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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 TFL ASSOCIATES, LLC;)
4 CALIBER COMPANY, INC.; and)
5 JACOBSON CONSTRUCTION &)
6 DEVELOPEMENT, INC.,)

7)
8 Complainants,)

9 vs.)

10 RAINIER VIEW WATER COMPANY,)
11 INC.; and SILVER CREEK)
12 DEVELOPEMENT COMPANY,)

13)
14 Respondents.)

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17 A prehearing conference in the above matter
18 was held on July 27, 2001, at 10:03 a.m., at 1300 South
19 Evergreen Park Drive Southwest, Olympia, Washington,
20 before Administrative Law Judge KAREN M. CAILLE.

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22 The parties were present as follows:

23 TFL ASSOCIATES, LLC; CALIBER COMPANY, INC.;
24 JACOBSON CONSTRUCTION & DEVELOPMENT, INC., by STEVEN G.
JONES, Attorney at Law, Foster Pepper & Shefelman,
PLLC, 1111 Third Avenue, Suite 3400, Seattle,
Washington 98101.

RAINIER VIEW WATER COMPANY, INC., by RICHARD
A. FINNIGAN, Attorney at Law, 2505 Evergreen Park Drive
Southwest, Suite B-3, Olympia, Washington 98502.

SILVER CREEK DEVELOPMENT COMPANY, by KIM D.
STEPHENS, Attorney at Law, Tousley Brain Stephens,
PLLC, 700 Fifth Avenue, Suite 5600, Seattle, Washington

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1 LEHMAN BROTHERS HOLDING, INC.; PROPERTY ASSET
2 MANAGEMENT, INC., by MARCIA NEWLANDS, Attorney at Law,
3 Heller Ehrman White & McAuliffe, LLP, 701 Fifth Avenue,
4 Suite 6100, Seattle, Washington 98104.

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4 THE WASHINGTON UTILITIES AND TRANSPORTATION
5 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
6 General, 1400 South Evergreen Park Drive Southwest,
7 Post Office Box 40128, Olympia, Washington 98504.

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24 Kathryn T. Wilson, CCR

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

2 JUDGE CAILLE: Let's go on the record. Good
3 morning, everyone. My name is Karen Caille, and I'm
4 the administrative law judge that has been assigned to
5 this proceeding. Before we get started, I just want to
6 remind you of a couple of things, and that is to please
7 speak directly into the microphone, speak slowly and
8 distinctly for the benefit of the court reporter, and
9 speak one at a time. She can only record one at a
10 time, so if you talk over one another, she will miss
11 what you are saying.

12 We are here today for the first prehearing
13 conference in our proceeding docketed as UW-010683.
14 This is a complaint brought by TFL Associates, LLC;
15 Caliber Company, Incorporated, and Jacobson
16 Construction and Development, Incorporated, against
17 Rainier View Water Company, Incorporated, and Silver
18 Creek Development Company. The Complaint is brought by
19 certain real estate developers concerning preferential
20 rights to available water on Rainier View's system.

21 Today is July the 27th, 2001, and we are
22 convened in a hearing room at the Commission's offices
23 in Olympia, Washington. Our basic agenda for today
24 will be to take appearances, entertain petitions to
25 intervene, consider any motions, consider the need for

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1 a protective order or invoking the discovery rule,
2 discussion of issues, process and a procedural
3 schedule, and any other business.

4 So with that, I would like to start by taking
5 appearances of the parties. Please state your name,
6 spelling your last name for the court reporter. Please
7 give me your business address, telephone, facsimile
8 number, and e-mail address, and let's begin with the
9 plaintiffs.

10 MR. JONES: I'm Steven G. Jones. The court
11 reporter has my card. Just for the record, I'm with
12 Foster Pepper and Shefelman, PLLC, 1111 Third Avenue,
13 Suite 3400, Seattle, Washington 98101. Phone direct
14 dial is (206) 447-8902. Direct facsimile is (206)
15 749-1962. E-mail address is jones@foster.com.

16 JUDGE CAILLE: Mr. Jones, could you give me
17 your phone number one more time?

18 MR. JONES: (206) 447-8902, and that's my
19 direct dial.

20 JUDGE CAILLE: Mr. Finnigan?

21 MR. FINNIGAN: Thank you. Richard A.
22 Finnigan. I'm appearing on behalf of Rainier View
23 Water Company, Inc. My address is 2405 Evergreen Park
24 Drive Southwest, Suite B-3, Olympia, Washington, 98502.
25 Phone number is (360) 956-7001. Fax is (360) 753-6862,

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1 and e-mail is rickfinn@ywave.com.

2 JUDGE CAILLE: At y...

3 MR. FINNIGAN: rickfinn@ywave.com.

4 MR. STEPHENS: My name is Kim Stephens with
5 Tousley, Brain, Stephens. Our address is 700 Fifth
6 Avenue, Suite 5600 in Seattle, 98104. The telephone
7 number is (206) 682-5600. Facsimile, same area code,
8 682-2992, and you can reach my e-mail at
9 kstephens@tousley.com, and I'm appearing for Silver
10 Creek Development Company.

11 MS. NEWLANDS: I'm Marcia Newlands. I'm the
12 attorney for Lehman Brothers Holding, Inc., and
13 Property Asset Management, Inc. I'm with the law firm
14 of Heller Ehrman White & McAuliffe, LLP. Our street
15 address is 701 Fifth Avenue, Suite 6100, Seattle,
16 98104. My direct dial is (206) 389-6102. My fax is
17 (206) 447-0849, and my e-mail is mnewlands@hewm.com.

18 JUDGE CAILLE: Could you please repeat the
19 fax number for me?

20 MS. NEWLANDS: (206) 447-0849.

21 JUDGE CAILLE: Commission staff?

22 MR. THOMPSON: I'm Jonathan Thompson,
23 assistant attorney general representing the Commission
24 staff. My address is 1400 South Evergreen Park Drive
25 Southwest, Olympia, Washington, 98504. Telephone is

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1 (360) 664-1225. Fax is (360) 586-5522, and my e-mail
2 address is jthompso@wutc.wa.gov.

3 JUDGE CAILLE: Has anyone joined us on the
4 bridge line? Then let the record reflect there are no
5 other appearances. The next order of business would be
6 to address the petitions to intervene, and I have
7 received a written petition to intervene from Lehman
8 Brothers Holding, Incorporated, and Property Asset
9 Management, Incorporated. Ms. Newlands, is there
10 anything you wish to add to your petition?

11 MS. NEWLANDS: No, unless you have questions
12 regarding it. We do, as stated in the Petition,
13 believe we have substantial interest in the proceeding
14 that needs to be protected by our participation in that
15 we do hold a security interest in the Silver Creek
16 Development property that we feel would be
17 substantially diminished in value if their water
18 service is denied to the Development.

19 JUDGE CAILLE: All right. Are there any
20 objections to this intervention?

21 MR. STEPHENS: On behalf of Silver Creek, I
22 have no objection.

23 MR. JONES: Plaintiffs have no objection to
24 the intervention.

25 MR. FINNIGAN: I'll have no objection to the

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1 intervention.

2 JUDGE CAILLE: Then the petition to intervene
3 filed by Lehman Brothers Holding, Incorporated, and
4 Property Asset Management, Incorporated is granted. At
5 this point, are there any preliminary or dispositive
6 motions that anyone wants to offer?

7 MR. JONES: I don't have a dispositive
8 motion. This may be most appropriate if it's conducted
9 as a private procedural matter, but as I noted before
10 we were on the record, Petitioners would like to
11 request that the briefing schedule and any dispositive
12 motions and ultimately the hearing on the merits be
13 expedited as quickly as possible, and I can make that
14 either as a formal motion now, or we you can defer it
15 until later, however you would like to deal with that.

16 JUDGE CAILLE: Does anyone want to be heard
17 in response to Mr. Jones?

18 MR. FINNIGAN: I guess I would like to take
19 this up when we get to a schedule because I don't even
20 know at this stage how expedited "expedited" means and
21 how that's going to fit in with both the Commission
22 schedules and all the parties' schedules.

23 I will note that it seems to me that there
24 will need to be time built in for discovery, even if
25 the estoppel issues are removed from the case for this

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1 purpose. The claims raised by Petitioners are
2 necessarily factually based, and we will need to get
3 into those. Quite frankly, at least one, and I think
4 two of the Petitioners are not even on record with
5 Rainier View as entities that have an interest in a
6 water availability letter as alleged in the Petition,
7 so I assume they are going to be able to establish some
8 sort of assignments from the original holders, but at
9 this stage, we don't even know whether they have any
10 interest at all. So I think there is going to be a
11 need for a substantial level of discovery, unless the
12 parties can get together and do some stipulation, but
13 at this point, I don't see how we can stipulate.

14 JUDGE CAILLE: Why don't we move on to
15 talking about discovery. Mr. Finnigan, you believe
16 there needs to be a substantial amount of discovery.

17 MR. FINNIGAN: And I would request the
18 discovery rule be invoked.

19 JUDGE CAILLE: I didn't bring my rules with
20 me.

21 MS. NEWLANDS: We have a copy.

22 MR. FINNIGAN: 480-09-480.

23 JUDGE CAILLE: Is everyone familiar with
24 480-09-480? Generally, the ALJ does not get involved
25 in discovery until there is some problem between the

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1 parties, and my policy is to have the parties hopefully
2 work things out, and if they cannot work things out
3 then to call me in. I'm not sure if you want to try to
4 -- the standard here -- I was just looking for the
5 standard amount of time for responses. Is it 10 days?

6 MR. FINNIGAN: Yes, it's 10 days, and that's
7 calculated as 10 business days. That's the only
8 exception within the Commission's rules where it's 10
9 business days as opposed to calendar days.

10 JUDGE CAILLE: Is there any reason why we
11 can't just follow that turnaround time?

12 MR. JONES: I have no problem with that kind
13 of turnaround time. I think what I would request is if
14 we are going to invoke the discovery rule that we have
15 a discovery cutoff that's relatively short. That will
16 give parties who want discovery an incentive to get on
17 it, and I'll represent on behalf of the Petitioners
18 that we will be as responsive as possible.

19 As I've already represented off the record,
20 and let me make it formally on the record, we believe,
21 and I'll make a formal offer, that we are going to stay
22 the estoppel claims that are outlined in the Petition
23 as Claims No. 5.5 and 5.6. It's the Petitioners'
24 contention that with the stay of those that discovery,
25 if needed at all, can be limited.

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1 So my only request would be that a short
2 discovery cutoff be set, and when I say "short," I mean
3 short in time, and that will provide incentive for
4 parties who want discovery to get discovery out, and we
5 will respond as promptly as possible, make ourselves
6 available for whatever discovery is deemed necessary,
7 and work cooperatively with other counsel, but I'm
8 going to reiterate the request I made informally before
9 that we move things forward as quickly as possible.

10 Let me explain why. It's not just the desire
11 to get this thing over. My clients have plats that are
12 going to expire at the end of calendar year 2001. If
13 that takes place for at least two of those developers,
14 they will have to do new storm water plans, the result
15 of which will be increased costs in their development
16 of hundreds of thousands of dollars. So they have a
17 very strong incentive to get a decision from the
18 Commission at the earliest possible time in order to
19 avoid those damages, and letters of notice to various
20 of the defendants have already been sent notifying them
21 of the potential of those damages, and we are not
22 asserting those damages in this proceeding but we may
23 well in future proceedings.

24 So the reason we want to move forward as
25 expeditiously as possible is to try to avoid those. If

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1 we can get a favorable decision from the Commission, we
2 are hopeful that those will ultimately not be incurred
3 at all. So if the discovery rule is going to be
4 invoked, to bring it full circle, I would ask that an
5 early discovery cutoff be set and an early hearing on
6 the merits be set so we can get a decision quickly and
7 hopefully avoid that.

8 JUDGE CAILLE: Does anyone else wish to be
9 heard on this matter?

10 MR. STEPHENS: On behalf of Silver Creek, I
11 know Mr. Finnigan has briefly stated his position. He
12 may want to reiterate his position, but I don't know
13 what he means by "expedited" either. Mr. Finnigan has
14 a good point, and let's find out what we are really
15 talking about here. I do anticipate that I have a
16 number of trials between now and the end of the year.
17 There are discovery that I believe needs to happen. I
18 think it's much more involved than Mr. Jones may be
19 recognizing at this time, and Mr. Finnigan has talked
20 about a little bit of that, so and I think there will
21 be depositions to be taken as well, not just written
22 documents.

23 So there is some allegations that there are
24 offers made orally, and I think that needs to be tested
25 is where I'm headed. I think the Court should know

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1 that I believe Mr. Jones and his plaintiffs have known
2 about our development agreement with Rainier View since
3 November of 1999, so I'm not sure exactly why this is
4 suddenly dawned on him that this is a big deal.

5 Finally, I guess, I'm not clear what
6 Mr. Jones means when he says he wants to stay some of
7 his claims, and it may be my lack of experience in
8 these types of proceedings, and I apologize if that's
9 what it is. In litigation, you don't generally have
10 piecemeal claim adjudications, especially when the same
11 witnesses and the same facts have to be heard several
12 different times. Generally, you join all your claims
13 together and you hear them, and I'm not sure what he's
14 asking. Is he asking for two different substantive
15 hearings or trials, essentially, on different claims or
16 where you bring a bunch of different people in? I'm
17 not sure. -- estoppel claims and dismiss them, I
18 understand that, but generally, it seems to me to make
19 more sense to have all the issues between the parties
20 determined at one time, so I guess I need more
21 clarification.

22 JUDGE CAILLE: Mr. Jones, could you clarify?

23 MR. JONES: The intent of the Complainants
24 would be to -- and we can do it either way, either stay
25 it or dismiss it without prejudice -- claims over which

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1 the Commission doesn't have clear jurisdiction. It's
2 clear that the Commission has jurisdiction over the
3 statutory claims outlined in Paragraphs 5.1 through
4 5.4. Our research indicates that the Commission likely
5 does not have equitable jurisdiction work to grant some
6 of the equitable relief we are seeking in claims
7 outlined in 5.5 and 5.6. While those claims may be
8 raised in a subsequent proceeding, the intent was to
9 try and limit issues solely to those over which the
10 Commission has clear statutory jurisdiction, and we can
11 do that one of two ways. We can either stay those
12 claims and order that those can be dismissed without
13 prejudice, or we could dismiss them without prejudice
14 voluntarily, and I would be willing to do either one of
15 those.

16 Our intent was solely to limit the issues in
17 this proceeding to those over which the Commission has
18 clear statutory jurisdiction with the notion that
19 discovery could be limited as of necessity, and at such
20 time as those claims were brought, for example, if we
21 brought a subsequent proceeding in Superior Court and
22 those issues had to be expanded, and that was my
23 intent.

24 JUDGE CAILLE: So if you were to dismiss
25 without prejudice, the "without prejudice" part is in

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1 order to preserve your claim in Superior Court or not
2 to bring it back up again to the Commission?

3 MR. JONES: That is correct, and if the Court
4 deems for the record that's the best way to do it, then
5 we will file a voluntary dismissal if that's the
6 cleanest way so everybody is clear.

7 JUDGE CAILLE: Does anyone else wish to be
8 heard on this further?

9 MR. FINNIGAN: In light of Mr. Jones'
10 statements that they themselves are at least very
11 uncertain that the Commission has jurisdiction over the
12 claims in Sections 5.5 and 5.6, I think the best course
13 of action from my perspective is that they be
14 dismissed. If the Commission doesn't have jurisdiction
15 over a particular claim, we shouldn't be addressing it
16 here.

17 JUDGE CAILLE: I think that probably the best
18 course would be to file a motion to dismiss on those
19 claims.

20 MR. JONES: We'll file that next week, Your
21 Honor.

22 MS. NEWLANDS: May I speak to this also? I
23 guess that they should be dismissed if they are not
24 going to be brought here. I hope we are not suggesting
25 that we acquiesce that that somehow then frees up the

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1 Court to expedite. I think that issue still needs to
2 be discussed.

3 JUDGE CAILLE: Yes, we still need to discuss
4 the expedite part of it. One other matter I just
5 wanted to mention, Mr. Jones, you mentioned damages,
6 and I don't know if you are aware, but the Commission
7 cannot assess damages. That's a matter that you would
8 have to take to Superior Court.

9 MR. JONES: I'm well aware of that, Your
10 Honor.

11 JUDGE CAILLE: Let's look at scheduling, and
12 maybe we should stay on the record for this. Normally,
13 I go off the record to have this discussion, but since
14 it appears that there is probably going to be some
15 controversy over schedule, maybe it will be easier to
16 stay on the record. Mr. Jones, did you want to take
17 the lead on this?

18 MR. FINNIGAN: May I raise a question first,
19 and I don't know how you would like to proceed in this
20 case, and I'm sure the other parties are not aware of
21 the normal process of written prefiled testimony and
22 discovery related to that testimony and whether there
23 are -- anyway, that that might be an issue we should
24 discuss a little bit first before we actually talk
25 about dates.

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1 JUDGE CAILLE: Do you think this needs to be
2 done on the record?

3 MR. FINNIGAN: No, I don't think so.

4 JUDGE CAILLE: Let's go off the record.

5 (Recess.)

6 JUDGE CAILLE: We have been off the record in
7 order for the parties to agree to a schedule for this
8 proceeding, and my understanding is that they have
9 reached that agreement, and Mr. Jones, would you please
10 read the schedule into the record?

11 MR. JONES: The agreed schedule that the
12 parties have agreed to, and the others can certainly
13 correct me if I get me notes incorrect, but my notes
14 reflect that Complainants' written testimony will be
15 distributed by August 10th. Respondents' reply
16 testimony is due by October 5th, and discovery both
17 written -- I don't know written and oral, but certainly
18 written discovery will take place in that interim
19 between those two.

20 Rebuttal testimony from Complainants is due
21 by October 26th. The prehearing conference we would
22 like to have on November the 2nd, and hopefully, the
23 schedule of the ALJ will work that we could have a
24 hearing on the 6th and 7th. That's what we would
25 prefer, if we could. Post-hearing memorandum from the

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1 parties will be simultaneously submitted by November
2 16th, and reply memorandum, if deemed necessary -- we
3 didn't want to require those, but if the parties feel
4 necessary -- were to be served and filed by November
5 30.

6 MR. FINNIGAN: Let me just add one item.
7 Mr. Jones mentioned a particular period for discovery.
8 Actually, discovery can start today and go throughout
9 the schedule.

10 JUDGE CAILLE: Yes. Now, there was some
11 discussion of a discovery cutoff.

12 MR. FINNIGAN: Effectively, if nothing else
13 is established, 10 days prior to the hearing. That's
14 the way it will work, because responses then wouldn't
15 be due until the hearing.

16 We will need to shorten the time for response
17 to discovery between the filing of the rebuttal and the
18 hearing, because the rebuttal is not due until the
19 26th. Do you see what I'm saying?

20 MR. JONES: Yes, I do. So if we file 10
21 business days, that would be October 23rd is 10
22 business days prior to the 6th of November.

23 MR. STEPHENS: I think the point is that we
24 get your rebuttal testimony on the 26th, and that if we
25 have follow-up data requests, we would need to get

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1 expedited responses from you.

2 MR. FINNIGAN: That's the point I was making.

3 MR. JONES: The thing I would suggest is any
4 responses to, what I'll term for want of a better term,
5 supplemental data requests would have to be submitted
6 prior to the prehearing conference so you at least have
7 them in hand, and if you have to address issues, you
8 would have them.

9 MR. FINNIGAN: That's fine, as long as you
10 understand that means if we give you a data request on
11 the 29th, you've got three days to respond to it.

12 MR. JONES: I understand that.

13 MR. FINNIGAN: That's acceptable to me.

14 MS. NEWLANDS: So to clarify, the discovery
15 cutoff is the prehearing conference? What is the last
16 date that we can make data requests based on the
17 written testimony filed on the 26th, the 1st or the 2nd
18 at the prehearing conference?

19 MR. JONES: There is no way, if you make a
20 data request on the 2nd, that I can get a response to
21 you before the prehearing conference. I think Rick was
22 suggesting, and I'm making it stronger than I think he
23 suggested it, but if my rebuttal testimony is due on
24 the 26th, his hypothetical was that supplemental data
25 requests would be on the 29th and that we wouldn't

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1 follow the normal rules, and that I would have to get
2 responses to those shorter than the 10 days normally
3 allowed.

4 MS. NEWLANDS: I would suggest the 31st, and
5 then that would give you --

6 MR. JONES: 24 hours?

7 MR. FINNIGAN: He was going to get them by
8 the 1st, the responses by the 1st.

9 MS. NEWLANDS: Then the 30th. As I recall, I
10 won't be in the office. I will have been gone three
11 weeks prior to this, so if I could have two days to get
12 the request to you, so cutoff on the 30th, and then
13 your responses would be due by the 1st, at the latest?

14 MR. JONES: Yes, that's fine.

15 JUDGE CAILLE: So there will be a discovery
16 cutoff for sending out discovery on October the 30th,
17 and responses to those supplemental data requests would
18 occur on November 1st.

19 MR. FINNIGAN: Could we have an understanding
20 that at least as to the rebuttal testimony and to the
21 briefs that those will be provided electronically so we
22 physically get them, or other means to assure that
23 that's actually the receipt date?

24 MR. JONES: Yes. I would welcome that. If
25 we could file electronic memorandum or by fax,

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1 whichever works easiest for folks, that's great by me.
2 MR. FINNIGAN: Service is one thing; filing
3 is another.

4 JUDGE CAILLE: The Commission has rules that
5 require a physical service, hard copy, but for service
6 among the parties, electronically generally helps.

7 MR. JONES: Let's specify. When you say
8 "electronically," are you talking about e-mail or
9 facsimile or either? Do you care, because I don't?

10 MR. FINNIGAN: Of the two, it can be either,
11 but of the two, I happen to prefer electronically.
12 It's easier than reading a fax copy.

13 MR. JONES: I agree.

14 JUDGE CAILLE: At the event of this
15 prehearing conference, I will be mentioning to you that
16 the Commission asks that you file electronically as
17 well as a disk. If you run into some crunch on the
18 deadlines, if you ask me, I can grant a request to file
19 by fax, but then it has to be followed with hard copies
20 the next day. It really needs to come in before five
21 o'clock.

22 MR. JONES: Let me just say this. Apart from
23 Mr. Finnigan, all of the rest of us are up in Seattle.
24 It would save us messenger fees to do it just -- if
25 that's acceptable, that would be my preference. We

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1 will file by fax with hard copy to follow by overnight
2 delivery, including a disk. Service can be by
3 electronic mail day of filing. If we just have that as
4 protocol and everybody follows it, if that's
5 acceptable, that's what I would suggest.

6 JUDGE CAILLE: I'm not sure about the service
7 part, whether you can just serve electronically. I
8 think you still have to do a hard copy as well.

9 MR. FINNIGAN: But that can follow the next
10 day.

11 MR. STEPHENS: Don't the rules actually
12 provide that it's effective the date you put it in the
13 mail to the parties?

14 MR. FINNIGAN: Right. That's why I'm asking
15 that the agreement that the day it's mailed you also
16 send an electronic copy --

17 MR. JONES: So that way, you don't have to
18 wait, but if we can do filing by facsimile with hard
19 copy delivered that same day for overnight delivery,
20 then that saves me hiring someone to drive to Olympia
21 everytime we do a brief.

22 JUDGE CAILLE: That will work.

23 MR. JONES: Perfect.

24 MR. STEPHENS: Mr. Finnigan, I don't have any
25 problem sending e-mail. You and I have done a lot of

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1 that. I can see a situation where there also would be
2 documents, so I assume that I won't have to scan those
3 in for you; that I will be able to fax those down to
4 you?

5 MR. FINNIGAN: Faxing documents is fine.

6 MS. NEWLANDS: I would like to clarify. My
7 understanding of what is being proposed is with respect
8 to service on the other parties is we serve on the day
9 it's due electronically and deliver a hard copy the
10 following day. I would propose -- I can see the volume
11 might prevent faxing documents. I would propose the
12 documents come in the hard copy.

13 MR. FINNIGAN: I would ask that we discuss
14 that at the time, because sometimes, quite frankly, the
15 mail from Seattle to Olympia, for reasons I don't
16 understand, is not next day.

17 MS. NEWLANDS: I'm proposing overnight
18 delivery, Fed Ex or some other overnight service.

19 MR. FINNIGAN: If it's a Friday deadline,
20 with the short times we've got, that unless it's
21 exceptional, I get it on the same day, because if I
22 don't have the weekend, that's a problem.

23 MR. STEPHENS: It seems to me we can probably
24 work that out, and presumably, you will have most of
25 these documents. We can work that out between

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1 ourselves.

2 JUDGE CAILLE: One thing we haven't
3 addressed, and I don't know if it's necessary, do any
4 of the parties feel the need for us to have a
5 protective order in this proceeding?

6 MR. FINNIGAN: It was on my list once we got
7 to the appropriate time.

8 JUDGE CAILLE: It sounds like the schedule is
9 settled now and we've worked out the discovery and the
10 filing.

11 MR. FINNIGAN: On behalf of Rainier View, we
12 would request a protective order be issued in this
13 case.

14 JUDGE CAILLE: I will see that our standard
15 protective order is prepared for the Commission's
16 signature, and I will do that today so that in case you
17 need it, discovery can begin immediately.

18 There is a matter I just want to mention
19 again, and Mr. Jones, you had stated that you would be
20 willing to have the initial order waived in this
21 proceeding to expedite the decision, and Mr. Finnigan
22 has stated that he needs to check with his clients on
23 that. I have not heard from you folks.

24 MR. JONES: I'm in Mr. Finnigan's boat.

25 MS. NEULANDS: I agree.

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1 JUDGE CAILLE: So if you will just keep that
2 in mind. It's not something we have to decide right
3 now. Are there any other matters that need to come
4 before the Commission today?

5 MS. NEWLANDS: Yes, there is one additional
6 matter. I'm sorry if I missed this in Mr. Jones'
7 recitation of the schedule, but we've discussed that
8 all parties are interested in attempting to settle this
9 before proceeding on and spending our client's money in
10 a hearing, and we would propose an ADR deadline of
11 October 19th. That would give us an opportunity to try
12 to reach settlement either informally or through ADR,
13 potentially with the cooperation of the Commission and
14 perhaps an ALJ of the Commission, but that would be a
15 subsequent request we would make if we felt ADR was
16 merited.

17 JUDGE CAILLE: The Commission definitely
18 encourages alternative dispute resolution, and we do
19 have judges who are trained as mediators, and
20 obviously, I wouldn't be one of those for this case,
21 but if you will just keep me apprised of the situation
22 so that we can notify a staff person to do that.

23 MR. JONES: What would be your preference if
24 we wanted to request the use of one of those ALJ's? Do
25 we work through Mr. Thompson or through you?

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1 JUDGE CAILLE: Through me.

2 MR. STEPHENS: One other matter. In terms of
3 protective order, I know that the Code talks about them
4 in general, but I can't recall an exemplar. Is it
5 possible for me to get an exemplar before you actually
6 get the order out? You said you were going to issue a
7 standard one. Maybe Mr. Finnigan has a standard one.

8 MR. FINNIGAN: I can provide you one.

9 MR. STEPHENS: Are you going to do it today?

10 JUDGE CAILLE: If you want to wait --

11 MR. FINNIGAN: Maybe we can do this off the
12 record.

13 JUDGE CAILLE: Is there anything further?
14 Then I'm going to just go over a few of our
15 administrative things that you need to know. On
16 filings, we need the original plus nine copies for
17 internal distribution at the Commission, and we've
18 already discussed how the filings of the briefs are
19 going to be. Is there a necessity for electronic
20 filing of the prefiled testimony? Was that meant to be
21 as well?

22 MR. FINNIGAN: At least the rebuttal
23 testimony because of the compressed nature of the end
24 of the schedule.

25 JUDGE CAILLE: The secretary's address is

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1 Secretary, WUTC, P.O. Box 47250, 1300 South Evergreen
2 Park Drive Southwest, Olympia, Washington, 98504-7250.
3 We require that filings of substance -- that includes
4 testimony, briefs, motions, and answers -- include an
5 electronic copy on a 3.5-inch IBM formatted disk in PDF
6 or Adobe Acrobat format reflecting the pagination of
7 your original. Also, please send us the text in your
8 choice of Word '97 or later or Word Perfect 6.0 or
9 later.

10 I will memorialize everything that occurred
11 today in a prehearing conference order, and I will also
12 see that a protective order gets signed. The
13 prehearing order will include requirements for witness
14 lists and exhibit lists to be submitted shortly before
15 the evidentiary hearings, and the order will also
16 remind the parties that the Commission encourages
17 stipulations both as to facts and to issues that can be
18 resolved through the settlement process or other means
19 of alternative dispute resolution, and please keep us
20 informed of any progress you make. That's all I have
21 for today. Is there anything from anyone else? Thank
22 you very much. We are off the record.

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(Prehearing concluded at 11:42 a.m.)

