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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

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Complainant,)

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vs.) Docket UG-110723

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) Pages 1-21

PUGET SOUND ENERGY, INC.,)

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Respondent.)

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PREHEARING CONFERENCE, VOLUME I

11

Pages 1-21

12

ADMINISTRATIVE LAW JUDGE KOPTA

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1:40 P.M.

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AUGUST 19, 2011

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Washington Utilities and Transportation Commission
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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

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OLYMPIA, WASHINGTON, AUGUST 19, 2011

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1:40 P.M.

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P R O C E E D I N G S

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JUDGE KOPTA: Then let's be on the record in Docket UG-110723, which is entitled "Washington Utilities and Transportation Commission versus Puget Sound Energy, Inc."

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My name is Gregory J. Kopta, Administrative Law Judge, presiding in this proceeding. It is Friday, August 19th, at approximately 1:40 in the afternoon, and we are here for a prehearing conference.

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I will first take appearances of the parties starting with Puget Sound Energy.

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MS. CARSON: Thank you, Your Honor. Sheree Strom Carson with Perkins Coie, representing Puget Sound Energy. My address: 10885 Northeast Fourth Street, Suite 700, Bellevue, Washington 98004. Phone is 425.635.1422, and fax is 425.635.2422. And my e-mail address: scarson@perkinscoie.com.

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MR. STOKES: Good afternoon. Chad Stokes for the Northwest Industrial Gas Users with the Cable Huston law firm. The address is 1001 Southwest Fifth Avenue, Suite 2000, Portland, Oregon 97204. My phone number is 503.224.3092. The fax number is 503.224.3176.

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Also appearing with me will be Tommy Brooks. His

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1 information is the same, except his e-mail is tbrooks --
2 b-r-o-o-k-s -- @cablehuston -- c-a-b-l-e, Huston, h-u-s-t-o-n,
3 dotcom. And my e-mail address is cstokes -- s-t-o-k-e-s --
4 @cablehuston.com.

5 JUDGE KOPTA: Thank you. Commission Staff?

6 MR. CEDARBAUM: Thank you, Your Honor. Robert
7 Cedarbaum, Assistant Attorney General, appearing for Commission
8 Staff. My last name is spelled C-e-d-a-r-b-a-u-m. My business
9 address is the Heritage Plaza Building, 1400 South Evergreen
10 Park Drive Southwest, Olympia, Washington 98504. My direct-dial
11 telephone number is 360.664.1188, and the fax is 360.586.5522.
12 And my e-mail address is bcedarba@utc.wa.gov.

13 JUDGE KOPTA: Thank you. And I will note for the
14 record that Simon ffitich, representing Public Counsel, called
15 earlier to say that he was stuck in traffic and will be here as
16 soon as possible. We will take his appearance when he actually
17 arrives.

18 Is there anyone else in the room that seeks to make
19 an appearance today? How about on the bridge line? Anyone on
20 the bridge line want to make an appearance?

21 Hearing nothing, I will assume that is all we have
22 for today.

23 The first order of business is to take petitions to
24 intervene. We have received -- the Commission, that is, has
25 received one petition for intervention from the Northwest

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1 Industrial Gas Users.

2 And is there anything you would like to add to your
3 petition at this time?

4 MR. STOKES: No, Your Honor.

5 JUDGE KOPTA: Does anyone have any objection to the
6 intervention of the Northwest Industrial Gas Users?

7 MS. CARSON: No objection.

8 MR. CEDARBAUM: No objection.

9 JUDGE KOPTA: Then we will allow them to intervene in
10 this proceeding.

11 The second issue that we need to discuss is
12 discovery. The Commission's discovery rules are available in
13 certain circumstances.

14 Do the parties believe that the circumstance of this
15 case warrant making those rules available in this case?

16 MS. CARSON: Well, yes, probably. The Company
17 doesn't feel a great need for discovery, but I -- I guess I'd
18 turn it over to other parties to see what they have to say.

19 MR. CEDARBAUM: Your Honor, we do believe the
20 discovery rules are available in this case already, and the
21 Commission can confirm that. I would note that the
22 suspension -- the complaint suspension order indicated that the
23 Commission found that the filing would change rates.

24 And under 480-07-400(2)(b), when the Commission finds
25 that any filing involves the change in the rate levels of an

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1 electric company, discovery is available, and so the subpart of
2 that also indicates any proceeding that the Commission declares
3 to be of a potentially precedential nature, perhaps out of the
4 box here as well, so -- so we believe discovery, formal
5 discovery is available.

6 And if the practice is now to confirm that in the
7 prehearing conference order, then that would be a practice we
8 hope would be followed.

9 JUDGE KOPTA: And we will. At this point, we are
10 trying in the orders of suspension to include that, and this one
11 wasn't, so I'm just sort of belt and suspenders making sure that
12 there aren't any issues with respect to making the discovery
13 rules available. So we will do that, confirm that in the
14 prehearing conference order.

15 And this seems to be an opportune moment to allow
16 Mr. Ffitch, who has joined us from battling the traffic down
17 from Seattle, to make his appearance.

18 MR. FFITCH: Good afternoon. Thank you, Your Honor.
19 Yes, Simon Ffitch, appearing for the Office of Public Counsel.
20 I do apologize for my late arrival due to the traffic.

21 JUDGE KOPTA: I understand that. I appreciate the
22 phone call. And it's no problem. I make that trek myself four
23 days or five days a week.

24 MR. FFITCH: A little unpredictable.

25 JUDGE KOPTA: If you would go ahead and give your

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1 full appearance for the record in this case, I would appreciate
2 that.

3 MR. FFITCH: Simon ffitch. Senior Assistant Attorney
4 General, Washington State Attorney General's Office. The
5 address is 800 Fifth Avenue, Seattle, Washington, and my e-mail
6 address is simonf@atg.wa.gov. The phone number is
7 206.389.2055, and the fax number, 206.464.6451.

8 JUDGE KOPTA: Thank you, Mr. ffitch.

9 Taking up where we left off, the next thing to
10 discuss is the need for a protective order.

11 Does any party believe at this point that there is a
12 need for a protective order in this case?

13 MS. CARSON: Your Honor, PSE anticipates there may be
14 a need for a standard form protective order. We would ask that
15 that be entered in this case.

16 JUDGE KOPTA: And what type of information are you
17 anticipating the need to be protected by a standard protective
18 order?

19 MS. CARSON: Well, frankly, at this point in time,
20 we're not sure what -- what type of discovery the other parties
21 will seek, and we would only use the confidentiality designation
22 if necessary, so it's hard for me to say.

23 If you would prefer for us to wait and ask for it
24 when faced with data requests that ask for confidential
25 information, we can do that as well.

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1 JUDGE KOPTA: Well, one of the difficulties that I
2 have with this proceeding -- and I've sat in the open meeting
3 when the Commission considered it -- is really not knowing
4 exactly what kind of evidentiary development is going to be
5 required, which, of course, the only reason you would need a
6 protective order.

7 So I'm a little bit hesitant at this point to simply
8 prophylactically issue a protective order until we have a better
9 sense of what kind of information is going to be requested and
10 whether it's going to be something that the Company needs to
11 protect as confidential.

12 So unless -- well, I mean, perhaps as we discuss this
13 issue a little bit more this afternoon, there may be a better
14 indication of the kind of information and, if so, then you can
15 let me know, and I can relook at that.

16 But for right now, I would just assume wait until --
17 until there is something that we know with reasonable certainty
18 will require a protective order.

19 The next issue is yesterday, the Commission received
20 a motion from Commission Staff, Public Counsel, and then the
21 Northwest Industrial Gas Users to consolidate this proceeding
22 with the general rate case in Dockets UE-111048 and UG-111049.

23 I'm a bit troubled by the timing of this motion. The
24 Commission suspended this filing back on July 15th, and as part
25 of the open meeting in consideration of that, there was a

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1 discussion about whether this should be consolidated. So it's
2 not as if something new came up within the last month. This is
3 something, obviously, I would have preferred to address at the
4 prehearing conference. Obviously, I cannot, since Puget Sound
5 Energy should have the opportunity to respond.

6 So at this point, all I can do is confirm a date by
7 which Puget Sound Energy would be able to respond. The default
8 is ten days from the date of the filing.

9 Is that sufficient time for you, Ms. Carson?

10 MS. CARSON: Yes. Ten days is sufficient time. PSE
11 is prepared to address and respond to that motion here. We
12 do -- we are inclined, though, if -- if the Commission is
13 leaning towards consolidating, we certainly would want to have
14 an opportunity to submit in writing PSE's position.

15 JUDGE KOPTA: Well, our preference at this point
16 would be to have your position in writing so that we have a
17 fully fleshed out discussion on the issue.

18 And I don't want to put you on the spot today, having
19 only just seen the motion myself, and I'm assuming you also only
20 having just seen the motion.

21 So at this point, I will expect that you will file a
22 response by Monday, August 29th, and the Commission will take up
23 that motion at that time and issue an order in due course.

24 MR. CEDARBAUM: Your Honor, if I could interject?
25 With actually Commission's permission, your permission, we would

0010

1 like to reserve the opportunity to file an answer to the
2 Company's response on a short turnaround time, I guess, within a
3 few days. As a moving party, I think we're -- typically moving
4 parties get the last word, and so we would appreciate that
5 opportunity.

6 JUDGE KOPTA: Well, under the Commission's rules, you
7 may certainly request a reply. There's not an automatic right
8 to a reply, and we will consider any request for such a reply at
9 the time in which you make it. But you are certainly welcome to
10 do so.

11 MR. CEDARBAUM: And just one comment, if I may, Your
12 Honor?

13 Obviously, we did not intend to surprise the
14 Commission with the motion, or the parties. We did -- we were
15 in communication with the parties earlier in the week, so the
16 parties and the Company knew that this was coming, while I
17 understand they certainly have the opportunity to have a
18 sufficient time to respond.

19 And also the Commission's rule on motion practice
20 doesn't require a written motion. It can be made orally at the
21 prehearing conference. So while we would have liked to, you
22 know, in the best world, we could have filed -- should have
23 filed sooner, perhaps, but we could have also come today and
24 presented our motion orally as well.

25 So we didn't mean to surprise anyone. We just did

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1 the best we could.

2 JUDGE KOPTA: I understand that, and it's not really
3 so much a question of surprise as it is of trying to move things
4 along. And it would be -- it certainly would have been my
5 preference and the Commission's preference to have tried to deal
6 with this issue today.

7 But not being able to, then we'll just have to deal
8 with it when we can deal with it, because at this point, I
9 believe we need to go ahead and set a schedule, you know, and
10 know whether this is going to be continued to be reviewed as
11 separately or whether it will be a part of the rate case.

12 And so in the meantime we have to proceed as if we
13 are going along a separate track, which segues nicely into the
14 last thing that I have on my list to discuss today, which is a
15 schedule. And I will ask the parties if they have had any
16 discussions in terms of putting together a proposed schedule.

17 MR. CEDARBAUM: Well, we haven't specifically. The
18 Company did distribute just this afternoon their idea of a
19 schedule, and we haven't had a chance to fully discuss it on our
20 side or with the other parties.

21 And I don't mean to speak for the Company here, but
22 the Company -- the schedule does assume kind of the traditional
23 filing, pre-filing of testimony, and I believe the Company is
24 open to a hearing as well. It's reserving one, so we won't talk
25 specifically about it.

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1 This doesn't discuss just a paper record. And we're
2 happy to go off the record, perhaps, and talk about it more,
3 but -- but I also think a -- I think a reasonable alternative is
4 that because the Company is yet to file its direct testimony,
5 and no one knows what that testimony will say, that it would be
6 reasonable to set just that date and then reconvene the
7 prehearing conference within a couple days after the filing when
8 we have a clear picture as to how much time we will need to
9 respond since we won't have that clear picture until we see what
10 the Company's case is.

11 JUDGE KOPTA: Well, why don't we do this: Let's go
12 off the record and allow some discussion among the parties in
13 terms of how best to proceed from a scheduling standpoint.

14 And I can participate a little bit at the beginning
15 of that and then leave and allow you to talk about it further.

16 But for now, let's be off the record.

17 (Discussion off the record.)

18 JUDGE KOPTA: Then let's go back on the record.

19 We took a break to discuss scheduling issues, and at
20 this point, the parties do not have an agreed proposal, but I
21 will let them let me know what their respective proposals are
22 for a schedule beginning with the Company.

23 MS. CARSON: PSE's proposed schedule has the Company
24 filing its direct testimony and exhibits on September 2nd.
25 Staff, Public Counsel, and Intervenor responsive testimony and

0013

1 exhibits on October 25th. Company rebuttal testimony and
2 exhibits on November 8, and then the hearing on November 18th.

3 And I don't have an exact date for briefs, probably
4 two to three weeks later.

5 JUDGE KOPTA: Okay. And, Staff, is there a proposal
6 from the three other parties, or is it just you?

7 MR. CEDARBAUM: No. I believe that I can speak on
8 behalf of Staff, Public Counsel, and the Northwest Industrial
9 Gas Users.

10 JUDGE KOPTA: Okay.

11 MR. CEDARBAUM: Our proposed schedule is the
12 Company --

13 MR. FFITCH: Excuse me. That's not correct.

14 MR. CEDARBAUM: Okay.

15 MR. FFITCH: I would like to just clarify our
16 position after Mr. Cedarbaum is done. Thank you.

17 MR. CEDARBAUM: Oh, okay.

18 JUDGE KOPTA: Fair enough.

19 MR. CEDARBAUM: And the schedule that I'm -- I'll
20 have some caveats to this. The schedule that I'll list is one
21 that would work, but based on the caveats, it's still not our
22 preference.

23 But the schedule we came up with is the Company would
24 file its direct testimony and exhibits on September 2nd. Staff,
25 Public Counsel, and Intervenor would file the responsive

0014

1 testimony on November 8th. The Company would file a rebuttal on
2 November 22nd. We would have a hearing on the 9th of January,
3 and simultaneous post-hearing briefs on the 25th of January.

4 And, for the record, Your Honor, the caveats are
5 that -- my understanding of the Company's position as to why it
6 wants to accelerate this case is that it believes that the case
7 does not present a lot of factual issues, and it just -- this
8 case isn't worthy of a longer schedule.

9 That is something that we simply cannot agree today.
10 We haven't seen the Company's direct testimony, so we don't know
11 what the facts are. We don't know how complicated or
12 uncomplicated they are, so agreeing today to an accelerated
13 schedule just simply can't be done.

14 Second of all, as our motion to consolidate shows, we
15 believe the preferred route is to consolidate it with the rate
16 case, so we would file our response case on December 7th, and
17 we'd just track that schedule. And we'd come -- we'll figure
18 out the date for the Company to file its direct testimony in
19 this case.

20 And, third, as I have stated before, we think the
21 appropriate course is that we see the Company's direct testimony
22 first, and then schedule the rest of the case. We just -- I
23 understand the Bench's desire not to have a second prehearing
24 conference, but it doesn't seem like a good idea to schedule an
25 entire case before we've seen the Company's initial filing or

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1 their direct testimony. We would have a better idea of the real
2 extent of a procedural schedule if we saw that first. So those
3 are my caveats.

4 And the schedule that I gave you is something that,
5 you know, we would comply with and -- and it works with the
6 other schedules of Staff in other cases, but it's obviously not
7 our first preference.

8 JUDGE KOPTA: Okay. Understood.

9 Mr. ffitch, you wanted to say something?

10 MR. FFITCH: Thank you, Your Honor. I don't disagree
11 with anything that Mr. Cedarbaum said, but I wanted to, I guess,
12 make our own position clear.

13 We believe strongly, and perhaps I go a little
14 further than Mr. Cedarbaum. Based on the history of this
15 proceeding so far and the information that has come forward from
16 the Company in the open meeting process, we believe it is clear
17 there are significant factual issues that have to be considered
18 by the Commission in this case. We believe there are important
19 policy issues as well that are related to those and legal
20 issues, and we emphatically believe that this is not a case to
21 be dealt with on an expedited or cursory basis. We feel that
22 very strongly.

23 Our motion to consolidate lists in a general sense
24 what we have identified as some of those factual issues, and we
25 cannot agree to a schedule at this time other than the general

0016

1 rate case schedule. We have, under protest at the direction of
2 the Bench, worked with other parties here to come up with an
3 alternative schedule to present to you, but we do not recommend
4 that schedule, and we believe that it is unworkable and a
5 schedule that will not -- that will do nothing but disadvantage
6 the parties other than Puget Sound Energy.

7 I want to state on the record in this proceeding, as
8 I have stated earlier before the suspension, this problem, this
9 procedural problem that we are facing today, is entirely of the
10 Company's making. And we have repeatedly requested that the
11 Commission not let the disadvantages created by that fall upon
12 the Public and upon the Commission's own Staff and other
13 intervenors, and yet today we're seeing that happen.

14 We are being asked to accept unreasonable and
15 untenable procedural schedules because the Company, for reasons
16 which it can't really articulate and hasn't articulated on the
17 record, would like to get a decision more quickly. And we
18 object to that in the strongest possible terms, and we request
19 that the Commission give us a level playing field to get a good
20 record and a good decision -- decision-making process
21 established here.

22 We do not believe that adoption of this schedule
23 proposed by Public -- or excuse me -- by Puget Sound Energy is
24 consistent with due process or the Administrative Procedures
25 Act. We do not believe that adoption of any schedule or a

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1 decision of this case without an open evidentiary hearing for
2 cross-examination of witnesses is consistent with due process or
3 the Administrative Procedures Act.

4 And that completes my statement. Thank you.

5 JUDGE KOPTA: All right. So just so that I'm clear
6 on Public Counsel's position, are you not joining in the
7 schedule that Mr. Cedarbaum outlined, but at this point, if the
8 Commission were to decide to not consolidate these cases, that
9 you would not oppose that schedule? Is that an accurate summary
10 of your position, or would you like to flesh that out a little
11 bit so I understand what your position is with respect to the
12 scheduling issue assuming that this case proceeds on a
13 standalone basis.

14 MR. FFITCH: Your Honor, without -- and here I echo
15 Mr. Cedarbaum. Without seeing the Company's case, yet to be
16 filed case, we can't make a decision ultimately on whether we
17 would object to a schedule that -- to the -- you know, to the
18 viability of the Staff's alternative schedule.

19 So at this point, we don't take a position. We don't
20 support it. We very strongly have concerns about it, but we
21 don't take a position till we've seen the Company's case. We'd
22 like to reserve the right to express our position at that time.

23 JUDGE KOPTA: Okay. Fair enough. As I said, I just
24 wanted to understand what your position is, and, obviously, even
25 with an established schedule, once the Company makes its filing,

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1 there's always the opportunity for any party to seek to amend
2 the schedule based on that filing, and I do not intend to
3 foreclose that opportunity at this point. I just want to make
4 things, at least from the Commission's perspective, mapped out
5 so that the Commission has an idea of where things fall. And
6 given its schedule and to the extent we need to make
7 adjustments, then we will make adjustments.

8 MR. FFITCH: Your Honor, may I please make one
9 additional point?

10 JUDGE KOPTA: Sure.

11 MR. FFITCH: I apologize. I meant to raise this in
12 the earlier comments.

13 In trying to respond to the Bench's request to come
14 up with a schedule of some type, we looked at the existing
15 schedules in dockets before the Commission this fall, going up
16 through the Commission's, you know, hearing in the general rate
17 case. It's already a very crowded schedule, and attempting to
18 come up with a separate track, adjudicatory schedule for this
19 matter, fitting it in around the Avista general rate case and
20 the REC proceeding and the Puget general, and whatever's going
21 to happen with Pacific, is just not a practical approach.

22 And, in fact, what presents sort of the simple
23 solution to that problem is syncing up with the Puget general
24 rate case schedule.

25 And, you know, I would submit that's actually a good

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1 solution for the Commission as well, rather than trying to
2 squeeze in yet another docket between now and the end of the
3 year.

4 JUDGE KOPTA: Fair enough.

5 Ms. Carson?

6 MS. CARSON: If I might just address a few of the
7 issues that Mr. ffitch raised?

8 JUDGE KOPTA: Certainly.

9 MS. CARSON: We take issue -- PSE takes issue with
10 the position of Public Counsel and others that they have really
11 no idea what this case is about.

12 The tariff filing was made in April. There have been
13 informal meetings with parties. There have been lengthy
14 discussions at open meetings about this, and there has been
15 actually fairly extensive discovery on an informal basis by
16 parties. So there's quite a bit of information out there
17 already.

18 What the Company intends to file is not a whole lot
19 different from what the parties have already seen, which, I
20 guess, they will see soon enough. But there are not a lot of
21 surprises. There's not a lot of new evidence or -- or evidence
22 in this case. It really is legal and policy issues that can be
23 addressed in briefing and addressed by the Commission.

24 So for that reason, you know, there's obviously a
25 fundamental difference between their view and PSE's in terms of

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1 what kind of case this is and what kind of schedule is needed.
2 We, again, aren't even sure that an evidentiary hearing is
3 needed. We'll leave that up to the Commission to decide after
4 the testimony is filed.

5 JUDGE KOPTA: All right. Obviously, the Commission
6 will make its determination based on what we have heard today
7 and what we hear in the future in terms of your response to the
8 motion to consolidate and anything else that comes in after you
9 make your initial filing.

10 So unless there is anything else from anyone at this
11 point?

12 Hearing nothing, then we are adjourned. Thank you.

13 (Proceeding concluded at 2:33 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)
4 COUNTY OF KING) ss

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter
7 and Notary Public in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and accurate to
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal
11 this 26th day of August, 2011.

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SHELBY KAY K. FUKUSHIMA, CCR

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17 My commission expires:
18 June 29, 2013

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