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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Petition of: )

)

4 PUGET SOUND ENERGY, INC. ) DOCKET NO. U-101217

)

5 For a Declaratory Order ) Volume I

Regarding the Transfer of ) Pages 1 - 15

6 Assets to Jefferson County )

Public Utility District No. 1 )

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8 A Prehearing Conference in the above matter was

9 held on August 26, 2010, at 1:30 p.m., at 1300 South

10 Evergreen Park Drive Southwest, Olympia, Washington, before

11 Administrative Law Judge DENNIS J. MOSS.

12 The parties were present as follows:

13 WASHINGTON UTILITIES AND TRANSPORTATION

COMMISSION, by ROBERT CEDARBAUM, Assistant Attorney General,

14 1400 South Evergreen Park Drive Southwest, Post Office Box

40128, Olympia, Washington 98504; telephone (360) 664-1188.

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PUGET SOUND ENERGY, by SHEREE STROM CARSON,

16 Attorney at Law, Perkins Coie, 10885 Northeast Fourth

Street, Suite 700, Bellevue, Washington 98004; telephone

17 (425) 635-1422.

18 PUBLIC COUNSEL, by SARAH SHIFLEY (via bridge),

Assistant Attorney General, 800 Fifth Avenue, Suite 2000,

19 Seattle, Washington 98104; telephone (206) 464-6595.

20 JEFFERSON COUNTY PUD NO. 1, by KIRK H. GIBSON,

Attorney at Law, McDowell, Rackner & Gibson P.C., 419 S.W.

21 11th Avenue, Suite 400, Portland, Oregon 97205; telephone

(503) 595-3922 and by ARTHUR BUTLER, Attorney at Law, Ater

22 Wynne, LLP, 601 Union Street, Suite 1501, Seattle,

Washington 98101-3981; telephone (206) 623-4711.

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Shaun Linse, CCR NO. 2029

24 Court Reporter

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

2 JUDGE MOSS: Good morning or good afternoon I

3 should say, everyone. My name is Dennis Moss. I'm an

4 Administrative Law Judge with the Washington Utilities and

5 Transportation Commission. We are convened this afternoon

6 in the first prehearing conference in the matter styled

7 Petition of Puget Sound Energy, Inc., for a Declaratory

8 Order regarding the Transfer of Assets to Jefferson County

9 Public Utility District No. 1, Docket U-101217.

10 The first order of business will be to take

11 appearances and we'll begin with the company PSE.

12 MS. CARSON: Good afternoon, Your Honor. Sheree

13 Strom Carson representing Puget Sound Energy. My address is

14 10885 N.E. Fourth Street, Suite 700, Bellevue, Washington

15 98004. Phone is 425-635-1422 and fax is 425-635-2422.

16 E-mail address is scarson@perkinscoie.com.

17 JUDGE MOSS: Just for the record, we've had some

18 off-the-record conversation among those present, including

19 Mr. Butler who is here representing as I understand it the

20 Jefferson County PUD No. 1, and we discussed what status

21 that interested party would have in this proceeding, and

22 I've decided I think that we'll just consider them to be an

23 intervenor. There's no objection from staff or from PSE and

24 they clearly do have an interest in the proceedings. So

25 will you be taking the lead for us, Mr. Butler, or your

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1 colleague?

2 MR. BUTLER: Yes, I'm here with my colleague Kirk

3 Gibson who will also be appearing for the Jefferson County

4 PUD. I'll enter my appearance first. It's Arthur A. Butler

5 from the Law Firm of Ater Wynne, LLP. Address is 601 Union

6 Street, Suite 1501, Seattle, Washington 98101-3981;

7 telephone 206-623-4711; fax, 206-467-8406; e-mail

8 aab@aterwynne.com. I've filed a written notice of

9 appearance also for my colleague Joel R. Paisner with the

10 same contact information.

11 JUDGE MOSS: Thank you.

12 MR. GIBSON: Your Honor, my name is Kirk H.

13 Gibson, K-i-r-k H. G-i-b-s-o-n. My address is 419 S.W. 11th

14 Avenue, Suite 400, Portland, Oregon 97205. Phone number

15 503-595-3922; fax 503-595-3928; e-mail kirk@mcd-law.com, and

16 I will be entering a written appearance downstairs later

17 after this proceeding, and I am here on behalf of PUD No. 1

18 Jefferson County.

19 JUDGE MOSS: Thank you, and that will be helpful

20 if you will enter that appearance form. I don't seem to

21 have yours, Mr. Butler, but I did note that it came in so

22 I'll have that information for purposes of our prehearing

23 conference order.

24 Mr. Cedarbaum.

25 MR. CEDARBAUM: Thank you, Your Honor. Robert

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1 Cedarbaum. I'm the Assistant Attorney General representing

2 Commission staff. My address is the Heritage Plaza

3 Building, 1400 South Evergreen Park Drive S.W., Olympia,

4 Washington 98504. My direct dial phone number is area code

5 360-664-1188. The fax is the same area code 586-5522 and my

6 e-mail is bcedarba@utc.wa.gov.

7 JUDGE MOSS: Thank you. And, Ms. Shifley, I had

8 some conversation with you a moment ago. I understand that

9 Public Counsel's intent at this moment at least is to act

10 more or less as a monitor in this proceeding. You are

11 nevertheless a statutory party, and I'll ask that you enter

12 your appearance for purposes of the record.

13 MS. SHIFLEY: Thank you, Your Honor. My name is

14 Sarah Shifley, Assistant Attorney General for Public

15 Counsel. My mailing address is 800 Fifth Avenue, Suite

16 2000, Seattle, Washington 98104. My direct number is

17 206-464-6595. My e-mail address is

18 sarah.shifley@atg.wa.gov. I'd also like to I guess enter an

19 appearance for my co-counsel Simon ffitch, same contact

20 information. ffitch's e-mail address is simonf@atg.wa.gov.

21 JUDGE MOSS: All right. Thank you. Is there

22 anyone else who wishes to enter an appearance today?

23 Apparently not.

24 All right. We've taken care of our intervenor

25 status question. I'll just note for the record that the

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1 Commission entered a protective order in this proceeding on

2 July 30, 2010, and I'll presume that to the extent there is

3 discovery -- I won't presume. I will say that it is going

4 to, of course, conform to the Commission's procedural rules

5 under WAC 480-07-400, et seq.

6 Now, what do we need to do in this case, folks, in

7 terms of process? We have testimony from Mr. Karzmar

8 supported by various exhibits. That's the case in chief.

9 So what do we want from staff?

10 Mr. Cedarbaum, are you going to have some

11 preliminary matters?

12 MR. CEDARBAUM: No, not in the way of any motions

13 if that's what you mean. There are some factual issues

14 raised by the company's petition in the specific relief that

15 they request in terms of the three findings that are listed

16 in the petition. So staff will be looking at those factual

17 issues and potentially filing testimony on them. And so

18 from a process perspective staff's proposal is to set up a

19 schedule that would accommodate prefiling of staff

20 testimony, company rebuttal, and a hearing, although we

21 think only one day would be necessary. But that we include

22 a settlement conference date as well so that perhaps these

23 factual issues can be dispensed with, and then perhaps the

24 filing of full formal staff testimony would become

25 unnecessary.

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1 So I would like to set it up that way with the

2 understanding that we could request more if the case

3 requires.

4 JUDGE MOSS: Yes, it's conceivable we would

5 proceed, for example, with a paper record if that was

6 appropriate given what you've learned. Have you commenced

7 discovery?

8 MR. CEDARBAUM: I think staff has begun to look at

9 Mr. Karzmar's testimony, but I have not issued any data

10 requests. I don't think anything informally has been done.

11 JUDGE MOSS: All right.

12 MR. CEDARBAUM: With respect to the data request,

13 we do appreciate the discovery rules being implemented. We

14 would like to have the turnaround time reduced to five

15 business days from ten given the schedule that I've

16 discussed just briefly with Ms. Carson.

17 JUDGE MOSS: Well, that was my next question was

18 whether you all had discussed the schedule. So have you

19 agreed to something?

20 MR. CEDARBAUM: I don't know. Again, this just

21 happened before we went on the record. She may need some

22 time to consult with Mr. DeBoer who is sitting behind her,

23 but we have a proposal. I can tell you what it is or we can

24 go off the record.

25 JUDGE MOSS: We'll go off the record in a minute,

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1 and you all can discuss it and maybe work out any little

2 kinks and so on and so forth, and we'll perhaps go forward

3 with an agreed schedule. Assuming it is a fairly short

4 schedule, certainly I would entertain favorably your

5 suggestion on the discovery exchange and we can talk about

6 that once we have the schedule before us.

7 Before that happens I'll just say one thing

8 picking up really on the comment you made, Mr. Cedarbaum.

9 The specific findings that company requests here I have to

10 say in particular the finding concerning the transactions

11 being authorized under RCW 80.12.020(2) the way that's

12 worded is a little troubling to me given what the statute

13 says, and I think the parties should be mindful as they talk

14 among themselves the precise statutory language what it

15 allows and does not allow for. I don't know that this is

16 going to pose any barrier to you in your transaction, so on

17 and so forth, but basically as I read it what the statute

18 says is this transaction is not within the Commission's

19 authority; therefore, it doesn't authorize the transaction.

20 It just says we don't have any authority to not authorize it

21 I guess.

22 So that's just one point I wanted to raise today.

23 Perhaps we'll need some briefing on it. I don't know, and

24 I'll just say too the reason I asked you, Mr. Cedarbaum, if

25 there was anything preliminary, I didn't know if staff was

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1 going to raise any concerns about the exercise of the

2 Commission's jurisdiction over this matter.

3 MR. CEDARBAUM: Well, I interpreted the Company's

4 request on that point and, maybe I interpret it incorrectly,

5 but I thought what was asked was for the Commission to

6 determine that it did not have -- that Commission approval

7 of the transaction was required by statute.

8 JUDGE MOSS: Right. I think that's probably what

9 we can say based on my reading of the statute, and I hope

10 perhaps I'm raising something that's not really a concern.

11 Just as I was reading the papers today, I just was struck by

12 the way that that particular finding was worded, and I

13 thought that the interpretation you suggested was entirely

14 within the possible range of things that the Company is

15 really looking for here. I'm just going to raise that

16 point.

17 MS. CARSON: I would agree on behalf of PSE that

18 that is what the Company was asking for, and there is a

19 little bit of perhaps confusion or if you look at the WAC

20 that does seem to require authorization for any transfer as

21 opposed to the statute. Of course, the RCW supersedes or

22 takes priority over the WAC, but it is the Commission's rule

23 requiring the Commission to rule on any transfer. So what

24 we are asking for is simply that the Commission confirm that

25 it's not necessary for it to approve this transfer.

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1 JUDGE MOSS: The WAC is limited by the

2 jurisdictional restrictions in the RCW. I think it's okay

3 to say that the WAC applies only to what we have

4 jurisdiction over and that extent. So I think that's not

5 really a question or at issue. Okay. All right.

6 I guess I want to raise the question too, and you

7 all can talk among yourselves about this as well as the

8 schedule and maybe we can hear a little bit more about it

9 when I come back, but the concern that I have is just sort

10 of mingling in the back of my mind is if we don't have

11 jurisdiction over the transaction under what rubric did we

12 make these other determinations that we've been asked to

13 make? One is that the company has received fair value or

14 full value or something -- I can't remember the term -- for

15 the properties. And the other is that the company is not

16 doing anything contrary to its public service obligation

17 here.

18 So I suppose perhaps it's just our authority to

19 enter into declaratory orders sufficient to confirm

20 jurisdiction to answer those questions, but I'm thinking

21 ahead to when I have to write an order, and so I'd like to

22 hear from the parties on what their thoughts are on the

23 subject.

24 MR. CEDARBAUM: Now or later?

25 JUDGE MOSS: We can do it later. You guys can

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1 talk among yourselves and see if we're all in agreement as

2 to how this goes forward. I mean it makes my life easier.

3 All right. Why don't I give you a few minutes.

4 You think you'll need more than say ten minutes?

5 MS. CARSON: That should be fine.

6 JUDGE MOSS: Okay. I'll give you ten minutes and

7 then I'll come back at about five before the hour, and we'll

8 see where we are.

9 (Recess taken from 1:49 p.m. to 2:06 p.m.)

10 JUDGE MOSS: We'll come back to order and be on

11 the record.

12 I gather from Mr. Cedarbaum having retrieved me

13 from the Commissioner's work area that you all have reached

14 some sort of an agreed schedule; is that right? Who wants

15 to tell me what that is?

16 MR. CEDARBAUM: I can do that.

17 JUDGE MOSS: All right. Thank you.

18 MR. CEDARBAUM: We've agreed to a schedule as

19 follows: A settlement conference on December 3, filing of

20 staff and intervenor testimony and Public Counsel if they

21 file on December 21. The filing of Company rebuttal on

22 January 18, and then we did not know the Commissioner's

23 schedule if they're sitting or your schedule if they're not.

24 We would ask for a hearing as soon as possible after

25 January 18 but no sooner than three weeks later. We would

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1 only anticipate one day being necessary.

2 JUDGE MOSS: Okay. So a hearing as soon as

3 possible after January 18 plus three weeks?

4 MR. CEDARBAUM: Right.

5 JUDGE MOSS: Now let me just take a quick look.

6 We have to be cognizant of state furloughs so I'm going to

7 do my duty here.

8 All right. I think all that is going to work just

9 fine in terms of the schedule for the government to cease as

10 it does every month or so. I think the calendar looks

11 pretty good in terms of the hearing shortly after January 18

12 plus three weeks. So I will set that up and just inform you

13 of what the date is. Does anybody have a preference in

14 terms of a specific date? No?

15 MR. BUTLER: Not February 7, if at all possible.

16 JUDGE MOSS: Okay. Would that be because of

17 Qwest/Century Link Transfer simultaneous post-hearing briefs

18 are due on that day or for some other reason?

19 MR. BUTLER: Good guess. Yes, correct.

20 MR. CEDARBAUM: We would still ask although that's

21 now as fast a schedule as I proposed earlier, we would still

22 ask for the shortened turnaround time for data requests five

23 days business.

24 JUDGE MOSS: All right. Is that workable for

25 everybody?

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1 MS. CARSON: That's fine.

2 JUDGE MOSS: I will do that when I prepare the

3 order, the prehearing order five-day turnaround.

4 Anything else we need to do that's unusual that

5 needs be noted in the order, the prehearing order? No?

6 Okay. Anything else you all want to share with me

7 at this time?

8 What else do I need to share with you? If you all

9 wish to go forward with the simply electronic service of

10 documents, remember that you need to file a waiver letter

11 with the records center so that we don't have to insist on

12 mail or hand delivery for service.

13 I guess I will remind you all. I don't think it's

14 going to be any problem with this particular group because

15 you're all experienced here, but do each keep in mind if

16 you're submitting things electronically, the dates we put on

17 the procedural schedule will be dates for submission. So

18 that's, for example, the testimony, so on and so forth. The

19 actual filing date is the next day following if you use

20 electronic submission, but I do want to emphasize that

21 there's a difference between submitting the document

22 electronically and filing it. The filing actually occurs

23 when we get paper copy, and that's explained in our

24 procedural rules, but we've had some recent activity on that

25 subject that I don't want to repeat. So there's that.

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1 You did mention that you want me to set a date of

2 December 3 for a settlement conference. You are familiar

3 with that process. If you need a mediator or if there's a

4 need for a mediator and you wish to ask us to provide one we

5 can certainly try to accommodate you in that regard. Though

6 we do have limited staff, we usually can meet those needs.

7 We need an original plus nine copies of everything

8 for internal distribution, and if information that you file

9 includes confidential -- do we have highly confidential

10 provisions in this one?

11 MS. CARSON: No.

12 JUDGE MOSS: If it includes confidential

13 information, you need to file the original and nine copies

14 of the confidential version and then you need to just file

15 the one copy of the redacted version. Okay? Because we

16 don't really use the redacted version internally. We use it

17 for posting. And, of course, you all are familiar with the

18 process of making your filings to the Commission Secretary,

19 the Commission's P.O. Box and street address, and, of

20 course, making your electronic submissions as well.

21 I like you all to send me courtesy copies of

22 filings and such preferably in .doc or .docx format. Some

23 of you may have noticed over the years, I do cut and paste

24 from what you send in when I'm writing things, and it does

25 make life a lot easier if I have it in that format so I

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1 appreciate that.

2 If we do end up having a hearing, we'll go through

3 the usual process that I have in my hearings which we'll

4 develop a witness list and exhibit list. We will exchange

5 cross-examination exhibits and so forth a few days, probably

6 three business days before the hearing, and only if

7 necessary will we conduct another prehearing conference at

8 that stage. That hasn't been necessary in about the last

9 four or five years so I think everybody is well familiar

10 with how that works.

11 I will prepare a prehearing conference order and

12 that will be entered in due course, and unless there's any

13 other business I believe that concludes what we need to do

14 today. Thank you all very much for being here.

15 (Prehearing Conference adjourned at 2:15 p.m.)

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1 In re: Petition of Puget Sound Energy, Inc.

2 Docket No. U-101217

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10 I, Shaun Linse, CCR, do hereby certify that the

11 foregoing transcript prepared under my direction is a

12 full and complete transcript of proceedings held on

13 August 26, 2010, in Olympia, Washington.

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Shaun Linse, CCR 2029

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