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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )

4 )

5 Complainant, )

6 )

7 vs. )

8 )

9 PACIFICORP, d/b/a PACIFIC )

10 POWER & LIGHT COMPANY, )

11 )

12 Respondent. )

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15 A prehearing conference in the above matter  
16 was held on October 17, 2006, at 1:39 p.m., at 1300  
17 South Evergreen Park Drive Southwest, Olympia,  
18 Washington, before Administrative Law Judge DENNIS  
19 MOSS.

20 The parties were present as follows:

21 WASHINGTON UTILITIES AND TRANSPORTATION  
22 COMMISSION, by DONALD T. TROTTER, Assistant Attorney  
23 General, 1400 South Evergreen Park Drive Southwest,  
24 Post Office Box 40128, Olympia, Washington 98504-0128;  
25 telephone, (360) 664-1189.

26 PACIFICORP, by JAMES M. VAN NOSTRAND,  
27 Attorney at Law, Perkins Coie, LLP, 1120 Northwest  
28 Couch Street, Tenth Floor, Portland, Oregon  
29 97209-4128; telephone, (503) 727-2162.

30 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,  
31 by MELINDA J. DAVISON, Attorney at Law, Davison Van  
32 Cleve, 333 Southwest Taylor, Suite 400, Portland,  
33 Oregon 97204; telephone, (503) 241-7242.

34 Kathryn T. Wilson, CCR  
35 Court Reporter

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1 PUBLIC COUNSEL, by SIMON J. FFITCH (via  
2 bridge line), Assistant Attorney General, 800 Fifth  
3 Avenue, Suite 2000, Seattle, Washington 98104-3188;  
4 telephone, (206) 389-2055.

5 THE ENERGY PROJECT, by BRAD M. PURDY (via  
6 bridge line), Attorney at Law, 2019 North 17th Street,  
7 Boise, Idaho 83702; telephone, (208) 384-1299.

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

2 JUDGE MOSS: Good afternoon, everyone. My  
3 name is Dennis Moss. I'm an administrative law judge  
4 for the Washington Utilities and Transportation  
5 Commission. We are convened this afternoon in the  
6 matter styled Washington Utilities and Transportation  
7 Commission against PacifiCorp, doing business as  
8 Pacific Power and Light Company, Docket UE-061546. Our  
9 first order of business will be to take appearances,  
10 and we will start with the Company.

11 MR. VAN NOSTRAND: On behalf of PacifiCorp,  
12 James M. Van Nostrand with the law firm of Perkins  
13 Coie, LLP, 1120 Northwest Couch Street, Tenth Floor,  
14 Portland, Oregon, 97209-4128. Phone number is (503)  
15 727-2162; fax, (503) 346-2162, and e-mail is  
16 jvannostrand@perkinscoie.com.

17 JUDGE MOSS: Thank you. Let's go ahead  
18 around the room here. Ms. Davison?

19 MS. DAVISON: Good afternoon, Your Honor.  
20 I'm Melinda Davison here on behalf of the Industrial  
21 Customers of Northwest Utilities. My firm is Davison  
22 Van Cleve. Our address is 333 Southwest Taylor, Suite  
23 400, Portland, Oregon, 97204. Phone is (503) 241-7242.  
24 Fax is (503) 241-8160, and my e-mail is mjd@dvclaw.com.  
25 Thank you.

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1 JUDGE MOSS: Mr. Trotter?

2 MR. TROTTER: Thank you, Your Honor. Donald  
3 T. Trotter, assistant attorney general appearing for  
4 the Commission staff. My address is 1400 South  
5 Evergreen Park Drive Southwest, Olympia, Washington,  
6 98504-0128. My phone number is (360) 664-1189. The  
7 fax is (360) 586-5522, and my e-mail address is  
8 dtrotter@wutc.wa.gov.

9 JUDGE MOSS: Now for those on the conference  
10 bridge, Mr. Purdy?

11 MR. PURDY: Thank you. Brad Purdy on behalf  
12 of The Energy Project. My address is 2019 North 17th  
13 Street, Boise, Idaho, 83702; phone, (208) 384-1299.  
14 Fax is (208) 384-8511, and e-mail bmpurdy@hotmail.com.

15 JUDGE MOSS: Is there anyone else on the  
16 conference bridge line that wishes to enter an  
17 appearance?

18 MR. FFITCH: Yes, Your Honor.

19 JUDGE MOSS: I'm sorry, Mr. ffitch. Go  
20 ahead, please.

21 MR. FFITCH: Thank you, Your Honor. Simon  
22 ffitch, assistant attorney general to Public Counsel.  
23 Address is 800 Fifth Avenue, Suite 2000, Seattle,  
24 Washington, 98104-3188. Phone number is (206)  
25 389-2055. Fax number is (206) 389-2079. E-mail is

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1   simonf@atg.wa.gov, and I would just note that this is a  
2   new address as of late September 2006, and the  
3   prehearing conference notice in this case inadvertently  
4   included our old address in the body of the notice. So  
5   just a request to parties to double-check their own  
6   service list or internal records to make sure that old  
7   address didn't get typed in somewhere for use on the  
8   service list or something of that nature. The new  
9   address is 800 Fifth Avenue. Thank you.

10           JUDGE MOSS: Thank you, Mr. ffitich, and I  
11   will speak to our staff to make sure we get these  
12   things changed. Is there anyone else on the bridge  
13   line who wishes to enter an appearance? Okay.

14           As I pointed out off the record, my sheet up  
15   here is an antique document, now four years old, and so  
16   I have wrong addresses and so forth on here, so let me  
17   ask, Ms. Davison, was the address you gave today the  
18   one when you appeared in the preceding PacifiCorp case?

19           MS. DAVISON: Yes, Your Honor.

20           JUDGE MOSS: Mr. Van Nostrand?

21           MR. VAN NOSTRAND: It would be different,  
22   Your Honor.

23           JUDGE MOSS: Can I get your business card?

24           MR. VAN NOSTRAND: (Complies.)

25           JUDGE MOSS: Mr. Purdy, are you at the same

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1 address that you gave at the PSE proceeding?

2 MR. PURDY: Correct.

3 JUDGE MOSS: I suppose we have petitions to  
4 intervene that we need to dispense with. The  
5 Industrial Customers of Northwest Utilities, I believe,  
6 filed a written motion.

7 MS. DAVISON: Yes, Your Honor.

8 JUDGE MOSS: Any objections? Hearing none,  
9 that will be granted, and The Energy Project was unable  
10 to file a timely petition to intervene. I talked to  
11 Mr. Purdy on the phone and told him that I would let  
12 him petition for oral motion today. Mr. Purdy, is that  
13 still your wish?

14 MR. PURDY: Yes, it is.

15 JUDGE MOSS: Would you go ahead, please?

16 MR. PURDY: The Energy Project would like to  
17 make an oral petition to intervene. I'm sorry that we  
18 are so late in this effort. I just learned late in the  
19 week from my client he wanted me to appear on his  
20 behalf, The Energy Project, so I hereby move.

21 JUDGE MOSS: I think we are familiar with The  
22 Energy Project's interest in the proceeding from prior  
23 experience, so let me just ask if there are any  
24 objections? Hearing none, the motion will be granted,  
25 and it appears these will be our two intervenors.

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1           Just to move things along, I'm sure we are  
2 going to engage in some discovery consistent with the  
3 Commission's discovery rules, so we don't need anymore  
4 said about that, or perhaps we will in terms of  
5 scheduling but not in terms of the use of the various  
6 methods. Do the parties see the need for a protective  
7 order in this proceeding?

8           MR. VAN NOSTRAND: Yes, Your Honor. We  
9 included a couple of confidential exhibits, so we would  
10 like a standard form of protective order issued.

11           JUDGE MOSS: Do we need the highly  
12 confidential provisions this case?

13           MR. VAN NOSTRAND: We don't anticipate at  
14 this point we will need the highly confidential, Your  
15 Honor.

16           JUDGE MOSS: We can always amend it if we  
17 need to, but in the meantime, we will enter the order.  
18 The responsibility for these has been delegated to the  
19 judges, so this will be over my signature as opposed to  
20 the commissioners, but it will carry the same force as  
21 it always has.

22           It would appear we are at the point for  
23 discussing the procedural schedule, and I had asked the  
24 parties to see if they could come up with a common  
25 schedule, and I gather from the document I've been

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1 handed which shows a Staff proposal and an ICNU  
2 proposal, which are somewhat different, that the  
3 parties have not been able to reach an agreement on a  
4 schedule.

5 MR. TROTTER: We have had discussions with  
6 the parties, and I'll just note to Mr. Purdy and  
7 Mr. ffitch, my secretary e-mailed you a Company  
8 document containing three schedules on it a few minutes  
9 ago, so if you could access your e-mail, you will find  
10 it.

11 JUDGE MOSS: I only have two here.

12 MR. TROTTER: There is another sheet of  
13 paper. The Company has copies it can distribute. It  
14 might be worthwhile to go off the record to discuss  
15 that, or you can stay on the record if you like.

16 JUDGE MOSS: We can discuss it off the  
17 record.

18 MR. TROTTER: So you should have two pieces  
19 of paper. One was prepared by ICNU containing two  
20 schedules, and the one containing three was prepared by  
21 the Company.

22 JUDGE MOSS: Do you want me to participate in  
23 this off-the-record discussion, or is there some  
24 thought that you may all be able to have a meeting of  
25 the minds?



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1                   MR. TROTTER: I think some off-record discuss  
2 among the parties would be useful for maybe ten minutes  
3 because some parties haven't seen the three schedules,  
4 and then you can come back.

5                   JUDGE MOSS: I'll walk down the hall here and  
6 I will sit in Mr. Beyer's office, so that's where you  
7 can find me, if he doesn't object. He's smiling. We  
8 will be off the record.

9                   (Discussion off the record.)

10                  JUDGE MOSS: I've been handed a copy of the  
11 document that shows three proposed schedules.  
12 Mr. Trotter indicates that the Staff proposal is being  
13 removed from the table, so to speak, so we have a  
14 proposal under the heading "ICNU proposed date," which  
15 has been modified somewhat. Do the parties on the  
16 bridge line have this information?

17                  MR. FFITCH: Yes, Your Honor, and that's now  
18 also become Public Counsel's proposed schedule.

19                  MR. PURDY: Yes.

20                  JUDGE MOSS: I guess it would be good to know  
21 who is supporting what here. The Company is clear  
22 enough. Is anybody else supporting the Company  
23 proposal?

24                  MR. PURDY: The Energy Project goes with  
25 Public Counsel.

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1           JUDGE MOSS:  So it would appear the Company  
2 stands alone; is that right.  Is Staff's proposal also  
3 the same as ICNU's?

4           MR. TROTTER:  It is, Your Honor.

5           MR. VAN NOSTRAND:  I wanted to state  
6 describing the Company proposal, as you know from the  
7 filing, we had made a proposal that if the Commission  
8 adopted a schedule providing for an order with rates  
9 effective in six months that the Company would reduce  
10 its request from 23 million dollars to 10 million  
11 dollars, 4.4 percent.  So we felt obligated to offer a  
12 proposal that would achieve that.

13           At the same time, we have been working with  
14 the parties, and we appreciate their efforts with  
15 coming up with a schedule that not within six months is  
16 nonetheless shorter than eleven months, so we've gone  
17 down the ICNU column and developed a schedule that  
18 works, we believe, for everyone, but we felt obligated,  
19 given the Company's proposal and its filing, to provide  
20 a schedule that would achieve that, understanding that  
21 no one likes it.

22           JUDGE MOSS:  Are you saying there is yet  
23 another alternative?

24           MR. VAN NOSTRAND:  No.  I wanted to provide a  
25 little context.  We have provided input on the proposed

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1 ICNU column.

2 JUDGE MOSS: The idea of the Company's  
3 willingness to accept a lower revenue requirement,  
4 assuming rates could be put into effect or the case  
5 could be concluded within a short period of time, is  
6 something that I think is certainly an appropriate  
7 subject for negotiation between the parties in terms of  
8 their settlement negotiations, and that's fine. It's  
9 not something, of course, that the Commission will  
10 engage in from the perspective of sitting as a judicial  
11 body. Our main interest is insuring that there is a  
12 schedule that is adequate to meet the needs of the case  
13 in terms of insuring due process.

14 Having said that, we have reviewed the case.  
15 Several of us, in fact, have read the entire case and  
16 have had some discussions internally prior to today,  
17 and it does appear to be relative to some rate cases we  
18 have seen in recent history, a relatively  
19 straight-forward case, somewhat less demanding than the  
20 full-blown case such as we've had a couple recently for  
21 PacifiCorp as well as Puget Sound Energy.

22 The Commission's view is that given the  
23 nature of the case, it is something that could be  
24 handled in a shortened period of time. What I'm  
25 looking at here as I quickly examine the dates that are

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1 proposed is something where the parties seem to be  
2 about two months apart. I have to say while the  
3 Company's schedule is ambitious, perhaps overly so, I  
4 think the proposal that the other parties have put  
5 forth is perhaps not ambitious enough.

6 I'm mindful too that PacifiCorp has been  
7 before the Commission very recently. All of the  
8 parties who would be participating in this proceeding  
9 participated in that earlier case. There has no doubt  
10 been very extensive discovery that brings everyone  
11 pretty much up to date. No doubt there will be some  
12 additional discovery, but we are looking at a smaller  
13 number of the issues.

14 So my inclination, and I may give you all  
15 another chance to talk amongst yourselves if you wish,  
16 my inclination is to split the difference here and  
17 expand the Company proposal by a month and shorten the  
18 Staff, Public Counsel, ICNU, Energy Project proposal by  
19 a month and have that happy medium. I don't think that  
20 brings it within the six months, but I'm not  
21 particularly concerned about that. What I am concerned  
22 about is managing the case expeditiously given its  
23 nature and scope and also giving the parties an ample  
24 opportunity.

25 Looking at a few of the specific dates, I

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1 will make some observations before I ask you whether  
2 you want some more time to talk amongst yourselves. I  
3 have a hard time accepting the idea that it will take  
4 until February 16th for the parties to prepare response  
5 cases given the small number of issues in this case,  
6 relatively small. I understand that these are  
7 important issues, but they are relatively small in  
8 number.

9           Let me pause there and go down a side path,  
10 and that is to ask this: I recall from the Company's  
11 case that there is testimony to the effect that the  
12 interjurisdictional cost allocation methodology, which  
13 has proven to be a somewhat intractable issue in prior  
14 cases, is a product that is at least in part a product  
15 of discussions among some of the key players. We are  
16 not told through the testimony who those players are,  
17 so I don't know how complete this discussion has been.

18           Do the parties perceive, having reviewed the  
19 case, no doubt, themselves that this is going to again  
20 be a significant issue?

21           MR. TROTTER: We believe the Company is  
22 making somewhat of an overstatement as to the nature of  
23 cooperation regarding allocation issues on the filing.  
24 There were some discussions, but it's still going to  
25 require some work. I can get into Staff-specific

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1 problems --

2 JUDGE MOSS: I don't want the substance.

3 MR. TROTTER: Problems with the schedule, not  
4 with that issue. The people assigned to the PacificCorp  
5 case are also working on -- one of the key witnesses is  
6 working on the Avista production and transmission case,  
7 so we've tried to set the schedule with that in mind,  
8 and that is why that date that you were focusing on is  
9 set where it is because the corresponding date in  
10 Avista, I believe, is mid January, so that just gives  
11 Staff an extra four weeks or so to get this filing in  
12 order, so we were trying to schedule this case with  
13 that one in mind. I recognize that is not the  
14 Company's problem but our problem. Taking a month off  
15 of Staff, ICNU, Public Counsel, Energy Project's  
16 schedule wouldn't give us an ample opportunity to  
17 address the issues or to create a happy medium.

18 The other problem is hearing dates. As you  
19 noted on Staff's schedule, we had the hearing a week  
20 ahead of the ICNU schedule. It turns out those dates  
21 are not available to the Commission. That's the NARUC  
22 conference, and some other items that week made that  
23 week just unavailable, and so once you start looking  
24 for available hearing dates, then that creates  
25 additional problems.

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1           So one thing you notice on Staff's column, we  
2 did just propose one brief, but the other parties  
3 wanted two, so we had some flexibility there, but if  
4 you want to go with one brief, that would shorten it as  
5 well, but we do believe that the ICNU column here is  
6 the best schedule for getting the Commission a quality  
7 work product.

8           It is true there is no cost-of-capital issue  
9 raised by the Company, but on the other hand, the last  
10 case I think went longer than the normal suspension  
11 period, and we still have PCA to work through, which  
12 was addressed in the last case, but there was no  
13 concrete proposal in the last case. It was addressed  
14 on a theoretical level.

15           So we have a lot of work to do, but I agree  
16 with you the number of issues are reduced, and that's  
17 why the briefs are submitted four months before the  
18 suspension period is up.

19           MR. FFITCH: Your Honor?

20           JUDGE MOSS: Yes, Mr. ffitch?

21           MR. FFITCH: Thank you, Your Honor. I wanted  
22 to add a couple of thoughts. I think that as  
23 Mr. Trotter has tried to do, it's perhaps useful for us  
24 to lay out a little bit more of the framework for the  
25 schedule. We kind of put it on your desk pretty cold,

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1 and it may be helpful to let you hear some of our  
2 thinking behind it. Mr. Trotter has already done that.

3 A couple of additional points: It is I think  
4 for all the parties, and certainly for us, it does take  
5 into account a very busy schedule in the next couple of  
6 months coming up to the end of the year. Also, I would  
7 just advise the Bench that one of the factors for me  
8 personally is will be out of the country from Christmas  
9 until January 10th. That's another scheduling factor  
10 that was accommodated by the schedule.

11 But more importantly, I think the schedule as  
12 presented in the ICNU version does actually take into  
13 account some of the factors you are talking about in  
14 the sense that it builds in technical conferences and  
15 settlement and an effort to begin settlement  
16 discussions before the end of the year with an  
17 understanding that there may be some avenues here for  
18 resolving this case and puts off some of the more  
19 formal litigation stages until a little bit later. It  
20 allows time for discovery and allows time then for the  
21 parties in November, December, January to talk about  
22 settlement, as well as accommodating the competing  
23 demands of other cases.

24 The final thing I wanted to say is that, and  
25 I can't speak for the Company here, but it was my



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1 understanding from the discussions we had while off the  
2 record that the Company can live with the joint  
3 parties' proposal if the Commission chooses not to go  
4 with the expedited schedule, and in fact, Public  
5 Counsel agreed to a number of modifications in the ICNU  
6 proposal essentially based on that understanding. It's  
7 already been modified to accommodate Company concerns,  
8 and we understand they wanted to put out their  
9 expedited proposal there so at least the Commission had  
10 an option, but we also understand they are comfortable  
11 with the joint parties' proposal if the Commission  
12 doesn't go with their fast-track, so that's some more  
13 context for these presentations, and there are other  
14 people in the room that can address this as well.

15 JUDGE MOSS: Yes. Let me ask Mr. Purdy if he  
16 has anything he wants to say here.

17 MR. PURDY: I have nothing to add to what  
18 Mr. ffitch just stated.

19 JUDGE MOSS: Then I will turn to the Company  
20 and see what Mr. Van Nostrand wants to tell me.

21 MR. TROTTER: Excuse me, Your Honor. Did  
22 Ms. Davison --

23 JUDGE MOSS: I'm sorry, Ms. Davison.

24 MS. DAVISON: Your Honor, I wanted to add a  
25 few things. We have the same scheduling issues that

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1 you have heard times two, and I have checked very  
2 carefully with our potential witnesses, and a December  
3 testimony date is just simply not a reality,  
4 unfortunately. I couldn't find a single witness that  
5 would tell me they could do testimony in that time  
6 frame.

7           So having said that, I wanted to address  
8 briefly some of the substantive issues that you raised  
9 in terms of the number of issues in the case and where  
10 we are on the allocation technology. ICNU did not  
11 participate in any meetings regarding the allocation  
12 methodology, so we are looking at this fresh, and we  
13 think there is a lot that needs to be looked at and  
14 asked, and we think it's very important, particularly  
15 if this is a methodology that's put in place and  
16 continues for a long period of time, that this is the  
17 case to get it right. So we would like to have the  
18 time to work with all the parties to get it right, and  
19 that's why you see the technical workshops and the time  
20 built in for the experts to talk to one another and  
21 work out the details on that.

22           In terms of the other issues, I agree that  
23 there are issues that are minimized in this case as a  
24 result of adopting some positions by the Company that  
25 the Commission ruled on in the last case, but what I

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1 would say is that the Company is dramatically different  
2 today than they were with the last case, and we think  
3 it's important to be able to have discovery and submit  
4 testimony to the Commission that shows areas that have  
5 changed and are continuing to change under the new  
6 ownership.

7           So we don't think that this is an update to  
8 the last case. We think this is a new company with new  
9 owners, new issues, new cost structure, and we think  
10 it's important that we have the ability to present all  
11 that to the Commission.

12           JUDGE MOSS: Just to be perfectly clear,  
13 Ms. Davison, I didn't mean to suggest that this is a  
14 mere update to a prior case. What I did mean to  
15 suggest is that I assume there was discovery in the  
16 last case, and that would mean that the parties would  
17 have a body of factual information that would be  
18 historic in nature, and that would not change. So in  
19 that extent, that would need to be updated perhaps.  
20 That was my reference there, and that may be true to a  
21 greater or lesser extent. I'm not privy to discovery,  
22 so I don't know what you have or don't have.

23           One question for you, and that is -- I'm  
24 probably missing something obvious, but why is your  
25 issue with timing a factor of two involved there?

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1           MS. DAVISON: Because we have lots of cases  
2 going on in Oregon. It's actually three. We do have a  
3 BPA case as well. Currently right now, ICNU is an  
4 intervenor in six rate cases.

5           JUDGE MOSS: I see. Mr. Van Nostrand, let me  
6 hear from you on this.

7           MR. VAN NOSTRAND: Thank you, Your Honor. We  
8 certainly were mindful of the workload issues. In  
9 fact, we looked at the Avista schedule very carefully  
10 when we prepared this proposed schedule, and we  
11 actually because of the issues in that case, whether it  
12 was dispositive motions, and ICNU and Public Council  
13 both question whether that case can be lawfully  
14 brought, which is one of the reasons there is a delay  
15 until January of '07 before the Staff and Intervenor  
16 testimony is filed, and that's why we tried to slide in  
17 our schedule to take advantage of the gap in the Avista  
18 schedule for the dispositive lawyer talk to have our  
19 testimony filed in December under our proposal.

20           So we were looking at that Avista schedule  
21 when we tried to design our schedule in a manner that  
22 would accommodate what was going on in that case. That  
23 being said, Mr. ffitich is right. We did work with the  
24 parties going down the ICNU column to make  
25 modifications for things that would work for us, and I

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1 guess a question that we have is whether there are any  
2 available hearing days. Our understanding was that the  
3 week of March 20th was not available due to the NARUC  
4 event, and just working back from that, if we want to  
5 land someplace in the middle, it depends on whether  
6 there are any hearing dates available in early to mid  
7 March that would provide a little bit of ability to  
8 work backwards.

9 JUDGE MOSS: I have a calendar that has  
10 information. Looking at March, on March 6th, the  
11 briefs are due in the Avista power transmission cost  
12 case, so to the extent the same people are involved, I  
13 can see that could be problematic to do something even  
14 the following week. I also see that we have a hearing  
15 the following week already scheduled. That's scheduled  
16 for the entire week, so the week of the 12th is not  
17 available. The week of the 19th, as you observed, is  
18 not available. March is going to be a busy month.

19 So about the only thing we could do in March  
20 would be the week of the 27th. Are we anticipating  
21 just three days of hearing then?

22 MR. TROTTER: I think all parties were  
23 comfortable with that, Your Honor.

24 JUDGE MOSS: I feel comfortable with that.

25 MS. DAVISON: Your Honor, actually, the way

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1 that I see it, it's actually three and a half, and I  
2 wanted to explain that I reached the same conclusion in  
3 talking to your assistant that March was extremely busy  
4 for the commissioners, and because it was so busy and  
5 dates were coming in right and left, I had her just put  
6 a tentative hold on those dates because I didn't want  
7 to lose those dates and push us into April. So what  
8 does come into the middle there is the Commission  
9 meeting on the 28th, so that's a half day. That would  
10 be a half-hearing day.

11 JUDGE MOSS: Right. Let me ask another  
12 question, if I may. The parties are now proposing a  
13 settlement conference December 14th. That pushes that  
14 up a month prior to the previous schedule, which is an  
15 improvement, I think, because the question I have is  
16 why are we waiting so long to engage in those  
17 discussions?

18 MR. TROTTER: Regardless of Mr. Van  
19 Nostrand's understanding of the Avista matter, the  
20 matter has not been dismissed and Staff is working on  
21 it, so the commitments of that case and this one  
22 dictate that Staff will be ready to, hopefully ready to  
23 discuss settlement by that time but probably not very  
24 much before it, and consequently, we picked that date  
25 as a date for parties to check in. Maybe there will be

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1 a proposal to work with, but as a date to really start  
2 talking in earnest about ways of resolving this case  
3 without hearing, and given Public Counsel's  
4 out-of-country events and so on, we had the backup  
5 dates for the 17th and 18th of January, but as you  
6 know, those dates are flexible and the parties can  
7 adapt to them as time goes by, but fundamentally it was  
8 simply preparing on other cases. We are not going to  
9 be in a position of addressing settlement until  
10 December 14th, so we did try to push that forward.

11 JUDGE MOSS: When are the dispositive motions  
12 going to be filed in the Avista case?

13 MR. VAN NOSTRAND: October 27th with the  
14 reply due on November 15th.

15 MR. TROTTER: Is there arguments then?

16 MR. VAN NOSTRAND: Not according to the  
17 prehearing conference order. That's all I'm going  
18 from.

19 JUDGE MOSS: One option, of course, that we  
20 can just be mindful of is we obviously can't act on the  
21 idea that dispositive motions will result in that case  
22 being dismissed nor can we be completely confident that  
23 the order will be out with great dispatch. I'm not the  
24 judge in that case so I have no control over that.

25 I have to say I'm going to have to be

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1 somewhat accommodating of these conflicts, so with that  
2 in mind, if something should occur, such as the Avista  
3 case being disposed of on dispositive motions, and this  
4 would open up opportunities in this case. So I think  
5 that I want to make the general observation that while  
6 I will set a schedule today that I think is pretty much  
7 in line with what I see here under most of the parties  
8 supporting, I would be open to receiving a motion at  
9 some point to alter the schedule and even accelerate it  
10 if opportunities should present themselves to do that  
11 without interfering with everyone's ability to manage  
12 their caseload as described. I do realize we have a  
13 lot of business taking place in a very fairly  
14 compressed period of time right now. There are some  
15 other cases that are taking up time that we haven't  
16 mentioned here.

17 I want to raise one other question: Do we  
18 really need two rounds of briefs? Ms. Davison wants  
19 one round of briefs. I should say, Ms. Davison called  
20 me about this in a generic question of whether the  
21 Commission has now a definite preference for two rounds  
22 of briefs or whether that remains open to decision in  
23 individual cases, and my response was simply that,  
24 well, we seem to go in trends around here, and we will  
25 go for periods of time, sometimes periods of years,



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1 where we will do it one way or the other. It is not  
2 locked in one way or the other. So I'm open to the  
3 idea of one round if that's suitable, but if the  
4 parties feel two rounds are needed, then we will go  
5 that way, and it appears to me that since Staff  
6 initially proposed two rounds and the Company proposed  
7 two rounds that we've got a couple of parties that are  
8 supporting that idea.

9 MR. TROTTER: We can live with the initial  
10 brief only or the single-brief model with the  
11 understanding that if a party really needs a reply,  
12 they can make a motion and you can grant it or not, so  
13 we were amenable to the one-brief proposal of ICNU.  
14 Mr. Van Nostrand wanted the reply, and he can speak for  
15 the Company on that point.

16 JUDGE MOSS: Mr. Van Nostrand?

17 MR. VAN NOSTRAND: I think our proposal was  
18 to have a reply but to have it be fairly quick after  
19 the initial, so we were looking for something slightly  
20 less than two weeks, but we don't feel that strongly  
21 about it. We can go along with the ground rules that  
22 Mr. Trotter laid out that we both have the ability to  
23 motion to submit a reply brief if there is something  
24 you absolutely have to respond to, but our -- is  
25 something comes up and you don't have the ability to

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1 respond to it, that's why we thought the quick  
2 response.

3 JUDGE MOSS: We have had situations arise  
4 where we had one round of briefs in the schedule, and  
5 the typical practice is if a party really feels a need  
6 for a reply brief, they will file a motion along with  
7 their brief and the chips will fall where they may, but  
8 I'm open to that process, so we can do that.

9 MR. VAN NOSTRAND: We could also do a very  
10 quick reply with a tight page limit too.

11 JUDGE MOSS: Say five pages?

12 MR. VAN NOSTRAND: Yes.

13 JUDGE MOSS: We could also limit the initial  
14 briefs. 30 pages has always seemed adequate to me.

15 MR. TROTTER: Your Honor, it might also  
16 be you can set the schedule either way, and then when  
17 the time comes, we can revisit it, because as the  
18 issues boil down, parties may change their views.

19 JUDGE MOSS: I'm going to resolve these  
20 issues piecemeal, and I will resolve that one by saying  
21 we will schedule one brief, and if we need a change, we  
22 will accommodate it. It's clear to me that I'm not  
23 going to be able to cut a month out of the longer  
24 proposal, but maybe we can see some economies of time  
25 here.

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1                   I see that there is a fairly significant  
2 period of time, nearly three weeks between the rebuttal  
3 and cross-answering testimony, if any, and the proposed  
4 hearing dates. It's over three weeks. Do we really  
5 need that much time in a case of this magnitude to  
6 prepare for hearing after rebuttal?

7                   MS. DAVISON: That's the commissioner's  
8 issue.

9                   JUDGE MOSS: We are constrained in March  
10 because of the hearing dates. Thank you for reminding  
11 me.

12                   MR. FFITCH: Your Honor?

13                   JUDGE MOSS: Mr. ffitich.

14                   MR. FFITCH: I wanted to make sure that the  
15 schedule you have in front of you references a  
16 report-back date on the public hearing. We had  
17 discussed that.

18                   JUDGE MOSS: My notes here say Public Counsel  
19 will recommend a date by November 17th.

20                   MR. FFITCH: That's correct, and we will  
21 consult with the Company and the Energy Project and  
22 anybody else who is interested and with Commission  
23 staff on that.

24                   JUDGE MOSS: I think based on everything I've  
25 heard, I may as well bring this to a quick conclusion.

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1 My plan then is to adopt the schedule that is supported  
2 by Staff, Public Counsel, ICNU, and the Energy Project,  
3 with the exception that we will schedule only the one  
4 brief on April the 23rd, and with the strong suggestion  
5 that the parties keep an eye on other developments at  
6 the Commission, as I will be following them closely,  
7 and if there are some ways to gain economies, I think  
8 we should want to encourage that and dispose of the  
9 case as efficiently as we can, particularly in terms of  
10 technical conferences, settlement conferences, that  
11 sort of thing.

12 I think it's a good idea to get those things  
13 taken care of early, particularly the settlement  
14 discussions, to get them off to a reasonably early  
15 start. I do want to encourage that, and I will say too  
16 that as you know, we have in the past made available to  
17 parties a settlement judge, someone who can act in the  
18 role of facilitator or mediator, and I will certainly  
19 take that up with Judge Wallis if that's something that  
20 might be helpful, and we try to accommodate that.

21 I did have one other question, and that is  
22 the technical workshop, are we proposing that there be  
23 two of those now, November 1st and November 16th?

24 MR. TROTTER: Yes, Your Honor. I think the  
25 idea was that different subjects would be covered on

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1 different dates. If those are in a schedule or not in  
2 a schedule, it doesn't matter. The parties are  
3 committed to doing that, but that was the thought  
4 behind it.

5 JUDGE MOSS: I understand. I wanted to be  
6 clear. And similarly with the settlement conferences,  
7 you've got a couple of days there, and you've heard  
8 what I had to say about that. Anything else on this  
9 subject; Mr. Van Nostrand?

10 MR. VAN NOSTRAND: No, Your Honor.

11 JUDGE MOSS: That's what we will do on that.  
12 We talked about the open public meeting. Is there any  
13 other business we need to take care of today before I  
14 give you the standard closing remarks about number of  
15 copies and so forth? Apparently not.

16 We do need original plus 12 copies for the  
17 Commission's internal distribution needs in this case.  
18 I'm not going to go through addresses and phone numbers  
19 and so forth. You all have been here so long and so  
20 many times that that would be unnecessary. Similarly  
21 with the electronic, you all know the requirements  
22 there, and service requirements.

23 I will enter a prehearing conference order in  
24 the next day or two once I get all your addresses  
25 straight again, and we will memorialize all of this

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1 including the schedule. We will follow the practice in  
2 this case that you all are familiar with from long  
3 experience of trying to do our final prehearing  
4 conference without the necessity of actually coming  
5 here and getting together, but if there is pressing  
6 business that we should take care of before the  
7 hearing, then we will hold that. For example, if there  
8 are some motions that require argument or something  
9 like that. So if there is nothing further?

10 MR. FFITCH: I'm sorry. Your reference to a  
11 service list reminded me that we have requested the  
12 inclusion of staff people on the e-mail service list  
13 that people use, and I think a number of parties have  
14 found that useful so that transmission of documents  
15 goes to a number of different recipients within an  
16 entity so that they can process them.

17 JUDGE MOSS: Let me ask this then: I can  
18 certainly include that on the sheet we provide everyone  
19 to facilitate communications, and it probably would be  
20 useful for me to have that information so I can include  
21 that on our list served, if that's the right term.

22 So let me the ask all the parties to simply  
23 e-mail me providing me with the e-mail addresses of  
24 those they would like to be recipients of all the  
25 communications among the parties and the Bench and we

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1 will do that, and I will include it in the prehearing  
2 conference order, so if you could do that in the next  
3 couple of days, that would be helpful.

4 MR. FFITCH: Thank you, Your Honor.

5 JUDGE MOSS: Mr. Purdy?

6 MR. PURDY: No, Your Honor.

7 JUDGE MOSS: Thank you all very much, and  
8 with that, we will be off the record.

9 (Prehearing conference adjourned at 3:02 p.m.)

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