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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

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COMMISSION

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WASHINGTON UTILITIES AND)

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TRANSPORTATION COMMISSION,)

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Complainant,)

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8

vs.)

DOCKET NO. UE-100467

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) DOCKET NO. UG-100468

10

AVISTA CORPORATION d/b/a)

Volume I

11

AVISTA UTILITIES)

Pages 1 - 65

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)

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Respondent.)

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A prehearing conference in the above matter

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was held on April 20, 2010, at 9:34 a.m., at 1300 South

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Evergreen Park Drive Southwest, Olympia, Washington,

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before Administrative Law Judge ADAM TOREM.

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The parties were present as follows:

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WASHINGTON UTILITIES AND TRANSPORTATION

21

COMMISSION, by MICHAEL A. FASSIO and GREGORY J.

22

TRAUTMAN, Assistant Attorneys General, 1400 South

23

Evergreen Park Drive Southwest, Post Office Box 40128,

24

Olympia, Washington 98504; telephone (Trautman), (360)

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664-1187.

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AVISTA CORPORATION, by DAVID J. MEYER, Vice

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President and Chief Counsel for Regulatory and

28

Governmental Affairs, 1411 East Mission Avenue, Post

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Office Box 3727, Spokane, Washington 99220; telephone,

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(509) 495-4316.

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NORTHWEST INDUSTRIAL GAS USERS, by CHAD M.

32

STOKES (via bridge), Attorney at Law, Cable, Huston,

33

Benedict, Haagensen & Lloyd, 1001 Southwest Fifth

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Avenue, Suite 2000, Portland, Oregon 97204; telephone,

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(503) 224-3092.

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Kathryn T. Wilson, CCR

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Court Reporter

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1 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
2 by S. BRADLEY VAN CLEVE, Attorney at Law, Davison Van
3 Cleve, 333 Southwest Taylor, Suite 400, Portland,
4 Oregon, 97204; telephone, (503) 241-7242.

5 PUBLIC COUNSEL, by SIMON J. FFITCH, Senior
6 Assistant Attorney General, 800 Fifth Avenue, Suite
7 2000, Seattle, Washington 98104; telephone, (206)
8 389-2055.

9 THE ENERGY PROJECT, by RONALD L. ROSEMAN,
10 Attorney at Law, 2011 14th Avenue East, Seattle,
11 Washington 98112; telephone, (206) 324-8792.

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

2 JUDGE TOREM: Good morning. It's a little
3 after 9:30 on Tuesday, April 20th, 2010. This is Judge
4 Torem, and this is the Avista general rate case. We
5 have two consolidated dockets. The first is UE-100467,
6 and the second is UG-100468.

7 On March 23rd of this year, Avista filed its
8 two different rate cases, one for electric, one for
9 gas. They are seeking revisions to their current
10 tariffs. On the electric side of the case, the
11 proposed revisions are seeking a general rate increase
12 of 55.3 million dollars, or about 13.4 percent. On the
13 gas side of the case, they are seeking an 8.5 million
14 dollar rate increase, or six percent for the gas
15 service.

16 The Commission has already suspended these
17 filings back on April 5th and consolidated the two
18 dockets on April 6th, and on April 8th, we issued a
19 protective order in the docket, so those items have
20 already been taken care of. This morning, I want to
21 take party appearances, talk a little bit about
22 discovery and intervention, and then we will get to the
23 meat of today's issue with setting the procedural
24 schedule. I also wanted to call party's attention to a
25 letter dated April 13th from the Company -- I think

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1 there was some warning it was coming -- as to very
2 small set of supplemental testimony from Mr. Lafferty,
3 and we will see if there are any objections to that
4 supplement at this early stage in the case, and then
5 perhaps discuss briefly how we handle supplemental
6 filings, if at all, the rest of the case.

7 We will talk a little bit about suggestions
8 for public comment hearings, and as long as Public
9 Counsel understands there may be a possibility due to
10 budget issues limiting travel for that on this set of
11 cases, and then we will handle a few other items as to
12 technical conferences and accounting exhibits and a
13 format for those to see if we can smooth things and
14 continue to learn and refine the process.

15 Let's shift now to appearances, and I'll ask
16 for the Company and then the parties from Public
17 Counsel and Commission staff, and then we will take the
18 proposed intervenors.

19 MR. MEYER: Thank you, Your Honor. Appearing
20 for the Company, and I will give you the long form of
21 appearance, David Meyer with Avista Corporation. My
22 address is PO Box 3727, 1411 East Mission Avenue,
23 Spokane, Washington, 99220-3727. Phone number is (509)
24 495-4316. My fax number is (509) 495-8851. My e-mail
25 address is david.meyer@avistacorp.com.

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1 JUDGE TOREM: For purposes of the service
2 list, Mr. Meyer, are there any other interested persons
3 you want us to insure are getting the communications in
4 this case?

5 MR. MEYER: I was going to take that up as a
6 procedural matter. In past cases, I think all parties
7 have found it useful to establish a longer service list
8 for service of DR's and responses to DR's, something
9 which wouldn't be the official service list because we
10 aren't going to serve our responses to DR's on the
11 Commission, obviously, but it was for purposes of
12 facilitating ongoing communication, and I think the way
13 we did that in the last case was each party provided up
14 to three or four additional names, and you may have
15 taken it upon yourself to publish such a list. If not,
16 I will be happy to do it.

17 JUDGE TOREM: The last list I had had Kelly
18 Norwood, Liz Andrews, and Joe Miller as receiving
19 electronic service of a variety of items.

20 MR. MEYER: That list would change for this
21 case. I can give you the names if you like, or we can
22 just circulate a piece of paper and everybody could add
23 to that and provide it to you.

24 JUDGE TOREM: Why don't we do that, and even
25 if you want to submit an e-mail today and copy to the

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1 rest of the parties, and I can forward it to my staff
2 and ask them to make sure that anything we send out
3 will go to those folks as well. Let me turn to
4 Commission staff.

5 MR. TRAUTMAN: Thank you, Your Honor. Greg
6 Trautman, assistant attorney general for Commission
7 staff. My address is 1400 South Evergreen Park Drive
8 Southwest, Olympia, Washington, Post Office Box 40128,
9 zip code, 98504. My telephone number is (360)
10 664-1187. My fax number is (360) 586-5522, and my
11 e-mail address is gtrautma@utc.wa.gov.

12 MR. FASSIO: Michael Fassio, assistant
13 attorney general on behalf of Commission staff, same
14 address and fax. My phone is (360) 664-1192, and
15 e-mail is mfassio@utc.wa.gov.

16 JUDGE TOREM: Public Counsel?

17 MR. FFITCH: Good morning; thank you, Your
18 Honor. Public Counsel will appear through lead counsel
19 Sarah Shifley, and I will also be an attorney on the
20 case. My information is 800 Fifth Avenue, Suite 2000,
21 Seattle, Washington. The phone number is
22 (206) 389-2055, and the e-mail address for me is
23 simonf@atg.wa.gov.

24 The phone number for Ms. Shifley is (206)
25 464-6595, and I apologize, Your Honor, I don't have her

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1 e-mail with me today, so I would have to supply that
2 separately. The fax number, subject to confirmation,
3 from memory is (206) 464-6251. We would request the
4 opportunity to add additional staff names to the
5 service list as was discussed, and I need to confirm
6 who those would be with my own staff. If I could
7 provide those no later than tomorrow, that would be
8 appreciated, Your Honor.

9 JUDGE TOREM: Let's have those additional
10 service requests sent to me by close of business
11 tomorrow, and I will aim to get the prehearing
12 conference order out Thursday morning.

13 We have some petitions for intervention. On
14 April 8th, the Northwest Industrial Gas Users filed
15 their petition, and on April 13th, the Industrial
16 Customers of Northwest Utilities filed their petition
17 to intervene, and I see that Mr. Roseman is here today
18 to verbally petition to intervene for The Energy
19 Project. Let me start with Northwest Industrial Gas
20 Users, and Mr. Stokes or Mr. Brooks?

21 MR. STOKES: Mr. Stokes is on the phone.
22 Chad Stokes from the Cable Huston Law Firm representing
23 the Northwest Industrial Gas Users. Address is 1001
24 Southwest Fifth Avenue, Suite 2000. That's in
25 Portland, Oregon, 97204-1136. Phone number is

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1 (503) 224-3092. The fax number is (503) 224-3176. My
2 e-mail is cstokes@cablehouston.com.

3 Tommy Brooks will also be appearing for the
4 Gas Users. His address and phone number are the same.
5 His e-mail is tbrooks@cablehouston.com.

6 JUDGE TOREM: Mr. Stokes, if you will send me
7 a confirmation e-mail as to Mr. Schoenbeck and
8 Ms. Pyron if you want them served with items as well.

9 MR. STOKES: Will do; thank you.

10 JUDGE TOREM: For ICNU, I see Mr. Van Cleve
11 is here.

12 MR. VAN CLEVE: Yes, Your Honor, Brad Van
13 Cleve appearing on behalf of the Industrial Customers
14 of Northwest Utilities. I'm with the firm Davison Van
15 Cleve, PC. My address is 333 Southwest Taylor Street,
16 Suite 400, Portland, Oregon, 97204. My telephone
17 number is (503) 241-7242. Fax number is (503)
18 241-8160. My e-mail address is mail@dvclaw.com, and
19 also appearing with me will be Irion Sanger, and his
20 contact information is the same.

21 JUDGE TOREM: Thank you. Mr. Roseman? When
22 you make your appearance, Mr. Roseman, for efficiency
23 sake since I don't have the reasons that The Energy
24 Project thinks it should intervene, could you state
25 those as well for the record?

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1 MR. ROSEMAN: I will be glad to, Your Honor.
2 My name is Ronald Roseman, and I am appearing on behalf
3 of The Energy Project. My office is Ronald Roseman,
4 Attorney at Law, 2011 14th Avenue East, Seattle,
5 Washington, 98112. My telephone number is
6 (206) 324-8792. My fax is (206) 568-0138, and my
7 e-mail address is ronaldroseman@comcast.net.

8 The Energy Project is a nonprofit
9 organization that represents low-income customers and
10 community action agencies in matters before the UTC.
11 The Energy Project has participated in rate cases with
12 this company for many years. It is primarily concerned
13 with the increase in rates that would substantially
14 affect the affordability of energy to those low-income
15 customers who are on fixed or limited income.

16 In this proceeding, I think The Energy
17 Project would be focusing on the low-income rate
18 assistance program and the low-income energy efficiency
19 program but also would be joined with possibly other
20 parties to address some of the issues that would have
21 an impact on possible increase in rates, and that's the
22 reason.

23 JUDGE TOREM: Thank you. Mr. Meyer, let me
24 turn to you and see on the petitions for intervention
25 now, we have two that were filed in writing in advance,

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1 and you've heard Mr. Roseman's assertions about his
2 client's substantial interests. Does the Company have
3 any objections to these petitions?

4 MR. MEYER: No, I do not.

5 JUDGE TOREM: I will grant the petitions for
6 Northwest Industrial Gas Users, ICNU, and The Energy
7 Project. Turning to discovery next, in Order 1, we
8 invoked our formal discovery rules. I wanted to see if
9 at this time the parties wanted to make their normal
10 request of shortened response periods for data
11 requests.

12 In past, the response time has been reduced
13 on party request to seven business days, that being
14 triggered by the filing of response testimony, and then
15 a further reduction in response time to five business
16 days after the rebuttal filing. Is that something that
17 the parties want to do in this case?

18 MR. TRAUTMAN: Staff would request that it be
19 done in this case as well.

20 MR. MEYER: Your Honor, could we hold that
21 question until we decide on how long the intervals are
22 between the filing dates, and that, of course, will
23 depend upon our scheduling discussion.

24 JUDGE TOREM: Are any other parties in favor
25 of that at this time or wishing to bring it up later?

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1 MR. FFITCH: Your Honor, Public Counsel has
2 no objection to that concept in general, discussing it
3 later.

4 JUDGE TOREM: We will work that in with our
5 scheduling items. One thing I want the parties to
6 consider is whether or not it would be useful to have a
7 discovery cutoff date after which you might not need to
8 worry about items coming in right before hearing,
9 whether that would help or hinder the process.
10 Commission is interested to see, we have not seen
11 discovery disputes that we've had to decide, but we
12 have heard rumblings of I couldn't get ready for
13 hearing because I had a lot of things to respond to,
14 and that's coming from both sides of cases in the past.
15 Not necessarily with Avista but in other energy rate
16 cases, so it's something to consider. I don't need an
17 opinion on it now, but if it would be useful for all
18 sides, we might have an agreed discovery cutoff date.

19 MR. FFITCH: Are we still on discovery? I
20 had a matter to raise.

21 JUDGE TOREM: Please.

22 MR. FFITCH: There is a carry-over issue in
23 this rate case from the previous case with respect to
24 the prudence of the Lancaster purchase agreement, and
25 we would like to request that all of the discovery

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1 materials and the testimony that was provided into the
2 record for the last case on the Lancaster issue be
3 agreed to be made part of the record in this case.

4 JUDGE TOREM: The testimony has been made
5 part of the record in the previous docket. The
6 discovery materials have not necessarily been made part
7 of the record, and only those that were marked and
8 perhaps admitted as cross-exam exhibits have even come
9 to the attention of the Commission, so I'm not sure if
10 yours is a two-part request, one for the Commission to
11 take official notice of the record in the prior case
12 regarding Lancaster, and second, to seek an agreement
13 from the Company to continue to make available for
14 making Public Counsel's case, or for consistent
15 statements or inconsistent statements, a look at
16 anything that was disclosed to Public Counsel in the
17 past. Is that the nature of the request?

18 MR. FFITCH: Yes, Your Honor, I think that's
19 well stated. I would agree that with respect to
20 discovery that was not tendered for the record, that
21 would be a matter for us to take up with the Company.

22 I guess I'm asking the Company at this point
23 whether there is going to be an issue with simply
24 treating that discovery as if it has been propounded in
25 this case, and we would expect to issue a data request

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1 to the Company along those lines, and then there would
2 be a second step if we felt it was necessary or
3 appropriate to offer that into the record in this case.
4 We would do that. The other material that's already
5 part of the record, we would ask that that be made
6 without objection part of this record by official
7 notice.

8 JUDGE TOREM: I think that the Commission
9 would want a particular listing of the documents you
10 wish to be made part of the record here for either
11 motion or official notice purposes. That way, all
12 parties would exactly what it is and was not being
13 bootstrapped into this particular record. With that in
14 mind, let me ask the Company its general reaction to
15 the response, particularly as to not what's already
16 part of the record. I think that one is easy for us,
17 but how we might best facilitate what was previously
18 tendered in the last rate case to not have you
19 responding and duplicating paper or electronic exhibits
20 in this case. How would that best work for the Company
21 to accommodate Public Counsel's request to the extent
22 you find it reasonable?

23 MR. MEYER: I think the best approach would
24 be to make the discovery request in this case,
25 identifying those discovery items that you would like

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1 to have reproduced in response to Lancaster rather than
2 just a broad-brush request, give me all of your
3 discovery that we responded to in the last case.

4 If Public Counsel could be a little more
5 targeted or a little more selective in what items they
6 would like to bring forward rather than just
7 reproducing everything and thus burdening this record,
8 perhaps, with things that are not pertinent at this
9 point. I think a little discipline around the process.
10 We are happy to respond and happy to work with Public
11 Counsel to bring into the record those pertinent
12 Lancaster items.

13 JUDGE TOREM: Do you have any objection to
14 Mr. ffitich crafting one discovery request that covers
15 the past and existing Lancaster discovery requests?
16 Maybe we can identify them by DR number and ask you to
17 confirm or indicate any changes to the previous
18 responses given, and if you would have no changes
19 essentially to say incorporate what we did before.
20 Mr. ffitich, would that work for you?

21 MR. FFITCH: Yes, Your Honor, that's
22 precisely the approach we took in, I believe, the Puget
23 Sound Energy case where we had a similar issue and had
24 exactly that type of request, and we had a continuing
25 request to update or correct the DR's that have already

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1 been provided, so it's actually not particularly
2 burdensome. We already have all the answers from the
3 last case.

4 JUDGE TOREM: But again, the idea is to make
5 sure the Company has notice as to what is coming into
6 this case so there is not any undue surprises at
7 hearing from a DR that wasn't formally made part of the
8 record or brief, something being argued that they
9 didn't have a chance to digest.

10 So if you will as far as the DR's go submit
11 something to the Company that identifies all of those
12 at least by number from the past case that you wish to
13 have items and answers confirmed or any changes thereto
14 noted, I think that would be within the rules of
15 discovery that we've already invoked.

16 As for items from the records from Docket
17 UE-090134, the most previous rate case decided late
18 last year, then I think if you would indicate those
19 exhibits by number and have a motion to make them part
20 of the record in this case, it will give other parties
21 a chance to object, or perhaps you could circulate that
22 in draft form and obtain their agreement, then we can
23 adopt those and make them part of the record in this
24 case, whether they be Bench exhibits or just official
25 notice Bench exhibits, so you can think about that and

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1 make a suggestion how to handle those since they
2 wouldn't necessarily be testimony offered, prefiled
3 testimony, but they are something from another case.

4 MR. MEYER: It could be a fairly long laundry
5 list of items we are being asked to look at, and with a
6 ten-business-day response, especially if you are asking
7 us to supplement our response, that would be fairly
8 cumbersome as a year has passed. So we are going to
9 need more than ten days to cull through this list and
10 determine if we have any objections or any
11 supplementation. There is just too much there to
12 digest.

13 JUDGE TOREM: Given what you know about your
14 staffing and the extent of the Lancaster record in the
15 prior rate case, how many days do you think is
16 reasonable.

17 MR. MEYER: I think we need to double that to
18 20 business.

19 JUDGE TOREM: Mr. ffitch, if you could
20 propound those sooner rather than later, would 20
21 business days work for that particular item?

22 MR. FFITCH: I'm not persuaded this is
23 necessary for the Company, Your Honor, but at this
24 point, it probably would work. I don't have any reason
25 to know one way or the other, frankly. The situation,

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1 obviously, that Public Counsel is facing, the prudence
2 issue in the Lancaster case was fully litigated in the
3 previous docket, and ultimately the decision as to the
4 prudence was deferred for this docket, so we want to
5 avoid having to reinvent the wheel or having the Bench
6 or other parties having to reinvent the wheel to the
7 extent possible.

8 JUDGE TOREM: We appreciate that, but it may
9 prove burdensome for the Company. I'm not particularly
10 familiar with the discovery practice from your office
11 to the Company, but it does sound as though going back
12 at this stage and double-checking things might be
13 somewhat burdensome depending on the number, and I'll
14 encourage Mr. Meyer and his staff to do it as quickly
15 as they can and send things off, if necessary, in
16 piecemeal so your office can begin to understand the
17 lay of the land this time around and if any changes
18 have occurred from what was previously litigated and
19 established, but if 20 days will work for you, then
20 we'll take this as the record creating the agreement
21 between Public Counsel and the Company on that
22 particular discovery request, but the other ten-day
23 rule would remain in effect for every other discovery
24 request under this docket number.

25 MR. FFITCH: I guess, Your Honor, I would

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1 prefer to have the Company just ask for more time if
2 they need it as with any other data requests. We have
3 always been willing to work with the Company on DR's,
4 and I'm reluctant to agree to an extension right now
5 when they haven't seen our requests. It may be
6 perfectly doable within ten days. But if the Bench --

7 JUDGE TOREM: I thought I heard your
8 agreement earlier. Let's let you file the request, and
9 if Mr. Meyer determines based on the timing of your
10 request and staff available that more time is needed, I
11 will count on the two of you to work it out on some
12 reasonable basis, and if nothing else, we've broached
13 the issue, and if you need to get me involved, please
14 let me know.

15 MR. FFITCH: Thank you, Your Honor.

16 JUDGE TOREM: Any other discovery questions?

17 MR. MEYER: Was it also the Chair's intent to
18 take official notice of the entire record in the last
19 case with respect to Lancaster?

20 JUDGE TOREM: Not necessarily. I'm asking
21 Mr. ffitich to file a motion as to Lancaster to identify
22 all those exhibits Public Counsel thinks we should take
23 official notice of in this case. If Staff or if the
24 Company has other documents you think are left off of
25 that list, I encourage you to work with Mr. ffitich to

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1 say if we are taking official notice of this, we need
2 to take official notice of that so if there is an
3 agreed motion from the parties to remind the Commission
4 what has already been done and specifically considered
5 again in this case and made part of the record here,
6 because what was done in the last rate case, while it
7 certainly influences what's here to create a formal
8 record, we don't need to bootstrap those items in, and
9 I prefer to do it with a laundry list that's very
10 detailed, not just blanketly refer to the other record.
11 If there is any appeal of the ultimate decision in this
12 case, the reviewing court certainly won't want to read
13 the entire record and figure out what's relevant.

14 MR. MEYER: There inlies part of the problem
15 is that for sure, neither the Company nor do I believe
16 Staff would want selected pieces brought forward and
17 incorporated into this record unless you had the
18 entirety of the record, including transcript
19 information pertaining to this --

20 JUDGE TOREM: That may be a task of going
21 down the exhibit list that was filed in that matter and
22 looking at the transcripts, what we think dealt with
23 Lancaster in pretty discreet days, and calling out
24 those items in the motion. You can cut and past from
25 the exhibit list on Lancaster. Here are the relevant

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1 cross-exam exhibits. These are the item numbers. I
2 don't think it will be that burdensome, but I don't
3 want the entire record of the past rate case with all
4 the other issues interwoven to be dragged into this
5 one.

6 MR. MEYER: I just wanted a clear
7 understanding that it's not just what Public Counsel
8 wants. It's what all parties want and if you are going
9 to bring forward anything related to Lancaster.

10 JUDGE TOREM: I agree, and I do believe the
11 intent of Mr. Ffitch's is to have some efficiency so as
12 not having to resubmit all those items again but just
13 make reference to them.

14 MR. MEYER: Thank you.

15 MR. FFITCH: We will be happy to work with
16 Mr. Meyer and share our list before we file a motion,
17 and maybe we can get a stipulation on what that all is.

18 JUDGE TOREM: Given that Commission staff
19 will also want to put forward a case on this matter,
20 please share it with them as well.

21 MR. FFITCH: We will do that.

22 JUDGE TOREM: Any other questions on
23 discovery or the record in the past case and its
24 relation to this one? Seeing none, let's take a look
25 at the procedural schedule. I know Mr. Fassio has

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1 handed around a list of dates. I don't know if the
2 other parties have had a chance to contribute to this,
3 but Mr. Fassio and Mr. Trautman, if you will explain
4 the process by which this was reached, and then I want
5 a chance to explain why one of those dates is going to
6 be problematic.

7 MR. TRAUTMAN: The dates you are saying the
8 process by which our --

9 JUDGE TOREM: I want to know if anyone has
10 agreed to this, if anyone.

11 MR. TRAUTMAN: On our schedule, we've had
12 agreement from NWIGU and ICNU. I think I know which
13 date you are going to stay is problematic, but maybe
14 you can identify that.

15 JUDGE TOREM: When I look at the proposal,
16 and for the record, it notes the March 23rd filing date
17 from the Company. It notes today's prehearing
18 conference date, and it also notes based on the e-mail
19 I sent to all parties the week of November 1st through
20 5th as the Commission's preferred hearing dates.

21 As I shared with Mr. Trautman, the reason for
22 that early November date was to insure the following
23 week might be available as a fall-back. However, that
24 does have not only an open meeting but the Veterans Day
25 holiday. The following week is unavailable in November

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1 due to the Commissioners' attendance at NARUC, and then
2 we hit the Thanksgiving holiday, and the Commissioners
3 did not want the hearing pushed to December, so
4 unfortunately, that's the first and only full week in
5 November available.

6 The in-between dates are proposed for a
7 settlement conference, August 11th and 12th, with a
8 responsive testimony from Staff and Intervenors on
9 September the 10th. Rebuttal from the Company and
10 cross-answering testimony from other parties would be
11 due on this schedule on October the 4th with another
12 settlement conference post-rebuttal on October the
13 12th. Again, the hearing would be November 1st through
14 5th.

15 As all of you know, there is an issue as to
16 furlow dates that have been proposed by the budget out
17 of the legislature, and we anticipate that that's going
18 to be signed by the governor. These furlow dates may
19 or may not be something the Commission is impacted by.
20 At this time, I've been instructed not to allow any
21 filing dates, not even to consider any filing dates
22 that occur in a week where a furlow occurs, so I cannot
23 allow the date of September the 10th to occur because
24 one of the statutory filing dates is going to be
25 September the 7th.

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1 The reason it's a problem, so the parties can
2 understand, is a number of us here at the Commission
3 are not normally overtime eligible. On a date when we
4 have a one-day layoff, a variety of employees, the
5 extent of which is not known, become overtime eligible,
6 and the Commission doesn't want to go backwards by
7 laying somebody off to save money and then paying them
8 three times as much when the bust their chops to get a
9 filing date met, so I've been instructed that will not
10 occur, so that will impact the September 10th date.

11 MR. TRAUTMAN: The earliest that Staff could
12 agree to, or we would propose then the prior week, and
13 I would propose September 2nd only because the 3rd is a
14 Friday before a holiday, but September 2nd for the
15 filing date, and in that case, if September 2nd is the
16 date, then Staff doesn't have an objection to going
17 back to September 27th if that works for the Commission
18 on the rebuttal.

19 JUDGE TOREM: Let me ask the Company what its
20 overall response to the proposed dates from Staff were
21 and if they had any issues with the hearing dates as
22 late as November from the Company's perspective.

23 MR. MEYER: Yes. In fact, I had circulated
24 to all the other parties and I'll provide to you a copy
25 of Avista's proposed schedule.

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1 MR. FFITCH: May I approach also, Your Honor?

2 JUDGE TOREM: Yes. Mr. Meyer, it looks like
3 from what you're distributing that you are looking for
4 Staff and Intervenor testimony on August the 18th with
5 a rebuttal filing with a longer interim period of
6 October the 4th and that Mr. ffitch as far as these two
7 key dates are is looking at a week later for responsive
8 testimony of August 23rd with rebuttal testimony on
9 September 27th.

10 MR. MEYER: If I could give you a little
11 background in terms of how we developed at least the
12 Avista schedule, and you are right. At this point,
13 there is no agreement. We appreciated the guidance you
14 provided in your April 8th e-mail to all the parties
15 when you set forth the November hearing dates, and you
16 also provided some guidance there with respect to a
17 filing date either in late July or early August for
18 Staff and Intervenors and a possible rebuttal date of
19 September 27th for the Company, and so we worked with
20 those intervals based on your guidance, and originally,
21 we had proposed a schedule consistent with that, and
22 through discussions with the parties, we tried to find
23 some common ground, and that resulted in not agreement
24 but in Avista revising its proposal to delay somewhat
25 the Staff and Intervenor filing date from late July or

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1 early August to August 18th in order to hopefully get
2 agreement. We were not successful in getting
3 agreement, but this was as far as we were willing to
4 push it.

5 I think that August 18th date should provide
6 sufficient time for Staff and Intervenors to pull
7 together a case, and it's two weeks after what you had
8 suggested. Also, it provides an interval between Staff
9 and Intervenor testimony and the Company's rebuttal to
10 allow for meaningful settlement discussions, which I
11 had penciled in for September 1st and 2nd, and also
12 then with the Company rebuttal on October 4th, that
13 would still provide some time for yet a final attempt
14 at settlement on October 12th through the 13th.

15 I will leave for later discussion this date
16 of July 12th that you see up there that has to do with
17 possible supplementation of the filing for later
18 discussion, but I just wanted to give you the basic
19 architecture of this. I will note in any event, there
20 are two things that are very important to the Company.
21 One is that all briefing be completed by December 6th.
22 I know that is also consistent with what Staff has
23 represented here, and we are not in favor of a reply
24 brief. We think simultaneous briefs due on or before
25 December 6th would be appropriate.

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1 The second major concern with Staff's
2 proposal is they would otherwise shorten the interval
3 between Staff and Intervenor cases and the Company's
4 rebuttal to some three weeks, and that simply isn't
5 enough time. There is no reason given where we are at
6 in this process why we can't create a schedule that not
7 only provides at least four weeks, if not five weeks,
8 for the Company to digest the Staff and Intervenor
9 filings and prepare a rebuttal but also to provide
10 enough of a window there for settlement discussion, so
11 that's also another feature that's very objectionable
12 to what Staff proposes.

13 So the short of it is this process, given the
14 cutoff on briefing on December 6th and given this
15 Commission-stated preference for another six weeks for
16 it to write a decision and issue that decision, still
17 results in a process that would be a ten-month process,
18 not an 11-month but a ten-month process, and it's the
19 Company's belief that given that cutoff on briefing,
20 that this is doable, it's reasonable, and in fact no
21 reason why this case can't be processed during that
22 time frame providing enough breathing spaces between
23 these dates for meaningful settlement discussions.

24 JUDGE TOREM: Mr. Trautman?

25 MR. TRAUTMAN: Staff objects very much to the

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1 proposed schedule that the Company has put out. This
2 schedule because of the necessity for the November 1st
3 hearing date and then the Commission's desire to have
4 five weeks before that as the deadline for rebuttal
5 testimony has made this schedule already severely
6 truncated, very shortened compared to previous cases,
7 and even with the date we had originally proposed for
8 Staff testimony, which would have given Staff
9 five-and-a-half months for filing, that's much shorter
10 than last year's case, and I believe it's shorter than
11 previous cases.

12 JUDGE TOREM: That should be expected to be
13 the trend, Mr. Trautman.

14 MR. TRAUTMAN: I'm just saying from Staff's
15 perspective to file in August. Furthermore, we have
16 many people, I think quite understandably on Staff who
17 are working on this case who are taking vacations in
18 July and August in various parts of the month. We
19 would very prejudiced by an early filing date of August
20 18th.

21 Furthermore, Staff doesn't see any reason why
22 the Company needs seven weeks to file rebuttal, which
23 is the amount of time that the Company has in their --
24 there is six-and-a-half weeks from August 18th to
25 October 4. We've never had that amount of time to file

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1 rebuttal in any of the cases that I've been in. In
2 fact, we've generally had about three-and-a-half to
3 four weeks to file rebuttal, which is what we have in
4 Staff's proposed schedule.

5 So Staff would object very much to an August
6 filing date, and it will be an impediment to Staff's
7 ability to present their case.

8 JUDGE TOREM: Let me hear from Mr. ffitch on
9 his proposed schedule.

10 MR. FFITCH: Thank you, Your Honor. I'll
11 probably add more complexity to this discussion. First
12 of all, I want to make a statement for the record on
13 behalf of Public Counsel with respect to our
14 participation in this case. Due to severe budgetary
15 restraints, we may not be in a position to present
16 expert testimony in this proceeding, and so that is
17 going to have an impact on the way in which we present
18 issues and also in our scheduling proposals, but I want
19 to state that for the record and state also for the
20 record that we reserve the right to present issues in
21 other ways during the case, including taking positions
22 only in the posthearing briefs, which has been
23 permitted by the Commission in other cases, if that
24 becomes necessary. We would also look for other
25 opportunities to present issues through exhibits and

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1 cross-examination and other means that are permitted
2 within the Commission rules.

3 With respect to our schedule specifically,
4 Your Honor, this was crafted in an effort to stick
5 within the constraints we were given by the Bench. We
6 are sensitive to Staff's concerns. However, as you can
7 see from looking at our schedule, we end up being
8 closer to what the Company has proposed on a number of
9 these dates. I won't go into specific dates right now;
10 that's not real productive, but we are comfortable with
11 a rebuttal testimony date of September 27th. We agree
12 that there should be settlement discussions between
13 responsive testimony and rebuttal testimony.

14 It is important to Public Counsel that there
15 be an adequate gap between rebuttal testimony and
16 hearing. That is specifically important to us this
17 time because if we are going to be presenting issues
18 more at the hearing rather than through testimony, we
19 would need more time to prepare. The current schedule
20 of rebuttal testimony on the 27th and hearings on
21 November 1st through 5th is adequate in our view for
22 that purpose.

23 The other point I wanted to draw to your
24 attention is we are requesting the file to reply a
25 reply brief. Because our advocacy in this case may be

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1 more reliant or briefing, we would request the
2 opportunity for all parties to file reply briefs. The
3 date we've chosen still leaves approximately six weeks
4 for the Commission to make a decision after the final
5 brief comes in, according to my calculations here, so
6 that's why we very strongly request the opportunity for
7 all parties to file a reply brief, and frankly, Your
8 Honor, in the past, the Commission itself has indicated
9 to parties in a number of previous rate cases over the
10 years that they've found it helpful to have reply
11 briefs, so it's not just -- perhaps it's a win-win in
12 that regard. Maybe I'll stop at this point, and we can
13 dicker about the individual dates and intervals, but I
14 don't know if that's productive in this setting.

15 JUDGE TOREM: I've heard the concerns of the
16 parties, and I think what I will do is go back, as I
17 got the initial direction from the commissioners, and
18 sit down with the commissioners and policy staff and
19 articulate on your behalf the reasons and show them
20 these proposed schedules and see what their reactions
21 are and accommodate what I can in the prehearing
22 conference order that you will see on Thursday.

23 I appreciate the flexibility that's been
24 expressed as to if this won't work than this might, but
25 I'll bring those concerns, and I will note for

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1 Commission staff to make sure that Staff is not pressed
2 too hard not only with the furlow days but with summer
3 staffing, as you said, Mr. Trautman, so that concern
4 has been raised. To the extent it can be, it will be
5 honored. We understand your budgetary restraints this
6 cycle, Mr. Ffitch, and that sounds like one of the key
7 reasons to request a reply brief. I will see if the
8 commissioners find that that will be helpful in this
9 particular case. It may even be that they reserve that
10 for hearing to see what sort of case is put on and
11 reserve the right to alter the briefing schedule and
12 adapt it from just if they choose at this point
13 simultaneous briefs to hear again from the parties to
14 see if there is any modification to the briefing
15 schedule.

16 So I pitch it back to you, and if it doesn't
17 come out Thursday as you request, I ask that you put
18 that to the commissioners again toward the end of the
19 hearing process, and we will see if they have changed
20 their minds if they haven't already seen it your way.

21 MR. FFITCH: Thank you, Your Honor. If I
22 may, I neglected to make another point in discussing
23 our schedule, which is we examined the schedule of our
24 staff over this time period very carefully, and there
25 are some conflicts, and if you would like those dates,

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1 I can give them to you. Our schedule that we've
2 proposed avoids any problems with that, but the second
3 week of August is a blackout week for myself.

4 JUDGE TOREM: Is that the week of the 9th or
5 the 16th?

6 MR. FFITCH: Week of the 9th. Then either
7 September 6th through 24th or September 13th through
8 30th are problematic dates. There is some lack of
9 availability during that time period.

10 MR. MEYER: So essentially the entire month,
11 the 6th through 30th?

12 MR. FFITCH: It's a three-week period, 6
13 through 24 or 13 through 30, so there is flexibility
14 there, so we've indicated we can deal with dates early
15 in September.

16 JUDGE TOREM: Thank you. I appreciate
17 knowing those.

18 MR. FFITCH: That would not preclude the
19 September 27th testimony deadline though.

20 MR. MEYER: Nor would it preclude question
21 for Public Counsel under Avista's proposed schedule a
22 settlement conference on September 1st and 2nd, would
23 it?

24 MR. FFITCH: No. We had that in mind.

25 MR. VAN CLEVE: Thank you, Your Honor. I

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1 just wanted to point out that the Company has proposed
2 a date to supplement their direct case, and I'm not
3 sure how you are going to rule on that, but I do know
4 it's been fairly common in previous cases for some form
5 of supplementation to at be least attempted.

6 These filings, especially on an issue like
7 power costs, can often be very extensive, almost whole
8 new cases, whole new model runs, and that can often
9 require several additional rounds of discovery to
10 really understand and respond to that case. So if, in
11 fact, supplementation is allowed as late as the middle
12 of July, I think that would argue for a later date for
13 the responsive testimony.

14 JUDGE TOREM: Thank you, Mr. Van Cleve. I
15 was going to turn to that and have Mr. Meyer explain
16 that date and what he thought it might entail, and then
17 we can hear from Mr. Trautman as to any other concerns
18 that that might throw into the loop.

19 At this point, I don't want to invite
20 supplemental filings, but it's an elephant in the room
21 that's not going to be ignored, and it's not as if the
22 parties haven't been watching other utilities and
23 what's been going on in those cases, but the Commission
24 has sent a message in the last few orders as to when a
25 case has to be made what the burden is on the company

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1 making the case and recognizes that a sense of
2 certainty has to be had at some point, and the
3 Commission is trending earlier and earlier, but we
4 recognize also that we don't want to harm the company
5 as to sufficient rates where the ratepayers as to
6 something that's just if there are wildly fluctuating
7 markets for these commodities particularly gas prices.

8 If you look at the history of where these
9 supplemental filings came from, it goes back ten years
10 to the energy crisis and when markets were unstable.
11 It appears that commodity prices have settled down.
12 There aren't the wild swings. At some point, we have
13 to say that this is the case. So I'll let Mr. Meyer
14 with that in mind explain what might come in in July,
15 and I'll take that matter back to the commissioners for
16 incorporating into the schedule as an expected date or
17 a cutoff date or perhaps again, any party can file
18 whatever motions its thinks are necessary or relevant.

19 MR. MEYER: Thank you. The addition of this
20 date for possible supplementation was really a
21 constructive effort to highlight an issue that you've
22 just discussed, and whether you call it an elephant in
23 the room or just a practical reality of processing a
24 case and providing the most current information, which
25 I believe the Commission wants. It wants current

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1 information and it wants correct information. I assume
2 that to be the case, and there is of course always a
3 balance between updating a case and concerns over
4 ability of parties to review that, and I do appreciate
5 your comments. We've read carefully the most recent
6 Puget order where you elaborated on that as well as our
7 previous order.

8 So in an attempt to anticipate an issue
9 that's going to be there at some point in any event, we
10 built into the schedule a date, and I characterize this
11 as possible supplementation of our direct filing,
12 because we don't know -- the supplementation could take
13 one of several forms. First of all, through the course
14 of discovery, we may discover that there are some
15 errors in our case, and we, as we've done in the past,
16 want to point those out so the record is accurate. So
17 there would be a reason to correct those errors where
18 we know them to exist in time for Staff and Intervenors
19 to pick those up in their direct case.

20 I've built in a five-week interval between
21 July 12th and August 18th believing that's a pretty
22 fair interval, trying to strike a balance between not
23 doing it too soon and not having enough information at
24 hand to do a decent job of supplementing it, but on the
25 other hand, pushing it back too close to their

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1 testimony and not giving them enough time to look at
2 it, so five weeks seems about right to the Company, so
3 it could be, for example, correcting for errors.

4 It also could be to supplement with
5 additional documentation surrounding capital items, and
6 as you know, because I'm sure you've looked at our case
7 and participated in the previous case, the Commission
8 was concerned there was not enough evidence of record
9 to support capital additions, and we've tried to
10 address that in spades in our original filing, but we
11 would like to be able to bring in any additional
12 information into the record at that time that would
13 supplement what we already filed. So at least we can
14 bring as current as we can the information that we
15 have.

16 Now ordinarily through the audit process,
17 Staff and other interested parties would appear on our
18 doorstep, look through our records, or do it through
19 discovery what additional capital documentation we have
20 there and then reach an appropriate judgment, but I
21 think the Commission would like to see that just not as
22 something the Staff looks at but actually brought into
23 the record so the Commission can see that, so that's
24 another area where we thought it might prove beneficial
25 to the Commission to bring that evidence forward.

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1 Then the last area that immediately comes to
2 mind is there may be some power supply matters as we
3 roll forward in time that we may want to reflect. I
4 don't know. I'm not going to even hazard to guess if
5 there would be a correction for gas prices at some
6 point or not. Those things are volatile, but those are
7 examples of things that come to mind.

8 What I don't want to do is have this
9 discussion on July 13th, the day after we do this, and
10 there are a flurry of motions that come before you
11 saying, Whoops, all bets are off on a procedural
12 schedule. The Company should be asked to delay or
13 agree to waive the suspension period so we can reset a
14 schedule because now this new stuff is coming in, and I
15 want to avoid that discussion. I want to give
16 everybody a heads-up now on the record that there may
17 be this stuff coming in so when the Commission sets the
18 schedule, we are not having to reargue that point.

19 So again, it's anticipating an issue that's
20 probably going to be there, and I'm trying to find a
21 sensible solution. Thank you.

22 JUDGE TOREM: Let me turn to Commission
23 staff, and while I think of it, I had Mr. Stokes on
24 mute, so I don't know if Mr. Stokes has been following
25 along and wanted to interject. Mr. Stokes, are you

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1 still there?

2 MR. STOKES: Yes, Your Honor.

3 JUDGE TOREM: I'm sorry. We had you on mute.

4 Did you want to interject anything regarding the

5 schedule for this proposal for possible

6 supplementation?

7 MR. STOKES: We don't agree that a built-in

8 date for supplemental testimony should be placed in the

9 record for the Company, and the proposals by either

10 Staff or Public Counsel are acceptable from our

11 perspective.

12 JUDGE TOREM: Let me turn to Mr. Trautman and

13 get his impressions at this point as to the possible

14 supplementation and any other issues that had to deal

15 with the schedule.

16 MR. TRAUTMAN: As for putting a definite date

17 for, quote, possible supplementation of the Company's

18 direct filing, Staff would oppose that. It is true

19 that in some past cases there has been updates to power

20 supply costs, and also I believe two cases ago to make

21 simple corrections and calculations.

22 What Mr. Meyer is referring to is an issue

23 that Staff is very concerned with, and that is the

24 Company made their filing on March 23rd. They had a

25 test here. They have all the information, expenses,

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1 liabilities, assets, but if you put this date into the
2 record, it arguably creates an expectation now that in
3 every rate case we are going to have updates with a
4 host of capital additions that Staff would then be
5 expected to individually audit at a late date and
6 include that in the Company's case, which gets to the
7 whole issue of what's a proper pro forma adjustment and
8 should all these additions be required to be
9 individually considered, particularly at a late date,
10 by Staff.

11 Staff objects very much to the notion that
12 this type of date should be put into the formal record
13 which would again create the need for Staff, because
14 they would be the party that would do the auditing, of
15 all of these additions to the Company's case. That's
16 far more than simply making corrections to calculations
17 or perhaps doing an update on what the cost of fuel is.
18 So Staff objects very much to having a supplementation
19 date formally placed into the record.

20 JUDGE TOREM: Any other parties wishing to
21 comment on this item?

22 MR. FFITCH: Yes, Your Honor. Public Counsel
23 supports Staff's position on this. Notwithstanding the
24 representations of Mr. Meyer, this appears to attempt
25 to institutionalize the problem that the Commission has

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1 indicated that it wants to try to minimize,
2 institutionalizing a moving target approach to rate
3 case filing.

4 The breadth of the modifications of the case
5 that we've heard from the Company are troubling to us
6 as well as to Staff. We note, of course, that by
7 filing essentially a new case or chunks of a new case
8 in June that the statutory time line that is allowed to
9 the Commission and other parties to review a rate case
10 is severely cut down, which is quite problematic.

11 The Company is in control of the timing of
12 its rate case filings, and if it is not prepared to
13 file accurate and complete case, it can wait until it
14 has the correct numbers and the full information to
15 support its request, and it can file at that time, and
16 Public Counsel is concerned that what we are starting
17 to see is a rush to get in the door with a new rate
18 case filing to start the clock running followed by sort
19 of makeup behavior where some of the gaps are filled in
20 and some of the missing information is provided later
21 for the record to the prejudice of other parties'
22 abilities to respond, and we think that's a misuse of
23 the process. So the burden should be on the Company to
24 have a complete and accurate filing from the get-go in
25 our view.

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1 The only other thing I would add is to say
2 for the record, we object to any filing which leads to
3 the Company requesting a revenue requirement which is
4 higher than their initial tariff filing without
5 amending the tariffs accordingly, and we believe that's
6 a violation of the requirements of Title 80.

7 JUDGE TOREM: I understand Public Counsel's
8 position.

9 MR. MEYER: Your Honor, I need to take strong
10 exceptions to at least portions of Public Counsel's
11 statement that paints with a broad brush and
12 inaccurately characterizes what Avista filed. Avista
13 didn't rush to file something with gaps in it that it
14 hopes to correct later on. There was nothing in my
15 prior commentary that suggested that was the reason for
16 the supplementation.

17 It was to correct for any subsequent errors
18 that we might discover for the benefit of all parties.
19 It was to update information, and it was to provide in
20 response to the Commission's own directives on the
21 record additional information supporting our
22 adjustments. This is not to remedy a deficient filing
23 at all, so we take strong exception to that
24 characterization of that is what this is all about.

25 JUDGE TOREM: I think this is useful to

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1 illustrate the quandary that supplemental testimony
2 presents not only for the Company to consider filing
3 but for the parties to respond to it. Mr. Roseman?

4 MR. ROSEMAN: I guess that's what I was going
5 to address is while there might be some benefit, trying
6 to prepare a case with limited resources, which my
7 client has, and it now appears that many others at the
8 table unfortunately are in that situation too, but
9 trying to prepare and have a witness review testimony
10 and then go through it again, it adds tremendously to
11 the cost, and it makes it very, very difficult for
12 organizations like mine, and like I said, now to a
13 larger group.

14 I think the Commission needs to balance all
15 these needs, we are to say, this is my recommendation,
16 we are to bring in and say that this is litigation.
17 This is not a moving target that just changes
18 periodically. I think we need to have a date certain
19 and we need to move forward. Otherwise, the cost and
20 the impediment to providing intervenors due process is
21 very, very severe.

22 JUDGE TOREM: Thank you, Mr. Roseman. This
23 is an issue that I will sit down with the commissioners
24 and policy staff and look at whether we do want to
25 incorporate into the schedule a cutoff date for

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1 supplemental testimony or not.

2 Some of the questions that also arise are on
3 occasion, we will get a settlement agreement which does
4 incorporate by agreement of the parties supplemental,
5 factual situation, so we are wary of setting a cutoff
6 date, but I do appreciate, Mr. Meyer, the Company's,
7 the way they've characterized this as possible
8 supplementation and teeing up the issue for discussion
9 this morning. I can't give you any ruling, but I
10 wanted to have the opportunity and be generous with the
11 court reporter's fingers this morning and get all of
12 this down so that the Commission has an opportunity to
13 really consider how it wants to move forward on this as
14 a policy not only in this rate case but in all of our
15 similar proceedings.

16 Let me turn now to a more specific question
17 about supplemental filings. You all received on April
18 13th, the date of the letter, two proposed exhibits
19 from Mr. Lafferty, RJL 6-T and RJL 7, and these were
20 reasonably modest in scope and size in addition to the
21 Company's case filed about two or three weeks earlier.
22 Are there any objections to these being made part of
23 the offer that will become part of the record in this
24 case?

25 MR. TRAUTMAN: No objection from Staff.

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1 MR. FFITCH: Your Honor, I would request one
2 business day to respond to that. We haven't fully
3 reviewed those yet.

4 JUDGE TOREM: Have you fully reviewed any of
5 Mr. Lafferty's couple of binders?

6 MR. FFITCH: No, Your Honor.

7 JUDGE TOREM: I don't see how this is going
8 to prejudice you then. I'm looking for a procedural,
9 not a substantive. I'm not admitting these into the
10 record. This is a question of has it really factored
11 in by getting them three weeks after the initial filing
12 any prejudice to you, and I won't grant you any more
13 time. You will have to let me know your objections now
14 or not.

15 MR. FFITCH: No objection, Your Honor.

16 JUDGE TOREM: Any other party wanting to
17 object to this filing? Technically, we require a
18 motion for supplemental testimony, but I understand
19 this was called out initially and is not unexpected,
20 and I don't hear any parties saying they are
21 prejudiced, so I will, and I'll put this in the
22 prehearing conference order, treat it as though a
23 verbal motion had been made here today, and those will
24 be allowed to come in to supplement the record.

25 Let's turn to public comment hearings.

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1 Mr. ffitch, you had indicated the level of
2 participation from the Public Counsel division of the
3 AG's office might be limited by the budget. One other
4 item that we are not sure of is whether our ability to
5 travel as a Commission will affect holding public
6 comment hearings in Spokane or local areas. There is a
7 possibility that the Commission will not be able to
8 fund travel or may be able to fund less travel, such as
9 having just one commissioner travel with an ALJ and our
10 public involvement staff. We are working on that now,
11 and we want to make sure we do the right thing by all
12 the members of the public that might be affected by
13 this. Does Public Counsel have a request as to public
14 comment hearings in this docket?

15 MR. FFITCH: Yes, Your Honor. Public Counsel
16 would request a minimum of one public comment hearing
17 in the Avista service territory. Given the
18 Commission's constraints and recent experience in the
19 last two or three cases with attendance issues, we
20 believe that Spokane is probably the best location in
21 the evening if there is only going to be a single
22 hearing. We would recommend that that be held in
23 September or October after Labor Day for a better
24 chance of attendance than a summer hearing. Again,
25 evening hearings, our recommendation is that it start

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1 no sooner than six p.m. because of giving people time
2 to get there after work.

3 In terms of the Commission availability, we
4 don't have any objection to alternative approaches,
5 Your Honor. Either fewer commissioners or having a
6 hearing held by an ALJ is not objectionable to Public
7 Counsel. We think that, of course, it's optimal to
8 have the commissioners there, as many as possible, but
9 given the budgetary constraints, we don't have any
10 objection to an alternative approach. We do think it's
11 important to have a live hearing in Avista's territory
12 in Spokane of some type.

13 JUDGE TOREM: Any other parties have concern
14 or comment on the public comment hearing process?

15 MR. TRAUTMAN: Public Counsel's suggestion
16 sounds very reasonable to Staff.

17 MR. ROSEMAN: The only thing from my
18 observation and from conversations with various people,
19 I believe having at least a commissioner present to
20 listen to customers' testimony and to recognize what
21 they are saying. I know you can read the cold record,
22 but at least having one person there with the ALJ would
23 be my recommendation.

24 JUDGE TOREM: I think that's the general
25 feeling coming from the commissioners. I can reassure

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1 you that they've tried -- I believe it was in a
2 PacifiCorp case -- the experiment of being by telephone
3 here and having an ALJ sit in Yakima with an attorney
4 general representative from Mr. ffitich's staff, and
5 that was less than optimal, particularly with the
6 television camera focused on you as a figurehead and
7 wondering the responses were coming from far away. I
8 don't think they found that satisfactory nor did the
9 Commission and Public Counsel representatives sitting
10 in Yakima find that particularly comfortable.

11 So for the dignity of the folks coming in to
12 testify, I think having an actual decision-maker in
13 front of them is what we are going to be aiming for
14 until the budget cuts are so severe that it becomes
15 impossible.

16 MR. ROSEMAN: Thank you.

17 JUDGE TOREM: I will get with the
18 commissioners and hope to have all of them there in the
19 Spokane area for at least one public comment hearing.
20 If budgetary issues change or they desire to have more
21 than one hearing, I will let the parties know.

22 The only other items I wanted to call to your
23 attention today, and then I will hear if there are any
24 others from the parties, are, number one, the
25 accounting exhibits we've asked for, and I think we are

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1 making progress trying to avoid the Bench request from
2 our accounting expert, Mr. Twitchell, having to say
3 that he can't get into spreadsheets or can't make
4 things function.

5 You will see the language again in the
6 prehearing conference order requiring the parties to
7 follow not only what's in 480-07-510, but to get the
8 formatting such that it's accounting-friendly among all
9 the parties. There may be a need for each party's
10 accounting experts to have a technical conference with
11 Mr. Twitchell at some point, and for that type of
12 procedural ex parte communication, that is authorized.
13 You don't need to go through me for that.

14 Mr. Twitchell's schedule here at the
15 Commission is limited to Mondays, so if we need to
16 coordinate that by e-mail, please work directly with
17 Mr. Twitchell on setting up any conference calls to
18 discuss the procedural nature of what's going on with
19 formulas in a spreadsheet and what may or may not be
20 working, and I'll ask Mr. Meyer to go back and look at
21 the accounting exhibits that have been previously
22 submitted, and if those need to be resubmitted to
23 comply with the prehearing conference order, please do
24 so.

25 As for the other parties presenting a revenue

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1 requirements case, please make sure you follow those
2 per books numbers and start your case from there, and
3 you will see the explicit show-your-work requirements
4 that will recall your fourth- or fifth-grade math
5 teacher and praying for partial credit in your more
6 advanced math classes. This is the kind of thing we
7 need to make it easy for all of us to understand.

8 And that leads to the last point I have is a
9 possibility that the Commission may choose to conduct a
10 technical conference both prehearing and post briefing.
11 What I will try to do is if the commissioners want to
12 follow through on this idea that's floating around the
13 Commission based on a most recent experience, and if
14 that has its roots in the last Avista rate case where
15 we've tried to sort out the partial settlement and some
16 conflict between numbers as to what was in the
17 settlement and what was in the Company's position and
18 understanding what was going on behind the curtains, it
19 might have been helpful for the parties to have the
20 Commission's expert policy staff and accounting staff
21 review those numbers not for an advocacy purpose but
22 simply for an understanding purpose.

23 So you may see the revival of the technical
24 conference in the 2010 rate case cycle, and given that
25 Avista is the first one in the door here, we may have a

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1 technical conference after rebuttal and an opportunity
2 for you to settle items so that the Commission
3 understands where the numbers are and how they work
4 before we walk into the hearing room the first week in
5 November. It may also be necessary after hearing
6 testimony and seeing how that comes out in briefs to
7 have a posthearing and post briefing technical
8 conference, but again, these are not intended to be
9 opportunities for advocacy whatsoever, but simply for
10 clarification. So that's what those will be if you see
11 them in the proposed final schedule that we set for the
12 case.

13 MR. MEYER: Avista is obviously wanting to
14 help in any way, so we don't have any objection to that
15 process and would encourage it if it helps clarify
16 things.

17 I just wanted to clarify with respect to
18 conversations with Mr. Twitchell, the Bench has no
19 objection to us simply calling him directly and saying,
20 "Mr. Twitchell, what are the problems you have to date,
21 if any," and having a one-on-one conversation in that
22 regard.

23 JUDGE TOREM: I think it's probably
24 preferable if you are going to schedule such a call to
25 schedule it as a conference call where other parties

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1 have the opportunity to listen and understand what his
2 needs are in anticipation of theirs. So again, I don't
3 need to be involved with that and honestly don't care
4 to be involved with that, but I want to make sure that
5 the ex parte communications are procedural in nature,
6 and I trust Mr. Twitchell's professionalism enough to
7 know on substance that stays on our side of the ex
8 parte wall.

9 On procedure on where the spreadsheets are
10 linked or not linked, it's much easier for him to
11 communicate that directly to your accounting experts
12 and to the other parties than it is for me to
13 understand his needs on Excel and then communicate
14 those secondhand to you. That hasn't always worked.
15 Something has been lost in the translation.

16 MR. MEYER: It quite possibly happened here
17 on my end. That helps clarify it, and we will just
18 make sure that we e-mail the other parties when we are
19 going to try to set up something with Mr. Twitchell.

20 Is it necessary for us to initiate the call
21 right away? Are there issues that you are aware of?

22 JUDGE TOREM: I have not been made aware of
23 any issues to date.

24 MR. MEYER: Hopefully, Mr. Twitchell will
25 return the favor and call us directly with those other

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1 parties if he has some issue.

2 JUDGE TOREM: We talked about that briefly
3 yesterday and I think he's on the line today, so I
4 expect some communication from him, and he and I will
5 work out the way for him to communicate with all the
6 parties as well to let them know if he has a question
7 and if there is a need for scheduling a phone call
8 that's mutually agreeable. Mr. Trautman?

9 MR. TRAUTMAN: You had earlier raised the
10 issue of discovery intervals. Are you going to decide
11 that now?

12 JUDGE TOREM: No. I would like to hear what
13 the parties, if there is a need for discovery cutoff or
14 a desire for one.

15 MR. TRAUTMAN: Staff would not be in favor of
16 that.

17 MR. MEYER: I would, and I have a suggestion
18 to make since you raised it. As we approach the date
19 for hearing, people need to get focused on final case
20 preparation, and I think that assuming that we have the
21 sort of intervals that at least the Company and I think
22 even Public Counsel have suggested, that provides
23 enough breathing time where it can accommodate a
24 discovery cutoff prior to the date of hearing, because
25 I think that there is in excess of a month, even under

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1 the most restrictive view of that and public counsel's
2 draft here. It's almost five weeks, so if we could
3 have a discovery cutoff prior to hearing.

4 Now, this is cutoff for the request, not the
5 answer, but just the request of 14 days prior to
6 hearing. Then I would like to couple that with a
7 request that we do shortened response periods, but not
8 at seven days, five days, but at seven days and seven
9 days. That is to say, seven days between when Staff
10 and Intervenor file their case, seven-day response
11 period, and because we have the same interval from when
12 we file to when the hearings are that we use the same
13 seven-day response period, not a five-day period,
14 unless Staff's proposal for only a three-week interval
15 for us to put together a rebuttal case is adopted, not
16 a case where we need to further reduce that to a
17 five-day period, so it would be a seven and a seven-day
18 turnaround.

19 JUDGE TOREM: So your hypothetical would have
20 a cutoff date for discovery requests on or about Friday
21 the 15th of October or Monday the 18th, depending on
22 how one counts that, for requests to be made, and a
23 seven-day response period means that discovery
24 responses, the cutoff would be on the 18th, the last
25 response could come in the Monday before hearing on

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1 October the 25th, if I understand you correctly.

2 MR. MEYER: Yes. That way it gives us a week
3 to turn to case preparation.

4 JUDGE TOREM: So it's essentially a two-week
5 cutoff before the hearing on asking for discovery and a
6 one-week turnaround, meaning that you have one full
7 week where nothing is coming in or going out and it's
8 just a focus on case preparation.

9 MR. MEYER: Exactly.

10 JUDGE TOREM: With that in mind, let me turn
11 to Mr. Trautman and Mr. Ffitch.

12 MR. TRAUTMAN: Again, Staff is opposed to a
13 discovery cutoff. The rebuttal case, even under the
14 Commission's September 27th date, is fairly late in the
15 game, and Staff needs to have sufficient time to read
16 through that and make discovery requests and perhaps do
17 follow-up discovery based on what the Company's
18 response is to the initial discovery request, but in
19 any event, two weeks prior to the hearing seems far too
20 long, and Staff again doesn't see any reason why we
21 should not adhere to the ten, seven, five-day rule that
22 we've used in all the rate cases that I've participated
23 in.

24 JUDGE TOREM: Mr. Ffitch?

25 MR. FFITCH: Thank, Your Honor. We generally

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1 agree with Staff, and I would add some elaboration on
2 that. I think this falls into the category of if it
3 ain't broke, don't fix it. The ten, seven, five
4 approach has been used in many, many rate cases. I'm
5 sorry to say we have that much experience with rate
6 case litigation recently, but it has not been a
7 problem. It makes sense because the time intervals do
8 get shorter towards the end of the case, so there is a
9 reason to have it go down to five.

10 I would also argue that we have, in fact, a
11 de facto discovery cutoff because the Commission has
12 now begun to take the approach of having a very hard
13 and fast cutoff for prefiling of cross-examination
14 exhibits. So in order for parties to have their
15 cross-examination exhibits in hand and identified, as a
16 practical matter, you have to be done with your
17 discovery in time to get that done, and that's these
18 days approximately a week before hearing, and then in
19 order to get responses to that, you are issuing
20 discovery, then a corresponding period ahead of the
21 cross-examination exhibit filing deadline. So as a
22 practical matter, we already have that cutoff except
23 for cases of true necessity where there is something
24 that you really feel like you need to find out about on
25 the eve of hearing.

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1 So I think from that perspective, it's not
2 necessary. I haven't seen a huge problem be identified
3 by any party with the current discovery practice, and I
4 guess my final comment is it's extremely prejudicial to
5 parties who are intervening or participating in the
6 case. It's extremely advantageous to the Company to
7 have a discovery cutoff. The Company is in full
8 control of all the information that is necessary to
9 perform an analysis of this case, and the time lines
10 for these proceedings are already extremely expedited
11 to -- and I would point out that the cutoff would occur
12 during the time when parties are reviewing the rebuttal
13 testimony of the Company, so there is essentially no
14 discovery cutoff as a practical matter for the Company.
15 They have more or less open period to do discovery on
16 the responsive case of Staff and Public Counsel and
17 other parties. Then the rebuttal gets filed. We have
18 under this schedule, September 27th to November 1st,
19 only about five weeks total to get ready for the
20 hearing, and the Company is now proposing that we cut
21 two weeks out of that to have the discovery cutoff.

22 So it's extremely one-sided in our view to
23 impose a formal discovery cutoff and just unnecessary
24 as a practical matter.

25 JUDGE TOREM: Any other parties wish to make

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1 a comment on the record as to the discussion about
2 discovery cutoffs and the shortened response periods?

3 MR. ROSEMAN: Thank you, Your Honor. I join
4 in Mr. ffitich's comments. I do think it's prejudicial.
5 I've been doing this for many years, and I certainly
6 recall getting discovery, and then you think you are
7 getting the final answer, and then you see the need to
8 because of the response you got to file additional
9 questions that you need to clarify or delve further
10 into. So I really do join with Public Counsel that I
11 just don't see the need, and I do envision the possible
12 harm as a result of having a discovery cutoff.

13 MR. VAN CLEVE: Your Honor, ICNU would also
14 oppose a discovery cutoff. I think the goal in the
15 proceeding is to produce the most complete record
16 possible, and I think cutting off that discovery would
17 do that, and as Mr. ffitich said, by filing its rebuttal
18 case, the Company gets the last word, and the only way
19 the other parties can respond to that, they don't get
20 to do testimony, is either through cross-examination or
21 discovery.

22 So I think if you cut off the discovery, it's
23 going to put a lot more pressure on the hearing to do a
24 lot more cross. You are going to see more Bench
25 requests, more requests for records requisitions, and I

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1 think it's going to make the hearing less efficient.

2 JUDGE TOREM: Mr. Stokes, anything you wanted
3 to add?

4 MR. STOKES: We join with the comments of
5 Staff, Public Counsel, The Energy Project, and ICNU as
6 well.

7 JUDGE TOREM: Again, this is something that
8 the Commission is seeking some input on, so this
9 morning's discussion is productive for creating a
10 record of party concerns and positions. Mr. ffitich, I
11 think it was you that said if it's not broken, don't
12 fix it, but every year at the end of the rate case
13 cycle, the commissioners and administrative law
14 division and policy staff do have a conversation. We
15 do try to look at things that might have been
16 problematic and those we know that obviously were for
17 us or were expressed by the parties, and we try to
18 refine the process informally, and perhaps as needed,
19 to be further discussion of these issues in a Bench
20 bar, but I'll go back to the Commission, and if you
21 don't see it mentioned in the prehearing conference
22 order or otherwise incorporated into the schedule on
23 any of these issues we've had some discussion about
24 today, just assume Staff has spoken for the last time
25 is formally in place but that some of the currents of

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1 change might be there for the future.

2 Again, if any of these items are adopted
3 differently, whether the commissioners want to change
4 the ten, seven, five shortened response times, or the
5 commissioners are interested in seeing discovery
6 cutoff, you will see that incorporated into the
7 procedural schedule in Thursday's order. I think the
8 only other reminder is that folks that want interested
9 persons added to the service list have until close of
10 business tomorrow. Just ship me an e-mail. If you
11 would put phone numbers and a complete address, that
12 would be helpful for all parties, and the e-mail
13 addresses certainly will get into the external mailing
14 list we send out from time to time. Anything else for
15 the record today from the Company?

16 MR. MEYER: No, Your Honor.

17 JUDGE TOREM: Staff?

18 MR. TRAUTMAN: No.

19 JUDGE TOREM: Mr. ffitch?

20 MR. FFITCH: No, Your Honor.

21 JUDGE TOREM: Any other parties have
22 something for the record today; Mr. Van Cleve?

23 MR. VAN CLEVE: I just wanted to raise one
24 issue that we didn't discuss about the schedule, and
25 that is the scheduling of the settlement conferences,

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1 and I'm not sure that the Commission is really
2 undertaken to mandate settlement conferences, and
3 perhaps the general outline of the schedule could be
4 set by the Commission and the parties could get
5 together on that issue, and there is a difference in
6 both the number and length of the settlement
7 conferences, and I would just suggest that the
8 companies propose at least in the abstract to have
9 three sets of two-day settlement conferences is a huge
10 resource commitment, and we wouldn't really want to
11 undertake that unless there was some reason to have
12 those.

13 JUDGE TOREM: Mr. Van Cleve, I think the
14 Commission's pattern has been to set something like the
15 week of in a particular week during a month for
16 settlement conferences, and the pattern I've understood
17 over the last three years has been for two different
18 get-togethers among the parties. That's desired by the
19 Commission. I don't know that it's ever been enforced,
20 but I think that's been the pattern.

21 Three may be a bit ambitious, and the
22 procedural schedule I anticipate would have at least
23 one week during the summer for the parties to talk
24 issues and perhaps recognize some obvious agreements or
25 disagreements, and that after the case has been filed

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1 in response that there be another settlement conference
2 that's really, what I've been told, the real issues in
3 a settlement conference once everyone's positions have
4 been cemented.

5 There has been no discussion that I'm aware
6 of as to saving resources of having to file testimony
7 that if the Company can get together with parties in
8 advance, perhaps those issues need not be having
9 experts retained, whether for cost of capital or other
10 items and for saving, so those are the reasons I
11 understand for the two part. The three-part may simply
12 be a phase by phase part of the case, and I understand
13 your party's concern with budget that the Company
14 probably shares as well, but I think I understand the
15 Company's motivation for getting to settlement on as
16 many issues as possible. Mr. Trautman?

17 MR. TRAUTMAN: I just noted the way you were
18 describing the, say, two settlement conferences and
19 there would be an initial conference, and then I think
20 you said after testimony filed a real conference, and I
21 know Staff has taken the view that many times
22 settlement can actually be done on most issues prior to
23 the filing of Staff's case so that that settlement
24 conference from Staff's perspective is often viewed as
25 quite important. I'm not sure that we just look at

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1 that one as sort of a get-together and then the second
2 one is the real conference.

3 JUDGE TOREM: I'm glad to hear Staff correct
4 my characterization then because I got the impression,
5 I think from you, Mr. Trautman, that sometimes the
6 timing of one was too early for Staff to really know
7 what its positions might be.

8 MR. TRAUTMAN: Not too early for Staff. It
9 may be too early from the perspective of others, but
10 not from Staff.

11 JUDGE TOREM: If what I'm hearing is that the
12 dates we are putting on these procedural conference
13 schedules are being honored as substantive negotiations
14 and every effort is being made, then I'm reassured the
15 schedule is working as intended. Mr. ffitch?

16 MR. FFITCH: It's a wide, complex topic,
17 Your Honor. I agree with Mr. Van Cleve sometimes and
18 also with Mr. Trautman sometimes. We actually, Your
19 Honor, have supported the Commission's practice over
20 the last couple of years of scheduling settlement
21 conferences within reason, as described by you in this
22 case, with the initial conference being an issues
23 conference, and then in our view, more productive
24 settlement discussions can occur after parties' issues
25 are more developed and testimony has been filed.

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1 One of the reasons why this has become an
2 institutionalized practice with scheduling was to try
3 to make sure that all parties were at the table and to
4 avoid some problems that had come up in past years of
5 bilateral negotiations where some parties or some
6 intervenors were not included on some occasions, and
7 there was sort of a reform effort to facilitate all
8 party discussions to have them on the schedule like
9 this, so that is one of the benefits of having them on
10 the schedule. We don't agree three are necessary here.
11 Certainly if we need them, parties can always get
12 together and do that voluntarily. So we share that
13 concern of Mr. Van Cleve.

14 Just to sort of comment on Mr. Trautman's
15 point that sometimes you can settle early; that's true.
16 However, as a practical matter, especially parties with
17 fewer resources, are not always in a position to engage
18 in extremely substantive discussions early in the case
19 before they've completed their discovery. Frequently
20 in recent years, companies are supplementing their
21 case. The case is changing.

22 JUDGE TOREM: You don't want to settle before
23 they supplement?

24 MR. FFITCH: Or a week after they supplement.
25 It's not always the case that that is an optimal time

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1 for settlement discussions to occur.

2 JUDGE TOREM: I can also see from your
3 previous comments that that concern may be magnified
4 for you in this particular cycle. Any other parties on
5 this? Again, I think that the general spirit sounds
6 like they are being honored, and Mr. Van Cleve, back to
7 your original question. The dates will be more in the
8 traditional range of a week, and Mr. ffitch has made me
9 aware of some blackout dates, so I will try to avoid
10 those weeks because I do want Public Counsel to have an
11 opportunity to be at the table for both rounds of
12 settlement discussions and will make every attempt to
13 schedule around those conflicts that he's put on the
14 record today.

15 The Commission is not going to ask to see the
16 particular date. If it's held here at the Commission,
17 sometimes it's helpful to know that all the parties
18 will be in the building. That may facilitate something
19 else like Mr. Twitchell being available. Beyond that,
20 the Commission has no direct interest other than to
21 have good-faith negotiations going on.

22 I have your input on the schedule, and I have
23 your input on the discovery issues both on the response
24 times and the cutoff date. We discussed supplemental
25 testimony and the possibility of technical conferences

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1 and the constraints and desires on public comment
2 hearings. I think that exhausts all the items we could
3 get together for at this stage. I encourage you to
4 start getting those cases together as soon as possible.
5 The folks that needed hard copies of the extra
6 exhibits, I'll call them. That were filed only
7 electronically, I know that the intervenors did not
8 respond to the motion informally or formally, but if
9 any of the intervening parties on the capital additions
10 exhibits needed to get a hard copy of that, please let
11 Mr. Meyer know in the order that came out on that
12 motion so that those can be provided. I know that to
13 date, the Commission has received the required copies,
14 and I believe, Mr. ffitch, your office has had your
15 copy delivered as well. Anything else for the record
16 this morning? Thank you all.

17 (Prehearing adjourned at 11:14 a.m.)

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