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1 COMPLAINANTS, by ROY DICKMEYER, 18502 126th
2 Street Southeast, Snohomish, Washington 98290;
3 telephone, (360) 794-4841.

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5 COMPLAINANTS, by STEVE EDWARDS, 18820 126th
6 Street Southeast, Snohomish, Washington 98290;
7 telephone, (360) 794-5024.

8

9 COMPLAINANTS, by MARI KAY EVERITT, 18514
10 126th Street Southeast, Snohomish, Washington 98290;
11 telephone, (360) 805-0154.

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13 COMPLAINANTS, by RONALD HOLLOWAY, 18521 126th
14 Street Southeast, Snohomish, Washington 98290;
15 telephone, (360) 794-8601.

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17 COMPLAINANTS, by CONSTANCE R. REID, 18515
18 126th Street Southeast, Snohomish, Washington 98290;
19 telephone, (360) 794-9397.

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21 COMPLAINANTS, by KEN COUNTER (via bridge
22 line), 12715 189th Drive Southeast, Snohomish,
23 Washington 98290; telephone, (360) 794-0936.

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1 COMPLAINANTS, by KEN CHISHOLM (via bridge
2 line), 12631 189th Drive Southeast, Snohomish,
3 Washington 98290; telephone, (360) 794-9192.

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5 COMPLAINANTS, by JANINE GROVES (via bridge
6 line), 18607 126th Street Southeast, Snohomish,
7 Washington 98290; telephone, (360) 794-8123.

8

9 COMPLAINANTS, by KATHRYN OSTBYE (via bridge
10 line), 18808 126th Street Southeast, Snohomish,
11 Washington 98290; telephone, (360) 805-5421.

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13 COMPLAINANTS, by MARGARET LACOMBE (via bridge
14 line), 18804 126th Street Southeast, Snohomish,
15 Washington 98290; telephone, (360) 805-1926.

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17 COMPLAINANTS, by TRACEY SMITH (via bridge
18 line), 18815 130th Street Southeast, Snohomish,
19 Washington 98290; telephone, (360) 794-1252.

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21 COMPLAINANTS, by ARNOLD EBY (via bridge
22 line), 18623 126th Street Southeast, Snohomish,
23 Washington 98290; telephone, (360) 794-4382

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1 COMPLAINANTS, by GREG GALLOWAY (via bridge
2 line), 18505 126th Street Southeast, Snohomish,
3 Washington 98290; telephone, (360) 794-7987.

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1 JUDGE MACE: Let's be on the record in the
2 matter of the complaint of Nancy Bates, et al., versus
3 Marbello Water Company for unfair billing, poor
4 communication and maintenance. That's the docket
5 caption I have for UW-040792. My name is Theo Mace.
6 I'm the administrative law judge who will be presiding
7 in this hearing.

8 We are meeting today, June 29th, 2004, at the
9 office of the Washington Utilities and Transportation
10 Commission in Olympia, Washington. We have scheduled
11 today a prehearing conference. The purpose of the
12 prehearing conference is to determine who the
13 Complainants in this case are, to set a schedule of
14 proceedings, and to address various other issues that
15 are required to be addressed at a conference like this,
16 issues related to filing of documents, discovery,
17 protective order, some of which may not pertain to this
18 specific proceeding, but nevertheless, they are issues
19 that we need to address today.

20 So the first thing I want to do is to get the
21 appearances, first of all, of the Complainants and then
22 of the Respondent and then of Staff, and so first I'm
23 going to turn to the Complainants who are in the
24 hearing room today. What I'm going to ask you to do is
25 to give me your full name, your address, your telephone

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1 number, and if you have a fax or an e-mail, you should
2 provide that as well, and I'm going to make sure I have
3 a list at the end of this of all the Complainants who
4 have entered appearances today, and I will turn to
5 those on the conference bridge as well so that we have
6 an accurate list of the Complainants who wish to
7 proceed with their complaints.

8 Those Complainants who are not entering or
9 who do not enter appearances today will be dismissed
10 from the proceeding because the rules require that you
11 enter an appearance at the first session of hearing.
12 So I just want you to all bear that in mind, and speak
13 clearly. Don't speak over each other, and make sure
14 that you enunciate, because the reporter is going to be
15 taking down everything we say today, and unless you are
16 clear, it will be hard for her to understand what you
17 are saying and to record it properly.

18 Anybody have any questions before we begin?
19 I'll begin with you, Mr. Holloway. Your full name,
20 address and telephone number and fax or e-mail, and
21 unless you speak into the microphone, the people on the
22 conference bridge won't be able to hear you, and that
23 may have to be the way it is for the rest of the
24 Complainants in the room, but at least, Mr. Holloway,
25 make sure the button is raised and speak directly into

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1 the microphone.

2 MR. HOLLOWAY: My name is Ron Holloway,
3 H-o-l-l-o-w-a-y. I live at 18521 126th Street
4 Southeast, Snohomish, 98290; phone number, (360)
5 794-8601. E-mail address is sha.ron@comcast.net.

6 JUDGE MACE: Thank you. I'll turn to those
7 people on my left in this second row here, if you would
8 introduce yourself.

9 MR. DICKMEYER: My name is Roy Dickmeyer. I
10 live at 18502 126th Street Southeast, Snohomish, 98290.
11 My phone number is (360) 794-8841.

12 JUDGE MACE: Next?

13 MS. EVERITT: Mari Kay Everitt, 18514 126th
14 Street Southeast, Snohomish, Washington, 98290. My
15 phone number is (360) 805-0154 E-mail is
16 mk.chad@verizon.net.

17 JUDGE MACE: Thank you. Next? Woman in
18 blue?

19 MS. DELISLE: I'm Martha DeLisle,
20 D-e-L-i-s-l-e. I live at 12718 189th Drive Southeast,
21 Snohomish, 98290. The phone number is (360) 794-3443.

22 JUDGE MACE: Thank you.

23 MR. DELISLE: I'm Ron DeLisle, same address
24 and phone number.

25 JUDGE MACE: All right, thank you. We have

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1 that information then.

2 MR. DELISLE: The e-mail address is
3 ron.de@comcast.net.

4 MS. REID: I'm Constance Reid, spelled
5 R-e-i-d. I live at 18515 126th Street Southeast,
6 Snohomish, 98290; phone number, (360) 794-9397. My
7 e-mail is dibreid@yahoo.com.

8 JUDGE MACE: Thank you. You two gentlemen in
9 the first row there?

10 MR. EDWARDS: Steve Edwards. I live at 18820
11 126th Street Southeast, Snohomish, 98290; phone number,
12 (360) 794-5024; e-mail, stevee@h-ai.com.

13 MR. BIRCHMAN: Name is Joel Birchman,
14 B-i-r-c-h-m-a-n. Address is 18715 126th Street
15 Southeast, Snohomish, 98290. Phone is (360) 794-7513.
16 E-mail address is joelb@perteet.com.

17 JUDGE MACE: Thank you. I believe that
18 concludes Complainant appearances from the hearing
19 room. I'm going to turn to the conference bridge now,
20 and let me go through the list that I have for people
21 who signed up, and you can enter an appearance
22 according to my calling on you. Is there a Peggy
23 LaCombe on the line?

24 MS. LACOMBE: Yes.

25 JUDGE MACE: Could you give us your full

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1 name, address, phone number and e-mail address?

2 MS. LACOMBE: My name is Margaret LaCombe,
3 L-a-C-o-m-b-e. My address is 18804 126th Street
4 Southeast, Snohomish, 98290. Phone number is (360)
5 805-1926. E-mail is pbclac@aol.com.

6 JUDGE MACE: Thank you. Kathryn Ostbye?

7 MS. OSTBYE: Yes, I'm here. My name is
8 Kathryn Ostbye, O-s-t-b-y-e. My address is 18808 126th
9 Street Southeast, Snohomish, 98290. My telephone
10 number is (360) 805-5421. My fax number is (206)
11 621-1251. My e-mail is catirb54@aol.com.

12 JUDGE MACE: Arnold Eby?

13 MR. EBY: Yes. My name is Arnold Eby, E-b-y.
14 My address is 18623 126th Street Southeast, Snohomish,
15 Washington, 98290; phone number, (360) 794-4382;
16 e-mail, sreby@yahoo.com.

17 JUDGE MACE: Thank you. Mr. Chisholm and
18 Mr. Counter?

19 MR. CHISHOLM: My name is Ken Chisholm,
20 C-h-i-s-h-o-l-m. My address is 12631 189th Drive
21 Southeast, Snohomish, 98290. My phone number is
22 (360) 794-9192.

23 JUDGE MACE: Do you have an e-mail address,
24 Mr. Chisholm?

25 MR. CHISHOLM: No, I do not.

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1 JUDGE MACE: Mr. Counter?

2 MR. COUNTER: My name is Kenneth A. Counter.
3 Last name is spelled C-o-u-n-t-e-r. My address is
4 12715 189th Drive Southeast, Snohomish, 98290. My
5 telephone is (360) 794-0936. No e-mail.

6 JUDGE MACE: I'm sorry. I missed your phone
7 number. Could you repeat it, please?

8 MR. COUNTER: 794-0936.

9 JUDGE MACE: Thank you. Mr. Groves or
10 Mrs. Janine Groves?

11 MS. GROVES: This is Janine Groves,
12 G-r-o-v-e-s. My address is 18607 126th Street
13 Southeast, Snohomish, 98290. Phone number is (360)
14 794-8123, and my e-mail is rjjjgroves@msn.com.

15 JUDGE MACE: Mr. Galloway?

16 MR. GALLOWAY: This is Greg Galloway,
17 speaking in regards to my wife also. We reside at
18 18505 126th Street Southeast, Snohomish. Home phone is
19 (360) 794-7987; cell, (425) 923-7160. E-mail address
20 is monroegalloway@msn.com.

21 JUDGE MACE: Ms. Tracey Smith?

22 MS. SMITH: My name is Tracey, T-r-a-c-e-y,
23 A. Smith, 18815 130th Place Southeast, Snohomish,
24 98290; telephone, (360) 794-1252; e-mail,
25 smithjjta@comcast.net.

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1 JUDGE MACE: Is there anyone else on the
2 conference bridge who wants to enter an appearance
3 today? Thank you. I would like to have counsel for
4 Marbello enter his appearance at this time.

5 MR. FINNIGAN: Richard Finnigan on behalf of
6 Marbello Water Company, 2405 Evergreen Park Drive
7 Southwest, Suite B-1, Olympia, Washington, 98502.
8 Phone is (360) 956-7001. Fax is (360) 753-6862.
9 E-mail is rickfinn@ywave.com.

10 JUDGE MACE: For Commission staff?

11 MR. THOMPSON: I'm Jonathan Thompson,
12 assistant attorney general representing the Commission
13 staff. My address is 1400 South Evergreen Park Drive
14 Southwest, PO Box 40128, Olympia, Washington, 98504.
15 My phone number is (360) 664-1225. My fax is 586-5522,
16 and my e-mail is jthompso@wutc.wa.gov.

17 JUDGE MACE: Thank you. Does anyone else
18 have an appearance to enter in this proceeding? I hear
19 no response. The next issue that we would typically
20 address in a prehearing conference like this is whether
21 the parties will be seeking discovery. That is to say,
22 whether they will be asking questions of one another in
23 writing prior to any hearing, and these provisions for
24 discovery are found in our administrative rules
25 480-07-400 in following the Administrative Code that

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1 governs our procedures here at the Commission.

2 I would like to ask whether the parties think
3 that discovery will be an issue in this case; in other
4 words, whether they will conduct discovery.

5 Mr. Holloway, I recognize you are probably at a
6 disadvantage about knowing about these procedures.

7 MR. HOLLOWAY: I'm an old farm boy. I'm more
8 comfortable driving a truck through LA than I am
9 sitting here.

10 JUDGE MACE: Then let me turn to the other
11 parties and see what they have to say, and then I will
12 turn back to you. Mr. Finnigan?

13 MR. FINNIGAN: I don't see any need for it.

14 MR. THOMPSON: Staff would ask that the
15 discovery rule be invoked.

16 MR. FINNIGAN: I do want a clarification.
17 What is Staff's role in this? I would like to know
18 what Commission staff views its role is in this
19 proceeding.

20 MR. THOMPSON: The portion of the customers'
21 complaint that Staff believes has particular merit is
22 the prayer for relief under RCW 80.04.220, which is the
23 reparations statute. It allows for the Commission to
24 award damages when it's found that a company has
25 charged rates that are excessive or unreasonable,

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1 essentially.

2 And so it's Staff's role in this case, as we
3 currently envision it, if there is a case to be made
4 for that going backwards in time from the date on which
5 the company met the test for jurisdiction that Staff
6 intends to file testimony in support of such a case.

7 JUDGE MACE: Mr. Finnigan?

8 MR. FINNIGAN: First of all, the statement
9 that the Commission can award damages is an incorrect
10 statement of law. The Commission can find that if
11 anybody wants damages, they have to go to Superior
12 Court under the reparations statute. It's not within
13 the Commission's jurisdiction to award damages --

14 JUDGE MACE: Let me just interrupt for one
15 moment. I don't want to hear argument on a motion to
16 dismiss at this point. I would give you an opportunity
17 to do that in writing.

18 MR. FINNIGAN: I'm really quite upset by how
19 this case got to this point. It really shouldn't be
20 here, but that aside, I'll address that at a later
21 date. I think this whole proceeding is wasting the
22 customers' money, so I would like to set a schedule
23 that allows us to get to that point as quickly as
24 possible.

25 JUDGE MACE: We will certainly be setting a

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1 schedule. That's one of the things we are going to do
2 in this prehearing conference. To go back to the issue
3 I addressed initially, I will invoke the discovery
4 rule, and that means that the parties will be able to
5 conduct discovery under the Commission's rules. I will
6 advise you that it would be a good idea, Mr. Holloway,
7 to at least take a look at those rules and try to
8 familiarize yourself with them. It may not be an issue
9 for you and for the Complainants, but on the other
10 hand, it may, and you might need to take a look at
11 them.

12 MR. HOLLOWAY: Where would I find those?

13 JUDGE MACE: I'm not sure right now, but I
14 can find out for certain where you can get a copy.
15 Probably through the Commission secretary or through
16 the records center.

17 MR. HOLLOWAY: Thank you, Your Honor.

18 JUDGE MACE: I would ask next with regard to
19 a protective order. Do any of the parties see the need
20 for such an order?

21 MR. FINNIGAN: If there is going to be
22 discovery, we will need a protective order, Your Honor.

23 JUDGE MACE: I will enter a protective order
24 then. For those of you who are Complainants and new to
25 the Commission, the protective order means that if

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1 there is information that any of the parties consider
2 confidential, very sensitive trade information or
3 commercial information, the party can ask that it be
4 filed on a confidential basis. That means it's sealed,
5 and only those who sign a certain agreement to protect
6 the confidentiality of the information are permitted to
7 look at it. Generally, that only touches on a small
8 portion of any information that comes into a particular
9 case, but we enter the order ahead of time so the
10 parties can be protected if they need that protection
11 during the hearing.

12 My review of the complaints, the individual
13 complaint filings in this case, seems to me to reveal
14 the following types of complaints: that Marbello's
15 rates are too high, that their rates are unfair, and
16 that there are certainly problems with service that
17 various of the Complainants have experienced.

18 Are there any other issues that the parties
19 would like to include in a list of issues? And this is
20 not intended to be a comprehensive list but just merely
21 to make sure we have sort of an idea of the issues we
22 are going to be facing in this case. If the
23 Complainants are going to speak, it would be helpful if
24 you said your name since there are so many of you.

25 MR. EDWARDS: Good afternoon; Steve Edwards.

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1 We've resided there for about 18 or 19 years, and in
2 our history of our living there, I have yet to see them
3 exercising their vows, flush the hydrants, in terms of
4 maintenance. I do water systems designs for a living,
5 and I'm concerned about the reliability of the system
6 because I haven't seen them maintain or use regular
7 practices common to water systems.

8 JUDGE MACE: Thank you.

9 MS. SMITH: I'm Tracey Smith. We've had
10 several times when we've tried to contact the company,
11 and we just leave messages that go unresponded to time
12 and time again.

13 JUDGE MACE: That's one of the things that
14 I've included under service complaints, one of the
15 issues, and I think a number of you have raised that as
16 an issue. I already have that noted, just as I have
17 noted considerations about the fairness of the rates,
18 the level of the rates, and now we have issues related
19 to maintenance and quality, so I want to try to stick
20 to general categories and not specifics, if I could do
21 that. Anything else?

22 MS. SMITH: No, thank you.

23 MR. BIRCHMAN: Joel Birchman. In reviewing
24 the records submitted to the UTC by the Marbello Water
25 district, I notice they identify expenses for testing

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1 of the water system. Normally, a water supplier would
2 be reporting to the customers the results of those
3 water tests and are required to do so. The only
4 results of testing that's been submitted to the
5 customers is coming from the Everett water system,
6 which is the ultimate supplier of the water.

7 JUDGE MACE: I think that really does falls
8 under concerns about water quality and maintenance, and
9 again, I don't want to get too specific here. We could
10 be here for a very long time. I just want to cover the
11 general categories.

12 I think that actually does cover pretty much
13 the -- not to use an inappropriate word, but the
14 waterfront here. Mr. Galloway, if this falls into one
15 of the general categories, it's not useful for us to
16 repeat the kind of complaints that fall into these
17 general categories.

18 MR. GALLOWAY: I would like to state
19 providing erroneous information, like metering is
20 required by law. They state in their letters that by
21 law they need to do this, the health department
22 requires us to do this. When the requirements of the
23 health department do require it, they don't abide by
24 it.

25 JUDGE MACE: Thank you. Last call for

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1 issues. Thank you very much. The next item I would
2 like to address is actually the issue of scheduling.
3 When I talk about scheduling, what I mean is a schedule
4 that will, for example, provide a date for what are
5 called dispositive motions. It may be that the
6 Respondent will file a motion to dismiss, and the
7 schedule should give an opportunity for the filing of
8 the motion and for a response to the motion.

9 Also, if the motion to dismiss is not
10 granted, then there would be a schedule that would
11 allow the Complainants to either file testimony or just
12 present live testimony, and it also allows the other
13 parties to file testimony as well, or conversely at
14 least, to exchange witnesses and exhibits so that
15 people would know what's going to happen at the
16 hearing, and then we would set a date for hearing and a
17 date for briefs to be filed after the hearing.

18 So that's what I mean by the schedule of
19 proceedings, and what I usually do in these
20 circumstances is I give the parties an opportunity to
21 talk amongst themselves so they can decide what the
22 best schedule is. We are not going to be able to meet
23 the needs of every Complainant here, and so as I think
24 I may have mentioned in the notice I sent out, I'm
25 expecting that you will consolidate your presentation

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1 in some way. I'm expecting that you will not provide
2 large numbers of witnesses and/or exhibits, if we get
3 to that point, that you will try to document the
4 complaints you have without being duplicative.

5 Today in terms of scheduling, I'm going to
6 ask you, Mr. Holloway, to be the person who will talk
7 with the other parties about what is an appropriate
8 schedule. While the other Complainants may provide you
9 with some input, like I said, we can't honor the
10 scheduling needs of all the Complainants. It's just
11 not going to work. So having said that, I would like
12 to go off the record for a brief period of time and
13 allow the parties to talk about scheduling and then
14 come back and try to see what we can come up with in
15 terms of a schedule.

16 MR. HOLLOWAY: Does the judge have a schedule
17 in mind as to how far out it should be or how soon?

18 JUDGE MACE: That's a good question,
19 actually. I think, for example, if there is going to
20 be a motion for dismissal or what we call dispositive
21 motion, that should be taken care of relatively
22 quickly. It doesn't usually require a hearing. It can
23 be done on paper, so to speak, so that should be done
24 relatively quickly.

25 In terms of my own schedule, it would be

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1 difficult for me to hold a hearing, if we get to that
2 point, until -- I suppose technically I could hold a
3 hearing in August, but that might be difficult. Also,
4 September there is some possibility. October, it would
5 be impossible. So a lot of it depends on what you come
6 up with and also specific dates as to whether I'm
7 available. There are a number of dates when I'm not,
8 and I hesitate to put them on the record at this point,
9 so let's be off the record.

10 (Discussion off the record.)

11 JUDGE MACE: Mr. Holloway has apparently
12 ceded his position to Mr. Edwards and Mr. Birchman?

13 MR. BIRCHMAN: That's correct.

14 JUDGE MACE: Thank you. I understand that
15 the parties have engaged in some discussion about
16 scheduling. Which one of you, Mr. Thompson or
17 Mr. Finnigan, will tell me what you've talked about?

18 MR. FINNIGAN: We've agreed, although we
19 haven't set the date precisely, to an early date for
20 dispositive motion.

21 JUDGE MACE: You should probably have a date.

22 MR. FINNIGAN: I recognize that. What's the
23 15th of July, what day of the week?

24 JUDGE MACE: It's a Thursday.

25 MR. FINNIGAN: July 16th then.

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1 JUDGE MACE: And responses?

2 MR. THOMPSON: I think the rules provide 20
3 days, well, 20 days --

4 JUDGE MACE: July 16 would be the filing.
5 Let's be off the record.

6 (Discussion off the record.)

7 JUDGE MACE: Let's be back on the record.
8 Thank you for those on the conference bridge who have
9 been patient during this off-the-record discussion
10 about scheduling, and I trust that you have heard most
11 of the dialogue and that if you have questions that you
12 consult with Mr. Birchman, Mr. Edwards, or Mr. Holloway
13 if you need further information.

14 The schedule that has been proposed and that
15 I will try to confirm within the next few days is the
16 filing on July 16th of dispositive motions, the filing
17 on July 30th of responses to those motions, and I will
18 endeavor to have a decision out within two to three
19 weeks of the July 30th date.

20 Then if the case is not disposed of as a
21 result of these motions, prefiled testimony will be
22 filed by the Complainants, and apparently by Staff, on
23 September 30th, and I have asked the Complainants to
24 file as their prefile testimony a statement indicating
25 what their testimony will be in some detail and also a

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1 list of exhibits they intend to bring to the hearing.
2 Those exhibits, by the way, will be marked at the
3 hearing and offered in evidence, so make sure you have
4 sufficient copies, and you will get some instruction
5 about that closer to the hearing time, sufficient
6 copies to distribute to the parties and for the Bench.

7 On November 15th, the Company will file
8 responsive testimony. On November 24th, the
9 Complainants and Staff have an opportunity to file
10 rebuttal testimony. A hearing is scheduled for January
11 10th and 11th and a half day on the 12th, if necessary,
12 in Room 206 here at the Commission. I have indicated
13 that I will check to see whether or not the hearing
14 could take place at or near Monroe, but I'm not certain
15 that that will be able to be accomplished. I will
16 advise the parties where the hearing will take place
17 when I send out the prehearing conference order, which
18 will come out in a few days.

19 Anything else? All right. I thank you very
20 much for your cooperation, and I appreciate your
21 attendance, your attention, and your courtesy, and we
22 are adjourned until the next day we have set for this
23 proceeding. Thank you.

24