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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND) Docket UE-130043
TRANSPORTATION COMMISSION,) Pages 1-30

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v.)

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Complainant,)

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PACIFICORP d/b/a PACIFIC POWER)
& LIGHT COMPANY,)

9

Respondent.)

10

PREHEARING CONFERENCE, VOLUME I

11

Pages 1-30

12

ADMINISTRATIVE LAW JUDGES

13

DENNIS J. MOSS and STEPHANY A. WATSON

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10:00 A.M.

16

February 13, 2013

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OLYMPIA, WASHINGTON, FEBRUARY 13, 2013

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10:00 A.M.

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P R O C E E D I N G S

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JUDGE MOSS: Let's be on the record.

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Good morning, everyone. My name is Dennis Moss. I'm
an administrative law judge of the Washington Utilities and
Transportation Commission. With me on the Bench today is my new
colleague, Stephany Watson. Stephany will be co-presiding in
this case. I expect to do most of the work from the Bench, but
she will be following this case through all of its intricacies.

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And we welcome her to the Commission after a long
stint at the FERC in Washington, D.C., and prior to that, she
was practicing energy law in this area. So she is known perhaps
to some of you, including, I believe, Mr. Sanger, so...

17

JUDGE WATSON: Good morning.

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MULTIPLE SPEAKERS: Good morning.

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23

JUDGE MOSS: All right. With that, we are convened
in the matter styled WUTC against PacifiCorp, Docket UE-130043.

This is a general rate proceeding following on
PacifiCorp's filing of revised tariff sheets here, something
less than 30 days ago, I guess.

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25

In any event, our first order of business will be to
take appearances.

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1 And I do know -- Ms. Davison, are you on the phone?

2 Ms. Davison?

3 MS. DAVISON: Yes, Your Honor. I am on the line.

4 JUDGE MOSS: Okay. I'll be calling on you in a
5 minute.

6 And, also, Mr. Purdy, I believe you were going to be
7 on the phone today?

8 MR. PURDY: I am, Your Honor. Thank you.

9 JUDGE MOSS: Okay. We'll call on you in a minute and
10 get your appearance in.

11 We'll start, though, in the hearing room, and, of
12 course, we'll start with the Company.

13 MS. CARSON: Thank you. Good morning, Your Honor.
14 I'm Sheree Strom Carson with Perkins Coie, representing
15 PacifiCorp.

16 Did you want the long form of the appearance?

17 JUDGE MOSS: I think we can dispense with the long
18 form. I have provided the court reporter with a list of all the
19 party representatives and their address and phone and so forth.

20 And to the extent those of you here in the room have
21 them, you could give her a business card as well as a belt and
22 suspenders sort of thing. But I think we're covered, so short
23 form is fine.

24 MS. CARSON: Okay. And also appearing with me is
25 Sarah Wallace, senior counsel with PacifiCorp.

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1 JUDGE MOSS: All right. And I believe Ms. Wallace
2 was indicated on the appearance form or something that was filed
3 earlier, so we have all that information for her as well?

4 MS. CARSON: That's correct.

5 JUDGE MOSS: Okay. Great. Well, that's good, then.
6 All right. Mr. Sanger?

7 MR. SANGER: Irion Sanger here today representing
8 Columbia Rural Electric Association.

9 JUDGE MOSS: All right.

10 MS. GAFKEN: Good morning. Lisa Gafken, Assistant
11 Attorney General, appearing for Public Counsel.

12 JUDGE MOSS: All right. Ms. Gafken, will you be the
13 lead in this or will Mr. ffitch?

14 MS. GAFKEN: I will be the lead on this one.

15 JUDGE MOSS: All right. Thank you.

16 Mr. Cedarbaum?

17 MR. CEDARBAUM: Robert Cedarbaum, Assistant Attorney
18 General, for Commission Staff.

19 JUDGE MOSS: All right. And now let's turn to those
20 of you who are on the conference bridge line this morning.

21 I'll start with you, Ms. Davison.

22 MS. DAVISON: Thank you, Your Honor. Melinda Davison
23 and also Joshua Weber. We are appearing on behalf of Boise
24 White Paper, LLC.

25 JUDGE MOSS: All right. And, Mr. Purdy?

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1 MR. PURDY: Thank you, Your Honor. Brad Purdy on
2 behalf of The Energy Project.

3 JUDGE MOSS: All right. Is there any other party on
4 the conference bridge line who wishes to enter an appearance
5 today and perhaps petition to intervene?

6 Apparently not, so that would seem to be all the
7 players.

8 We do have three petitions to intervene.

9 Did you file a petition, Mr. Purdy?

10 MR. PURDY: I did, Your Honor. It should have been
11 received by you on Monday.

12 JUDGE MOSS: All right. I believe I did have that.
13 I focused more on your appearance form as I was preparing the
14 papers. But I'm familiar with your interest, so that's not
15 really a problem.

16 MR. PURDY: Thank you.

17 JUDGE MOSS: Boise White Paper, in addition, and
18 Columbia Rural Electric Association.

19 Now, I trust, since I have received nothing, that
20 there's no objection to the intervention by Boise White Paper or
21 The Energy Project; am I correct?

22 MS. CARSON: That's correct.

23 JUDGE MOSS: All right. And nobody else wishes to be
24 heard on that, I suppose?

25 All right. Well, we'll just grant those two

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1 petitions to intervene.

2 Now, the Columbia Rural Electric Association petition
3 has been contested. The Company filed its opposition to the
4 Organization -- or to the Company's participation, the
5 Association's participation. And the Association filed its
6 response, and I saw that this morning.

7 So I have read both papers, and I have also gone back
8 and read the Commission's order dated July 9, 2001, in Docket
9 UE-001734 when this same issue came up. So I'm pretty well
10 versed in the matter, but if someone has something that they
11 feel compelled to share with me this morning, I'll be happy to
12 open that up.

13 And it's your opposition, Ms. Carson, so I'll let you
14 go first.

15 MS. CARSON: Thank you, Your Honor. We briefed this
16 pretty extensively, but I think it's important to just hit on a
17 couple of points here.

18 JUDGE MOSS: Okay.

19 MS. CARSON: The standard for intervention is
20 substantial interest or in the public interest, and,
21 interestingly, although CREA originally in their petition to
22 intervene asserted a substantial interest in their reply, they
23 recognized that the Commission has said there is no substantial
24 interest here. There was no substantial interest back in 2000,
25 so there is not a ground there based on substantial interest, so

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1 we're left with the public interest.

2 And I think it's important, when looking at Docket
3 UE-001734, not just to look at the intervention, but to look at
4 how it was decided on the merits. And on the merits, the
5 Commission did, in fact, foreclose as a matter of law the issues
6 that CREA is again seeking to base its intervention on and raise
7 in this case, issues of noncompetition, antitrust. The
8 Commission made clear that those are foreclosed based on the
9 immunity from the RCW 19.86, the Unfair Business Practices Act.
10 There's no State antitrust claim, and under the State action
11 doctrine, there's no Federal antitrust claim. So these
12 competitive issues that the Commission allowed intervention on
13 and an abundance of latitude in the last case when PacifiCorp
14 first introduced this tariff, are no longer grounds for
15 intervention and shouldn't be raised in this case.

16 Interestingly, CREA apparently thinks it's the
17 appropriate advocate for PacifiCorp's customers, and that's just
18 not the case. PacifiCorp's customers have ample opportunity to
19 be involved in these rate cases. Public Counsel represents
20 residential customers. Commercial and industrial customers can
21 intervene directly or through ICNU. And Commission Staff, of
22 course, very ably looks out for the interests of customers, as
23 well as for the Company.

24 And, in fact, if we look back at that 2000 docket,
25 the modifications to the tariff that were considered by the

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1 Commission that the Company accepted and that were approved were
2 from Commission Staff. So it's clear. All the case law cited,
3 with the exception of this one Commission case, makes clear that
4 nonregulated competitors of regulated utilities should not be
5 allowed to intervene in the regulated utilities rate case before
6 the Commission.

7 The Commission recognized this in the Washington
8 Natural Gas-PSE merger where it said, In rate cases, we don't
9 allow competitors to intervene. The Washington Supreme Court
10 recognized it in the coal case, and we've cited cases from other
11 jurisdictions as well. The only authority that CREA cites to is
12 this 2000 Commission decision where ultimately on the merits,
13 the Commission rejected these arguments, so we ask the
14 Commission not to reopen these issues that have already been
15 decided and to deny this petition to intervene.

16 JUDGE MOSS: Thank you very much.

17 Mr. Sanger, any response?

18 MR. SANGER: Yes. Thank you, Judge Moss.

19 Columbia REA's petition to intervene should be
20 granted in this proceeding, and I believe the Commission can
21 grant its intervention either under the substantial interest or
22 the public interest standard.

23 Columbia REA and PacifiCorp exists in competition in
24 Southwestern Washington right now -- Southeastern Washington,
25 and PacifiCorps' customers have the lawful right to choose

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1 alternative electricity suppliers, and the net removal tariff
2 could impact this customer choice.

3 Columbia REA, and many of its members, are former
4 customers of PacifiCorp, and they have paid this rate and have
5 experience to bring to the Commission regarding this rate. And
6 if having paid a rate and potentially paying a rate in the
7 future does not provide an interest, then I'm not sure what
8 does.

9 Now, the Commission previously addressed this issue
10 in the second supplemental order where in Docket UE-001734, the
11 Commission granted Columbia REA's intervention on the grounds
12 that it would be in the public interest to allow Columbia REA to
13 participate, and to participate on two issues: (1) to address
14 the customer choice issue; and (2) to provide the Commission
15 with additional information when it was making its determination
16 whether the net removal tariff was fair, just, reasonable, and
17 nondiscriminatory.

18 Now, Ms. Carson argues that the eighth supplemental
19 order foreclosed not only these issues, but it also forecloses
20 Columbia REA's ability to participate in this proceeding. And a
21 review of the eighth supplemental order does not support this
22 interpretation. The Commission approved a prior version of the
23 net removal tariff in the eighth supplemental order based on the
24 evidence presented at that time. The net removal tariff was a
25 new tariff. It had never been approved. It had never been

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1 used. And the Commission had a few pages of testimony from
2 Staff and PacifiCorp, and it reviewed that evidence. And based
3 on that evidence, it approved the prior version of the net
4 removal tariff.

5 One of the conditions the Commission imposed was a
6 sunset provision where it would at some point review the net
7 removal tariff again. That has never occurred, there has never
8 been a full review of the net removal tariff, and now we have
9 over a decade of experience with the net removal tariff.

10 Columbia REA is the only party that has experienced
11 from a customer perspective or from a competitor perspective
12 with the net removal tariff. That information will be
13 invaluable to the Commission in reviewing the evidence in this
14 proceeding, whether the net removal tariff that PacifiCorp is
15 proposing is nondiscriminatory, whether it's cost-based, whether
16 it's fair, just, or reasonable. And that's information that
17 Columbia REA has that's unique to it, and that will assist the
18 Commission in the public interest in deciding whether in this
19 proceeding, the net removal tariff should be approved.

20 And those are the same reasons that the Commission
21 granted Columbia REA's intervention in 2001, and they're even
22 more true now, because that information should be brought to the
23 Commission, and the Commission should consider that when making
24 a final order on the net removal tariff.

25 And I would point out that Columbia REA has only

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1 sought intervention to review the net removal tariff in this
2 proceeding. We're not seeking the opportunity to review other
3 aspects of PacifiCorp's filing, but the net removal tariff and
4 how it impacts PacifiCorp's customers and PacifiCorp and
5 Columbia REA.

6 JUDGE MOSS: Thank you, Mr. Sanger.

7 Do either Public Counsel or Staff wish to weigh in on
8 this matter before I rule?

9 MR. CEDARBAUM: Your Honor, for Staff, Staff has no
10 objection to the intervention. We understand that it would be
11 limited to the net removal tariff and would expect that if
12 intervention would be granted, the prehearing conference order
13 would state that.

14 We do have some questions or concerns about allowing
15 intervention under the substantial interest prong of the
16 Commission's rule, but we think that the public interest prong
17 is broad enough to encompass this intervention, so we would have
18 no objection to it.

19 JUDGE MOSS: Okay. Thank you.

20 Anything, Ms. Gafken?

21 MS. GAFKEN: Public Counsel, likewise, has no
22 objection to CREA's intervention.

23 JUDGE MOSS: All right. Ms. Davison, you're sort of
24 uniquely situated in some respects here, but I don't imagine you
25 have anything to say about this, do you?

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1 MS. DAVISON: Your Honor, actually, I could go back
2 and talk about the ancient history, since I'm probably the only
3 person at the table that participated in the original docket,
4 but I won't do that. I will say that Boise White Paper supports
5 Columbia REA's intervention.

6 JUDGE MOSS: Okay. And that was Judge Caille in that
7 case, so I was not involved in it either. I don't know of
8 anything ancient history, except to the extent I read the second
9 supplemental order. I did not read the eighth, by the way.

10 So I'm prepared to rule.

11 Ms. Carson, you seem to want to say something more.

12 MS. CARSON: Well, I would encourage you to read the
13 eighth. I think that it definitely has a bearing on this case
14 when the Commission ruled as a matter of law on these same
15 issues.

16 JUDGE MOSS: Well, I think you have enlightened me as
17 to the import of the eighth, vis-à-vis, the competitive issues
18 and the alleged restraint of trade issues. Those would not be a
19 basis for me to grant intervention in any event, since we have
20 no jurisdiction over those matters in my view of the law.

21 However, having said that, in reading the second
22 order and, indeed, in reading your two pleadings in this case,
23 what I came away inclined to focus on is the public interest
24 question, not the substantial interest question. Granted, as
25 Mr. Cedarbaum correctly points out, I don't think the

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1 substantial interest prong is satisfied.

2 However, I did go and I read -- is it Ms. Coughlin
3 who testifies on the Schedule 300? Yes. I read her testimony
4 yesterday, which is mercifully brief, I might say. But in any
5 event, clearly this is in play. And PacifiCorp has put it in
6 play, and as I understand their proposal, it is to change the
7 tariff rate for that schedule to -- it seemed a little vague to
8 me -- gather to reflect the actual cost in each event. I'm not
9 sure how that's going to work. I'm not sure I've ever seen a
10 tariff operate quite like that before, but that's okay.

11 The point simply is that this is going to be an
12 important issue from my perspective, at least, and I want to be
13 as fully informed about the subject as I can. And I think
14 there is at least some potential that the Columbia REA can
15 contribute to my -- the body of information that we have in the
16 case that would be helpful in making an ultimate decision on
17 that issue.

18 And on the basis of that public interest, the
19 Commission's perspective on the matter is that Columbia REA
20 should be allowed to intervene for the limited purpose of
21 focusing on the Schedule 300 issue. And we won't -- I'm not
22 interested in hearing about, you know, antitrust claims or
23 competition claims, or that sort of thing, and we just won't
24 spend time on that because it's not part of our jurisdiction.

25 So that is my determination on that. And if any

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1 problem should arise down the line, then certainly it will be
2 brought to my attention, and we'll take it from there.

3 As far as the confidentiality piece, Mr. Sanger
4 predicted we took umbrage in the implications there. I don't
5 think there was anything intended in the way offense,
6 Mr. Sanger, and I would encourage you all to go forward on an
7 even keel as we progress through the case, okay?

8 That took a little longer than I'd normally take on
9 these things, but I guess I'm feeling like I'm waxing eloquent
10 today. I don't know.

11 All right. We do have a few other matters to work
12 through here. I don't know if discovery has commenced. Of
13 course we dispensed with the public -- open public meeting step
14 of this, so perhaps discovery has commenced.

15 But in any event, it will be conducted in accordance
16 with the Commission's procedural rules in 480-07-400 through
17 425.

18 As always, I encourage the parties to cooperate in
19 the discovery process and not bring discovery disputes to me
20 unless it becomes absolutely necessary. All right. But I am
21 available for that, of course.

22 A protective order was already entered in this
23 proceeding on January the 25th, and so you have that.

24 I don't recall. Ms. Carson, did that have the highly
25 confidential provisions in it?

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1 MS. CARSON: It did not.

2 JUDGE MOSS: It did not.

3 It was not requested?

4 MS. CARSON: It was not requested.

5 JUDGE MOSS: Okay. Well, should that change, you'll
6 bring it to my attention, I'm sure.

7 I have one other matter of this nature, if you will,
8 and that is we put out a notice -- let's see. When was that?

9 On February 5th, the Commission issued a Notice of
10 Assignment of Policy Advisor and Notice of Deadline for
11 Responses. This was in regard to the possible participation in
12 the case as an advisor of Mr. Danny Kermode, who has been a
13 policy advisor here at the Commission. He was briefly employed
14 by PacifiCorp. According to the notice and according to my
15 personal knowledge, he did not focus on Washington matters at
16 all. Indeed, he was involved in Oregon matters exclusively and
17 was screened from the development of any preparation by
18 PacifiCorp in this proceeding.

19 However, out of an abundance of caution, the
20 Commission issued this notice and invited anyone who wishes to
21 make a statement concerning Mr. Kermode's participation or
22 object to it in some fashion to do so.

23 And so I'll just ask at this point, since we have all
24 the parties present, if anyone does have something they wish to
25 say or an objection they wish to raise?

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1 Hearing nothing, we give Mr. Kermode a clean bill of
2 health, and we will expect his participation to one degree or
3 another.

4 All right. Turning to the process and procedural
5 schedule, I would like to thank and compliment the parties on
6 their excellent efforts in getting a very thorough schedule put
7 together for us in this proceeding.

8 Apparently, everyone agrees to that; am I correct in
9 that regard? I see heads nodding in the room.

10 MR. CEDARBAUM: Yes.

11 JUDGE MOSS: Hearing no objections, then, I'm going
12 to just adopt your procedural schedule. I did check with the
13 Commissioners and the calendars and the hearing dates.

14 Actually, Mr. Cedarbaum and I had some informal
15 contact about that before today. And with the hearing being the
16 week of August 26 through 30th, that's going to work. The
17 following week is not available. It had been suggested as a
18 possibility, but it's not available due to Commissioner Goltz
19 will not be available that week.

20 In terms of the public comment hearings, I have heard
21 from the two. I don't know if we actually have two or three
22 sitting Commissioners at this point in time, but I have heard
23 from Commissioner Jones and Commissioner Goltz. Their
24 preference for two public comment hearings as we did as last --
25 as the Commission conducted in the last prior PacifiCorp general

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1 rate case. We're still working on the dates, and I, also, of
2 course, need to hear from our new Chairman and get his input on
3 that before we make a final determination on that. But that
4 week that was identified by you all, July 11 through 16, is
5 workable.

6 And I have suggested a couple of alternative
7 schedules to the Commissioners, and we'll see how that works,
8 and we'll announce that as soon as we can. Chances are the
9 prehearing conference order will just say to be determined
10 during that week, because I don't think I'm going to get an
11 answer to that.

12 So let's see. Anything else in here that...

13 I note there's this date for public notice report on
14 April 15th, but didn't I see something filed on that just a day
15 or two ago? Yes? No? Maybe not. I'm hallucinating.

16 MS. GAFKEN: If I may, Your Honor. That's a bit of a
17 placeholder date that we like to have on the schedule just to --
18 you know, we'll work with the Company and with Commission Staff
19 to evaluate and develop the customer notice that goes into the
20 bill stuffers.

21 JUDGE MOSS: Okay.

22 MS. GAFKEN: And that's just a date on the calendar
23 to have us come back to the Commission. Usually it's just done
24 as a written letter letting you guys know what the status is and
25 also holds our feet to the fire to get it done.

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1 JUDGE MOSS: Okay. Very good. All right. Well,
2 we'll have that in the schedule then.

3 Has PacifiCorp -- well, Ms. Carson, I know you have
4 participated before in the development of the issues list, this
5 thing we started doing here a couple of rate cases ago?

6 MS. CARSON: Yes.

7 JUDGE MOSS: So you're familiar with that process --

8 MS. CARSON: Yes.

9 JUDGE MOSS: -- and -- okay. We're good there.

10 I think we went ahead and got Bench Request 1 and 2
11 out, didn't we? Yes. Okay.

12 Well, that bench request, I've come to think of it as
13 the standard bench request, because we issue it in so many
14 proceedings. But, of course what we're asking for there is to
15 have working models of the revenue requirements piece of case.

16 And we're also asking that parties, as they did in
17 the last PSE case that I presided in and probably have in other
18 cases as well, try to stick to a common nomenclature and
19 numbering when referring to adjustments so that we can have -- I
20 started to put this in the bench request but decided it was just
21 not suitable. Apples to apples is what we're looking for there,
22 and it really helps us a lot if we have that common terminology
23 and -- and at least cross-references to the appropriate
24 adjustment numbers.

25 So we're looking for that, and that's -- I say that

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1 because I want to focus the attention of everyone, other than
2 the Company, on that. The Company, of course, is primarily the
3 target of Bench Request 1 and 2 at this juncture, but others
4 will be later.

5 MS. CARSON: Your Honor, we did have a question about
6 that.

7 JUDGE MOSS: Okay.

8 MS. CARSON: To keep the links intact, is it
9 acceptable to submit that on a USB drive rather than a disk?

10 JUDGE MOSS: Is that acceptable?

11 Yes. I'm getting an affirmative nod from our
12 accounting advisor, Mr. Martin, and so that would work.

13 MS. CARSON: Thank you.

14 JUDGE MOSS: All right. Okay. So we have our
15 procedural schedule. I'll put that, of course, on the
16 prehearing conference order, which I anticipate getting out
17 today or tomorrow. Perhaps I should get that out tomorrow,
18 because I want to give the parties an opportunity to let me know
19 if there are others they want on the electronic service list.

20 Is that something you all want to do?

21 MS. CARSON: Yes. We definitely -- I was...

22 JUDGE MOSS: Okay. Well, we'll do that, then. I'll
23 postpone getting that order out by a day, so if you all can let
24 me know by, say, noon tomorrow, then we'll get that out tomorrow
25 afternoon, and it'll have all that information on it.

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1 Let me see. All right. Electronic submission filing
2 and services process.

3 First of all, I want to remind the parties that if
4 they wish to agree among themselves for electronic service in
5 lieu of mailing or hand delivery or whatnot, please file a
6 letter with the Commission to that effect so that we have that
7 in our records just waiving service between yourselves by mail
8 or hand delivery.

9 We will continue -- the Commission will continue to
10 provide courtesy copies as part of its service, if you will, but
11 we're required by law to serve you by mail or hand delivery, so
12 we'll also continue to do that.

13 And I may have this later in my agenda, but I'll just
14 say it now since it comes to mind. As has become common
15 practice, the dates on the procedural schedule are the dates for
16 the electronic submission of papers and so forth. And then we
17 get the hard copy the next day, and that's agreeable. And
18 that's, of course, the official filing is when we receive it.

19 As you all know, everyone in this room has
20 participated in these proceedings many times. You do know the
21 Commission's rules encourage stipulations or settlements as to
22 facts and issues that can be resolved by negotiation, and so I
23 see you have set aside a date or two for that in your procedural
24 schedule that we're adopting. And I'm not sure. We're a little
25 shorthanded at this juncture in terms of providing you with a

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1 mediator or settlement judge. But if that becomes apparent that
2 that would be helpful, let us know, and we'll do our best.

3 Before I go through my closing litany, I'll ask if
4 the parties have any other business they wish to bring to my
5 attention?

6 MS. CARSON: Your Honor, one issue on discovery. I
7 guess we just want to be clear. You said that in terms of
8 CREA's intervention, it would be limited to Schedule 300 issues?

9 JUDGE MOSS: Mm-hm.

10 MS. CARSON: And so it's our understanding that would
11 be true for discovery; that that would be --

12 JUDGE MOSS: Yes.

13 MS. CARSON -- discovery would be limited to these
14 issues?

15 JUDGE MOSS: Yes, I think that's right. And I'm sure
16 Mr. Sanger's client will want him to focus on their issues and
17 not others, so that will no doubt eventuate.

18 And, again, any problems, bring them to my attention,
19 and then I'll take care of them.

20 Okay. Anything else? Anybody else have other
21 business?

22 All right. Then filings. I have checked with the
23 Records Center, and at this juncture, we need the original plus
24 19 for internal distribution.

25 If your filing includes information designated as

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1 confidential, file the original and 19 copies with a fully
2 unredacted version, because anybody within the Commission who
3 gets a copy will be privy to the confidential information.
4 We'll also need, of course, a redacted version for the Records
5 Center so that they can put something on the website. So that's
6 how that works. I'm going to do some internal work and see if I
7 can reduce that number, and if so, I'll let you all know.

8 As you all know, filings must be made through the
9 Commission's Secretary by mail or hand delivery to the Secretary
10 at the WUTC Records Center, or at the address: PO Box 47250,
11 1300 South Evergreen Park Drive Southwest, Olympia, Washington
12 98504-7250.

13 If I haven't said so already, I do appreciate if you
14 all can send me courtesy copies when you make filings.
15 Otherwise, I'll have to wait to get them through the system, and
16 I prefer to have them immediately, if possible.

17 So if you can send me a courtesy copy by e-mail, and
18 perhaps you can include Ms. Watson on that as well. And to the
19 extent it's a narrative of some sort, if it can be provided in
20 MS Word, that's most helpful to me.

21 Closer in time to the hearing, I'll follow the usual
22 practice of requiring you to submit a witness list showing an
23 order of presentation, estimates of time required for
24 cross-examination and cross-examination exhibit lists.

25 And I see you all even provided a date for that,

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1 which I'm adopting, even though it cuts my usual three down to
2 two. I'll manage.

3 We will, of course, exchange the cross-examination
4 exhibits prior to the hearing. And if necessary, prior to the
5 hearing, we will have a prehearing conference, but I haven't
6 done that in years, so I'm not expecting to do it here.

7 And as I have mentioned, I will enter a prehearing
8 conference order.

9 And if there's nothing further? Ms. Gafken?

10 MS. GAFKEN: I do have one question about
11 distribution of cross exhibits.

12 JUDGE MOSS: Sure.

13 MS. GAFKEN: Are you anticipating that to be a
14 distribution among the parties and to the Bench of the physical
15 paper copy of the cross exhibits at that time and then
16 electronic filing after, or...

17 JUDGE MOSS: I think that we are going back to the
18 old way of doing things, which is to say we're going to have you
19 do everything at once.

20 MS. GAFKEN: And then not again after?

21 JUDGE MOSS: We're going to do the filing. And I'll
22 clarify this in the prehearing conference order, because I want
23 to talk to Judge Kopta about this, but I believe the last
24 conversation he and I had on this subject was that this
25 two-stage thing just wasn't working out very well for the

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1 Records Center. So I'll have that conversation with him, and
2 we'll make it clear in the order. But my thinking is that we're
3 going back to the system of simply having everybody file and
4 exchange on the same day.

5 MS. GAFKEN: Okay.

6 JUDGE MOSS: And then we have to have the paper
7 copies that day because we're preparing bench books.

8 MS. GAFKEN: Right. I guess I'm just a little
9 unclear, and I apologize, but does that mean, then, that there's
10 two electronic filings --

11 JUDGE MOSS: No. There will just be the one.

12 MS. GAFKEN: -- or just one?

13 JUDGE MOSS: There will just be the one.

14 MS. GAFKEN: Okay.

15 JUDGE MOSS: We'll take the responsibility as we
16 traditionally had done of identifying for the Records Center
17 only those exhibits that are admitted and so on and forth.

18 MS. GAFKEN: Okay.

19 JUDGE MOSS: And the others, I don't know what
20 happens to those, but I guess they sit around as public record
21 for a thousand years or whatever.

22 Mr. Cedarbaum?

23 MR. CEDARBAUM: Just to follow up on that, I have a
24 question.

25 So in our schedule, we have August 22nd as a

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1 distribution date for cross exhibits.

2 JUDGE MOSS: Mm-hm.

3 MR. CEDARBAUM: On that date, you will want hard copy
4 and electronic copies of both of all cross exhibits, and any
5 confidential exhibit you're going to want a redacted version as
6 well?

7 JUDGE MOSS: I never need a redacted version of
8 anything.

9 MR. CEDARBAUM: Okay.

10 JUDGE MOSS: The only purpose for redacted versions
11 is if you need to distribute something like that to somebody who
12 hasn't signed the confidentiality agreement.

13 So as far as cross exhibits are concerned, the
14 Records Center, I guess, will ultimately need one. But, you
15 know, I can give you a day or two on that if you want, and
16 that's fine, if you want it.

17 MR. CEDARBAUM: Okay.

18 JUDGE MOSS: If the preparation of the redacted
19 version is one of the headaches involved in this process -- and
20 I realize there are more than one headache involved -- then,
21 yes, I would not mind if you postpone that by a day or two or
22 three because that won't become important until later in the
23 process.

24 MR. CEDARBAUM: Okay. Thank you.

25 JUDGE MOSS: But for my purposes, we're getting

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1 copies to the Commissioners and to our advisors and to myself
2 and Ms. Watson, Judge Watson, yeah, we do need them on the 22nd
3 fully unredacted.

4 MS. GAFKEN: I guess one more thing about that.

5 So in the agreed proposed schedule, we have a two
6 o'clock deadline --

7 JUDGE MOSS: Yes.

8 MS. GAFKEN: -- on the 22nd.

9 JUDGE MOSS: That's for our benefit of our Records
10 Center.

11 MS. GAFKEN: And I guess when I was initially
12 thinking about it, I thought it was just the paper copies being
13 submitted.

14 If we cannot have a two o'clock deadline, that would
15 help tremendously.

16 JUDGE MOSS: Well, I don't want to allow for that
17 right now, because this is -- you know, this process I realize
18 is burdensome. It's burdensome on everyone, and that includes
19 the Commission. And we have limited personnel to deal with a
20 lot of paper at that time, so the two o'clock deadline is
21 important to us.

22 And, you know, I realize that you all, too -- these
23 are all deadlines. I would hope you would have your stuff ready
24 even a little earlier than the schedule provides in terms of
25 something like this. And if there's good cause, we certainly

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1 can have an exhibit come in -- I hate to say it -- late during
2 the hearing.

3 You know, we discourage that, of course, for obvious
4 reasons, but, you know, if that something happens, then, you
5 know, I'm a pretty understanding kind of a guy, so we'll
6 accommodate it. Our main interest, of course, as always, is
7 having a complete record.

8 All right. Now, I hope I haven't muddied the waters
9 too much on that process, but I will try to make a more clear
10 statement in the prehearing conference order so we're all on the
11 same page about how we're going to do this.

12 All right. Anything further?

13 Apparently not. Thank you all for being here. I
14 look forward to working with you and bringing this case to a
15 speedy resolution.

16 We're off the record.

17 (Proceeding concluded at 10:35 a.m.)

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