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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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v.) DOCKET UG-111233

7

NORTHWEST NATURAL GAS COMPANY,)

8

Respondent.)

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PREHEARING CONFERENCE, VOLUME I

11

Pages 1 - 20

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ADMINISTRATIVE LAW JUDGE DENNIS MOSS

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14

1:31 p.m.

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DECEMBER 1, 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 (Continued)

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1 JUDGE MOSS: On the record.

2 Good afternoon. We are convened this
3 afternoon in the matter styled Washington Utilities
4 and Transportation Commission against Northwest
5 Natural Gas Company, Docket UG-111233.

6 As I recall, this is our first prehearing
7 conference. Our initial effort at having one was
8 cancelled, with some process occurring just before it
9 was scheduled to happen. And just to have a clear
10 record, I will just recall that the parties did file a
11 joint motion seeking leave to withdraw on a certain
12 condition that the Commission found untenable. And
13 therefore, the Commission granted only in part the
14 request for leave to withdraw, giving the Company the
15 option of either withdrawing, if it chose to do so,
16 without the condition it had requested, or continuing
17 the process. And the Company elected to continue the
18 process, hence, we are here today, but essentially at
19 Square 1.

20 I've been handed a proposed procedural
21 schedule by Staff counsel. Is this an agreed
22 schedule?

23 MS. BROWN: Public Counsel is in
24 agreements, as is Ms. Rackner. I have not heard from
25 Mr. Stokes or Mr. Brooks.

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1 JUDGE MOSS: All right. Well, I
2 suppose, then, let's just be sure we have everybody in
3 the loop. Let's take appearances, since this is the
4 first prehearing conference.

5 We will begin with the Company.

6 MS. RACKNER: Lisa Rackner with the law
7 firm of McDowell Rackner & Gibson appearing on behalf
8 of Northwest Natural.

9 Would you like my address?

10 JUDGE MOSS: We have moved to the
11 convention of just having a short form of appearance
12 in our proceedings. I'm glad you actually reminded me
13 of that, because the parties will grow accustomed to
14 that practice or change over time. But please do
15 provide the court reporter with a copy of your
16 business card or something that will give her all the
17 necessary information for contact purposes.

18 MS. RACKNER: I have done that.

19 I also just wanted to note for the record that
20 with me today is Mark Thompson from the Company and
21 Alex Miller from the Company.

22 JUDGE MOSS: All right. Thank you very
23 much.

24 Ms. Brown, since you are present in the room,
25 I will have you enter your appearance next, if you

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1 would.

2 MS. BROWN: Sally Brown, Senior
3 Assistant Attorney General, appearing on behalf of
4 Commission Staff.

5 JUDGE MOSS: Thank you.

6 And are there other counsel in the room? I
7 think not. No other counsel in the room.

8 So, Mr. ffitch, let's have your appearance.

9 MR. FFITCH: Thank you, Your Honor.
10 Simon ffitch, Senior Assistant Attorney General, for
11 the Office of Public Counsel.

12 Would you like the details because I am on the
13 phone?

14 JUDGE MOSS: No, that's quite all right.
15 I think we can manage that from this end.

16 MR. FFITCH: All right.

17 JUDGE MOSS: I notice that you are now
18 Senior Assistant Attorney General, Mr. ffitch. So
19 like me, you have hung around long enough that they
20 have attached something to your name. They probably
21 gave you no additional salary.

22 Mr. ffitch: Thank you. That is
23 correct. Thank you for noticing, Your Honor.

24 JUDGE MOSS: All right, very good.

25 Mr. Brooks, you are on the phone.

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1 MR. BROOKS: Good afternoon. This is
2 Tommy Brooks with the law firm Cable Huston. I am
3 appearing on behalf of the Northwest Industrial Gas
4 Users.

5 JUDGE MOSS: Have you given the court
6 reporter your contact information?

7 MR. BROOKS: I have not. We have
8 included it in our notice of appearance, but I can
9 certainly provide it in another form.

10 JUDGE MOSS: We can provide it from
11 here, then, if it is in your notice of appearance. I
12 should have that with me today in my notebook. We
13 will just do that. Okay.

14 I didn't really save much time there, did I,
15 with all that discussion around our new process.

16 As I said, we are basically at Square 1 in
17 this case. It is a tariff filing, it does have a
18 suspension date. I haven't bothered to calculate the
19 suspension date, but since this was kicked off, what,
20 June or July, I gather that this schedule reflects an
21 agreement to extend the procedural agreement, or is
22 this within the framework of the original suspension
23 date?

24 MS. RACKNER: I believe it's within the
25 framework of the original suspension date.

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1 JUDGE MOSS: Okay.

2 MS. BROWN: That's my understanding, as
3 well.

4 JUDGE MOSS: When I came in the room, in
5 the back of my mind was what are we going to do about
6 that. Apparently, the parties feel comfortable that
7 we can complete the case within the confines of the
8 existing schedule, which is bounded by the statutory
9 suspension period.

10 Now, Mr. ffitch, you've seen this procedural
11 schedule and you agree with it.

12 Mr. Brooks, have you seen it?

13 MR. BROOKS: I've seen a version of it.
14 We don't have any objection to it. I do have two
15 versions, though: One that has a date for
16 simultaneous answering briefs and one that does not.
17 I don't think it changes the fact that we don't have
18 any objection.

19 JUDGE MOSS: What I have before me does
20 show the simultaneous answering briefs.

21 MR. BROOKS: Okay.

22 MS. BROWN: Yes, I made that change,
23 Your Honor.

24 JUDGE MOSS: That would be the one,
25 okay. And the Company is in agreement.

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1 Does that cover everybody who is participating
2 in this proceeding?

3 Do I need to grant intervention to anybody?
4 Have we done that?

5 Mr. Brooks?

6 MR. BROOKS: We have submitted a
7 petition to intervene, but I do not believe that has
8 been granted.

9 JUDGE MOSS: I don't think it has been
10 acted on, because I normally do that at the first
11 prehearing conference. Forgive me, I have put this on
12 my shelf for a while now, so I'm not as up to speed as
13 I might otherwise be.

14 All right. So we have a petition to intervene
15 from the Northwest Industrial Gas Users. Is that
16 correct, Mr. Brooks?

17 MR. BROOKS: That is correct.

18 JUDGE MOSS: And is there --

19 MS. BROWN: It was filed --

20 JUDGE MOSS: -- any objection to that?

21 MS. BROWN: August 10th it was filed,
22 Your Honor.

23 JUDGE MOSS: Thank you very much,
24 Ms. Brown.

25 Is there any objection to the petition?

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1 MS. BROWN: No objection.

2 MS. RACKNER: No objection.

3 JUDGE MOSS: All right. Hearing no
4 objection, that intervention will be granted. That
5 will be noted in the prehearing order.

6 MR. FFITCH: Your Honor, if I may be
7 heard on the schedule?

8 JUDGE MOSS: Sure.

9 MR. FFITCH: I have one comment for the
10 record. Public Counsel has agreed to Staff's proposed
11 schedule. However, apropos of your inquiry about the
12 schedule, it is possible -- this is a somewhat
13 truncated schedule, because we are getting started
14 much later than normal in the suspension period. I
15 thought it would be important to note on the record
16 that we might get into a situation, depending how the
17 case unfolds, where it might be appropriate to have an
18 extension of the suspension date.

19 I think the Company's approach in this case
20 has, to some extent, been the cause of where we are in
21 the schedule at this point. I wouldn't want to see us
22 getting really squeezed at the end of the time line if
23 we need more time because of that.

24 At this point that has not arisen. I just
25 wanted to sort of make that observation for the

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1 record, in case it comes up later.

2 JUDGE MOSS: Thank you.

3 And I will note in that connection, that while
4 we do have a suspension period, this is a tariff
5 filing. This is a much narrower case than, for
6 example, a general rate proceeding, and therefore --
7 and the parties apparently have agreed, at least for
8 the moment, that they believe they can complete it
9 within the constraints of the existing suspension
10 date.

11 We will just leave it at that for today.
12 Should the need arise later in the process for someone
13 to want to request an extension of the suspension
14 date, then we will do what we need to do to manage
15 that request, if and when we receive it.

16 I see that there is a prehearing conference
17 date here of May 4th. What's the purpose of that?

18 MS. BROWN: We were hoping -- we are
19 going to have to enter discussions about it. We are
20 hopeful that perhaps we could proceed on a paper
21 record, and then we would stipulate to the admission
22 of testimony and exhibits. That's under
23 consideration, Your Honor.

24 JUDGE MOSS: Okay. Well, that's
25 certainly something I would encourage us to do, if we

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1 could proceed on a stipulated record, so long as it is
2 sufficient to the Commission's needs to make a
3 decision, as would be obvious to you all, I'm sure.

4 MS. BROWN: We had hoped for a
5 settlement.

6 JUDGE MOSS: I hope the order would
7 sufficiently describe the Commission's concern about
8 some factors that need to be fleshed out.

9 And the parties, of course, as I believe I
10 indicated in that order -- it's been a while since I
11 have read it, too. But I believe there is a statement
12 in there to the effect that settlement is still
13 possible, it just needs to be brought forward in a
14 little more fulsome manner than I perceived earlier
15 on.

16 If there are questions about that, we can
17 discuss it further.

18 Okay. What else do we need to accomplish
19 today? We have the schedule, apparently.

20 MS. RACKNER: We would like the entrance
21 of a protective order.

22 JUDGE MOSS: Oh, a protective order.

23 MS. BROWN: And also discovery.

24 JUDGE MOSS: All right. Well, this is
25 the type of proceeding in which discovery should and

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1 is allowed, and therefore it will proceed. I would
2 hope that it is proceeding under the Commission's
3 procedural rules.

4 Did you want to shorten response times or
5 something?

6 MS. BROWN: I don't think that's
7 necessary at this time.

8 JUDGE MOSS: Okay.

9 MR. FFITCH: Your Honor, we just want to
10 make sure it is clear that the discovery rule is not
11 being invoked.

12 JUDGE MOSS: I never have liked that
13 term, Mr. ffitch. I have always taken the view that
14 the discovery rules are there. I recognize that they
15 identify certain circumstances in which discovery is
16 appropriate, and at least implies that there may be
17 circumstances in which it is not. Indeed, I have
18 presided over cases where it was not.

19 As a general proposition, in a tariff filing
20 in particular, I think it is appropriate to "allow"
21 for it. That would be the term I would use, rather
22 than "invoking" it.

23 MS. BROWN: I would rather invoke it,
24 Your Honor.

25 JUDGE MOSS: You would rather invoke it?

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1 Well, don't provoke me.

2 I am speaking here, and I am finding I am less
3 able to do multiple things at once, than I used to be.
4 I want to check these dates and make sure I don't have
5 a conflict. Although, I have discussed with other
6 judges in this section that this looks like an
7 interesting case. Someone might wish to step forward
8 and help me.

9 MS. BROWN: I'm having the same problem.

10 JUDGE MOSS: I will just note that you
11 have identified May 10th as the date for the hearing
12 to begin. We can certainly do that, but it is a date
13 of an open meeting. We will either have to begin in
14 Room 108, or begin in the afternoon. We will work
15 that out as we get closer, if a hearing is even
16 needed. As Ms. Brown suggests, you may be able to go
17 forward in this on a stipulated record, or even on the
18 basis of -- well, we might have to have a settlement
19 hearing, or something, I guess.

20 Okay. I can meet that hearing date. And the
21 briefing, of course, dates don't really conflict with
22 me.

23 I would think 25 days would be adequate to get
24 an order out. Okay.

25 Let me just throw out, though, this one

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1 question that occurs to me, since this is a tariff
2 filing. At this moment, at least, I am presiding in
3 this case alone, which is to say what comes out of it
4 will not be a final order, but an initial order. How
5 does that affect us in terms of the suspension date?

6 You have given me 25 days from July 2nd
7 answering briefs to the suspension date. I can turn
8 an order out pretty quickly, as you all know, but I am
9 concerned about being able to do that, have sufficient
10 time for a petition for review.

11 MS. BROWN: Your Honor, we would waive
12 that initial order.

13 JUDGE MOSS: Well, all right.

14 What about the Company?

15 MS. RACKNER: Well, that's something I
16 would have to talk with the Company about.

17 JUDGE MOSS: Yeah, okay. Well, get back
18 to me on that. Perhaps an e-mail to everyone would be
19 the best way to do that, so that everyone understands
20 the situation.

21 I can discuss with the commissioners whether
22 they have an interest in sitting for this hearing or
23 not. It's not a general rate case, so they are not
24 required to under the statute.

25 The only concern, and the only reason I am

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1 hesitating a little bit, is if I do turn out an
2 initial order that raises significant questions in one
3 or more of their minds, then we may become pressed for
4 time. In that event, I would say the Company is put
5 into this sort of situation. If everybody agrees to
6 waive the initial order, then I think we can probably
7 handle that.

8 But I think we need to have the contingency
9 that in the event we seek to have a final order at the
10 end of the day, whether the commissioners see it or
11 not, the Company needs to be prepared to give us an
12 extra couple of three weeks, if we need it. So that
13 would just be our commissioner time, if you will. And
14 so I would like to have that as a commitment from the
15 Company, as well.

16 We'll do our best, of course.

17 MS. RACKNER: Certainly, that all makes
18 sense.

19 I guess one thing I would note is that the
20 case does raise some significant policy issues, and so
21 if we are unable to settle the case, I would think
22 that this might be a case that the commissioners would
23 have a particular interest in.

24 JUDGE MOSS: I did mention that. I was
25 not being glib. I think it is a case of considerable

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1 interest. As far as I know, it is one of first
2 impression. At least in Washington state, it raises
3 issues that I have not seen before in the years I have
4 been here.

5 I think you're right. I will talk to them
6 about it. They may decide they just want to sit.

7 MS. RACKNER: Okay.

8 JUDGE MOSS: That would solve
9 everything, wouldn't it?

10 MS. RACKNER: Yes, it would.

11 JUDGE MOSS: Okay.

12 After a season of general rate cases, I don't
13 know how they would feel about that.

14 MS. RACKNER: Well, this would be a
15 refreshing change of pace.

16 JUDGE MOSS: I guess I can present it in
17 that fashion and see if they buy it.

18 Is there anything else today?

19 I thank you all for being here. Those of you
20 on the phone, thank you for calling in.

21 Mr. ffitich: I'm sorry, Judge, I did
22 have one other thing. You were moving too fast for me
23 there.

24 JUDGE MOSS: Well, you see, I'm
25 accustomed to having you in the room, Mr. ffitich,

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1 where I can read your face and see that you are going
2 to tell me something more.

3 Go ahead.

4 MR. FFITCH: This is administerial. I
5 am a little bit uncertain about the new process under
6 the recent issuance from the bench about putting new
7 people on the -- or additional people on the service
8 list. We have a couple of people from our staff that
9 we would like to have on that list. Should we e-mail
10 those in, or do you want those now?

11 JUDGE MOSS: Let's go off the record for
12 purposes of this discussion.

13 (Discussion off the record.)

14 JUDGE MOSS: Okay, great.

15 Mr. Brooks, you are also on the phone. Did
16 you have anything further for us?

17 MR. BROOKS: Nothing from me, Your
18 Honor.

19 JUDGE MOSS: Okay, fine.

20 And those in the room apparently are satisfied
21 with our discussion to this point.

22 MS. RACKNER: Yes.

23 JUDGE MOSS: And so with that, I
24 thank you all again. We will be in recess until our
25 next gathering.

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(Prehearing conference adjourned 1:50 p.m.)

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23 MY COMMISSION EXPIRES:

24 JUNE 2012

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I, Sherrilyn Smith, a Certified
Shorthand Reporter and Notary Public in and for the
State of Washington, do hereby certify that the
foregoing transcript is true and accurate to the best
of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto
set my hand and seal this 7th day of December, 2011.

SHERRILYN SMITH