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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the)
4 Application of PacifiCorp and)
5 Scottish Power PLC for an)
6 Order (1) Disclaiming)
7 Jurisdiction, or in the) DOCKET NO. UE-981627
8 Alternative, Authorizing the) Volume 3
9 Acquisition of Control of) Pages 164 - 197
10 PacifiCorp by Scottish Power)
11 and (2) Affirming Compliance)
12 with RCW 80.08.040 for)
13 PacifiCorp's Issuance of Stock)
14 in Connection with the)
15 Transaction.)
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11 A prehearing conference in the above matter
12 was held on August 12, 1999 at 1:40 p.m., at 1300
13 South Evergreen Park Drive Southwest, Olympia,
14 Washington, before Administrative Law Judges DENNIS J.
15 MOSS and KAREN M. CAILLE.

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The parties were present as follows:

17

18 SCOTTISHPOWER by JAMES M. VAN NOSTRAND,
19 Attorney at Law, Perkins Coie, 411 108th Avenue
20 Northeast, Suite 1800, Bellevue, Washington 98004.

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20 PACIFICORP by KATHERINE A. McDOWELL, Attorney
21 at Law, Stoel Rives, 900 Southwest Fifth Avenue, Suite
22 2300, Portland, Oregon 97204.

21

22 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
23 by MICHAEL T. BROOKS, Attorney at Law, Duncan,
Weinberg, Genzer and Pembroke, 1300 Southwest Fifth
24 Avenue, Suite 2915, Portland, Oregon 97201.

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25 NORTHWEST ENERGY COALITION by DANIELLE DIXON,
Policy Associate, 219 First Avenue South, Suite 100,
Seattle, Washington 98104.

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1 THE PUBLIC, by SIMON J. FFITCH, Assistant
Attorney General, 900 Fourth Avenue, Suite 2000,
2 Seattle, Washington 98164.

3 THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION by ROBERT D. CEDARBAUM, Assistant Attorney
4 General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

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

2 JUDGE MOSS: Good afternoon, everyone. We're
3 convened this afternoon for a prehearing conference in
4 the matter of ScottishPower and PacifiCorp in Docket
5 No. UE-981627. The purpose of our prehearing
6 conference is to take care of our housekeeping matters
7 in anticipation of the evidentiary hearings to begin
8 next Tuesday. I do have an agenda that we'll go
9 through, and the first item is to take appearances, and
10 we'll begin with the Applicant.

11 MR. VAN NOSTRAND: Thank you, Your Honor.
12 For Joint Applicants and ScottishPower, James M. Van
13 Nostrand. I'm with the law firm of Perkins Coie in
14 Bellevue, Washington.

15 MS. McDOWELL: I'm Katherine McDowell with
16 the law firm of Stoel Rives in Portland. I'm here on
17 behalf of the Joint Applicants and PacifiCorp, and I'm
18 here substituting for Mr. Galloway who has previously
19 appeared before you, and I will be substituting for
20 Mr. Galloway at the hearing next week as well.

21 MS. DIXON: Danielle Dixon representing the
22 Northwest Energy Coalition here in Seattle, Washington.

23 MR. BROOKS: On behalf of Industrial
24 Customers of Northwest Utilities, Michael Brooks from
25 the law firm of Duncan, Weinberg, Genzer and Pembroke.

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1 MR. FFITCH: Simon ffitch, assistant attorney
2 general for the Public Counsel section.

3 MR. CEDARBAUM: Robert Cedarbaum, assistant
4 attorney general for Commission staff.

5 JUDGE MOSS: And except as noted, we've
6 previously had appearances by these counsel, and the
7 new appearances we have today -- I'm not sure,
8 Mr. Brooks, if you've appeared before or not, but same
9 firm as the other counsel so we have all the
10 information in the record in that regard.

11 I'll just quickly run through the headings of
12 the agenda so if I don't know what's coming, then we'll
13 return to the items and take them up one at a time or
14 as appropriate, and perhaps you have all had some
15 opportunity to chat beforehand, and that may help cut
16 through some of them quickly, but the things I have on
17 the agenda are essentially as listed in the Notice of
18 Prehearing Conference.

19 We want to determine the order of the
20 parties' presentations, including any stipulations, of
21 which I have knowledge of one; determining the order of
22 witnesses where we have parties with multiple
23 witnesses; determining the order and time estimates for
24 cross-examinations; identifying and exchanging exhibits
25 parties intend to use during cross-examination, if any.

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1 Any motions to strike prefile testimony or exhibits,
2 I'd like to take that up today, although we might not
3 decide on those today if there are any, and then
4 hearing any other preliminary motions of which I have
5 none prefiled, and then, of course, we'll consider any
6 other matters related to procedure that you all want to
7 bring up and discuss.

8 That being the essential agenda, I'll ask if
9 there is anything you all have to put on the table
10 first before I simply walk through that step by step
11 and we work out the details.

12 MR. FFITCH: Your Honor, I think we have some
13 things to report to you, and I'm not sure who would
14 like to speak on behalf of the parties, but there have
15 been some discussions regarding settlement that may
16 affect the agenda today.

17 JUDGE MOSS: I think I'd like to hear about
18 that first. In fact, I'm sure I'd like to hear about
19 that first. Whoever wishes to take the lead on that,
20 I'm all ears.

21 MR. VAN NOSTRAND: Thank you, Your Honor. As
22 you know, there was a stipulation with Staff that was
23 filed as an exhibit of Mr. Kilpatrick's testimony, a
24 follow-up, following all the evidentiary hearings in
25 the other states we met with Staff to determine whether

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1 there might be some appropriate modifications to that
2 testimony, line of commitments made in the other
3 states.

4 We've had a number of discussions with Public
5 Counsel in addressing particular issues that Public
6 Counsel had. At this point, we have a combined
7 stipulation with Staff and Public Counsel which I think
8 I can report Staff, Public Counsel, ScottishPower, and
9 PacifiCorp have reached agreement in principle on
10 subject to some wording that we're still working out on
11 some remaining provisions, and we believe we can
12 complete the settlement, the document, probably
13 tomorrow and hopefully have it filed with the
14 Commission by the close of business tomorrow, and that
15 would be a stipulation with Staff, Public Counsel,
16 ScottishPower, and PacifiCorp, and in addition, as
17 Ms. Dixon will probably report, there is also a
18 stipulation with Public Counsel, ScottishPower,
19 PacifiCorp, and the Northwest Energy Coalition
20 concerning certain low income and conservation issues,
21 which I think she is prepared to distribute today, and
22 that would also be a preliminary matter that would be
23 taken up as we go on with the proceedings.

24 MR. FFITCH: And that also includes the
25 Energy Project.

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1 JUDGE MOSS: Any fruitful discussions with
2 the Industrial Customers of Northwest Utilities?

3 MR. VAN NOSTRAND: No, sir.

4 JUDGE MOSS: Now, as I understood what you
5 said, and I have to confess I was taking notes and I
6 missed one point there, as far as the NWEC is
7 concerned, everybody is in agreement on that -
8 Applicant, Staff, Public Counsel?

9 MR. VAN NOSTRAND: Staff is not a party to
10 the NWEC, although Staff is looking at it. Maybe Staff
11 would join that stipulation, but it was just reached
12 yesterday and today, basically, and Staff now has a
13 copy of it, and Staff may be joining that one as well,
14 but that would be Northwest Energy Coalition,
15 PacifiCorp, ScottishPower, Public Counsel, and the
16 Energy Project, who although was not granted intervenor
17 status in the case has interest in low income issues
18 and was included in that stipulation and concurs with
19 the recommendations therein.

20 JUDGE MOSS: I think this does affect our
21 discussions today in terms of our procedures beginning
22 on Tuesday. One of the issues that Mr. ffitich brought
23 up in his suggestion that we have a prehearing
24 conference, and he and I did subsequently discuss that
25 procedural matter on the telephone, and I think maybe

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1 we discussed too is how we want to go about presenting
2 this matter. Of course, the Commissioners will be on
3 the Bench next week. We want to do this in the manner
4 that is most efficient for that, so this really does
5 bring us directly into the first point on the agenda
6 that I listed before, determining the order of party
7 presentations including any stipulations.

8 It occurred to me that there are a couple of
9 options, and, of course, I was working with the
10 understanding of only the one stipulation at that time.
11 One option would be to present the stipulation first
12 with perhaps a witness panel to respond to any inquiry
13 the Commissioners may have.

14 MR. VAN NOSTRAND: That's what we had
15 anticipated with each of the parties being represented
16 by one witness on the panel.

17 MR. CEDARBAUM: Since we're talking about two
18 stipulations, I think we're also talking about two
19 panels, one panel for the low income and energy
20 stipulation -- which Staff may or may not be a party
21 to. Mr. Van Nostrand is correct about that. We just
22 haven't had the chance to look at it yet -- and then
23 another panel for the stipulation between Companies,
24 Public Counsel, and Staff.

25 JUDGE MOSS: Then what I would propose if you

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1 all are in agreement in terms of our order of business
2 for next Tuesday -- I believe we start at 9:30, if I'm
3 not mistaken -- we would first then -- and these are
4 just suggestions so you all tell me if you want to do
5 it differently. We would first have the stipulation
6 among Applicants, Staff, Public Counsel, and the panel
7 with representatives from each of those parties?

8 MR. CEDARBAUM: That's right.

9 JUDGE MOSS: Who would be the representative
10 for Staff?

11 MR. CEDARBAUM: That hasn't been finalized,
12 but I believe it will be Douglas Kilpatrick.

13 JUDGE MOSS: How about for Public Counsel.
14 Mr. ffitich, do you know who you would want to put on
15 the panel?

16 MR. FFITCH: Matthew Steuerwalt.

17 JUDGE MOSS: Who would the Applicants want to
18 put on that panel?

19 MR. VAN NOSTRAND: For ScottishPower, either
20 Matthew Wright or Andrew MacRitchie, who is a witness
21 in the proceeding.

22 MS. McDOWELL: For PacifiCorp would be Bruce
23 Hellebuyck.

24 JUDGE MOSS: I noticed that some of these
25 names are familiar to me as witnesses and some are not

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1 presently designated as witnesses in the case. What is
2 the intention of the parties with respect to their
3 witnesses who have prefiled testimony? Is it your
4 intention to withdraw the testimony or to go ahead and
5 put the witnesses and the testimony into the record?

6 MR. VAN NOSTRAND: I think it probably needs
7 to be in the record to support the evidentiary basis
8 for the stipulation, so we propose to still submit the
9 testimony, and if there are questions from the
10 Commissioner or remaining parties, to make the
11 witnesses available for cross-examination on that
12 testimony.

13 JUDGE MOSS: And we'll talk in a minute about
14 what the scope of that might be. Same thing for Staff?

15 MR. CEDARBAUM: I would echo that.

16 JUDGE MOSS: Of course, you have Mr.
17 Kilpatrick anyway as a witness.

18 MR. CEDARBAUM: And Mr. Schooley on prefile
19 testimony. The stipulation that we're hoping to
20 finalize tomorrow, many of the provisions are
21 incorporated from the existing stipulation between
22 Staff and the Companies for which we filed supporting
23 testimony already, so our plan would be to offer both
24 the prefile testimony, Mr. Kilpatrick and Mr. Schooley,
25 have Mr. Kilpatrick on the panel but have Mr. Schooley

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1 available in the hearing room to ask questions of.

2 JUDGE MOSS: Now Mr. ffitch, your witnesses'
3 prefile testimony was, for lack of a better phrase,
4 essentially adverse to the Application, so what is your
5 intention with respect to your witnesses?

6 MR. FFITCH: I guess that's an issue.

7 Witnesses who filed testimony are located out of state.
8 Our plan was to present a witness who could explain our
9 position with regard to the settlement who was closely
10 familiar with that position who is from our own staff.
11 It was not prefiled testimony.

12 If there is a need to bring one of our
13 experts or more who have filed prefiled testimony for
14 the hearing, I guess we would need to know that. It
15 would be very helpful to know that. It's difficult to
16 have them waiting in the back in case there are
17 questions, so if we could have some advance notice of
18 the need to do that, we could make arrangements to have
19 somebody here.

20 JUDGE MOSS: I certainly don't need to
21 suggest you need to have any of them here. Typically
22 in my experience when we have a stipulation, we do hear
23 from witnesses who can speak to the terms of the
24 stipulation and in terms of how that satisfies the
25 concerns of previously adverse party may have expressed

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1 through prefile testimony which is not yet part of the
2 record.

3 I think it's essentially your call as to
4 whether you wish to simply not put the testimony into
5 the record. If you do want to put it in the record,
6 that either has to be done by having the witnesses live
7 and present and available for cross-examination or by
8 stipulation among the parties that there be no
9 cross-examination, and I've done it both ways there
10 too. I don't want to make that decision for you, and
11 I'm operating a little bit in the dark here since I
12 haven't seen all this stuff, but you can ponder that,
13 and we can return to the subject momentarily as to how
14 you might want to proceed. I do understand the
15 logistical problem that you're talking about; your
16 witnesses are off on the East Coast.

17 MR. FFITCH: I was going to say that I
18 believe I'm not aware of any other party that would
19 want to cross-examine our witness and inquire into our
20 prior positions in prefile testimony other than the
21 Industrial Customers, and there are some other parties
22 who are not present here, but not being real active --
23 and I guess that would be what I would anticipate is
24 they might have questions, and we can maybe inquire
25 into that and figure out what the situation is there,

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1 but otherwise, I would be not inclined to submit our
2 testimony or bring those witnesses to the hearing.

3 JUDGE MOSS: I assume that the stipulations
4 will probably include the usual disclaimer that should
5 the Commission not accept or should the Commission
6 condition in a way unsatisfactory to the parties, then
7 everyone reserves their rights and we're sort of back
8 to square one anyway.

9 Clearly, our principle concern is to maintain
10 everyone's due process rights so nobody is going to get
11 blindsided by something we decide here today in terms
12 of our appropriate process. If we had to schedule a
13 later hearing date to hear from witnesses who were from
14 the East Coast, we could make those arrangements too.
15 We could see on a break maybe working some of those
16 details out.

17 Something Mr. ffitch said reminded me of a
18 housekeeping matter I neglected, and I did have a call
19 earlier today from Mr. Dukich of Avista, and he
20 indicated that since they had no witness, he would go
21 along with whatever process we decided today. As to
22 the WSLC and the IBEW, I didn't hear anything from
23 them, and we had no appearances today, so, of course,
24 they will also be bound by whatever process we
25 determine today.

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1 MR. CEDARBAUM: If I could just add one
2 additional refinement to the panel discussion, again,
3 with respect to the stipulation that Staff is not yet a
4 party to on low income and energy conservation. We do
5 intend on looking at that, and if we can sign on to it,
6 we will. If we do sign on, then I suppose it's
7 possible to have one panel that would just add a member
8 from the Energy Coalition to the existing panel, just
9 take it all together, but that's within your
10 discretion, obviously, to handle that.

11 If we don't sign on, I would like to at least
12 alert everyone to what I expect to be a request of
13 Staff to have probably Mr. Kilpatrick either take the
14 stand and put on supplemental direct or at least be
15 available for questions from the Commissioners or the
16 parties as to what Staff thinks about that stipulation
17 and why Staff hasn't joined. I think the Commission
18 would be interested in knowing Staff's position. We're
19 at that crossroads. I'm not sure which road we're
20 going down, but I wanted to at least advise you of that
21 possibility.

22 MR. VAN NOSTRAND: The Joint Applicants would
23 not object to that procedure. On the low income panel,
24 we have a different witness because it would be the
25 person that primarily negotiated that stipulation. His

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1 name is Mike Marron.

2 MR. CEDARBAUM: It may be better than to keep
3 them separate.

4 JUDGE MOSS: Unless it's going to be
5 collapsed into a single stipulation, I think my
6 preference would be to have it as two panels. Even if
7 it happened to be the same people, I would prefer to do
8 it that way just for organizational purposes, so why
9 don't we set it up that way, and if it happens that you
10 all manage to collapse all of this into a single
11 document, then we can modify our procedures
12 accordingly. It's always easier to make it smaller than
13 larger, so we'll go ahead and set it up that way given
14 what we know today.

15 So with that, we have on this second panel
16 for the stipulation among Applicants, Public Counsel,
17 and the Northwest Energy Coalition and including the
18 Energy Project

19 -- even if Staff doesn't sign on, you would want to
20 make Mr. Kilpatrick available to explain to the
21 Commission or be available to respond to any questions
22 about why Staff is not signing on, and then the
23 Applicant would put on witness Mike Marron, and would
24 there be a separate witness for PacifiCorp?

25 MS. McDOWELL: Let me just clarify there

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1 would not be. Mr. Marron would be the witness for the
2 Joint Applicants on this panel.

3 JUDGE MOSS: And for the Northwest Energy
4 Coalition.

5 MS. DIXON: Nancy Hirsh would be the witness
6 for the Coalition.

7 MR. FFITCH: And for Public Counsel would be
8 Matt Steuerwalt.

9 JUDGE MOSS: Probably Mr. Kilpatrick would be
10 your witness either way?

11 MR. CEDARBAUM: That's right.

12 JUDGE MOSS: We'll do the stipulations one,
13 two, and then the Joint Applicants have indicated that
14 they wish to go ahead and put their witnesses on, put
15 the testimony in the record and make those witnesses
16 available for cross-examination, so let's talk about
17 what order you want to put them on.

18 MR. VAN NOSTRAND: We call Alan Richardson
19 first, then Dick O'Brien, Bob Moir, Robin MacLaren, and
20 Jack Kelly. Then we have a Graham Morris substituting
21 for Robert Green, and I've got a statement of
22 background and qualifications for Mr. Morris, and our
23 last witness would be Andy MacRitchie.

24 JUDGE MOSS: We're going to have
25 Mr. Kilpatrick available on the panels. Did you want

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1 to put on his prefile testimony as well?

2 MR. CEDARBAUM: I think the plan was to just
3 have him on the panel but to offer into evidence his
4 testimony and exhibit.

5 JUDGE MOSS: Through the panel procedure?

6 MR. CEDARBAUM: I think as to the parties of
7 the stipulation would be just by stipulation that the
8 testimony would go in, but Mr. Kilpatrick would be
9 available for questions on his testimony as well.

10 JUDGE MOSS: I think what we'll want to do is
11 put him on the stand by himself for that purpose, so
12 what we'll do is have our stipulation panels and then
13 we'll put the Applicants' witnesses on in the order
14 indicated, and then we'll put on Staff's witnesses.
15 You want to put on both of them?

16 MR. CEDARBAUM: Yes.

17 JUDGE MOSS: What's the order?

18 MR. CEDARBAUM: Kilpatrick and then Schooley.
19 For Mr. Kilpatrick, since his testimony supports the
20 prior stipulation which is being incorporated into the
21 one we're working on, I'm not sure there is really any
22 difference. I'm not sure where we separate the cross,
23 but if you want to do him separately with respect to
24 his testimony from the panel, that's fine.

25 JUDGE MOSS: I think that will maintain good

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1 order because we still have the Industrial Customers
2 and a couple of other intervenors we don't know about
3 who may wish to inquire, and in terms of maintaining a
4 good momentum and good order, we should probably do it
5 that way, and of course, we'll open inquiry of the
6 panel to the parties. It may not become necessary, but
7 we'll reserve the option.

8 We have a witness from Northwest Energy
9 Coalition. Nancy Hirsh is the witness, and would it be
10 your intention to still put on her prefile testimony or
11 just participate in the panel?

12 MS. DIXON: I think I need a little
13 clarification, and I apologize since this is the first
14 time I've gone through this process. If her testimony
15 is not put on, does that mean that what we prefiled
16 then is never in the record?

17 JUDGE MOSS: It's not part of the record
18 unless it becomes an exhibit in this proceeding. As I
19 had the conversation a moment ago with Public Counsel,
20 your testimony, although perhaps not strongly adverse,
21 was certainly adverse to the Application. You're not
22 supporting the Application. You've now entered into a
23 stipulation as Public Counsel has, as Staff has.

24 I can't advise you from the Bench whether to
25 put in testimony that is adverse to the Application at

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1 the same time you are supporting the stipulation that
2 is supporting the Application with conditions. I'll
3 let you draw your own conclusions about whether that is
4 a good idea or not, but I need to know if you want to
5 put it on anyway, and of course, what happens then is
6 it's open to cross-examination, and the Applicants may
7 decide they need to cross-examine the witness and have
8 the record reflect, perhaps, for example, perhaps
9 reflect she no longer sees the problems identified in
10 her testimony as problems because of the stipulation or
11 something like that. That's the sort of thing that
12 might happen that I have seen unfold in other
13 proceedings, so I just need to know today whether you
14 plan to put on the prefile testimony or not so we can
15 reserve a slot for that.

16 MS. DIXON: Thank you. That is much more
17 clear, and no, we will not be. She will just be on the
18 stipulation panel.

19 JUDGE MOSS: So will not present evidence
20 except the live testimony in support of the
21 stipulation, which brings us to our other intervenor
22 who has prefiled, which is for the Industrial Customers
23 of Northwest Utilities as Mr. Wolverton's prefile
24 testimony. Would you intend to still put that on?

25 MR. BROOKS: Yes, we still intend to

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1 introduce his testimony. He'll be here to be available
2 for cross-examination, maybe with the same reservation
3 as Public Counsel. If we could know by the end of the
4 day today if anyone did have cross-examination for him,
5 it may or may not be necessary for him to be here.

6 JUDGE MOSS: But your intention is to put him
7 on to the extent that cross is not completely waived,
8 and you want to put his testimony in anyway, and we
9 have to have a place for that to happen.

10 MR. BROOKS: Yes.

11 JUDGE MOSS: That then brings us to what?
12 Am I missing anybody? We already talked to Public
13 Counsel. We don't need to know since we're going to
14 put you last. It's not essential that we know today
15 whether you want to put your witnesses on.

16 MR. FFITCH: I'm not sure if Mr. Brooks can
17 give us any idea about what he wants to do at this
18 point.

19 JUDGE MOSS: Do you want to go off the record
20 and discuss that for a few moments, or do you want to
21 discuss that on the record?

22 MR. FFITCH: Off the record is fine.

23 (Discussion off the record.)

24 JUDGE MOSS: We've had a break, and the
25 parties have had some discussions among themselves, and

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1 I'm not sure where we are at this point. Is there
2 anything to report before I move on in my agenda? Any
3 follow-up to our previous discussions?

4 MR. VAN NOSTRAND: I think we've reached
5 agreement as far as cross-examination estimates and
6 waiving of cross-examination. The Industrial Customers
7 have presented us with their cross-examination
8 exhibits, which we agreed we would stipulate into the
9 record, and they would waive cross-examination on the
10 panel witnesses and the Applicants' witnesses in
11 agreement for our waiving those exhibits into the
12 evidence without having the sponsoring witness, subject
13 to the availability, as I understand it, for follow-up
14 questions to the extent there are questions from the
15 Bench.

16 That would be the only circumstance under
17 which there would be any questioning by the Industrial
18 Customers of the Applicants' witnesses or of the panel
19 witnesses, and I also understand from Public Counsel
20 that he would not be offering his testimony, so it
21 appears as though -- and I believe Industrial Customers
22 have also stipulated to the cross-examination exhibits
23 which we were going to offer for Mr. Wolverton in
24 exchange for which we would not have any
25 cross-examination for the Industrial Customer's

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1 witness, so it would appear as though on Tuesday we
2 would have the two panels, assuming we can close the
3 deal on the stipulation with Staff and Public Counsel,
4 and then it would be up to the Bench, the Judges and
5 the Commissioners, as to which of the remaining
6 witnesses of the Applicants that would need to take the
7 stand. We can always make the witnesses available if
8 there are questions from the Bench, but as far as the
9 parties in the room, we're only requiring the
10 appearance of the two panels. Does that summarize it?

11 MR. CEDARBAUM: Just to add to that, I think
12 the guidelines that Mr. Van Nostrand has laid out for
13 the Applicants' witnesses apply also to the Staff
14 witnesses; that all parties have waived
15 cross-examination of Mr. Kilpatrick and Mr. Schooley
16 and that Mr. Kilpatrick will appear on the panel and be
17 available for questions either on the panel, or both
18 Staff witnesses will be available for questions from
19 the Commission, if necessary.

20 MS. DIXON: And can I clarify one more thing?
21 In not submitting Nancy's direct testimony into the
22 record, and with all this going on, I guess I just want
23 to say that if a global agreement is not reached
24 between Public Counsel and the Staff and Applicants,
25 then we might have questions, and is that something

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1 that's allowable?

2 JUDGE MOSS: Are you suggesting if the
3 Commission rejected this stipulation?

4 MS. DIXON: No. I'm suggesting if Staff and
5 Public Counsel and the Joint Applicants don't end up
6 signing the document. I know they are pretty far along
7 and it's likely they'll sign, but if they didn't sign
8 it, does that still leave the door open --

9 JUDGE MOSS: I'm operating under the
10 assumption that we're going to have a stipulation next
11 week. If that doesn't happen, then all of this time
12 we're spending today is wasted and we're be back to
13 square one in terms of our process as that point, but
14 my experience tells me that will not happen.

15 MS. DIXON: Thanks.

16 JUDGE MOSS: It's good for you to ask because
17 some things do happen. I believe Mr. ffitich had
18 something to say.

19 MR. FFITCH: We did off the record talking
20 about cross and exhibits and so on, and just to
21 supplement what Mr. Van Nostrand said, my understanding
22 is that ICNU will have no cross-examination for Public
23 Counsel witnesses, and to confirm, we will not be
24 offering the prefile testimony into the record. I
25 guess maybe I'll just ask for the record if any other

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1 parties have cross-examination for Public Counsel
2 witnesses?

3 JUDGE MOSS: I see a lot of heads shaking
4 negatively which I would take to say no, and if you're
5 not going to offer the testimony, there would be
6 nothing for them to cross-examine.

7 Let me recapitulate to make sure I have a
8 clear understanding because I'm going to have to brief
9 the Commissioners on this. As I understand everything
10 that I've been told, the Industrial Customers of
11 Northwest Utilities have distributed among the parties
12 and to the Bench copies of certain exhibits that they
13 had intended to introduce subject to any objections
14 through cross-examination of various witnesses. The
15 parties have agreed among themselves that all those
16 exhibits can be stipulated into the record without
17 regard to witness sponsor or anything like that.

18 ICNU, in turn, has waived cross-examination
19 of Applicants' witnesses, Staff's witnesses, and that's
20 all the witnesses we have left because Public Counsel
21 will not be offering witnesses and the Northwest Energy
22 Coalition will not be offering its witness. The Public
23 Counsel representative, however, who had not prefiled
24 testimony, Mr. Steuerwalt, will be part of the panel,
25 actually, I guess a part of both panels if we end up

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1 having two, and, of course, the other witnesses as
2 previously indicated will appear as participants of the
3 panel, but I also understand that no one intends to
4 cross-examine the panel; is that correct?

5 MR. CEDARBAUM: That's right. I think only
6 unless we have follow-up questions to the
7 Commissioners' questions.

8 JUDGE MOSS: Correction. If the
9 Commissioners' questions are believed by any
10 participant to require follow-up, then you all reserve
11 the right to do that; is that correct, Mr. Cedarbaum?

12 MR. CEDARBAUM: I think so.

13 JUDGE MOSS: We know that sometimes happens.
14 Questions come from the Bench and sometimes it needs
15 clarification.

16 MR. BROOKS: Could I also make one
17 clarification? I think that as part of the agreement
18 of not cross-examining the Applicants' witnesses, the
19 Applicants also agreed not to have cross-examination on
20 ICNU's witness, Lincoln Wolverton.

21 MR. VAN NOSTRAND: Yes.

22 JUDGE MOSS: I understand also that part of
23 that is that Applicants had some cross-examination
24 exhibits and those are going to be distributed today,
25 and those are, in the same fashion as I previously

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1 described for ICNU's cross-examination exhibits, these
2 will be stipulated into the record, and we won't have
3 to worry about witness sponsors and all that stuff.
4 Did I miss anything else?

5 MR. CEDARBAUM: I have one clarification. We
6 discussed this a little bit before. In the event that
7 the Staff is unable to join or recommend approval of
8 the Energy Coalition stipulation, I'd ask permission to
9 put Mr. Kilpatrick on the stand to either provide
10 direct supplemental testimony or answer questions with
11 respect to Staff's position on the stipulation. I just
12 wanted to make sure that would still be considered to
13 be part of the process.

14 If it's not, I may feel I need to ask
15 cross-examination questions of that panel if we're not
16 a party to that stipulation. I'd rather have
17 Mr. Kilpatrick explain Staff's position, so I'm
18 assuming we'll be allowed that opportunity.

19 JUDGE MOSS: I didn't go back that far. If
20 Staff does not agree with the stipulation that is
21 finally signed currently among Applicants, Public
22 Counsel, and Northwest Energy Coalition, then
23 Mr. Kilpatrick will be available to ask questions or
24 provide some testimony with respect to Staff's position
25 on that stipulation, and what we'll do there is that

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1 will just follow the panel.

2 MR. CEDARBAUM: Thank you.

3 MR. FFITCH: One other thought, Your Honor,
4 and that's whether -- and perhaps I'm just remembering
5 or misremembering some discussion we had off the record
6 about Commissioners wanting to hear from any of the
7 witnesses, and this is perhaps more of a concern for
8 the Company or Staff who would be potentially having
9 witnesses.

10 JUDGE MOSS: Staff's witnesses are going to
11 be here; I feel confident. Applicants, you intend to
12 bring your witnesses regardless of this process?

13 MR. VAN NOSTRAND: I guess if possible, it
14 would be helpful to know perhaps by close of business
15 on Monday if there are witnesses that the Commissioners
16 won't have questions of that wouldn't need to make the
17 trip. If it's possible to have some idea so that we
18 don't have to bring everybody up here.

19 JUDGE MOSS: Here I'm not going to be able to
20 be very positive about what may happen, and the simple
21 fact of the matter is a couple of the Commissioners are
22 out of town today and tomorrow. We won't be able to
23 have any discussion until Monday, so it could get kind
24 of pressed, but we'll try to let you know by end of the
25 business day Monday if there are witnesses that you do

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1 not need to have present. Otherwise, I suspect
2 prudence dictates having them here. The Applicants
3 clearly have the most at stake in the proceeding, and
4 although I would hate to put you and them to that
5 unnecessary bother, it may become logistically
6 impossible to give you sufficient notice, and we'll do
7 the best we can on that. Mr. Wolverton, what would be
8 his status?

9 MR. BROOKS: He's available, and I understand
10 that you won't know whether the Commissioners will have
11 questions until Monday, and Monday sometime would be
12 acceptable.

13 JUDGE MOSS: Even then I may not know. The
14 Commissioners have the testimonies and they are
15 reviewing the testimonies. I don't know where they are
16 in that process. Frankly, my best guess would be they,
17 like me, are continuing to study this record, and
18 frankly, I had planned to spend part of my weekend
19 preparing for this case so all of this is very good
20 news to me. I think I can now avoid that.

21 Nevertheless, like all of you, we prepare
22 right up until the hearing for these things, and I
23 don't know where they are in the process. So whether
24 they will be in a position to say by the close of
25 business on Monday or in time for us to let you know,

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1 that's sort of an open question. We could always make
2 some special arrangement if it was a significant
3 inconvenience to have him here or a significant
4 expense.

5 MR. BROOKS: It's not. Barring any
6 communication on Monday, we'll make him available.

7 MS. McDOWELL: I wonder also even if we
8 couldn't know before the hearing begins, if it was
9 apparent on Tuesday morning that some of the witnesses
10 would not need to remain all day long or until the
11 close of hearing, I'm sure they would appreciate that
12 notice as well.

13 MR. CEDARBAUM: Your Honor, if I could just
14 follow up with yet another clarification with respect
15 to the Staff witnesses who might need to be available.
16 Obviously, both Staff witnesses will be in the room.
17 My intention was not to offer Mr. Schooley for
18 cross-examination. His testimony would go in by
19 stipulation, but he'll be here in case the
20 Commissioners have questions of him.

21 JUDGE MOSS: As I understand it, there is not
22 going to be any cross-examination of any witness unless
23 there are questions from the Commissioners or otherwise
24 from the Bench.

25 MR. CEDARBAUM: That's right.

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1 JUDGE MOSS: I'm sure there will be questions
2 of the panel from the Bench, and whether that's going
3 to prompt anything, I don't know, and I will probably
4 ask the questions I have at that time as well rather
5 than in connection with the individual testimonies.

6 As far as Mr. Schooley is concerned, since
7 you indicate Mr. Kilpatrick will probably be your
8 witness on the panel, we can just have his testimony.
9 Cross-examination has been waived. Let me ask your
10 opinion on this, whether we need to -- I've done this
11 both ways -- whether we need to actually put the
12 witnesses on the stand to sponsor their testimony in or
13 just indicate that the testimony is being made part of
14 the record as an exhibit by stipulation. That's much
15 more efficient, but if you feel the need to have your
16 witness sworn ...

17 MR. CEDARBAUM: It may be that somebody has a
18 typographical error to correct, but if the testimony is
19 clean as filed, I assume we were just going to offer
20 them by stipulation without putting them on the stand.

21 JUDGE MOSS: That's my preference because it
22 takes so much less time.

23 Are there any motions to strike any of the
24 prefile testimony or exhibits you've indicated we're
25 going to have in? Hearing nothing ... Are there any

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1 other preliminary motions that we need to consider
2 today? Hearing nothing ... Are there any other
3 matters that we need to consider regarding our process
4 and procedures?

5 MS. DIXON: Your Honor, that I have one for.
6 I have already spoken with you and several other folks
7 in the room about this. I wanted to put in the record
8 that although I am the designated representative for
9 the Coalition in this proceeding, I will not be present
10 at the proceedings next week, and Nancy Hirsh, who is
11 the Coalition's witness and who will be on the panel,
12 will be taking over my responsibilities next week as
13 well, so she'll be acting in both roles.

14 JUDGE MOSS: I think we all understand that,
15 and we'll make whatever allowances are necessary for
16 the dual participation as a panel member but also as
17 your only representative. It doesn't appear to me
18 we're going to have any of the sorts of issues that
19 come up about nonlawyer cross-examination so we won't
20 have to go through any of that.

21 MR. CEDARBAUM: One matter with respect to
22 the public hearing -- this is perhaps a little bit out
23 of order -- just so you will know, the public hearing
24 was set for the 23rd. I will be unavailable for that.
25 Sally Johnston will be taking my place, and I think

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1 Mr. ffitch may have a conflict as well, so I'm hoping
2 that we can off the record work some sort of written
3 document that can be provided of the public hearing for
4 the public who appears so we'll know what the case is
5 about since a couple of the main players won't be
6 there.

7 MR. FFITCH: Just to follow up, I understand
8 there have been some discussions, and I advised the
9 Bench I would not be here and suggested that we might
10 need to vary the standard public meeting procedure a
11 little better, at least want to discuss that, in which
12 an attorney for our office conducts some brief direct
13 of the witnesses who come forward from the general
14 public, and I had suggested that we might ask the Judge
15 to do that or some other approach be adopted.

16 JUDGE MOSS: I have something on that. We've
17 had some internal discussions about the way to proceed,
18 and I appreciate you informing me that you would be
19 unavailable and suggesting an alternate procedure.

20 My understanding is that what has been
21 determined through discussions between the director of
22 the Administrative Law Section, which, by the way, is
23 what my section is now called. We were formally known
24 as the LAPD. Anyway, we are now called the
25 Administrative Law Section, which has led to a whole

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1 new round of humor. In any event, there has been some
2 discussion between the director of my section and the
3 senior attorney general and the decision, apparently,
4 has been taken that a representative from the attorney
5 general's office will be made available to substitute
6 into the role inquiring of the public, and whether that
7 will be the same AG who is substituting for
8 Mr. Cedarbaum or a separate one, those decisions will
9 be made by the appropriate people, so there is a
10 procedure being established to handle that in an
11 appropriate fashion, and that hearing will go forward.
12 It's been publicly noticed so everybody will need to do
13 that. I frankly have not had any feedback whether
14 we're expecting much participation in that or not so I
15 don't know at this juncture.

16 Judge Caille or I may or not be present
17 either. We'll consult with the Commissioners about
18 that. The Commissioners intend to attend, as far as I
19 know, all of them. Anything else? Let me just ask
20 while we're still on the record, are there any further
21 discussions ongoing with respect to stipulations as
22 between ICNU and any other parties, Mr. Brooks?

23 MR. BROOKS: There are not.

24 JUDGE MOSS: So the posture of the case as
25 we've discussed it today is unlikely to change between

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1 now and Tuesday; is that a fair statement?

2 MR. BROOKS: I agree with that statement.

3 JUDGE MOSS: That is the lay of the land.

4 Anything else? Thank you all very much. I appreciate

5 you coming today and helping us out. We're off the

6 record.

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8 (Prehearing conference concluded at 2:45 p.m.)

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