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1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION

3))
4 NETWORK ESSENTIALS, LTD.,) Docket UT-051602
5) Complainant,) Volume I
6) vs.) Pages 1-51
7))
8 GRANT COUNTY PUBLIC UTILITY))
9 DISTRICT 2,))
10) Respondent.)
11))

12 A pre-hearing conference in the
13 above-entitled matter was held at 1:34 p.m. on
14 Thursday, January 5, 2006, at 1300 South Evergreen
15 Park Drive, S.W., Olympia, Washington, before
16 Administrative Law Judge DENNIS MOSS.

17 The parties present were as follows:

18 NETWORK ESSENTIALS, LTD., by Craig R.
19 Jungers, President, 10268 Rd F.8 S.W., Royal City,
20 Washington 99357.

21 GRANT COUNTY P.U.D. 2, by Michael
22 Smith, Attorney at Law, Law Offices of Ray Foianini,
23 120 First Avenue, N.W., P.O. Box 908, Ephrata,
24 Washington 98823.

25 COMMISSION STAFF, by Gregory Trautman,
Assistant Attorney General, 1400 S.W. Evergreen Park
Drive, S.W., P.O. Box 40128, Olympia, Washington
98504-0128.

Barbara L. Nelson, CCR
Court Reporter

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1 JUDGE MOSS: Good afternoon, everyone. My
2 name is Dennis Moss. I'm an Administrative Law Judge
3 for the Washington Utilities and Transportation
4 Commission. I'll be presiding in this matter that is
5 styled Network Essentials, Limited, against Grant
6 County Public Utility District -- is it Number 2 or
7 just 2?

8 MR. SMITH: Number 2.

9 JUDGE WALLIS: Number 2, okay. We're
10 convened for our first pre-hearing conference in this
11 matter, which was brought before us on a complaint by
12 Network Essentials against Grant County P.U.D. back
13 in October, if memory serves. Our purpose today is
14 to establish the procedures, the process and the
15 procedures that we'll need to follow in order to
16 bring this matter to a satisfactory conclusion before
17 the Commission and to set a schedule for that process
18 to take place.

19 And we'll also want to have some discussion
20 concerning the issues in the case that are, in part,
21 cued up by the complaint and answer, but furthermore
22 have been developed through a document Grant County
23 P.U.D. filed, a pre-hearing conference issues
24 proposal. It was filed on January 4th. So we'll
25 talk about those things during the course of our

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1 gathering this afternoon.

2 There is a related proceeding, and I say
3 it's related at least in the sense of the law, that I
4 have a pre-hearing conference scheduled at 3:00 this
5 afternoon, and that is the matter styled BigDam.net
6 against Grant County Public Utility District Number
7 2, and we will want to discuss in this conference and
8 in that conference, as well, the question of whether
9 we should consolidate these cases and hear them
10 together, given that there is some commonality of at
11 least the legal issues, if not factual issues, the
12 latter being unclear to me at this point, of course.
13 So we'll take that up as part of our discussion, as
14 well.

15 Our first order of business, having said all
16 that, however, is to take appearances of those who
17 have appeared today to represent the various party
18 interests.

19 This being our first pre-hearing conference,
20 I'll ask that you give full appearances today, which
21 is to say I'll ask you to state your name, your
22 business affiliation, whom you represent, give us
23 your mailing address, your telephone number, your
24 facsimile number, and your e-mail address, or say
25 that you have none, and I think that will give us all

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1 the information that we need. I will try to get that
2 information down. I may have to ask you to repeat
3 some of it as we go along. And we'll start with the
4 Complainant. So you're here to represent the
5 Complainant, sir?

6 MR. JUNGERS: I am. My name is Craig R.
7 Jungers, J-u-n-g-e-r-s. I am with Network
8 Essentials, Limited, Moses Lake. I'm the president
9 of the corporation. The address is 326 South Cedar
10 Street, Moses Lake, Washington, 98837. The phone
11 number is 509-764-5007. We have a fax, but I don't
12 know what the number is.

13 JUDGE MOSS: All right. Maybe you can
14 provide that to us later.

15 MR. JUNGERS: Yeah. My admin. assistant
16 knows it, but I don't.

17 JUDGE MOSS: I have trouble remembering
18 these things, too. I understand.

19 MR. JUNGERS: Yeah.

20 JUDGE MOSS: And do you have an e-mail
21 address?

22 MR. JUNGERS: My e-mail address is
23 Craig@NetworkEssentials.net.

24 JUDGE MOSS: And I know Mr. Jungers and a
25 representative for Network Essentials, you all have

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1 not appeared before us in the past, and so I'll give
2 you some information as we go along that I might not
3 ordinarily put on the record, but just, first of all,
4 so you know, that odd noise that you just heard was
5 somebody coming onto our conference bridge line. We
6 do -- these are public hearings, and we have a
7 conference bridge line, people can call in by
8 telephone and listen in or even participate in that
9 fashion. When we get to the close of appearances
10 here, I'll ask if there's somebody on the line. So
11 that's what that was. All right. Let's hear from
12 the Respondent.

13 MR. SMITH: My name is Michael Smith. I'm
14 with the Law Offices of Ray Foianini. Do you need me
15 to spell that? F-o-i-a-n-i-n-i. And our physical
16 address is 120 First Avenue Northwest, Ephrata,
17 Washington, 98823. We use our P.O. Box, it's P.O.
18 Box 908. Our phone number's 509-754-3591, and I,
19 like Mr. Jungers, don't remember my fax number, but
20 his administrative assistant probably knows that one,
21 as well, and my e-mail address is msmith1 -- it's all
22 run together, msmith1@gcpud.org.

23 JUDGE MOSS: And what was your area code?

24 MR. SMITH: 509.

25 JUDGE MOSS: Thank you.

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1 MR. SMITH: I'm assuming it's okay for me to
2 sit while addressing the --

3 JUDGE MOSS: Oh, yes, we do sit here. We
4 don't stand. Thank you for asking.

5 MR. JUNGERS: I happen to know his fax
6 number.

7 JUDGE MOSS: Great. Why don't you furnish
8 that for the record.

9 MR. JUNGERS: 509-754-5076, according to the
10 --

11 JUDGE MOSS: Okay, fine. That's helpful.
12 Thank you. And for Staff.

13 MR. TRAUTMAN: Thank you. Gregory J.
14 Trautman, Assistant Attorney General, representing
15 the Commission Staff. My address is 1400 South
16 Evergreen Park Drive, S.W., Post Office Box 40128,
17 Olympia, Washington, 98504. My telephone number is
18 area code 360-664-1187, my fax number is area code
19 360-586-5522, and my e-mail address is
20 gtrautma@wutc.wa.gov.

21 JUDGE MOSS: Thank you. And I'm going to
22 interject here that we're going to come back in a
23 moment and discuss Staff's status and role in this
24 proceeding. We had some brief off-the-record
25 discussion in advance of the pre-hearing, and I'll

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1 memorialize that, and we'll have some further
2 discussion about that, but in the meantime, before we
3 get to that, let me ask if there's anyone on the
4 teleconference bridge line who wishes to enter an
5 appearance today?

6 MS. ANDERL: Your Honor, Lisa Anderl. I'm
7 an attorney in-house with Qwest. I do not wish to
8 seek party status for Qwest, but simply appearing as
9 an interested person and I wanted to let you know
10 that I was on the bridge.

11 JUDGE MOSS: All right. Thank you, Ms.
12 Anderl. Have you informed the Commission, through
13 letter or anything, that you wish to be on the
14 interested persons list?

15 MS. ANDERL: No, we haven't done that yet,
16 Your Honor. I think actually we'll probably -- we're
17 going to listen today to make a final decision.

18 JUDGE MOSS: All right. Well, please do
19 follow up on that if you decide you want that status,
20 so we'll be sure to include you on the appropriate
21 communications.

22 MS. ANDERL: Thank you.

23 JUDGE MOSS: Thank you. Anybody else on the
24 bridge line? All right. Thank you very much. I'll
25 note for the record that there are no petitions to

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1 intervene, we have appearances by the principal
2 parties.

3 And let's turn to some brief discussion, at
4 least, concerning Staff and Staff's role in the case.
5 As I mentioned, I had a brief off-the-record
6 discussion with Staff and Staff counsel just before
7 walking in here today. My sense of that is that
8 Staff is still considering whether it would wish to
9 take an advocacy role or a more advisory role in this
10 case.

11 I will say, on behalf of the bench, that
12 particularly, I think, because this case is one that
13 presents some novel questions in the sense that we
14 have not previously had a case before this Commission
15 under the particular statutes involved, that it would
16 be useful, I think, to have Staff's views. That can
17 be accomplished in any number of ways.

18 I do anticipate at this time that there will
19 be some legal briefing in the case. Some of the
20 issues do concern the statute and scope and its
21 application, and on those things it would be useful,
22 I think, to have the expertise of the Staff and its
23 attorneys brought to bear.

24 That isn't to say that Staff would
25 necessarily have to take an advocacy position in the

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1 sense of taking sides with the Complainant or the
2 Respondent, but from my standpoint, at least, it
3 would be useful to have that sort of input.

4 Staff, of course, is a statutory party, and
5 so in that sense has party status without any further
6 action on my part being necessary. But, Mr.
7 Trautman, if you have anything you wanted to comment
8 on, I think you have a sense of my needs.

9 MR. TRAUTMAN: Well, Your Honor, thank you.
10 I think you're correct that if Staff were to
11 participate, we were looking more at the legal side.
12 We were not looking at developing the factual record
13 or the various claims between the private parties,
14 and our role likely would be as you indicated,
15 largely the scope of the Commission's jurisdiction,
16 the scope of the Commission's remedial choices.

17 Staff also is interested in seeing that the
18 resolution -- or that the dispute be brought to a
19 successful resolution. If that is helped by Staff's
20 participation in the proceeding, then Staff certainly
21 -- certainly can do that.

22 JUDGE MOSS: It is my view that that would
23 be helpful, so I would appreciate that level of
24 participation, at least, if it's agreeable.

25 MR. TRAUTMAN: All right. But that was

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1 generally, at least at this point, looking at the
2 pleadings, those are the issues that we thought we
3 would be primarily concerned with. And as you said,
4 at this point, it may not be an advocacy role for one
5 side or another, rather an advisory role.

6 JUDGE MOSS: Yes, all right. Well, I think
7 that will be fine and that will be helpful, I
8 believe, in the context of this proceeding.

9 I think, then, the next question I want to
10 take up is the question of whether we should
11 consolidate this proceeding with the other. Now, Mr.
12 Smith, I gather that you are representing the Public
13 Utility District in both cases?

14 MR. SMITH: Correct.

15 JUDGE MOSS: And of course, we'll have a
16 different Complainant representative in the other
17 case, unless it's an affiliate company, which I don't
18 gather it is. Okay. Are the BigDam representatives
19 here, by the way?

20 MR. CAIN: I am, Your Honor.

21 JUDGE MOSS: Okay. Good. So you'll have
22 the benefit of hearing our discussion here and it may
23 be more pro forma in the subsequent pre-hearing
24 conference, although formally we do need to address
25 it in both dockets.

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1 I expressed before that there is certainly
2 some commonality of the legal issues in the case, and
3 Mr. Trautman has touched on some of that.

4 There are some questions concerning the
5 scope of the Commission's jurisdiction that are
6 implicated by the pleadings and by the issues
7 statement that Grant County P.U.D. filed. I would
8 just open the floor to comments from the parties as
9 to their view whether it should be consolidated.

10 We consolidate proceedings for the sake of
11 efficiency. We do that when there are common issues
12 of law or fact, often there are common issues of
13 both, and of course it preserves the parties'
14 resources and promotes efficiency in the process if
15 we -- if it's appropriate to consolidate.

16 Consolidation does not have any implications
17 concerning outcome. We can, at the end of a
18 consolidated proceeding, issue a single order
19 addressing all the issues in both dockets or we can
20 issue separate orders addressing individual issues in
21 the individual dockets. So there's no prejudice
22 involved in proceeding in that way. As I say, it
23 does promote efficiency, and of course, that will be
24 largely realized in this case in Respondent's side,
25 because there's the same Respondents in both, but

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1 also from the Commission's standpoint.

2 I know I talked to Ms. Johnston, who is the
3 Chief of the Assistant Attorney General's division
4 that represents Staff before the Commission, and she
5 indicated to me that, while Mr. Trautman would be
6 appearing today in this, that she would be appearing
7 in the subsequent proceeding. And she expressed -- I
8 think she would probably -- will probably state later
9 today that she supports the idea of consolidation so
10 that Mr. Trautman can do all the work.

11 MR. TRAUTMAN: Yeah, our dwindling attorneys
12 here.

13 JUDGE MOSS: So that was perhaps a little
14 too longwinded, but let me ask. The Staff would
15 support consolidation, I take it?

16 MR. TRAUTMAN: I believe so, yes.

17 JUDGE MOSS: How about you, Mr. Jungers?

18 MR. JUNGERS: I have some reservations about
19 it, but in general I support it. It certainly would
20 make things more efficient. You've allayed some of
21 my concerns, Your Honor, with the statement about
22 being able to issue separate orders and to separate
23 the dockets at some point in the future, which would
24 be, from my point of view, probably preferable.

25 My case is a little more complicated than

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1 the other one. The other one, I think, is a little
2 easier to determine. So I have basically no real
3 objections; I just have some concerns that it all
4 turns out well one way or another.

5 JUDGE MOSS: Now, if you have any questions,
6 this is a good time to raise them, and I'm certainly
7 happy to answer them to the best of my ability.

8 MR. JUNGERS: Well, the only -- I have to
9 tell you I'm not an attorney, Your Honor, and that's
10 going to be very obvious as we continue along. And
11 we're a very small company, a privately held
12 corporation, we don't do a lot of business, we're in
13 a small agricultural area of Washington, and so the
14 resources are not great. So I am doing this because,
15 otherwise, I can't afford to stay in business.

16 So that's my concern, is that we don't, you
17 know, expend a great deal of time when otherwise I
18 could be doing something to earn money, but -- and I
19 want -- I do want to see this expeditiously resolved
20 and resolved in a fair manner, and those are my
21 concerns. And if consolidating the two cases would
22 help further that goal, then that would be okay with
23 me.

24 JUDGE MOSS: I can't promise that
25 consolidation will lead to any faster process, but I

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1 can promise that it won't slow things down in any
2 way. So to that extent, it is at least a neutral
3 decision from that perspective on that point.
4 Chances are it will actually speed things up. I just
5 don't want to make that commitment to you, but
6 because of the Commission's limited resources, as
7 well, it's probably easier for us to calendar a
8 consolidated situation. How about Mr. Smith?

9 MR. SMITH: My concern maybe echoes Mr.
10 Jungers' a little bit. I feel like BigDam's issue is
11 pretty simple and straightforward. There's really
12 not a lot of -- it's mostly dispute with our rate
13 schedule. I don't know if there really is any fact
14 driven issues there, whereas Mr. Jungers has raised a
15 number of issues, a lot of factual issues we'll have
16 to look at and try to clarify for the Commission.

17 And I'm worried that, you know, at some
18 point along the line maybe we'll come to a situation
19 where Mr. Cain would be happy with a solution that
20 we've arrived at and not have to proceed to a full
21 hearing, whereas with Mr. Jungers, maybe we won't be
22 able to come to that, and keeping them separate
23 allows us to sort of deal with a simple,
24 straightforward issue and keep a more complicated one
25 separated out that we can focus on in that sense.

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1 JUDGE MOSS: Okay. You raised several
2 points there that I'll address. In terms of the
3 potential for settlement between, let's say, two of
4 the parties, but not among the three, there would be
5 nothing to prevent a settlement between the two
6 parties that you've described being brought forth for
7 consideration and resolution at any point during the
8 case. I wouldn't postpone that.

9 If that's something you achieved, you wanted
10 to bring that forth for Commission approval, it is --
11 our jurisdiction is a little different from civil
12 court in that if you do arrive at a settlement, you
13 will need to submit it to us for approval. That's
14 the nature of the regulatory adjudicatory model. But
15 we can set aside a separate process for that if it
16 should come to that. Of course, if a global
17 settlement is reached, we can accommodate that, too.
18 We do remain flexible in our process.

19 In terms of the question of whether there
20 may be no factual issues between you and one
21 Complainant relative to you and the other
22 Complainant, where there are quite detailed factual
23 allegations in some dispute, again, we can proceed in
24 a consolidated basis, but in a sense on separate
25 tracks, somewhat separate tracks, I should say.

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1 It occurs to me that we may want to have an
2 earlier briefing, early briefing of the legal issues,
3 and to the extent, then, there's no fact in dispute
4 as between you and one party or the other, we can
5 resolve the case on cross motions for summary
6 determination. And so again, we can do that.

7 Let's say we have need for an evidentiary
8 hearing a couple months from now. Then we could take
9 that up in a month, motions for summary
10 determination. So again, I don't think it would
11 prejudice you in that sense. So did I touch on all
12 the points that you had concerns about?

13 MR. SMITH: I believe so.

14 JUDGE MOSS: I think I did. So I'll just
15 say I'm not going to make a decision now, because I'm
16 somewhat -- my hands are a little bit tied
17 procedurally since I don't formally have the other
18 docket before me, and I'll make a decision through an
19 order, but I will say that I'm inclined to
20 consolidate the proceedings at this point. And if we
21 find down the road that there's some reason to
22 proceed on separate tracks, we'll do that as is
23 appropriate to the case. So that's my inclination,
24 and I'll say that same thing in our next conference.

25 All right. I think our next -- the next

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1 subject I want to address, then, concerns the -- sort
2 of the nature of the issues, if you will, and what
3 sort of dispute we actually have here.

4 I have read the complaint and the answer in
5 the Network Essentials case. The complaint is, I
6 would venture to say, exceedingly detailed. The
7 answer, of course, responds to the various factual
8 allegations and legal assertions and implications in
9 the complaint.

10 It does strike me, and I'll ask you to
11 verify, that there are material facts in dispute
12 between the parties with respect to this complaint.
13 Is that correct, in your view, Mr. Smith? Do you
14 dispute -- you do dispute various of the allegations?

15 MR. SMITH: Some of them, yes, some of the
16 factual allegations, yeah, I would dispute.

17 JUDGE MOSS: And what do the parties believe
18 would be necessary to resolve those factual disputes?
19 Do we need to have -- necessarily need to have
20 evidentiary proceedings with the presentation of
21 witnesses, testimony, and so forth? Is there -- have
22 you all had any opportunity to discuss the
23 possibility of stipulating facts, that we could
24 decide the case on a paper record, as we call it,
25 without the necessity for live testimony? These are

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1 options that we have.

2 MR. SMITH: Right. Mr. Jungers and I
3 haven't had a chance to sit down and maybe decide
4 what we stipulate on. I'm not entirely clear on the
5 total scope of all the issues that he's raising. We
6 could do that, sit down and say, Look, we agree on
7 the characterization of the District's fiber system
8 and the services offered in these ways and probably
9 be able to dispense with a number of issues or a
10 number of potential problems by just stipulating on
11 how we're going to characterize the system and maybe,
12 as well, some of the issues and maybe be able to
13 isolate where we disagree factually.

14 JUDGE MOSS: Okay. Mr. Jungers, I assume
15 you've had an opportunity to read the answer that the
16 P.U.D. filed. Are there facts -- does the P.U.D.
17 dispute facts that you believe are material, that is
18 to say, important to your case?

19 MR. JUNGERS: Yes, Your Honor, they do. In
20 fact, I think the only things that we could stipulate
21 that we agree upon, they've already stipulated and
22 agreed in their answer. All of the issues I've
23 raised which they don't agree upon or which they
24 dispute would probably require evidentiary hearings
25 and maybe even witness testimony, but we have copious

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1 evidence of the allegations, so --

2 JUDGE MOSS: When you say copious evidence,
3 that would be in the nature of documents that you
4 have in your possession?

5 MR. JUNGERS: We have documentation galore.

6 JUDGE MOSS: Okay. It would be necessary to
7 have a witness to sponsor those documents, unless
8 they are admitted by stipulation, which is another
9 option. But it does sound to me that we need to set
10 some time aside for evidentiary hearings and consider
11 how we might conduct those.

12 Do you -- Mr. Jungers, do you anticipate the
13 need to have discovery? Does that word have meaning
14 to you? I know you're not a lawyer. I can explain
15 what I mean by it.

16 MR. JUNGERS: No, you don't have to do that,
17 Your Honor, thank you. I think everybody in the
18 United States understands what discovery is after all
19 the lawyer shows on television.

20 JUDGE MOSS: I don't watch much TV, Mr.
21 Jungers, but I'll take your word for it.

22 MR. JUNGERS: And not to mention in the news
23 and everything else. I don't even know that we need
24 discovery. As you know, there's a public disclosure
25 law in the state of Washington, and we have got --

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1 received a lot of documentation from the P.U.D.
2 itself through that law, and in fact, that
3 documentation has become the basis for this
4 complaint. As we have progressed over the past four
5 or five years with one document and another and
6 digging deeper and deeper, we've got more and more of
7 this evidence. And some of it would have to be done
8 in cooperation with witnesses, some of the people who
9 actually wrote the reports or were authors of e-mails
10 or memos, but -- and some of it can just be
11 stipulated, because it's obviously Grant County
12 P.U.D. documentation.

13 JUDGE MOSS: Okay. Commonly in our
14 jurisdiction we allow parties the opportunity to have
15 pre-filed testimony, that is to say, written
16 testimony, and then the witnesses are subject to
17 cross-examination on that testimony when they appear.
18 That is an option that is available to you, or we
19 have the option of just having live witnesses on the
20 stand. Do either of you wish to express a
21 preference?

22 MR. JUNGERS: It actually -- it probably
23 doesn't make much difference to me. I think that
24 most of the witnesses would be witnesses that are
25 employees or past employees of the P.U.D., so I would

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1 -- if I called them, I'd have to -- I would have to
2 treat them as a witness that would not necessarily be
3 on my side, and so it would almost be a
4 cross-examination of what they've already said
5 anyway.

6 MR. SMITH: If I understand, Mr. Jungers
7 does have the option of deposing a witness beforehand
8 and seeing what their testimony is -- you know,
9 interviewing them.

10 JUDGE MOSS: We do allow depositions as a
11 form of discovery, yes.

12 MR. SMITH: As a form of discovery, or he
13 can obtain statements from witnesses, which would
14 then be submitted to the Commission, or just have an
15 employee or a witness appear on the stand. And those
16 are the options we're looking at.

17 JUDGE MOSS: Sure. For example, if you were
18 to decide to proceed on cross motions for summary
19 determination, those could be supported by affidavits
20 or sworn statements, and that's one option. Or I
21 should say you could call the witness as an adverse
22 witness and put him on the stand and prove up a
23 document or what have you.

24 Oftentimes, because of the nature of our
25 practice at the Commission, the cases are very

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1 document-intensive and there's often little dispute
2 -- we don't tend to get into the authenticity and
3 best available and that sort of thing types of issues
4 here, like you might find in civil court. We do even
5 go so far as to accept hearsay. It's really almost,
6 I would say, necessary because the big corporations
7 that we've become involved with, for example, the
8 documents might be produced by dozens of people, and
9 we don't want to have to parade them all in here and
10 say, Did you write this; yes, I did.

11 So we're pretty flexible. It's a much less
12 formal type of proceeding in that sense. So I think
13 what I would like to do, then, is we can set some
14 dates if you want, we can set dates for some
15 pre-filed testimony or if you get to that point where
16 we're on the verge of having that testimony and you
17 find that you don't really have a lot of dispute
18 about the admission of the documents and so forth, we
19 can just admit them by stipulation.

20 Just by way of example, in another case in
21 which I am sitting involving the proposed acquisition
22 of PacifiCorp by MidAmerican, the parties just filed
23 a joint motion asking to admit the exhibits that were
24 pre-filed, and the Commission granted that motion, so
25 we have what we call a paper record, no live

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1 testimony.

2 So I'll set dates for an initial round of
3 testimony, that would be your opportunity, Mr.
4 Jungers, and response and rebuttal, and then we'll
5 set dates for evidentiary hearings.

6 MR. SMITH: Will I have a chance to -- I
7 apologize.

8 JUDGE MOSS: Go ahead.

9 MR. SMITH: Mr. Jungers isn't an attorney
10 and this is my first time before the UTC.

11 JUDGE MOSS: Sure.

12 MR. SMITH: You know, I'm coming from a more
13 civil background, where you have more traditional
14 discovery, where you send interrogatories and you
15 find out what documents they have and what their
16 point of view is. It's difficult for me to really --
17 I feel like I'm jumping ahead to a hearing before
18 I've really had a chance to -- I believe I have
19 access to most of the documents he has, because he's
20 obtained them through public records requests, but
21 I'd like to see what it is that he has and what his,
22 you know, where he's going at with his argument or
23 what he feels these documents are saying. If I can
24 get that established, then I can say, Okay, let's
25 proceed.

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1 JUDGE MOSS: Well, we'll build time in that
2 would give you an opportunity to conduct that sort of
3 discovery. And the other thing I want to build in
4 here, too, is I would like to establish a date fairly
5 early for the parties to get together and at least
6 discuss the possibility of some informal resolution
7 of their dispute. That is to say, some form of
8 settlement.

9 We have come to do that as a standard step
10 in our process. That is to say, establish a date for
11 that conference, first conference to occur. The
12 parties -- we give the parties -- it's not a formal
13 date. You're not going to appear before me, so you
14 all can change it, but we do like to establish that
15 date to encourage you to consider that option that is
16 available to you, and so I want to build that date
17 in, as well.

18 I'm laying out the various steps that I'm
19 going to establish a schedule on in part because I'm
20 going to go off the record here shortly and let you
21 all discuss between yourselves what sort of schedule
22 will be mutually convenient. And I will give a fair
23 amount of weight to your preferences within the
24 constraints of my own calendar. And so that's why
25 I'm trying to think through all the various steps I

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1 want you to consider.

2 So we're looking at dates for pre-filed
3 initial testimony by Mr. Jungers on behalf of his
4 company, response testimony by the P.U.D., rebuttal
5 testimony from the Complainant, a date for settlement
6 discussion, and I think you'll want to be thinking
7 about whether you want to do that before any
8 testimony is filed, which sometimes has the effect of
9 entrenching positions.

10 So -- well, I won't go any further than
11 that. I think you might do well to have an early
12 date. And then we'll want a date for hearings. You
13 can discuss between yourselves how much time you
14 think might be required for such a thing. It sounds
15 to me like we probably wouldn't need more than about
16 a day or two. So that's the kind of scope of the
17 thing I see.

18 In terms of any post-hearing argument or
19 briefing, we can decide that at the time of any
20 hearing. I don't see any reason to set those dates
21 today. It would be fairly prompt, though, after --
22 if we had a hearing, probably certainly within four
23 weeks, if we have any briefing.

24 MR. SMITH: Would we need to factor in time
25 for the possibility of a summary determination motion

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1 hearing?

2 JUDGE MOSS: Yeah, we have fairly elaborate
3 procedural rules, and I think they call for motions
4 for summary determination at least 30 days before
5 hearing or something along those lines, but we can
6 build in dates for motions for summary determination
7 if you prefer to do that. I have done that in
8 procedural schedules in the past, or we can leave it
9 open --

10 MR. SMITH: Leave it open till later.

11 JUDGE MOSS: Till later, yeah. As you get
12 closer, you may know more, be better able to decide.
13 And you know, we may remain flexible with you. Once
14 we get these schedules set, we don't like to have to
15 grant continuances, unless it's for a very good
16 reason, such as we're very close to settling the case
17 and we'd like a few more days to discuss it, Your
18 Honor. That's a good reason. So yeah, build in time
19 and dates that will give you the opportunity to
20 resolve the case in the fashion that best suits you.

21 I will say, too, in connection with the
22 prospects of possibility of settlement and settlement
23 discussions, you can ask the Commission to assist you
24 by appointing a settlement judge, or sometimes we
25 call that person a mediator. The role of the

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1 settlement judge is a little different, but the
2 function is essentially that of a mediator. And if
3 we have the resources and believe that they should be
4 devoted -- that they can be productively devoted,
5 then we will provide that. It's not a given that
6 we'll do that, but you can certainly ask for it if
7 you think it would be helpful.

8 All right. Mr. Trautman, am I forgetting
9 anything I need to raise with the parties before I
10 let -- before I go off the record for some discussion
11 about dates?

12 MR. TRAUTMAN: No, I don't believe so, Your
13 Honor. I was -- on the issue of the briefings --

14 JUDGE MOSS: Yes.

15 MR. TRAUTMAN: So the briefing would be
16 following the hearing? Is that --

17 JUDGE MOSS: Ah, yes. Well, you know, I'm
18 wondering, in that connection, whether we should have
19 an early round of briefs purely on the legal issues.
20 Those seemed to be fairly well-defined. I think
21 particularly the issues statement that Grant County
22 provided I thought laid out what I see to be the
23 legal issues at least. Now, maybe I'm missing
24 something here, and Mr. Jungers, if you see something
25 that I haven't, then that's fine, too.

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1 What do the parties think about briefing
2 those early on, and I would issue a decision early
3 on, as well, so you all would know -- some of these
4 questions would be answered, in other words, early in
5 the case, and that might actually narrow the case
6 down in a way that would be useful to everyone. So
7 what about an early briefing schedule?

8 MR. JUNGERS: Well, Your Honor, I actually
9 have a response to his issues motion, and -- however,
10 I did notice that it contained a mistake, and I was
11 not going to file it today. I was going to wait.

12 JUDGE MOSS: That's fine.

13 MR. JUNGERS: But we can talk about it. I
14 don't exactly agree with all of the issues that Mr.
15 Smith has raised. In fact, I don't think that the
16 case hinges around -- or at least my complaint
17 doesn't hinge around some of those issues at all.
18 The complaint -- well, I have an issues statement
19 that we can talk about at your leisure.

20 Maybe you can answer a question of what
21 briefings are, because in the military, when you're
22 briefing, that's somebody giving you information, and
23 I have a feeling that it may not be exactly the same
24 thing here.

25 JUDGE MOSS: More in the nature of argument

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1 here. The parties will tell me, will argue through
2 their written briefs their views of the law. We have
3 not a very extensive body of law in play here. I
4 have the statutes here somewhere in front of me. I
5 guess we're looking at -- principally, I guess it's
6 54.16.380, or 340. Yeah, 340, I guess. Yeah, the
7 other one is the -- Port Districts is the 53.08.380.
8 Port Districts, which is a parallel statute to the
9 P.U.D. statute, which is 54.16.340. And of course,
10 330 is implicated to the extent it also defines some
11 of these matters.

12 And I don't know that there's any particular
13 legal issue or dispute with respect to the Chapter
14 80.01.110 and 04.110, which are Commission statutes.
15 So it's not a very extensive body of law that we're
16 dealing with, but it is, for this Commission, a novel
17 body of law. We haven't had a case under this
18 before, so -- and again, while you may not
19 specifically agree with the statement of the issues
20 set forth by Grant County, and certainly I'd like to
21 have your filing when it's ready, expressing your own
22 view, I think it at least touches on some of the
23 legal issues that I see, the extent of the
24 Commission's authority, what remedial authority the
25 Commission might have, for example, some of the

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1 requests for relief that you have included in your
2 complaint, whether we can even grant such relief,
3 those kinds of issues.

4 I think it would be useful to have those
5 briefed early on, which is to say you have to argue
6 the law is basically what's involved. We can do it
7 early, because we're not going to have to have any
8 facts resolved to get that argument on the table and
9 get it resolved, and so that's where having an
10 attorney might be very useful.

11 And you can consider, of course, whether you
12 want to have some sort of limited engagement with
13 counsel to assist you with that, or I will say that
14 you're very articulate and perfectly capable of
15 presenting those arguments yourself. There's nothing
16 preventing you from doing that, either. We do allow
17 people -- company officers to appear and represent
18 their company's interest. That's up to you which way
19 you go on that, but that's the nature of it.

20 MR. JUNGERS: I have to say that I do agree
21 with you in that the body of law is not exactly what
22 you would call extensive, and we're only dealing with
23 a few statutes and they aren't, on the face of it,
24 all that complicated, either, although there's some
25 interesting verbiage in there, but from a

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1 technician's standpoint, which is where I come from,
2 and I certainly don't mind arguing this out and here
3 before you, Your Honor, and maybe we can come to some
4 idea of what the UTC's role is supposed to be and
5 what the legislature may have intended or -- because
6 that's what all of this hinges upon, I think right
7 now, is this is brand new. And Mr. Smith and I
8 talked on the telephone and we agreed that this is
9 uncharted territory, nobody's done this before, and
10 it may be interesting to have a non-lawyer doing it,
11 but that's the way we are right now.

12 I might also add that when we first filed
13 this complaint, it was our understanding, after
14 having tried to interest various law enforcement
15 bodies in the state and in the county and in the city
16 and in the federal government step in and help us,
17 and having gotten not very far, we were hoping that
18 the UTC would be more of an advocate on the part of
19 the Complainant because we're just a customer, and we
20 think that we've been abused for a pretty long time
21 and we would like to get it resolved, and we don't
22 want to lose this on some minor technicality of the
23 rule of law.

24 JUDGE MOSS: Well, we do our best to arrive
25 at the just answer. I hesitate to say the right

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1 answer. These matters of interpretation, sometimes
2 reasonable minds can differ, but, you know, that's
3 our ultimate task, is to arrive at the best result we
4 can, given the arguments presented, and we'll
5 certainly strive to do that.

6 And as I observe early on, I think Staff
7 will make a valuable contribution to that legal
8 briefing process and will inform the record as to its
9 view of what the law says and doesn't say without
10 particularly supporting one side or the other, but
11 giving us a good, if you will, objective perspective
12 on that. So I think it's very useful to have that
13 perspective.

14 MR. SMITH: I'm correct in assuming that
15 whatever briefing they provide you will be given to
16 us, as well, and we can respond to it?

17 JUDGE MOSS: Oh, yes. Absolutely,
18 absolutely. Now, in terms of the timing on this, I
19 keep saying I'd like to see this, I think, fairly
20 early on. That will depend in part on what schedule
21 you all set for yourselves. I wouldn't want to get
22 too far down the road before we had that piece done
23 so that you don't waste your time. If you bring some
24 issue forward that we decide is outside the scope of
25 the statute, then you'd be wasting your time and

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1 effort on that issue. Save it for the appeal, if you
2 will, but --

3 so I'm thinking, depending on what you want
4 to do in terms of a hearing, probably we'd want to
5 look at those legal briefs four to six weeks out,
6 something like that. I will say this, in terms of my
7 own schedule, I have time available during the
8 balance of this month in which I could consider
9 briefs. Early in February I'm scheduled to conduct a
10 hearing, the week of February the 6th, so I would be
11 unavailable to consider arguments in this case during
12 that week. Other than that, I can work such briefs
13 in just about any time in January, February, so --

14 MR. TRAUTMAN: Your Honor, I was just going
15 to indicate that I'll be a participant in the hearing
16 that you referred to.

17 JUDGE MOSS: You're in the Sprint-Nextel
18 case?

19 MR. TRAUTMAN: Yes, and there's also a brief
20 due the 25th in January in that case.

21 JUDGE MOSS: Yeah, so that's -- we'll have
22 to limit your -- well, again, maybe we can get briefs
23 in toward the end of this month. Would that work for
24 you?

25 MR. TRAUTMAN: Well, that's when -- my other

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1 brief is due on the 25th of this month, is what I'm
2 saying.

3 JUDGE MOSS: Oh. What case is that?

4 MR. TRAUTMAN: Sprint-Nextel.

5 JUDGE MOSS: But that would be -- that's in
6 February.

7 MR. TRAUTMAN: Yes, Your Honor, but there
8 was a brief -- I thought there was a brief.

9 JUDGE MOSS: Oh, the pre-hearing brief.

10 MR. TRAUTMAN: Yes.

11 JUDGE MOSS: Right, quite right. That's not
12 on my calendar yet. Okay. Well --

13 MR. TRAUTMAN: Unless Ms. Johnston can do
14 it.

15 JUDGE MOSS: Yeah, there you go. Involve
16 yourself in the conversation with Counsel and see
17 what you can work out. I think I've made my
18 preferences relatively clear.

19 Anything else we need to talk about before
20 we go off the record for, say, ten minutes or so?
21 All right. Well, let's be off the record until 2:30,
22 and I'll check back with you then, and if you have
23 reached a sort of tentative agreement on a schedule,
24 then we can come back on the record and finalize it
25 and we'll wrap this thing up. If you need a little

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1 more time, I'll certainly give it to you, and if you
2 find yourself at upstream loggerheads, then I'll just
3 impose a schedule on you and make all of you unhappy.
4 Okay. So let's be off the record.

5 (Recess taken.)

6 JUDGE MOSS: Let's go back on the record.
7 The parties have had an opportunity to discuss among
8 themselves what would work for them in terms of
9 procedural dates, and so I'd like to hear a report on
10 where we stand from whoever wishes to give me such a
11 report. Everybody's pointing at Staff.

12 MR. TRAUTMAN: Well, I think most of this is
13 actually issues to be resolved between the parties.

14 JUDGE MOSS: Sure.

15 MR. TRAUTMAN: Our issue is mainly in the
16 briefing question, and I'm not sure that the parties
17 -- that the other two parties have agreed on either a
18 hearing date or how they want to file the testimony,
19 whether it be pre-filed or live testimony. I'm not
20 sure if there was any agreement on that. I think
21 there was an agreement of the parties to have a
22 briefing of the issues by February 28th, and I
23 believe there was an agreement to have a settlement
24 conference between the two parties somewhere near the
25 end of March. And beyond that, I'm not sure.

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1 JUDGE MOSS: All right. Then I'm going to
2 need to hear from Mr. Smith, Mr. Jungers, whoever
3 wishes to speak up on behalf of the disputants.

4 MR. SMITH: I think part of the issue is my
5 understanding is Mr. Jungers wants to -- he's
6 interested in presenting live testimony. He wants to
7 examine, cross-examine P.U.D. employees and former
8 P.U.D. employees, which -- and I'm not sure if we
9 have an opportunity for pre-filing testimony, because
10 these aren't his witnesses; these would be former
11 employees and employees of the P.U.D.

12 That bears on the issue of whether or not we
13 can even go there. I think he wants to raise some
14 issues and explore some issues with these witnesses
15 that the P.U.D. would argue isn't even really
16 relevant to the issues at hand related to
17 preferential discriminatory rates at the P.U.D. at
18 this time.

19 So we're kind of at the point where we do
20 need to get to that point and have another conference
21 and set our scheduling for our deadlines for hearing
22 evidence at that point, once we've got this initial
23 set of briefing out of the way, and maybe we can look
24 at what the scope of the issues can be.

25 JUDGE MOSS: That's certainly an option.

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1 Mr. Jungers, what do you think?

2 MR. JUNGERS: Well, one of the problems is
3 is that the P.U.D. itself was central to the creation
4 of Noanet, and Noanet right now is at the crux of
5 this complaint. That is, is Noanet a creation, a
6 subsidiary of these P.U.D.s or is it its own private
7 entity. And I would like to explore with some of the
8 people who had a hand in creating Noanet, because it
9 really was created by the P.U.D.s themselves, and now
10 it's being treated as a private business, when it's
11 convenient, at least, and we need to get out on the
12 table and in the public record just exactly what
13 transpired with this creation, where -- how did it
14 end up that private businesses are now competing with
15 an organization that is supported by public monies
16 and created with public monies, and I don't know that
17 I could do pre-filed testimony with that.

18 JUDGE MOSS: Well, yeah. I mean, I think
19 the problem you have in terms of pre-filed testimony
20 is fairly straightforward, as you expressed it
21 earlier. The witnesses you would wish to examine are
22 basically employees or former employees of Grant
23 County P.U.D. To that extent, they're adverse
24 witnesses.

25 MR. JUNGERS: Right.

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1 JUDGE MOSS: They're not going to sit down
2 and cooperate with you in developing pre-filed
3 testimony, so that certainly is a problem. But I
4 guess the question, then, is can we, through our
5 relatively early briefing, sufficiently define the
6 issues so that we know whether we'll need to hear
7 from those specific witnesses or not?

8 MR. JUNGERS: Oh, I think we can do that.

9 JUDGE MOSS: Yeah. So the suggestion, as I
10 understood what Mr. Smith was saying, was that
11 perhaps we need to get this briefing out of the way,
12 get that resolved, and then revisit the question --

13 MR. JUNGERS: Yes.

14 JUDGE MOSS: -- of dates for a hearing, say,
15 when we would have witnesses. We certainly then
16 would know who we would need to call, anyway. That
17 would be helpful. So we can proceed in that way.
18 You know, I don't sense, from what I've heard so far,
19 that there's great urgency.

20 Now, we do have to finish this thing up by
21 August under our statute, but within that constraint,
22 I am prepared to be flexible and incur whatever wrath
23 I incur for letting the proceeding drag on for months
24 and months, but that's -- you know, we've got the
25 time. I think it's important for the parties to have

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1 the time to develop their cases appropriately, and of
2 course our paramount interest is to have a fair
3 hearing on the basis of a full and complete record,
4 so -- and that's why the statute gives us ten months,
5 so we don't need to use all that time, and I'd prefer
6 not to, but if your own schedules are such, and I
7 think we do need to proceed in a deliberate way, such
8 as we're talking about, that perhaps we should go
9 ahead and have this briefing.

10 The date Mr. Trautman said tentatively was
11 towards February 28th? Is that what -- do you all
12 need that much time, want that much time?

13 MR. JUNGERS: I don't think I need that much
14 time.

15 JUDGE MOSS: I think you have a problem.

16 MR. TRAUTMAN: That's right. I'm willing to
17 be flexible, and I wanted to make sure that this
18 would not impinge on the other parties' needs. If
19 they wanted to bump it upsomewhat, then I'd be
20 flexible.

21 JUDGE MOSS: What are your preferences,
22 then, Mr. Jungers or Mr. Smith?

23 MR. SMITH: The 28th is out a ways, but I'm
24 comfortable with that date. I think we can -- my
25 feeling is I can, at the same time, also be receiving

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1 documents from Mr. Jungers and, you know, getting to
2 the basis of his factual allegations, as well, during
3 that time. So it's a period of discovery for me, so
4 I feel like, one way or another, we're going to have
5 a factual dispute at some point.

6 JUDGE MOSS: You can get your discovery
7 accomplished in that same period, and that will be a
8 good use of time.

9 MR. SMITH: so that's why saving that brief
10 till the 20th doesn't concern me too much.

11 JUDGE MOSS: Okay. All right. Well, I'm
12 okay. I'm agreeable to letting you have your briefs
13 out on the 28th, but I would like to encourage you to
14 have some sort of a settlement conference, whether it
15 be just a couple of hours you schedule or a half a
16 day or what have you, just to, you know, open the
17 door to that line of discussion, if you will, a
18 little earlier than near the end of March. I think
19 it would be a good idea for you to do that either at
20 the end of this month or early in February, before
21 you even get to the briefing, so -- I see some nods
22 of willingness, which I appreciate, and so what would
23 be a good date for that from -- in terms of your two
24 schedules?

25 I know you have a business to run, Mr.

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1 Jungers, and I'm sure Mr. Smith has many things on
2 his docket. So let's say January 31st, which is a
3 Tuesday, be a good date, or perhaps later, February
4 2nd?

5 MR. SMITH: I'd like to have a chance, you
6 know -- I guess the constraint here is, you know,
7 that Mr. Jungers get a chance to provide me with the
8 documentation he has and I can review that before
9 going in to this so I could have a good handle on it.

10 JUDGE MOSS: Sure.

11 MR. SMITH: So whatever, you know. There's
12 going to be additional time constraints when I send
13 some questions to you and some requests for documents
14 and you've got to process that, as well, before we --

15 MR. JUNGERS: I can just give you all the
16 documents I've got. Most of them are yours, anyway.

17 MR. SMITH: I'm assuming they are. I just
18 wanted to make sure. Yeah, you know, the 31st or
19 maybe the -- I guess the -- we could meet on the 6th
20 or 7th of February. You wouldn't need to be
21 involved.

22 JUDGE MOSS: No, I don't need to be
23 involved. I'll be in a hearing on those dates.

24 MR. JUNGERS: Your Honor, I would like to
25 request that we do have a settlement judge or an

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1 arbitrator to --

2 JUDGE MOSS: All right.

3 MR. JUNGERS: -- mediate between the two of
4 us, particularly given my inexperience in these
5 matters.

6 JUDGE MOSS: It strikes me that might be
7 useful. I will take that up -- the way this works
8 internally is I'll take that up with the director of
9 what we call the Administrative Law Division, which
10 is the division in which I work, and I'll take that
11 up with Judge Wallis and we'll see what we can do in
12 terms of getting somebody assigned. And I'll --
13 assuming that I can accomplish that, I'll have that
14 person contact you and you can set up something that
15 will work.

16 MR. JUNGERS: Thank you.

17 JUDGE MOSS: All right. So -- well, let's
18 set a tentative date, then, say February 6th, 7th?
19 Are you all physically proximate to each other?

20 MR. JUNGERS: Yes, within 30 miles or so.

21 JUDGE MOSS: Okay. That's not an issue,
22 then.

23 MR. SMITH: No.

24 JUDGE MOSS: Okay. So February 6th or 7th.
25 Is either one better than the other?

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1 MR. JUNGERS: No, my work is -- basically,
2 things happen on an emergency basis and I fix them,
3 so --

4 MR. SMITH: Why don't we set it for either
5 the 7th or 8th, since our commission meets on Monday,
6 and it could arise that I need to go to that, I can
7 switch off with the --

8 JUDGE MOSS: Sure. I'll just put down
9 February 7, 8, and you all, if you need to change
10 that, just let me know so that I can keep track of
11 what's going on. That's my interest here. In the
12 meanwhile, I'll, as I said, talk to Judge Wallis and
13 we'll get back to you by e-mail or phone call or what
14 have you. All right. So that's the date for that.

15 And in terms of the scoping, I call it the
16 scoping briefs or the brief of the issues, if you
17 will, did we want to set the February 28th date?

18 MR. JUNGERS: That's fine with me.

19 JUDGE MOSS: Allright. I'll just call them
20 pre-hearing briefs, I guess. All right. Now, we're
21 going to defer any decision in terms of dates for
22 testimony until after we get the initial round of
23 briefs. Let's see. March looks pretty good for me,
24 so I probably ought to get you a decision pretty
25 quickly after I get those briefs, and that will --

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1 and once I get you that decision, I will set a
2 pre-hearing conference and we will reconvene for
3 purposes of establishing other procedural dates.

4 Now, were there others you wanted to
5 establish today? For example, you talked about
6 setting dates for filing motions for summary
7 determination. Do we want to wait on that, as well?

8 MR. SMITH: If we're going to have a
9 conference sometime in March, let's wait.

10 JUDGE MOSS: Just wait and do it all then?

11 MR. SMITH: Yeah.

12 JUDGE MOSS: I think that makes sense, too.

13 MR. SMITH: We should be able to have a
14 pretty quick turnaround at that point.

15 JUDGE MOSS: Sure. And we'll know a lot
16 more then, all of us will. That probably makes a lot
17 of sense. All right.

18 MR. SMITH: Did you have, in terms of this
19 briefing at the end of February, was there a scope to
20 that, or you want us to review the legal issues
21 surrounding the different parameters of the issues
22 that we can consider?

23 JUDGE MOSS: Yeah, you've got your -- you
24 know, you've got the complaint and the answer. You
25 both have a good sense of what each of you regards

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1 the issues to be. So it really sort of picks up on
2 what you've already filed, Mr. Smith, and elaborates
3 your arguments on the various points, and you have
4 begun, at least, Mr. Jungers, to prepare a similar
5 document, and you can just expand -- you can go ahead
6 and file something early if you want, but you can
7 certainly then expand your initial effort into a
8 full-blown argument concerning the various points.
9 Whether they're within the Commission's authority is
10 certainly an important point.

11 And so - and in terms of length, the
12 Commission's procedural rules allow briefs up to 60
13 pages, which is, I think, far more than you'll need.
14 I would think 25 pages or something probably would be
15 sufficient, but I won't limit you. I'm a pretty
16 quick reader. Just don't repeat yourselves. I hate
17 that. Just say it once, I'll get it the first time.

18 Okay. Do you all have any other business
19 you want to bring to me? I have a few closing
20 comments. Anything? All right.

21 I will say this, before I get into my more
22 standard closing comments. I am available to you on
23 procedural matters informally. You can call me on
24 the phone, you can e-mail me, but you must limit
25 yourself to procedural questions. I cannot discuss

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1 the case with any party in terms of its substance
2 outside the presence of the other parties, the
3 so-called ex parte rule. But you can contact me
4 directly on procedural issues, if you have any.

5 If you want to talk about something of more
6 substance, an easy way to accomplish that quickly and
7 informally is to arrange for a conference call, get
8 the two lawyers and the party representative on the
9 the phone, call me. I'm happy to talk to you. If I
10 feel like it's something that needs to be on the
11 record, I'll stop the conversation and we'll figure
12 out some way to do that. We can do hearings by
13 telephone, too, so it's not necessary for you to
14 always come here if we need to resolve some dispute.

15 If Mr. Smith asks you for some document that
16 you feel like you shouldn't have to give up and you
17 guys want to argue about it, we can do that over the
18 telephone and make a tape recording or something. we
19 have to have a record. So all right.

20 Paper filings, to the extent you all file
21 any paper in the proceeding, we need you to file the
22 original and four copies. That could change later,
23 but for now that's sufficient. These copies are for
24 internal distribution at the Commission. I get a
25 copy of everything, we'll probably have a policy

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1 adviser in this case, and conceivably some other
2 adviser, depending on how the issues come up and have
3 an accounting adviser, for example.

4 All filings need to be made through the
5 Commission's Secretary by mailing to the secretary at
6 our mailing address. That goes to the Records
7 Center, and they then take care of the document in
8 terms of making sure it's officially received,
9 distributed and so forth.

10 We ask that -- indeed we require that
11 filings of substance be provided to us not only on
12 paper copy, but also in electronic format. These
13 days everything is done with Microsoft Word or
14 WordPerfect or what have you instead of a typewriter,
15 so it shouldn't be a problem. Just furnish us the
16 document, electronic file with the document.

17 We can sometimes accept filings by e-mail,
18 if that's what we need to do. You need to contact me
19 in advance if you want to do that so that I can give
20 the necessary alerts to the Records Center and so
21 forth. They usually only like to do that if there's
22 some emergent situation, something that precludes a
23 more deliberate filing. So we're moving to the point
24 in time where we can do this routinely, but we're not
25 quite there yet.

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1 I'll enter a pre-hearing conference order
2 and we'll include this type of information, as well
3 as our scheduling information and other things, so
4 you'll have that next week. It will also provide a
5 service list with all the contact information and of
6 course the schedule. We'll discuss, if we have
7 another pre-hearing conference, we'll discuss some
8 further process that pertains to the hearing itself.
9 We do call for the exchange of exhibits or proposed
10 exhibits in advance of hearings, even
11 cross-examination exhibits, and try to have a very
12 organized hearing, a very efficient hearing, and that
13 promotes that. So we'll talk about that later, as we
14 need to.

15 And with that, I think if there's nothing
16 further --

17 MR. SMITH: I had one question.

18 JUDGE MOSS: Yes, sir.

19 MR. SMITH: Will the order contain -- my
20 understanding was is, with UTC procedures, you have
21 to have an order to proceed with discovery more
22 traditionally, like in a civil case, and that will be
23 --

24 JUDGE MOSS: I'll include a statement
25 regarding the discovery, yes. We have discovery

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1 rules, as you know.

2 MR. SMITH: Right.

3 JUDGE MOSS: And I'll just simply note that
4 discovery will proceed in accordance with those
5 rules.

6 MR. JUNGERS: I have a question, as well,
7 Your Honor.

8 JUDGE MOSS: Sure.

9 MR. JUNGERS: I don't have access to the
10 handy dandy software that produces a filing that
11 looks like lawyerly filings, and my filings would
12 tend to look more like a letter with all the
13 pertinent information at the top. Is there -- is
14 that acceptable?

15 JUDGE MOSS: Well, there are certain filing
16 guidelines expressed in our procedural rules, so what
17 I'd like to do is ask you to familiarize yourself
18 with those guidelines and, to the extent you have
19 questions, if you could contact me, that certainly
20 falls within the realm of procedural, and I will work
21 with you to acquaint you with the appropriate
22 formats. And I think we can make it fairly simple
23 for you, in terms of getting things to us in a format
24 that would be most useful.

25 MR. JUNGERS: Okay. Thank you.

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1 JUDGE MOSS: And to the extent I feel it's
2 appropriate to include you in any such
3 communications, Mr. Smith, I will do so. Now, I
4 assume you have a civil trial practice, so none of
5 these procedures will come as a great surprise to you
6 because they're based on that practice.

7 MR. SMITH: Right. There's a few
8 differences.

9 JUDGE MOSS: Few differences, sure. Okay.
10 And if you don't have copies of our procedural rules,
11 you can get those from our Records Center. You just
12 go by the Records Center right downstairs and ask
13 them and they'll give you a set. Okay.

14 MS. ANDERL: Your Honor, Judge Moss?

15 JUDGE MOSS: Yes, Ms. Anderl.

16 MS. ANDERL: Lisa Anderl here. I've been
17 listening with interest. I just wanted to let you
18 know I think our level of interest in this and the
19 next proceeding will be the same, whatever that turns
20 out to be, and I don't feel the need to listen in
21 during the next pre-hearing conference, so I'll be
22 dropping off.

23 JUDGE MOSS: Okay. Thank you very much for
24 letting us know.

25 MS. ANDERL: Thank you.

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1 JUDGE MOSS: Okay. All right. Nothing
2 further? Very well. Thank you all for being here
3 today. I appreciate it very much. Mr. Jungers, I
4 guess you can sit back or leave as you choose, and
5 Mr. Cain can take your place up here. We'll be
6 starting here in just a moment.

7 MR. JUNGERS: Thank you, Your Honor.

8 JUDGE MOSS: Thank you.

9 (Proceedings adjourned at 3:02 p.m.)

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