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1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION  
3   WASHINGTON UTILITIES AND            )Docket No. UG-020230  
4   TRANSPORTATION COMMISSION,        )Docket No. UG-020232  
5                   Complainant,        )Volume I  
6                                        )Pages 1-14  
7                   vs.                    )  
8                                        )  
9   BASIN FROZEN FOODS, INC.,         )  
10                                        )  
11                   Respondent.         )  
12                   \_\_\_\_\_ )

8  
9                   A prehearing conference in the  
10   above matter was held on October 24, 2002, at 9:33  
11   a.m., at 1300 Evergreen Park Drive Southwest,  
12   Olympia, Washington, before Administrative Law Judge  
13   ROBERT WALLIS.

14                                        The parties were present as  
15   follows:

16                                        BASIN FROZEN FOODS, INC., by Kevin  
17   Weber, President, P.O. Box 747, Warden, Washington,  
18   98857.

19                                        THE COMMISSION, by Donald T.  
20   Trotter, Assistant Attorney General, 1400 Evergreen  
21   Park Drive, S.W., P.O. Box 40128, Olympia, Washington  
22   98504-0128.

23  
24   Barbara L. Nelson, CCR  
25   Court Reporter

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

2                           JUDGE WALLIS: Let's be on the record,  
3 please, for a prehearing conference in the matter of  
4 Commission Docket Number UG-020230. This is a  
5 prehearing conference in that matter, which is a  
6 complaint by the Commission against Basin Frozen  
7 Foods.

8                           This conference is being held at Olympia,  
9 Washington, on October 24 of the year 2002. My name  
10 is Robert Wallis, and I am the presiding judge this  
11 morning, substituting for Judge Schaer, who's been  
12 assigned to this matter, but who is unable to attend.

13                           I'd like to start by taking appearances of  
14 the parties, and as we do that, I would like the  
15 representatives to state your name and your business  
16 address and your communications contact information,  
17 your voice line telephone, your electronic mail, and  
18 your fax. Then we will launch into the agenda. May  
19 we begin with the Complainant, please.

20                           MR. TROTTER: Yes, Your Honor. For the  
21 Commission, my name is Donald T. Trotter. I'm an  
22 Assistant Attorney General with the Attorney  
23 General's office. My address is 1400 South Evergreen  
24 Park Drive, S.W., P.O. Box 40128, Olympia,  
25 Washington, 98504-0128. My telephone number is

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1 360-664-1189; e-mail is dtrotter@wutc.wa.gov; and my  
2 fax number is 360-586-5522.

3 JUDGE WALLIS: And appearing this morning  
4 for Basin Frozen Foods?

5 MR. WEBER: Kevin Weber, Basin Frozen  
6 Foods. Address is P.O. Box 747, Warden, Washington,  
7 98857. Phone number is 509-349-2210; fax number is  
8 509-349-2375; and e-mail is Kevin@bffinc.com.

9 JUDGE WALLIS: Thank you very much.  
10 Commission Staff has distributed a document  
11 indicating a list of issues that they would like to  
12 address this morning. Prior to beginning the  
13 hearing, we inquired whether there were any  
14 additional matters that people would like to put on  
15 the list, and there was no response. We will again  
16 afford people the opportunity later in the morning to  
17 raise additional matters, if you desire.

18 First item on Staff's list of issues is  
19 hearing schedules, and they have presented a couple  
20 of specific proposals. Mr. Trotter, would you like  
21 to describe those?

22 MR. TROTTER: Yes, Your Honor. We have two  
23 alternative proposals, and just for Basin Frozen  
24 Foods' benefit, we're not wedded to any particular  
25 date on this. This is just a proposal and dates that

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1 we thought were achievable. For Your Honor's  
2 benefit, we did not check the hearing dates to see if  
3 there was Commissioner availability on those dates.  
4 Certainly in that time frame would be acceptable to  
5 us.

6 We have two options. One, if the parties  
7 are willing to consider proposing a settled  
8 resolution of this matter, we were proposing kind of  
9 a month in order to accomplish that. And then, if  
10 that didn't bear fruit, then we would proceed to  
11 prepare our case.

12 So the two schedules are similar. One lags  
13 the other by a month, give or take a few days. So  
14 that's the rationale for it. For the Staff's part,  
15 we are willing to discuss a settlement with the  
16 company. We believe the company's also amenable, but  
17 they can speak for themselves. As I've noted here,  
18 any stipulation between the Commission Staff and  
19 Basin Frozen Foods would have to be subject to  
20 Commission approval. We can't settle anything by  
21 ourselves. We need -- the Commission will pass on  
22 whatever settlement would be reached by the parties.

23 Again, there's nothing particularly magical  
24 about the schedule. We just felt these dates were  
25 achievable, and the company can comment on them as

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1 they wish, but we believe Staff can meet these dates.

2 JUDGE WALLIS: Mr. Weber, what are your  
3 thoughts on that?

4 MR. WEBER: The dates look fine with me.  
5 And you know, we'd hope to settle this thing and get  
6 it over with.

7 JUDGE WALLIS: Very well. So I take it  
8 that your preference would be to follow the Staff's  
9 Option A, which would be to spend some time on  
10 settlement discussions, see what the results are, and  
11 if they haven't proved fruitful, then to proceed with  
12 the litigation schedule?

13 MR. WEBER: That would be correct.

14 JUDGE WALLIS: Very well. The Commission's  
15 policy is to support settlement discussions. The  
16 proposal seems very appropriate in light of that  
17 policy, and we will enter a prehearing order that  
18 establishes a schedule based upon this proposal.

19 MR. WEBER: Okay.

20 JUDGE WALLIS: We will check the calendar  
21 and we will come up with dates that appear as of this  
22 time to be available. We've learned over the years  
23 that the Commissioners are sometimes called away and  
24 things happen, but barring that, we'll try to get  
25 something that people can count on.

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1 MR. WEBER: Okay.

2 JUDGE WALLIS: The next item on the agenda  
3 is the question of invoking the Commission's  
4 discovery rule, which is WAC 480-09-480. Mr.  
5 Trotter, would you like to describe what that entails  
6 and why the Staff is seeking to invoke that rule?

7 MR. TROTTER: Yes, Your Honor. Under the  
8 statutes and rules of the Commission, in certain  
9 types of cases, the only method for obtaining  
10 information between parties, other than by agreement  
11 between the parties themselves, is by subpoena. So  
12 in order to require a response, we'd have to issue  
13 you a subpoena for documents or records and so on.  
14 That's sometimes not very efficient, but it is kind  
15 of the default procedure.

16 In certain classes of cases, the Commission  
17 has adopted a more detailed rule that permits us to  
18 issue data requests to you, asking you specific  
19 questions and even to take depositions, if necessary.  
20 I don't think we need them in this case at this time,  
21 but that's also available. The same procedures that  
22 we would have, of course, you would have to ask us  
23 the same type of discovery questions and take  
24 depositions of our witnesses, if you so desired. But  
25 the rule I've cited there sets forth the

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1 requirements.

2           Now, in order for those -- that what I  
3 think to be more flexible procedure to be available,  
4 it's only available in certain types of cases, and  
5 the one type of case that we thought this case fit  
6 into was the -- any proceeding that the Commission  
7 declares to be of a precedential nature. This is, as  
8 far as we know, the first case that has gone to  
9 hearing in the pipeline safety enforcement area, and  
10 so it will be precedential to that degree, and so we  
11 think we can invoke the rule.

12           I have the rule here if you want to look  
13 through it, if you haven't had familiarity with it,  
14 but that's our proposal.

15           The other way -- the other thing you need  
16 to know is that the rule itself is invoked only by  
17 order of the Commission invoking it. So we need a  
18 prehearing order saying this rule will be invoked.  
19 So that's why we put it on our list. We think it's a  
20 reasonable way to get information, and there's  
21 procedures in there for doing it and it's pretty well  
22 laid out and we think it's preferable to subpoena in  
23 this case, so we're proposing that the Commission  
24 invoke that rule. You're welcome to peruse it if you  
25 want to.

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1           MR. WEBER: Yeah, is there a chance I can  
2 get a copy to take with me or --

3           MR. TROTTER: I'd be happy to -- there's a  
4 records center down on the first floor that has  
5 copies of all the rules, and we'll take you down  
6 there, make sure you get copies of whatever rules you  
7 want. They're also available online on the  
8 Commission's website.

9           MR. WEBER: If I could pick one up on the  
10 way out, that would be great.

11          MR. TROTTER: Sure, great. So for those  
12 reasons, Your Honor, we'd ask the Commission to  
13 invoke the provisions of WAC 480-09-480.

14          JUDGE WALLIS: Mr. Weber, do you have any  
15 objections to invocation of that rule?

16          MR. WEBER: You know, I don't -- at this  
17 time, I don't know exactly what that rule is, so I  
18 don't have any objections to it, you know, at this  
19 time.

20          JUDGE WALLIS: What I would suggest is that  
21 we afford you a couple of days to take a look at the  
22 rule and respond if you do have any objections. So  
23 what I would propose here is that if we haven't heard  
24 from you by the close of business on Monday that you  
25 have an objection, we will proceed on the basis that



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1 you do not object.

2 MR. WEBER: That would be fine.

3 JUDGE WALLIS: You also may talk with Staff  
4 at the conclusion of the hearing about the process  
5 that would be used in implementing the rule, that is,  
6 exactly what Staff would be doing, what they would be  
7 giving to you and what your responsibilities would be  
8 in terms of responding. And that will help fill out  
9 the picture of whether or not this makes sense from  
10 your perspective.

11 MR. WEBER: Okay.

12 MR. TROTTER: Your Honor, that's acceptable  
13 to us. And I would just note, also, our list of  
14 issues, I just prepared it late yesterday. I did not  
15 give Basin Frozen Foods a copy till this morning. So  
16 we think your proposal's eminently fair.

17 JUDGE WALLIS: Yes. The next item on the  
18 agenda is an issues statement. Mr. Trotter.

19 MR. TROTTER: Yes, Your Honor. The  
20 prehearing conference notice talked about  
21 identification of issues. The complaint sets forth  
22 the general categories where the company has  
23 allegedly failed to comply with Commission safety  
24 rules. Also, the company was given a detailed  
25 violation report, which itemized each and every

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1 aspect of the rules that the Commission Staff  
2 believed had been violated and which formed the basis  
3 of the complaint. So to put together a detailed list  
4 would be several pages, so I thought just a general  
5 statement of the issues was whether the Respondent  
6 had violated the safety rules, and if so, what is the  
7 appropriate sanction or remedy for that conduct. So  
8 I stated it generally, but if the Commission wants a  
9 very detailed list, we could provide that, but it's  
10 based on the violation report that the company  
11 received initially.

12 JUDGE WALLIS: Very well. Mr. Weber, do  
13 you have any thoughts on whether those are the issues  
14 and, from a procedural standpoint, whether there are  
15 issues that you see that Staff has not mentioned?

16 MR. WEBER: No, I think everything's, you  
17 know, been mentioned in there. You know, the  
18 violations we had on there were basically a piece of  
19 paper that we couldn't put our hands on when they  
20 were there, you know, for the audit. We had them.  
21 We changed some personnel and, in the midst of that,  
22 we didn't have everything in one file is the, you  
23 know, main issue here.

24 JUDGE WALLIS: Very well. And should this  
25 go to hearing, you'll have the opportunity to hear

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1 what Staff's story is and then you'll be able to  
2 present your own.

3 MR. WEBER: Okay.

4 JUDGE WALLIS: Let's proceed to the next  
5 item on the agenda, which is other matters. And on  
6 that point, Staff has presented its prediction as to  
7 the number of witnesses that it will be presenting  
8 during its direct and rebuttal case. Mr. Trotter.

9 MR. TROTTER: Yes, Your Honor. We thought  
10 the Commission might like that information to gauge  
11 the scope of the hearing from the Staff's  
12 perspective, at least, and we did allow two days for  
13 hearing in our schedule, and we thought that if -- to  
14 the extent there are issues -- factual issues raised,  
15 that by the process of filing direct testimony, the  
16 company's direct testimony and the Staff rebuttal  
17 testimony, those would pretty much be funneled down  
18 to two manageable set of factual issues for hearing.

19 So at this point, we thought we would have  
20 a minimum of two and a maximum of four witnesses for  
21 our direct case, and probably half that for rebuttal.

22 JUDGE WALLIS: Are you expecting that the  
23 witnesses on rebuttal would also have been witnesses  
24 on the direct case?

25 MR. TROTTER: Yes.

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1 JUDGE WALLIS: Very well.

2 MR. TROTTER: Unless some very technical  
3 engineering type fact came up, but generally, if it's  
4 within the scope of the violations that we're  
5 alleging, then definitely the same people.

6 JUDGE WALLIS: Very well. Mr. Weber, are  
7 you able to take a stab right now, if this goes to  
8 hearing, at the number of witnesses that you would be  
9 presenting on your behalf in defense of these  
10 allegations and how much time would be appropriate to  
11 schedule for that presentation?

12 MR. WEBER: You know, at this time, I  
13 haven't given that a lot of consideration, so I would  
14 hate to guess at that.

15 JUDGE WALLIS: Very well. You're under no  
16 obligation to do so at this time.

17 Mr. Trotter, does that conclude the list of  
18 items that you wish to raise at the conference this  
19 morning?

20 MR. TROTTER: Yes, it does.

21 JUDGE WALLIS: Mr. Weber, is there any  
22 other matter that you would like to raise at this  
23 time regarding the process of taking this matter  
24 through to the Commission decision?

25 MR. WEBER: No, there's nothing else.

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1           JUDGE WALLIS: Very well. We did afford  
2 you the opportunity to voice objection to invoking  
3 the Commission's discovery rule by Monday of next  
4 week, and if you do, I would suggest that you use the  
5 fax to send that into the Commission's Record Center,  
6 and we'll see that you get the number to use before  
7 you leave the building today.

8           MR. WEBER: All right.

9           JUDGE WALLIS: And that will allow a rapid  
10 communication. I would also suggest that you ask the  
11 Records Center for the entire chapter 480-09, which  
12 is the Commission's Procedure Rules. The rule on the  
13 discovery process is one of those rules. There are  
14 others that will govern how this case is taken to  
15 hearing.

16           And finally, Mr. Trotter has indicated and  
17 you've indicated that you're willing to discuss a  
18 settlement of the matter. And if you are both  
19 prepared to begin those, as long as you're both in  
20 town today and available, you might explore with Mr.  
21 Trotter whether it would be premature to start those  
22 negotiations, those discussions today.

23           MR. WEBER: Okay.

24           JUDGE WALLIS: Mr. Trotter.

25           MR. TROTTER: Yes, that's fine.

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1 JUDGE WALLIS: Very well.

2 MR. TROTTER: I did have one other --

3 JUDGE WALLIS: Mr. Trotter.

4 MR. TROTTER: Perhaps it's a formality, but  
5 if you could, on the record, ask for intervention, if  
6 anyone is here to intervene -- I don't think there  
7 are such people, but just so that we can protect  
8 ourselves later, if you could ask for any person that  
9 intends to intervene at this time, I'd appreciate  
10 that.

11 JUDGE WALLIS: Very well. Is there anyone  
12 present, either in the hearing room or on the bridge  
13 line, who wishes to participate in this proceeding as  
14 an intervenor? Let the record show that there's no  
15 response.

16 MR. TROTTER: Thank you.

17 JUDGE WALLIS: Very well. There being  
18 nothing further to come before the Commission, this  
19 conference is adjourned, and we wish the parties well  
20 in their discussions.

21 MR. TROTTER: Thank you, Your Honor.

22 (Proceedings adjourned at 9:51 a.m.)

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