

**Docket No. UE-151344 - Vol. I**

**Frontier Communications Northwest, Inc. v. Puget  
Sound Energy**

**August 12, 2015**

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

FRONTIER COMMUNICATIONS )
NORTHWEST, INC., )
Complainant, ) Docket No. UE-151344
v. )
PUGET SOUND ENERGY, )
Respondent. )

PREHEARING CONFERENCE, VOLUME I

Pages 1-16

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

2:35 p.m.

August 12, 2015

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

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

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(Continued...)

1 OLYMPIA, WASHINGTON, AUGUST 12, 2015
2 2:35 P.M.

3 -oOo-
4 PROCEEDINGS

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

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

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

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

16 MR. THOMSON: Thank you, your Honor.

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

21 JUDGE KOPTA: Thank you.

22 And for the Respondent?

23 MR. WILLIAMS: Thank you, your Honor.

24 James Williams from Perkins Coie on behalf
25

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.

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.

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

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

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.

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

1 PSE is requesting an extension of time until  
2 September 18th in order to file its Opposition and  
3 Cross-Motion for Summary Determination.

4 We ask for that because Frontier has pending  
5 in the King County Superior Court right now a motion to  
6 dismiss PSE's complaint that was filed in that court.

7 We -- PSE is in the process now of drafting  
8 and developing opposition materials that will be  
9 submitted to that court for determination, and our  
10 preference is not to have to fight and file  
11 simultaneously in two separate courts at the same time.

12 So the purpose of the extension would be to  
13 allow us to finish our work before the Superior Court,  
14 and to allow us sufficient time to pivot and turn our  
15 attention to responding to the Motion for Summary  
16 Determination in this case.

17 JUDGE KOPTA: All right.

18 And as I understand the Staff, you are  
19 supportive of that request?

20 MS. CAMERON-RULKOWSKI: Your Honor, Staff  
21 would support having a little more time to look at this.  
22 I don't know that Staff will be taking a position in  
23 this -- in this matter, or how Staff will be  
24 participating.

25 I would appreciate to have a little more

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

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

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.)  
 23  
 24 --oOo--  
 25

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.

1 CERTIFICATE  
 2  
 3 STATE OF WASHINGTON )  
 4 ) ss.  
 5 COUNTY OF KING )  
 6  
 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.  
 13  
 14  
 15  
 16 ANITA W. SELF, RPR, CCR #3032  
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