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

2 JUDGE CAILLE: Good afternoon. We are here
3 today for the first prehearing conference in the
4 proceeding in Docket No. PG-040984, which concerns a
5 pipeline safety complaint against Weyerhaeuser -- I'm
6 going to say Paper Company for right now since it is
7 entitled that way. My name is Karen Caille, and I'm
8 the presiding administrative law judge for this
9 proceeding. Today is June 17th, 2005, and we are
10 convened in a hearing room at the Commission's offices
11 in Olympia, Washington.

12 I would like to start the afternoon off with
13 appearances of the parties, and if you would please
14 give me a full appearance, and that means that you
15 should state your name, spell your last name, state
16 whom you represent, provide your street address and
17 mailing address, telephone number, facsimile number,
18 and your e-mail address, and that just made me recall
19 that when I was doing the party representative list,
20 besides Ms. Davison, there is another gentleman
21 actually from Weyerhaeuser?

22 MS. DAVISON: Yes, that's correct, Your
23 Honor.

24 JUDGE CAILLE: Will you be entering that
25 appearance for him?

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1 MS. DAVISON: I think you have all of his
2 information.

3 JUDGE CAILLE: I'll make a note to add it. I
4 think I do have it. Let's begin with the Company.

5 MS. DAVISON: Thank you. My name is
6 Melinda Davison, and I'm here on behalf of the
7 Weyerhaeuser Company. My firm name is Davison Van
8 Cleve. My address is 333 Southwest Taylor, Suite 400,
9 Portland, Oregon, 97204. My phone is (503) 241-7242.
10 My fax is (503) 241-8160. My e-mail is mjd@dvclaw.com.

11 I'm not sure, Your Honor, if you want me to
12 make this comment, but in the last few prehearing
13 conferences, I've been asked to indicate whether we are
14 okay with service by electric service, and that would
15 be fine with us.

16 And as we discussed earlier, Charlie
17 Douthwaite from Weyerhaeuser Company should also be on
18 the service list, and I believe he has made an entry of
19 appearance, and I believe you have his information. If
20 not, I can provide that to you later.

21 JUDGE CAILLE: I have that information, and I
22 will add it. I forgot to add that. Thank you for
23 bringing that up about the electronic service. This is
24 something we've been asking of the parties to just sort
25 of facilitate the exchange of documents. That does not

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1 mean that you do not still have to file a paper copy,
2 because our statute still requires that. Mr. Swanson?

3 MR. SWANSON: My name is Chris Swanson,
4 assistant attorney general. My mailing address is PO
5 Box 40128, and along with my street address, 1400 South
6 Evergreen Park Drive Southwest, Olympia, Washington,
7 98504-0128. My phone is (360) 664-1220. My fax number
8 is (360) 586-5522, and my e-mail is
9 cswanson@wutc.wa.gov.

10 JUDGE CAILLE: Thank you. There is a
11 gentleman in the audience I don't recognize. Were you
12 going to make an appearance?

13 GENTLEMAN: No, Your Honor.

14 JUDGE CAILLE: Let the record reflect there
15 are no other appearances. Before we proceed any
16 further, I just want to clarify a matter that the
17 parties and I have discussed off the record, and that
18 is the name of the entity that is the Respondent in
19 this proceeding, and from Weyerhaeuser's answer, I
20 understand that the company name should be Weyerhaeuser
21 Company, not Weyerhaeuser Paper Company; is that
22 correct?

23 MS. DAVISON: Yes, Your Honor.

24 JUDGE CAILLE: Is that your understanding as
25 well, Mr. Swanson?

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1 MR. SWANSON: Yes, Your Honor.

2 JUDGE CAILLE: Then we will amend the caption
3 so that it reads "Weyerhaeuser Company," and I will
4 reflect that in the prehearing conference order and
5 make sure that everyone that needs to know knows.

6 At this point, are there any preliminary or
7 substantive motions? My next question is usually is
8 there a possibility of amicably resolving the issues in
9 this complaint, and I see that in the proposed
10 schedule, there is an opportunity for the parties to
11 meet and discuss settlement. In that vein, I just want
12 to check with you, is this a settlement conference
13 where the parties are going to be having these
14 discussions among themselves, or do you feel you are
15 going to need a settlement judge?

16 You know, let me just say you don't have to
17 tell me this now, but just keep in mind that we do have
18 other judges other than myself who would do that if it
19 was needed by the parties.

20 MS. DAVISON: Your Honor, I think from
21 Weyerhaeuser's perspective, at this moment in time, we
22 would keep that issue open. We are hopeful that we
23 will be able to resolve these issues, and I think we
24 will see how it proceeds, if we feel like we need to
25 request a settlement judge.

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1 MR. SWANSON: Staff concurs with that. I
2 think we would like to leave it open as well.

3 JUDGE CAILLE: Then let's proceed to
4 discovery. It kind of sounds like the parties feel
5 there is a need for discovery, and I see on the
6 schedule that the discovery interim would be June 20th
7 through September 16th with the footnote that
8 additional discovery may be required on the prefiled
9 testimony of either party. That's understood, I think.

10 MR. SWANSON: A point of clarification for
11 the record, Staff believes that a discovery schedule
12 would be appropriate in this case pursuant to the
13 discovery rule, and that setting depositions, if they
14 are required, would be appropriate after Staff
15 testimony is filed for Weyerhaeuser perhaps after
16 Weyerhaeuser testimony is filed.

17 And additionally, one thing I don't think
18 that got onto this discovery schedule and Ms. Davison
19 may not agree to or may recall, but I believe that
20 Staff would also like to have a settlement deadline set
21 in this case for September 21st, but that is a deadline
22 that could possibly be moved but still the same a
23 settlement deadline for obtaining settlement so that
24 Staff can prepare it's testimony if it needs to do
25 that.

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1 MS. DAVISON: Your Honor, it didn't make it
2 onto our schedule because we thought that that was
3 something that should be left open-ended, that there
4 shouldn't be a date in which the possibility of
5 settlement is cut off, because we are hopeful that if
6 we are not able to settle the case early on, then as
7 the parties go through the testimony and the issues
8 hopefully get narrowed, there would still be
9 opportunity to settle the case if we have not done so
10 at any time before the hearing.

11 JUDGE CAILLE: Do you have a response to
12 that, Mr. Swanson?

13 MR. SWANSON: Staff feels that certainly
14 informally -- that is, off the prehearing order -- it's
15 fine to negotiate in terms of having ability to extend
16 things with agreement of the parties, if need be.
17 However, Staff believes that having that deadline in
18 place may motivate the parties to settle and bring a
19 settlement to fruition a lot faster than had it just
20 been left open.

21 Additionally, Staff is concerned that should
22 it be moved beyond that date, it could start moving
23 into Staff preparation time for its testimony filing on
24 the 21st of October.

25 JUDGE CAILLE: Anything further, Ms. Davison,

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1 on this?

2 MS. DAVISON: The only thing I would say in
3 response to that is if we did decide to have a
4 settlement conference in the time period that would cut
5 into the time that the Staff would be preparing their
6 testimony, we would, of course, agree to move the
7 schedule accordingly, and we are very sensitive to the
8 concern that Staff is expressing that settlement should
9 not interfere with their ability to prepare their
10 testimony, but we still believe that not having a
11 settlement cutoff best promotes the possibility of
12 settlement, and we would advocate not to have a firm
13 date, and we certainly are in agreement that we are as
14 motivated as Staff to reach an early settlement, but I
15 don't think that we need an artificial cutoff date in
16 order to achieve that.

17 JUDGE CAILLE: Just from what I know of our
18 proceedings, generally we do not set a settlement
19 cutoff date just because we do want to encourage
20 settlement at any time during the proceedings. Unless
21 there is somebody in the audience who can tell me
22 something different, I don't know of any settlement
23 cutoff date in any of the proceedings that I am
24 currently presiding on, and I think that the Commission
25 really does encourage settlements.

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1 But on the other hand, I can understand
2 Staff's interest in setting up a date to encourage the
3 parties and motivate the parties to come to a
4 settlement, so I don't see that it hurts to put it in
5 with the understanding that if it looks like things are
6 proceeding towards settlement and we are coming up on
7 that date, I would hope that the parties would be able
8 to be a little flexible.

9 It looks to me like based on this schedule
10 and what I know of the other cases that are going to be
11 taking the time of Staff and the Commission, I think
12 that we could adjust the schedule, but I'm happy to
13 hear from anybody who would like to fill me in more on
14 that.

15 MR. SWANSON: On this specific issue of
16 Staff's caseload or workload, I'm not aware. I can
17 check with my client about that. I do know, like
18 Weyerhaeuser, Staff is certainly willing to extend the
19 deadline if we need to. I think it's more a place
20 marker --

21 JUDGE CAILLE: Or a target, perhaps. With
22 that understanding, I will place that into the
23 schedule, but I am going to describe it as a target
24 deadline, so that will soften it a bit, but I would
25 encourage the parties to try to come to settlement

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1 quickly because, of course, that saves everyone money
2 and time.

3 The discovery schedule is depositions after
4 the filing of each side's testimony, and that is
5 Staff's proposal, and is it my understanding that
6 Weyerhaeuser is opposed to that?

7 MS. DAVISON: Yes, Your Honor. We think that
8 particularly given the desire to have a cutoff for
9 settlement relatively early in the schedule proposed
10 that we would like to have the ability to conduct
11 depositions if we need them earlier than Staff is
12 proposing in their schedule.

13 We would like to have the ability to conduct
14 depositions during the discovery period that we had set
15 out of June through mid September, and we think that
16 waiting to have the depositions in the October through
17 November time frame may not allow us to gather up the
18 sufficient amount of information that we would need
19 early in the proceeding.

20 MR. SWANSON: May I respond, Your Honor?

21 JUDGE CAILLE: Yes.

22 MR. SWANSON: The first thing I want to point
23 out is that Staff feels that the depositions aren't
24 necessarily, or at least Weyerhaeuser hasn't shown how
25 they might be used for purposes of settlement, and that

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1 there are other devices, such as DR's, and Staff would
2 certainly be willing to cooperate in terms of informal
3 settlement to try to provide the information
4 Weyerhaeuser needs if we are looking towards
5 settlement.

6 I also would indicate that under the rules
7 for the discovery rule, although Staff is agreeing to
8 waive that, this case I don't think fits squarely
9 within the criteria for the other discovery devices,
10 and Staff feels it would be appropriate to have the
11 schedule in place because Staff then could be free to
12 develop its case in preparation for filing its
13 testimony and not necessarily be locked down about how
14 it's going to put that case forward.

15 Furthermore, when that filing occurs by
16 Staff, Weyerhaeuser will have the opportunity to see
17 what the relevant issues are from Staff's perspective.
18 Potentially, if those depositions occur right away,
19 there could be additional issues in Staff filing
20 necessitating either more DR's or possibly even another
21 deposition after Staff files its testimony.

22 Also, Staff feels that starting out the case
23 in this way with such a formal discovery device,
24 deposition, could lead to more of an adversarial tone
25 to the case and may frustrate settlement discussions in

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1 the case.

2 JUDGE CAILLE: Mr. Swanson, do you have a
3 proposed discovery schedule that you would like to
4 share with me?

5 MR. SWANSON: Certainly. We would agree with
6 the Company about discovery on the June 20th through
7 September 16th, 2005, period of time, but that would be
8 limited to data requests and to informal information,
9 which Staff would be happy to work with the Company to
10 provide, especially to contribute towards any
11 information the Company might need for settlement.

12 Then following Staff's testimony filing date
13 on October 21st, 2005, in that period of time, that is,
14 the October 22nd through November 21st, 2005 period of
15 time, the depositions could be set by agreement of the
16 parties for Staff, and then following Weyerhaeuser's
17 filing on November 21st, 2005, depositions of
18 Weyerhaeuser, if they would need to occur, could happen
19 in that period of time, November 22nd through December
20 21st, 2005.

21 Staff would certainly be willing to come up
22 with a single date, but I think leaving it open for an
23 approximate 30-day period of time leaves the parties
24 enough room to negotiate and figure out dates that work
25 for everybody.

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1 JUDGE CAILLE: Just so I'm following this, I
2 want to make sure. So after Staff files its testimony,
3 then that would be the time that Weyerhaeuser would
4 then depose Staff and time for them to do their
5 answering testimony; is that right?

6 MR. SWANSON: That's right, and I believe my
7 understanding is traditionally that's how discovery has
8 been conducted at the Commission. That is, after Staff
9 files its case, that's when a lot of the discovery
10 requests are issued. Even DR's in some cases aren't
11 issued until after Staff's testimony is filed.

12 JUDGE CAILLE: I'm aware of DR's. I'm not
13 aware of depositions. Depositions are generally things
14 we don't see that much of here. Although, having said
15 that, there is one occurring next week on one of my
16 cases. Generally, we try to accomplish as much as we
17 can through just DR's and informal discovery. Let me
18 hear from you, Ms. Davison, and then I'll make a
19 ruling.

20 MS. DAVISON: Thank you, Your Honor. The
21 reason why we would like the ability to have a
22 deposition earlier in this case than is suggested by
23 the schedule that Staff has laid out is twofold.

24 First is that this case is different than
25 traditional rate cases, cases that are kicked off by a

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1 complaint, and we think that a deposition is a much
2 more efficient mechanism to understand the bases of the
3 allegations that are contained in the Complaint, so we
4 think that it's actually a mechanism that could speed
5 things up, make things more efficient.

6 We don't see it as an adversarial deposition
7 at all. We see it as an efficient mechanism to try to
8 understand the bases of the Complaint, so I'm not sure
9 that comparing it to a general rate case is a correct
10 analogy, and certainly, I have been involved in several
11 cases in which depositions have been utilized and
12 actually were encouraged as a mechanism for
13 understanding the bases of a complaint and trying to
14 efficiently gather discovery information.

15 The second issue that we have is that while
16 the deposition schedule of October 22nd through
17 November 21st, we think it is unduly limiting because
18 once you come up with a date that takes into
19 consideration everyone's schedule and you finally land
20 on a date that works for everyone, then you have the
21 deposition. Then you have approximately a week
22 turnaround to get the transcript, and then trying to
23 incorporate into our testimony as needed is, I think,
24 actually will end up squeezing us on our schedule and
25 our time. So that's the second reason why we think

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1 having it limited to that time period is unduly
2 restrictive.

3 Perhaps there is some ability to compromise
4 here. I'm not trying to suggest that it's something
5 that we are going to abuse or utilize other than -- we
6 anticipate one deposition, potentially two, but we
7 don't see this as something that we would be utilizing
8 in any kind of extreme measure at all. I think what we
9 are anticipating will actually help to move the case
10 along.

11 MR. SWANSON: May I respond, Your Honor?

12 JUDGE CAILLE: Yes.

13 MR. SWANSON: I guess there are a couple of
14 things I want to point out. The first is that Staff
15 isn't necessarily comparing it to a rate case except in
16 the sense that the rule that provides for additional
17 discovery devices, other than the subpoena, really one
18 of the criteria is it's a rate case, and because this
19 is outside that context, in fact, Staff believes that
20 it argues against depositions.

21 In addition, Staff believes that the
22 Complaint does a good job of setting out what the
23 issues are and that the issues can be flushed out
24 through data requests sufficiently in the same way they
25 would be able to be flushed out through a deposition,

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1 especially considering the fact that Staff isn't
2 challenging having any depositions at all, just that
3 they shouldn't occur until later.

4 Finally, on the issue of the time line, Staff
5 is certainly willing to work with the Company if
6 something came up where schedules didn't work out
7 between the parties and the Company felt squeezed in
8 terms of the timing. We certainly could adjust the
9 schedules, and I think you mentioned that's a
10 possibility as well, and that's it.

11 JUDGE CAILLE: I am going to consider this
12 further, and I will make the ruling in the prehearing
13 conference order and the reasoning for that ruling.
14 Otherwise, am I correct that the parties are in
15 agreement with the schedule that is before me?

16 MR. SWANSON: One thing I noticed, if I may,
17 Judge, we didn't identify or set a date for
18 identification of cross-exhibits, and I assume that we
19 want to do that.

20 JUDGE CAILLE: Yes. The hearing date is
21 January 25th. PacifiCorp is scheduled through the 20th
22 of January. Since this is an ALJ-only case, I think
23 that we can do that on Monday the 23rd, if everyone is
24 available.

25 MS. DAVISON: That would be good.

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1 JUDGE CAILLE: If there is any way, I'll see
2 if we can do it without, but I will schedule that in.
3 Can we do that in the morning?

4 MS. DAVISON: Morning is great.

5 JUDGE CAILLE: We'll put January 23rd at ten
6 o'clock with the understanding, if it's needed. As we
7 get further along, perhaps there is some way we could
8 exchange exhibits, and I can pull together an exhibit
9 list and we wouldn't have to meet, unless there is
10 going to be a volume of exhibits in this case, and I
11 think there wouldn't be, but maybe. Is there a need
12 for a protective order in this proceeding? I wouldn't
13 think there would be.

14 MS. DAVISON: I am not personally familiar
15 with that need, but if there is, we will file a motion.

16 JUDGE CAILLE: All right. Generally what I
17 discuss next are the issues, and since this is a
18 complaint and it alleges nine violations, I think that
19 the Complaint is pretty clear and the penalty
20 recommended is as well, but are there any other issues
21 that the parties are aware of at this time, or does
22 anyone want to comment on the allegations or the
23 penalties at this point?

24 MR. SWANSON: Nothing for Staff.

25 MS. DAVISON: No, Your Honor.

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1 JUDGE CAILLE: In this proceeding, we will
2 need an original plus eight copies of your documents
3 for internal distribution, and remember that all
4 filings must be made through the Commission's secretary
5 either by mail to the secretary at WUTC, PO Box 47250,
6 1300 South Evergreen Park Drive Southwest, Olympia,
7 Washington, 98504, or by other means of delivery to the
8 Commission's offices at that street address. Please
9 refer to WAC 480-07-140, 145 and 150 that cover
10 communicating with the Commission and the filing of
11 service of documents in adjudicative proceedings.

12 I will enter a prehearing conference order
13 that will reiterate this plus capture the discussions
14 we've had today and set forth a schedule. I believe I
15 covered everything. Is there anything more from the
16 parties this afternoon?

17 MR. SWANSON: No, Your Honor.

18 MS. DAVISON: No, Your Honor.

19 JUDGE CAILLE: Thank you for coming.

20 (Prehearing conference concluded at 3:34 p.m.)

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