

0002

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

3 WAL-MART STORES, INC.; SAM'S WEST, INC., by
JUDITH KIM (via bridge line), Assistant General
4 Counsel, 2001 Southeast 10th Street, Wal-Mart US Legal,
Department 8989, Bentonville, Arkansas 72716-0550;
5 telephone, (479) 204-2527.

6 PUBLIC COUNSEL, by SIMON J. FFITCH, Senior
Assistant Attorney General, 800 Fifth Avenue, Suite
7 2000, Seattle, Washington 98104-3188; telephone, (206)
464-6595.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

0003

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

2 JUDGE CLARK: Good afternoon. It's
3 approximately 1:30 p.m., June 2nd, 2010, in the
4 Commission's hearing room in Olympia, Washington. This
5 is the time and the place set for a prehearing
6 conference in the matter of the Washington Utilities
7 and Transportation Commission, Complainant, versus
8 PacifiCorp, doing business as Pacific Power and Light
9 Company, Respondent, given Docket No. UE-100749,
10 Patricia Clark, administrative law judge for the
11 Commission presiding.

12 This matter came before the Commission on May
13 4th, 2010, when PacifiCorp filed revisions to its
14 electric service tariffs proposing to increase the
15 rates and charges for electric service customers in
16 Washington. According to the filing, rates for
17 electric service would increase by approximately 20.88
18 percent. On May 12th, 2010 the Commission suspended a
19 filing until April 3rd, 2011, and on May 13th, 2010,
20 the Commission scheduled a prehearing conference for
21 this date and time.

22 I'm going to take appearances of all
23 individuals who are present; although some of those are
24 present telephonically, and I recognize we have three
25 outstanding petitions to intervene, but I'm going to

0004

1 take appearances from everyone before I rule on those
2 outstanding petitions. I just want to remind everyone
3 that because we do have two individuals appearing on
4 our bridge line that you speak a little more loudly
5 that you might ordinarily speak and perhaps a little
6 bit more slowly. I'll take the appearance first on
7 behalf of PacifiCorp.

8 MS. MCDOWELL: Thank you, Your Honor. This
9 is Kathryn McDowell with the law firm McDowell, Rackner
10 and Gibson here on behalf of PacifiCorp.

11 JUDGE CLARK: I would like you to make a full
12 appearance because this is your first appearance, and
13 that means for those individuals who have not appeared
14 before us previously, I need your name, address,
15 telephone number, fax number, and e-mail.

16 MS. MCDOWELL: Katherine McDowell, McDowell,
17 Rackner and Gibson, 520 Southwest Sixth Avenue, Suite
18 830, Portland, Oregon, 97232. My phone number is (503)
19 595-3924, and did you request my fax number as well?

20 JUDGE CLARK: Yes, please.

21 MS. MCDOWELL: One moment. (503) 595-3928,
22 and let me correct my zip code. It's 97204, and my
23 e-mail is katherine@mcd-law.com.

24 JUDGE CLARK: Thank you. Appearing on behalf
25 of the Commission staff?

0005

1 MR. TROTTER: Thank you, Your Honor. Donald
2 T. Trotter, assistant attorney general. My address is
3 PO Box 40128, Olympia, Washington, 98504-0128. Phone
4 number is (360) 664-1189; fax, (360) 586-5522, and
5 e-mail is dtrotter@wutc.wa.gov.

6 JUDGE CLARK: Appearing on behalf of Public
7 Counsel?

8 MR. FFITCH: Good afternoon, Your Honor.
9 Simon ffitich, assistant attorney general, Public
10 Counsel section of the Washington State Attorney
11 General's office. The address is 800 Fifth Avenue,
12 Suite 2000, Seattle, Washington, 98104. Phone number
13 is (206) 389-2055. Fax number is (206) 464-6451.
14 E-mail is simonf@atg.wa.gov.

15 JUDGE CLARK: Thank you, Mr. ffitich.
16 Appearing on behalf of the Industrial Customers of
17 Northwest Utilities?

18 MR. SANGER: My name is Irion Sanger with the
19 law firm of Davison Van Cleve. I represent ICNU. The
20 address is 333 Southwest Taylor, Suite 400, Portland,
21 Oregon, 97204. My e-mail is ias@dvclaw.com. My phone
22 number is (503) 241-7242. My fax number is
23 (503) 241-8160, and do you want all the contact
24 information to be put on the official service list at
25 this time, or should we do that at another time?

0006

1 JUDGE CLARK: I also have under notice of
2 appearance an appearance by Melinda Davison. There are
3 also several individuals, I believe, who would be
4 serving as consultants that we would ordinarily place
5 on the interested persons list.

6 MR. SANGER: I would like to put Ms. Davison
7 on the official service list, but it would be fine if
8 the consultants were on the interested person list and
9 got the e-mails.

10 JUDGE CLARK: I have Ms. Davison on the
11 official list.

12 MR. SANGER: Thank you.

13 JUDGE CLARK: Appearing on behalf of The
14 Energy Project?

15 MR. PURDY: Yes, Your Honor, Brad Purdy. My
16 address is 2019 North 17th Street, Boise, Idaho, 83702.
17 E-mail is bmpurdy@hotmail.com. My telephone is (208)
18 384-1299. My fax, (208) 384-8511.

19 JUDGE CLARK: Appearing on behalf of
20 Wal-Mart, Incorporated, and Sam's West?

21 MS. KIM: My name is Judith Kim, assistant
22 general counsel, Wal-Mart Store, Inc., 2001 Southeast
23 10th Street, Bentonville, Arkansas, 72716-0550. Phone
24 is (479) 204-2527; fax, (479) 277-5991; e-mail,
25 judith.kim@walmartlegal.com.

0007

1 JUDGE CLARK: Thank you, Ms. Kim. I'm going
2 to address first the outstanding petitions to
3 intervene, and I'm going to address those in the order
4 in which they were filed. The first petition to
5 intervene I have was filed by Industrial Customers of
6 Northwest Utilities. Is there any objection to this
7 petition? Hearing none, the petition for leave to
8 intervene in this proceeding is granted.

9 The second petition is by Wal-Mart Stores,
10 Incorporated, and Sam's West, Incorporated. Is there
11 any objection to this petition to intervene? Hearing
12 none, the petition to intervene is granted.

13 Finally, I have the petition to intervene
14 filed on behalf of The Energy Project. Is there any
15 objection to this petition to intervene? Hearing none,
16 the petition to intervene is granted.

17 This should be a pretty expedited prehearing
18 conference this afternoon because we've already
19 addressed a number of the procedural matters that we
20 ordinarily take care of in a prehearing conference.
21 We've already invoked the Commission's discovery rules
22 and we've already issued a protective order, so I
23 believe that the primary issue of business this
24 afternoon is going to be hammering out a procedural
25 schedule that is hopefully to everyone's mutual

0008

1 satisfaction.

2 In addition, for those that participated in
3 last year's PacifiCorp rate filing, we tried something
4 a little bit different, and instead of the Commission
5 issuing a Bench request, actually two Bench requests,
6 which are pretty standard, requesting additional
7 information from PacifiCorp, we requested that
8 information during the course of our prehearing
9 conference. That worked out very well, and we were
10 able to get that supplemental filing from PacifiCorp
11 very expeditiously, so I'm going to give you the
12 information that we need once again this year.

13 The information is the underlying support for
14 Mr. Dalley's exhibit, RBD-3. The Company needs to
15 provide in separate electronic spreadsheet files in
16 Excel format and include the linked files with all
17 formulas and formatting and every spreadsheet intact;
18 that is, the formulas are not to be converted to values
19 or otherwise modified from the original, and we will
20 talk about a deadline for that information in a minute.

21 The second information request is also
22 linked, and this would, again, ordinarily be a Bench
23 request, an electronic spreadsheet file for any other
24 exhibits that flow into the results of operation,
25 including all adjustments furnished by other witnesses.

0009

1 Those files must also be in Excel format and include
2 all linked files with all formulas and formatting and
3 every spreadsheet intact. The formulas are not to be
4 converted or modified in any way, and those are also to
5 be filed on CD.

6 I would like to discuss now with PacifiCorp
7 what you think would be an appropriate filing date for
8 you to come up with that additional information for the
9 supplemental filing. I would ordinarily ask that it be
10 approximately ten days, and I'm interested in knowing
11 if that would be burdensome for PacifiCorp.

12 MS. MCDOWELL: Is there any difference
13 between these requests and the requests that the
14 Commission asked at the prehearing conference in the
15 last case?

16 JUDGE CLARK: No, there is absolutely no
17 difference, and if you are interested in the exact text
18 of that information, you can even go to the year before
19 that in Docket UE-080220, and if you look at Bench
20 Requests 1 and 2, it is exactly the same information.

21 MS. MCDOWELL: Can I just have one moment to
22 confer with my clients?

23 JUDGE CLARK: Absolutely.

24 MS. MCDOWELL: Your Honor, the ten-day time
25 line I think you propose would work for PacifiCorp.

0010

1 JUDGE CLARK: Those exhibits will be due then
2 on June 14th, taking into consideration the benefit of
3 a weekend. With respect to the prefiled testimony and
4 exhibits of other parties, the Commission wants the
5 parties to start with the results of operation that
6 show test year actual results and state whether the
7 company is restating in proforma adjustments are
8 contested or uncontested, and if contested, state
9 the -- for your disagreement, and that way, if everyone
10 starts from the same sheet of music, it will be a lot
11 easier for the Commission to compare the information
12 regarding each parties' proposal.

13 Commission also wants the parties to be
14 sensitive to rounding numbers with respect to the rate
15 of return. The recommended rate of return should be
16 stated as a percentage rounded to two decimal points;
17 for example, 8.34 percent. The conversion factor
18 should be stated as a number with six digits to the
19 right of the decimal point and rounded to the last
20 digit; for example, 46.012345.

21 I think we are now ready to discuss the
22 procedural schedule. It is my understanding from
23 Mr. Trotter immediately before the prehearing
24 conference, he advised me that the parties were
25 discussing a proposed procedural schedule but would

0011

1 require some time to confer regarding that schedule, so
2 I'm going to take a recess at this time. We will be at
3 recess until further call to allow the parties to
4 discuss that procedural schedule. Before we go off
5 record, I want to remind you again that we do have two
6 parties appearing telephonically, so your discussion
7 regarding that schedule needs to be somewhere close to
8 a microphone so they can participate. We are at recess
9 until further call.

10 (Recess.)

11 JUDGE CLARK: We are back on the record.
12 Have the parties had an adequate opportunity to confer
13 regarding the procedural schedule?

14 MR. TROTTER: Yes. We have taken quite a bit
15 of time to discuss a schedule, Your Honor.

16 JUDGE CLARK: Do you have a proposed schedule
17 that all parties can agree?

18 MS. MCDOWELL: Yes, we do.

19 MR. TROTTER: I made a copy of that, Your
20 Honor. Parties will have to make sure I did it right,
21 but I will give you a copy.

22 JUDGE CLARK: I would greatly appreciate
23 that.

24 MR. TROTTER: If everyone could look at it
25 and make sure it is the same as what we discussed.

0012

1 JUDGE CLARK: Do you want to memorialize that
2 for purposes of the record, Mr. Trotter?

3 MR. TROTTER: Yes, Your Honor. For benefit
4 of those on the bridge line, what I handed out was
5 direct testimony filed May 4th of this year, which has
6 already occurred, and all the dates will be this year,
7 and I will make the distinction when the new year
8 starts.

9 The issue discussion settlement conference,
10 October 20th; response testimony, November 10th;
11 settlement discussion again on December 8th; rebuttal
12 and cross-answering testimony filed December 14th;
13 discovery cutoff, that is, the last day to issue data
14 requests is December 30th, and I'm moving into 2011.
15 Prehearing conference for marking exhibits, January
16 7th; hearings, January 12th through 14th and the 18th
17 if necessary; briefs, February 14th, and the end of the
18 suspension period is April 3rd.

19 JUDGE CLARK: All right. I am going to take
20 this schedule under advisement. Ordinarily if the
21 parties have concurred regarding a procedural schedule,
22 I would be inclined to adopt it. However, I do note
23 that out of this ten-month suspension period, more than
24 five months expire before we get responsive testimony,
25 and I think that that is probably not the most prudent

0013

1 and fairest use of the suspension period.

2 My concern is insuring that the
3 decision-makers have an adequate amount of time to
4 consider the case and render a decision, and everyone
5 has had PacifiCorp's filing since the 4th of May, as
6 well as all of the direct testimony, and it seems to me
7 that that is an inordinately lengthy amount of time.

8 Prior to going on the record in this
9 afternoon's prehearing conference, I did confer with
10 commissioners regarding their preference, and their
11 preference would be to have a hearing in December, and
12 no later than mid December, and preferably early
13 December, so I'm going to have to present this
14 alternate schedule to them, but I will warn everyone
15 that it may not be likely that the commissioners get
16 backed into a corner to make a decision. Mr. ffitch?

17 MR. FFITCH: I'm sorry, Your Honor. I wanted
18 to bring up another scheduling matter when you are
19 ready.

20 JUDGE CLARK: I'm ready.

21 MR. FFITCH: We actually did discuss amongst
22 the parties two other matters, which I think we are in
23 agreement on. One is for a report-back date on the
24 public notice of July 2nd, and the Commission staff and
25 the Company would confer and hopefully reach agreement

0014

1 as we are usually able to do on the public notice
2 process and the content, and we would report back to
3 Your Honor by July 2nd.

4 Second item is public hearings. We
5 tentatively are proposing one public hearing for
6 Walla Walla in early October. The caveat is that
7 Mr. Purdy wants to check with his client, The Energy
8 Project, to see if they have any variation on that
9 recommendation or want to recommend an additional date,
10 so what we would request is that we be able to follow
11 up with communication to the Bench once Mr. Purdy has
12 had a chance to check with his client.

13 JUDGE CLARK: That would be fine. First the
14 deadline of July 2nd to confer with the Company and
15 Staff regarding the public notice report is accepted.
16 It's a reasonable amount of time to confer regarding
17 that public notice, and the Commission will take under
18 consideration the request for the public comment
19 hearing to be held in Walla Walla.

20 I am sure that everyone is quite aware of the
21 budget constraints for the state of Washington right
22 know, so I did check alternatives. If Walla Walla is
23 the location selected, it would probably have to be an
24 afternoon hearing rather than a hearing after five
25 p.m., because it is impossible to fly there and back in

0015

1 one day. There are no flights available, and I think
2 the Commission is very unlikely to want to incur the
3 additional expense of hotel accommodations for a
4 hearing that typically sets aside an hour and a half to
5 two hours. It's a brave new world with budget
6 constraints that we have, and we are all going to have
7 to make some accommodation to work within those.

8 I'm happy to let the parties report on a
9 location later, but I have to let you know, if you
10 select Walla Walla, it's unlikely to be an evening
11 hearing. It's more likely to be an afternoon hearing.

12 MR. FFITCH: Your Honor, we had in mind
13 budget constraints and therefore didn't ask for two
14 hearings, speaking for Public Counsel. We picked Walla
15 Walla rather than Yakima because I believe last case,
16 the hearing was in Yakima.

17 JUDGE CLARK: That is correct, and the
18 proceeding before the hearing was held in Walla Walla,
19 and the Commission does traditionally alternate. I
20 will also add that for PacifiCorp, the Commission seems
21 to usually hold one public hearing with or without
22 budget constraints. It seems there is one hearing in
23 this particular case, and I think that's probably more
24 linked to the size of the service territory in the
25 state of Washington rather than the budget.

0016

1 MR. PURDY: This is Brad Purdy. I appreciate
2 Mr. ffitch carrying the banner for me on that. That
3 was, as he indicated, my request for diligence. I
4 certainly do understand budget constraints. I will
5 talk with my client and get right back to the other
6 people and be very aware of that.

7 JUDGE CLARK: That's not a problem,
8 Mr. Purdy. I just wanted you to be aware that there
9 would probably be some additional constraints, so when
10 you discuss this with your client, I would like you to
11 be aware of that so that you are not surprised that
12 when you request a Walla Walla hearing that we grant
13 it, but it's at three o'clock in the afternoon because
14 we can't make alternate travel arrangements. I just
15 wanted you to have all the information.

16 MR. PURDY: Thank you very much.

17 MR. FFITCH: Your Honor, if I could make one
18 more observation. If the choice is perhaps a very
19 poorly attended afternoon hearing in Walla Walla
20 whereas an evening hearing in Yakima might be also
21 doable within the same budget, that might be, frankly,
22 preferable. I'm looking back at Mr. Kouchi and he's
23 nodding. If the Commission is going to spend some
24 money on a hearing, it may be more cost-effective to do
25 an evening hearing.

0017

1 JUDGE CLARK: Right. I understand you are
2 going to get back to me on your preference, and I do
3 hope that you will take all of these considerations
4 into account when you make your request regarding the
5 location. I just didn't want you to not have all the
6 information to take into consideration when you are
7 forming that recommendation, and I would like a
8 deadline for you to get back to me on your
9 recommendation to the public comment hearing.

10 MR. PURDY: My client was unable to be
11 available the latter part of this hearing. I will
12 contact him immediately and give you my assurances I
13 will get back in touch, if it's appropriate with
14 Mr. Ffitch, at the end of the business day tomorrow, if
15 that's adequate.

16 JUDGE CLARK: That would be excellent for me,
17 and is that a sufficient amount of time for Mr. Ffitch?

18 MR. FFITCH: Yes, Your Honor.

19 JUDGE CLARK: Is that sufficient for Staff as
20 well, Mr. Trotter?

21 MR. TROTTER: Yes.

22 JUDGE CLARK: I don't want to exclude anyone.
23 If Wal-Mart or ICNU care about the location or time or
24 deadline, I'm hoping you will jump in. People are
25 nodding their heads affirmatively which isn't picked up

0018

1 quite as well on the microphones.

2 MS. KIM: Wal-Mart is okay.

3 MS. MCDOWELL: Your Honor, I just had a
4 couple of comments on the schedule, if I might.

5 JUDGE CLARK: Please.

6 MS. MCDOWELL: First, just responding to your
7 comment about the need to review the schedule that we
8 have proposed. I do want to say that I hope we haven't
9 missed the mark too far. We tried to look at the 2009
10 Puget case which was filed within just a few days last
11 year of when we filed this year and try to find
12 generally the milestones based on that schedule, so
13 that's just to give you some background on how we tried
14 to develop the schedule.

15 If we are going to be moving dates up into
16 December, November, even October, the Company has
17 various other cases scheduled in other jurisdictions.
18 Many of the witnesses are overlapping, so I'm not quite
19 sure the process, if there was an ability for you to
20 put out proposed dates or something and have folks
21 respond with respect to availability, something like
22 that would be very helpful, I'm sure not just for the
23 Company but others that are involved in other
24 proceedings that are going on in the fall and late next
25 year or in this year.

0019

1 JUDGE CLARK: Absolutely. And I would
2 probably do that via electronic notification so that
3 you can see an alternate schedule that the Commission
4 was considering.

5 MS. MCDOWELL: That would be very helpful.
6 With respect to the current schedule, and I know this
7 may be a level of detail that may not be appropriate at
8 this point, but I just want to offer it up that we had
9 talked about some expedited discovery turnarounds, just
10 to put those in the record so there is no question
11 about that. The proposal had been that we move to a
12 seven-business-day turnaround commencing with the
13 response testimony, which we have proposed to have
14 filed on the 10th of November, and that we moved to a
15 five-day discovery turnaround beginning on the 14th,
16 the rebuttal and cross-answering testimony to date.

17 JUDGE CLARK: The Commission does ordinarily
18 adopt a five-business day.

19 MS. MCDOWELL: That's five business days.
20 The first one was seven business days. The second one
21 was five business days.

22 JUDGE CLARK: That is a reasonable proposal
23 and the Commission will adopt that. That is generally
24 the Commission's practice as well.

25 MS. MCDOWELL: Great. Then we had indicated

0020

1 in our proposed schedule, and I don't think anyone
2 objected to it, that we wanted to reserve the right to
3 request a reply brief. The current schedule
4 contemplates only a single date for opening briefs, but
5 to the extent that reply briefs seemed important
6 because of the issues that were still outstanding, we
7 wanted to reserve the right to request to add reply
8 briefs into the schedule.

9 Then finally, again, this is a little detail
10 that I hope is appropriate, the 18th is a date where we
11 potentially would have the hearing slipped a week if
12 we did not complete it. It's proposed now for the 12th
13 through the 14th of January with the 18th as a
14 potential additional day the following week. The
15 Company has many witnesses who need to be at a
16 conference in the Midwest beginning on the 19th. It's
17 possible that some witnesses, we would need to
18 accommodate those witnesses' schedules by having them
19 go the preceding week in order to actually accommodate
20 the hearing on the 18th.

21 JUDGE CLARK: We can certainly do that. We
22 can take witnesses out of order and make whatever other
23 accommodations are necessary to assure that those other
24 individuals are able to meet those travel arrangements.

25 MS. MCDOWELL: Thank you. Those are all the

0021

1 issues I have.

2 JUDGE CLARK: I do appreciate you bringing
3 all of those issues to the Commission's attention so
4 they can take those issues into consideration in
5 determining whether or not to adopt this procedural
6 schedule.

7 The other bit of business is, of course,
8 cross-examination exhibits, and the Commission will be
9 setting a deadline for the submission of
10 cross-examination exhibits. Those of you who are
11 familiar with our practice know that we have a rule
12 that requires the parties may be required to
13 predistribute cross-examination exhibits, and it's the
14 Commission's practice to always require the
15 predistribution of cross-examination exhibits.

16 It is also in the last couple of years, I
17 suppose, become the Commission's practice to not only
18 require the predistribution but to establish a
19 deadline, and not to extend that deadline absent good
20 cause to insure that the parties and the commissioners
21 have an adequate opportunity and time to prepare for
22 the hearing, and the Commission may exclude
23 cross-examination exhibits that are distributed after
24 the deadline absent a showing of good cause for that
25 delay, so any procedural schedule that the Commission

0022

1 adopts will also include a deadline for submitting
2 cross-examination exhibits.

3 Let me see if I have all the other
4 information that I need. It appears that I do have, I
5 believe, deadlines for all the other information that I
6 need. Is there anything further that should be
7 considered on the record this afternoon?

8 MR. FFITCH: Your Honor, I have two very
9 small matters. One is to request if you know the
10 number of copies that the Bench will require yet?

11 JUDGE CLARK: As soon as you said that, what
12 popped up on my screen is "document preparation and
13 filing requirements." In this case, the Commission
14 will require an original and 17 copies of all
15 documents, and that is a large amount of copies, and so
16 therefore, I'm going to ask that the parties not expand
17 the number of filing copies that we need; that is, that
18 you not add additional people but rather share
19 graciously with others rather than expanding the number
20 of copies.

21 MR. FFITCH: The second was to ask if we
22 could have until close of business tomorrow to provide
23 additional names for your electronic service list for
24 our internal staff.

25 JUDGE CLARK: If possible, I would really

0023

1 appreciate getting that information by noon tomorrow
2 rather than the close of business tomorrow, and that is
3 only because I will be on leave starting on Friday for
4 a week, and I would rather not delay getting a
5 prehearing conference order out for a week, so yes, by
6 noon.

7 MR. FFITCH: We can do that, Your Honor.

8 MR. SANGER: That's in addition to the people
9 we've already provided you?

10 JUDGE CLARK: Yes, that's in addition to the
11 people you've already provided. Are there any other
12 matters that we should take under consideration this
13 afternoon? Mr. ffitch? Hearing nothing, we are
14 adjourned.

15 (Prehearing adjourned at 2:56 p.m.)

16

17

18

19

20

21

22

23

24

25