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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND) DOCKET TG-143889
TRANSPORTATION COMMISSION,) Pages 1-24

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v.)

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Complainant,)

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WASTE MANAGEMENT OF WASHINGTON,)
INC. d/b/a WASTE MANAGEMENT OF)
SPOKANE,)

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Respondent.)

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PREHEARING CONFERENCE, VOLUME I

12

Pages 1-24

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ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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9:31 A.M.

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March 16, 2015

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Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest, Room 206
Olympia, Washington 98504-7250

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A P P E A R A N C E S

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1 OLYMPIA, WASHINGTON, MARCH 16, 2015

2 9:31 A.M.

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P R O C E E D I N G S

6 JUDGE KOPTA: Then let's be on the record in Docket
7 TG-143889, en captioned: Washington Utilities and
8 Transportation Commission v. Waste Management of Washington,
9 Inc. d/b/a Waste Management of Spokane.

10 We are here for a prehearing conference in this
11 matter, and let's start by taking appearances. I note that we
12 have petitions to intervene or notice of appearances from folks
13 that are in the room right now, so you only have to give me, in
14 making your appearance, your name, law firm, if any, and the
15 party you represent.

16 And unless there's somebody else that is going to be
17 joining us, that should be sufficient, so let's begin with the
18 Company.

19 MS. KELLY: Sara Kelly with Summit Law Group for
20 Waste Management.

21 MS. McNEILL: And Polly McNeill with Summit Law
22 Group, also for Waste Management.

23 JUDGE KOPTA: Commission Staff?

24 MR. BEATTIE: Thank you, Judge Kopta. Julian
25 Beattie, Assistant Attorney General, for Commission Staff.

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1 JUDGE KOPTA: And for the County?

2 MR. DiJULIO: Steve DiJulio, Foster Pepper, special
3 deputy prosecuting attorney, appearing on behalf of Spokane
4 County. Good morning.

5 JUDGE KOPTA: Good morning.

6 Is there anyone else who wishes to make an
7 appearance?

8 Hearing none, we will proceed.

9 The first order of business is intervention. We
10 received a petition to intervene from the County and a response
11 from Waste Management.

12 Is there any further discussion on that petition this
13 morning? Are we set with what's in the papers?

14 It sounds like we're okay.

15 MS. McNEILL: No, your Honor. There hasn't been any
16 further discussion about it this morning.

17 JUDGE KOPTA: All right. Well, I will grant the
18 petition to intervene. I find that the County has substantial
19 interest in this proceeding and should be allowed to participate
20 as an intervenor.

21 The next order of business, discovery. I'm assuming
22 that we want discovery in this case, so we will make the
23 discovery rules available.

24 Protective order. Again, my assumption, based on my
25 understanding of this case, is that we need a protective order

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1 and the standard protective order. I will issue the standard
2 protective order, unless there's some concern about the contents
3 of that particular order.

4 Ms. McNeill or Ms. Kelly?

5 MS. KELLY: I do think we had a couple --

6 MS. MCNEILL: Can I just ask? Do you want the
7 microphones on or not?

8 JUDGE KOPTA: Is there anyone on the bridge line?

9 Well, then, it doesn't make any difference. That's
10 the only reason.

11 MS. MCNEILL: Okay. Thanks.

12 MS. KELLY: We did have a couple of comments about
13 the protective order. One of the things that we noted is in
14 prior communications, the County had indicated its desire to
15 have someone from within the County review the work papers, and
16 we noted that the standard protective order usually contemplates
17 an outside expert. The Company wouldn't have any objection to
18 someone from within the County acting, I suppose, as an expert,
19 but just with -- the language of the standard protective order
20 doesn't contemplate that, and so we wanted to raise the issue.

21 JUDGE KOPTA: All right. It's certainly my
22 understanding that there are individuals within a company that
23 could sign a protective order. I will take a look at that
24 standard protective order to make sure that there isn't anything
25 that precludes anyone that is actually working for the County

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1 from reviewing confidential information. But my understanding
2 is that that should not be precluded, so...

3 You're still looking puzzled, Ms. McNeill.

4 MS. MCNEILL: Yeah. It's just a little bit odd
5 because of the posture of the parities and the nature of the
6 protective order in terms of the County itself being a local
7 government, so we're trying to follow all of the different
8 possible anomalies that might occur as a result of that
9 situation. And we didn't know the County has, at least -- I
10 don't know. And maybe we would want to go off the record, but I
11 don't know if the County has identified an expert or not. And
12 our impression was that they wanted it to be somebody -- that
13 they had somebody on board internally who had the capacity to be
14 looking at the -- reviewing the work papers.

15 And, again, in reading the -- as you know, the use of
16 the protective order is a little bit new for us in this
17 industry. We're perhaps not as facile with its terms as Your
18 Honor may be, but in reading it literally, it did seem to
19 contemplate only counsel and experts rather than actual
20 employees.

21 JUDGE KOPTA: And, generally -- and we may need to
22 use the microphone because it sounded like somebody joined us on
23 the bridge line. Generally, expert is construed broadly so that
24 you can have an internal expert, not necessarily an external
25 expert. The only restriction on that being someone who's in a

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1 decision-making capacity that could use the information to their
2 competitive benefit.

3 But, again, as I say, I will take a look at it. It
4 is a little unusual because we generally don't have local
5 governments intervening in Commission proceedings, but I think
6 that the issue remains the same. And it sounds to me like there
7 isn't going to be a dispute, and, certainly, if there is, then
8 you have the opportunity to object if someone signs the
9 protective order and files it. I think you have a period of
10 time to object if you don't believe that a particular individual
11 meets the qualifications of the order, so there is that
12 safeguard as well.

13 But as I say, I will take a look at the order to make
14 sure that there isn't anything that precludes anyone from within
15 the County to look at the information that you would be
16 providing that is designated as confidential.

17 All right. I think that brings us to schedule.

18 I received an e-mail from Mr. Beattie, on behalf of
19 Staff, with a proposed schedule that I understand has been
20 worked out with the parties. Again, a little bit unusual for
21 our proceedings since it is just scheduling three mediation
22 sessions. I don't have a particular objection to that. I have
23 a couple of thoughts, but I would like to hear from the parties
24 first as to what your thinking is on just scheduling mediations
25 at this point. Obviously, mediation is not something that is --

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1 something you have by right, but that you would request, and I'm
2 certainly willing to grant that request. We want to do
3 everything we can to encourage settlements of disputes.

4 But your thoughts on proposing at this point just to
5 have a schedule that would have mediation sessions would be
6 welcomed, and, Mr. Beattie, I will let you start since you sent
7 me the e-mail.

8 MR. BEATTIE: Thank you, Judge Kopta. And I was the
9 first to float this proposal among the parties, and it responds
10 to the optimism expressed among counsel for the various -- well,
11 now, parties, since intervention has been granted. And nobody
12 wants to go to a hearing that will require resources and time
13 that are just -- could be better used for other projects, and so
14 mediation was viewed as a way to resolve this matter
15 expeditiously. But I should also mention, you know, we're
16 really in a wait and see kind of mode because the County has
17 asked to see confidential data and until it sees that data, it
18 doesn't have a clear objective yet.

19 And so mediation is really viewed as the best way to
20 move forward in this state of uncertainty. We need a neutral
21 third party to help us move along because there is no real clear
22 objective at this point. And so scheduling those three
23 mediation sessions was viewed as a way to, you know, I guess as
24 I said, move forward in the state of uncertainty.

25 JUDGE KOPTA: Is there a sense that there's a need to

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1 schedule three sessions at this point?

2 MR. BEATTIE: Staff hopes that this can be resolved
3 in one mediation session. Scheduling three consecutive
4 mediation sessions, in my mind, sends the message to all the
5 participants that there won't be any more than three. And, you
6 know, if there's anything to work out that there will be an
7 option to come back the following week and then if at all, if
8 absolutely necessary, the third week. But certainly Staff
9 would -- aims to have -- come to a resolution after one session.

10 JUDGE KOPTA: All right. Any elaboration on that
11 from the Company?

12 MS. KELLY: The Company raised -- do we have someone
13 on the bridge line?

14 JUDGE KOPTA: I believe someone. I heard a tone,
15 so...

16 Is the light on?

17 MS. KELLY: All right. The Company did raise several
18 issues that we see as procedural in our response to the County's
19 petition to intervene. The first of those would be the scope
20 of -- in this case in mediation. And the Company would hope
21 that it would be limited to verifying the allocation expenses
22 within this rate filing. That appears to be what the County's
23 interested in and as far as we understand, it would be
24 appropriate to narrow the focus of the mediation on the issues
25 that the County is interested in. So that would be one of our

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1 requests.

2 The second one, I think in some ways, relates to the
3 length of the mediation. Generally, mediation would contemplate
4 both parties filing a mediation brief prior to the first
5 mediation. One of our concerns is we still don't have a clear
6 understanding of what all the County's concerns are, and so our
7 proposal would be that there be some sort of brief by the County
8 to which we could respond. And whether that occurs prior to the
9 first mediation or the second mediation, I think it would help
10 to have some direction to the parties in terms of our ability to
11 respond to the County's concerns. Obviously, they're going to
12 need to review the work papers, but perhaps after they review
13 the work papers, it would be appropriate, if we did contemplate
14 having only one mediation, for there to be some sort of opening
15 brief by the County.

16 As far as we're concerned, the Company has already
17 met its burden of proof in this filing, and so we'd also like to
18 avoid creating unnecessary work for the Company. Obviously,
19 attorneys' fees are a concern. We have yet to recover in the
20 expenses incurred in this proceeding.

21 JUDGE KOPTA: All right. Mr. DiJulio?

22 MR. DiJULIO: Thank you, Judge. As you are aware
23 from your review of the file, in December of 2014, the customer
24 base for the Company had no change whatsoever. It was a change
25 in paper only with the cities of Spokane Valley and Liberty Lake

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1 contracting for service. The customer base remained the same.
2 The rates that were in place in the unincorporated county and in
3 the cities remained the same.

4 The County has been very clear from the beginning in
5 this matter that it wants to be assured that the allocation of
6 costs consistent with the Commission's standards have been
7 properly managed as between the regulated areas and the now
8 removed areas in the city because you basically have the service
9 level just right next door to each other as well. So there's
10 been no question about what the County's interest has been from
11 the outset in this.

12 In addition, there's the other question about proper
13 allocation of disposal costs and revenues as a result of
14 shifting disposal to the Company-controlled landfill as opposed
15 to the former Spokane County system, which is within their
16 authority, but, certainly, we want to make sure the costs are
17 properly allocated.

18 So from that standpoint, the County wants to have
19 access to those records in order to be able to evaluate the
20 allocation of costs associated with just simply taking one
21 service level and calling it a city service level and having
22 contracts for that service as opposed to Commission regulation.

23 Secondly, in this regard, you know, we did not
24 respond to the Waste Management response to the motion to
25 intervene. The County looked at it and said we don't want to

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1 spend more money than we already have to in this matter, but the
2 notion that a county should not be paying attention to solid
3 waste rates within the unincorporated area or within cities that
4 are subject to the Commission's jurisdiction is remarkable. The
5 statute specifically calls for a system of compliance with the
6 County adopted solid waste management plan. The County has a
7 significant role in this program in the State. The fact that
8 local government has not typically appeared before the
9 Commission in rate proceedings doesn't make this any different
10 than any other rate proceeding. The Staff will evaluate, and
11 the Staff will make a recommendation, but intervenors have the
12 opportunity as well. And the fact that it hasn't -- doesn't
13 happen regularly in solid waste proceedings doesn't make it any
14 different here.

15 Now, with respect to the mediation, we do think that
16 there are few issues in dispute and that following review of the
17 financial data that the matter may be able to be resolved
18 expeditiously. So that's where we are. The County does not
19 oppose early mediation. We think it may be useful, but we're
20 not -- like any mediation, we want to be sure that we're able to
21 address the issues that are of concern to the County.

22 As we told the full Commission at the last meeting,
23 it may very well be that following review of the data,
24 confidential data that shows the allocation of cost as between
25 regulated and unregulated areas, the County will be satisfied,

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1 and we won't have anything further to say with respect to this
2 matter and the matter can be resolved expeditiously without
3 hearing. But that remains to be seen.

4 The County's concerns here are, in fact, that the
5 allocation of costs results in fair, just, reasonable, and
6 sufficient revenues to the Company for service to the
7 unincorporated or the unregulated areas. And so we do think
8 that this matter should proceed through mediation, and,
9 hopefully, to resolution at an early stage.

10 But, the Company's request that the Commission's
11 proceedings or that standard process should be buried because
12 the County has chosen to intervene in this case, which, again,
13 should not be viewed as unusual because it happens all the time
14 in Commission rate proceedings. We just think it should go its
15 normal course. Let's do mediation. We'll do joint submissions.
16 We have mediation. We try and resolve the issue. We will file
17 the confidential statements by the attorneys or the experts who
18 may be called upon to investigate these matters. The parties
19 have an opportunity to object. But these proceedings are
20 considered by the Commission all the time, and there's nothing
21 unusual or different about this one.

22 JUDGE KOPTA: And is it your anticipation that you
23 will be limited in your review of the information to just the
24 allocation, or did you also want to look at the level of
25 expenses, investments, depreciation, and those kinds of things?

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1 MR. DiJULIO: Well, yes. And the reason why we're
2 interested in that is because as the County has already said in
3 prior submissions to the Commission in this matter, there are
4 allocation of costs and expenses as between the regulated and
5 unregulated entity. We necessarily are going to have to look at
6 that, at what are the costs and expenses, what truck is being
7 used in this part of the service area on these days of the week,
8 and what part of the truck is being used in other parts of the
9 area, when was the truck purchased, what's the depreciation
10 schedule, there's a full range of issues.

11 Now, having said that, the County understands fully
12 that the Commission Staff has looked at those issues and has
13 determined that there has been a proper allocation. So we, the
14 County, speaking for the County at this point, while the County
15 is very concerned about that, until it sees the numbers, sees
16 the analysis, it's not in a position to say what's of concern,
17 you know, at this point. We want to make sure that the
18 standards for proper allocation of costs and expenses between
19 regulated and unregulated are properly supported, consistent
20 with the regulations. And that's what we're looking at.

21 Now, how far down we have to go in that regard? At
22 this point, we don't know. But we're confident that the Staff
23 has done its job, and the County is just checking it at this
24 point.

25 JUDGE KOPTA: All right.

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1 MS. McNEILL: Judge Kopta?

2 JUDGE KOPTA: Yes.

3 MS. McNEILL: Excuse me. If I may, there's just one
4 important point that I think needs to be responded to.

5 It may not be unusual to have local governments
6 involved in rate cases, but it is unusual to have local
7 governments driving rate cases when there is no dispute between
8 Staff and the Company.

9 So, usually, the rates are not reviewed and approved
10 and agreed upon, and usually there would not even be any kind of
11 a hearing process in this case. But -- and it's -- it's
12 difficult to maintain a posture of wanting to be responsive to
13 the County's concerns in the face of this sort of prospect of a
14 protracted rate hearing with endless inquiries into endless line
15 items when, in fact, there's no -- there's no controversy at the
16 heart of this proceeding.

17 So that's one of the reasons that we felt it was not
18 unreasonable or inconsistent with the County's objectives to try
19 to keep this confined, keep it focused, keep it short. And
20 mediation is in the Company's rope, maybe a means of sort of
21 some intellectual medication, some rate reviewing mediation, but
22 not -- you know, we feel that we have met our burden of proof in
23 terms of the revenue needs, so there isn't an issue about
24 revenue. It's just a very odd proceeding, so -- and not just
25 because there's a county government involved, but because of

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1 what is the underlying premise that brings us here. Thank you.

2 JUDGE KOPTA: And I understand that it is a little
3 unusual, but not that unusual. I mean, the timing is Staff has
4 decided before this case ever started that it doesn't have any
5 concerns with your filing.

6 MS. McNEILL: Right.

7 JUDGE KOPTA: But there are other rate cases in which
8 Staff, after the proceeding has begun, has settled with the
9 Company, other parties have not, and the Commission has heard
10 the settlement and has gone on to hear the case put on by the
11 other intervenors.

12 So while I understand that you would like to have
13 things accomplished as quickly as possible, Staff, while a very
14 important party, is just a party in these proceedings. And so I
15 think the County, as a party, has the opportunity to explore
16 whatever it chooses to explore in terms of the Company's filing
17 to ensure that it is resulting in rates that are fair, just,
18 reasonable, and sufficient.

19 One of the concerns that I have is that as with any
20 suspended tariff filing, the Commission must render a final
21 decision within ten days from the stated effective date of that
22 filing. While I don't object to having some time for parties to
23 see if we can work out -- you can work out a negotiated
24 resolution, I am also mindful that if you are not successful,
25 then we are then required to have testimony and hearings and a

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1 final order from the Commission within the statutory time frame.

2 So I am willing certainly to schedule a mediation. I
3 would hope that the parties would have some settlement
4 discussions before then to determine whether mediation is
5 something that is actually necessary. That would give you,
6 Ms. Kelly, I think, some more information in terms of what the
7 County is looking at in terms of issues once it has had an
8 opportunity to review the confidential information that it's so
9 far been unable to review. But I would be most comfortable with
10 the parties establishing a schedule now that, hopefully, will
11 not be necessary, but that will remind everyone that we have to
12 ensure that this proceeding concludes within the ten months that
13 we have to issue a final order.

14 So what I propose at this point would be to go off
15 the record, allow the parties to have a discussion among
16 themselves to see what they can work out in terms of a schedule
17 that would give the parties enough time to develop the case and
18 the Commission enough time to issue a final order should it come
19 to that.

20 Rayne Pearson, an administrative law judge with the
21 Commission, will be appointed to be the mediator. You can work
22 with her to schedule one or more dates for a mediation that I
23 can include in the procedural order if you would like. And,
24 generally, that's not something that we would do, but I'm happy
25 to do that in this case.

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1 So any thoughts before we go off the record so you
2 can have your discussion?

3 MS. McNEILL: I do.

4 Do you?

5 MR. BEATTIE: My question would be: Would the
6 Commission ask for a mediation statement and can you give us
7 some guidance on how far before the first mediation session the
8 Commission would ask for that document to be filed?

9 JUDGE KOPTA: That's generally something that the
10 mediator works out in conjunction with the parties, so, again,
11 that would be something that I would expect you to discuss with
12 Ms. Pearson.

13 MR. BEATTIE: Very well. Thank you.

14 MS. McNEILL: Thank you, Judge Kopta.

15 Part of the reason that we made some of the points in
16 the response to intervention that we did were because we thought
17 to ourselves, Well, what happens if the mediation is not
18 successful? The Commission still is confronted with its
19 ten-month statutory deadline, so things are going to move
20 forward pretty quickly.

21 I am struggling, though, with some guidance in terms
22 of the normal presentation of materials. If the Company has the
23 full burden of proof and has to prepare prefiled testimony
24 without -- I mean, sort of as if there were no rate case that
25 had already been audited and decided and it -- again, you know

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1 we're very concerned about attorney fees. We think that the
2 Company should have a right to recover these attorney fees in
3 its rates and would argue for that, but, nonetheless, that
4 helps, but that doesn't justify having increased attorney fees.
5 And preparing prefiled testimony in the normal order of the
6 sequence of events would be, you know, a pretty daunting task if
7 we were to take it seriously as we would.

8 So we did ask, then, in the context of this rate case
9 whether you would consider any modification to the typical order
10 of proceedings that might mitigate unnecessary costs and
11 expenses.

12 JUDGE KOPTA: And I appreciate your concern.
13 Unfortunately, we are now in an adjudication, and the
14 Commission's decision in this adjudication will need to be based
15 on an evidentiary record. And, currently, there is nothing in
16 the evidentiary record, so we would need to have a filing from
17 the Company that establishes its prima facie case and then have
18 responses from the other parties.

19 Granted, that can be expensive, but that's where we
20 are at the moment and perhaps provides that much more of an
21 incentive to resolve this short of actually going to the
22 full-blown adjudication for all parties. I'm sure Mr. DiJulio's
23 client is equally willing to try and work things out short of
24 having to spend money and attorneys' fees and expert fees to
25 fully litigate this. But we are constrained by the

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1 Administrative Procedures Act, and we will act accordingly.

2 So with that in mind, we will go off the record so
3 that the parties can discuss a schedule that hopefully will not
4 be necessary, but if it is, then we will have it in place, and
5 then we will reconvene and conclude this prehearing conference.
6 So let's be off the record.

7 (Discussion off the record from
8 9:59 a.m. to 10:33 a.m.)

9 JUDGE KOPTA: Then let's be back on the record.

10 After taking a break to discuss scheduling, I
11 understand that the parties have agreed on a proposed schedule.

12 Mr. Beattie, would you like to tell me what that is?

13 MR. BEATTIE: That's correct, Judge Kopta.

14 So I would like to propose the following procedural
15 schedule. We would like for our first mediation session to be
16 April 24th, with mediation statements due on April 20th, with
17 electronic service and statements due by five p.m.; the second
18 mediation session on May 4th -- and please let me know if you
19 need me to slow down.

20 JUDGE KOPTA: I'm good so far.

21 MR. BEATTIE: We would like to schedule a third
22 mediation session for May 6th, with the understanding that it's
23 tentative, but on the schedule nonetheless.

24 JUDGE KOPTA: All right.

25 MR. BEATTIE: Should alternative dispute resolution

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1 not produce a final resolution, we will proceed to a procedural
2 schedule geared towards a hearing.

3 Company testimony would be due on June 12th; Staff
4 responsive testimony and also Intervenor responsive testimony
5 would be due on July 17th; Company rebuttal testimony and Staff
6 and Intervenor cross-answering would be due on August 7th;
7 evidentiary hearing commencing on August 13th, going on to
8 August 14th, if necessary, with cross-exhibits due on August
9 10th; simultaneous posthearing briefs due September 22, 2015,
10 with a suspension date being November 1st, which we hope would
11 give the Commission plenty of time to issue an order.

12 JUDGE KOPTA: Well, the concern I have is I'm not
13 aware that the Commissioners would actually be sitting on this
14 particular proceeding and if they aren't, then we would be in a
15 position of having an initial order, which would need to be
16 reviewed by the Commissioners, which would take additional time
17 which could not happen within this by November the 1st.

18 So I'm not sure that this schedule is going to work,
19 and I'm not sure that we'll be able to resolve that while we're
20 sitting here today. So since the focus is going to be on
21 mediation, I think you can count on those dates being the ones
22 that we will set. I will discuss with the Commissioners what
23 their preferences are in terms of sitting on this or not. And
24 based on that preference, I will let the parties know, and if we
25 need to, we will need to come up with a different procedural

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1 schedule that allows for both an initial order and a final order
2 on petitions for review.

3 Anything further at this point?

4 MR. BEATTIE: Yes, Your Honor. There is just one
5 lingering piece of business, which relates to the Intervenor's
6 request for public records, and it is still pending. My
7 understanding is Mr. DiJulio is willing to address that.

8 JUDGE KOPTA: Well, let me say, first of all, that
9 that's a separate issue from what we do here. So, I mean, you
10 can tell me what you're going to plan to do, but if you're going
11 to do anything with the public records, then that needs to be
12 handled through our public records office.

13 MR. DiJULIO: No. Mr. Beattie talked to me during
14 the off-record discussion, and the County, officially for the
15 record, withdraws its public records request and will deal with
16 this through its hearing discovery process. Thank you.

17 JUDGE KOPTA: And that makes sense. But if you would
18 confirm that with our public records office, the office of Lisa
19 Wyse, then...

20 MR. DiJULIO: The County will do.

21 JUDGE KOPTA: Great. Thank you very much. We
22 appreciate keeping them separate because you have a right to ask
23 for public records apart from discovery.

24 Anything else that we need to discuss this morning?
25 Thank you. Then we are off the record.

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(Proceeding concluded at 10:37 a.m.)

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