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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 THE WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

4 Complainant,)

5 vs.)

6 1-800-RECONEX, INC.,) DOCKET NO. UT-990946

7 Respondent.) Volume 1

8 -----) Pages 1-15

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10 A prehearing conference in the above matter
11 was held on August 12, 1999 at 9:30 a.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge LOIS E. GOLD.

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15 The parties were present as follows:

16 THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION STAFF, by GREGORY J. TRAUTMAN, Assistant
17 Attorney General, 1400 South Evergreen Park Drive
Southwest, Post Office Box 40128, Olympia, Washington,
18 98504-0128. Also Present: MARY TAYLOR.

19 1-800-RECONEX, INC., by WILLIAM E. BRAUN,
Attorney at Law, 2500 Industrial Avenue, Hubbard,
20 Oregon, 97032.

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25 Kathryn T. Wilson, CCR
Court Reporter

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P R O C E E D I N G S

JUDGE GOLD: I'm Lois Ellen Gold, Administrative Law Judge for the Washington Utilities and Transportation Commission, and I will be the presiding officer in this proceeding. On the 23rd of July, the Commission on its own motion entered a complaint and order to show cause why penalties should not be assessed and why service remedies should not be ordered.

The Commission at that time set the matter for a prehearing conference on this date, the 12th of August, 1999, at Commission offices in Olympia, Washington. Due and timely notice has been afforded to all interested parties. The Commission hereby enters upon a full and complete investigation of the matters and things alleged in the Complaint and will proceed with public hearings pursuant to Chapter 34.05 RCW and Chapter 480-09 WAC to determine whether RECONEX has violated statutes, rules, and orders of the Commission as well as the provisions of its tariff as alleged in the Complaint. Based on the complete record, the Commission will make and enter such determinations, orders, and penalties as may be just and reasonable.

We have no parties this morning that are taking part by our Commission bridge line, and I see no

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1 persons in the court that appear to be intervenors.
2 I'm going to now take appearances, but prior to
3 proceeding with scheduling matters, I shall address the
4 motion for conversion of proceedings filed by
5 Respondent yesterday.

6 We'll take appearances now beginning with the
7 Complainant. Mr. Trautman, for Commission staff, would
8 you state your name, mailing address, telephone number,
9 fax number, and e-mail address for the record and whom
10 you represent.

11 MR. TRAUTMAN: I'm Gregory J. Trautman,
12 Assistant Attorney General for Commission staff. My
13 address is 1400 South Evergreen Park Drive Southwest,
14 Olympia, Washington, Post Office Box 40128. My
15 telephone number is (360) 664-1187. My fax number is
16 (360) 586-5522, and my e-mail address is
17 greg@wutc.wa.gov.

18 JUDGE GOLD: Thank you. Mr. Braun, would you
19 now give your appearance on behalf of your client?

20 MR. BRAUN: For Respondent, William E. Braun,
21 B-R-A-U-N. Our offices are located at 2500 Industrial
22 Avenue, Hubbard, Oregon, 97032. My phone number is
23 (503) 982-5573. My fax number is (503) 982-6077. My
24 e-mail is bill@reconex.com.

25 JUDGE GOLD: Thank you. Since we have no

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1 intervenors, we're going to proceed right to the
2 purpose of this conference. Before we actually get
3 involved with clarification of issues and scheduling,
4 does Staff have any comments pertaining to Respondent's
5 motion for conversion?

6 MR. TRAUTMAN: Your Honor, we just received
7 this motion yesterday, and our immediate response is
8 that we would be opposed to the request that is in the
9 motion, and the motion asks to convert the proceeding
10 to one for -- it's described as technical assistance or
11 an informal complaint process. Staff is of the opinion
12 that the Complaint that has been filed should go
13 forward and that scheduling should be set for the
14 prefiling of testimony and response testimony and then
15 cross-examination and a briefing.

16 Staff is willing to perhaps set the filing
17 dates out, and we had envisioned possibly allowing 45
18 days or perhaps roughly until the end of September to
19 try to work with the Company. We'd be willing to
20 entertain compliance plan that the Company might set
21 forth to address both future compliance as well as
22 address all the items that have been mentioned in the
23 Complaint. However, if that does not lead to a
24 successful resolution of the matters, Staff would like
25 to have the dates for testimony set at this hearing so

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1 we could then proceed with a hearing, and so in sum, we
2 would not be in favor of converting the present
3 proceeding. We do have suggested dates for setting the
4 prefiling of testimony, which we think would allow for
5 time for the Company, during this month and during the
6 month of September, to set forth whatever proposals
7 they may have to try to bring resolution to the matter,
8 and if the Bench would like to have our specific
9 proposal dates or testimony, we could provide that.

10 JUDGE GOLD: I'm interested in the dates that
11 you have proposed. I'm also interested, Mr. Braun, in
12 whether you feel that it would be appropriate to go off
13 record for a short span and discuss with Staff their
14 position on the motion and also their proposal for a
15 briefing schedule and hearing schedule that allows this
16 window of the next 45 days for discussions between
17 Staff and your client.

18 MR. BRAUN: I think that would be helpful.
19 That's primarily why I'm here.

20 JUDGE GOLD: Let's go off the record.
21 (Discussion off the record.)

22 JUDGE GOLD: We're back on the record now.
23 Has Respondent and Complainant had a chance to have
24 discussions?

25 MR. TRAUTMAN: We have, Your Honor, and we've

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1 come up with a proposed time line, which we would, we
2 believe, allow for negotiations with the Company, but
3 at the same time would set in place dates for filing
4 testimony and for hearings and post-hearing briefs so
5 that that schedule could go forward in the event that
6 the negotiations were not successful. Should I give
7 you the dates that we have?

8 JUDGE GOLD: Yes. Before you do, I concur
9 with the approach that Commission staff and Respondent
10 are taking. I think it's the most constructive, but I
11 would ask that during this discussion period that Staff
12 provide me with a one or two liner periodic update as
13 to what kind of progress we're making, if we're going
14 to stick to our time line, if resolution has been
15 reached otherwise. I do want that type of update.
16 Yes, I'd like to hear --

17 MR. BRAUN: Your Honor, could I make one
18 statement before? Sorry to interrupt, but I would be
19 remiss in defending my client. I did bring the motion
20 to convert. I fully believe in the reasons that are
21 stated in there and I believe that's the proper course.
22 Should Your Honor choose to deny that motion,
23 Mr. Trautman and Ms. Taylor and I have agreed on a
24 process to go forward, but, of course, it would be the
25 preference of Respondent in this matter that their

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1 motion be granted for the reasons stated.

2 JUDGE GOLD: Mr. Braun, to that issue, if you
3 and Staff are fairly optimistic that these discussions
4 are going to bring resolution to these issues, the
5 Bench is going to ask whether you'd consider on behalf
6 of your client withdrawing the motion that was filed on
7 the 11th of August?

8 MR. BRAUN: Regardless of your decision, Your
9 Honor, the motion is not appealable. I think that it
10 would be my request that there be a ruling one way or
11 the other.

12 MR. TRAUTMAN: The only difficulty with that
13 at this point is that under the rules, I believe we
14 would have 20 days if the Bench wished to have a
15 written response to the motion prior to issuing.

16 JUDGE GOLD: It's certainly within your
17 prerogative not to withdraw the motion, and should you
18 not withdraw the motion, I will allot -- I would
19 schedule a response to that motion, Mr. Trautman, in
20 approximately 10 days. We're on a Thursday now. I
21 would want a response by the 23rd of August to the
22 motion, and as I'm understanding that RECONEX does not
23 choose to withdraw that motion, then to schedule that
24 into the time line that any response Staff wants to
25 make to the motion will be by the 23rd, and I will then

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1 subsequently rule on the motion.

2 MR. BRAUN: Thank you, Your Honor.

3 JUDGE GOLD: Mr. Trautman, you were saying
4 that you had a time line.

5 MR. TRAUTMAN: The time line that we had
6 suggested was that we would provide for negotiations
7 with the Company through October the 1st, which is a
8 Friday, approximately seven weeks from today. Then if
9 those discussions were not fruitful, we would propose
10 that Staff testimony be provided on October the 22nd,
11 RECONEX'S testimony would be due on November the 19th.
12 Staff's reply testimony would be due on December the
13 10th. We would propose hearings for the 10th and 11th
14 of January, which is a Monday and Tuesday. We propose
15 then that briefs be due on February the 11th, and these
16 time lines would also take into account the times that
17 the parties have already scheduled for certain other
18 matters.

19 JUDGE GOLD: What was the date for the
20 post-hearing briefs?

21 MR. TRAUTMAN: February the 11th.

22 JUDGE GOLD: The only issue I might have
23 would be with the hearing date, and I am attending a
24 conference, and I need to recheck those specific dates.

25 MR. TRAUTMAN: For which dates?

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1 JUDGE GOLD: The hearing dates, the 10th and
2 11th. I'm not sure whether my conference is on those
3 days, so I will have to get back to both parties if it
4 is not agreeable, but for now we'll tentatively set
5 hearing.

6 MR. TRAUTMAN: If it were not, what dates
7 would Your Honor prefer?

8 JUDGE GOLD: Well, that's hard for me to say
9 since I don't recall what the conference dates are.
10 How would the following -- that's a Monday and Tuesday?

11 MR. TRAUTMAN: The following week you'd
12 probably want to do Tuesday and Wednesday. I believe
13 Monday would be a holiday.

14 JUDGE GOLD: The following week what are the
15 dates?

16 MR. TRAUTMAN: It would be the 18th and 19th,
17 Tuesday and Wednesday. I'm hesitant to put it any
18 earlier because my experience has been that the time
19 around Christmas and New Years is not a good time.

20 JUDGE GOLD: I think it's safer to set the
21 hearing for the 18th and 19th and not have to concern
22 with any change. Do you want to slide the post-hearing
23 brief?

24 MR. TRAUTMAN: Yes, I would, because I'm
25 currently scheduled to be at a NARUC program in

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1 Maryland for the last week in January, and I have
2 another oral argument currently set for February the
3 4th. February 18th would be -- I think the 18th would
4 be the day. That would be Friday, yes.

5 JUDGE GOLD: Is that agreeable to you?

6 MR. BRAUN: Yes, Your Honor.

7 JUDGE GOLD: Let me just review this process
8 briefly as I have understood it. Answers or responses
9 to the motion are due by the 23rd of August. I will
10 subsequently rule on the motion. In the meantime,
11 we're setting this type of procedural schedule that
12 there shall be negotiations between the Company and the
13 Staff in an attempt to resolve issues and matters
14 alleged in the Complaint until the first of October,
15 1999.

16 We will set Staff testimony to be due by the
17 22nd of October and Respondent's testimony by the 19th
18 of November. Staff response to the Respondent's
19 testimony will be due December 10th. Hearing is set
20 for -- was that Tuesday and Wednesday?

21 MR. TRAUTMAN: January 18 and 19th, yes,
22 Tuesday and Wednesday.

23 JUDGE GOLD: -- January 18th and 19th, and
24 post-hearing briefs are going to be due on the 18th of
25 February. Let the record reflect that the Bench

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1 concurs with this scheduling, but I need to clarify
2 some issues. First of all, I'd like to let the record
3 reflect that we are going to invoke the discovery rule
4 pursuant to WAC 480-09-480, and the cutoff for
5 discovery is going to be five days before any prefiled
6 testimony exhibit lists and witness lists are due.

7 Do we have any need for confidentiality and
8 protective orders pertaining to discovery?

9 MR. TRAUTMAN: So five days before the
10 prefiled witness list, and when will they be due?

11 JUDGE GOLD: I want any prefiled exhibits,
12 exhibit lists, prefiled witness lists with a concise
13 synopsis of proposed testimony of each witness five
14 business days before the hearing, which would make it,
15 I think, the 12th of January.

16 MR. TRAUTMAN: Your Honor, if I may
17 interject, because we have prefile testimony, much of
18 what would be exhibits to be offered into the record
19 probably will be available, I believe, by the time that
20 our Staff testimony and reply testimony is due.

21 JUDGE GOLD: But should there be any
22 subsequent exhibit or witness lists, I want to set that
23 date, even if it proves not to be relevant, five
24 business days prior.

25 MR. TRAUTMAN: And then the discovery cutoff

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1 would be five days prior to that?

2 JUDGE GOLD: Yes.

3 MR. TRAUTMAN: So just for clarification, so
4 that would be --

5 JUDGE GOLD: I have it as the 12th of
6 January. Is that what you get?

7 MR. TRAUTMAN: As the prefiled exhibit day?
8 I think it would be the 10th if it were five business
9 days.

10 JUDGE GOLD: Yes.

11 MR. TRAUTMAN: And then the discovery cutoff
12 would be January the 3rd?

13 JUDGE GOLD: Right.

14 MR. TRAUTMAN: Is that the cutoff for
15 receiving responses from discovery?

16 JUDGE GOLD: Yes. How many days do you
17 estimate that you're going to need for hearing? You've
18 mapped out two. Do parties believe that that's
19 sufficient?

20 MR. BRAUN: We're in agreement on that.

21 MR. TRAUTMAN: Yes, we believe so.

22 JUDGE GOLD: Since we're in agreement on the
23 schedule, we're going to proceed in reserving
24 accommodations. Should there be a change, I will try
25 to be agreeable to new dates, but I don't want to make

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1 this habitual, so first of all, we have to find out
2 where would be an appropriate place to have the
3 hearing. Have you discussed that?

4 MR. TRAUTMAN: Typically, these are in
5 Olympia in the hearing room.

6 MR. BRAUN: And that was our assumption, Your
7 Honor. That's fine.

8 JUDGE GOLD: Then we will move forward on
9 that.

10 MR. TRAUTMAN: It may be possible to use Room
11 108 too.

12 JUDGE GOLD: We'll find what accommodations
13 we need. We haven't discussed at all the number of
14 witnesses that either of you expect to have. Staff, do
15 you have a sense of that?

16 MR. TRAUTMAN: Probably one or two, I would
17 imagine.

18 JUDGE GOLD: Mr. Braun?

19 MR. BRAUN: I would envision a like amount.
20 I can't imagine more than two, Your Honor.

21 JUDGE GOLD: We'll find an appropriate room
22 for that. I feel it's appropriate to remind both the
23 Complainant and Respondent that stipulations as to fact
24 are encouraged, and parties are also encouraged to
25 consider alternate dispute resolution should your

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1 negotiations not prove as fruitful as you would wish.

2 It's always appropriate to pursue whatever
3 constructive means you can to resolve your differences
4 prior to hearing with the proviso that I would need the
5 status updates on some agreed-to periodic schedule. I
6 would like to hear a proposal from Staff as to what
7 would be appropriate with whatever schedule of
8 discussions has been arranged.

9 MR. TRAUTMAN: We likely will not be able to
10 have discussions for the next two weeks for the reason
11 that Staff members will be out of town or on vacation.
12 Perhaps we could have the first update September the
13 10th and perhaps a subsequent update on a weekly basis,
14 so that would be the 10th, the 17th, the 24th, and 1st,
15 and if substantial progress were made, we might ask to
16 make an adjustment in the schedule.

17 JUDGE GOLD: The Bench would entertain that
18 request very positively if they were constructive
19 discussions. Is there anything else we need to discuss
20 regarding this matter on or off the record?

21 MR. BRAUN: Not from the Respondent's side,
22 Your Honor.

23 JUDGE GOLD: I think that the purpose of this
24 hearing has been accomplished and we may leave. Court
25 is dismissed, and we're off the record.

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(Prehearing conference concluded at 10:30 a.m.)