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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) Docket UE-100749
) Pages 814-842
PACIFICORP d/b/a PACIFIC POWER)
& LIGHT COMPANY,)
Respondent.)

PREHEARING CONFERENCE, VOLUME VIII

Pages 814-842

ADMINISTRATIVE LAW JUDGE PATRICIA CLARK

9:30 A.M.

JULY 7, 2011

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

REPORTED BY: LISA BUELL, RPR, CRR, CCR 2204

Buell Realtime Reporting, LLC
1411 Fourth Avenue
Suite 820
Seattle, Washington 98101
206.287.9066 | Seattle
360.534.9066 | Olympia
800.846.6989 | National

www.buellrealtime.com

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A P P E A R A N C E S

2

ADMINISTRATIVE LAW JUDGE:

3

PATRICIA CLARK
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504
360.664.1136

4

5

6

7

FOR WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION:

8

9

DONALD T. TROTTER
Assistant Attorney General
P.O. Box 40128
Olympia, Washington 98504
360.664.1189

10

11

FOR PACIFICORP:

12

13

KATHERINE A. McDOWELL
McDowell, Rackner & Gibson, PC
419 SW 11th Avenue
Suite 400
Portland, Oregon 97205
503.595.3922

14

15

16

FOR INDUSTRIAL CUSTOMERS
OF NORTHWEST UTILITIES (ICNU):

17

18

IRION A. SANGER
Davison Van Cleve, PC
333 SW Taylor Street
Suite 400
Portland, Oregon 97204
503.241.7242

19

20

21

FOR WAL-MART STORES, INC.
and SAM'S WEST, INC.:

22

23

ARTHUR A. BUTLER
Ater Wynne LLP
601 Union Street
Suite 1501
Seattle, Washington 98101
206.623.4711

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A P P E A R A N C E S (Continued)

PUBLIC COUNSEL:

SARAH A. SHIFLEY
Assistant Attorney General
800 Fifth Avenue
Suite 2000
Seattle, Washington 98104
206.464.6595

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OLYMPIA, WASHINGTON; JULY 7, 2011

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9:30 A.M.

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P R O C E E D I N G S

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JUDGE CLARK: We have I think everyone online or I've heard from everyone, so good morning.

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It's approximately 9:30 a.m. on July 7th, 2011, in the Commission's Hearing Room in Olympia, Washington. This is the time and the place set for a prehearing conference in the matter of Washington Utilities and Transportation Commission, Complainant, v. PacifiCorp, doing business as Pacific Power & Light Company, Respondent, given Docket No. UE-100749.

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Patricia Clark, Administrative Law Judge for the Commission, presiding.

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The prehearing conference this morning was scheduled because by Order No. 6 entered in this case on March 25th, 2011, the Commission concluded that Renewable Energy Credits or RECs benefits should go to PacifiCorp's ratepayers; however, the Commission bifurcated resolution of this issue to a separate phase of this proceeding after it had obtained additional evidence in the record.

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The Commission required the Company to file within 60 days a detailed accounting of REC proceeds received during the periods after the test year and a detailed proposal for

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1 operating a tracking mechanism going forward.

2 On May 24, 2011, the Company timely filed the
3 required documents, and Commission staff filed comments on the
4 proposal, as well as an alternative proposal. The Industrial
5 Customers of Northwest Utilities, also referred to as ICNU, and
6 the Public Counsel section of the Office of the Attorney
7 General requested discovery and additional time to file
8 comments and alternative proposals.

9 By notice entered June 21st, 2011, the Commission
10 scheduled this telephonic prehearing conference to receive
11 input from the parties on two issues: No. 1, the timing of
12 legal briefing; and 2, the proposed procedural schedule
13 attached to the notice.

14 At this time, I will take appearances on behalf of
15 the parties. The parties have already entered full appearances
16 in this matter, so it's only necessary to provide your name.
17 I'll call first on PacifiCorp.

18 MS. McDOWELL: This is Katherine McDowell here on
19 behalf of PacifiCorp.

20 JUDGE CLARK: Thank you, Ms. McDowell.

21 Appearing on behalf of the Commission staff?

22 MR. TROTTER: For UTC staff, my name is Donald D.
23 Trotter, Assistant Attorney General.

24 JUDGE CLARK: Thank you, Mr. Trotter.

25 Appearing on behalf of Public Counsel?

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1 MS. SHIFLEY: This is Sarah Shifley, Assistant
2 Attorney General, for Public Counsel.

3 JUDGE CLARK: Thank you.

4 Appearing on behalf of ICNU?

5 MR. SANGER: This is Irion Sanger, the Law Office of
6 Davison Van Cleve, appearing on behalf of ICNU.

7 JUDGE CLARK: Thank you, Mr. Sanger.

8 Appearing on behalf of Wal-Mart Stores, Incorporated
9 and Sam's West, Incorporated?

10 MR. BUTLER: This is Arthur A. Butler.

11 JUDGE CLARK: Thank you, Mr. Butler.

12 And the record should reflect that Mr. Brad Purdy,
13 representing The Energy Project, already contacted the
14 Commission and indicated that The Energy Project would not be
15 participating in this morning's prehearing conference.

16 Just as a preliminary matter, I want to remind all
17 the parties that when you're appearing telephonically, it's
18 necessary to speak a little more loudly and slowly than you
19 would probably ordinarily speak. And it is also necessary for
20 you to identify yourself each time you speak so that the court
21 reporter can make an accurate transcript.

22 All right. Are there any preliminary matters that
23 we should address?

24 Hearing nothing, I'm just going to turn to the two
25 issues that the Commission would like considered at this

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1 morning's prehearing.

2 The first is the issue of briefs, and I'm going to
3 address that one first so that we can perhaps incorporate the
4 party's opinion on this particular issue into a procedural
5 schedule that we'll discuss next.

6 The first issue is, of course, the timing of the
7 briefs. And I'm sure, as you are aware, the Commission, by
8 Order No. 6 entered in this case, indicated that it would
9 require additional briefing. And the question is simply
10 whether or not the parties have an opinion regarding whether
11 that should be prehearing briefs or post-hearing briefs. And
12 in order to address the timing, of course, we also need to
13 discuss the scope of that briefing.

14 The Commission envisioned in Order No. 6 that
15 briefing would be limited to the issue of the timing of the
16 commencement of any REC mechanism, but is also amenable to
17 allowing the parties to file briefing on all issues raised in
18 conjunction with a party's proposal.

19 Does anyone have any input on briefing?

20 Mr. Trotter?

21 MR. TROTTER: This is Don Trotter. It seems to make
22 sense -- most sense to staff to have the briefing at the end,
23 and have it cover obviously the timing of the commencement of
24 the mechanism, but also any other issues that might arise, such
25 as allocation or the appropriate share of REC revenues and so

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1 forth. However, if the Commission -- I could see an advantage
2 to having the briefing first if the Commission is going to take
3 the briefs and rule prior to parties filing their testimony
4 because that would obviously inform the testimony and limit the
5 issues.

6 But if the Commission is not inclined to issue an
7 order following the briefing and then have the testimony filed
8 consistent with that ruling, we see no particular benefit to
9 doing it early and just have it at the end so the Commission
10 can have the full range of issues before it.

11 JUDGE CLARK: All right. Does anyone else have input
12 on this issue?

13 MS. SHIFLEY: This is Sarah Shifley with Public
14 Counsel. We would definitely agree with staff that it would be
15 preferable to have the briefing at the end of the case, and if
16 the Commission is going to consider having a briefing date
17 that's earlier, we would definitely feel that there would be an
18 advantage to having the briefing after the hearing so that the
19 brief could include and be informed by the entire factual
20 record that's developed in this case.

21 JUDGE CLARK: Thank you, Ms. Shifley.

22 MS. McDOWELL: This is Katherine McDowell for the
23 Company. We think the views of Staff and Public Counsel are
24 similar to those of PacifiCorp. We've been speaking mostly
25 about the most -- really the most efficient way to present all

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1 this. I think we have some concern that if we do legal
2 briefing and then post-trial briefs or post-hearing briefs, we
3 end up potentially being, you know -- looking at redundant
4 briefing or, you know, briefing that gets pancaked on itself
5 and maybe gets confusing. I think our preference on all that
6 is have the briefs at the end and have the briefs address all
7 issues, the issues that arise through the evidentiary process,
8 as well as the legal issues around the timing of the balancing
9 account.

10 JUDGE CLARK: Thank you, Ms. McDowell.

11 Anyone else?

12 MR. SANGER: This is Irion Sanger, and we don't have a
13 strong opinion regarding the briefing, but the statements of
14 the other parties' counsel makes a lot of sense to us to have
15 the briefing at the end of the schedule. But if the Commission
16 prefers another route, we're flexible to do whatever is needed.

17 JUDGE CLARK: Thank you.

18 MR. BUTLER: This is Art Butler. Wal-Mart would
19 agree.

20 JUDGE CLARK: All right. Thank you for your input.

21 I think the Commission is disinclined to rule prior
22 to the filing of evidence in this matter, so I'm going to
23 require post-hearing briefing in this. And post-hearing
24 briefing may include not only the legal issue the Commission
25 would like addressed regarding the appropriate timing of any

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1 REC mechanism commencement, but rather, it can also address all
2 of the issues that are raised during the course of the hearing.

3 So we turn now to the -- I'm sorry. Ms. McDowell?

4 MS. McDOWELL: I'm sorry to interrupt. It's harder in
5 a telephone conference to avoid doing that, so pardon me. But
6 I did want to say -- and I'm not sure if this is the
7 appropriate time to say that -- but I know the proposed
8 procedural schedule kind of placed one round of briefing, and
9 we think, given the issues in the case, it would be helpful to
10 have reply briefs as well.

11 JUDGE CLARK: Thank you. And it's always awkward to
12 know on a telephonic prehearing conference when to jump in. We
13 will discuss that. I would like to discuss all of the elements
14 of the proposed schedule. And just as luck would have it,
15 Ms. McDowell, we'll be addressing that one last since I've now
16 concluded that the parties' proposal is reasonable and that we
17 should only have post-hearing briefs. So when we get to that
18 bit of the puzzle, if you would be kind enough to remind me to
19 address that issue again, in the event I neglect to address it,
20 I would appreciate it.

21 MS. McDOWELL: Okay.

22 JUDGE CLARK: As the parties are aware, the Commission
23 issued a proposed procedural schedule. I would like to
24 reiterate that this schedule is only proposed, and that given
25 the workload at the Commission in other proceedings, the

1 Commission was simply trying to ensure that this case was kind
2 of worked into the Commission's schedule. So we're not wedded
3 to any of the dates in the proposed schedule. The Commission
4 set forth the typical deadlines that we establish prior to an
5 evidentiary hearing, including Company direct testimony and
6 exhibits, prefiled responsive testimony from Staff, Public
7 Counsel and Intervenors, reply and cross-answering testimony.

8 In this particular case, the Commission has also
9 elected to establish a discovery deadline, and there will be a
10 deadline to submit cross-examination exhibits, as well as an
11 evidentiary hearing and post-hearing briefing.

12 So I want to know if the parties have had an
13 adequate opportunity to review that proposed schedule, or if
14 you would like a few minutes among yourselves to discuss that
15 proposed schedule out of hearing of the judge.

16 MR. TROTTER: This is Don Trotter, your Honor. There
17 have been some discussions between various parties, as I
18 understand it, so my sense is I think people are ready to
19 discuss the schedule now, but I'll just offer that up.

20 JUDGE CLARK: Thank you, Mr. Trotter.

21 MR. TROTTER: Discuss it with you on the record, is
22 what I meant.

23 JUDGE CLARK: Right. Anyone else? Does anyone feel
24 you need time off record or are we good to go?

25 All right. Silence assumes acquiescence. So does

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1 anyone have a problem with any of the dates presented in the
2 proposed schedule attached to the notice?

3 MS. McDOWELL: This is Katherine McDowell on behalf of
4 the Company. And generally the dates and the structure of the
5 schedule are fine for the Company, with one exception, and that
6 is that the Staff Public Counsel and Intervenor responsive
7 testimony filed on September 8th, which is only two weeks then
8 prior to the Company's rebuttal and the cross-answering
9 testimony filing deadline. And because of the possibility that
10 we may see a new proposal for the first time in that September
11 8th filing, the Company, you know, has considered it and thinks
12 that an additional week between those two milestones would be
13 necessary for us to be able to appropriately respond.

14 And so our proposal -- and we have discussed this
15 with Public Counsel, ICNU and staff -- is to basically add a
16 week into the schedule, beginning on that September 22nd --
17 with that September 22nd milestone. We're not wedded to
18 particular dates, but I think we are just feeling like two
19 weeks is potentially an insufficient amount of time for that
20 particular turnaround.

21 JUDGE CLARK: All right. So just to make sure I'm
22 understanding your proposal, you would recommend moving the
23 deadline for prefiled reply and cross-answering to the -- oops.
24 I'm in the wrong month.

25 MS. McDOWELL: Basically September 29th would be

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1 the --

2 JUDGE CLARK: Okay. That's what I was going to say.

3 MR. SANGER: Judge Clark, this is Irion Sanger. I
4 would like to move back and discuss the date for Staff, Public
5 Counsel and Intervenor testimony point.

6 JUDGE CLARK: All right. Which is proposed as
7 September 8th.

8 MR. SANGER: Yes. And I would propose to move that
9 date to September 9th. We're involved in a PacifiCorp rate
10 case in Oregon, and the hearing for that is scheduled for
11 September 8th. We would prefer, just for our own workload
12 levels and preparation, to have our testimony due one day later
13 on September 9th.

14 JUDGE CLARK: All right.

15 Anyone have an objection to that modification?

16 Okay.

17 MS. McDOWELL: We're fine with that, based on, you
18 know, our position that we would build some additional time in
19 the schedule for the next timeline, for the next milestone.

20 MR. SANGER: ICNU does not object to providing the
21 Company an additional week they're requesting.

22 MS. SHIFLEY: This is Sarah Shifley with Public
23 Counsel. Public Counsel also doesn't object to PacifiCorp's
24 request to build an additional week into the schedule, but I --
25 perhaps we'll discuss this more in depth later. Ms. McDowell

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1 raised the issue of whether or not to have simultaneous
2 post-hearing briefs --

3 JUDGE CLARK: Well, let's wait until we get there,
4 okay?

5 MS. SHIFLEY: Yes, your Honor. Thank you.

6 JUDGE CLARK: Thank you.

7 And if we're going to allow an additional day for
8 the responsive testimony, it seems to me it would be reasonable
9 to move the reply and cross-answering to September 30th, rather
10 than September 29th.

11 MR. SANGER: Yes.

12 JUDGE CLARK: All right. And it looks like that's a
13 Friday, so at least I haven't hit on a date that's a weekend.
14 All right. So that would move.

15 So obviously then -- does anyone else want input on
16 those first three elements?

17 MS. McDOWELL: This is just --

18 JUDGE CLARK: And this is?

19 MS. McDOWELL: I'm sorry, Katherine McDowell.

20 JUDGE CLARK: Thank you, Ms. McDowell.

21 MS. McDOWELL: And this is just a detail, but an
22 important one to us. Right now, the discovery timelines begin
23 to become more expedited after the rebuttal and cross-answering
24 testimony, and we would appreciate it if that could be moved up
25 to the September 9th filing time period, just because that

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1 already is a pretty short period of time for us. If we want to
2 do any discovery on any new proposals, it will be difficult to
3 have the normal turnaround time, be able to do discovery and
4 reflect that in our rebuttal testimony.

5 JUDGE CLARK: All right. And how many days would you
6 propose for DR responses after responsive testimony,
7 Ms. McDowell?

8 MS. McDOWELL: Well, we would propose the five-day
9 turnaround that's contemplated in Footnote 5, so we would
10 basically propose just to move the start time of the truncated
11 five-day discovery to September 9th.

12 JUDGE CLARK: All right. Does anyone have an
13 objection? Okay. Thank you.

14 And then we need to move to the deadline to submit
15 cross-examination exhibits, which would also need to be moved,
16 and let's see what we can accommodate here. Well, I'm a little
17 bit concerned because at this juncture, we're backing up close
18 to the hearing date itself, and I'm not sure I have a lot of
19 flexibility in the Commission's calendar on the hearing date.
20 So I think we're going to have to have a relatively fast
21 turnaround on cross-examination exhibits in order to keep the
22 October 7th -- I mean, the October 17th evidentiary hearing.
23 So I don't want to put the parties in a bind, because I
24 recognize that we've moved these other deadlines about a week.
25 So --

1 MR. TROTTER: Your Honor, this is Don Trotter. Is
2 there no flexibility on -- I had assumed that all the dates
3 could be moved, you know, in the range of a week, recognizing
4 there's limitations, but is there no flexibility at all on this
5 October 17th hearing date?

6 JUDGE CLARK: No. There's limited flexibility on
7 that, so perhaps at this point, it would be more reasonable to
8 move to the hearing date and work backwards for a
9 cross-examination deadline.

10 Do you have a date proposed, other than the 17th,
11 Mr. Trotter?

12 MR. TROTTER: I do not, your Honor. My schedule is
13 flexible over that following seven days.

14 JUDGE CLARK: All right. Ms. McDowell?

15 MS. McDOWELL: So, we had, you know, just by doing the
16 exercise of adding a week in beginning from September 8th, that
17 had put the evidentiary hearing on October 24. I understand
18 from Sarah Shifley that Public Counsel has a conflict, and
19 maybe Sarah can clarify this, but I believe beginning on
20 October 20th through the 25th. So we were going to have to,
21 you know, work around that conflict, you know. Perhaps we
22 could, you know -- it sounds like it might be problematic to
23 move it to after that conflict, so maybe just moving it to the
24 19th. But maybe it's appropriate for Sarah to jump in and talk
25 about her timing.

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1 JUDGE CLARK: Ms. Shifley?

2 MS. SHIFLEY: Thank you, your Honor. I've actually
3 been able to resolve that conflict, so we are available for the
4 dates of the week following the currently proposed hearing date
5 of October 17th and can accommodate whatever date it works best
6 for the Commission.

7 JUDGE CLARK: All right. Well, honestly, the 17th of
8 October works the best for the Commission, so if there is a
9 party that has a difficulty with that particular hearing date,
10 speak now or forever hold your peace.

11 MR. SANGER: Judge Clark, this is Irion Sanger, and
12 the 17th is actually the only day in that two-week period which
13 causes a significant problem for us.

14 JUDGE CLARK: And so do you propose an alternate date?

15 MS. SHIFLEY: Any date between the 18th and the 28th
16 would work for us.

17 JUDGE CLARK: Okay. Anyone else?

18 MR. BUTLER: This is Art Butler. The 27th of October
19 is the only date during that time that's a problem for me. I
20 have a hearing in Oregon on that date.

21 JUDGE CLARK: All right. Thank you, Mr. Butler.

22 Okay. Then it looks like the Commission calendar is
23 available also on the 19th of October, and so let's work
24 backwards from that. And we could allow a lot more flexibility
25 into the deadline for submission of cross-examination exhibits.

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1 So how about Friday the -- well, let's see. Either
2 Thursday, the 13th, or Friday, the 14th. I'm cutting somewhat
3 short the amount of time the Commission normally prefers for
4 cross-examination exhibits, but I think in this particular
5 case, given the limited number of issues before the Commission
6 in this phase of the proceeding, that we could certainly
7 accommodate an abbreviated schedule. Do the parties have a
8 preference regarding either of those dates?

9 MS. SHIFLEY: Your Honor, this is Sarah Shifley for
10 Public Counsel. Looking at our calendar, it appears that we
11 will have testimony due in another proceeding, in the Avista
12 general rate case proceeding on October 14th, so we would
13 prefer to have cross-examinations actually due on the 13th.

14 JUDGE CLARK: Okay. Does anyone else have input on
15 that issue?

16 MS. McDOWELL: Judge, before we get too far, we are
17 just looking -- you know, we're trying to check our calendars
18 as we go, and it looks like we may have a conflict on the 19th,
19 so I need to -- if I could have just one moment to check that.

20 JUDGE CLARK: Okay. Absolutely.

21 MS. McDOWELL: We'll just go on hold for one second
22 and check that.

23 JUDGE CLARK: Okay. We'll take a moment off record.

24 (Brief pause in the proceedings.)

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1 JUDGE CLARK: All right. We're back on the record.

2 Ms. McDowell, have you had an opportunity during the
3 recess to check on your availability for October 19th?

4 MS. McDOWELL: I have. Thank you, your Honor. We
5 have a conflict with a proceeding in another state on the 19th
6 and 20th of October. We are available on the 17th and 18th.

7 JUDGE CLARK: Thank you. And the Commission, it
8 appears, is available on both the 17th as proposed in the
9 initial notice and on the 18th. Do the parties have a
10 preference between those two dates?

11 MR. SANGER: Your Honor, this is Irion Sanger. We
12 would have a preference for the 18th.

13 JUDGE CLARK: All right. Anyone else? All right. It
14 looks like the 18th would be reasonable for the hearing date.
15 I'm assuming that we only need one day set aside for hearing,
16 so if that's incorrect, I'm sure someone will jump in and
17 caution me.

18 Lastly, we have the issue of post-hearing briefs,
19 and at the beginning of the prehearing conference, Ms. McDowell
20 did indicate a preference for rather than simultaneous
21 post-hearing briefs, rather a process that would envision
22 initial and reply briefs. And I believe that, if my memory
23 serves me correctly, Ms. Shifley also had an opinion on that
24 particular issue. So I'm going to turn first to you,
25 Ms. McDowell.

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1 MS. McDOWELL: So this is Katherine McDowell for the
2 Company, and we think given the issues in this case, that reply
3 briefs would be helpful. We, you know, are fine with the
4 process that incorporates what the Commission had originally
5 contemplated in terms of the simultaneous post-hearing briefs
6 so we would have a simultaneous opening brief, simultaneous
7 reply brief. We're also open to a process where the Company
8 would file first, parties would respond, and the Company would
9 reply. Really whatever other folks -- however folks prefer to
10 do it and whatever the most efficient way to go, we're open to
11 either approach.

12 JUDGE CLARK: All right. Does anyone have an opinion
13 on that?

14 MR. TROTTER: This is Don Trotter, your Honor, for UTC
15 staff. We don't see this case as being quite as complicated or
16 issue-packed as perhaps others. We think the simultaneous
17 briefs is sufficient. If a party at that point feels the need
18 to file even more briefing, they can make a request to your
19 Honor, and you can entertain that request at that time. So we
20 would propose simultaneous briefs on one date.

21 JUDGE CLARK: And do you have a problem with the date
22 of November 1?

23 MR. TROTTER: Well, it did seem a little tight, but if
24 the Commission's schedule for getting an order out is on track,
25 we'll meet that date.

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1 JUDGE CLARK: All right.

2 MS. SHIFLEY: Your Honor, this is Sarah Shifley for
3 Public Counsel. I would second the opinion of the Commission
4 staff that we believe that simultaneous briefs would be
5 preferable in this case, and as to the date for the
6 simultaneous post-hearing briefs, although Public Counsel could
7 accommodate a November 1 deadline, we would note that that is a
8 pretty short turnaround after the hearing, especially given
9 that oftentimes, there is a delay in obtaining a transcript
10 from the hearing, which would leave even less time for review
11 of the record and drafting of the post-hearing briefs.

12 JUDGE CLARK: Anyone else?

13 All right. I've now heard from two of you that
14 perhaps November 1st is an overly ambitious date to set for
15 post-hearing briefing, and I'm curious to hear how much
16 additional time the parties feel would be reasonable.

17 MR. TROTTER: This is Don Trotter, and I don't have a
18 calendar in front of me. What day of the week is November 1st?

19 JUDGE CLARK: November 1st is a Tuesday.

20 MR. TROTTER: I would say that Friday, the 5th.

21 JUDGE CLARK: 4th?

22 MR. TROTTER: 4th, thank you.

23 JUDGE CLARK: Okay. Ms. Shifley? You also indicated
24 that you thought that schedule was a little tight.

25 MS. SHIFLEY: Yes. Thank you, your Honor. I would

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1 just, looking at our calendar, anywhere from an additional four
2 business days, as suggested by Mr. Trotter, or up to a full
3 calendar week.

4 JUDGE CLARK: All right. Anyone else want to be heard
5 on the date?

6 Okay. I'm going to set the deadline for November
7 4th; Friday, November 4th, taking into consideration
8 Mr. Trotter's comment about the limited issues in this
9 proceeding. And I do think that this is -- this proceeding
10 really does have relatively limited issues for the Commission's
11 consideration.

12 Also in light of that, Ms. McDowell, I'm going to
13 deny the request for reply briefing at this juncture. If,
14 however, the need should arise after you've had the opportunity
15 to review the initial post-hearing briefs and believe that the
16 record -- or that the Commission would benefit from additional
17 briefing or if parties have raised issues that you think need
18 to be addressed, you can certainly request the opportunity to
19 file reply briefs at that time.

20 MS. McDOWELL: Thank you.

21 JUDGE CLARK: All right. Is there anything else the
22 parties would like to discuss this morning?

23 MS. SHIFLEY: Your Honor, this is Sarah Shifley for
24 Public Counsel. I think that the only date that we didn't
25 discuss was the discovery deadline, and I would just feel since

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1 we've pushed back some of the preceding dates, that we look at
2 pushing back that date as well.

3 JUDGE CLARK: Well, actually, if we build in a DR
4 response time with a five-day turnaround, I'm not sure that we
5 need to establish that deadline.

6 MS. SHIFLEY: So, your Honor, just to clarify then,
7 would you be saying that the procedural schedule in this case
8 would not include a discovery deadline?

9 JUDGE CLARK: I think the discovery deadline would be
10 built into the fact that the DR response time would be a
11 five-day turnaround from the date of the filing of responsive
12 testimony and also five-day turnaround from reply.

13 MS. McDOWELL: Your Honor, this is Katherine McDowell.
14 I would have concerns about that, because I think that -- you
15 know, the current schedule I think contemplated a, you know,
16 round of discovery before the discovery deadline. You know, it
17 had a week between the last filing and the discovery deadline,
18 and we think that the new schedule ought to carry that forward
19 so that parties have a chance to prepare their
20 cross-examination exhibits with ongoing discovery.

21 JUDGE CLARK: Okay. I think that is what Ms. Shifley
22 is also indicating. Is that correct, Ms. Shifley?

23 MS. SHIFLEY: Your Honor, we would prefer to have no
24 discovery deadline, considering the procedural schedule, and
25 just allow the response due dates to govern when the last round

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1 of discovery is administered in this case, so we would actually
2 prefer to have no deadline specified.

3 JUDGE CLARK: All right. Anyone else have a
4 preference?

5 MS. McDOWELL: This is Katherine McDowell. I think
6 what we would propose here is just basically, if you look at
7 the schedule, you know, the current --

8 JUDGE CLARK: Intervals.

9 MS. McDOWELL: Excuse me, the current date of October
10 7th for deadline for cross-examination exhibits, it looks like
11 that really becomes the, you know -- October 6th, October 7th
12 become the appropriate discovery deadline dates.

13 JUDGE CLARK: Anyone else want to be heard?

14 MR. TROTTER: Your Honor, this is Don Trotter. I
15 think there is some benefit to setting a cutoff, and October
16 7th is the practical cutoff you were talking about. If someone
17 issues a DR that day, the response -- well, there's -- I don't
18 know where the weekends lie, but I don't know where five
19 business days gets you, but maybe just you'd have to produce
20 that to the Commission as an exhibit on the 13th. So I guess
21 five business days before the 13th would be the one. I think
22 that makes some sense.

23 JUDGE CLARK: All right. Then that would actually be
24 October 6th; Thursday, October 6th. And in this case, I am
25 going to go ahead and retain a deadline for issuing data

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1 requests, and I'm going to move it from the proposed date of
2 October 7th to October 6th, and that would afford the parties
3 five business days before it was necessary to submit
4 cross-examination exhibits.

5 MR. TROTTER: And then, your Honor, one final thing.
6 Our analysis of the schedule and our comments today were based
7 on our understanding that the Company's direct case is going to
8 be consistent with the filing that it made in May with its
9 proposal, and I did have a conversation to that effect with
10 Ms. McDowell, and she confirmed that that's the case. And I'd
11 also just like to state that the staff at this point is also
12 intending to file consistent with its filing in May. So that
13 has informed our view of the schedule. We don't know what ICNU
14 or Public Counsel are going to do specifically, so there is
15 some risk in that. But I wanted to let you know that's how
16 we're approaching it, and we appreciate the Company's
17 forthcoming on that issue as well.

18 JUDGE CLARK: And I would like to add that there was
19 some informal discussion via e-mail regarding this particular
20 topic, and I would just like to memorialize that on the record.
21 There was some inquiry from the parties regarding what the
22 Commission anticipated in the form of testimony and exhibits in
23 this docket, given the filings by both PacifiCorp and
24 Commission staff on May 24th. And the Commission's intent in
25 scheduling this matter for hearing was to have the parties, for

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1 lack of a better term, further flesh out or elaborate on the
2 proposals that were submitted on May 24th. So that's really
3 what the Commission is also envisioning, is that at least the
4 scope -- of course we have, as Mr. Trotter pointed out, nothing
5 yet from ICNU or Public Counsel, but at least the Commission
6 does envision that this will be sort of further explanation of
7 the proposals that were already submitted that will help them
8 to understand what the parties are proposing in this case
9 regarding the disposition of REC revenues.

10 MR. SANGER: Judge Clark, this is Irion Sanger. I
11 don't think I'm going to say anything different, but I wanted
12 to ensure that I'm not wrong and we're all on the same page.
13 Our understanding was that the Company's direct testimony and
14 exhibits would further flesh out their proposal and be largely
15 consistent with it. If the Company comes up with an entirely
16 new proposal on August 8th, then we may need additional time to
17 review that. And we have not completed our review of the
18 Company's proposal, so I'm not sure what we're going to file on
19 September 9th, but it will be obviously in response to the
20 Company's filing. We may propose different ways of doing it
21 than the Company has proposed in its filing to date.

22 JUDGE CLARK: All right. Anyone else?

23 Okay. Then I would like to run just quickly through
24 the procedural schedule to make sure that I have all of the
25 dates correct while I have everyone online. I have Company

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1 direct testimony and exhibits August 8, 2011. Prefiled
2 responsive testimony from Staff, Public Counsel and Intervenors
3 September 9th, 2011, with a data request response turnaround
4 time five days, commencing with that date.

5 MR. TROTTER: Your Honor, would that be five business
6 days?

7 JUDGE CLARK: Five business days. Thank you,
8 Mr. Trotter.

9 Prefiled reply and cross-answering testimony,
10 September 30, 2011. Discovery deadline that is the last date
11 to issue data requests, October 6, 2011. The deadline to
12 submit cross-examination exhibits, October 13th. The
13 evidentiary hearing, October 18th. And simultaneous
14 post-hearing briefs on November 4th.

15 Does that reflect everyone's understanding?

16 MS. SHIFLEY: Yes, your Honor.

17 JUDGE CLARK: All right. Thank you. Then I don't
18 have anything further -- the schedule is, with these
19 modifications, reasonable and I'm going to accept it. The
20 Commission will issue a prehearing conference order
21 memorializing that schedule. I just want to remind everyone
22 that all of the other procedural and filing rules that were
23 already indicated in this case are also applicable to this
24 phase of the proceeding, and most notably, the number of copies
25 to be filed. And in this case, the Commission requires an

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1 Original plus 17.

2 The only other modification I would like to add is
3 that the Commission has, in light of discussions at the
4 Bench-Bar Conference, determined that it will not require the
5 parties to prefile cross-examination exhibits, but rather,
6 those will be submitted to the Records Center in this case and
7 distributed by the Records Center to the parties, which may
8 obviate some of the parties' concerns about filing the
9 electronic version of documents. And the filing -- official
10 filing of exhibits will actually come at some point after the
11 hearing itself.

12 All right. Are there any questions? Is there
13 anything further to be heard on the record?

14 Hearing nothing, we are adjourned.

15 Thank you.

16 MR. TROTTER: Thank you.

17 MR. SANGER: Thank you.

18 (Proceeding concluded at 10:13 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Lisa Buell, a Certified Shorthand Reporter and Notary Public in and for the State of Washington, do hereby certify that the foregoing transcript of the proceedings is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 14th day of July, 2011.

LISA BUELL, RPR, CRR, CCR

My commission expires:
DECEMBER 2014