

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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