

0405

1

BEFORE THE WASHINGTON

2

UTILITIES AND TRANSPORTATION COMMISSION

3

4 In the Matter of the Petition of) Docket UE-121373
5 PUGET SOUND ENERGY, INC.,)
6 For Approval of a Power Purchase)
7 Agreement for Acquisition of Coal)
8 Transition Power, as Defined in)
RCW 80.80.010, and the Recovery)
of Related Acquisition Costs)

9

10

HEARING, VOLUME V

11

Pages 405 - 441

12

ADMINISTRATIVE LAW JUDGE DENNIS MOSS

13

14

10:18 A.M.

15

MARCH 14, 2013

16

17 Washington Utilities and Transportation Commission
18 1300 South Evergreen Park Drive Southwest
19 Olympia, Washington 98504-7250

18

19

20 REPORTED BY: SHERRILYN SMITH, CCR# 2097

21 Buell Realtime Reporting, LLC
22 1411 Fourth Avenue
23 Suite 820
24 Seattle, Washington 98101
25 206.287.9066 | Seattle
360.534.9066 | Olympia
800.846.6989 | National

25 www.buellrealtime.com

0406

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

2 ADMINISTRATIVE LAW JUDGE:

3 DENNIS MOSS
4 Washington Utilities and
5 Transportation Commission
6 1300 South Evergreen Park Drive SW
7 P.O. Box 47250
8 Olympia, Washington 98504
9 360.664.1136

10 FOR PUGET SOUND ENERGY:

11 SHEREE STROM CARSON
12 JASON KUZMA
13 Perkins Coie
14 10885 Northeast Fourth Street
15 Suite 700
16 Bellevue, Washington 98004
17 425.635.1400
18 scarson@perkinscoie.com
19 jkuzma@perkinscoie.com

20 FOR WASHINGTON UTILITIES AND
21 TRANSPORTATION COMMISSION:

22 SALLY BROWN
23 Senior Assistant Attorney General
24 1400 South Evergreen Park Drive SW
25 PO Box 40128
Olympia, Washington 98504
360.664.1193
sbrown@utc.wa.gov

GREGORY J. TRAUTMAN
Assistant Attorney General
PO Box 40128
Olympia, Washington 98504
360.664.1187
gtrautma@wutc.wa.gov

24

25

0407

1

A P P E A R A N C E S (Continued)

2

PUBLIC COUNSEL:

3

SIMON J. FFITCH
Public Counsel Section
Senior Assistant Attorney General
800 Fifth Avenue
Suite 2000
Seattle, Washington 98104
206.389.2055
simonf@atg.wa.gov

8

FOR THE INDUSTRIAL CUSTOMERS
OF NORTHWEST UTILITIES:

9

10

MELINDA J. DAVISON
JOSHUA D. WEBER
Davison Van Cleve
333 Southwest Taylor
Suite 400
Portland, Washington 97204
503.241.7242
mjd@dvclaw.com
jdw@dvclaw.com

11

12

13

14

15

16 FOR NW ENERGY COALITION:

17

DANIELLE DIXON
NW Energy Coalition
811 First Avenue
Suite 305
Seattle, Washington 98104
206.621.0094
danielle@nwenergy.org

18

19

20

21

22

23

24

25

0408

1 A P P E A R A N C E S (Continued)

2 ALSO PRESENT:

3 CHAIRMAN DAVID DANNER
4 COMMISSIONER JEFFREY GOLTZ
5 COMMISSIONER PHILIP JONES
6 ELIZABETH THOMAS, K&L GATES
7 NORMAN FURUTA, FEDERAL EXECUTIVE AGENCIES
8 DAMON E. XENOPOULOS, NUCOR STEEL
9 KURT BOEHM, KROGER COMPANY

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

-o0o-

22

23

24

25

0409

1 OLYMPIA, WASHINGTON; MARCH 14, 2013

2 10:18 A.M.

3 -o0o-

4

5 JUDGE MOSS: Let's go on the record.

6 Good morning, everyone. My name is Dennis
7 Moss, I'm an administrative law judge with the
8 Washington Utilities and Transportation Commission. I
9 have been assisting the Commissioners in the conduct
10 of Docket No. UE-121373, and I continue in that role
11 today. That matter was decided by final order, as to
12 which PSE filed a petition for reconsideration, and
13 that matter is pending. That's essentially our
14 subject matter. I will get to the specific subject
15 matter in a moment.

16 Our first order of business, as in all hearing
17 proceedings, is to take appearances, and I will start
18 with the Company. Ms. Carson?

19 MS. STROM CARSON: Good morning, Sheree
20 Strom Carson with Perkins Coie, representing Puget
21 Sound Energy, and also I believe on the bridge line is
22 Jason Kuzma, representing Puget Sound Energy.

23 JUDGE MOSS: All right.

24 Mr. Weber?

25 MR. WEBER: Joshua Weber with Davison

0410

1 Van Cleve, representing Industrial Customers of
2 Northwest Utilities, and also I believe on the bridge
3 line is Melinda Davison, with my firm.

4 JUDGE MOSS: Thank you.

5 Ms. Dixon, welcome back. I haven't seen you
6 in a while.

7 MS. DIXON: I know, thank you. It's
8 funny, actually, Nancy was out of town today, so there
9 you go.

10 Danielle Dixon, representing the Northwest
11 Energy Coalition.

12 JUDGE MOSS: All right.

13 Mr. ffitch?

14 MR. FFITCH: Simon ffitch on behalf of
15 the Public Counsel Office.

16 JUDGE MOSS: Ms. Brown?

17 MS. BROWN: Sally Brown and Greg
18 Trautman, assistant attorneys general.

19 JUDGE MOSS: Are there people on the
20 bridge line who wish to enter an appearance today?

21 Ms. Davison, do we have you on the bridge line
22 there?

23 MS. DAVISON: Yes, Judge Moss, I am on
24 the bridge line. Thank you.

25 JUDGE MOSS: All right.

0411

1 And, Mr. Kuzma?

2 Well, Mr. Kuzma has either muted his phone or
3 has other responsibilities to which he is attending at
4 the moment.

5 We had some others who might take an interest
6 in this matter on the bridge line earlier today. They
7 are not parties, but if anybody else wishes to enter
8 an appearance today to indicate their presence on the
9 record, I would be happy to take that.

10 MS. THOMAS: Judge Moss, this is Liz
11 Thomas with K&L Gates. I am not representing a party
12 to this proceeding, but taking an interest.

13 JUDGE MOSS: All right. Thank you.

14 MR. FURUTA: This is Norman Furuta for
15 the Federal Executive Agencies. I am holding over on
16 the bridge line just to take notice of what occurs,
17 but have not formally requested an appearance in this
18 proceeding yet.

19 JUDGE MOSS: All right, Mr. Furuta,
20 thank you very much. It's nice to hear --

21 MR. XENOPOULOS: This is Damon
22 Xenopoulos --

23 JUDGE MOSS: -- from you, too.

24 MR. XENOPOULOS: -- similarly situated
25 to Mr. Furuta. Again, and I am here on behalf of

0412

1 Nucor Steel, but not seeking to make an appearance.

2 JUDGE MOSS: Very good. Thank you so
3 much.

4 Anybody else?

5 MR. BOEHM: Good morning, Judge Moss.
6 This is Kurt Boehm, appearing on behalf of Kroger
7 Company, doing business as Fred Meyer Stores. We have
8 also not made a formal --

9 (Interruption in the proceedings.)

10 JUDGE MOSS: Thank you.

11 Anyone else?

12 All right. The reason I took the unusual step
13 of asking persons not parties to indicate their
14 presence on the bridge line, if they wish to do so,
15 the matter before us in this docket, 121373, is a
16 motion for second extension of time to file answers to
17 Puget Sound Energy's petition for reconsideration and
18 motion to reopen the record. The Staff motion, as did
19 its first motion for an extension of time, implicates
20 other pending dockets before the Commission,
21 specifically the so-called decoupling dockets,
22 UE-121697 and UG-121705, and the so-called ERF
23 dockets, or expedited rate filing dockets, UE-130137
24 and UG-130138.

25 Those who have identified themselves who are

0413

1 not parties here but who identified their presence for
2 the record, do have an interest in those proceedings,
3 as they indicated earlier today in an open meeting
4 session, during which the Commissioners took action
5 with respect to those, at least to the extent of
6 establishing some procedural changes in their posture.

7 Getting to the matter at hand, we have before
8 us this second motion for extension of time. It is
9 grounded on the same basis as the first motion for a
10 30-day extension of time, which is basically that
11 Staff and PSE at least have been engaged in settlement
12 negotiations in an effort to resolve a number of
13 pending matters, including the five dockets I have
14 identified this morning.

15 The other parties, or certain other parties to
16 this docket, 121373, have objected to this second
17 motion, as they did object to the first. The
18 Commission granted the first motion over their
19 objections and allowed additional time for the
20 settlement efforts by Staff and PSE to bear fruit.
21 That apparently has not occurred yet, as we have had
22 no filing of any sort of a settlement. I understand
23 there is some additional discussion going on in this
24 regard, including a plan for all the parties in these
25 various matters to have an opportunity to get together

0414

1 on April the 4th, which is still some time away.

2 I have a couple of questions about this. I
3 have, of course, read all the papers, I am familiar
4 with the basic arguments. I don't need to hear them
5 reiterated this morning, I've actually heard all of
6 them twice. We can just cut to the chase here in
7 terms of the things that concern me.

8 One thing that concerns me, and I direct my
9 questions to you, Ms. Brown, since it is Staff's
10 motion. Others may comment on it as well. I am
11 wondering if there is -- what is the need for a
12 continuance here? Why can't this go on -- why can't
13 these discussions go on in these other dockets, in
14 this docket, in a posture whereby the parties have
15 been given a deadline and filed their motions, or
16 their responses to the pending petition and motion,
17 and the Commission has that before it and ready for
18 decision? What's the reason for that?

19 MS. BROWN: As we stated in our motion,
20 the hope is that we file a global settlement, and
21 which we anticipate doing Monday or Tuesday next week.
22 And to beat another dead horse, as you have said, you
23 have heard it, we have -- I lost that thought here.

24 Well, we made certain trade-offs among the
25 various dockets. We think about making a concession

0415

1 in one docket that benefits perhaps a different
2 concession in another docket, and it's a concession
3 one would not have otherwise made but for the
4 resolution of an earlier docket, then at least from
5 Staff's perspective, these five dockets are
6 interrelated, and so it doesn't make sense for a
7 variety of reasons to proceed with filing a formal
8 response to the motion for reconsideration to reopen
9 the record.

10 Number one, it would be inefficient and
11 wasteful in the event that we file a settlement
12 agreement that's either -- that's most likely to be
13 multiparty or partial, which would then moot the
14 TransAlta Centralia motion for reconsideration, and to
15 reopen the record, and perhaps the Company would then
16 file a motion to withdraw its pleading in that regard.
17 And just generally, it's burdensome to spend time
18 responding to a motion, number one, when Staff has
19 already reached an agreement with the Company filing
20 the motion for an acceptable resolution that we
21 believe is in the public interest. That seems
22 wasteful and inefficient.

23 And also, there really is no immediacy to rule
24 on that motion, given that the first delivery under
25 the contract will not occur until December 2014. So

0416

1 that's my primary argument in opposition to the
2 parties who have argued they are prejudiced somehow or
3 experiencing substantial harm in the event the
4 TransAlta Centralia PPA docket doesn't proceed to
5 resolution in advance of our filing a settlement
6 agreement, which we anticipate doing early next week.

7 JUDGE MOSS: My impression from what you
8 have said is that were we to deny the motion to compel
9 and allow the parties to go ahead, or actually require
10 the parties to go ahead and file any responses they
11 might wish to file, were I to rule in that
12 direction --

13 MS. BROWN: I'm sorry --

14 JUDGE MOSS: That's all right, I'll
15 repeat myself.

16 MS. BROWN: Are you referring to the
17 motion to compel --

18 JUDGE MOSS: I'm sorry, the motion to --

19 MS. BROWN: For a continuance.

20 JUDGE MOSS: I misspoke, the motion to
21 continue.

22 MS. BROWN: Thank you.

23 JUDGE MOSS: I misspoke.

24 If we were to deny that and go ahead with the
25 deadline for people to file their responses, the

0417

1 important date to you with regard to everything you
2 just said is the date the Commission makes a decision,
3 is it not?

4 MS. BROWN: The date the decision -- the
5 decision made by the Commission on the --

6 JUDGE MOSS: On the petition for
7 reconsideration. In other words, if the Commission
8 says let's go ahead and get the process complete in
9 this docket and have this matter before us ready for a
10 decision whenever we decide we want to finalize the
11 decision, the only potential impairment to Staff and
12 PSE's efforts to settle these matters, and perhaps to
13 broaden the participation in that settlement, would be
14 were the Commission to go ahead and decide it in a way
15 that was contrary to the way you wanted it settled;
16 isn't that right?

17 MS. BROWN: Well, no, I think it's
18 larger than that, Your Honor. I think it's that --
19 that it sort of -- while a party would not willingly
20 negotiate against oneself in litigation, but to
21 require Commission Staff to take a position that's at
22 odds where it would be in the settlement context, this
23 just seems unfair. In other words, that this -- what
24 I would write on brief in response to the petition to
25 reopen the record and petition for reconsideration

0418

1 wouldn't vary from what I would anticipate filing
2 early next week, for example. So while you may have a
3 closed record that you may or may not decide on, that
4 doesn't change the fact that I would be required to
5 operate cross-purposes to my goal.

6 JUDGE MOSS: Well, there's some
7 legitimacy to that argument, but I have to observe
8 it's something that happens in our proceedings all the
9 time. We have settlements filed in our general rate
10 cases, for example, after response testimony has been
11 filed and Staff has made clear its litigation
12 position. The settlements that are subsequently filed
13 are often at odds with the position Staff has taken on
14 litigation, or other parties have taken during the
15 litigation context, and we don't find that
16 particularly problematic. We don't, for example,
17 allow parties to inquire of one another's witnesses,
18 well, why did you take a different position on
19 settlement? We just don't do that because we
20 recognize that settlements are what they are, they are
21 trade-offs. I don't see that that is a particular
22 impairment.

23 Let me tell you what my concern is.

24 MS. BROWN: How about this --

25 JUDGE MOSS: Let me tell you what my

0419

1 concern is.

2 MS. BROWN: -- before you rule, Your
3 Honor.

4 JUDGE MOSS: Let me tell you what my
5 concern is in this. As you heard this morning, the
6 Commission has now set these other matters for hearing
7 that are implicated here and has assigned them to me.
8 I am now responsible for managing all of these, and I
9 have had some hand in that all along. One of the
10 concerns that I have had is that these motions for a
11 continuance in my view are delaying things. They are
12 keeping us from proceeding as expeditiously as we
13 might and as expeditiously as we should.

14 I am disappointed that we haven't seen more in
15 the way of activity after hearing from Staff some time
16 ago now, that there was an agreement in principle,
17 yet -- and I understand that parties -- that you all
18 put some dates out there for parties to get together,
19 and of course we want to see that happen, and I want
20 to encourage that today, for parties to work
21 cooperatively together, to sit down and talk through
22 all this stuff. I think that's a very important step.

23 As we heard earlier today, the chances of a
24 true full settlement, as we defined that in our
25 procedural rules, absent that kind of exchange are,

0420

1 for all practical purposes, nil. They are going to be
2 difficult, in any event. But I just want to -- I want
3 to move all of these cases along, all five dockets.
4 My concern in granting another continuance here, for
5 another 30 days, is simply that it creates a window
6 during which people can just sort of say, well, okay,
7 let's don't get on with things. I want you to get on
8 with things. I want everybody to get on with things.
9 Again, I don't have a problem, and I don't think the
10 Commission has any problem if you filed a response
11 that in some ways deviated from what you offer up in
12 terms of a settlement.

13 I will hear from you further. You have
14 another point to persuade me with here, so I will
15 listen.

16 MS. BROWN: How much time do you have?

17 The thing I'm thinking is that, number one, we
18 are moving forward. We have -- in fact, we are
19 meeting after this, and also on the 18th.

20 JUDGE MOSS: Who is "we"?

21 MS. BROWN: Well, the world is invited.

22 JUDGE MOSS: I encourage the world to
23 attend.

24 MS. BROWN: We also plan to file the
25 settlement agreement properly, although the terms of

0421

1 the agreement have been filed. They are an exhibit to
2 ICNU's motion to compel, at Exhibit B, Pages 5 through
3 11, if you want to read them. We will dress that up
4 and file that early next week.

5 I guess, with all due respect, I am trying to
6 understand the benefit of requiring parties to file a
7 response to the petition for reconsideration and to
8 reopen in the event that whole pleading is mooted by a
9 settlement and soon to be followed by, let's say a
10 motion to withdraw that pleading.

11 JUDGE MOSS: It may --

12 MS. BROWN: I'm thinking also selfishly
13 that I would rather spend my time, the next 24 hours,
14 responding to the motion, focusing more on settlement.

15 JUDGE MOSS: It may shock you to learn
16 that I did read the attachments to the motion to
17 compel. I didn't see anything in there about it being
18 withdrawn. Is that something new?

19 MS. BROWN: No, no, no, the motion to
20 compel will not be withdrawn. I am suggesting that in
21 the event we file --

22 JUDGE MOSS: No, no, the petition for
23 reconsideration, you are saying that that would be
24 part of the settlement, that that would be withdrawn.

25 MS. BROWN: Well, it certainly would be

0422

1 mooted, I would imagine.

2 JUDGE MOSS: It would only be mooted,
3 wouldn't it, if we accepted the settlement?

4 MS. STROM CARSON: That's correct. Your
5 Honor, if I might just speak to a couple of the issues
6 that you raised?

7 JUDGE MOSS: You might.

8 MS. STROM CARSON: Thank you very much.

9 I do think that this is a different situation,
10 where you are asking Commission Staff's attorney to --
11 where they have a litigation position, obviously, and
12 a settlement position, and you are asking them now to
13 submit their litigation position after they have
14 agreed to a settlement. This is more akin -- it's
15 true, sometimes we have settlements after testimony
16 has been filed or briefs have been submitted, but
17 sometimes we have settlements before that, and we
18 don't ask the parties once they have reached a
19 settlement to then go ahead and file what their
20 litigation position would have been now that they have
21 settled. I think the Commission has addressed that
22 before and said that's not particularly helpful to do
23 at that point in time.

24 I think here, for Commission Staff, that puts
25 them in a difficult position to be filing a position

0423

1 that now is different from their current position. I
2 don't see how that's helpful for Commission Staff or
3 for the settlements, which are favored in law, to put
4 them in the position of arguing against themselves.

5 The other point I want to make, and I know you
6 are aware of the meeting schedule dates, but the only
7 reason that we have held off filing the settlement is
8 we wanted to wait until the six dates that offered in
9 March had come and gone, and we are hoping to meet
10 with people. We have two dates left, the 14th, today,
11 and the 18th. I think some parties have expressed a
12 willingness to attend. Many have said they cannot
13 attend today. Monday is the final day in March that
14 we had offered, and so we plan to go ahead with the
15 settlement after that time.

16 It's not a matter of delaying the settlement,
17 it could have been filed sooner, it's just a matter of
18 trying to bring parties on board.

19 JUDGE MOSS: Does anybody else want to
20 be heard?

21 Mr. ffitch?

22 MR. FFITCH: Thank you, Your Honor. I
23 guess I will try to --

24 JUDGE MOSS: No dead horses.

25 MR. FFITCH: I will try to be concise

0424

1 here.

2 MR. JONES: And expeditious.

3 MR. FFITCH: And expeditious. Heavens,
4 they are tasty.

5 Actually, I guess the first comment is I'm
6 rather struck by the fact that Staff and the Company
7 are saying very explicitly, We have a settlement, we
8 are going to file a settlement agreement on Monday or
9 Tuesday, that we have drafted into final form,
10 essentially no matter what happens. Okay, that's
11 fine, but I think it's something to take into account,
12 in terms of their other requests and statements.

13 The position that we are hearing today seems
14 to be full speed ahead, from what we have been hearing
15 for the last several weeks. That leads me to my
16 second point, which is, you know, we heard the
17 Commission's decision this morning on the other
18 dockets. I think that I don't hear Staff and the
19 Company sort of changing any of their approach with
20 respect to that. To me that makes a difference.

21 As we have argued in multiple forms and
22 filings, this case is not related to those cases. We
23 have actually heard, perhaps for the first time,
24 explicitly from Staff today that nevertheless at least
25 Staff has been engaged in trading off aspects of the

0425

1 ERF and the decoupling docket against the Centralia
2 docket. As we've said, we really don't think that's
3 appropriate. I would suspect that some of the other
4 parties to those other dockets, or potential parties
5 to those other dockets might be quite concerned that
6 issues they care about are being traded off in order
7 to try to deal with concerns that Puget might have
8 about the Centralia case. We share that same concern.
9 We think they should all be proceeding on their
10 separate tracks and resolved on their own merits.

11 I guess the final point is, I still have not
12 heard any kind of a clear or convincing explanation
13 from Staff or the company about how they can be
14 settling a case in which this Commission has issued a
15 final order. And so I -- you know, I don't know what
16 it means. They appear to think that -- the tone of
17 this is almost that they can somehow bind the
18 Commission, but as the judge has just indicated,
19 that's a false premise. It is an unconventional --
20 there's a lot of reference to what we do all the time
21 with regard to settlements and how parties behave with
22 regard to filing settlements. This is an extremely
23 unconventional procedural posture for filing a
24 settlement.

25 Those are my comments.

0426

1 JUDGE MOSS: It's unusual, to be sure.

2 All right.

3 Anybody else?

4 Oh, Ms. Dixon wishes to be heard.

5 MS. DIXON: I have to take this
6 opportunity while I can, right, because I'm not here
7 all the time.

8 I guess I will say we were about halfway
9 through writing our response to PSE's motion for
10 reconsideration and to reopen the record when Staff
11 filed its first motion for continuance and we did not
12 object to that motion. Since then, the Coalition has
13 been prepared to participate in settlement
14 discussions. In keeping with that, we filed a letter
15 in support of Staff's second motion for continuance.

16 I guess I will say that we are a
17 resource-constrained organization. You have heard
18 that from us before. We try our best to participate
19 as much as we can in the Commission proceedings and to
20 put forward as best we can, but we do want to ensure
21 the most efficient process possible, and that helps us
22 to be able to participate better.

23 I guess in a sense, I would kind of follow up
24 to a comment by Ms. Brown and Ms. Carson about
25 ensuring the most efficient process here. We would

0427

1 certainly prefer, if at all possible, to be focusing
2 our efforts on those settlement discussions, rather
3 than spending the next 24 hours writing our response
4 to PSE's motion which may prove moot next week.

5 I guess that's all I have to say. Thanks.

6 JUDGE MOSS: Thank you, Ms. Dixon.

7 Mr. Weber, did you have anything for us?

8 MS. DAVISON: Judge Moss, this is
9 Melinda Davison, if I could speak. Can you hear me
10 okay?

11 JUDGE MOSS: I guess you are his senior
12 partner. I don't want to interfere with that
13 relationship.

14 MS. DAVISON: All right. Thank you,
15 Judge Moss. I am kind of losing my voice, but I will
16 be very brief.

17 Essentially, we got the message loud and clear
18 from the three commissioners this morning, which is we
19 need to roll up our sleeves and get on with things. I
20 think that applies in this docket as well. We have a
21 lot of work ahead of us, and yes, we will participate
22 in settlement. Judge Moss, I agree with your
23 comments. I'm not sure that the fact that a
24 settlement is going to be filed next week necessarily
25 changes what shouldn't happen with regard to this

0428

1 motion for a second extension of time. Thank you.

2 JUDGE MOSS: Thank you.

3 Anybody else wish to be heard? I'm prepared
4 to rule.

5 COMMISSIONER GOLTZ: Judge Moss, may
6 I just ask a question?

7 JUDGE MOSS: Absolutely.

8 COMMISSIONER GOLTZ: I guess I
9 understand the position of the Commission Staff, and I
10 believe it's also Puget's, that if there is a global
11 settlement, an all-party settlement, then maybe
12 there's a way out of all of this morass.

13 What I just heard during the open meeting, the
14 representatives of Public Counsel and ICNU talk about
15 how they need months and months to review the ERF
16 filing and the decoupling matters. It just would be
17 amazing to me if somehow, given that preference,
18 somehow between now and this afternoon, or now and the
19 18th, there could be an all-party global settlement.

20 I'm sort of -- my thought on this is premised
21 on that there will not be -- any global settlement
22 will refer to the number of issues, not the number of
23 parties, and any settlement is likely to be between
24 Commission Staff, the Company, perhaps Northwest
25 Energy Coalition, but probably no more than that. If

0429

1 that's the case, then we are going to have to litigate
2 the nonsettled -- the issues with the nonsettled
3 parties, which would include this petition for
4 reconsideration. We need to hear responses anyway at
5 that point, I think.

6 Given Ms. Brown's point of, well, we don't
7 know -- you know, I understand sort of the
8 inefficiency, and I would rather be working on
9 settlement than working on this, I understand all of
10 that, and maybe that's relevant. This is not like the
11 situation in a rate case, where there is stated
12 preference to come to a settlement before responsive
13 testimony is filed because you don't want to negotiate
14 against yourself. But here all of the parties have
15 already taken positions in the underlying case. The
16 positions are all on paper. Anything that is filed is
17 going to be different from that anyway, so we are
18 already going to be changing initial positions if
19 there is some sort of a settlement.

20 Whether it's a change from the initial
21 litigation position in the initial case or whether
22 it's changed from what may be said in response for
23 reconsideration, I don't know that that makes any
24 difference.

25 Anyway, those are just my thoughts.

0430

1 JUDGE MOSS: Anyone else?

2 Ms. Brown?

3 MS. BROWN: I just wanted to point out,
4 in response to Commissioner Goltz, that there would be
5 a change in position insofar as -- at least with
6 regard to the TransAlta Centralia PPA order. Staff's
7 proposal, as I tried to signal in our procedural
8 options letter, would be in a sense filling in gaps or
9 attempting to eliminate perceived uncertainty with
10 regard to issues that we have not yet taken on. So
11 that -- I guess that's a different thing.

12 I have already said it, but I want to beat
13 this dead horse, and that is that I don't
14 think that -- well, that Staff should be required to
15 file a response that's going to be contrary to its
16 settlement position. And, you know, following up on
17 something that Public Counsel said. You know, if the
18 parties are not inclined to support the settlement,
19 there's nothing that would require them to do so, or
20 any aspect of a settlement. Of course, in that case
21 we litigate, and that's fine, and that's a valid
22 option for Public Counsel and Northwest Industrial Gas
23 Users and ICNU and anyone else.

24 Anyway, that's all I have. Thank you.

25 JUDGE MOSS: Thank you.

0431

1 If there's -- Ms. Carson, you have something
2 more.

3 MS. STROM CARSON: Just very briefly,
4 Your Honor. Thank you.

5 I guess I just wanted to clarify. It seems to
6 me that what Commissioner Goltz said maybe isn't
7 exactly the way that it would play out. It seems to
8 me that once a settlement is filed in the dockets,
9 then the parties then are addressing the settlement
10 and opposing the settlement, as opposed to filing a
11 response to a petition for reconsideration. It
12 typically stops the process, which I think would be
13 the petition for reconsideration process for
14 Centralia. It would stop that process. Parties would
15 respond to the settlement, which would incorporate the
16 Centralia, but there wouldn't be a need to -- to
17 actually respond to the petition for reconsideration.

18 COMMISSIONER GOLTZ: Hypothetically, if
19 there is a settlement that does not ICNU, it does not
20 include Public Counsel, I don't know what the
21 difference would be between their response to the
22 settlement that addresses the TransAlta matter and
23 their response on a petition for reconsideration on
24 TransAlta. I mean, maybe there would be differences,
25 but -- you know, I guess I view that as being kind of

0432

1 the same -- we would hear the same thing.

2 MS. STROM CARSON: Well, it would be
3 broader than that --

4 COMMISSIONER GOLTZ: Oh, of course.

5 MS. STROM CARSON: -- because there
6 would be multiple dockets. I think the person that
7 this puts in a difficult position, the party is Staff,
8 because -- or whoever is now willing to settle,
9 because they are being asked to put forth their
10 litigation position, which is no longer their position
11 anymore. And I guess I think it's also just important
12 to know that there is no -- again, this contract does
13 not go into effect until December of 2014. There is
14 no prejudice to any party by an additional 30-day
15 delay.

16 JUDGE MOSS: I sense everyone has had
17 their say. All right.

18 MR. TRAUTMAN: Your Honor, I just wanted
19 to raise one point. Not to speak definitively about
20 PSE's position, but Commissioner Goltz said that the
21 other parties' response to the motion for
22 reconsideration might not be different than the
23 response to the TransAlta in the context of the
24 settlement. Well, it might be different, because
25 PSE's position on TransAlta in the context of the

0433

1 settlement might be different. I don't think the two
2 responses would necessarily be the same.

3 MS. STROM CARSON: Yes, I would agree
4 with that, because there is give-and-take, and PSE is
5 willing to compromise certain things that are not in
6 its litigation position, so it would be a different
7 situation that the parties would be responding to.

8 JUDGE MOSS: Well, if I may flip some
9 cards onto the table face up, so to speak. As I
10 understand the situation, the settlement will be filed
11 next week, and part of the settlement may well be that
12 the only thing that will remain, if the settlement is
13 accepted, of the TransAlta matter, would be the motion
14 to reopen in order for the Commission to entertain the
15 amendments that were entered into with TransAlta
16 subsequent to the final order. I suppose that's what
17 Ms. Brown means by filling in a gap. That's all that
18 would be left, that's what I'm hearing. And so I can
19 see the point, the position that Public Counsel or
20 ICNU or some other party might take in response to a
21 proposition like that. At least with respect to that
22 docket, it could be different. Now, that doesn't say
23 anything about what the position might be on the
24 decoupling piece or the ERF piece. I have to accept
25 that the point is well made, Mr. Trautman.

0434

1 What I want to do at this juncture, if nobody
2 has anything else to illuminate this matter, I would
3 like to take a recess for about ten minutes and I will
4 get back to you then.

5 MS. BROWN: Thank you.

6 JUDGE MOSS: All right. Thank you. We
7 will be back at about five after.

8 (A brief recess.)

9 JUDGE MOSS: Let's be back on the
10 record.

11 Okay, a few things. In terms of the pending
12 motions, what I want to do is continue the date until
13 the Wednesday following a week from Friday. The
14 reason I set that -- and I don't have my calendar in
15 front of me so I don't know that date. I am going to
16 set a prehearing conference in the decoupling and ERF
17 matters for a week from this Friday. That's the
18 soonest I can do it consistent with the statutory
19 notice requirements and my own calendar. There will
20 be a notice going out today setting a prehearing
21 conference for a week from Friday.

22 I am also, for reasons that will become clear
23 perhaps, going to notice that prehearing conference
24 for this docket. I am not going to have you file your
25 responses in the interim, because this will give us

0435

1 another opportunity to consider how we are going to
2 proceed in all of these matters.

3 If somebody has that date, I would be happy to
4 announce it on the record.

5 MR. TRAUTMAN: The 27th.

6 JUDGE MOSS: The 27th, okay.

7 MR. FFITCH: What was a week from this
8 Friday?

9 JUDGE MOSS: The prehearing conference
10 will be on the 22nd.

11 MR. FFITCH: 22nd.

12 JUDGE MOSS: Yes, that's a week from
13 this Friday, but I wasn't sure of the date of the
14 following Wednesday, and I don't do that kind of math.

15 MR. FFITCH: We agree that it's the
16 27th.

17 JUDGE MOSS: Thank you, Mr. ffitich.
18 Ever ready with the calendar resource, I see.

19 All right. So that's what we want to do on
20 that, that way Staff's concerns, I think, about having
21 to file something prior to the indicated date for the
22 settlement, so on and so forth. And we will deal with
23 other questions with respect to the scheduling in all
24 of these matters at the prehearing conference.

25 I said I had a couple things to say, and one

0436

1 in that connection is this: Procedural dates are
2 deadlines. If somebody wants to go ahead and file a
3 response to the motion for reconsideration -- I'm
4 sorry, petition for reconsideration and motion to
5 reopen, they are free to do so at any time, and that
6 will become part of the record of that proceeding. I
7 am not encouraging that, I just want to be clear that
8 no one is foreclosed from the opportunity of having
9 their say in that sense. If you want to go ahead and
10 file something and throw down the gauntlet, so to
11 speak -- I think someone observed earlier here today,
12 we all know what everybody's positions are anyway, but
13 that's okay. That opportunity is available to you.

14 My concern is to -- as I have mentioned to a
15 couple of people in having procedural discussions
16 about this informally, I want to bring some
17 rationality to this whole process, and I want to see
18 it move forward in a coherent fashion. That's what
19 will make all of our lives easier and make us able to
20 get through this in a most expeditious and reasonable
21 way possible. That's my goal, and I feel confident
22 that we can accomplish it. So there's that.

23 The other thing I want to say is, we've had a
24 lot of talk about -- and frankly, I think it has
25 gotten to the point of being a bit uncivil about

0437

1 people doing this, and who struck John, and meeting
2 then, and meeting there. That's got to stop. I want
3 all of you to stop all of that overblown rhetoric and
4 sit down together and talk about this. I understand
5 that parties need opportunities to get information.
6 They need opportunities to analyze, to have their
7 experts analyze. They can't agree to things in the
8 absence of those undertakings.

9 I don't like to see this business of -- well,
10 I will just say it again, as the FERC judges used to
11 call it, the who struck John. You know, that impedes
12 progress. Indeed, I believe Public Counsel and ICNU,
13 or perhaps separately or together, I don't recall,
14 made the observation. It's not constructive to snipe
15 at one another about who did what when. I have a
16 pretty good sense of what's gone on since last June or
17 July. I follow all this stuff very closely. I've
18 been practicing law for more than 30 years. I can
19 read between the lines of all of this stuff and
20 understand what's really going on, and I think I do.

21 I want to encourage you all in the strongest
22 possible terms to realize that, as Mr. ffitch observed
23 earlier today, we are looking at a potential paradigm
24 change in the way this Commission does regulatory
25 ratemaking for energy companies. I don't think this

0438

1 is just going to be limited to PSE. That's my guess.

2 I think everybody is open to that.

3 I am reminded of the circumstances surrounding
4 the Air Liquide litigation and the general rate case
5 back around 2000, 2001, whenever it was, in Docket
6 011570, UG-011571. I presided in both of those cases.
7 I participated with the Commission in reviewing and
8 ultimately approving the full settlements that came
9 forward in both of those cases. I believe it was
10 the eleventh supplemental -- did we call them
11 supplemental orders in those days -- the eleventh
12 order, I think, in the Air Liquide case, and I don't
13 recall the number in the general rate case.

14 Those were paradigm shifting events for the
15 Commission. That's when we came up with Schedules 448
16 and 449. That's when we came up with the PCORC and
17 the PCA. These were not small achievements by the
18 parties and ultimately by the Commission. They were
19 achievements that were accomplished because everybody
20 took the time and made the effort to seriously sit
21 down and negotiate what were very serious matters
22 during very dire times. Maybe the times aren't quite
23 so dire, maybe the future of the universe is not at
24 stake this time, as we perceived it then. This is
25 serious stuff and we take it seriously. We do want to

0439

1 give it fair and full consideration.

2 So I've probably said more than I needed to,
3 but I think you all certainly will get my point, and
4 that's what I want to encourage. I want to encourage
5 a more cooperative and -- well, just that, a more
6 cooperative and -- well, let's just say let's raise
7 this to the high level of professionalism that I have
8 enjoyed in working with you all over many years. And
9 you have all heard me quote Commissioner Hemstead
10 before, our elite and distinguished bar. That is what
11 you are. Let's get over taking things personally and
12 making those kinds of comments and pleadings and so on
13 and so forth and just get along with the business at
14 hand, all right?

15 So that is my ruling, you have my ruling. We
16 will continue the date for responses until the 27th,
17 which will give us an opportunity in the meantime to
18 have some further discussion and give some further
19 thought to all of this, in anticipation of a
20 prehearing conference to be held a week from tomorrow.
21 You will get a notice on that today.

22 Are there any other comments, questions,
23 points people wish to make while we are here this
24 morning? People are reaching for their microphones.

25 Ms. Dixon?

0440

1 MS. DIXON: Just one clarification.
2 Maybe this will come out in the notice. For the new
3 due date for responses on the 27th, do you have a
4 time? Sometimes it's 2:00, sometimes it's 3:00,
5 sometimes it's 5:00. Just to be able to mark my
6 calendar.

7 JUDGE MOSS: I'm going to be bold and
8 say I don't think it's really necessary to set a time.

9 MS. DIXON: Even better.

10 JUDGE MOSS: But you won't have to work
11 over the next 24 hours.

12 MS. BROWN: Thank you, Your Honor.

13 MS. DIXON: I appreciate that immensely.

14 JUDGE MOSS: It was your plea that
15 actually persuaded me.

16 Anything else from anybody?

17 MS. BROWN: No.

18 JUDGE MOSS: Well, thank you all very
19 much for being here today.

20 We are off the record.

21 (Hearing concluded 11:17 a.m.)

22

23

24

25

0441

1

C E R T I F I C A T E

2

3 STATE OF WASHINGTON

4 COUNTY OF KING

5

6

I, Sherrilyn Smith, a Certified

7

Shorthand Reporter in and for the State of Washington,

8

do hereby certify that the foregoing transcript is

9

true and accurate to the best of my knowledge, skill

10

and ability.

11

12

13

14

15

16

17

SHERRILYN SMITH

18

19

20

21

22

23

24

25