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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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FRONTIER COMMUNICATIONS)

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NORTHWEST, INC.,)

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Complainant,)

Docket No. UE-151344

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v.)

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PUGET SOUND ENERGY,)

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Respondent.)

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PREHEARING CONFERENCE, VOLUME I

12

Pages 1-16

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ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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2:35 p.m.

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August 12, 2015

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Washington Utilities and Transportation Commission

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1300 South Evergreen Park Drive Southwest

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Olympia, Washington 98504-7250

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REPORTED BY: ANITA W. SELF, RPR, CCR #3032

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1 A P P E A R A N C E S

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ADMINISTRATIVE LAW JUDGE:

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GREGORY J. KOPTA
Washington Utilities and
Transportation Commission
1300 So. Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504
(360) 664-1355
gkopta@utc.wa.gov

8

FOR WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION:

9

10 JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
11 DAVID GOMEZ
Assistant Power Supply Manager
12 1400 So. Evergreen Park Drive SW
P.O. Box 40128
13 Olympia, Washington 98504
(360) 664-1186
14 (360) 664-1240
jcameron@utc.wa.gov
15 dgomez@utc.wa.gov

16

FOR FRONTIER COMMUNICATIONS:

17

GEORGE BAKER THOMSON, JR.
Frontier Communications
18 1800 41st Street
19 Everett, Washington 98201
(425) 261-5844
20 george.thomson@ftr.com

21

ROMÁN D. HERNÁNDEZ
K&L Gates
22 One SW Columbia Street, Suite 1900
23 Portland, Oregon 97258
(503) 226-5776
roman.hernandez@klgates.com

24

25 (Continued...)

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1 FOR PUGET SOUND ENERGY:

2 JAMES WILLIAMS
3 Perkins Coie, LLP
4 1201 Third Avenue, Suite 4900
5 Seattle, Washington 98101
6 (206) 359-8000
7 jwilliams@perkinscoie.com

8 KAREN BLOOM (by phone)
9 Perkins Coie, LLP
10 1201 Third Avenue, Suite 4900
11 Seattle, Washington 98101
12 (206) 359-8000
13 kbloom@perkinscoie.com

14

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1 OLYMPIA, WASHINGTON, AUGUST 12, 2015

2 2:35 P.M.

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

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6 JUDGE KOPTA: All right. Let's be on the
7 record in Docket UE-151344, caption Frontier
8 Communications Northwest, Inc., versus Puget Sound
9 Energy.

10 We are here on August 12th, 2015, for a
11 prehearing conference.

12 My name is Gregory Kopta. I'm the
13 Administrative Law Judge who is presiding over this
14 proceeding.

15 And let's begin by taking appearances,
16 beginning with the Complainant.

17 MR. THOMSON: Thank you, your Honor.

18 Good afternoon. George Baker Thomson, I'm
19 an Associate General Counsel with Frontier
20 Communications. With me today is my co-counsel, Román
21 Hernández, from the firm of K&L Gates.

22 JUDGE KOPTA: Thank you.

23 And for the Respondent?

24 MR. WILLIAMS: Thank you, your Honor.

25 James Williams from Perkins Coie on behalf

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1 of Puget Sound Energy.

2 JUDGE KOPTA: And for Commission Staff?

3 MS. CAMERON-RULKOWSKI: Jennifer
4 Cameron-Rulkowski, Assistant Attorney General.

5 MR. WILLIAMS: I should also mention I have
6 a colleague, Karen Bloom, from Perkins Coie on the
7 phone.

8 JUDGE KOPTA: Okay.

9 Is there anyone else who wishes to make an
10 appearance?

11 Hearing none, Petitions to intervene: I
12 have not received anything, and since there's no one
13 else on the phone, I am going to presume that no one is
14 seeking to intervene, so that's not an issue.

15 Service: The Commission may decide to have
16 electronic service only. Would that be something that
17 the parties would agree to should the Commission decide
18 to do that?

19 MR. WILLIAMS: Yes.

20 MR. THOMSON: No objection from Frontier,
21 your Honor.

22 JUDGE KOPTA: Okay. Thank you.

23 MS. CAMERON-RULKOWSKI: And no objection
24 from Staff, but at this time I would like to remember --
25 to ask for courtesy service for our Admin Staff.

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1 JUDGE KOPTA: Well, and that was the other
2 issue about this.

3 If we continue with paper service, we only
4 serve a paper copy to one person for each party, but we
5 also have courtesy electronic service to others.

6 So if you could let me know who that person
7 is because, particularly for the Complainant and the
8 Respondent, you've listed more than one person. So if
9 you'd just let me know who that person is that would get
10 the paper copy for whatever we serve and, I'm assuming,
11 what others we'll serve as well, and then others would
12 just get the electronic copy, then that would help us.

13 Because as part of our -- part of the
14 prehearing conference order that I will order will have
15 a master service list that will identify who it is that
16 needs to receive the paper copy, and who else also gets
17 electronic copies.

18 So if Staff would make sure and provide us
19 with all of the people who they would like to have, and
20 as well as the other parties, in addition to anybody
21 else that you have already listed, then you certainly
22 may do that.

23 We try to get these out expeditiously, so if
24 I could -- either today before you leave, or send me an
25 e-mail with the parties or the individuals that you want

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1 to receive service, then that would help.

2 Discovery: The Commissions's discovery
3 rules are not generally available unless we make them
4 available.

5 Is discovery something that the parties
6 believe that they would like to have available?

7 MR. WILLIAMS: Yes, on behalf of PSE.

8 MR. THOMSON: Yes, your Honor.

9 JUDGE KOPTA: All right. Then the discovery
10 rules will be made available.

11 Protective order: Is there any indication
12 at this point that any of the information that will be
13 exchanged between the parties or filed with the
14 Commission is considered confidential?

15 MR. WILLIAMS: Yes, your Honor. At the
16 moment, in the Superior Court matter, the parties have a
17 discovery dispute over the production of documents that
18 PSE believes are important for establishing its case.

19 We met and conferred with opposing counsel
20 before this hearing and decided that we are at an
21 impasse, which means that PSE will need to file to
22 compel production of this information because Frontier
23 disagrees that it should be turned over. So either that
24 issue has to be dealt with by the Superior Court judge
25 or by the Commission.

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1 JUDGE KOPTA: Okay.

2 In this case, I'm referring to information
3 that is competitively sensitive. The Commission has a
4 standard order that we will enter if there's going to be
5 that kind of information that is at issue.

6 Do you anticipate that there's any
7 information that PSE would be providing that would be of
8 a competitively-sensitive nature?

9 MR. WILLIAMS: PSE isn't at issue. We
10 provided everything we had without a protective order
11 request.

12 Frontier is suggesting that there's
13 something sensitive or secretive about -- or
14 privacy-oriented about what we are asking.

15 JUDGE KOPTA: Okay.

16 MR. THOMSON: Your Honor, I'm not aware of
17 any competitively-sensitive information that we've
18 either sought or divulged in the Superior Court case.
19 And I find the potential remote in this particular
20 proceeding for that, so I don't see a need at this
21 point.

22 If it becomes apparent later, we'll
23 certainly move for a protective order at that time.

24 JUDGE KOPTA: Okay. That's acceptable.

25 We will -- I will not enter a protective

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1 order at this point, but leave open the possibility if,
2 down the road, it seems to be -- would help make sure
3 that we have the information that the Commission needs
4 to render a decision.

5 I think that leads us to scheduling. We had
6 a brief discussion off the record before we began.
7 There is still some disagreement in terms of what kind
8 of schedule we need to put together, so we will have
9 further discussions off the record and then come back
10 and memorialize them.

11 So at this point we will be off the record.

12 (Discussion off the record.)

13 JUDGE KOPTA: Let's be back on the record.

14 After having a very brief discussion off the
15 record, there are at least a couple of issues that seem
16 to be needing a resolution before the parties can
17 discuss scheduling.

18 And I believe the first one is the timing of
19 response to the Motion for Summary Determination that
20 Frontier has previously filed.

21 So Mr. Williams, I believe this is the issue
22 that you were discussing off the record, so if you'd
23 like to, on the record, now give us your position, and
24 that will help things along.

25 MR. WILLIAMS: Thank you, your Honor.

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1 time to look at it. This -- this -- this motion is --
2 has potential to dispose of the case, and so I'd like to
3 have a little more time to look at the whole case.

4 And I think that would -- given also that
5 it's my understanding that PSE will be filing a
6 Cross-Motion for Summary Determination, we're going to
7 then have a second round two. So this is -- this is
8 going to be the place where we do a lot of work on this
9 case.

10 And in addition, it so happens that I'm
11 going to be going on vacation, and I would appreciate a
12 little more time.

13 JUDGE KOPTA: All right.

14 From Frontier?

15 MR. THOMSON: Thank you, your Honor.

16 My client's position is that these cases,
17 although they involve the same facts and some of the
18 same tenets of law, are not connected except to the
19 extent that we've asked the Superior Court judge in King
20 County to dismiss or stay the case in favor of the
21 Commission's primary jurisdiction.

22 Because, perhaps -- especially because
23 Mr. Williams has indicated they intend to file a
24 cross-motion that's also a dispositive motion, we'd like
25 to adhere as much as we can to the procedural rules set

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1 out by the Commission for such responses. If we can get
2 that resolved, that's fine, but there's no connection
3 between the two motions.

4 And, you know, for a little bit more
5 illustration, PSE has had Frontier's motion in the
6 Superior Court proceeding for -- since the end of June,
7 I believe. And thus, it's -- it should be something
8 that they've been proceeding upon already.

9 I don't see a whole lot of linkage between
10 that, except to the extent that the work may largely
11 have been done already with regard to research. And it
12 seems to me they could file in a timely fashion in this
13 proceeding.

14 JUDGE KOPTA: Anything further,
15 Mr. Williams?

16 MR. WILLIAMS: Yes, your Honor.

17 There's no urgency here. There's no risk of
18 anybody losing anything if there's an extension granted.
19 All we're asking for is the time to finish what we need
20 to do in the Superior Court, which they started, so we
21 can pivot and turn our attention to the WUTC quickly and
22 in short order.

23 JUDGE KOPTA: All right.

24 It's a little unusual to file a Motion for
25 Summary Determination before we even have the prehearing

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1 conference, so I was a little surprised to receive that
2 motion, and it is a dispositive motion.

3 I think given that we are still in the early
4 stages of this proceeding, I don't really see any
5 prejudice to Frontier by giving PSE some additional
6 time, as well as Staff, to review the motion and to file
7 a response and any other motions that they may believe
8 are appropriate.

9 So I will -- under the Commission rules, we
10 are authorized to set a different date than the default
11 date that's in our rules, so I will exercise that
12 discretion and allow PSE to have until September 18th to
13 file its response, as well as Staff, should it choose to
14 do so.

15 At this point, I won't make any
16 determination in terms of when anybody else needs to
17 file a motion, whatever motion it is. I will leave that
18 to your discretion to decide when that's appropriate,
19 and we will take them up as that happens or doesn't.

20 So with that, I understand that that was one
21 of the road blocks to setting up any further procedural
22 deadlines, and if that is all that we need to resolve at
23 this point, then we can go off the record again and
24 allow the parties to just come up with appropriate dates
25 for testimony and hearing, if that's the way they feel

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1 is the best way to try and resolve this case.

2 All right. Then we will be off the record.

3 Thank you.

4 (Discussion off the record.)

5 JUDGE KOPTA: Let's be back on the record.

6 The parties have had a discussion about
7 scheduling and have proposed the following:

8 Simultaneous direct testimony on
9 November 16th;

10 Simultaneous response testimony on
11 December 16th;

12 Simultaneous rebuttal testimony on
13 January 18th;

14 Cross-examination exhibits will be filed on
15 Friday, January 19th;

16 And we will schedule two days for hearing on
17 February 23rd and 24th, and hold in abeyance for the
18 moment the date for post-hearing briefing.

19 Is that correct?

20 MR. THOMSON: Your Honor, I think you
21 misspoke on the cross-filing of the exhibits date. I
22 believe that's February 19th.

23 JUDGE KOPTA: If I didn't say February 19th,
24 that's what I meant to say. February 19th, the Friday
25 before the hearing.

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1 MR. THOMSON: And I believe I wrote down
2 January 19th for rebuttal, because we may have had a
3 conflict with Martin Luther King Day.

4 MS. CAMERON-RULKOWSKI: I have January 19th.

5 JUDGE KOPTA: As the date for filing? What
6 day of the week is that?

7 MS. CAMERON-RULKOWSKI: That would be a --

8 MR. WILLIAMS: Tuesday.

9 MS. CAMERON-RULKOWSKI: Tuesday. Tuesday,
10 January 19th.

11 JUDGE KOPTA: All right.

12 Then we will change that to Tuesday,
13 January 19th, and then the cross-exhibits will be one
14 month later on February 19th.

15 All right. Thank you for the correction.

16 And if we have nothing further, then we are
17 adjourned. Thank you.

18 MR. THOMSON: Thank you, your Honor.

19 MR. WILLIAMS: Thank you, your Honor.

20 MS. CAMERON-RULKOWSKI: Thank you,
21 your Honor.

22 (Hearing concluded at 3:03 p.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON)

) ss.

4 COUNTY OF KING)

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7 I, ANITA W. SELF, a Certified Shorthand Reporter
8 in and for the State of Washington, do hereby certify
9 that the foregoing transcript is true and accurate to
10 the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 and seal this 19th of August, 2015.

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ANITA W. SELF, RPR, CCR #3032

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