

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Joint)
 Application of)
 4)
 PUGET HOLDINGS LLC AND) DOCKET NO. U-072375
 5 PUGET SOUND ENERGY, INC.) Volume V
) Pages 364 - 397
 6 For an Order Authorizing)
 Proposed Transaction.)
 7 -----

8 A prehearing conference in the above matter
 9 was held on July 25, 2008, at 3:31 p.m., at 1300
 10 South Evergreen Park Drive Southwest, Olympia,
 11 Washington, before Administrative Law Judge DENNIS
 12 MOSS.

13 The parties were present as follows:

14 WASHINGTON UTILITIES AND TRANSPORTATION
 15 COMMISSION, by DONALD T. TROTTER, Assistant Attorney
 General, 1400 South Evergreen Park Drive Southwest,
 16 Post Office Box 40128, Olympia, Washington 98504;
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17 PUGET SOUND ENERGY, INC., by SHEREE STROM
 18 CARSON (via bridge line), Attorney at Law, Perkins
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 19 Bellevue, Washington 98004-5579; telephone, (425)
 635-1422.

20 PUBLIC COUNSEL, by SIMON J. FFITCH, Assistant
 21 Attorney General, 800 Fifth Avenue, Suite 2000,
 Seattle, Washington 98104; telephone, (206) 389-2055.

22 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
 23 by IRION A. SANGER (via bridge line), Attorney at Law,
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25 Kathryn T. Wilson, CCR, Court Reporter

0365

1 THE ENERGY PROJECT, by RONALD L. ROSEMAN (via
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2 Seattle, Washington 98112; telephone, (206) 324-8792.

3 NORTHWEST INDUSTRIAL GAS USERS, by CHAD M.
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7 South, Suite 305, Seattle, Washington 98104;
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1 P R O C E E D I N G S

2 JUDGE MOSS: Good afternoon, everyone. My
3 name is Dennis Moss. I'm an administrative law judge
4 for the Washington Utilities and Transportation
5 Commission. We are convened this afternoon for
6 purposes of a prehearing conference in the matter of
7 the joint application of Puget Holdings, LLC, and Puget
8 Sound Energy, Inc., for an order authorizing proposed
9 transaction, Docket NO. U-072375. This case has
10 commonly been referred to as the PSE sale or transfer
11 of property or merger case.

12 We have been presented at the Commission with
13 what we call a multiparty settlement. That is to say,
14 many of the parties but not all of the parties in the
15 case have agreed to a proposed resolution of the
16 issues. This is not a full settlement. Mr. ffitch
17 representing the Public Counsel is here today to
18 represent his office in opposition. Our purpose in
19 being here today is to determine the process and a
20 procedural schedule by which the Commission will
21 consider the proposed settlement as a potential
22 resolution of the case.

23 The first order of business today is to take
24 the appearances of counsel, and I will start with the
25 Company, Ms. Carson, just the brief form, please.

0367

1 MS. STROM-CARSON: This is Sheree
2 Strom-Carson representing the joint applicants, Puget
3 Sound Energy and Puget Holdings.

4 JUDGE MOSS: We will take those in the room
5 first and then I will return to the conference bridge
6 line for those that wish to enter an appearance.
7 Mr. ffitch?

8 MR. FFITCH: Thank you, Your Honor. Simon
9 ffitch, assistant attorney general for the Public
10 Counsel office.

11 MR. TROTTER: Donald T. Trotter, assistant
12 attorney general for Commission staff.

13 JUDGE MOSS: Are there persons on the
14 conference bridge line who wish to enter an appearance?
15 For Industrial Customers of Northwest Utilities?

16 MR. SANGER: This is Irion Sanger for the
17 Industrial Customers of Northwest Utilities.

18 JUDGE MOSS: How about for the Northwest
19 Industrial Gas Users?

20 MR. STOKES: Chad Stokes for the Northwest
21 Industrial Gas Users.

22 JUDGE MOSS: Kroger Company?

23 MR. BOEHM: This is Kurt Boehm for Kroger.

24 JUDGE MOSS: Cogeneration Coalition?
25 Apparently not. My mind is failing. Anyone else?

1 MR. JOHNSON: This is David Johnson
2 representing the Northwest Energy Coalition.

3 JUDGE MOSS: How about The Energy Project?

4 MR. ROSEMAN: This is Ronald Roseman
5 representing The Energy Project.

6 JUDGE MOSS: Anyone else? Apparently not.
7 Thank you all very much for being present today. As I
8 mentioned, our goal today is to talk about and
9 determine process and a procedural schedule. Shortly
10 before I came down this afternoon at three o'clock, I
11 received by e-mail a suggestion from Public Counsel
12 regarding procedural dates and also including some
13 process suggestions.

14 I also received such a document, the document
15 is actually prepared by, it looks like, Mr. Trotter for
16 Commission staff and Ms. Carson for the Company, so
17 those are the three parties who have given me something
18 in writing in terms of proposed process and procedural
19 schedule. They are, of course, different as one might
20 expect.

21 I have used those as a starting point. I
22 have had an opportunity this afternoon and indeed have
23 spent a good bit of time working internally considering
24 the schedule of business on the Commission's books at
25 this point in time, considering particularly the

0369

1 commissioners' schedules, and to a lesser degree my
2 own, and resolving all of these matters, I have a
3 schedule that I want to talk to you about, and we will
4 fix some exact dates depending on some of our
5 conversation here today.

6 First, however, I want to talk a little bit
7 about the process. The settlement stipulation was
8 filed several days ago. One of the requirements under
9 the Commission's procedural rules is that there be
10 testimony or some sort of supporting statement to
11 accompany a settlement stipulation such as this, and
12 that is contemplated. The parties who filed this
13 settlement stipulation jointly indicated at the time of
14 their filing that they would be filing, I believe it
15 will be in the form of testimony, and I now understand
16 that that will be no later than July 29th, 2008.

17 Mr. Trotter, is that correct?

18 MR. TROTTER: That's my understanding, Your
19 Honor.

20 JUDGE MOSS: Ms. Carson?

21 MS. STROM-CARSON: That's correct. Our goal
22 has been to get it completed today, but we are still
23 working on it, so we should definitely have it by the
24 29th.

25 JUDGE MOSS: Ms. Carson, is this going to be

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1 a joint submission by a number of witnesses who would
2 appear as a panel, or will there be individual
3 testimony? What is contemplated?

4 MS. CARSON: Contemplated that it will be
5 joint testimony. Perhaps one party wants to have
6 separate testimony. We haven't totally resolved that
7 issue yet, but we do anticipate having a settlement
8 panel at the hearing.

9 JUDGE MOSS: So there will be a settlement
10 panel and perhaps one additional witness; is that
11 correct?

12 MS. CARSON: That's correct. I think that
13 witness will be a part of the panel. The question is
14 will that witness file separate testimony or include it
15 with the panel's testimony.

16 JUDGE MOSS: Well, I don't see a particular
17 problem with that one way or the other, and you've
18 identified in your letter to me, you and Mr. Trotter
19 have identified to me the makeup of that panel, and I
20 don't think I really need to read that into the record
21 today.

22 So we can expect to have that, let's say, by
23 close of business on July 29th to cover that
24 eventuality. Now, Public Counsel will wish to file
25 testimony in response to that; is that correct

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1 Mr. ffitch?

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

3 JUDGE MOSS: Do you have any expectations
4 there in terms of witnesses, Mr. ffitch, one, more?

5 MR. FFITCH: In terms of the number of
6 witnesses filing a written piece of testimony?

7 JUDGE MOSS: Yes.

8 MR. FFITCH: One witness, Your Honor,
9 Mr. Steve Hill. That is my current expectation. We
10 have not seen the July 29th filing, so I guess I would
11 reserve the right to modify that if we needed to, but
12 we only have two witnesses in the case, and we would
13 expect that Mr. Hill would address the issues in the
14 settlement.

15 JUDGE MOSS: Acknowledging your point,
16 Mr. ffitch, that you have not yet seen whatever the
17 settling parties will file, and acknowledging also the
18 point that I think both of you have made to me in
19 informal discussions concerning process matters and
20 also is reiterated in the letter from the Company and
21 Commission staff today, this is an important case.
22 It's a case in which the priority of the parties as
23 well as the Commission is to make as informed a
24 decision as possible and have as full and complete a
25 record as possible, and so in looking at your schedules

0372

1 today, the paramount interest that has been on my mind
2 is to insure that everybody has adequate time to
3 prepare and do the best possible job.

4 So while you, Mr. Ffitch, I believe suggested
5 August 6th as the date for your response testimony,
6 another proposal was for August 8th. My first
7 inclination is to just go ahead with the August 8th day
8 to give you those extra couple days, but I need to tell
9 you all another piece of information first before we
10 set dates, and that is a very critical date here from
11 the Commission's perspective because it affects our
12 calendars is the date for the hearings. Of course, we
13 have to have all the commissioners present for that.

14 The parties had suggested a couple of
15 options, and Mr. Ffitch, you had suggested that we have
16 this more or less coincident with the planned hearings
17 for the pending general rate case or around there,
18 September 4th and 5th. The other recommendation was
19 for the week of August 8th. In considering those --

20 MR. TROTTER: I think that was September 8th.

21 JUDGE MOSS: Yes. In considering those and
22 considering also the possibility of the general rate
23 case, which at this juncture, as far as the Commission
24 is concerned, remains a fully contested case, and
25 considering also that these cases are both very

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1 significant, have very expansive records, many
2 witnesses in both, I just think it would be a mistake
3 to try to do that at the same time as a general rate
4 case. The week of August 8th also is not entirely
5 convenient for the Commission given other business and
6 scheduling matters.

7 So what I want to do is to set September 15th
8 through 17 as the three days for hearing. Mr. ffitch,
9 you've indicated two-and-a-half to three days, so
10 that's why I'm using three days, and I think that will
11 be adequate based on your cross-examination estimates.
12 So that's pushing things back a week from one week from
13 the proposal that Staff and the Company made. This
14 allows a little more flexibility in terms of the
15 intervening dates, and that's why I stopped there.

16 Mr. ffitch, you may want yet a little
17 additional time for that response testimony, and so
18 what I see here is a week's worth of flexibility if you
19 wish to have it. If you want me to set, say, the 8th,
20 I'll do that, but I'm willing to give you a few more
21 days if you wish. The 8th is a Friday.

22 MR. FFITCH: Your Honor, would you like to
23 hear from me at this point?

24 JUDGE MOSS: Yes. I want to know what your
25 preference is.

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1 MR. FFITCH: The fundamental problem we have,
2 I did talk in detail with our witness, Steve Hill,
3 about September dates in anticipating this discussion,
4 and he is not available at all the week of the 15th for
5 us, and that's just a serious problem that we would
6 face with this schedule. So that's really the key
7 issue for us.

8 I think the rebuttal or the response date of
9 the 8th would work fine, and that is why we tried to
10 look at the date of Labor Day week realizing that there
11 is a problem there with the rate case. The week of the
12 8th is problematical but not impossible for Mr. Hill.
13 He has a hearing in Wisconsin at the end of the week,
14 so again, we were thinking if we started at the end of
15 the preceding week and maybe finished up on the 8th or
16 9th, that might work.

17 Just to get it all out there, the other issue
18 we have with the week of the 8th is that our testimony
19 in the Avista rate case is due on the 12th, so what we
20 would probably do if it were going to go the week of
21 the 8th is ask for a short extension of time on that
22 into the following weeks. It's very difficult to get
23 testimony prepared and filed if we are also having an
24 evidentiary hearing earlier in the week, so if we can
25 slip the Avista date into the middle of next week, that

0375

1 would work for us. I understand that week is not good
2 for the Commission.

3 Looking at the week of the rate case, the
4 cost of capital week, the reason we came onto that is
5 Mr. Hill will be here in any event; that we have
6 hearing dates scheduled that week in any event. We
7 might be able to confer amongst the parties and really
8 cut down on our cross for those witnesses. I haven't
9 even talked to counsel about this, but I don't know how
10 much cross we are going to actually have with
11 Dr. Moore.

12 It's not ideal because we will be kind of
13 piggybacking on a big case hearing anyway and sort of
14 continuing on. It makes a very lengthy hearing to
15 continue on after the previous week, but our thinking
16 was that maybe the cost-of-capital hearings would not
17 be so extended, or the parties could work to trim them
18 down and free up some time in that week.

19 MR. TROTTER: When Mr. ffitch circulated the
20 schedule, this is the first time we had seen it. We
21 had been discussing other schedules with him in earnest
22 before this one, so this is the first we saw of it. So
23 I contacted our consultant, Mr. Horton, and he will be
24 on the east coast through September 6th, so he would
25 not be able to be here. I don't know what the nature

0376

1 of Mr. Hill's conflict is the week of the 15th. My
2 witnesses conflict is a vacation. We tried throughout
3 this process to accommodate other parties in that
4 regard. If pressed, we could try to see what we could
5 do about a telephone hookup, but perhaps we could have
6 a better understanding of the issue.

7 JUDGE MOSS: Mr. Horton was your panel
8 witness?

9 MR. TROTTER: That's correct.

10 MR. FFITCH: Your Honor, I recall that
11 Mr. Hill stated to me categorically that that week of
12 the 15th was not available. We are trying to be
13 flexible here and look at possible dates, and I would
14 say the week of the 8th is in that category, not
15 desirable but not impossible. I could call him if you
16 like and explore that week of the 15th again.

17 JUDGE MOSS: Why don't you do that,
18 Mr. ffitch, and see if any one of those days, and at
19 this juncture, the parties have indicated they have no
20 cross-examination for Mr. Hill. When he files
21 testimony and response to the settlement stipulation,
22 that may change, so we have another factor of
23 uncertainty to deal with there.

24 MR. FFITCH: I'm going to want him assisting
25 me in the hearing.

0377

1 MR. TROTTER: We would also appreciate the
2 opportunity to call our expert regarding that week. I
3 asked him about the prior weeks but not that week.

4 JUDGE MOSS: Meaning the week of the 15th?

5 MR. TROTTER: Correct. I have his cell phone
6 number. I can do that very quickly.

7 JUDGE MOSS: We'll plan on a five-minute
8 recess. Let's be off the record.

9 (Recess.)

10 JUDGE MOSS: We've had some off-the-record
11 discussion, and we haven't reach a definite
12 understanding of whether Mr. Hill might be available
13 the week of the 15th or Mr. Horton might be available
14 that same week; although preliminary indications for
15 Mr. Horton appear to be positive.

16 In any event. What point shall I make here?
17 We have Mr. Parvinen present, but we do not have
18 Mr. Cedarbaum present. He represents the Commission
19 staff in the general rate proceeding. The Company is
20 present. Mr. ffitich is present. I can't get an
21 answer, nor shall I ask for an answer, and it's pretty
22 clear to me at this point that we are not going to be
23 able to set this date definitively today for these
24 hearings.

25 That being the case, I just want to throw out

0378

1 the suggestion that while we would miss the repartee of
2 cross-examination of four experts in the area of cost
3 of capital in the rate case, were the parties, as they
4 sometimes do, to decide they don't really need to
5 cross-examine each other's experts on that particular
6 highly technical area, then that would open up some
7 time that would be available for other business, but in
8 the absence of that, I think that week remains very
9 problematic from my perspective in terms of scheduling
10 witnesses.

11 Another possibility that occurs to me, and
12 I'm going to leave it to the parties to discuss this
13 among themselves and I'm going to get back with you
14 again on Monday. Another possibility is that we could
15 take Mr. Hill out of order and perhaps schedule him in
16 during that week in September. I don't want to try to
17 do more business than that unless the time opens up as
18 I suggested it might.

19 MR. FFITCH: Your Honor, do you mean to take
20 his cross-examination on the sale case?

21 JUDGE MOSS: Yes. I'm just suggesting
22 alternatives. I'm not advocating any particular course
23 of action. I just want you all to discuss this among
24 yourselves. It's clear to me I can't set this today.
25 I'm not going to sit here waiting for people to become

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1 available.

2 So what we will do is set as many dates as we
3 can. I will have a conference with you all on Monday
4 by telephone, I imagine. We will just do it off the
5 record. We'll see if we can set something.

6 MR. STOKES: This is Chad Stokes. I have one
7 more conflict to note. If the hearings are to be held
8 the weeks of the 15th, Paula Pyron is scheduled to be a
9 witness on the panel and is only available on the 15th
10 and would not be able to testify on either the 16th or
11 the 17th.

12 JUDGE MOSS: My understanding is the
13 preference of everyone is we have the panel first, and
14 heads are acknowledging that I have the correct
15 understanding there, so that won't be a problem.

16 MR. STOKES: Okay, great. Thank you.

17 JUDGE MOSS: So I've said my peace on that.
18 Let's go ahead and set these other dates. I think we
19 can do that.

20 MR. FFITCH: I will just say in aid of that,
21 we've been considering the idea of how much or whether
22 we need cross-examination of Dr. Moore, so we are
23 prepared to have that conversation.

24 JUDGE MOSS: We've all done this enough times
25 that I didn't hesitate to make the suggestion that that

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1 is one possible outcome. I've seen it happen in a
2 number of rate cases.

3 MR. TROTTER: Staff is at a bit of a
4 disadvantage regarding that because Mr. Cedarbaum is
5 out of state for another week, but we will do what we
6 can to get an answer.

7 JUDGE MOSS: I acknowledge the fact that
8 Mr. Cedarbaum is not here and needs to be consulted on
9 this as well, so I would certainly not be suggesting
10 anything in the way of advocating the outcome or asking
11 that you give me a definitive answer today. I
12 understand that.

13 MR. FFITCH: One factual question, in terms
14 of the commissioner availability that week, are all the
15 days except for Labor Day available?

16 JUDGE MOSS: I think so. We've already
17 scheduled two of the four days for hearing. I think I
18 can make that happen.

19 MR. TROTTER: Just to reiterate, our expert
20 is on the east coast that week.

21 JUDGE MOSS: You would want him present?

22 MR. TROTTER: That would be our preference.
23 If that's the week, then we need to hear what
24 Mr. Hill's issues are as well.

25 JUDGE MOSS: Well, I may even go so far as to

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1 say we may have to maintain a little flexibility until
2 right after hearing time. Schedules change; things
3 change. So we maintain some flexibility there and be
4 able to fit something in, in other words, if something
5 changes.

6 But let's go ahead and set some dates for
7 prefiled testimony on the settlement stipulations. We
8 have the July 29th date already established as the
9 deadline by which the settling parties will file their
10 testimony and support. Mr. ffitch, August 8th?

11 MR. FFITCH: That's fine, Your Honor. Thank
12 you.

13 JUDGE MOSS: We will set that for the date
14 for your response, and then rebuttal, I believe the
15 Company and Staff had suggested August 22nd. Would
16 that still suit you, or would you prefer another day or
17 so? You suggested the 8th, so I guess you don't need
18 to suggest anything else, do you? August 22nd would be
19 the date. This is your schedule, in other words.

20 MR. TROTTER: That's correct, Your Honor.

21 JUDGE MOSS: So August 22nd for the rebuttal,
22 and then as we've been discussing at some considerable
23 length, the hearings we are unable to set today because
24 of the reasons we've discussed, and we will have a
25 conference on Monday. Is there a time, morning or

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1 afternoon? What suits you all better in terms of the
2 parties on Monday? I have an obligation beginning at
3 3:30.

4 MR. TROTTER: I suggest 1:30, Your Honor.

5 MR. FFITCH: That would allow more time.

6 JUDGE MOSS: Does anybody have a party
7 problem with 1:30 on Monday?

8 MS. STROM-CARSON: It does work for the joint
9 applicants.

10 MR. STOKES: Can we schedule for two?

11 JUDGE MOSS: Two o'clock.

12 MR. STOKES: Thank you.

13 MR. JOHNSON: Two o'clock is fine.

14 MR. ROSEMAN: That's fine with me also.

15 JUDGE MOSS: Two o'clock it is. Two o'clock
16 Monday I'll expect to hear from you all. You all set
17 that up and call me, okay? You can decide among
18 yourselves who is going to take the laboring oar.

19 MR. TROTTER: That's acceptable, Your Honor.

20 JUDGE MOSS: All right. Now the proposal
21 that we have here before us suggests that just looking
22 here first of all at the Company, Staff proposal, if we
23 were looking at a hearing September 8th through 10th,
24 you were suggesting briefs on September 25th.

25 I want to note a couple of things in regard

0383

1 to that. One is the briefs in the general rate case
2 are due on the 24th. I presume you all had that in
3 mind when you suggested this date. It surprised me
4 that you would want to do both on the same day or close
5 in proximity, one day apart. I don't have any problem
6 with that if that's what you all want to do, but in any
7 event, what I'm looking at right now is intervals, so
8 if we did have the hearing 8, 9, 10, let's say, as
9 suggested, that would mean even if you order expedited
10 transcript; that is to say, daily transcript, you would
11 not have the file transcript until the 15th of
12 September, so cuing off of that, you are asking for ten
13 days, basically, once you have the full record, for
14 briefs. Is that what you are asking for, Mr. Trotter?

15 MR. TROTTER: That's what the schedule
16 contemplates, Your Honor.

17 JUDGE MOSS: Ms. Carson, is that enough time?

18 MS. STROM-CARSON: Looking a little closer at
19 the schedule and the point that you've made, it might
20 be helpful to have a few more days and to have it
21 spread out a little bit for GRC briefs. I'm wondering
22 about September 29th?

23 JUDGE MOSS: I have jotted down as a note
24 here that if we were going to do the hearing 8, 9, and
25 10, then briefs on the 30th would be a good idea.

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1 Therefore, you would avoid having to file on a Monday,
2 which can be problematic, and that would give you a few
3 extra days after the general rate case briefs, and then
4 on the other hand, if we are able to have the hearing
5 15, 16, 17, then we would just slip that by one week
6 and have the briefs, say, on the 7th of October.

7 So that's the sort of thing I'm looking at.

8 I suppose we will just go and set that date when we set
9 the hearing dates, but my major concern is you
10 basically need, I think, a minimum of ten days, and
11 considering the proximity to the GRC briefing date, if
12 it's going to be the earlier hearing, then we will want
13 to slip that by a few days in any event. Does that
14 sound reasonable to everybody?

15 MR. FFITCH: Yes, Your Honor. For Public
16 Counsel, we think the 30th, as you suggested, is a good
17 date if we have the earlier hearing setting.

18 JUDGE MOSS: If we had the later hearings, we
19 could slip it to the 3rd, maybe, or do you want to slip
20 it into that following week? I guess we can decide
21 that at the time we set the hearing.

22 MS. CARSON: I think the 3rd would work.

23 JUDGE MOSS: You all think about that. We
24 will reserve setting that final date until we have more
25 discussion next week about the hearing. We will decide

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1 both of those dates, hopefully, on Monday, because as
2 you all know from my informal communication with you
3 this morning as well as the notice that I entered later
4 today that canceled our hearings next week and
5 suspended the procedural schedule, I do -- of course,
6 the Commission does have a strong interest in there
7 being adequate public notice of everything. This
8 particular proceeding has attracted a lot of public
9 attention, and while we are sensitive to that in all
10 cases, we perhaps need to be more sensitive in this
11 case given the widespread public interest, but whatever
12 hearing dates we select, we will now have adequate time
13 for giving good notice of the hearing dates.
14 Mr. ffitch, you had suggested in your materials that
15 you wanted to have another public comment hearing; is
16 that right?

17 MR. FFITCH: Yes, Your Honor. We note,
18 actually, that in the settlement to consideration rule,
19 that's called out as a possible option for the
20 Commission, and in light of the high level of public
21 interest and the number of comments that have been
22 received, we thought it would be appropriate to
23 schedule an opportunity for that to occur here in
24 Olympia in an evening time slot after we had had the
25 cross-examination hearings. Whatever time the

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1 Commission would order.

2 JUDGE MOSS: I'll take that up internally and
3 we will see how that -- I don't have an answer for you
4 today. I'll raise the question.

5 MR. FFITCH: I was just going to add that we
6 sort of in connection with that would request an
7 extension of time for the public to file written
8 comments. I think that's sort of logical right now.
9 The cutoff is around the time of the current set
10 hearings. I believe the cutoff was next week, and so
11 we would just ask that it be extended coincident with
12 whenever the hearings are set.

13 JUDGE MOSS: Did we establish a firm cutoff
14 date for that? I usually just make that coincide with
15 the closing of the record.

16 MR. FFITCH: In this case, I believe at the
17 public comment hearings, there was a statement made on
18 the record that there was a particular cutoff date.

19 JUDGE MOSS: We'll amend that.

20 MR. TROTTER: Your Honor, I contacted the
21 Commission's consumer affairs section today about this
22 issue, and there has been very little public comment on
23 the proposed settlement so far. Their recommendation
24 was that the extension of the comment period was
25 sufficient, but obviously, the Commission can make that

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1 decision for itself whether an additional live hearing
2 is appropriate.

3 JUDGE MOSS: You are suggesting because there
4 has been little comment to date from the public that
5 there may be no need for another open session?

6 MR. TROTTER: That's what I was told.

7 JUDGE MOSS: I will take that up with them,
8 and I probably will extend the date for comment until
9 the close of the record.

10 MR. FFITCH: Thank you, Your Honor.

11 JUDGE MOSS: I believe that brings everything
12 I had noted on my agenda to completion. Do the parties
13 have any other business they want me to take up today?

14 MR. TROTTER: Just one, Your Honor, and
15 that's in terms of, and I don't think it can be
16 resolved today, but we wanted to get a discussion on
17 what Public Counsel's witnesses other than Mr. Hill and
18 other than the panel, what he has in mind regarding
19 that.

20 JUDGE MOSS: Is the question whether he
21 intends to put on Ms. Alexander?

22 MR. TROTTER: No. It's my understanding that
23 he intended to call several witnesses, a couple of
24 which may be on the panel, many of which are not, and
25 that's maybe an issue that ought to be aired to the

0388

1 extent we can today.

2 JUDGE MOSS: Okay.

3 MR. TROTTER: I also just received a note
4 that Mr. Horton is available the 15th.

5 JUDGE MOSS: Very good.

6 MS. CARSON: If I might add something to what
7 Mr. Trotter just said, yes, we have made an attempt.
8 We know that there are certain witnesses that
9 Mr. ffitch is very interested in cross-examining, and
10 of course, our position is that what is before the
11 Commission at this point in time is the settlement, and
12 the parties' litigation positions are not maybe before
13 the Commission.

14 If for some reason the settlement is not
15 approved, then the parties would go back to their
16 litigation position, but we understand that Mr. ffitch
17 has certain witnesses that he's interested in
18 cross-examining; in particular, a few that he has
19 extensive, so we made an attempt to put those witnesses
20 on the panel so he would have an opportunity to
21 cross-examine them on the panel.

22 JUDGE MOSS: Let me say that the response to
23 you from the Bench's perspective, Ms. Carson, is yes
24 and no. This is indeed a hearing on the settlement
25 stipulation. Having said that, it's my understanding

0389

1 that the settling parties wish to stipulate into the
2 record all of their prefiled testimonies and exhibits.

3 I also understand from having spent quite a
4 bit of time reviewing all of this material that many of
5 the commitments that are being made as part of the
6 settlement stipulation are commitments previously
7 offered by the Company both in its direct testimony and
8 its rebuttal testimony, and to the extent that
9 testimony bears on those commitments, certainly it is
10 relevant, and Mr. ffitch should have an opportunity to
11 examine witnesses insofar as it bears on those points
12 that are part of the settlement proposal.

13 Yes, it is true that the witnesses and the
14 parties, I should say, litigation positions to the
15 extent those are different from what they are putting
16 forth as a proposed resolution in terms of the
17 settlement stipulations, no that is not before us, and
18 I'm sure Mr. ffitch is aware of that. We've been down
19 this path many times. He's seen me cut off lines of
20 cross-examination that have drifted too far into the
21 direction of exploring litigation positions when it's
22 not appropriate to do so, and I'm sure he will govern
23 himself accordingly in this proceeding as other parties
24 will with respect to, for example, cross-examination of
25 Mr. Hill, if they undertake it.

0390

1 Another part of the yes and no is, of course,
2 Mr. Hill has testified to his litigation position,
3 which I assume he maintains. Public Counsel is
4 opposed, and so we will explore the dimensions of that
5 in the prefiled testimonies that we are going to
6 receive under the schedule that we've set today, but at
7 this juncture at least, it seems to me that we have to
8 give Mr. Ffitch the opportunity to cross-examine these
9 individual witnesses, and whether that's as they sit as
10 a panel and he cross-examines one of them for a period
11 of time or another, I don't know. I think I'll
12 probably not do it that way. I'll probably have those
13 witnesses sit individually and give him that
14 opportunity. Of course, you, and to the extent it's
15 another party's witness, that counsel will have the
16 opportunity for redirect and so forth, so follow the
17 usually course. This is a contested matter. It is not
18 an all-party full settlement, so that's sort of the
19 nature of the matter as I see it.

20 Have I addressed, Mr. Trotter, what you had
21 concerns about, and Ms. Carson, you as well?

22 MR. TROTTER: I think that is helpful.
23 Perhaps Mr. Ffitch could help us by giving us his
24 witness list, at least as of today. That would be
25 useful.

0391

1 JUDGE MOSS: Mr. ffitch, you shared with me
2 some cross-examination estimates. Did you share that
3 with the other parties?

4 MR. FFITCH: We did yesterday.

5 JUDGE MOSS: So Mr. ffitch has already given
6 you his estimates of cross-examination time, which
7 identifies the witnesses he wishes to cross-examine.
8 We do need an order of presentation. In light of what
9 I've said, Mr. ffitch, I think you probably have the
10 information you need. I'll just go ahead and tell you
11 that we will do it individually, so you go ahead and
12 give me an order of presentation. We will take the
13 panel as a separate matter. To the extent there is
14 overlap, then we will hear from some of the witnesses
15 more than once, and then, of course, all witnesses
16 appear subject to recall, and so we will maintain our
17 flexibility as we always try to do so that everyone
18 will have the best opportunity to protect their rights
19 as they perceive them to be.

20 MR. FFITCH: Thank you, Your Honor.

21 MR. TROTTER: Your Honor, I did not interpret
22 Mr. ffitch's cross-estimates to be related to the
23 settlement process, so it sounds like he has confirmed
24 with us and you have understood that that's what it is,
25 so I'll look at it in this way.

0392

1 JUDGE MOSS: Those are your cross-estimates
2 for purposes of the settlement hearing, are they not?

3 MR. FFITCH: Yes.

4 MR. TROTTER: He filed a cross-list Wednesday
5 pursuant to the prehearing scheduling order, which was
6 for the merits underlying the case, so now I understand
7 what it is, so that helps. Thank you.

8 JUDGE MOSS: I think we are clear. Just to
9 make everyone clear, I have had off-the-record
10 conversations with a number of you, sometimes in groups
11 and sometimes individually, on procedural matters, as
12 is appropriate under the Commission's procedural rules
13 and consistent with the prohibition against ex parte,
14 so I may have had some conversation with Mr. ffitch
15 that you didn't know about, Mr. Trotter, and I can
16 understand how some confusion may have followed, but I
17 think we are clear now?

18 MR. TROTTER: I'm clear; thank you.

19 MR. FFITCH: Your Honor, this raises a point
20 that I was going to make a suggestion about. Obviously
21 now we were proceeding this week in anticipation
22 possibly of hearings next week. We may need a
23 prehearing conference on the order of witnesses, on the
24 exhibits, things like that when we get closer to the
25 actual hearing date to take another stab or read it

0393

1 where we are organizationally.

2 JUDGE MOSS: I will remain open to having
3 another prehearing conference if we need to have that.
4 It does raise a point in my mind, and I will share it
5 with all of you that to the extent you anticipate there
6 is going to be contentiousness regarding the
7 introduction of exhibits, that sort of thing, and in
8 fact, one issue that occurs to me is that you,
9 Mr. Ffitch, have identified that you wish to introduce
10 a couple of cross-exhibits that you've identified to
11 Mr. Storey and Mr. Gains who are not witnesses, nor are
12 they indicated to be witnesses. Those are both Company
13 personnel. You need to work with the Company to see if
14 they are just going to waive those in or have a fight
15 about it or subpoena these witnesses and see if that
16 works, all that sort of possibility. So I would like
17 you to work on that informally. I don't want to take
18 that up today.

19 Those sorts of questions though to the extent
20 you all recognize that you have some irreconcilable
21 differences concerning witnesses or testimony or
22 exhibits, other than objections that follow in the
23 ordinary course, but if there are going to be motions
24 to strike or that sort of thing, let's get that out and
25 over with before we start our live hearings. I don't

0394

1 want to spend a whole lot of time on that with the
2 commissioners sitting on the Bench. I can take care of
3 those things, and I have more flexibility in my
4 schedule than others may have, so we will be mindful of
5 my availability to resolve issues like that, and if we
6 need to have a prehearing conference, we will.

7 At this juncture, I have an exhibit list
8 under way. I'm open to the idea that there may be
9 additional cross-exhibits after we have this next round
10 of testimony, and so we will take that up as the need
11 presents itself.

12 MR. FFITCH: Thank you, Your Honor. We
13 obviously reserve the right to identify additional
14 cross-exhibits after we've seen the testimony, and
15 witnesses, and I just want to correct something, an
16 oversight on my part. We had also wanted to identify,
17 I believe it's the panelist Dr. Horton as a witness,
18 and we did not prepare a cross-estimate for him in what
19 we filed yesterday, but we are anticipating also having
20 some questions, I believe, it's either Mr. Horton or
21 the other staff expert. I've got to check.

22 JUDGE MOSS: That's Mr. Schmitt.

23 MR. FFITCH: That would be additional to what
24 we've identified. The other reason for bringing this
25 up is no cross was identified for either of our

0395

1 witnesses so far or any exhibits, and when we get
2 closer to the hearing, we think that it's fair that the
3 other parties be required to indicate whether they have
4 cross for Mr. Hill and what exhibits they would use.

5 JUDGE MOSS: I think it goes without saying
6 they know I expect that. I like to have these hearings
7 well organized when we go in, and I'm sure that the
8 Staff or any other party in the proceeding decides they
9 want to cross-examine Mr. Hill or Ms. Alexander, they
10 would let me know and all of us know and indicate how
11 much.

12 MR. FFITCH: We would like to have a date
13 established for that once the hearing dates are set.

14 JUDGE MOSS: Typically, I do that three
15 business days before the hearing.

16 MR. TROTTER: Your Honor, this is the first
17 time we've heard that Dr. Schmitt might be subject to
18 cross-examination, so I have not checked his
19 availability.

20 JUDGE MOSS: You all work on that and let
21 Mr. Trotter know at the earliest possible time.

22 MR. FFITCH: I will, Your Honor. We will
23 figure that out by Monday. In terms of the scope of
24 questioning, we do expect to ask questions regarding
25 direct and rebuttal testimony and the cross-exhibits

0396

1 that we've filed, and we believe that's relevant to the
2 question of approval of the settlement or rejection of
3 the settlement or modification of the settlement.

4 In that regard, we do expect to have some
5 examination of the witnesses that would go beyond just
6 specifically the stipulation, the set of commitments,
7 and the July 29th testimony. But again, we view that
8 as being germane to the ultimate question that's about
9 the question with the settlement.

10 JUDGE MOSS: Clearly, all counsel will have
11 the opportunity to object to any questions you may
12 pose, and a point that I was meaning to make and will
13 make is that this is a settlement that we are dealing
14 with here. It is by its nature a compromise. It has
15 in it the standard language concerning compromise and
16 the nature of that. There is no point in developing on
17 our record the obvious point that parties have deviated
18 in the settlement from their litigation position.
19 That's clear from the record as it stands.

20 So we don't need cross-examination to
21 emphasize that point. It's one we are fully aware of
22 going in. It's true in all settlements by the very
23 nature of the beast. Parties have compromised their
24 litigation positions, and it's not particularly weighty
25 to demonstrate that they have done so. They

0397

1 acknowledge that going in, so the fact that the witness
2 once said this and now has agreed to compromise his
3 point is not something that's worth a great deal of
4 development, and to the extent you want to develop
5 that, you can do it on brief. You've got the record.
6 You've got the original testimony. They've stipulated
7 it in, and if you want to argue on brief that they said
8 that then and now they've compromised, you can make
9 that argument, but we know that; okay?

10 MR. FFITCH: I understand your point, Your
11 Honor, and I simply respond that our general direction
12 in questioning will be to the analysis of the
13 fundamental structure and details of the transaction.

14 JUDGE MOSS: And how the settlement
15 stipulation purports to address that, that's what we
16 are interested in.

17 MR. FFITCH: Thank you, Your Honor.

18 JUDGE MOSS: Anything else from the parties?
19 Thank you all very much. I appreciate you being here
20 this afternoon, and I think we've had some useful
21 discussion. I will look forward to talking to you at
22 two o'clock Monday afternoon. We are off the record.

23 (Prehearing adjourned at 4:34 p.m.)

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