: Judith Krebs, assistant attorney
8 general for the Public Counsel section of the Attorney
9 General of Washington. My address is 800 Fifth Avenue,
10 Suite 2000, Seattle, Washington, 98104. Phone is
11 (206)464-6595. Fax is (206)389-2079. E-mail is
12 judyk@atg.wa.gov.

13 JUDGE WALLIS: Thank you very much. By way
14 of explanation of why we are here today, I would merely
15 like to note for the record that a complaint and notice
16 of hearing was issued by the Commission on October 5 of
17 this year setting a prehearing conference for Wednesday
18 October 25th.

19 Prior to that date, the two parties, that is,
20 the Complainant and Respondent, communicated with the
21 Commission and requested that that conference be
22 vacated pending a decision on process. Commission
23 complied with that request, and on the day following
24 the scheduled date of the prehearing conference, we
25 received a notice of appearance from Ms. Krebs on

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1 behalf of Public Counsel.

2 Let me inquire at this point whether there is
3 any objection to the appearance of Public Counsel in
4 this docket? Let the record show that there is no
5 response. Ms. Krebs, welcome to this proceeding.

6 MS. KREBS: Thank you.

7 JUDGE WALLIS: The question that I had in
8 looking at the filing and the status of this docket is
9 whether any oral hearing would be necessary.
10 Ms. Krebs, in view of some preliminary discussions,
11 very preliminary discussions off the record, I take it
12 you have a view on that. Would you care to express
13 that?

14 MS. KREBS: Yes. Let me first say that the
15 investigation that Staff has done is excellent and
16 greatly resolves many of the issues in the case.
17 However, there remain some additional issues that
18 require, in our view, some additional consideration
19 that were not part of the settlement agreement, and the
20 settlement agreement may have been different had they
21 been considered. I'll focus really on two of these as
22 examples so that there is an understanding about the
23 kind of outstanding factual issues that might require
24 more discovery and a hearing.

25 One is the Staff report identifies

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1 66,000-some-odd transfers of phone calls from PSE to
2 PSE Connections, and that's a stipulated fact. It's
3 admitted to by PSE. Those were phone transfers. There
4 is also evidence that PSE Connections was accessible
5 via the PSE Web site, and what is unclear is whether
6 when individuals signed up for the services that PSE
7 provides, whether gas or electric, they were also
8 transferred over to PSE Connections in such a way that
9 their customer information was transferred as it was
10 under the phone program.

11 So that factual question, should it be
12 resolved one way or the other, will impact,
13 particularly if it is resolved that there were a number
14 of individuals who were, in fact, transferred, and that
15 data did in fact transfer, that would raise the number
16 of violations and give it that the counting is a
17 thousand per violation, it changes the mitigation
18 factors as well as the overall penalty factor.

19 Similarly, it is in the record that PSE when
20 it transferred to All Connect as PSE Connections, PSE
21 Connections or All Connect then identified which
22 services that individual may want to receive. That
23 included Comcast, Seattle Times. It also included
24 other, by the way, companies that are regulated by this
25 commission, and there are some questions about that,

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1 for instance. Qwest was participating in the program.

2 The transfer and the question as to whether
3 or not someone wanted to sign up for the service, if it
4 resulted in a yes, I want to join Comcast, then
5 allegedly per the report and the Company's
6 representation, or at least All Connect's
7 representation, is that they obtain consent to pass the
8 customer data to the additional third party, so it went
9 from PSE to All Connect to Comcast to Qwest to Seattle
10 Times. It could have gone to any of those.

11 Now, that's a factual question, one, whether
12 or not consent existed at All Connect, which in the
13 report they represent it did, but again, that's unsworn
14 and hearsay, and two, we don't know if it was
15 sufficient consent even if it was obtained. So those
16 are two outstanding factual questions, and that too
17 raises the possibility that the number of violations
18 are far in excess of what we currently know given that
19 an individual who is transferred may have actually
20 signed up for two or three or four or more services,
21 and every time that information was passed along, it
22 was tainted by the release of the information
23 wrongfully under the rules.

24 MS. CARSON: Judge Wallis, if I might add
25 something here. This is Sheree Carson.

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1 JUDGE WALLIS: Ms. Carson?

2 MS. CARSON: We have concerns about Public
3 Counsel trying to bring in numerous other parties to
4 the extent if, in fact, this is true, these are
5 separate actions, separate violations by separate
6 companies and should not be brought into this action.
7 They should be separate actions by Public Counsel or
8 Commission staff -- this is too tenuous and isn't
9 proper to be brought into this action.

10 JUDGE WALLIS: Very well. I believe it is
11 somewhat hypothetical at this point, a possible result
12 of discovery, and I think we should wait until we see
13 what we actually have and then we can confer and decide
14 what procedural course we will take as a result.
15 Ms. Krebs, are you concluded or did you want to
16 continue?

17 MS. KREBS: No. We have numerous issues.
18 This is not all of the issues that we have questions
19 about, but the two kind of largest examples that would
20 have a sufficient magnitude of effect on the settlement
21 agreement. Thank you.

22 JUDGE WALLIS: Very well. For Commission
23 staff, counsel earlier indicated that you might also
24 have some concerns to state for the record?

25 MS. CAMERON-RULKOWSKI: Thank you, Your

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1 Honor. Staff wants to reserve some concerns, and
2 primarily, while Staff recognizes that opponents to a
3 settlement have a right to cross-examine witness and
4 have other rights as well under WAC 480-07-740(c),
5 Staff is concerned that should Public Counsel's
6 investigation not raise additional issues for the
7 settlement that the settlement continue to be
8 considered, and Staff would note that there is a
9 considerable amount of information in the record
10 currently, and that is in the investigation report and
11 in the settlement agreement and in the narrative.

12 When we do get to our schedule, we have built
13 in an additional prehearing conference to be able to
14 essentially cut off any hearing process if there are
15 not issues that Public Counsel has discovered. Thank
16 you.

17 JUDGE WALLIS: I will note that at this
18 point, we do not have a record. I have offered the
19 settlement agreement and a narrative and some
20 supporting information. Technically, they have not yet
21 been received, and that will be ultimately a part of
22 the mix that we will all be considering.

23 MS. CAMERON-RULKOWSKI: May I respond
24 briefly?

25 JUDGE WALLIS: Yes.

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1 MS. CAMERON-RULKOWSKI: The settlement
2 consideration procedure rules does allow for supporting
3 documentation to consist of a memorandum such as just a
4 narrative, and we do have the documentation in the
5 record for the Commission to consider the settlement.
6 Not in the record, but we do have the documentation in
7 the docket that is currently available to the public
8 and to the commissioners to consider when they do look
9 at the settlement agreement.

10 JUDGE WALLIS: We do understand that.
11 Ms. Carson?

12 MS. CARSON: Yes, just to reiterate what
13 Ms. Cameron-Rulkowski said, we also think that the
14 Staff investigation was very thorough and complete.
15 There is a narrative that has been filed along with the
16 proposed settlement agreement, and we think it is
17 important to have.

18 Although we have set a date for a potential
19 hearing, we think it's important to have the
20 opportunity to have the Commission not go forward with
21 this hearing depending on the results of the limited
22 discovery that Public Counsel will undertake. So we
23 just wanted to make clear that at that follow-up
24 prehearing conference that the parties have agreed to,
25 that should be considered whether or not a hearing is,

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1 in fact, necessary.

2 MS. KREBS: Your Honor, may I respond?

3 JUDGE WALLIS: Ms. Krebs?

4 MS. KREBS: I think we are amenable, and
5 we've told the parties to a prehearing conference,
6 which if there isn't kind of sufficient evidence or an
7 outstanding question that requires a hearing, we
8 certainly don't want to have a hearing for the sake of
9 having a hearing.

10 However, the obligation to show that the
11 settlement is fair, just, and reasonable falls upon the
12 proponents of the settlement, not upon Public Counsel,
13 who is currently not a signatory to that agreement, so
14 both parties appear to want to shift the burden when,
15 in fact, it is there's and there's alone, and Public
16 Counsel certainly has the ability to challenge whether
17 or not they've met that burden without putting forth
18 any evidentiary record whatsoever.

19 JUDGE WALLIS: I did not hear any of the
20 parties seeking to change any burdens and understand
21 that at the time of that prehearing conference, if
22 there are differing views, they will be expressed on
23 the record and a ruling will be made. So, with that,
24 is there any further discussion before we get into the
25 parties' desires for a hearing schedule? Let me say

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1 procedural schedule. Is that more accurate?

2 MS. CARSON: Yes, I think so.

3 MS. CAMERON-RULKOWSKI: Nothing further from
4 Staff.

5 JUDGE WALLIS: What is the proposal for
6 scheduling?

7 MS. KREBS: I will present it, and other
8 parties can feel free to jump in if I don't get it
9 right. The Company has represented and they themselves
10 should represent on the record that the narrative
11 statement that has been filed with the Commission is
12 equivalent to any direct testimony or prefiled direct
13 testimony they would file in this case, and that in
14 essence would obviate our request for prefiled
15 testimony in this matter should they make that
16 recommendation on the record and basically stipulate to
17 that.

18 MS. CARSON: The Company has with Staff
19 presented the narrative in support of the settlement
20 and that we are willing to stand by that in terms of
21 the Company's representation of the facts relating to
22 this complaint and relating to the settlement.

23 MS. KREBS: I just want to make clear. Does
24 that mean that the narrative statement is equivalent to
25 any prefiled direct testimony you would file,

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1 Ms. Carson?

2 MS. CARSON: Yes, I think that's true. We
3 are in a different situation now. We have a settlement
4 agreement here. As opposed to a complaint between
5 Commission staff and Puget Sound Energy, we now have
6 entered into a settlement agreement, but yes, I think
7 this is, in effect, the same as the testimony otherwise
8 would have been.

9 MS. KREBS: Okay. Then we would have
10 beginning tomorrow, 11/7/06, the beginning of data
11 requests propounded by Public Counsel, and that would
12 be a seven-business-day turnaround. It would end
13 December 7th, 2006. There would be no more than two
14 sets of discovery.

15 There would be on December 8th, 2006, a
16 settlement conference, and then we propose the
17 prehearing conference for that day as the prehearing
18 conference prior to any hearing. Then it's kind of
19 difficult to find a hearing date in December, but we've
20 identified December 14th, '06, and then we are looking
21 at initial and responsive briefing -- so that would be
22 a one-day hearing, obviously -- January 8th, '07, for
23 Public Counsel's opening brief or brief, since there
24 won't be a reply, and January 22nd, 2007, for
25 responsive briefing from the Company and Staff.

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1 JUDGE WALLIS: Very well. Ms. Carson, do you
2 have any anything further on scheduling?

3 MS. CARSON: No, I don't, Your Honor.

4 JUDGE WALLIS: Commission staff?

5 MS. CAMERON-RULKOWSKI: Your Honor, there is
6 one clarification that I should have cleared up
7 earlier, so I apologize to the other parties.

8 The narrative has attachments. It has the
9 settlement agreement attached and it has the
10 investigation report attached. Was it the intent of
11 PSE and Public Counsel to have that stipulated into the
12 record?

13 MS. KREBS: My understanding is that the
14 whole thing will become part of the record.

15 JUDGE WALLIS: It would be offered, and if
16 counsel is prepared to stipulate to its receipt, then I
17 think we can handle that right now.

18 MS. KREBS: I think that's preferable if the
19 parties are willing to move and/or stipulate, then
20 given that we've waived the request for prefiled
21 direct, it would be helpful. Thank you.

22 MS. CARSON: Yes, we are willing to stipulate
23 to that.

24 MS. CAMERON-RULKOWSKI: Staff is as well.

25 JUDGE WALLIS: The documents identified as

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1 the narrative and as the Staff investigation into the
2 business practices of Puget Sound Energy, PSE
3 Connections program, are stipulated and will be
4 received in evidence.

5 MS. KREBS: There was just one last thing
6 that I had which was I talked to Ms. Cameron-Rulkowski
7 today that the Staff or the identification of the
8 documents in camera was not meant to preclude the
9 public from viewing them.

10 JUDGE WALLIS: We understand that term only
11 to mean that no hearing is required and do not
12 understand it to have any significance with regard to
13 the confidentiality or availability of the documents to
14 the public.

15 MS. KREBS: Thank you.

16 MS. CAMERON-RULKOWSKI: Thank you, Your
17 Honor.

18 JUDGE WALLIS: I will note that the discovery
19 rules will be invoked. The schedule that you've
20 proposed will be appropriate. I would like Public
21 Counsel to clarify for the record what you mean by two
22 sets of discovery.

23 MS. KREBS: Thank you, Your Honor. The idea
24 is really just to have service of discovery requests,
25 response, and then service of the second discovery

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1 request, response, and that's it. However we use that
2 month, there won't be any more than two sets.

3 JUDGE WALLIS: Very well. Does any party
4 seek a protective order?

5 MS. CARSON: The Company does not seek a
6 protective order at this time. We would like to
7 reserve the right should confidential information
8 become evidence in the case to ask for a protective
9 order.

10 JUDGE WALLIS: Commission staff?

11 MS. CAMERON-RULKOWSKI: No, Your Honor.

12 JUDGE WALLIS: Public Counsel?

13 MS. KREBS: We don't usually seek protective
14 orders, but in order to expedite matters, if the
15 Company at all thinks they are going to provide
16 confidential information, we rather that be invoked now
17 because it takes awhile for everybody to sign the
18 paper. I guess the question is for the Company, and I
19 know it's not always possible to envision everything
20 you are going to turn over, but if they think at all
21 they are going to need a protective order, we would
22 rather have the standard protective order invoked now.

23 MS. CARSON: And we don't. The Company does
24 not anticipate that a protective order is needed, but
25 as you say, it depends on what the discovery requests

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1 seek, so if we get to the point where there is
2 confidential information, I would think the parties
3 could work together to agree on a protective order, the
4 standard protective order, but at this point in time,
5 we don't see the need for one.

6 JUDGE WALLIS: It is often possible for
7 parties to agree on alternative means of exchanging the
8 information without the need to involve original
9 confidential information, so I will state that for the
10 parties' benefit that if there is a request for a
11 protective order, we will understand that the parties
12 have found that it is not possible to resolve the issue
13 without such an order, and an order will be imminently
14 forthcoming if there is such a request.

15 MS. CARSON: Thank you.

16 JUDGE WALLIS: Is there any other matter that
17 we should touch on today?

18 MS. KREBS: I have nothing, Your Honor.

19 MS. CAMERON-RULKOWSKI: Nothing from Staff,
20 Your Honor.

21 MS. CARSON: Nothing from the Company, Your
22 Honor.

23 JUDGE WALLIS: Very well. With that, this
24 prehearing conference is concluded. Thank you all, and
25 we will aspire to enter a prehearing conference order.

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1 Let me ask if there is any party that would like to
2 purchase the record of today's proceeding? I hear no
3 affirmative response.

4 (Prehearing conference adjourned at 3:38 p.m.)

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