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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In re Application TC-061847 of )  
4 ROMAN SOLUTIONS LLC, d/b/a ) DOCKET NO. TC-061847  
ROCKET TRANSPORTATION ) Volume I  
5 ) Pages 1 - 20  
6 for a Certificate of Public )  
Convenience and Necessity to )  
7 Operate Motor Vehicles in )  
Furnishing Passenger and )  
8 Express Service as an Auto )  
Transportation Company. )  
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11 A prehearing conference in the above matter  
12 was held on June 1, 2007, at 10:05 a.m., at 1300 South  
13 Evergreen Park Drive Southwest, Olympia, Washington,  
14 before Administrative Law Judge ADAM TOREM.

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16 The parties were present as follows:  
ROMAN SOLUTIONS, LLC, by ANDREW W. STEEN,  
17 Attorney at Law, Lane Powell, 1420 Fifth Avenue, Suite  
4100, Seattle, Washington 98101; telephone, (206)  
223-7739.

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19 WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by MICHAEL A. FASSIO, Assistant Attorney  
General, 1400 South Evergreen Park Drive Southwest,  
20 Post Office Box 40128, Olympia, Washington 98504;  
telephone, (360) 664-1192.

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22 HECKMAN MOTORS, INC., by JAMES K. SELLS,  
Attorney at Law, Ryan, Sells, Uptegraft, 9657 Levin  
Road Northwest, Suite 240, Silverdale, Washington  
23 98383; telephone, (360) 307-8860.

24 Kathryn T. Wilson, CCR

25 Court Reporter

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PACIFIC NORTHWEST TRANSPORTATION SERVICES,  
INC., by JAMES N. FRICKE, President, Post Office Box  
2163, Olympia, Washington 98507-2163; telephone, (360)  
754-7113.

EVERGREEN TRAILS, INC., by DAVID L. RICE (via  
bridge), Attorney at Law, Miller Nash, 601 Union  
Street, Suite 4400, Seattle, Washington 98101,  
telephone, (206) 622-8484.

BREMERTON-KITSAP AIRPORTER, INC., by RICHARD  
E. ASCHE (via bridge), Attorney at Law, Post Office Box  
1255, Port Orchard, Washington 98366; telephone, (360)  
876-1737.

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1 PROCEEDINGS

2 JUDGE TOREM: Good morning. I'm Adam Torem,  
3 the administrative law judge presiding over this  
4 matter. We are here today before the Washington  
5 Utilities and Transportation Commission at 10:05 in the  
6 morning on Friday, June the 1st, 2007, for a prehearing  
7 conference in Docket TC-061847. This is an application  
8 for an auto transportation company for bus certificate  
9 that was filed by Roman Solutions, LLC. Their d/b/a is  
10 Rocket Transportation.

11 Our court reporter today is Kathy Wilson,  
12 Continental Reporting Service, and the purpose of the  
13 prehearing conference this morning is to take  
14 appearances of the parties, clarify the issues for  
15 hearing, discuss a schedule for the Commission's  
16 consideration of the application, and perhaps any other  
17 procedural matters. So let's take appearances from the  
18 parties. We have some folks on the bridge line. I'll  
19 come to you in a second, and we will go around the room  
20 first with the Applicant.

21 MR. STEEN: Andrew Steen representing Rocket  
22 Transportation.

23 JUDGE TOREM: Would you also state your full  
24 address, telephone number, fax number, and e-mail  
25 address.

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1 MR. STEEN: 1420 Fifth Avenue, Suite 4100,  
2 Seattle, Washington, 98101 --

3 JUDGE TOREM: Could those of you on the  
4 bridge hear the appearance by Mr. Steen?

5 MR. RICE: I could not.

6 JUDGE TOREM: You all got his appearance and  
7 you all received his notice by mail, is that correct,  
8 on the line? Mr. Sells?

9 MR. SELLS: Your Honor, please, James Sells  
10 appearing on behalf of Protestant Heckman Motors, d/b/a  
11 Olympic Bus Lines. I should add that Mr. Jack Heckman  
12 is on the bridge line as well. My address is 9657  
13 Levin Road Northwest, Suite 240, Silverdale; telephone,  
14 (360) 307-8860; fax, (360) 307-8865; e-mail,  
15 jimsells@rsulaw.com.

16 JUDGE TOREM: And also present today,  
17 Mr. Fricke?

18 MR. FRICKE: James N. Fricke, president of  
19 Pacific Northwest Transportation Services, Inc.,  
20 protestant. The address is PO Box 2163, Olympia,  
21 Washington, 98507-2163. Telephone number is (360)  
22 754-7113, Extension 106. Fax number is (360) 754-7118;  
23 e-mail, jimf@capair.com.

24 JUDGE TOREM: Commission staff?

25 MR. FASSIO: Michael Fassio, assistant

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1 attorney general, representing Commission staff. My  
2 address is PO Box 40128, 1400 South Evergreen Park  
3 Drive Southwest, Olympia, Washington, 98504. Phone is  
4 (360) 664-1192. Fax is (360) 586-5522. E-mail is  
5 mfassio@wutc.wa.gov. Seated with me is Penny Ingraham  
6 of Commission staff.

7 JUDGE TOREM: On the bridge line, Mr. Asche?

8 MR. ASCHE: Richard Asche, 2599 Alaska  
9 Avenue, Port Orchard, Washington, representing  
10 Bremerton-Kitsap Airporter, Inc., PO Box 1255, Port  
11 Orchard, Washington, 98366.

12 JUDGE TOREM: Mr. Rice?

13 MR. RICE: This is David Rice here on behalf  
14 of Gray Line of Seattle. I'm with Miller Nash, LLP.  
15 My address is 4400 Two Union Square, 601 Union Street,  
16 Seattle, Washington, 98101. My phone number is (206)  
17 622-8484. Fax is (206) 622-7584. My e-mail address is  
18 david.rice@millernash.com. Would you like me to give  
19 the address for Gray Line of Seattle as well?

20 JUDGE TOREM: I think we have that in the  
21 record, but you will be the one receiving  
22 communications on their behalf?

23 MR. RICE: That is correct.

24 JUDGE TOREM: Then that won't be necessary at  
25 this time. Let me thank everybody for their

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1 appearances and remind the folks on the bridge line to  
2 speak as loudly and deliberately as you can so we can  
3 catch that here in the hearing room. Particularly,  
4 Mr. Asche, your phone seems to be a bit light on the  
5 volume this morning.

6 MR. ASCHE: I'll speak up.

7 JUDGE TOREM: I'm required under the  
8 Administrative Procedure Act and our own Commission  
9 procedural regulations to note a couple of ex parte  
10 communications I had earlier this week, three as of  
11 this morning. I talked to Mr. Rice this morning  
12 indicating that -- what was it Mr. Rice, that you  
13 didn't have to file a separate intervention issue, so  
14 we will talk more about that later, so you and I spoke  
15 this morning.

16 On Wednesday of this week, I talked to  
17 Mr. Steen. He was telephoning just inquiring as to  
18 expectations of this morning's prehearing conference,  
19 and we just talked a little bit about prehearing  
20 conference preparation and the reference to the rules.  
21 In talking to him, I decided to look through with some  
22 detail our prehearing conference order, and I  
23 discovered that some of the citations in there had been  
24 overcome by events and were repealed last year, WAC  
25 480-30-020 and 030, Commission rewrote that entire

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1 chapter last summer and adopted a new one, so I  
2 apologize. I'm sure you folks were all more than  
3 familiar with the rules. We were directing you to the  
4 wrong rules. You probably found they were not there in  
5 the current version.

6 Last one also yesterday morning, May 31st, I  
7 noticed that some of the new regulations that we had  
8 adopted, particularly WAC 480-30-091, called for a  
9 payment of \$200 as the filing fee for these  
10 applications effective July of last year. I contacted  
11 Mr. Fassio as the attorney for Commission staff, and  
12 when I noted that Roman Solutions had filed on what  
13 apparently was an old form the \$150 fee, and Mr. Fassio  
14 clarified that the Commission didn't even catch up with  
15 the new forms until February, so the \$150 fee is  
16 sufficient. So we don't need to get Mr. Steen for 50  
17 bucks today. Mr. Fassio, is that the sum of our  
18 conversation?

19 MR. FASSIO: Yes.

20 JUDGE TOREM: Those three communications are  
21 all I've had with folks up to this point. Today, let's  
22 move on to the issues in this case. And as far as I  
23 can see it, Mr. Steen's clients, Roman Solutions or  
24 Rocket Transportation, have applied for Commission  
25 certification to operate a door-to-door service that's

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1 going to be by reservation. They predict they are  
2 going to have four daily trips to and from Clallam and  
3 Jefferson counties, serving points in Kitsap county,  
4 the Amtrak terminals in Seattle and Tacoma, some  
5 Greyhound bus terminals in that same areas, various  
6 hospitals, as well as the SeaTac International Airport.  
7 The Application was filed December 12th, 2006. The  
8 Commission published its application docket with this  
9 notice on March 2nd of 2007.

10 In the month that followed that publication,  
11 we had four timely protests filed, and as far as I  
12 could tell, they were all in accordance with WAC  
13 480-30-116. Each of these protests allege that the new  
14 service would be duplicative of their routes already in  
15 effect, and each of the protestants alleged that the  
16 applicant was not fit, willing, or able to provide the  
17 proposed new service. Now, two of the protestants,  
18 Gray Line of Seattle and the Bremerton-Kitsap  
19 Airporter, have indicated their objections might be  
20 addressed by what's called a restrictive amendment to  
21 any certificate issued by the Commission.

22 Now, up to this point, we've got the four  
23 protests but no petitions to intervene, and I ask you  
24 now if there is anyone not already a protestant who  
25 wishes to intervene. Seeing that all we have is



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1 protestants and the parties in the room, there won't be  
2 any interventions it appears. Let me just go around to  
3 make sure all of you that are parties, either applicant  
4 or protestant, agree with my summary of the issue  
5 presented here. Mr. Steen?

6 MR. STEEN: Yes.

7 JUDGE TOREM: Mr. Rice?

8 MR. RICE: I do.

9 JUDGE TOREM: Mr. Sells?

10 MR. SELLS: Yes.

11 JUDGE TOREM: Mr. Asche?

12 MR. ASCHE: Yes, sir.

13 JUDGE TOREM: Mr. Fricke?

14 MR. FRICKE: Yes.

15 JUDGE TOREM: Mr. Fassio?

16 MR. FASSIO: Yes.

17 JUDGE TOREM: Excellent. So with that on the  
18 table, let's see if there is any need to discuss  
19 discovery issues today. There are some specific  
20 discovery rules in our procedural rules for the  
21 Commission. They are found at WAC 480-07-400. It may  
22 be that they are going to be fairly informal discovery  
23 and that we just need to set a discovery deadline.  
24 Mr. Steen, did you have any discussions with your  
25 colleagues before the prehearing conference today?

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1           MR. STEEN: I've had several conversations  
2 with my colleagues here, not explicitly about  
3 discovery. It's important to note from the beginning  
4 that through these conversations, it's become clear to  
5 me that I think three of the four protestors, they've  
6 indicated that they would be willing to drop their  
7 protests for some stipulated language added to the  
8 notice, which we have been working on, putting together  
9 something, and I think we have come up with some  
10 stipulated language that will satisfy three of the four  
11 protestors, so I think that those issues might be able  
12 to be cleared up very shortly here, but as to  
13 discovery, we haven't spoken.

14           JUDGE TOREM: Who was the remaining  
15 protestant you anticipate won't settle, because it will  
16 be the two of you that need to address discovery.

17           MR. STEEN: That would be Heckman Motors.

18           JUDGE TOREM: That's your client, Mr. Sells.

19           MR. SELLS: Yes.

20           JUDGE TOREM: What is your thought on  
21 discovery and what might be necessary here?

22           MR. SELLS: I don't think we need to invoke  
23 the rule. I think if there is anything we haven't seen  
24 already we can probably exchange informally, and we  
25 would happy to do that.

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1 JUDGE TOREM: So we can set an informal  
2 discovery deadline?

3 MR. SELLS: Yes.

4 JUDGE TOREM: You are in agreement,  
5 Mr. Steen?

6 MR. STEEN: I am.

7 JUDGE TOREM: Are there any other protestants  
8 that don't think that a simple discovery deadline will  
9 fit the bill for this case? Hearing none, let's move  
10 on to the question as to -- this addresses Mr. Steen  
11 and Mr. Sells -- if there is a need for a protective  
12 order in this case. Mr. Sells, you are probably more  
13 familiar with these cases. Do you want to set out any  
14 reasons you think there might be a need or not?

15 MR. SELLS: I don't think so, Your Honor,  
16 Frankly, our evidence is all either of public record or  
17 in the telephone book or on the Internet, so there is  
18 not much need for a protective order that I can see at  
19 this point.

20 JUDGE TOREM: Mr. Steen?

21 MR. STEEN: I would agree. I would like to  
22 not preclude the possibility of a protective order at  
23 some point down the road, but I don't right now see the  
24 need for it.

25 JUDGE TOREM: If you find that there is any

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1 matter that is being requested in discovery or  
2 otherwise needs to be marked as confidential or highly  
3 confidential as allowed in our Commission rules, then  
4 let us know. Mr. Fassio, any ideas on protective  
5 orders for these types of cases?

6 MR. FASSIO: Staff really has no position on  
7 the protective order issue. We don't really see a need  
8 for it on our end.

9 JUDGE TOREM: I think the main procedural  
10 issue that's really facing us today is the scheduling  
11 of dates for this hearing. We will schedule a hearing  
12 on the merits and any necessary prehearing deadlines,  
13 and I think especially given the scope you've just  
14 described, Mr. Sells and Mr. Steen, as to there are two  
15 parties left and Staff, I think we would avoid the  
16 formal prefiled testimony and simply rely on the live  
17 witnesses and cross-examination on the day or days of  
18 the hearing.

19 I also suspect that perhaps, depending on  
20 where your witnesses might be, Mr. Steen, we might hold  
21 some or all of the hearings in Jefferson county or  
22 Clallam county depending on where your client's  
23 witnesses might be best served. So let me direct you,  
24 Mr. Steen, to WAC 480-30-126. That's our new rule that  
25 essentially sets out what your client has to prove, the

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1 burden of proof, to get the certificate, and among  
2 other things, you will have to show the knowledge,  
3 experience, and resources how to conduct a proposed  
4 service.

5           Your client will have to demonstrate that its  
6 proposed service is required for the public convenience  
7 and necessity and also that any existing auto  
8 transportation company currently operating in the  
9 territory is not providing service to the satisfaction  
10 of the Commission. So in this case, if you settle with  
11 everyone else, you have to demonstrate that Heckman  
12 Motors is the one that's not supplying service that  
13 already meets the Commission's needs and standards.

14           I'm going to assume your filing, because I  
15 saw some of it with your application, will include  
16 documentary evidence and that you will have a couple of  
17 witnesses or more as well to meet that burden of proof.  
18 Let me ask your preliminary assessment as to estimates  
19 for the number of witnesses you intend to present and  
20 how long their direct testimony would take.

21           MR. STEEN: Should this matter go all the way  
22 to hearing, at this point, I would predict that we  
23 would have five or six witnesses to demonstrate these  
24 points. I don't expect that any of those witnesses  
25 would require more than an hour or two each.

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1 JUDGE TOREM: Do you know where those  
2 witnesses will be located?

3 MR. STEEN: The majority would be located in  
4 Jefferson or Clallam counties, so to hold the hearing  
5 there would be very convenient for my client.

6 JUDGE TOREM: All right. Mr. Sells?

7 MR. SELLS: At this point, depending on the  
8 nature of the testimony elicited by the Applicant, we  
9 will certainly have one witness. That would be  
10 Mr. Heckman himself, the CEO of the company, and we may  
11 well have two or three more just to cover the overall  
12 reputation of the company in the community, perhaps a  
13 couple of passengers in the past or people who will be  
14 passengers in the future. Other than Mr. Heckman, I  
15 don't think any of our witnesses, assuming we would  
16 even call them, would be 10 to 15 minutes each on  
17 direct.

18 JUDGE TOREM: How long again do you think  
19 Mr. Heckman's testimony would be?

20 MR. SELLS: I guess it would be an hour.

21 JUDGE TOREM: Mr. Fricke, do you anticipate  
22 you will be settling in this case, or do you want to  
23 estimate potential witnesses if you have to go to  
24 hearing?

25 MR. FRICKE: I waive if the stipulation is

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1 accepted by the Commission. That would satisfy our  
2 concerns, and therefore, we wouldn't need to present  
3 any witnesses.

4 JUDGE TOREM: Mr. Rice on the bridge line?

5 MR. RICE: Yes. We are also involved in the  
6 stipulation negotiations and optimistic that we will be  
7 able to reach a resolution, so I doubt that we will  
8 have a need for a witness. I believe that we may have  
9 mentioned in our protest that we might have a witness,  
10 but at that time, we didn't know a settlement was  
11 possible.

12 JUDGE TOREM: That's correct. I think your  
13 protest went to the formal state, and I appreciate  
14 that, and noting that there were two witness and some  
15 potential times, so that may not be necessary.

16 MR. RICE: That's my suspicion as well.

17 JUDGE TOREM: Mr. Asche, again, if you will  
18 speak up, are you involved with the stipulation in  
19 settling as well do you think?

20 MR. ASCHE: Yes, we are involved, and we are  
21 perfectly satisfied with the stipulation as we stated.

22 JUDGE TOREM: It sounds to me that you and  
23 Mr. Rice on the bridge line may essentially be  
24 spectators the rest of this proceeding as we do the  
25 scheduling both on and off the record, so speak up and

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1 interrupt if you find a need. I may or may not come  
2 back to you. Commission staff?

3 MR. FASSIO: Yes. Commission staff foresees  
4 potentially calling one witness if this does go to  
5 hearing. I should note here that Staff, if this  
6 remains protested, does not intend to remain entirely  
7 neutral but does intend to take a position as to  
8 whether the certificate should be granted depending on  
9 issues that may come up in the hearing.

10 JUDGE TOREM: And just that one witness, an  
11 hour?

12 MR. FASSIO: No more than that, yes.

13 JUDGE TOREM: It sounds from what I'm getting  
14 this morning we may need maybe two days for hearing.  
15 We might be able to get it done in one day, but it  
16 sounds as though we might want to schedule it for two.  
17 Mr. Sells, in your experience, would that be safe, or  
18 should we go for a third day, or is two days already  
19 excessive?

20 MR. SELLS: I'm virtually certain we can  
21 finish this in a day and a half, certainly no more than  
22 two days.

23 JUDGE TOREM: If nobody else thinks  
24 differently, then I'll take Mr. Sells' wisdom, who has  
25 had time and experience in this field, and go with the



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1 two-day recommendation.

2           So it's now all of about 10:25 a.m., and I'm  
3 going to recommend we take a brief break off the  
4 record. We will all stay here and compare calendars.  
5 We will come back on the record in a little bit and  
6 summarize our discussions. We are off the record.

7           (Discussion off the record.)

8           JUDGE TOREM: It's now about 10:38. We are  
9 back on the record, and we have clarified that the  
10 agreed earliest possible date for a hearing in this  
11 case is going to be the week of July the 9th, 2007. We  
12 have selected Wednesday, July the 11th as the start  
13 date, and that hearing will commence that morning at  
14 9:30 a.m.

15           We are going to find a location either in  
16 Jefferson or Clallam county, so that gives us cities  
17 such as Port Angeles or Sequim where the Applicant is  
18 located, or perhaps Port Townsend or somewhere else in  
19 that vicinity. I will take suggestions from folks when  
20 we close the prehearing conference today and see what  
21 they propose.

22           We are going to have a second day of hearing  
23 on Thursday, July the 12th, 2007. That may be at the  
24 same location. It maybe closer in to Olympia, Tacoma  
25 or Seattle, somewhere in one of these counties on this

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1 side of the water, and we will just have to determine  
2 what facilities are available and when we think the  
3 witnesses that live out in Jefferson and Clallam county  
4 will be done and try to schedule them all on the first  
5 day and have any carryover the second day, perhaps  
6 again in the same location or back on this side of the  
7 water, and we anticipate it will be a day-and-a-half to  
8 a two-day hearing at the most.

9           We talked about a discovery deadline. That  
10 will be the same as the witness and exhibit list filing  
11 deadline, and based on the number of parties that  
12 anticipate settling out, Mr. Sells, your client as well  
13 as the Applicant have agreed with Staff that we do  
14 everything on Friday, June 22nd, 2007, and that will be  
15 the close of business or five p.m. filing deadline. As  
16 long as you file the original and ten copies with our  
17 records center by five o'clock, that would be satisfied  
18 to that deadline. If you would like to file it  
19 earlier, that's fine as well.

20           Our witness lists should have name, address,  
21 and telephone number of the witness and maybe a  
22 two-sentence indication as to the topic or summary of  
23 their testimony. Exhibit lists, there is a protocol  
24 for the filings of those within WAC 480-07, so don't  
25 preassign any numbers. We apparently do that at the

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1 hearing itself, so just bring your copies with a  
2 stencil that says "exhibit," and we will fill in the  
3 number as we go, and we can talk about that a little  
4 bit more after the prehearing conference for those that  
5 are new to this procedure. Finally, copies of the  
6 exhibits should be filed with the deadline on June  
7 22nd.

8           So again, take a look at the procedural rules  
9 in Chapter 480-07 of the WAC, and I believe it's  
10 480-07-145 and 195. We are going to have ten copies in  
11 addition to the original, and if you file an electronic  
12 filing through that as well as paper if you have it  
13 electronically, that would be great. If requested, we  
14 can allow maybe a one-day extension to file the paper  
15 copies. Electronic copies are sufficient to be filed  
16 on time with the necessary copies filed the following  
17 business day, which would be the following Monday, but  
18 hopefully, we won't have to do that, but please let me  
19 know that week it's going to be a last-minute filing.

20           Are there any other items we need to address  
21 this morning? I see none. Does any party wish to  
22 order a transcript of this morning's proceeding?

23           MR. STEEN: I would like to order.

24           JUDGE TOREM: Anyone else? Anything else for  
25 the record this morning? Hearing nothing else, this

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1 prehearing conference is adjourned. It's now about  
2 10:42 a.m. I will enter a prehearing conference order  
3 in the first couple days of next week to summarize our  
4 discussions this morning, and if you find that I've  
5 left something out or have any objection to how I  
6 characterized it, there is a procedure for filing  
7 objections in writing with the Commission. It has to  
8 be done within ten days after the order is entered, and  
9 I believe it's WAC 480-07-430, sub 3. With that, we  
10 are adjourned.

11 (Prehearing conference adjourned at 10:43 a.m.)

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