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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3

4 WASHINGTON UTILITIES AND) Docket No. UE-991832
5 TRANSPORTATION COMMISSION) Volume I
6 v.) Pages 1-37

7 PACIFICORP d/b/a PACIFIC LIGHT)

8 AND POWER)

9 _____)

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11 A hearing in the above matter was
12 held on January 21, 2000, at 8:32 a.m., at 1300
13 Evergreen Park Drive Southwest, Olympia, Washington,
14 before Administrative Law Judges DENNIS J. MOSS and
15 LOIS GOLD.

16

17 The parties were present as
18 follows:

19 PACIFICORP, by James M. Van
20 Nostrand, Attorney at Law, Stoel Rives, 600
21 University Street, Suite 3600, Seattle, Washington
22 98101-3197 and Stephen C. Hall, Attorney at Law,
23 Stoel Rives, 900 S.W. Fifth Avenue, Suite 2300,
24 Portland, Oregon, 97204-1268.

25 ICNU, by Michael T. Brooks,
26 Attorney at Law, Duncan, Weinberg, Genzer & Pembroke,
27 1300 S.W. Fifth Avenue, Suite 2915, Portland, Oregon
28 97201.

29 BARBARA SPURBECK, CSR
30 COURT REPORTER

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1 THE COMMISSION, by Sally G.
Johnston, Assistant Attorney General, P.O. Box 40128,
2 Olympia, Washington 98504-0128.

3 PUBLIC COUNSEL, by Simon ffitch,
Assistant Attorney General, 900 Fourth Avenue, #2000,
4 Seattle, Washington 98164 and Robert W. Cromwell,
Jr., Assistant Attorney General, 670 Woodland Square
5 Loop, SE, P.O. Box 40124, Olympia, Washington
98504-0124.

6 NORTHWEST ENERGY COALITION, by
7 Danielle Dixon, Attorney at Law, 219 First Avenue
South, Suite 100, Seattle, Washington 98104.

8 THE ENERGY PROJECT, YAKIMA OIC,
9 and VALLEY FARM WORKERS CLINIC, by Chuck Eberdt,
Attorney at Law, 314 E. Holly Street, Bellingham,
10 Washington 98225.

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1 JUDGE MOSS: Let's go on the record. Good
2 morning, everyone. My name is Dennis Moss. I'll be
3 the presiding Administrative Law Judge in this
4 proceeding, which is styled Washington Utilities and
5 Transportation Commission against PacifiCorp, d/b/a
6 Pacific Light and Power, Docket Number UE-991832. We
7 are convened for our first prehearing conference this
8 morning.

9 With me on the bench is Administrative Law
10 Judge Lois Gold, who is available to assist me at the
11 bench. And of course, this is a general rate case,
12 and so the Commissioners will be presiding in the
13 substantive portions of the case, and we will be on
14 the bench, or at least I will be on the bench with
15 them.

16 The first order of business will be to take
17 appearances. And we'll start, I believe, with the
18 applicant. Mr. Van Nostrand, go ahead.

19 MR. VAN NOSTRAND: Thank you, Your Honor.
20 Appearing on behalf of PacifiCorp, James M. Van
21 Nostrand, with the law firm of Stoel Rives, 600
22 University Street, Suite 3600, Seattle, 98101.

23 JUDGE MOSS: And let's see. I think we
24 need a facsimile and an e-mail to complete the
25 initial appearance record.

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1 MR. VAN NOSTRAND: Okay. And telephone
2 number, as well?

3 JUDGE MOSS: Did you not give that already?
4 I apologize. I was clearly not focused on the latter
5 part of that.

6 MR. VAN NOSTRAND: Telephone number is
7 206-386-7665, fax is 206-386-7500, e-mail is
8 jmvannostrand@stoel.com.

9 JUDGE MOSS: Thank you very much. Let's go
10 ahead with those who would intervene this morning.
11 And I did not receive any petitions to intervene
12 prior to this morning, so I'll just go along the
13 table here.

14 MR. EBERDT: My name's Chuck Eberdt. I'm
15 with the Energy Project. I'm here to represent the
16 Energy Project, the Yakima Valley Farm Workers Clinic
17 and the Yakima Valley Opportunities Industrialization
18 Center, or more familiarly, the OIC. My address is
19 314 East Holly Street, Bellingham, Washington, and
20 the phone number is 734 -- I'm sorry, area code
21 360-734-5121, extension 332, and the fax number there
22 is 360-715-8 -- I'm sorry, this is incorrect.
23 676-2142 will work.

24 JUDGE MOSS: Okay. Mr. Eberdt, I had a
25 telephone communication from you yesterday, which I

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1 was unable to return, due to my being occupied in
2 other matters. Are you here this morning on behalf
3 of all three of the entities?

4 MR. EBERDT: Just two.

5 JUDGE MOSS: Just two, okay. Will we need
6 to discuss the matter of the third's intervention?

7 MR. EBERDT: If that's appropriate, sure.
8 I could talk to you off the record.

9 JUDGE MOSS: If there's some prospect that
10 they may wish to be an intervenor, we should take
11 that up this morning. Okay. We'll get to that.

12 MS. DIXON: My name is Danielle Dixon. I
13 represent the Northwest Energy Coalition. The
14 address is 219 First Avenue South, Suite 100, in
15 Seattle, 98104. Phone number, 206-621-0094. Fax
16 number 206-621-0097, and e-mail is
17 Danielle@nwenergy.org.

18 JUDGE MOSS: Thank you.

19 MR. BROOKS: Michael Brooks, representing
20 Industrial Customers of Northwest Utilities, with the
21 law firm of Duncan, Weinberg, Genzer and Pembroke,
22 1300 S.W. Fifth Avenue, Suite 2915, Portland, Oregon,
23 97201. Telephone, 503-204-7242, fax, 503-241-8160,
24 and the e-mail is dunwei@ibm.net.

25 JUDGE MOSS: Mr. Brooks, excuse me. I

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1 noticed that your name is not on the written
2 petition. Will you be the primary contact for ICNU
3 for purposes of this case?

4 MR. BROOKS: I will not be the primary
5 contact. As was put on the petition, the primary
6 contacts will be Melinda Davison and Brad Van Cleve.

7 JUDGE MOSS: As you know, we designate one
8 individual for receipt. Of course, you're all at the
9 same address, so that won't be a problem, in any
10 event, but we'll have -- Ms. Davison will be the
11 primary contact for purposes of our official service.
12 And of course, the parties can work cooperatively
13 together for a more expansive service, if that's
14 indicated, and I ask that that be done. Let's have
15 Public Counsel's appearance.

16 MR. FFITCH: Good morning, Your Honor.

17 JUDGE MOSS: Good morning.

18 MR. FFITCH: Simon ffitich, Assistant
19 Attorney General, Public Counsel Section, Washington
20 Attorney General's Office, 900 Fourth Avenue, Suite
21 2000, Seattle, Washington, 98164. My phone number is
22 206-389-2055. The office fax number is 206-389-2058.
23 Did you wish an e-mail address, Your Honor?

24 JUDGE MOSS: Please.

25 MR. FFITCH: It's simonf@atg.wa.gov. Your

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1 Honor, also appearing this morning for Public Counsel
2 is Robert Cromwell, who is a new attorney with our
3 office, and he will also make an appearance and will
4 be on pleadings for Public Counsel in this case, and
5 we'll designate him as the primary recipient.

6 JUDGE MOSS: All right.

7 MR. FFITCH: But would like to have both
8 our names on the service list.

9 JUDGE MOSS: All right.

10 MR. FFITCH: We'll be co-counsel on the
11 case.

12 JUDGE MOSS: Okay. Welcome, Mr. Cromwell.

13 MR. CROMWELL: Thank you, Your Honor.

14 JUDGE MOSS: Congratulations on your new
15 position.

16 MR. CROMWELL: Thank you.

17 JUDGE MOSS: Ms. Johnston, for the Staff.

18 MS. JOHNSTON: Sally G. Johnston, Assistant
19 Attorney General, appearing on behalf of Commission
20 Staff. My address is 1400 South Evergreen Park
21 Drive, S.W., Olympia, Washington, 98504. My
22 telephone number is 360-664-1193. My e-mail address
23 is sjohnston@wutc.wa.gov. My fax number is area code
24 360-586-5522.

25 JUDGE MOSS: Thank you very much. Are

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1 there any other persons present today who wish to
2 participate in this proceeding?

3 MR. VAN NOSTRAND: Your Honor, I'd like to
4 enter another appearance on behalf of PacifiCorp.?

5 JUDGE MOSS: Please go ahead.

6 MR. HALL: Good morning, Stephen Hall, for
7 PacifiCorp. My address is 900 S.W. Fifth Avenue,
8 Suite 2600, Portland, Oregon, 97204. My telephone
9 number is 503-294-9897, my e-mail is
10 schall@stoel.com, and my fax number is 503-220-2480.

11 JUDGE MOSS: Okay. Mr. Van Nostrand,
12 you'll be the primary on this?

13 MR. VAN NOSTRAND: Yes, Your Honor.

14 JUDGE MOSS: Okay. Thank you very much.
15 Mr. Eberdt, did you have something?

16 MR. EBERDT: I failed to give you an e-mail
17 address, if you'd like that.

18 JUDGE MOSS: Oh, yes. Please do.

19 MR. EBERDT: Chuck eberdt@oppco.org.

20 JUDGE MOSS: We've all had to learn a new
21 manner of speaking to communicate these things, but
22 it all seems to work very effectively. I ask that
23 any party who has not provided the court reporter
24 with a business card, do so as we get to the end of
25 things today, so that we can have an accurate record.

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1 I did not take as careful notes of these things as I
2 normally do, because I'm going to use these cards
3 myself. That's one reason I perhaps missed some
4 details that you all missed.

5 With respect to the staffing of this case,
6 I want to mention to the parties that the bench has
7 available to it, as in all general rate cases in my
8 experience here, a policy staff adviser, and that
9 will be Debra Stevens. And we have an -- we intend
10 to use an outside accounting adviser, and that is in
11 the person of Mr. Bob Damron. And I'd mention that
12 Mr. Damron, as I understand it, is also the -- is he
13 an expert working for you in the Avista case, Mr.
14 Ffitch?

15 MR. FFITCH: That's correct, Your Honor,
16 one of our consultants.

17 JUDGE MOSS: One of your consultants in the
18 Avista rate case, which happens to be before the
19 Commission at this time. If that gives anybody cause
20 to comment, then I will certainly entertain that. I
21 don't see why it would pose any problem myself.
22 Okay. It does not appear that that does cause any
23 problem, so all right.

24 Our next order of business will be the
25 motions to intervene, and I was -- I don't remember

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1 what order they were handed to me, but let's go with
2 ICNU first. I have a written petition to intervene,
3 and that has not been filed, as I understand it?

4 MR. BROOKS: It has been filed. I just
5 walked downstairs and filed it.

6 JUDGE MOSS: Excellent. Have the parties
7 seen copies of this?

8 MR. BROOKS: They have not. They were
9 served by mail yesterday. I'm a little short on
10 copies this morning, but I have a few.

11 JUDGE MOSS: Why don't you start with the
12 Applicant and distribute to the extent you can.
13 Others may share. It's fairly brief, so I'll ask you
14 all to just glance through it quickly. Why don't you
15 give a copy over here to Public Counsel and Staff
16 table. I have a copy at the bench.

17 Rather than have Mr. Brooks state his
18 motion, we do have the written copy distributed, and
19 I'll ask if there are any objections or comments
20 parties wish to make with respect to it, when you're
21 ready.

22 MR. VAN NOSTRAND: Ready.

23 JUDGE MOSS: Go ahead.

24 MR. VAN NOSTRAND: No objection.

25 JUDGE MOSS: No objection. Mr. Eberdt.

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1 MR. EBERDT: No, none.
2 JUDGE MOSS: Ms. Dixon.
3 MS. DIXON: No objection.
4 JUDGE MOSS: We've lost Mr. ffitich. I'm
5 sorry, I've --
6 MR. CROMWELL: Mr. Cromwell.
7 JUDGE MOSS: Mr. Cromwell.
8 MR. CROMWELL: No objection, Your Honor.
9 JUDGE MOSS: And Ms. Johnston.
10 MS. JOHNSTON: No.
11 JUDGE MOSS: Okay. The motion will be
12 granted. Okay. I have Ms. Dixon's filing here on
13 behalf of the Northwest Energy Coalition. Has that
14 been distributed to the parties?
15 MS. DIXON: I mailed it yesterday and I
16 gave it to the records department this morning, with
17 multiple copies, but I do have additional copies with
18 me.
19 JUDGE MOSS: Okay. You should distribute
20 those now. I doubt anybody has them, except me. And
21 I'll follow the same protocol and ask if there are
22 any objections to this motion when the parties are
23 ready. Do you have any objection?
24 MR. VAN NOSTRAND: No, Your Honor.
25 MR. EBERDT: None.

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1 JUDGE MOSS: No objection?

2 MR. BROOKS: No objection.

3 MR. CROMWELL: No objection.

4 MS. JOHNSTON: No objection.

5 JUDGE MOSS: Hearing no objection, the
6 motion will be granted. All right. Now, Mr. Eberdt,
7 let's see, your petition mentions the Yakima Valley
8 Farm Workers Clinic, the Yakima Valley Opportunities
9 Industrialization Center, and the Washington State
10 Association of Community Action Agencies Energy
11 Project. I'll be curious to see how that acronym
12 works out.

13 MR. EBERDT: It's a drag.

14 JUDGE MOSS: As I mentioned earlier,
15 though, I did have a telephone communication from you
16 yesterday. And did I understand that two of these
17 individuals, or two of these groups have made a firm
18 decision that they wish to intervene?

19 MR. EBERDT: Yes.

20 JUDGE MOSS: But one is -- the decision is
21 still pending before its board?

22 MR. EBERDT: Yes.

23 JUDGE MOSS: All right. Well, I think,
24 unless there's a problem, and this is a little bit of
25 an unusual situation, but whenever we have a

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1 situation where such a decision is pending because
2 it's necessary to get the approval of a board, it
3 sounds to me like that might be cause to give some
4 leeway with respect to the rule that such petitions
5 be filed in advance of the prehearing or presented
6 orally at the prehearing. With respect -- which
7 party is that, by the way?

8 MR. EBERDT: It's another community action
9 agency, Blue Mountain Action Council.

10 JUDGE MOSS: So it's in addition to these
11 three?

12 MR. EBERDT: Yes, those three have agreed
13 to. There was a third community action agency that
14 needed to check with their board. They're in Walla
15 Walla.

16 JUDGE MOSS: And would the representation
17 be identical with respect to all four?

18 MR. EBERDT: I'll still be the primary
19 representative. They may wish to add someone to the
20 service list.

21 JUDGE MOSS: But you would be presenting a
22 single case on behalf of the group?

23 MR. EBERDT: Yes.

24 JUDGE MOSS: So we wouldn't be dealing with
25 essentially another party?

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1 MR. EBERDT: Exactly.
2 JUDGE MOSS: Okay. Well, let's go ahead
3 and -- I'm sorry?
4 MS. JOHNSTON: Excuse me. Do we know when
5 the board will render its decision?
6 JUDGE MOSS: I was going to get to that.
7 MR. EBERDT: They're supposed to meet on
8 Tuesday.
9 JUDGE MOSS: So we'll know fairly soon.
10 Let's go ahead and act on the motion, and then we'll
11 take up the separate matter. Has the motion been
12 filed and distributed?
13 MR. EBERDT: No, this is the only copy
14 that's --
15 JUDGE MOSS: This is the only copy?
16 MR. EBERDT: I have a couple of copies
17 here.
18 JUDGE MOSS: Would you please provide the
19 Applicant with a copy, and also Public Counsel and
20 Staff counsel. Do you have yet a third copy for your
21 own file there that you can share with Ms. Dixon and
22 Mr. Brooks?
23 MR. EBERDT: I will actually have to make
24 another.
25 JUDGE MOSS: Here, use this one. Let your

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1 colleagues there take a look at that. Any of the
2 parties have any objection? Mr. Van Nostrand.

3 MR. VAN NOSTRAND: Can I take just one
4 moment?

5 JUDGE MOSS: All right.

6 MR. VAN NOSTRAND: No objection, Your
7 Honor.

8 JUDGE MOSS: Okay. No objection from the
9 Applicants.

10 MS. DIXON: No objections.

11 MR. BROOKS: No objection.

12 MR. CROMWELL: No objection, Your Honor.

13 MS. JOHNSTON: None.

14 JUDGE MOSS: All right. Looking around the
15 room, I see or hear no objection, so we'll grant the
16 motion with respect to these three. With respect to
17 the Blue Mountain Group, as I was saying before, it
18 does strike me that, under the circumstances, we
19 might provide a little leeway on that and would
20 expect to hear one way or the other -- would it be
21 Tuesday or Wednesday of next week?

22 MR. EBERDT: Probably Wednesday. They meet
23 in the evening.

24 JUDGE MOSS: Does anyone have an objection
25 to proceeding in that fashion? Okay, fine. Thanks

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1 very much. And of course, if we receive any other
2 late-filed motions to intervene, then we'll deal with
3 those in due course in accordance with the guidelines
4 in our rules and regulations. Are there any other
5 preliminary motions that we need to consider this
6 morning? There appear to be none.

7 It almost goes without asking, I suppose,
8 but will the parties require discovery in this
9 proceeding?

10 MS. JOHNSTON: Yes.

11 MR. CROMWELL: Yes, Your Honor.

12 JUDGE MOSS: Is that under way? No, there
13 hasn't been discovery to date?

14 MR. FFITCH: Well, Your Honor, we have
15 initiated discussion on one matter with the company
16 that I was going to raise, but other than that, I
17 don't believe we've issued formal discovery yet.

18 JUDGE MOSS: Well, it is, of course,
19 appropriate to invoke the discovery rule in a general
20 rate case, and that will be done. What about a
21 protective order? Does the company perceive a need
22 for a protective order?

23 MR. VAN NOSTRAND: Yes, Your Honor.

24 JUDGE MOSS: All right. Does anyone else
25 have an objection?

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1 MS. JOHNSTON: No, Your Honor.

2 JUDGE MOSS: All right. It would be my
3 plan, then, to use the Commission's standard form of
4 discovery order, which is familiar, I think, to
5 everyone in this room, and that will be done next
6 week, along with the prehearing conference order.

7 MR. FFITCH: Your Honor, may I just raise
8 that discovery matter at this point?

9 JUDGE MOSS: Yes.

10 MR. FFITCH: We have initiated discussion.
11 This mic doesn't seem to be on, but I'll just talk in
12 a loud tone of voice.

13 JUDGE MOSS: We can all hear you. I can
14 certainly hear you just fine. I don't know why it's
15 not on. But you're quite right. It's not.

16 MR. FFITCH: In any event, we had initiated
17 a discussion with the company regarding -- well,
18 asking the company about running a cost of service
19 study, their cost of service study, using our inputs,
20 and that discussion is ongoing. We don't have a
21 dispute at the present time and we're hopeful that we
22 can work that out with them, but I just wanted to let
23 you know that that discussion was under way, and
24 unless we can't work it out, hopefully you won't need
25 to hear about it again.

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1 JUDGE MOSS: Okay. I apologize, but Mr.
2 ffitch has brought to my attention that this
3 mechanism is not on. And of course, the
4 teleconference bridge is supposed to be available
5 this morning for people to participate. So I'm going
6 to go off the record for a few minutes and check into
7 that with our meeting management people and see if we
8 can get that turned on in case there's someone out
9 there anxiously trying to dial in and participate.
10 I would not want to cut their rights off. We'll be
11 off the record.

12 (Recess taken.)

13 JUDGE MOSS: Let's go back on the record.
14 We had a brief recess to adjust our technology, and I
15 see the microphones are now on and the telephone
16 conference bridge is available. I did check with the
17 staff at our Commission's front desk and also the
18 staff in my section and ascertained that we have had
19 no calls in to inquire as to why the telephone
20 conference bridge was not available, so I suspect
21 we're in good shape, but the parties here will all be
22 aware of the fact that someone may have tried to
23 participate and been unable to do so due to this
24 problem, so we'll take that into account if it comes
25 up later that someone else who wanted to intervene

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1 wasn't here.

2 All right. We have invoked the discovery
3 rule. I've determined that the Commission will issue
4 a protective order, so we now turn to the fun part of
5 our morning, which is to establish a schedule for
6 this proceeding.

7 MS. JOHNSTON: Excuse me, Your Honor,
8 before we proceed to the setting of the hearing
9 schedule, I'd like to revisit the discovery issue.

10 JUDGE MOSS: All right.

11 MS. JOHNSTON: And I would request that
12 PacifiCorp be required to respond to data requests
13 within seven business days after receipt of those
14 requests.

15 JUDGE MOSS: How does PacifiCorp feel about
16 that?

17 MR. VAN NOSTRAND: I guess, Your Honor,
18 we'd like to see what the schedule is first. If it's
19 necessary to accelerate the turnaround time, for
20 example, during the rebuttal phase, I think
21 PacifiCorp would be agreeable to that. If it's
22 establishing from day one a seven-day turnaround
23 time, I'm not sure, given the amount of time that our
24 case has been on file and the amount of time since
25 the first round of hearing, that it's reasonable that

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1 times be accelerated in that manner.

2 So I guess I'd like to see what the
3 schedule of -- PacifiCorp is conducting rate cases in
4 four states. It's my understanding it's been very
5 difficult to get responses in less than the seven, in
6 the ten-business day turnaround time. So there is a
7 little bit of a problem in meeting that request. I
8 think we generally do all we can, but I guess if we
9 need to do a faster turnaround time in the rebuttal
10 phase, we'd certainly be open to that, but I think
11 we'd like to see what the schedule is and see if
12 that's warranted.

13 JUDGE MOSS: Does your request contemplate
14 seven business days or seven calendar days?

15 MS. JOHNSTON: Seven business days, Your
16 Honor. And I'd be willing to discuss this again
17 after we arrive at a hearing schedule, although my
18 concern is that the regulatory staff working on this
19 case is also obligated to work on and committed to
20 working on the Avista rate case, which is pending
21 before the Commission, as well.

22 JUDGE MOSS: Okay. Let's take a look at
23 our schedule first, and then we can decide if we need
24 to have some procedures in there for shortened time
25 frames. It's been my experience the parties do what

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1 they can to respond to discovery promptly, and
2 sometimes it becomes impossible to meet these
3 shortened schedules and it ends up creating a lot of
4 fuss when there might not need to be any. So let's
5 work with our schedule first.

6 Now, I will tell you that there was quite
7 an effort involved in trying to find some hearing
8 dates when we could have the Commissioners available
9 to us on the bench, and so I have fixed dates for
10 that, and we'll use those as benchmarks from which to
11 determine the balance of the schedule. Now, Ms.
12 Johnston, is it still Staff's desire to have two
13 rounds of cross-examination in this proceeding?

14 MS. JOHNSTON: Yes. Are the fixed dates
15 you're referring to July 31st through August 4th,
16 2000?

17 JUDGE MOSS: That is the -- those are the
18 dates for --

19 MS. JOHNSTON: The second set?

20 JUDGE MOSS: What would be the second
21 round. Or if we were only going to have one round,
22 we would do it then. And the earlier dates are April
23 24 through 28.

24 MS. JOHNSTON: Then, Your Honor, would this
25 be the appropriate time for me to make my record

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1 objecting to those dates?

2 JUDGE MOSS: Well, you can make your record
3 objecting to those dates, if you wish.

4 MS. JOHNSTON: Thank you. I do object to
5 those dates, given that the Avista rate case is also
6 pending and that the very same regulatory staff will
7 be working both cases. And under -- we have a
8 proposed schedule, which I will distribute,
9 surrounding those hearing dates that you proposed,
10 and for example -- it will prove very difficult. For
11 example, PacifiCorp will be required to prefile its
12 rebuttal case on July 5th under the schedule, and
13 regulatory staff will be crossed on July 10th. It's
14 about five days. And then, two weeks following the
15 cross of Staff in Avista, they will have to -- Staff
16 will have to ready itself to testify in the
17 PacifiCorp rate case.

18 And I just think the schedules are very,
19 very tight, and even appreciating the fact that we
20 have two pending rate cases and we all need to be
21 cooperative, I think that it's a very difficult
22 situation for Staff.

23 JUDGE MOSS: Well, I appreciate the
24 difficulty that it imposes for Staff. Of course, the
25 at least equally important difficulty is arranging

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1 time on the Commissioners' schedules for them to hear
2 the case. They do sit on the bench in these cases.
3 And as I mentioned at the outset, it required
4 considerable effort, in coordination with your
5 office, to establish hearing dates for this
6 proceeding that would work in conjunction with the
7 Avista proceeding. And it was my understanding that
8 that had been accomplished, that the last
9 communication I had from your office, not from you,
10 but from your office indicated that these dates would
11 work. And if that was not the case, it would have
12 been better to let me know before this morning.

13 If you have a proposed schedule, I will be
14 happy to receive it and ask that you distribute it to
15 the parties and we will consider it, but sitting here
16 this morning, I can't change these hearing dates. I
17 don't have the information available to me to do
18 that. So would you like to distribute that?

19 Now, I notice that this schedule that you
20 have put up here does include the hearing dates that
21 I've indicated, April 24th through 28th for the first
22 round of cross and --

23 MS. JOHNSTON: Yes, that's correct. We
24 built the hearing schedule around what we assumed
25 were already established, fixed hearing dates.

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1 JUDGE MOSS: Okay. Any other parties have
2 some comments on this proposed schedule? Mr. Van
3 Nostrand.

4 MR. VAN NOSTRAND: Your Honor, this was the
5 schedule that was discussed with Ms. Johnston, and I
6 think with representative for Public Counsel's
7 office. It's acceptable to us. I would like to go
8 beyond that and talk about maybe having some
9 discovery cutoffs to allow a quiet time, so to speak,
10 prior to the rounds of hearings, but this is
11 acceptable to us.

12 JUDGE MOSS: I think discovery dates are a
13 good idea, particularly in light of Ms. Johnston's
14 express concern about the Staff's preparation time.
15 That will probably facilitate things, if we can build
16 those dates in, as well. Let me ask if any other
17 party has a comment on the -- at least these elements
18 of the proposed schedule. Mr. ffitich.

19 MR. FFITCH: Your Honor, Mr. Van Nostrand
20 is correct regarding the discussions, that we do
21 support this proposed schedule.

22 JUDGE MOSS: Okay. Hearing no other
23 comments, it sounds as though these elements of the
24 schedule, at least, will work.

25 MS. DIXON: Your Honor.

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1 JUDGE MOSS: Go ahead, Ms. Dixon.

2 MS. DIXON: We'll work with the proposed
3 schedule. I would also like to back up what Staff
4 has said. We're involved in the Avista rate case, as
5 well, and the timing is going to be difficult, given
6 limited resources.

7 JUDGE MOSS: Sure. And of course, there's
8 always a lot of stress and strain in doing a general
9 rate case. This sort of thing happens.

10 MR. FFITCH: Your Honor, I have one other
11 matter on the scheduling, so that it doesn't slip
12 through the cracks, quite an important one. And that
13 is that we would request that public hearings be held
14 in the affected communities.

15 JUDGE MOSS: Do you have some suggestions
16 regarding how many and where, that sort of thing, or
17 do we need to work that out later?

18 MR. FFITCH: At this point, we would
19 propose a hearing in Yakima, a hearing in Walla
20 Walla, and understanding that we would work with the
21 Commission's public affairs staff on actual
22 scheduling. Those would be the evening, and probably
23 looking at scheduling them at some time either before
24 or after the second round of hearings.

25 JUDGE MOSS: I'll ask, of course, that you

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1 work with everyone else, too, in terms of
2 coordinating that scheduling. And particularly, the
3 company's indicated it's involved in proceedings in
4 four jurisdictions, and they'd have particular
5 personnel they'd like to have present at those public
6 hearings, so I'll ask you to coordinate that. And of
7 course, Staff's indicated and Ms. Dixon's indicated
8 certain constraints in terms of available staff and
9 what have you. So I think there will perhaps need to
10 be a high order of coordination in this instance,
11 also working with the public affairs staff to arrange
12 that. And I know from past experience that your
13 office will accommodate that need.

14 So we will defer scheduling those
15 particular dates and times until that discussion has
16 taken place. All right. So we have that matter
17 taken care of, and we need to build some discovery
18 dates in here, I think.

19 Does anyone have proposals for me, in terms
20 of discovery dates, or should we go off the record
21 for a few moments and let you all discuss that among
22 yourselves so that we don't spend a lot of time on
23 the record trying to hash through this date or that
24 date?

25 MS. JOHNSTON: That would be a good idea.

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1 JUDGE MOSS: Let's go off the record. I'll
2 stay present in the area, and so you all let me know
3 when you're ready and we'll go back on the record and
4 finalize the schedule at that time. We're off the
5 record.

6 (Recess taken.)

7 JUDGE MOSS: Let's go back on the record.
8 We've had a recess to allow the parties an
9 opportunity to work out some scheduling questions
10 with respect to discovery, perhaps other matters. So
11 I'd like to hear from a spokesperson with regard to
12 that. I understand that things have been worked out.
13 Who would speak to me about that?

14 MR. VAN NOSTRAND: I'll attempt to
15 summarize the agreement, Your Honor. We discussed
16 having a discovery cutoff prior to the first round of
17 hearings and decided, rather than doing that, the
18 objective would be not to have a data request
19 response due while we're in the hearing rooms.

20 So the agreement was that due date for any
21 data request response that would fall during the week
22 of hearings would automatically be extended by the
23 number of days of hearings.

24 Then, for the second round of hearings,
25 commencing on July 31, the parties agreed on a

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1 discovery cutoff date of July 19th, which would be
2 eight business days prior to the start of hearings,
3 which brings me to the turnaround time. The parties
4 agreed that the ten working days provided in the rule
5 would apply through July 5th, the prefiling of the
6 company's rebuttal, but July 5th -- following July
7 5th, the parties agreed to a seven-working-day
8 turnaround time for discovery responses, and I
9 believe even a 2:00 p.m. receipt time was established
10 on the seventh day.

11 Would that accurately summarize it, Ms.
12 Johnston?

13 MS. JOHNSTON: That's correct. Thank you,
14 Mr. Van Nostrand.

15 MR. VAN NOSTRAND: Are you okay with that,
16 Mr. Ffitch?

17 MR. FFITCH: Public Counsel concurs in that
18 agreement.

19 JUDGE MOSS: Okay. It does sound very
20 workable to me, and I appreciate the parties
21 undertaking the effort to establish that. Hopefully,
22 by the time we get to that seven-day turnaround, most
23 of the discovery will have been concluded, and so no
24 party will find itself particularly burdened by the
25 need to respond more quickly. But, of course,

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1 whatever happens happens, I guess. We'll see.

2 Now, of course, with respect to the
3 discovery, as always, I want to ask the parties and
4 encourage the parties to work cooperatively together
5 to accomplish the needs of discovery, and preferably
6 without the necessity of involving me. But I am
7 available, and I have found it workable in other
8 proceedings to resolve -- sometimes resolve these
9 matters by telephone conference when they come up.
10 And keep in mind, if you want to do it that way, that
11 my preference is to do that as an unrecorded
12 proceeding. I don't like to have to arrange for a
13 court reporter and all that to take care of a 15 or
14 20-minute discovery conference. So it's a bit
15 informal in that way.

16 If we do have the need for formal
17 resolution the parties wish to have on the record,
18 for whatever reason, you all let me know and we'll
19 schedule that. Typically I can conduct those without
20 the need for scheduling time with the Commissioners
21 on the bench, and they will allow me to proceed with
22 those decisions without their involvement in that
23 way. So we'll do whatever needs to be done to keep
24 the case moving and stay on top of things.

25 Again, we are constrained by various

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1 scheduling issues. And while it is unfortunate that
2 the regulatory staff and other staff support persons
3 for various parties will be significantly burdened by
4 the circumstances, it appears to be unavoidable in
5 this instance. The year 2000 will be marked as one
6 of interesting times, as the old Chinese curse says,
7 and we must live with them.

8 We do, of course, have the Applicant's
9 prefiled testimony and exhibits, as filed with the
10 application, so I would expect the discovery, which I
11 understand there's been some just sort of very
12 minimal effort to this point in time in that regard
13 -- I think that should be kicked off in earnest right
14 away, so that we don't run into any problems down the
15 line.

16 MS. JOHNSTON: I was mistaken, Your Honor.
17 Staff has issued some informal data requests.

18 JUDGE MOSS: Oh, good. Well, that's good
19 to know. Okay. Well, that's under way. And of
20 course, with respect to the protective order, the
21 parties are all familiar with the Commission's
22 standard requirements on the protective order, so go
23 ahead and proceed in that fashion, and I'll get that
24 order turned around for the Commissioners' signatures
25 early next week, and we'll get that out.

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1 And of course, the prehearing conference
2 order, I won't try to get that out this afternoon. I
3 think I'll let that slip into next week, so you'll
4 have that very soon. You all have the schedule,
5 anyway.

6 Let's see. What did we say -- let me look
7 at the schedule again. There was one issue on the
8 schedule that I wanted to raise. I see the
9 post-hearing briefs are scheduled for the 7th, and I
10 had put down on my calendar, in pencil, September 1st
11 for that. And I'm wondering if the extra week is
12 anticipated to really make a difference, since we do
13 have the separate AG counsel now on the two cases.

14 What about that, Ms. Johnston? Could we
15 move that back up to the 1st of September? I'll tell
16 you what my concern is. It's simply this. The
17 suspension date in this proceeding is November 1, and
18 the preferred practice in my division and in working
19 with the Commissioners on these decisions, which
20 requires a lot of coordination back and forth between
21 the two bodies, often requires the full eight weeks.
22 And one of the reasons for that, of course, is again
23 the Commissioners' schedules are tight, so we have to
24 work back and forth with them.

25 Would that be a terrible inconvenience to

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1 move that briefing date back by about a week?

2 MS. JOHNSTON: I'm reluctant to agree to
3 that, Your Honor. I think that we may need the
4 holiday weekend in order to prepare a brief that
5 would be of benefit to the Commission, although I
6 would be willing to set the briefing date earlier,
7 with the understanding that, depending upon how
8 things shape up, I may request an additional week.
9 Mr. Ffitch, do you have any thoughts?

10 JUDGE MOSS: Let me ask this. Do you
11 anticipate that -- let's go ahead and clear this up
12 now, I guess. Are you thinking in terms -- are the
13 parties thinking in terms of a single round of
14 briefs, all parties, simultaneous briefs, or was some
15 thought given to having initial and reply briefs?

16 MS. JOHNSTON: I made the assumption that
17 we would be filing simultaneous briefs. I don't know
18 if Mr. Van Nostrand --

19 MR. VAN NOSTRAND: I assumed that, as well,
20 Your Honor.

21 MR. FFITCH: Yes, Your Honor. I guess,
22 just to respond to the main question, we have a
23 concern in our office about having both counsel
24 available during the period of time prior to that
25 filing date to work on the brief. And if we move it

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1 back up into September -- you know, 1st of September
2 or right at the end of August, we have a problem with
3 having both people in the office to work on it. So
4 we would prefer sticking with this date, given that
5 they're simultaneous briefs.

6 JUDGE MOSS: All right. Well, I'm
7 persuaded, then, to leave it September the 7th.

8 MS. JOHNSTON: Thank you.

9 MR. FFITCH: Thank you, Your Honor.

10 JUDGE MOSS: As the horse in Animal Farm
11 said, I will work harder. All right. Then we'll
12 adopt the schedule that has been proposed this
13 morning, and I'm going to read that into the record.
14 We'll have a first round of cross with respect to the
15 company's direct April 24th through 28th, 2000. The
16 Staff, Public Counsel, and intervenor prefiled
17 testimony will be due June 12th. The Company's
18 rebuttal case will be filed July 5th.

19 Second round of cross-examination with
20 respect to the material not covered in the first
21 round will be July 31st through August 4th.

22 Simultaneous post-hearing briefs September 7th.

23 We will schedule some public hearings.
24 Public Counsel will work with the public affairs
25 staff at the Commission, and I'm going to request

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1 that -- I have requested they also coordinate with --
2 the Public Counsel also coordinate with the other
3 participants in the proceeding, and all of this will
4 ultimately run through me to the Commissioners, and
5 of course, they will no doubt want to be present and
6 we'll have to work with their schedules again, as
7 well.

8 There are some dates on the discovery and
9 some procedures on discovery that I will also
10 memorialize. To be sure that I understand them
11 correctly, I'll restate them. For the first -- with
12 respect to the first round phase, there will be no
13 cutoff for discovery during that period, but to the
14 extent a data request response would fall due during
15 the first round of hearings, the due date for that
16 response will automatically be extended by the number
17 of days the hearing requires.

18 With respect to points in time after that
19 first round, there will be a July 19th discovery
20 cutoff date, so there should not be data requests
21 after that date. And with respect to responses to
22 discovery, we will follow the standard ten
23 working-day rule through July 5th, and after that
24 date, seven working days will be allowed as the
25 turnaround time for responses to data requests with a

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1 2:00 p.m. receipt time on the seventh day. That
2 would be Pacific time.

3 All right. I'll write all that into the
4 order. One thing I neglected to do this morning,
5 which I usually do, is check with the Records Center
6 to see how many copies of filed documents need to be
7 submitted. I apologize that I did not bring that
8 information with me. However, I will include it in
9 the prehearing order. I think the standard is
10 original and 19. And what we try to do is reduce
11 that, if we can, although in one recent case, it's my
12 understanding it was expanded, so we'll see how that
13 goes.

14 I do ask that your copies, at least, be on
15 pre-drilled paper. I think we even have a
16 requirement about that, but if we don't, I'm asking
17 it. It really saves a lot of staff time, because we
18 keep everything in notebooks. Filings, of course,
19 must be made and directed to the attention of the
20 Commission's Secretary, at P.O. Box 47250, 1300 South
21 Evergreen Park Drive, S.W., Olympia, Washington,
22 98504-7250.

23 I want to remind the parties, as I always
24 do in these proceedings, that the Commission
25 encourages fact stipulations, as stated in WAC

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1 480-09-470.

2 Also, the Commission encourages alternative
3 dispute resolution and settlement discussions, as
4 memorialized in WAC 480-09-465 and 466. And the
5 Commission, of course, should be kept advised of any
6 progress you make in that regard. Is there any other
7 business we need to take up this morning?

8 MS. JOHNSTON: I don't believe so.

9 JUDGE MOSS: There being no indication of
10 that and my not thinking of anything, I thank you all
11 very much for being here this morning at the early
12 hour, and we will probably follow the 9:30 convention
13 from this point forward, unless we need to make some
14 adjustment during hearing.

15 Let me do ask one more thing. I knew there
16 was something else on my mind. Did the parties have
17 any sense that we will actually require five hearing
18 days in either round one or round two? I'm going to
19 keep the days scheduled. I just want to know for my
20 own informational purposes in terms of the number of
21 witnesses, and perhaps it's too early to guesstimate.

22 MS. JOHNSTON: I think it's too early for
23 Staff to know the answer to that question.

24 MR. FFITCH: I don't know, Your Honor.

25 MR. VAN NOSTRAND: I will suspect the five

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1 days will be necessary in round two, given we've got
2 Staff, intervenor, Public Counsel testimony, plus
3 Company rebuttal.

4 JUDGE MOSS: Yes.

5 MR. VAN NOSTRAND: I would be surprised if
6 we used the full five days, but that's up to their
7 cross.

8 JUDGE MOSS: Sure, sure. Planting a seed
9 there, are we?

10 MR. VAN NOSTRAND: Yeah.

11 MR. FFITCH: We have two lawyers now, too,
12 so --

13 JUDGE MOSS: No tag team lawyering. Okay,
14 fine. Is someone on the conference bridge line who
15 wishes to be acknowledged? Apparently not. I thank
16 you all for participating in your usual
17 highly-professional manner, and I look forward to
18 conducting this case with you. So thank you all, and
19 we'll be off the record.

20 (Proceedings adjourned at 9:55 a.m.)

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