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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 THE WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )

4 )  
Complainant, )

5 )

6 vs. ) DOCKET NO. UE-001734

7 ) Volume I

PACIFICORP d/b/a ) Pages 1 - 20

7 PACIFIC POWER & LIGHT, )

8 )

Respondent. )

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10 A prehearing conference in the above matter

11 was held on May 1, 2001, at 9:40 a.m., at 1300 South

12 Evergreen Park Drive Southwest, Olympia, Washington,

13 before Administrative Law Judge KAREN M. CAILLE.

14

The parties were present as follows:

15

16 PACIFICORP, by JAMES C. PAINE, Attorney at  
Law, Stoel Rives, 900 Southwest Fifth Avenue, Suite  
2600, Portland, Oregon 97204.

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18 WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by DONALD T. TROTTER, Assistant Attorney  
General, 1400 South Evergreen Park Drive Southwest,  
19 Post Office Box 40128, Olympia, Washington 98504.

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INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,  
by IRION A. SANGER, Attorney at Law, Davison Van Cleve,  
21 1300 Southwest Fifth Avenue, Suite 2915, Portland,  
Oregon 97201.

22

23 PUBLIC COUNSEL, by ROBERT W. CROMWELL, JR.,  
Assistant Attorney General, 900 Fourth Avenue, Suite  
2000, Seattle, Washington 98164.

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25 Kathryn T. Wilson, CCR  
Court Reporter

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P R O C E E D I N G S

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JUDGE CAILLE: Let's be on the record. We are here this morning for the first prehearing conference in Docket No. UE-001734. This is the Washington Utilities and Transportation Commission versus PacifiCorp doing business as Pacific Power and Light. This matter concerns tariff revisions which would allow PacifiCorp to charge a customer the costs associated with removing PacifiCorp's utility property from the customer's location when the customer changes utility service providers.

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My name is Karen Caille. I'm the presiding administrative law judge in this proceeding. The commissioners will also be sitting in on this, but they will not join us today, however. Today is May 1st, 2001, and we are convened in a hearing room at the Commission's offices in Olympia, Washington.

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Our basic agenda today is to take appearances, address petitions to intervene and any other preliminary motions, discuss the need for a protective order and for invoking the discovery rule, discuss the issues, if necessary, and then address process and a procedural schedule. Is there anything that anyone would like to add to that agenda?

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MR. PAINE: Nothing to add. My name is Jim

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1 Paine, Your Honor, and I'm appearing today on behalf of  
2 PacifiCorp. I would like to give a little background,  
3 if I could, when the opportunity presents itself after  
4 appearances have been taken.

5 JUDGE CAILLE: Why don't you begin with the  
6 appearances, and if you will, please state your name,  
7 whom you represent, your business address, your  
8 telephone number, your fax number, and your e-mail  
9 address.

10 MR. PAINE: James C. Paine, P-a-i-n-e, Stoel  
11 Rives Law Firm in Portland, Suite 2600, 900 Southwest  
12 Fifth Avenue, Portland, Oregon, 97204. My telephone  
13 number is (503) 294-9246. My fax number is (503)  
14 220-2480, and my e-mail address is jcpaine@stoel.com.

15 JUDGE CAILLE: Mr. Paine, I thought I copied  
16 from your card Suite 2300. Is it 23 or 26?

17 MR. PAINE: It's 2600. I'm appearing here  
18 today on behalf of PacifiCorp.

19 MR. SANGER: My name is Irion Sanger. I'm  
20 with the Industrial Customers of Northwest Utilities.  
21 My address is 1300 Southwest Fifth Avenue, Suite 2915,  
22 Portland, Oregon, 97201; phone number (503) 241-7242;  
23 fax, (503) 241-8160; e-mail, mail@dvclaw.com.

24 JUDGE CAILLE: Thank you. Mr. Trotter?

25 MR. TROTTER: My name is Donald T. Trotter,

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1 assistant attorney general. My address is 1400 South  
2 Evergreen Park Drive Southwest, P.O. Box 40128,  
3 Olympia, Washington, 98504-0128. My phone number is  
4 (360) 664-1189. My fax number is (360) 586-5522, and  
5 e-mail is dtrotter@wutc.wa.gov.

6 JUDGE CAILLE: Mr. Cromwell?

7 MR. CROMWELL: My name is Robert W. Cromwell,  
8 Jr. on behalf of Public Counsel. My address is 900  
9 Fourth Avenue, Suite 2300, State Mail Stop TB-14,  
10 Seattle, Washington, 98164-1012. My direct line is  
11 (206) 464-6595. My fax number is (206) 389-2058. My  
12 e-mail address is robertcl@atg.wa.gov.

13 JUDGE CAILLE: Is the mail stop something  
14 new?

15 MR. TROTTER: No. It's like a P.O. box.

16 JUDGE CAILLE: So is that necessary if we  
17 were to mail something?

18 MR. CROMWELL: No. Ignore that.

19 JUDGE CAILLE: Let's have Mr. Paine do some  
20 opening remarks.

21 MR. PAINE: I will address the fact that the  
22 notice indicated that at the time of the prehearing  
23 conference or before, PacifiCorp should file with the  
24 Commission and distribute to the parties its proposed  
25 direct evidence in support of its filing, and I will

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1 address that in a moment, if I may.

2           First I would like to mention though, as  
3 Mr. Trotter has stated, that this particular filing,  
4 depending on your perception, may be seen as the most  
5 important stranded cost filing in the State of  
6 Washington to date, or it may alternatively be seen as  
7 an effort to respond to a growing but not large problem  
8 faced by PacifiCorp in this case in Eastern Washington  
9 where a very aggressive electrical cooperative is  
10 soliciting and obtaining, convincing some of our  
11 customers to switch.

12           What we are seeking to do here is assess  
13 removal costs to those customers that switch, but there  
14 are concerns that are held by the protestants, the  
15 parties that have entered appearances here today, some  
16 of a philosophical nature, but more importantly, there  
17 is a question in the minds of some as to whether or not  
18 this filing violates a rate case plan and a stipulation  
19 that has been filed with the Commission in  
20 Docket No. UE-991832.

21           JUDGE CAILLE: Is that the PacifiCorp  
22 ScottishPower?

23           MR. PAINE: No. It was not the merger case,  
24 but it was a rate increase case that PacifiCorp filed  
25 with this commission, and it resulted in a stipulation

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1 in a rate case plan that described what types of  
2 filings the Company could make over approximately a  
3 five-year period and what it could not.

4           What I would propose to do is as follows:  
5 PacifiCorp will take the comments and concerns that I  
6 have gleaned from the other parties here today, and I  
7 would respectfully request that we be allowed to either  
8 file our direct evidence a week from Friday -- I  
9 believe that's the 11th -- or file a formal request to  
10 withdraw this filing, one or the other. We would also  
11 indicate that if we did, in fact, file on May 11th  
12 direct evidence in support of our filing that we would  
13 also, because the 10-month statutory time frame within  
14 which to process this case is running, we would make  
15 accommodations to make sure that either this is  
16 processed within the 10-month time frame or the Company  
17 would waive the 10 months to the extent that was  
18 required.

19           JUDGE CAILLE: Mr. Paine, are you finished?

20           MR. PAINE: I am, thank you.

21           JUDGE CAILLE: Would anyone else like to  
22 speak on this?

23           MR. CROMWELL: And surprising though it  
24 seems, I think I'm the only person in the room at  
25 counsel table that was actually involved in that rate

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1 case, which kind of stuns me at this moment in time.

2           For your information, that was the rate case  
3 presented to Judge Moss last year, and it was -- I  
4 believe procedurally we were halfway through an  
5 extended cross-examination hearing schedule when the  
6 parties were able to reach a stipulation and agree to  
7 resolve those matters.

8           JUDGE CAILLE: Thank you. I recall it now.

9           MR. CROMWELL: I certainly have no objection  
10 to Mr. Paine's proposal for a two-week extension of  
11 time for him to discuss this with his clients and  
12 determine whether they are either going to file  
13 testimony and direct evidence in this matter with the  
14 proviso and stipulation that they would extend the  
15 suspension deadline sufficient for all parties to  
16 establish a litigation schedule and get the matter  
17 before the commissioners in a timely fashion.

18           MR. SANGER: ICNU is not opposed to the  
19 proposal for the extension of two weeks.

20           MR. TROTTER: On behalf of staff, I likewise  
21 have no objection. I think Mr. Paine was correct when  
22 he said the Company would move to withdraw, if they so  
23 desired at that point, or file testimony. They cannot  
24 unilaterally withdraw. Then they need to get  
25 permission; is that correct?

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1 MR. PAINE: That's correct.

2 MR. TROTTER: We are satisfied that the  
3 Company's commitment to extend the suspension period to  
4 accommodate a reasonable schedule. So for those  
5 reasons, we can support the Company's request.

6 JUDGE CAILLE: Since we do not know whether  
7 we are going forward or not, I still would like to  
8 establish a procedural schedule, and obviously, if you  
9 withdraw, that will not occur, but because the  
10 commissioners are sitting on this matter, it's better  
11 to try to get hearing dates with them earlier rather  
12 than later. We have more options that way.

13 MR. TROTTER: Your Honor, might I make a  
14 suggestion at this point?

15 JUDGE CAILLE: Yes, go ahead, Mr. Trotter.

16 MR. TROTTER: If we are going to discuss  
17 schedule feeding off the May 11th distribution date,  
18 perhaps if you could give us hearing dates in the July,  
19 August time frame that the commissioners are available.  
20 We could go off the record, and the parties could  
21 propose something that works.

22 JUDGE CAILLE: So July, August.

23 MR. TROTTER: July, August, September. Or we  
24 can do it on the record.

25 JUDGE CAILLE: We'll go off the record for



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1 that, but prior to discussing scheduling, I do want to  
2 get through the petition to intervene and other  
3 process.

4 MR. CROMWELL: Your Honor, that reminds me.  
5 I did notice that on the notice for this prehearing  
6 conference, Mr. ffitch was identified for representing  
7 Public Counsel. I would ask that the Commission  
8 replace Mr. ffitch's name with my own.

9 JUDGE CAILLE: We have a petition to  
10 intervene from Industrial Customers of Northwest  
11 Utilities, and Mr. Sanger, do you have anything to add  
12 to your written petition?

13 MR. SANGER: No, I do not.

14 JUDGE CAILLE: Is there any objection by any  
15 party to the intervention of ICNU?

16 MR. PAINE: No objection.

17 JUDGE CAILLE: Hearing none, then I have  
18 reviewed the petition, and I believe it does meet the  
19 requirement of the Commission's intervention rules, so  
20 ICNU will be allowed to intervene in this matter. Are  
21 there any preliminary motions or substantive motions?  
22 Then I think the next thing we should look at is  
23 discovery. Is anyone going to want to have the  
24 discovery rule invoked?

25 MR. TROTTER: Yes.

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1                   JUDGE CAILLE: Commission staff has requested  
2 that the discovery rule be made available in this  
3 proceeding, and that process is outlined in  
4 WAC 480-09-480, and it will be available to you. I  
5 would ask the parties to please try to work out  
6 discovery matters, but if you have problems, please  
7 bring them to me at your earliest convenience and I  
8 will see that they are taken care of expeditiously. Do  
9 we need a discovery cutoff date? Maybe we need to know  
10 what the schedule is, so let's hold off on that.

11                   MR. CROMWELL: Your Honor, given that there  
12 is some potential that this might all be moot, I  
13 hesitate to estimate discovery issues. There was an  
14 issue that arose repeatedly in the rate case last year.  
15 In Public Counsel's data requests to PacifiCorp, we  
16 asked that they identify the witness who will be  
17 prepared to testify regarding responses to the data  
18 requests provided by the Company. That was a request  
19 that was repeatedly not provided, might be the most  
20 polite way to put it.

21                   That failure materially impedes our ability  
22 to prepare for trial and the cross-examination of  
23 witnesses, as you might imagine. I want to make a  
24 record of it here at this time so that if this case  
25 does go forward that the Company is sensitive to that

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1 issue and that we will insist by motion, if necessary,  
2 that they respond to our data requests, including  
3 identification of witnesses provided for  
4 cross-examination who will be able to respond to those  
5 issues identified in the data requests.

6 JUDGE CAILLE: Mr. Paine, do you have any  
7 remarks?

8 MR. PAINE: Well, I'm shocked that this  
9 occurred in the general rate case, but I can assure  
10 Mr. Cromwell we will make every effort to identify any  
11 witnesses that would be sponsoring any particular data  
12 response.

13 JUDGE CAILLE: I'm happy to hear that.  
14 Anything else about discovery? The next matter I would  
15 bring before us is whether or not there is going to be  
16 the need for a protective order in this proceeding.

17 MR. PAINE: Along those lines, frankly, I do  
18 not perceive a need for a protective order at this  
19 time. I would assume that basically, the thrust of  
20 discovery would be focused upon costs and proper  
21 accounts that they are to be recorded in and the  
22 determination of the costs, and I do not see anything  
23 of a proprietary nature that would be coming up.  
24 That's my initial reaction.

25 MR. CROMWELL: The only thing that I can

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1 contemplate would be possible discovery of cost  
2 analyses or other research that the Company may have  
3 done or had contracted done for them regarding  
4 associated costs to a competitive environment that they  
5 may feel sensitive about disclosing publically. I'm  
6 just trying to brainstorm what scope of discovery may  
7 push the boundaries and give the Company some pain.

8 MR. TROTTER: To the extent competitive  
9 issues are involved here, the Company may find itself  
10 in the position of asserting confidentiality. It makes  
11 sense to me to just issue the order, and if it doesn't  
12 need to be used, it won't be.

13 JUDGE CAILLE: Does anyone object to my  
14 having the Commission issue a protective order in the  
15 event we need one?

16 MR. PAINE: Not at all.

17 MR. CROMWELL: Provided it's the standard  
18 protective order.

19 JUDGE CAILLE: Sure. Then I will draw up a  
20 standard protective order and present it to the  
21 commissioners for signing.

22 Do we need to have a discussion of any issues  
23 today? I assume that the ultimate issue is whether  
24 this new tariff, the new tariff revisions are just,  
25 fair, reasonable, sufficient and in the public

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1 interest. Is there anything else that you would like  
2 to bring to everyone's attention so we do focus on...

3 MR. TROTTER: We have raised these issues  
4 with the Company, and some was discussed today that  
5 there may be an issue of discrimination and there may  
6 be an issue regarding compliance with the rate plan.  
7 Those could also be subsumed under public interest, but  
8 they are a little more specific.

9 MR. CROMWELL: I would concur, Your Honor,  
10 that the threshold question for our legal analysis  
11 would be whether or not the stipulation the Company  
12 entered into last year precludes, essentially as a  
13 matter of law due to the Commission's order adopting  
14 that stipulation, this type of filing absent the  
15 provisions in that stipulation, I believe, under  
16 Sections 9 and 11, which might arguably permit or  
17 arguably not permit this type of filing, and I think  
18 that's a matter that if the Company decides to go  
19 forward on the filing, I would have every confidence  
20 that the parties would agree on a motion, schedule,  
21 perhaps, that would, during the discovery period, allow  
22 us to present that issue to the Commission discreetly  
23 and not unduly delay or affect the rest of the  
24 litigation. I'm speaking solely for myself here, not  
25 having consulted with anyone else, but I see some

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1 nodding heads that it presents a fairly clean-cut  
2 question of the interpretation of the Commission's  
3 order and the stipulation that it adopted...

4 JUDGE CAILLE: I think the Commission would  
5 like to hear the parties' arguments in support of or  
6 against that threshold issue. Maybe what we'll do is  
7 just go ahead and set a schedule for that as well so we  
8 can take care of as much today as possible.

9 MR. CROMWELL: I suppose in that context I  
10 don't know other parties' feelings. I would think that  
11 perhaps an hour of the Commission's time -- I'm sort of  
12 brainstorming here -- to maybe take it like a Superior  
13 Court summary judgment approach in terms of the motion  
14 being filed, the Company's response two weeks after,  
15 the reply a week after that, and then a week or so  
16 after that an hour of the Commission's time to answer  
17 any questions or motions regarding it.

18 MR. PAINE: That type of a time frame would  
19 be perfectly satisfactory to us.

20 JUDGE CAILLE: One of the things I did not  
21 bring with me to the Bench is my calendar, so this  
22 seems an appropriate time for the parties to discuss  
23 schedule and the timing of that motion. I'm going to  
24 go get my calendar. I will also stop off at the  
25 commissioners' support staff and ask them for dates.

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1 How many days do you think we would need for hearing?

2 MR. PAINE: One.

3 MR. TROTTER: Assuming we are going on the  
4 standard format of one hearing for the entire case, I  
5 would set aside two, but I would think it could be  
6 handled in one.

7 MR. CROMWELL: Two days would probably be  
8 careful.

9 MR. SANGER: Two days would probably be  
10 better.

11 JUDGE CAILLE: We will get two days, and if  
12 we don't need them, the Commission will be very happy.  
13 We will take a brief recess, and I will let you folks  
14 discuss schedule. I will get my calendar and come back  
15 with possible hearing dates.

16 (Recess.)

17 JUDGE CAILLE: The parties have been off the  
18 record discussing the schedule, and they have agreed to  
19 the following schedule: The Company will file its  
20 direct testimony on May the 11th, and in addition to  
21 filing that testimony, the Company will also file a  
22 letter or some sort of argument that they are in  
23 compliance with the agreement in the PacifiCorp rate  
24 case, the stipulations that were entered in that case.  
25 Just dealing with that, anyone who is going to file a

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1 motion to dismiss based on an argument of  
2 noncompliance, or whatever argument, would do so by May  
3 the 24th.

4           After that, there will be an opportunity for  
5 a response by the Company followed by an opportunity  
6 for a reply by the movants, and we will allow up to  
7 seven calendar days for that response and reply. So  
8 that would mean that the latest the response would be  
9 would be May 31st and the reply would be June the 7th,  
10 but we are anticipating that it will be less time than  
11 that so that we can dispose of this issue.

12           Then for the remainder of the schedule, the  
13 period of June 18th through the 22nd is being reserved  
14 for a settlement conference. July 2nd, will be the due  
15 date for response testimony, and July 27th will be the  
16 due date for PacifiCorp's rebuttal testimony. Hearings  
17 will be held on August 16th and 17th. Initial  
18 simultaneous briefs will be due on October 2nd.  
19 Simultaneous reply briefs will be due on October the  
20 19th, and these are receipt dates. The order will be  
21 issued by November 20th, and the parties have agreed  
22 there will be a five-day turnaround for discovery,  
23 unless there is incomplete response. I'm not sure what  
24 the caveat was on that.

25           MR. TROTTER: I think it was best efforts



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1 based on five working days.

2 JUDGE CAILLE: So five working days, best  
3 effort. Mr. Paine, just for the record, if the Company  
4 does file its testimony on May 11th, you will be  
5 waiving the 10-month deadline out two weeks; is that  
6 correct?

7 MR. PAINE: It would be a little longer than  
8 that. This contemplates a Commission order by November  
9 20th, and we would waive the suspension period in view  
10 of that in contemplation of a November 20th Commission  
11 order.

12 MR. CROMWELL: Your Honor?

13 JUDGE CAILLE: Just a moment, Mr. Cromwell.  
14 Yes?

15 MR. CROMWELL: Much as it pains me to raise  
16 the issue, we should probably also set a pretrial  
17 conference for identifying exhibits. Perhaps August  
18 8th, which would give us roughly a week. Painful for  
19 us to do, but I know Ms. Moen would appreciate it.

20 JUDGE CAILLE: Actually, Ms. Moen is now  
21 going to be Chairwoman Showalter's assistant.

22 MR. CROMWELL: Alternatively, given that the  
23 hearings are at the end of the week that week, we could  
24 do it at the beginning of the week -- we were doing it  
25 on Wednesday for one-day hearings, which gave --

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1           JUDGE CAILLE: Part of that was in order for  
2 the commissioners to read it over the weekend. We  
3 could move it to later.

4           MR. CROMWELL: The 10th? That would give  
5 them the weekend. So August 10th for the pretrial  
6 conference, which is exhibit identification?

7           JUDGE CAILLE: Exhibit identification and  
8 exchange of cross-exhibits.

9           MR. CROMWELL: With the fervent hope that  
10 this will all go away.

11          JUDGE CAILLE: Any other business? Then I  
12 will just give you the reminders. On filings, we will  
13 need the original plus 15 copies for internal  
14 distribution at the Commission, and please remember  
15 that all filings must be made through the Commission  
16 secretary, either by mail to the secretary, WUTC, P.O.  
17 Box 47250, 1300 South Evergreen Park Drive Southwest,  
18 Olympia, Washington, 98504-7250, or by other means of  
19 delivery to the Commission's offices at the street  
20 address I just mentioned.

21          We require that filings of substance --  
22 testimony, briefs, motions, and answers -- include an  
23 electronic copy on a three-and-a-half IBM formatted  
24 high-density disk in PDF Adobe Acrobat format  
25 reflecting the pagination of your original. Also,

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1 please send us the text in your choice of Word 97 or  
2 later or Word Perfect 6.0 or later. Service on all  
3 parties must be simultaneous with the filing.  
4 Ordinarily, the Commission does not accept filings by  
5 facsimile, so please do not rely on that without prior  
6 permission from me.

7           The Commission will enter a prehearing  
8 conference order and protective order. The prehearing  
9 order will include requirements for witness lists and  
10 exhibit lists to be submitted shortly before the  
11 evidentiary hearings. The order will also remind the  
12 parties that the Commission encourages stipulations  
13 both as to facts and to issues that can be resolved via  
14 the settlement process or other means of alternative  
15 dispute resolution, and the Commission should be  
16 advised of any progress you make. Is there anything  
17 further that should come before the Commission today?

18           MR. TROTTER: I would ask if the Company  
19 could commit that if before June 11th it has decided  
20 what it's going to do that it notify the parties, so  
21 that if this case is to be litigated, we can get our  
22 data requests going.

23           JUDGE CAILLE: Before May 11th?

24           MR. TROTTER: Yes, sorry.

25           MR. PAINE: Yes, we would commit to do that.

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1 If we decide sooner than that, I will contact all  
2 participants here.

3 JUDGE CAILLE: Thank you very much. Thank  
4 you for coming today.

5 (Prehearing conference concluded at 10:40 a.m.)

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