BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION	)	UE-031725
	)	Volume I
	)	Pages 1-50
v.	)	
	)	
PUGET SOUND ENERGY, INC.,	)	

A prehearing conference in the above-entitled matter was held at 1:37 p.m. on Thursday, November 6, 2003, at 1300 South Evergreen Park Drive, Southwest, Olympia, Washington, before Administrative Law Judge DENNIS MOSS.

The parties present were as follows:

PUGET SOUND ENERGY, by Todd Glass and Lisa Hardie, Attorneys at Law, Heller Ehrman White & McAuliffe, LLP, 701 Fifth Avenue, Suite 6100, Seattle, Washington 98104.

BP WEST COAST PRODUCTS and TRANSCANADA PIPELINE, LTD., by John A. Cameron, Attorney at Law, Davis Wright Tremaine, 1300 S.W. Fifth Avenue, Portland, Oregon 97201.

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES and MICROSOFT, by Matthew Perkins, Attorney at Law, Davison Van Cleve, 1000 S.W. Broadway, Suite 2460, Portland, Oregon 97205.

COMMISSION STAFF, by Robert L. Cedarbaum, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

Barbara L. Nelson, CCR

Court Reporter

PUBLIC COUNSEL, by Simon ffitch, Assistant Attorney General, 900 Fourth Avenue, Suite 2000, Seattle, Washington, 98164 (via teleconference bridge).

FEDERAL EXECUTIVE AGENCIES' CONSUMER INTERESTS, by Norman J. Furuta, Attorney at Law, 2001 Junipero Serra Boulevard, Suite 600, Daly City, California 94014 (via teleconference bridge).

JUDGE MOSS: We'll go on the record. Good afternoon, everyone. We are assembled today for our first prehearing conference in the matter styled Washington Utilities and Transportation Commission against Puget Sound Energy, Inc., Docket Number UE-031725. I think our business today will be exclusively procedural, and we'll start with appearances and the company.

MR. GLASS: Good afternoon, Your Honor. My name is Todd Glass, Heller, Ehrman, White and McAuliffe, 701 Fifth Avenue, Suite 6100, Seattle, Washington, 98104. Phone number, 206-389-6142; e-mail address tglass@hewm.com. With me today at counsel table is my colleague, Lisa Hardie, and two directors of the rate department of Puget Sound Energy, Karl Karzmar and John Story.

JUDGE MOSS: And your facsimile number?

MR. GLASS: 206-515-8968.

JUDGE MOSS: Okay. Let's go ahead with our Intervenors. For ICNU and Microsoft, I believe.

MR. PERKINS: Thank you, Judge Moss. My name is Matthew Perkins, from Davison Van Cleve, P.C. Our address is 1000 Southwest Broadway, Suite 2460, Portland, Oregon, 97205. Phone number is 503-241-7242; our facsimile number is 503-241-8160;

and our e-mail address is mail@dvclaw.com. And also appearing in this proceeding will be Brad Van Cleve from our office for ICNU and Melinda Davison for Microsoft.

JUDGE MOSS: Cogeneration Coalition of Washington. Anyone present on the bridge line for that organization?

MR. GLASS: Your Honor, Mr. Brookhyser left me a message yesterday stating that he would not be present at today's prehearing conference.

JUDGE MOSS: Is the client still interested in the proceeding, as far as you know?

MR. GLASS: I believe so. I just don't think he was able to attend today.

JUDGE MOSS: I see, all right. And for BP and TransCanada.

MR. CAMERON: Hello, Your Honor. I'm John Cameron. I tendered to the Commission today a joint intervention petition on behalf of BP and TransCanada. I'd like to enter my appearance and that of counsel for TransCanada. Again, I'm John Cameron, Davis, Wright, Tremaine, LLP, Suite 2300, 1300 Southwest Fifth Avenue, Portland, Oregon, 97201. My phone number is 503-778-5206; fax number, 503-778-5299; and my e-mail address is

johncameron@dwt.com.

JUDGE MOSS: Thank you.

MR. CAMERON: Co-counsel is Ms. Angela Avery, TransCanada Pipelines, Limited, 450-First Street Southwest, Calgary, Alberta, and their equivalent of a zip code is all caps, T2P 5H1. Ms. Avery's phone number is 403-920-2171; her fax number is 403-920-2354; and her e-mail address is angela_avery@transcanada.com.

JUDGE MOSS: Is Ms. Avery an attorney?

MR. CAMERON: She is, Your Honor.

JUDGE MOSS: Admitted in the U.S.?

MR. CAMERON: I can't say with certainty.

JUDGE MOSS: All right. It does not appear that we have anyone present for Public Counsel today. Is there a representative from Public Counsel on the bridge line?

MR. FFITCH: Yes, thank you. Good afternoon, Your Honor. Simon ffitch, Assistant Attorney General, Public Counsel Section, Washington Attorney General, 900 Fourth Avenue, Suite 2000, Seattle, Washington, 98164. Phone number is 206-389-2055; fax number is 206-389-2058; e-mail is simonf@atg.wa.gov.

JUDGE MOSS: Thank you, Mr. ffitch. And for

Staff.

MR. CEDARBAUM: Thank you, Your Honor. Robert Cedarbaum, Assistant Attorney General, representing Staff. My business address is the Heritage Plaza Building, 1400 South Evergreen Park Drive Southwest, Olympia, Washington, 98504. My telephone number is 360-664-1188; the fax number is 360-586-5522; and my e-mail address is bcedarba@wutc.wa.gov.

JUDGE MOSS: I always get your e-mail address wrong, Mr. Cedarbaum.

MR. CEDARBAUM: So do I sometimes.

JUDGE MOSS: Always R instead of B. I've got to correct it now. All right. Are there any other persons who wish to enter an appearance today, either present in the hearing room or on the bridge line?

MR. FURUTA: Yes, Your Honor, on the bridge line, my name is Norman J. Furuta, and I'd wish to appear for the Federal Executive Agencies' consumer interest. My business address is 2001 Junipero Serra --

JUDGE MOSS: You'll need to spell that one for us.

MR. FURUTA: Yes. Spelled J-u-n-i-p-e-r-o

S-e-r-r-a Boulevard, that's Suite 600, in Daly City, California, Daly is spelled D-a-l-y, 94014. Telephone is 650-746-7312; fax is 650-746-7372; and unfortunately I have a long e-mail address. It's furutanj@efawest.navfac.navy.mil. They tell me next month I'm going to be getting a much shorter e-mail address. You'll have to bear with me.

JUDGE MOSS: Well, yours isn't as bad as some. All right. Anyone else? Okay. Thank you.

MR. GURTLER: Judge, this is Gerry Gurtler.

JUDGE MOSS: Sorry. Can't hear you.

MR. GURTLER: Judge, this is Gerry Gurtler, with Microsoft. I'm being represented by Davison Van Cleve. Would you like my contact information?

JUDGE MOSS: If you have counsel representing you here, we don't really need you to enter a formal appearance.

MR. GURTLER: Great. Thank you.

JUDGE MOSS: Thank you. Any other party wishes to enter an appearance? All right. Thank you. I do have written petitions to intervene, some of which I received this morning, from Industrial Customers of Northwest Utilities, Microsoft Corporation, Cogeneration Coalition of Washington, who is not represented today, BP West Coast Products

and TransCanada Pipelines, Limited. That would seem to be the full set, based on the appearances we've had.

Let me just ask generally if there's any opposition to any of these petitions to intervene?

MR. GLASS: Your Honor, the company does not -- the company does not object to the intervention of any of these parties. I would note that I think Mr. Furuta is also seeking intervention.

JUDGE MOSS: Mr. Furuta, I'm sorry I missed you. You're simply not down on my sheet and I'm having that kind of a day. Federal Executive Agencies.

MR. FURUTA: Thank you.

JUDGE MOSS: I do not have a written petition from you. However, I assume you do wish to intervene?

MR. FURUTA: That's correct.

MR. GLASS: Your Honor, I have two points of clarification. One is that while we do not object to the intervention, we do not necessarily agree with the statements in some of the motions to intervene. So by our agreeing, we're not agreeing with those statements.

The second thing is that of primary

importance to us is that the protective order with the highly confidential provisions will be enforced with regard to all of these intervenors. Thank you.

JUDGE MOSS: Yes, that's our next order of business, is to discuss the motions and so forth. Because we all recognize that this proceeding springs from the settlement the Commission approved and adopted in connection with the last rate case that called for an expedited process -- an agreement among the parties, at least, for an expedited process for this type of proceeding, we did take some preliminary steps in consultation with Staff, Public Counsel and Puget Sound Energy to get a procedural order in place so that discovery could commence.

That was done a week or so ago, and it's essentially our standard form of protective order. We will have an opportunity today to talk about any adjustments that need to be made to that, but of course it is an order effective in this proceeding and governs the conduct of all the parties.

Discovery, as I mentioned, has commenced. I would say, technically, it's commenced informally, so we'll make it formal and invoke the Commission's discovery rule for purposes of this proceeding.

Let me ask, though, are there any -- do we

need to have any discussion about the protective order? I believe I did have one e-mail from Public Counsel expressing some concern, but perhaps it turns out there is no concern.

MR. FFITCH: Yeah, thank you, Your Honor. This is Simon ffitch. We did have an issue we wanted to discuss.

JUDGE MOSS: Well, go ahead.

MR. FFITCH: Thank you. I -- and we have had a chance to discuss this matter with Mr. Glass, for the company, and Mr. Cedarbaum, and attempted to work it out. I'm afraid that we still have a bit of a difference and I wanted to bring that forward today. I'll try to be concise as possible.

The basic form of the protective order that's been entered in the case is acceptable to Public Counsel, but with the understanding that the order be interpreted in the same fashion that similar orders have been interpreted in recent telecom proceedings.

And as I explained to Mr. Glass, we actually address in the series of motions and orders in the current pending Qwest competitive classification docket whether or not Public Counsel was subject to the full panoply of outside counsel, outside expert

and affidavit requirements of the protective order, and ultimately the Commission ruled that and interpreted the order to mean that we were treated and received information under the order identically to the Commission Staff, and that the special requirements in those -- essentially the affidavit and outside counsel, outside party -- outside expert requirements did not apply to Public Counsel, just as they did not apply to Staff.

The -- I think the unresolved dispute we have here, maybe the only unresolved dispute with the company is that they would like to kind of modify that prior approach by requiring Public Counsel's outside experts be subject to the affidavit requirements. Again, we believe that's inconsistent with the Commission's orders in the Qwest competitive classification docket that were just issued earlier this summer.

JUDGE MOSS: Okay. I will say that the way I read and read and indeed communicated to the parties informally in response to an e-mail from Mr. Cedarbaum, my understanding was that the intent was to have the protective order treat Public Counsel identically to Staff with respect to in-house personnel, but with the -- in the case of an outside

expert, that person would be required to execute the affidavit in Appendix C to the protective order, so that's how I had been reading it. I'm not the presiding officer in the Qwest competitive classification case, so I don't have any particular insight to what the Commission may or may not have done there, not that it would necessarily govern here, in any event.

So I guess I would like to hear why we should treat an outside expert hired either by Public Counsel or, for that matter, one hired by Staff, differently from someone else?

MR. FFITCH: Well, I know this is sort of the first answer doesn't necessarily always make a very persuasive point, but we think it's important that we thoroughly address these issues with the -- with the Commission in this current case, and it's been a perennial issue and it was my understanding that we had finally resolved it. That's point one.

I -- as I indicated to Mr. Glass, I'm a little frustrated with having to go back and revisit and reinvent the wheel on this issue when we really had hammered it out pretty well in the comp class case. But to your point specifically, the basis of our position is that obviously Public Counsel does

not represent competitors, and for that reason, we're -- we believe we're so similarly situated with Staff, we don't think Staff has ever been subject to this special affidavit requirement.

We are subject to the protections of the order, so that our Staff and our outside experts are making a commitment by signing the expert agreement to protect the information and maintain it in a highly confidential fashion. And we believe that gives adequate protection to the company.

In addition, they do have an opportunity, if they have a special basis for concern, they can always object to the experts that we name in a particular case. So we're not suggesting that the information be unprotected, but we're, I guess, jealous of our position, as a statutory party who's not representing competitors, and reluctant to be placed in that sort of general category with the special requirements, particularly as to the affidavits.

The last point I would make is that the affidavit requirement itself has been completely dispensed with in the very recently-initiated mass market impairment docket on the telecom side, which involves a large number of competitors and a very

large amount of very competitively-sensitive information. The approach there has simply been to have everybody sign the standard agreement to abide by the protective order, but it's my understanding, I can check it while we're on line here, because I have a copy of the order right here, that they've dispensed with the affidavit requirement in that proceeding.

So that's kind of an alternate model that we have out there that says it's enough if you commit to abide by the terms of the order, limit the use of the information to the purposes of the docket, agree not to use it for any anticompetitive purposes, and that's sort of been deemed sufficient in that case.

So that's essentially a statement of why we take this position.

JUDGE MOSS: Well, I'll say that, Mr. ffitch, while I share your frustration in returning to this issue it seems perennially, I also recognize that each case may have its own subtleties that sometimes requires us to modify terms. We do that from time to time, so I don't know that there's any such thing as the perfect protective order that will allow us to avoid having this conversation again in the future.

I guess my concern, while I have heard you argue what essentially seems to be a point of principle, I'm more concerned with the practical side of things. Is there any practical difficulty caused for you by the protective order in its current form? It seems to me that it's fairly unrestrictive, and simply provides a mechanism whereby those who are not directly in your employ, and therefore not directly under your control in terms of their professional activities, are having to verify, if you will, by affidavit, that they will not use this information in some other setting in which they may find themselves working for a competitive company, for example.

So is there any practical difficulty posed by -- and again, as far as treating Public Counsel evenhandedly with Staff, a statutory party, that is my understanding of the current order. It treats you evenhandedly, in that if Staff went out and hired an outside expert, that person also would be required to execute an affidavit and the Appendix C. So tell me if there's a practical problem here.

MR. FFITCH: Well, with respect, Your Honor, Staff -- this form of highly confidential protective order has not previously been interpreted to require Staff outside witnesses to sign affidavits. So

that's a new reading.

JUDGE MOSS: Well, I don't know that we've ever been put to making that interpretation, not in any cases I've sat in.

MR. FFITCH: It's also a new reading as to Public Counsel. We have -- I realize that, Your Honor, I haven't had a chance to provide you with the copies of the pleadings and orders from the other case which lay this out in more detail, but in recent -- in two recent significant telecommunications dockets we have used outside consultants and have not been required to follow this, you know, this affidavit requirement.

So it is a matter of principle, and also, as a practical matter, it can be an onerous requirement for consultants if we can't tell, when we present this affidavit requirement to consultants, and it will be a new requirement for us, whether we're going to -- whether the consultant's going to be willing to sign off on it. Because it has some elements of sort of a non -- you know, restrictions on employment to it that can potentially interfere with the consultants' livelihood and practice. We've had some consultants express some real concerns about that.

Now, I don't know if that would happen for

us in this case, because we haven't made a final determination about who we would retain, and so it's possible that in this case it might not be a practical issue, but, you know, having, I thought, established how this order was going to be interpreted with respect to our office, I'm very, very reluctant to retreat from that interpretation just on sort of a case-by-case basis for the convenience of, you know, Puget Sound Energy. We'll be litigating this in every single case that comes before us. I know the Commission has preferred to have a standard approach to protective orders.

JUDGE MOSS: A preference that we have so far failed to satisfy, it seems.

MR. FFITCH: Well --

JUDGE MOSS: Well, it says -- it appears to me, and I'm familiar -- of course, I've been involved in this discussion for years, and we have modified the protective order, what we call the standard form of protective order from time to time to address some of these very concerns. I'm just looking now at page seven of the protective order. Paragraph 12 is probably the operative paragraph in terms of any concerns that an outside consultant might have with respect to accepting employment with you and

therefore being foreclosed from potential employment elsewhere, and all this appears to require is that such a person not involve themselves in competitive decision-making with respect to which documents or information in this proceeding may be relevant.

I mean, this is at the very heart of the purpose of a protective order, is to protect such information, and so I guess my thinking on that is if there's anybody who's reluctant to agree to that, then I would be reluctant to have them looking at the material.

Well, I'll hear from anybody else who wants to be heard on this, and I don't think we'll try to amend the protective order from the bench, but let me go ahead and complete the record on this if anybody else wants to be heard. And I guess the appropriate thing to do would be to ask if there's anyone who supports Public Counsel's position on this?

MR. CEDARBAUM: Your Honor, this is Robert Cedarbaum. I'm not sure if this is a statement of support or not, but just let me state my concern. The reason why Staff did not object to the protective order that was issued with respect to the highly confidential information was really just a reality check, and that was that we weren't planning and have

no intention on -- no plan to hire any outside expert, so this was sort of a no harm, no foul situation from our point of view. That was the basis, really, in large part for Staff not objecting.

If Staff were to look to outside help on this case or any other case, it may very well be that we would have some difficulty with the language that's in the protective order. I personally have never tendered that language to an outside expert to ask that person if they would have any problem with it, and maybe they would and maybe they wouldn't. I don't know. But there's certainly a potential that there would be some difficulty.

That's not -- from Staff's perspective, that's not this case yet, since, again, we're not looking to hire any outside expert, but I wouldn't want the record to show by my -- that Staff was necessarily agreeing with your statement, with all due respect, that Staff outside experts would be required to sign this affidavit or that a better approach might be to revise this protective order in more acceptable language along the lines of Public Counsel's suggestion.

JUDGE MOSS: Hopefully we will someday achieve perfection, but we are not there yet. I will

say this. In specific cases, we have in the past made accommodations to meet the unique circumstances of a party where we have counsel traveling to Africa, for example. We might have to make some allowances for co-counsel when we have restrictive terms with respect to the numbers of people, for example, which was a prior form of our protective order that people had difficulties with and we modified.

So although I don't like to spend so much time as we are spending on this type of issue, sometimes it's necessary to spend that kind of time, and so I don't mind doing it and I don't mind entertaining the idea of making some specific adjustments if they're needed. For example, if Public Counsel were to propose to hire a specific expert and came forward and said that this expert we want to hire says she will not serve if required to sign this affidavit and so forth, then we might want to inquire a bit further into that, see if there's some accommodation that can be made and so forth, but that's a specific case, rather than the abstract. Maybe it is impossible to resolve this in the abstract and have the perfect standard form of protective order. I'm not sure.

If no one else wishes to be heard

essentially in support or at least in that direction with respect to Public Counsel, I'd like to hear from Mr. Glass. Go ahead, Mr. Glass.

MR. GLASS: Thank you, Your Honor. As Mr. ffitch accurately states, the company has no argument with regard to Public Counsel's carveout, their lawyers, their in-house staff, and that is due to Public Counsel's statutory obligations. We do have an objection to outside consultants and experts being given the same access to highly-confidential information without an affirmative statement acknowledging that they're not going to turn around and use that information with their other clients, their other competitors.

Public Counsel has, in other proceedings, engaged consulting firms such as R.W. Beck and others who have very active consulting practices for other companies that compete with the type of project owners and energy project developers that we are trying to guard their information.

Consequently, I have no doubt in my mind that R.W. Beck is going to be consulting competitors. Consequently, we object to letting them have the information without that affirmative statement. The very reluctance, as I think you've pointed out, the

very reluctance and refusal to sign because they think of it as a noncompete is exactly why and evidence of the reason for this very commitment.

I've read the pleadings in UT-030614, and with due respect to Mr. ffitch, I don't see that it squarely deals with the question of outside consultants.

Finally, I have here in this binder the -- I think 50 different confidentiality agreements that the company signed with project developers in order to obtain the information that we have now classified as highly confidential. If we are to, in this proceeding, give that information to the likes of R.W. Beck or other types of consultants that do advise competitors, the company might seek some -- they might receive some legal action and even possibly the Commission in the form of external protective orders to make sure that that doesn't happen, because I have a feeling that the 40 or so project developers that handed this information over would not like to have it in the hands of somebody that hasn't made that affirmative commitment.

JUDGE MOSS: All right. Well, I'll do this. I'll go back and study the protective order again and see if I have any further concerns in light of the

arguments I've heard. In the meantime, Mr. ffitch, I invite you, if you wish, to furnish me with the determinations, I believe you described them, or rulings or whatever orders they were from the Commission in these other proceedings that resolved this matter in a way contrary to what I expressed as my understanding of the agreement as written. Then I'll certainly be happy to look at that, as well.

If you wish, you may, of course, file a motion to amend the protective order, and we'll take that up formally. And again, I must say that my concern with this sort of thing is very much a practical concern. My goal is to facilitate the free exchange of information that is required for people to access and study and analyze for purposes of developing a record satisfactory to the Commission's needs. And so absent practical problems, and you know, granted a practical problem might be that you have a hard time hiring a consultant because there's something the consulting community regards as onerous here, you know, that's -- evenhanded treatment, I think that's a fairly important principle and one that we have conformed to here. It's just that we have a different understanding or interpretation perhaps of what the treatment is, not -- I think you do

understand that, in my view, we are treating Public Counsel and Commission Staff identically.

So again, I'm not going to sit here and try to tweak the protective order today, but those are the options that we have available to us and it's something that I spent perhaps a bit more time than I'd care to spend on internally, as well as in proceedings, but I will certainly discuss it further with my colleagues and the Commissioners and we'll see what we might need to do.

MR. FFITCH: Thank you, Your Honor. I would be happy to send the documents that I'd mentioned electronically just for efficiency, and because we're not actually asking to have the order amended per se, but simply an interpretation of it, I'd be happy to just have that be taken under advisement. I don't know if any of the other parties would want service of those documents. We don't have a full service list set up yet.

JUDGE MOSS: Well, if you wanted -- yeah, I think the electronic service would be perfectly adequate. Indeed, you can -- if it's -- if sending the documents themselves is in any way difficult, you can simply give me the docket numbers and the dates or the order numbers or whatever, and I can access

them myself and just copy our group on that. As far as the service list is concerned, if you were here today, I could provide you with one. I'll send you one electronically. How about that?

MR. FFITCH: Thank you very much, Your Honor. I'll send out the copies to everybody.

JUDGE MOSS: I'll send out -- as part of the prehearing conference order, I'll include a service list that will have all the relevant contact information, so you'll all have that probably tomorrow and certainly by Monday. All right. Well, thank you all very much.

MR. CAMERON: Your Honor, I did want to make --

JUDGE MOSS: Oh, I'm sorry. Mr. Cameron.

MR. CAMERON: I did want to make one comment, please. And it does not bear on Public Counsel's issues. We don't have any problem with signing the protective order materials.

I did want to raise one point, though, and that is it's our position that Puget's choice of resources has a necessary bearing on its avoided cost under the Public Utility Regulatory Policies Act. We don't have the joint issue on that today, but to the extent that is true, we think it's incumbent on Puget

to publish that information and make it publicly available for the benefit of qualified facilities under PURPA. Again, it's not something that we would disclose; it would be, we believe, incumbent on the Commission or Puget to do that, but I don't know yet the position Puget will take on information regarding the cost of its Frederickson I proposed acquisition, which is really the only resource we're talking about here.

I did want to make note of the fact that we don't necessarily agree that all the information should be kept confidential.

JUDGE MOSS: All right. Thank you. That's noted for the record. All right. Are there any other motions or requests that we have today that we need to take up or shall we move on to process and procedural schedule?

MR. CEDARBAUM: Your Honor, there's one -- I guess one issue that is noted on the proposed schedule that I distributed this morning, but you referenced the discovery rule earlier before, so maybe to single that one issue out, Staff, the company and I believe Public Counsel have agreed prior to today to reduce the turnaround time for data request responses from the 10 business days, as it

states under the rule, to five business days, and perhaps we can just get a ruling on that single item before we move on to more pure process type items.

JUDGE MOSS: And Puget's in agreement?

MR. GLASS: Yes, Your Honor.

JUDGE MOSS: Okay. Well, Puget will tend to carry the principal laboring oar in the discovery response stage, although others, of course, will need to respond, also, unless there's an objection, and hearing none, we will reduce the response time to five business days effective immediately. And I'll include that in the prehearing order.

Anything else? Okay. Process and procedural schedule, you know, we seem to be headed down a more or less traditional path for this type of case with prefiled testimony and exhibits, and I don't see anything in the proposed schedule that Staff, Public Counsel, and Puget have put up here -- did I get that right? Is it those three?

MR. CEDARBAUM: Yes, it is.

JUDGE MOSS: -- that would suggest anything other than that sort of traditional process. I'm sure you'll tell me if I'm mistaken about that. But the proposal that's before me is to have the Staff, Public Counsel and Intervenor direct testimony -- or

actually, I would call it response testimony and exhibits January 16th, which is a Friday, and then the Puget Sound Energy rebuttal testimony and exhibits on January 30th.

Now, the hearing schedule, and I had previously discussed this with Mr. Cedarbaum off the record, it being a wholly procedural matter, and he had suggested to me the possibility of hearings commencing on the 16th, which is a state holiday.

While I personally have no particular problem with that, in all candor, I have not cleared that with the Commissioners, and I know they'll be sitting at hearing. So I'm not prepared today to endorse that day. It is -- the week is available otherwise, it appears. I had actually suggested to Mr. Cedarbaum, and I think he passed that on at least to Puget, probably to Public Counsel, as well, the idea of going on the 9th. That would -- or the week of the 9th. That would just give you a week, but we could make it maybe 10 days and start on the afternoon of the 11th or something like that.

Do we anticipate we're going to need five days? I mean, we've got a huge volume of material here, to be sure. On the other hand, the testimonies, at this juncture, are relatively brief.

I've even had time to read them all, and so it's not too much.

MR. CEDARBAUM: There's a balancing act here, I guess.

JUDGE MOSS: Sure.

MR. CEDARBAUM: Between -- and the main players, in Staff's mind, or the main points that we're balancing are trying to keep the prefiling of Staff, Public Counsel and Intervenor responsive testimony no earlier than mid-January, because, especially with all the holidays thrown in there, it's very difficult to accelerate that, which would have been necessary had we moved the hearings up to the week of the 9th. So that's why we came up with the week of the 16th of February. My gut reaction is that we wouldn't need more than that week for the hearings, but I haven't read as much of the case, I guess, as you have, Your Honor. I -- the company has how many witnesses? Five witnesses?

JUDGE MOSS: Five.

MR. CEDARBAUM: My understanding from Staff is that we will have no more than three, is my current understanding. Mr. ffitch can speak for himself, but I'm assuming one or two, and I don't know about the Intervenors, so I guess from a head

count, it seemed like five days would be enough.

JUDGE MOSS: Let's see if we can get some better idea about that. Mr. ffitch, has your thinking gone far enough that you know how many witnesses you might have?

MR. FFITCH: I think one or two is a fair estimate, Your Honor.

JUDGE MOSS: Let's call it two, so we're using a conservative estimate. Mr. Cameron, do you anticipate that you'll put on a witness?

MR. CAMERON: I believe so, Your Honor. I can't tell you at the moment how many that might be.

JUDGE MOSS: I'll give you one for the time being for purposes of count.

MR. CAMERON: Okay. Seems fair.

JUDGE MOSS: How about you, Mr. Perkins?

MR. PERKINS: I think at this point we anticipate having one witness.

JUDGE MOSS: I saw Mr. Schoenbeck's name on the pleading. I assume he's your expert.

MR. PERKINS: That's correct.

JUDGE MOSS: How about the Federal Executive Agencies, Mr. Furuta? Are you anticipating that you'll put on a witness?

MR. FURUTA: At this point, it's more likely

that we'll not have a witness, but we would just be crossing.

JUDGE MOSS: Okay. Thank you. Well, that's 12 witnesses all together, then. We could probably do that in a week. Again, always depends on how extensive the testimony is or how much examination there needs to be with respect to the exhibits, because that really is the bulk of the material that we have, and it is a considerable bulk, as personnel from Heller Ehrman will testify, because they were here today helping us arrange it for our files and they spent many hours doing that, which we appreciate.

Is the time after the 30th of January -- do you feel like you need the full two weeks to prepare, Mr. Cedarbaum? I realize you get the rebuttal there at that last step, and so you may not know.

MR. CEDARBAUM: I don't know. I mean, I can only be -- I can only be cautious and assume that two weeks is the minimum amount because, well, anything less than two weeks is just difficult with -- you can barely get one round of data requests in, anyway, with that amount of time. Two weeks just isn't that long.

JUDGE MOSS: I understand.

MR. CEDARBAUM: And likewise, it's not that long. The company has the same two weeks to put its rebuttal case and it's expressed concern to me that that's a short time, as well.

JUDGE MOSS: Sure.

MR. CAMERON: Your Honor, I would join Mr. Cedarbaum and try to preserve the two weeks between rebuttal and hearing. It occurs to me that we might propose now to convene the hearing on the 16th. If the Commissioners' schedules can't accommodate that, we could always consider going long on the four days, Tuesday through Friday, as necessary, to finish off the hearing within that week. We've done that before.

MR. GLASS: Yes, we have.

MR. CEDARBAUM: We've also spent time in the hearing room on holidays before.

JUDGE MOSS: Yes, we have. I've missed several in the last two years, as well as being involved in what one Commissioner refers to as the Bataan death march hearings.

MR. CEDARBAUM: Your Honor, I guess I would just only ask that if, for some reason, the entire week of the 16th is unacceptable and if the Commission was inclined to accelerate that to the

9th, that you convene another prehearing conference by phone, if necessary, to talk about that, because that -- you know, quite honestly, we came up with the schedule keeping in mind the four-month process.

JUDGE MOSS: Sure.

MR. CEDARBAUM: But honestly, we've had disagreements among the three parties who proposed this as to what that four-month commitment was, but we're here trying to accommodate the company, and that's fine, but if we have to accelerate the hearing and likewise accelerate prefiling of the Staff case, that's kind of not the deal we came in -- kind of the deal and sort of the expectations that we were acting upon. If we were going to accelerate that, we might want to have more argument about the schedule than agreement about the schedule.

JUDGE MOSS: Well, I guess I was just looking to see if there might be some little bit of room here to adjust without ruffling anybody's feathers, and so I was thinking, as I mentioned, perhaps starting on the afternoon of the 11th or even starting on the 12th. That way, if we started, for example, on the morning of the 12th, then we'd have two full days of hearing, the parties would have a relaxing three-day weekend in which to sharpen and

hone their cross-examination, and we might finish by Wednesday, the 18th, say. You would lose a little time in terms of preparing cross-examination after the rebuttal testimony, but you'd gain a little extra time on the briefs. Is something like that unworkable, from your view?

MR. CEDARBAUM: Your Honor, I'm just not expecting this to be easy no matter how we slice and dice it. Again, I just -- I think it's difficult to agree that we're -- that we don't need the full two weeks in between filing of rebuttal and cross.

JUDGE MOSS: Okay.

MR. CEDARBAUM: I just don't see -- I mean, unless the -- it seems to me that I guess I would rather have long days the 17th through the 20th if the 16th is out than to quicken that up.

JUDGE MOSS: Yeah, you know, I can't say the 16th is out. I don't know.

MR. CEDARBAUM: Right. So I guess I -- Staff's proposal would be that for you -- to ask you to take this to the Commissioners and find that out before we worry too much about alternatives.

JUDGE MOSS: Sure. All right. Well, I'll do that. I'll go ahead and -- well, I haven't asked if others have any comments on the schedule, and I'll

do that, but my inclination is to take this to the Commission and see what they want to do. And they may decide we'll just start on the 17th and cross our fingers. Although there is some opportunity to slip into the following week. I don't see anything prohibitive on the calendar. There's some activity that week, but I think we can arrange for a hearing day if we needed it.

Does anyone else -- okay. To recapitulate, January 16 for Staff, Public Counsel and Intervenor direct; January 30 for rebuttal; February 16 through 20 for hearings, and then simultaneous post-hearing briefs on March 5th.

Does anybody else have a problem with any of those dates?

MR. GLASS: Your Honor, I don't have a problem with it and I've been staying quiet because I think that the agreed-to schedule here, at least as among Staff, PSE and Public Counsel, is a give and take product.

I would say this, that note two is very important, I think to all the parties, in that if we have 14 days to prepare the rebuttal case, then there's 14 days for everybody else to prepare after our rebuttal case. We'd rather not expend that time

with the discovery, so we have placed in a note two in which all parties would provide models, source documents, work papers and outsource documents -- or output documents at the time of the filing of their cases so that we don't need to waste a week waiting for that data, because 14 days is short.

The second thing I'd like to note is that the company acknowledges the daunting size of the filing and acknowledges that that takes some time to work through. We're trying to do it this way in order to accelerate the schedule and allow the consideration to go forward more quickly.

I would say that later this month we will be having a meeting -- offering a meeting to the industrial customers first off to explain the filing to them. Early in December we are offering to have another meeting with other folks, to the extent that they're interested, to come discuss with the company and have us, in an off-the-record type of setting, explain what we were thinking, what we were doing, where we were going and where they'll find the answers if they're looking for it, which I'm hoping will also assist in discovery.

Finally, we're hoping that sometime in December, at least the parties can come together and

discuss whether there's some common ground in the potential of limiting the amount of issues going forward in the case because none of us need to spend time on things that aren't issues.

So we'll -- all of those things we are hopeful that the schedule meet -- are a very important objective of the four months of process. Thank you.

JUDGE MOSS: Okay. And I will include the note two in the prehearing order, as well. As soon thereafter as possible is a little bit susceptible to interpretation. Do the parties want me to put some kind of time frame on that? I mean, it strikes me the work papers are going to be done before testimony, so I don't know why it would be a problem to meet this.

MR. CEDARBAUM: Your Honor, it took me -- it took how many people this morning to just put together your filing?

JUDGE MOSS: Delicate instrument here.

MR. CEDARBAUM: It took me three hours on Monday to put together my filing. I think it's just -- Staff is going to do its best to provide all of our work papers to the company when we file, but as a practical matter, with that last couple days of

logistics, especially with all the confidential and highly confidential information, we just may not get there. So we talked about our filing day is a Friday. If we missed Friday, it would be Monday or Tuesday the following week. That's what we thought is as soon thereafter as possible.

JUDGE MOSS: We'll come in on Monday morning and find hanks of hair all over the carpets and so forth, I suspect. All right. I understand. I think we can rely on the parties' good faith and my sense that there's a high level of cooperation here and the mutual interest of moving this proceeding along on a fast track. So I'm going to rely on that good faith, as I always try to do in these proceedings, and to the extent there's a problem, I'm sure it will be brought to my attention and we'll deal with it at the time. We won't anticipate problems.

All right. Then I think we'll tentatively go with this schedule, with the caveat that we may not have a hearing on the 16th, but otherwise I think we'll be able to meet this. I'll probably schedule a couple of extra days that week of the 23rd just to be sure and reserve the appropriate resources.

The briefs on the 5th, I'm going to include that those need to be filed here by noon on the 5th,

and that's important in terms of logistics if we're going to get our order completed in an expeditious way.

So as we get closer to that date, I won't do it now, but as we get closer to that date, if the parties tell me that this is going to be a problem, what we can do is allow for electronic submission by noon on the Friday followed by paper copies on the Monday.

MR. CAMERON: Could we do that now?

JUDGE MOSS: Want me to go ahead and --

MR. CAMERON: Yes, please.

JUDGE MOSS: -- allow for that? The only reason I'm hesitating at all, Mr. Cameron, is that it does present certain logistical difficulties for me, but I will overcome them, okay. We'll do it that way.

MR. CAMERON: Thank you.

JUDGE MOSS: At the same time, I'll ask that the briefs be kept short, but I won't impose a page limitation. The Commission's rules, I believe, allow for 60 pages, which is usually excessive and you don't need it, so don't use it if you don't have to.

Okay. Do we need to resolve anything else in terms of process or procedural schedule, or does

that take care of it?

MR. GLASS: Your Honor, I have one administerial announcement, that, once again, the daunting file, we found in the last few days a few pages disappeared into the copier and didn't come out into the copies. We'll be making another sort of follow-up filing with the Commission and with all the parties hopefully tomorrow, possibly Monday, but we do acknowledge that there are a few pages missing and we'll be making that correct.

JUDGE MOSS: And it is quite literally a few pages, I believe?

MR. GLASS: No more than 10 to 15, something like that.

MR. CAMERON: May I inquire? Is this really in the nature of errata, just filing a few pages?

MR. GLASS: Well, they fall into two categories. Some are just pages that just disappeared and didn't make it into the copies. The second set is that we found that we overdesignated a few pages as either confidential or highly confidential and, upon further consideration, we don't think they're confidential at all. So we're going to backtrack and put those into the correct category.

JUDGE MOSS: All right. Do we have any other business that the parties wish to raise?

MR. CEDARBAUM: Your Honor, I just have one question. You distributed an exhibit list --

JUDGE MOSS: Ah, yes.

MR. CEDARBAUM: -- this morning. I was wondering, were you going to provide us with the numbers associated with those or --

JUDGE MOSS: Well, I don't do that until later. And the reason is that I like to number the -- use sequential numbers to the extent possible. So of course, at this juncture all we have is the direct testimonies and exhibits. We'll no doubt have cross-examination exhibits for each of these witnesses or most of them, and likewise, when we get Intervenor, Staff and Public Counsel witnesses, so I need to -- I can't number them at this point.

For the present purposes, to the extent you need to communicate about these among yourselves or with us, you can simply use the identification marks, WAG-1T, for example, that sort of thing, and that's adequate to our needs.

Let's do discuss this, however. As you all know, in recent proceedings, probably over at least the course of the last two years, it has been our

practice to have a final prehearing conference usually about two business days before the hearing to exchange cross-examination exhibits and to mark all exhibits in the proceeding. In a recent case in which I presided, I took the bold step of trying to do that by mail, and it worked. We were actually able to exchange all the cross-examination exhibits, they were all neatly packaged by witness with dividers, tabbed dividers between each exhibit, between all the exhibits, all the materials were furnished to me, I was able to -- oh, I also had the parties give the descriptions, so I didn't have to come up with a description for each exhibit. And I had them do it on an electronic version of the exhibit lists that I have distributed today. Within a very short period of time, I was able to assemble all of that material into a single exhibit list. It went very smoothly.

So I'm putting it to you whether you want to follow through with this experiment in this proceeding or whether you would actually prefer to have a final prehearing conference approximately two business days before the commencement of the hearing. Anybody?

MR. CEDARBAUM: I guess I just have a

question of clarification. Was that -- were the exhibits received by you and the parties on the same day or was it received by you?

JUDGE MOSS: Same day. We set a date for that, and it was a receipt date. Everybody got the -- now, granted this is the next step. The proceeding I'm referring to in which this succeeded is one in which there are only two parties. So that's why I chose that proceeding for this experiment that I've been wanting to try for some time. And so this would be the next step, where we have a multi-party proceeding, and if you all think it would be simpler, I'm open to your ideas.

MR. CAMERON: Just a question, please. This mail process, that was simply for purposes of designating exhibits and not receiving them into evidence?

JUDGE MOSS: Oh, correct. We don't ever receive the exhibits into evidence until the live hearing.

MR. CAMERON: So you weren't that bold?

JUDGE MOSS: Oh, no. Well, I don't think I legally could be. We have to have those subject to objections, so we do that at the hearing and we did that in this instance, as well, and would do that

here. It's just simply a replacement for that final prehearing conference where the parties all come together and bring their boxes of exhibits and pass them up and exchange them and so forth. It's just doing that by mail.

What it requires on the part of the parties is a higher order or a higher level of organization. You have to be sure that you've got everything in nice, neat stacks by witness with all the exhibits separated by tabs, and then it can quickly be processed by your counter-parties, and so that's -- and by me, and of course I'm processing multiple sets, so it's particularly important to me that it be well-organized. But as I said, it worked well for these parties, and since you all have been through this process with us at least once, if not multiple times, that familiarity helps.

But I'm willing to do it either way. I'm perfectly happy to hold it. I'm just -- frankly, I'm thinking this is perhaps more of a benefit for the parties than for the bench, in the sense that we don't end up taking half a day out of your time where travel is required and so forth, so --

MR. CAMERON: Based upon your description, I'd prefer to try it by mail. I'd also ask if you

could make this document available to us electronically?

JUDGE MOSS: Yes, my practice is to share the exhibit list that I prepare electronically. I didn't do it this time because I just got it finalized. I'll go ahead and send you this version, and then, as we update it with the addition of the response testimony, the rebuttal testimony, and ultimately the cross-examination testimony, I will update it each time and provide it to you. At the rebuttal stage, you know, if you give me descriptions on the exhibit list, that's great, too. That saves time, so -- and I'd require that at the cross-examination stage, because I don't want to find myself sitting here for two days figuring out what to call exhibits. So Mr. Cedarbaum, does this work, from your perspective?

MR. CEDARBAUM: You know, it's much easier for me to walk out of my office and walk across the parking lot to come to a prehearing conference than it is for anybody else in the room because they have to travel. So I guess my first -- I guess my first reaction was I guess I'd rather have the prehearing conference because it doesn't inconvenience me.

JUDGE MOSS: That's rather selfish, Mr.

Cedarbaum.

MR. CEDARBAUM: And because -- well, and actually, mostly because given the short two-week turnaround time, we're probably going to be getting a lot of data request responses, you know, maybe after that distribution of exhibit time. And if you have to put something in the mail to be received on the Thursday prior to the hearing, that means we're only getting it all ready on Wednesday, which makes it more likely that you're going to have additional exhibits to come in on Monday at the hearing.

So I guess -- I mean, if all the parties want to do it by mail, I'm not going to object to that. I just think that we might, in this situation, even though we're all used to this type of process, we might end up with a lot more exhibits straggling in after that distribution date.

JUDGE MOSS: Well, let's do this, then. I won't make a firm decision on this for now. I've planted the suggestion, you all can think about it some more, and it may depend in part on the volume that we're talking about. If the volume of potential cross-examination exhibits is huge, it might make more sense to hold the prehearing. If it's relatively more modest, then the mail or the

overnight delivery service might be an effective way to do it.

So let's reserve that decision. We can probably have a prehearing conference by telephone, or even, if this is a procedural matter, we can even have an informal conference on the telephone among ourselves and resolve this closer in time to the hearing date. So I'll keep that in the back of my mind and we'll decide the best way to proceed.

All right. Any other business from the parties that's going to tickle anything else in my mind? I have a few closing remarks. On paper filings in this proceeding, we do need an original and 19 copies, and I was trying to pare that down and it kept getting pared back up, so we ended up at what used to be the standard number, original plus 19 for internal distribution needs.

Remember to make all your filings through the Commission's Secretary, either by mail to the Secretary at WUTC, P.O. Box 47250, 1300 South Evergreen Park Drive, Southwest, Olympia, Washington, 98504-7250, or by other means of delivery to the Commission's physical address that I just mentioned.

I want to stress that we do require that filings of substance be provided to us

electronically, as well as a paper copy. Someday we'll get to the point where we only require electronically, but our statutes haven't caught up with us yet, so we're not there.

It's very important to us to have the electronic copy so that we can post the nonconfidential materials to the Internet and also make them available internally to ease the processing of the materials. So that includes testimony, briefs, motions, answers, all that sort of thing. You can furnish the electronic copy either by e-mail attachment or on a three and a half-inch diskette, preferably in a PDF type format, supplemented by either MS Word or WordPerfect.

And I remind you that service on all parties must be simultaneous with filings under our rules. I will enter a prehearing conference order probably tomorrow, but certainly by Monday, and I'll -- it will have an appendix that will keep you mindful of format requirements that I will stress. And I'll say that Puget did -- I'll give them an A, maybe an A minus. You did very well in that only a few things fell through the cracks. Considering the volume of the filing, I guess I'd have to give you an A.

Do be careful to follow the requirements for

confidential documents being on colored paper, yellow for confidential, blue for highly confidential. That's important to help us keep up with things and make sure that we afford the documents the proper treatment. Be sure to three-hole-punch everything. The volume of paper that we have to process on a daily basis is enormous and it makes a big difference to us to have that one little thing done.

MR. CAMERON: Does that go for motions, as well, the three-hole punch?

JUDGE MOSS: As far as I'm concerned, every piece of paper that comes in to the Commission should be three-hole-punched. Now, others might not agree with me and people seem loath to puncture holes in their letterhead for some reason. I'm not sure why that is. But, yeah, my preference is that you three-hole-punch everything. Got one like that the other day. Made my day, Mr. Cameron. So anyway, I do ask that you be mindful of those formats.

We've discussed the prospect of a final prehearing conference and we'll resolve that question later. All right. If there's nothing further, I thank you all for being here, and please feel free to contact me with any procedural issues, and we'll look forward to working together through the course of the

next few months. Thank you.

(Proceedings adjourned at 2:46 p.m.)