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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 GTE NORTHWEST INCORPORATED,)
4)
5 Complainant,) DOCKET NO. UT-951240
6 vs.) VOLUME 2
7)
8 PAUL C. and BARBARA STEPHANUS,) PAGES 25 - 56
9 and the marital community)
10 composed thereof, d/b/a PAUL C.)
11 STEPHANUS INVESTMENTS and U.S.)
12 TELCO, INC., a Washington)
13 corporation,)
14 Respondents.)
15 -----)

16 A pre-hearing conference in the above matter
17 was held on March 12, 1996, at 9:30 a.m., at 1300
18 South Evergreen Park Drive Southwest, Olympia,
19 Washington before Administrative Law Judge SIMON
20 FFITCH.

21 The parties were present as follows:

22 GTE NORTHWEST, INC., by TIMOTHY J.
23 O'CONNELL, (via telephone), Attorney at Law, 1800 41st
24 Street (5LE), Everett, Washington 98201.

25 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION STAFF, by SHANNON SMITH, Assistant
Attorney General, 1400 South Evergreen Park Drive
Southwest, Olympia, Washington 98504.

U S WEST COMMUNICATIONS, by LISA A. ANDERL,
(via telephone), Attorney at Law, 1601 7th Avenue,
Room 3206, Seattle, Washington 98191.

Cheryl Macdonald, CSR
Court Reporter

APPEARANCES (Cont.)

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2 PAUL and BARBARA STEPHANUS, d/b/a STEPHANUS
3 INVESTMENTS and U.S. TELCO, INC., by SCOTT A. SMITH,
4 (via telephone), Attorney at Law, 3000 First
Interstate Center, 999 Third Avenue, Seattle,
Washington 98104.

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

2 JUDGE FFITCH: Good morning, everyone.

3 This is the time and place set for the pre-hearing
4 conference in the matter of GTE vs. Stephanus. It's
5 UTC docket UT-951240. Appearing today for the
6 complainant GTE is Mr. Tim O'Connell, attorney at law.
7 The record will show that he also has with him at his
8 office Joan Gage. Mr. O'Connell is appearing by
9 phone. Appearing for respondents Stephanus is Scott
10 Smith, also appearing by phone. Appearing for
11 intervenor U S WEST is Lisa Anderl appearing by
12 telephone. Appearing for the Commission staff is
13 Shannon Smith, assistant attorney general, and she's
14 accompanied by Tom Wilson of the Commission staff.

15 As the notice indicated, the matters that I
16 wanted to address today at the pre-hearing are a
17 schedule revision pursuant to the GTE request and also
18 to the fifth order indicating that we would be
19 revising the schedule. Also wanted to find out the
20 status of the discovery dispute between the parties
21 and address the second motion to compel. Then there
22 are a couple of other matters regarding the state of
23 the pleadings that were raised in GTE's motion. They
24 have made a conditional request to file a reply and
25 also suggested possible other motions regarding the

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1 answer and the counterclaim, so those are the things
2 that I wanted to cover today. I think we should
3 probably bump the schedule revision to the end to see
4 what else we need to get done before the hearing, so
5 let's hear from counsel on the motion to compel.

6 MR. O'CONNELL: Thank you, Your Honor. Tim
7 O'Connell for GTE. On the motion to compel I think
8 Mr. Smith's response does accurately indicate that
9 after our motion was filed they did respond. Just to
10 go over the timing, our motion was filed, I believe,
11 March 1. That was necessary so that we have a motion
12 (inaudible) before the deadline for our testimony. It
13 was clear to me that we would not be able to prepare
14 testimony by the preexisting deadline because of the
15 court order (inaudible).

16 JUDGE FFITCH: Excuse me, Mr. O'Connell.
17 We're having trouble hearing you. The court reporter
18 has also expressed a concern. Is there some way you
19 can speak more clearly and loudly?

20 MR. O'CONNELL: I will try and speak
21 directly into the microphone. Is that better?

22 JUDGE FFITCH: Much better.

23 MR. O'CONNELL: The motion was filed on
24 March 1 so that we can insure that the motion was on
25 file before -- with the Commission before our

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1 testimony was due under the prior timetable. We
2 believe that the second paragraph of the fifth
3 supplemental order accurately relates the -- as we
4 have it here today is our filing of testimony had been
5 predicated on compliance with a ten day response time.
6 We have been prevented from timely filing testimony,
7 and I raise that because I don't want there to be any
8 belief on the part of respondents or any other party
9 that GTE rushed to file that motion in an attempt to
10 obtain (inaudible). We filed the motion because it
11 was necessary to do so before testimony was due, and
12 in order to get a hard copy filed with the Commission
13 it had to be filed that morning. By virtue of the
14 fact that respondents have belatedly perhaps but
15 nonetheless they have responded to the discovery, we
16 don't believe that the sanctions are necessary at this
17 time. We think that the Commission should not adopt a
18 position liberally imposing sanctions. In light of
19 the fact the fact that respondents have replied, we
20 would no longer request any particular sanctions be
21 imposed on them, although I will note that the comment
22 that Mr. Wilson made in his testimony, the difficulty
23 of doing discovery should weigh in the Commission's
24 mind if we have to go to a phase 3 in this hearing.
25 By virtue of respondents having complied

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1 and because we are requesting that no sanctions
2 are imposed, I believe the pending motion to compel
3 limited to that issue it is no longer -- it's
4 effectively moot.

5 On the other matters we raised in our
6 motion, including the conditional request to file a
7 reply, Your Honor, I believe that the answer and
8 counterclaim is clearly untimely under the
9 Commission's procedures. If respondents were going to
10 do so they were required to file an answer within 20
11 days. There's no need for them to have done so of
12 course under the Commission's -- but if they were
13 going to do so it had to be done within 20 days. This
14 answer is therefore months late. We have expressed a
15 conditional request to file a reply because pursuant
16 to Commission's procedure we will at the commencement
17 of the hearing in this matter move that that answer
18 and counterclaim be stricken as we will similarly move
19 that the late-filed testimony of Mr. Stephanus be
20 stricken. That's not a dispositive matter. It need
21 not be taken up ahead of the hearing. But we believe
22 that that answer and counterclaim are clearly
23 untimely, so we don't think that we should therefore
24 have to file a reply. I'm counting the fact that we
25 believe the issues raised by the answers and

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1 counterclaim are adequately framed both by the
2 complaint and also the first pre-hearing conference
3 held in this case in which the issues were discussed
4 by the parties at some length, that is, reported, and
5 I think the issues are adequately framed there.

6 In light of the fact that the answer and
7 counterclaim are procedurally improper as well as not
8 raising new issues, I don't believe a reply is
9 necessary, but we made a conditional request for reply
10 just out of concern for safety. If the judge believes
11 that there is any prospect that the answer and
12 counterclaim raises issues not addressed by the
13 pleadings or prior proceedings in that case we feel
14 the need to get a response.

15 JUDGE FFITCH: Very well. Mr. Smith, do
16 you want to respond to that? And it does appear, am I
17 understanding correctly, Mr. O'Connell, that you're
18 indicating that the second motion to compel is moot at
19 this point, you have received the discovery, and so we
20 would then talk about, when we get to the scheduling
21 discussion, about the time line for rebuttal, but the
22 issues raised by the motion to compel are moot at this
23 time?

24 MR. O'CONNELL: I believe they are, Your
25 Honor. By virtue of the fact that respondents have

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1 belatedly complied, obviously we do not need an order
2 directing them to do so and in view of the fact that
3 our belief that sanctions should not be liberally
4 imposed we do not request sanctions at this time.

5 MR. SMITH: I will offer an observation and
6 talk about the answer and counterclaim. I hoped that
7 counsel would call us to work these things out, which
8 I had thought we had done in a phone call on
9 Wednesday, February 28, so I was a little shocked to
10 get a motion to compel that was filed before the
11 Friday deadline that we indicated we would provide the
12 discovery answers to.

13 JUDGE FFITCH: Well, Mr. Smith --

14 MR. SMITH: (Inaudible) gives him more time
15 to file a reply and I have no objection to that
16 request.

17 JUDGE FFITCH: Mr. Smith, I don't know if
18 you can hear me --

19 MR. SMITH: Yes, I can.

20 JUDGE FFITCH: -- but I don't want to hear
21 any further discussion on the motion to compel. I
22 think the issue raised by the late-filed answer and
23 counterclaim is relevant. There's no motion with the
24 answer requesting permission to file after the
25 deadline set out in our rules, so I would like to have

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1 you address that.

2 MR. SMITH: Well, I can go through that
3 procedural step. I've been hearing hints in both
4 papers filed and in conversations with Mr. O'Connell
5 that somehow there's going to be some kind of a gotcha
6 because we didn't formally raise issues in a
7 counterclaim that I thought were quite clear from the
8 beginning. Given the change in circumstances and
9 facts since the filing of what GTE termed an absolute
10 emergency hearing before the Commission and withdrawal
11 of any suggestion that Mr. Stephanus would disconnect
12 GTE's wires, the case settled into a different mode,
13 and we've been unsuccessful in just having the whole
14 case mooted with GTE, and hearing the suggestion that
15 there was something improper in the way we were
16 proceeding because we hadn't put in writing what I
17 thought was clear to all parties I then sent to leave
18 no doubt the counterclaim which set forth that, by the
19 way, in case you do have any doubts, GTE, we are
20 asking the Commission to decide whether GTE should
21 have to pay for the involuntary taking of private
22 property of Mr. Stephanus, and if the answer to that
23 question is yes, how much should that be.

24 I truly don't believe that we've raised any
25 new issues that are not already before the Commission,

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1 and, as I'm sure you're aware, we filed a motion to
2 clarify or limit issues just to make everybody on
3 the same wavelength as to what we're going to address
4 when we have a future hearing, and I believe that
5 motion is still pending and has not been ruled upon by
6 the Commission. If Mr. O'Connell and GTE insists we
7 can certainly go through the additional hoop of filing
8 a motion for leave to file a counterclaim, which I
9 assume would be granted by Commission if it wanted to
10 address this issue on the merits and not give GTE an
11 opportunity to say, wait a minute, that's a total
12 surprise to us, where did that issue come from.
13 So again it depends whether we should -- the parties
14 all want to go through one more hoop, we can do that
15 and file a motion for leave for additional time to do
16 this.

17 I'm going to note, too -- and I don't want
18 to sound too defensive, and I apologize for not having
19 followed all the rules of the Commission -- as I
20 mentioned in a brief I filed, this is my first
21 experience with the Commission and our efforts to find
22 other counsel who have experience handling these
23 issues was unsuccessful because everybody thought they
24 had a conflict of the four or five lawyers we talked
25 to, and I didn't spent the time I should have

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1 initially reading through the procedural rules to find
2 out what all the various so-called local rules would
3 be in a Commission hearing. Hopefully, I've gotten
4 the case back on track and certainly nothing that
5 we've done was designed as GTE accuses us of
6 (inaudible) behavior, willful refusal to comply with
7 all rules and the flouting of the rules. A little bit
8 excessive language which I don't think fairly
9 characterizes our errors in not filing things to the
10 letter of the procedural rules. Thank you.

11 JUDGE FFITCH: Ms. Anderl, do you want to
12 say anything on behalf of U S WEST at this point?

13 MS. ANDERL: Actually, no. I don't think I
14 have anything to add, thank you.

15 JUDGE FFITCH: I know that U S WEST,
16 neither U S WEST nor staff have filed anything on
17 these -- on this particular dispute. Ms. Smith, did
18 you have anything you wanted to say at this time?

19 MS. SMITH: No.

20 JUDGE FFITCH: Mr. O'Connell, other than
21 the violation of the time line set out in the rules,
22 can you identify some prejudice to GTE if the
23 Commission were to permit the answer and counterclaim
24 to be filed?

25 MR. O'CONNELL: Limiting our discussion

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1 strictly to the answer and counterclaim, Judge ffitch,
2 no. In fact I thought -- I tried to make the point
3 that, to the contrary, we do not believe that the
4 answer and counterclaim raised any issues which were
5 not raised by either our complaint or the discussion
6 of the issues held on the first pre-hearing
7 conference. So when Mr. Smith indicates that it does
8 not raise any new issues, quite candidly, I agree with
9 him (inaudible). So to that degree it certainly does
10 not prejudice us because it does not raise new issues.

11 I raise the issue, it is clearly untimely,
12 and (inaudible) your point was well taken in that
13 there was no motion made for relief from the
14 Commission's normal time rule, and perhaps I
15 appreciate Mr. Smith's candor with his acknowledgement
16 that he is not familiar with the Commission's
17 procedures. I do not believe, however, that is a
18 response when we start discussing some of the other
19 issues such as the late filing of Mr. Stephanus, his
20 testimony, which did not arrive under operation of
21 Commission rules but rather from an express order
22 issued by this Commission in a proceeding to which
23 anticipated (inaudible), and we're getting ahead of
24 ourselves and forgive me for doing so, but as far as
25 the answer and counterclaim, no, I don't believe GTE

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1 would be prejudiced by its submission to the
2 Commission. I raise the issue because if the
3 Commission -- Judge ffitch, if you believe that it
4 does raise any new issues we would want to reply.

5 JUDGE FFITCH: Are you saying, Mr.
6 O'Connell, that you've reconsidered your intention to
7 file a motion to strike the answer and counterclaim at
8 the outset of the hearing?

9 MR. O'CONNELL: Not at all, Judge ffitch,
10 and I apologize if I'm not being clear. Your question
11 was do we believe that we are prejudiced by it and I'm
12 trying to say no, I don't think we are prejudiced by
13 it. Any motion to strike the answer and counterclaim
14 would be based exclusively on the fact that
15 respondents have not complied with the Commission's
16 procedural rules.

17 JUDGE FFITCH: I understand. One thing
18 that I wanted -- I guess this is a good time to
19 perhaps let you know my preference here. I am
20 reluctant to, given the fact that, Mr. O'Connell,
21 you're anticipating motions to strike as to the answer
22 and counterclaim and also as to the testimony, I would
23 prefer to have those filed prior to the hearing and so
24 that we could dispose of them rather than having --
25 having that on the eve of hearing be something that

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1 parties would have to adjust to. My reading of the
2 rules indicates perhaps that our -- among other
3 things, time lines would require -- time lines for
4 motions directed at pleadings would not necessarily
5 permit GTE to delay filing those motions to strike
6 until the time of hearing, so I think if you're going
7 to make those motions then I would like to build that
8 into the discussion that we're going to discuss in a
9 couple of minutes here.

10 MR. SMITH: This is Scott Smith. Could I
11 suggest that if possible that we just handle that
12 orally right now? This case has gotten incredibly
13 expensive for what my client would love to have just
14 go away, and the formality of filing a motion to
15 dismiss a pleading that GTE just conceded doesn't
16 prejudice it, doesn't raise any issues -- in other
17 words, now Mr. O'Connell is agreeing with me that
18 there is nothing new raised in the answer and
19 counterclaim. You know, I truly would like to avoid
20 the trouble and expense my client will have to go
21 through to file a written answer to a written motion
22 to dismiss a pleading that I think everybody agrees
23 isn't creating any problems here, and I think it
24 reflects the state of this proceeding from the outset
25 as far as Mr. Stephanus's testimony, and I suppose the

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1 same thing with the answer, one of our responses to a
2 motion to strike is that nobody did anything
3 deliberately in a late filing, and wasn't designed to
4 and did not in fact prejudice anyone, and I would hope
5 we're all here to try to get this case resolved on the
6 merits without getting bogged down in thousands of
7 dollars of procedural squabbles to gain some tactical
8 advantage that detracts from the open-ended
9 resolution here: Does GTE have a right to take
10 private property without paying compensation?

11 It's a simple issue, at least I thought it
12 was, and I might point out if it assists on this that
13 I did not file any testimony at the outset because
14 what we had done and perceived this whole thing to be
15 was a legal issue on that whole takings issue. Ms.
16 Smith was kind enough to call me and inform me that,
17 well, there's a possibility that my failure to file
18 testimony might preclude my making any of those
19 arguments, and so I then put together a statement by
20 Mr. Stephanus which repeated facts which are -- I
21 don't think ever been contested, they aren't news to
22 anybody, and just repeated some of the background
23 information that was set forth in the motion we filed
24 to clarify, which will serve as our brief when we get
25 to the final hearing. So if at all possible I would

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1 really like to see if we could just address this thing
2 now orally, and if there is a procedural defect then
3 by all means we'll go to the next step of filing a
4 formal motion to ask the Commission to waive the time
5 lines to give us and accept the testimony, again
6 designed to get this thing addressed as efficiently as
7 possible and on the merits. Thank you.

8 JUDGE FFITCH: Mr. O'Connell, I see two
9 potential motions that you've raised here, motions to
10 strike, one directed to the answer and the
11 counterclaim, the other to the testimony. We have had
12 some discussion about the motion to strike the answer,
13 and I think I've heard argument from counsel on both
14 sides. However, there is not actually such a motion
15 pending at the present time. Are you prepared to make
16 a motion to strike the answer and counterclaim on the
17 record at this time?

18 MR. O'CONNELL: Your Honor, yes, I will.
19 So that we can move forward I will as a formal matter
20 move to strike the answer and counterclaim on the
21 grounds that they were not timely filed. I'm limiting
22 that to the answer and counterclaim. I would like to
23 take up the testimony at another time, and motion as
24 it applied to the answer and counterclaim was limited
25 exclusively to the fact that it is not timely. I

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1 think I've been very candid that we acknowledged
2 readily that in our opinion it does not raise any new
3 issues.

4 JUDGE FFITCH: Do you want to make any
5 additional argument raising support for your motion
6 that you haven't already mentioned?

7 MR. O'CONNELL: No, Your Honor. I think we
8 have fully discussed it.

9 JUDGE FFITCH: Mr. Smith, do you have any
10 response in addition?

11 MR. SMITH: I don't see anything that I
12 didn't mention already.

13 JUDGE FFITCH: At this time I'm going to
14 deny GTE's motion to strike the answer and
15 counterclaim, and accept the answer and counterclaim
16 for filing. I will say, Mr. Smith, that I am not
17 particularly happy with the pleading practice that
18 respondents have engaged in up to this time. I
19 understand that you're not familiar with our
20 procedures. I will just, however, indicate that of
21 course all parties are expected to familiarize
22 themselves with those procedures. They are designed
23 to insure a fair and orderly process. There are ways
24 to find out if you have questions about how things
25 work, and the filing of answers to complaints is, as

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1 an example, is something that ordinarily occurs not
2 only in our proceedings but in civil litigation and is
3 subject to deadlines in that form as well as in ours,
4 so with that admonition, I will allow the answer and
5 counterclaim to be filed.

6 I don't want to take up the motion to
7 strike testimony at this time. I'm going to allow GTE
8 to do that in writing, and we'll set a date for that.
9 I don't want to postpone that until the time of the
10 hearing. I will build that into the schedule in
11 advance of the hearing.

12 MR. O'CONNELL: May I raise a point?

13 JUDGE FFITCH: Is this Mr. O'Connell?

14 MR. O'CONNELL: Yes. Can I construe from
15 our discussion on the record at this point that there
16 is a consensus among the parties that the answer and
17 counterclaim do not raise any new issue and therefore
18 a reply is not necessary? That was originally how we
19 raised the context of this was a conditional request
20 to file a reply and if our pleading of the oral motion
21 to strike was based on the statements that it does
22 not raise any new issue I would therefore (inaudible)
23 from that that since there are no new issues no reply
24 is necessary at this point.

25 JUDGE FFITCH: I've heard counsel for GTE

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1 and the respondent state that they see no new issues
2 in the answer and counterclaim. My review of that
3 pleading does not indicate new issues. I will --
4 however, GTE has the right or I would allow GTE the
5 option of filing a reply if they so chose. I think to
6 some extent that's a decision that GTE has to make, a
7 procedural decision.

8 MR. O'CONNELL: Thank you.

9 JUDGE FFITCH: I think that disposes of the
10 various procedural issues that were before me, and we
11 can talk about scheduling. Before we get to
12 scheduling, is there anything else that we need to
13 look at?

14 Not hearing any suggestions I will move on
15 to the scheduling. GTE had asked for three weeks
16 after receiving discovery to file its rebuttal, and
17 that seems reasonable. Is there any objection to the
18 three-week period? We need to figure out what the
19 triggering date for the three weeks is, but is there
20 any objection from any party to allowing GTE three
21 weeks?

22 MR. SMITH: No. This is Smith. No.

23 MS. ANDERL: No, Your Honor.

24 MS. SMITH: No objection.

25 JUDGE FFITCH: We could count the three

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1 weeks as starting today. Is there any additional
2 discovery coming in to GTE? I will just let counsel
3 advise me on the status. Are you awaiting any further
4 discovery, Mr. O'Connell?

5 MR. O'CONNELL: No, Your Honor.

6 JUDGE FFITCH: Why don't we count the three
7 weeks from today.

8 MR. O'CONNELL: I would appreciate that,
9 Your Honor. The difficulty with my schedule has been
10 that I had several other matters that filled in in the
11 time period in which I would have been preparing
12 testimony as well as since then, so three weeks from
13 today would be perfectly adequate.

14 JUDGE FFITCH: All right. That brings us
15 to the 2nd of April. GTE's rebuttal would be due
16 April 2, and I would propose that any motion to strike
17 testimony of Stephanus would be filed also on April 2.

18 MR. O'CONNELL: Happy to do so, Your Honor.

19 JUDGE FFITCH: Then I'm happy to hear from
20 the parties in terms of their suggestions for a
21 hearing date.

22 MR. SMITH: This is Smith. I'm wondering
23 if it would help the parties prior to the final
24 hearing to get a ruling on the motions filed by
25 Stephanus to clarify or limit the issues. I mean, it

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1 would, I think, help everybody to know what it is
2 going in to address with the hearing schedule, unless
3 you just want to take it up at the hearing itself. I
4 think everybody has responded to that now.

5 JUDGE FFITCH: Well, I guess I would
6 entertain the idea perhaps of having an issues list
7 develop, for example. Perhaps GTE could file an
8 issues list on April 2 and parties could have a week
9 to respond to that, and that would be a way to perhaps
10 address that concern. Not wedded to that notion, and
11 I will hear from other people on that. I don't know
12 that it's necessary in this case, but Mr. O'Connell --

13 MR. O'CONNELL: I would be happy to do
14 that. I think Mr. Smith's motion, the motion to
15 clarify or limit, I believe, raises a variety of
16 factual and legal issues, and I think the preparation
17 of a list of issues for hearing would be a good way of
18 determining what needs to be addressed.

19 JUDGE FFITCH: Any objections or comment,
20 observations from other counsel? Ms. Anderl.

21 MS. ANDERL: No. That sounds fine to me.

22 JUDGE FFITCH: Ms. Smith.

23 MR. SMITH: That might work fine. If it
24 helps parties we obviously didn't do that within our
25 motion and listed those issues we thought are still

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1 before the Commission, and we wanted to make sure that
2 everybody agreed with that, so if it assists anybody
3 we've got in writing what we think the issues are
4 for consideration. Maybe, Tim, when you look at that
5 you might see if you had any other things that you
6 think we had missed.

7 MR. O'CONNELL: I will try and make the
8 issues list that I will submit on April 2 as
9 definitive as possible.

10 JUDGE FFITCH: Mr. Smith, if you want to
11 simply refer to the list that you had filed in
12 response to GTE's you can do that.

13 MR. SMITH: Appreciate that, thank you.

14 JUDGE FFITCH: I know Ms. Smith had a
15 comment.

16 MS. SMITH: I do have a comment. Thank
17 you, Your Honor. My concern about the issues list
18 isn't so much actually doing an issues list is that if
19 the list that's agreed upon by the parties and filed
20 contains any issue that is somewhat new to these
21 proceedings and by that time everyone would have filed
22 all of the testimony in this case, and to the extent
23 that the issues list might include an issue that
24 hasn't been raised in the proceeding up until this
25 point, I mean, I certainly would object to any issue

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1 that hasn't already been raised or, in the alternative
2 to that, the opportunity to file additional testimony
3 that might respond to that issue. Otherwise, it could
4 be the parties are in the situation that they're
5 prejudiced by having an issue before them in hearing
6 with no opportunity to provide testimony on that
7 issue.

8 JUDGE FFITCH: That's a legitimate concern,
9 and I guess I would direct parties to refrain from
10 raising any new issues in the issues list. There will
11 be an opportunity when the proposed issues lists are
12 filed for parties to object in their filing to
13 something which they see goes beyond the issues that
14 were previously framed. I view this as more of an
15 organizational effort for the parties rather than a
16 new opportunity to plead. I will allow parties a
17 chance to object to the inclusion of an issue which
18 appears to be new and create a requirement for new
19 testimony in advance of the hearing, so --

20 MR. O'CONNELL: Judge ffitch, may I ask a
21 question?

22 JUDGE FFITCH: Yeah.

23 MR. O'CONNELL: I will be drafting up the
24 issues list in the first instance. It would be my
25 intent that the issues raised in this phase of the

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1 proceeding -- if you will recall from the record on
2 the first pre-hearing conference, the proceeding was
3 divided into three phases. We are currently in phase
4 two.

5 JUDGE FFITCH: Correct.

6 MR. O'CONNELL: I would therefore not
7 identify on the issues list I will file on April 2 any
8 issues raised in the third phase of the hearing, phase
9 relating to if some payment is appropriate what should
10 that be. I would not raise any of the phase 3 issues
11 at this time.

12 JUDGE FFITCH: That would be the proper
13 approach. Thank you for that clarification. Let's
14 see if we can identify the full schedule then. The
15 rebuttal testimony of GTE is now due on April 2, 1996,
16 and the -- on that same date a motion to strike the
17 testimony of Mr. Stephanus will be due. Also on that
18 date an issues list. All of these are GTE filings.
19 Then we will need to allow a time period for response
20 to motion to strike. I believe the rules allow ten
21 days so the response to the motion to strike would be
22 due on April 12.

23 MS. SMITH: Your Honor, I would suggest
24 that April 12 also be the day that parties file any
25 objections to issues list that we might want to make.

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1 MR. SMITH: Your Honor, we are completely
2 incapable of hearing Ms. Smith.

3 JUDGE FFITCH: I'm sorry, perhaps you could
4 pull the microphone closer.

5 MS. SMITH: Is this better?

6 MR. SMITH: Yes, it is substantially
7 better.

8 MS. SMITH: I would suggest that April 12
9 also be the day to file any objections to the issues
10 list that's filed on April 2.

11 MR. SMITH: That sounds good to me.

12 JUDGE FFITCH: All right. I will set April
13 12 as the day for either objections to the proposed
14 issues list or obviously parties can suggest additions
15 or modifications in addition to simply objecting at
16 that time.

17 Then the hearing date, I had written down a
18 tentative hearing date of April 25.

19 MR. O'CONNELL: Your Honor, can I perhaps
20 suggest or make a request, could the hearing be moved
21 perhaps to the first full week in May or the second
22 week in May? I say that on the week of -- that you
23 just designated, the week of April 25, I have labor
24 arbitration and a hearing that has been scheduled for
25 in front of the school board. A week after that I

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1 have another labor arbitration. If we could push this
2 out, I would be most appreciative.

3 JUDGE FFITCH: Any objection to that?

4 MR. SMITH: This is Smith. I wasn't sure
5 what dates you mentioned. May 13 would work for me.
6 The prior two weeks would not.

7 MR. O'CONNELL: I would be available any
8 time of the week of May 13.

9 MS. ANDERL: This is Lisa Anderl. That
10 week is completely open for me also.

11 MS. SMITH: That works for me.

12 JUDGE FFITCH: Shall we set it for Tuesday
13 of that week? Here we are. That would be the 14th of
14 May.

15 MR. O'CONNELL: That would be acceptable.

16 JUDGE FFITCH: Any objection to having the
17 hearing set for May 14?

18 MR. SMITH: No, that's fine.

19 MS. SMITH: No objection.

20 JUDGE FFITCH: Very well. I will issue an
21 order adopting this new schedule.

22 MR. SMITH: This is Smith. Would it
23 facilitate if we filed a motion today to extend the
24 time for filing Mr. Stephanus's testimony? I don't
25 want to be in a position where GTE is creating some

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1 prejudice by now waiting until April 2 to file
2 something that it had for a month or so, and I would
3 think that that would be about a two paragraph motion,
4 but I just don't want to be in a situation where
5 there's a complaint that, my gosh, we've got a hearing
6 on May 14 and, gee, this Stephanus testimony is
7 creating problems for us in our ability to reply or be
8 prepared or file responses. I mean, if GTE is intent
9 on filing their motion to strike, it's a mirror image
10 response to our motion to allow it and I would hope we
11 could simply talk about it a few minutes by phone
12 today and get it resolved without written argument
13 back and forth, but appearing that's not the case --

14 JUDGE FFITCH: Well, we don't have the
15 motion before us right now. Your comment may be well
16 taken.

17 MR. SMITH: I don't know why we can't even
18 address it by phone or why we have to wait until April
19 2 on that.

20 JUDGE FFITCH: Mr. Smith, it does occur to
21 me that it perhaps might be more efficient on that
22 issue to simply have GTE file that earlier than the
23 2nd. I don't know that there's any new information
24 that's going to come along. Maybe we could just get
25 that out on the table and resolved one way or the

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1 other as soon as possible rather than waiting almost
2 three weeks or a month, so --

3 MR. O'CONNELL: Your Honor --

4 JUDGE FFITCH: Kind of reconsidering that
5 April 2 and thinking, perhaps, Mr. O'Connell, might
6 request GTE file that motion if they wish to pursue
7 that within ten days. Would that be --

8 MR. O'CONNELL: I'm almost inclined to
9 agree to Mr. Smith's proposal, and let me suggest why.
10 I don't think there's any question on the face of the
11 record that the testimony is untimely. There was a
12 date established in the first scheduling order and the
13 testimony clearly did not meet that time line. What
14 occurs to me, therefore, is that if Mr. Smith is going
15 to argue that the testimony should be considered
16 despite the fact that it is untimely I would presume
17 he's going to offer some facts that will be supported
18 by some kind of an evidentiary showing as to why they
19 should be forgiven from not adhering to the time
20 schedule, and it occurs to me that if that's going to
21 be the case it would make more sense for GTE to be
22 able to respond to that motion and there be no or at
23 least no ready way for us to respond to whatever
24 excuse they're going to offer for having failed to
25 file the testimony in a timely fashion.

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1 JUDGE FFITCH: That seems like a reasonable
2 approach. Mr. Smith, how much time would you need to
3 file a motion for leave to file late-filed testimony?

4 MR. SMITH: I would be prepared to make
5 that motion orally right now if that's with
6 everybody's approval.

7 JUDGE FFITCH: I think I would rather have
8 you file a written motion at this point.

9 MR. SMITH: I would file it next week then.
10 I would be happy to do that. I would like to get this
11 whole thing resolved as quickly as possible and get to
12 the merits before my client spends a lot more time and
13 money on this case. I will file something next week
14 if that's with everybody's approval.

15 JUDGE FFITCH: I will allow Stephanus seven
16 days to March 19 to file a motion for leave for
17 late-filed testimony. Then I will allow GTE seven
18 days to respond until the 26th.

19 MR. SMITH: Thank you.

20 JUDGE FFITCH: Any other matter that we
21 need to take up at this time?

22 MS. ANDERL: Your Honor, this is Lisa
23 Anderl. I apologize for not having had a calendar
24 that had everything on it when we were first
25 discussing scheduling. In fact I had nothing on that

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1 calendar on that week but in actuality I'm supposed to
2 be in Utah the 13th through the 16th and I was
3 wondering if -- it's not certain. I mean, those dates
4 could still move but I think I do have to say that
5 that was a previously scheduled matter that I just
6 completely forget about, and as I was looking at my
7 May calendar I thought something is wrong that this is
8 so empty, and so I just checked my other scheduling on
9 my E-mail and realized that in fact we do have
10 hearings scheduled in Salt Lake that day. I am,
11 however, supposed to be back and available, would be
12 available on the 17th, which is a Friday of that week.

13 MR. SMITH: Your Honor, I have no objection
14 to doing the hearing on Friday rather than Tuesday.

15 JUDGE FFITCH: Any other objections to May
16 17? I am amenable to moving it to the 17th.

17 MR. O'CONNELL: Works for me.

18 MS. SMITH: I have a conflict on the 17th.

19 JUDGE FFITCH: Ms. Smith has a conflict on
20 the 17th.

21 MS. ANDERL: I am also available the
22 following week, the Wednesday, Thursday and Friday of
23 the following week, the 22nd, 23rd or 24th.

24 JUDGE FFITCH: Mr. O'Connell, are you
25 available any of those three days?

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1 MR. O'CONNELL: I am available any of those
2 three days, and just for -- one comment, if I may,
3 because of something that Mr. Smith said earlier, the
4 urgency with which this matter has been commenced has
5 been alleviated because there is a current injunction
6 in place at this point -- excuse me, a preliminary
7 injunction in place at this point, so we're -- we are
8 not attempting to suggest to the Commission that there
9 is a need for an urgent hearing. We would be
10 perfectly happy to accommodate everyone's schedule and
11 do it the 22nd, 23rd or 24th.

12 JUDGE FFITCH: Does anybody have a conflict
13 on May 22?

14 MR. SMITH: My preference would be to do it
15 that day because I have a trial starting the following
16 Monday so the earlier we can do it the better.

17 MR. O'CONNELL: Ms. Gage just pointed out
18 to me that the 22nd is a Commission open meeting.

19 MS. ANDERL: Could I suggest we might be
20 able to start at 10:30 when they're done or we can
21 convene in a different room.

22 MR. O'CONNELL: Either of those will be
23 acceptable to me.

24 JUDGE FFITCH: All right. I will look into
25 that. Let's pick May 22 as the starting date. I

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1 would suggest that parties also reserve May 23rd in
2 the event that we start late on the 22nd and need to
3 finish up the following day. I will investigate the
4 specific scheduling options available here in our
5 hearing room and put that information in the notice.

6 Any other matters that we need to take up
7 today? Thank you for your attendance. The
8 pre-hearing conference is adjourned.

9 MS. ANDERL: Thank you.

10 MR. SMITH: Thank you.

11 (Hearing adjourned at 10:15 a.m.)

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