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

2 JUDGE CLARK: Good morning. It's
3 approximately 10:05 a.m. on September 26th, 2008, in
4 the Commission's hearing room in Olympia, Washington.
5 This is the time and the place set for a prehearing
6 conference in Washington Utilities and Transportation
7 Commission versus Avista Utilities, given docket
8 numbers UE-080416 and UG-080417, Patricia Clark,
9 administrative law judge for the Commission presiding.

10 This matter came before the Commission on
11 March 4th when Avista filed a request for rate relief
12 for both its electric and gas service operations. The
13 Commission established a procedural schedule in this
14 matter by Order No. 2 entered in this proceeding. On
15 September 16th, Avista, the Commission staff, the
16 Northwest Industrial Gas Users, and The Energy Project
17 filed a multiparty settlement stipulation resolving all
18 issues in dispute between those parties. Industrial
19 Customers of Northwest Utilities joined in some but not
20 all of the settlement's terms and conditions. Public
21 Counsel did not join in the settlement.

22 On September 17th, the Commission issued
23 Order No. 5 in this proceeding establishing today as
24 the date and time for a prehearing conference to
25 discuss, among other things, a proposed procedural

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1 schedule modification. After that lengthy
2 introduction, I will finally get to appearances by the
3 parties. Appearing on behalf of Avista Utilities?

4 MR. MEYER: David Meyer on behalf of Avista.
5 Thank you.

6 JUDGE CLARK: Thank you, Mr. Meyer.
7 Appearing on behalf of the Commission staff?

8 MR. TRAUTMAN: Greg Trautman, assistant
9 attorney general for the Commission staff.

10 MR. FASSIO: Michael Fassio, assistant
11 attorney general for Commission staff.

12 JUDGE CLARK: Thank you, Mr. Trautman,
13 Mr. Fassio. Appearing on behalf of Public Counsel?

14 MR. FFITCH: This is assistant attorney
15 general Simon ffitch. Thank you, Your Honor.

16 JUDGE CLARK: Thank you, Mr. ffitch.
17 Appearing on behalf of the Northwest Industrial Gas
18 Users?

19 MR. STOKES: Chad Stokes representing the
20 Northwest Industrial Gas Users.

21 JUDGE CLARK: Thank you, Mr. Stokes.
22 Appearing on behalf of The Energy Project?

23 MR. ROSEMAN: Good morning. This is Ron
24 Roseman appearing on behalf of The Energy Project.

25 JUDGE CLARK: Thank you, Mr. Roseman, and

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1 appearing on behalf of the Industrial Customers of
2 Northwest Utilities?

3 MR. VAN CLEVE: Your Honor, Brad Van Cleve
4 for ICNU.

5 JUDGE CLARK: Thank you, Mr. Van Cleve. It
6 would probably be a good idea if you could try to speak
7 up just a little bit. It's somewhat difficult to hear
8 you. Because we do have a number of parties appearing
9 telephonically this morning, I just want to remind
10 everyone that it's very important that you speak
11 directly into the microphone and perhaps speak a little
12 more loudly and slowly that you would ordinarily speak.
13 That will hopefully allow everyone to participate
14 telephonically.

15 The other preliminary matter before we jump
16 right into the procedural schedule is I did receive a
17 copy of the e-mail from Public Counsel with a proposed
18 procedural schedule in it, and I see that that was
19 submitted to all the other parties to this proceeding,
20 so perhaps that can be one discussion point. My first
21 question is, have the parties had an adequate
22 opportunity to confer regarding a proposed schedule, or
23 would you prefer to take a few moments off record to
24 have that opportunity? Mr. Meyer?

25 MR. MEYER: I can speak to that for Avista.

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1 We have not, and we would prefer some time off the
2 record, but it would further those off-the-record
3 discussions if we were aware of what dates were open in
4 November for possible hearings, and then I have three
5 or four sets that I would like to ask you about, of
6 dates, two days back to back, so we can try and craft a
7 schedule by consensus around those dates. Those dates
8 are --

9 JUDGE CLARK: Hold on. Is everyone else
10 amenable to conferring off record regarding the
11 procedural schedule?

12 MR. TRAUTMAN: Yes, Your Honor.

13 JUDGE CLARK: Mr. ffitch?

14 MR. FFITCH: Yes, Your Honor. I think we
15 also need to know about available dates in December;
16 for example, in the currently scheduled week.

17 JUDGE CLARK: Is there anyone appearing
18 telephonically on the bridge line who has an objection
19 to conferring off record at this juncture? Hearing
20 none, then we are going to take a few moments off
21 record. Ordinarily, I exit the hearing room during
22 your off-record discussions, but I am going to remain
23 in the hearing room so that I can give you availability
24 of Commission dates, but I don't think it's necessary
25 to clutter the record with that discussion.

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1 Accordingly, we are off record until further call.

2 (Discussion off the record.)

3 JUDGE CLARK: We are back on the record.

4 During the time we were off record, I remained in the
5 hearing room for a portion of the discussion to attempt
6 to give the parties some dates that are available on
7 the Commission calendar should the Commission decide to
8 reschedule the hearing in this matter and adopt other
9 procedural deadlines other than those established by
10 Order No. 2, and then the parties attempted to work out
11 a schedule that they could agree with.

12 It appears that there is one schedule the
13 parties can agree to. If that schedule is not
14 available and adopted by the Commission, then the
15 parties cannot agree and have alternative proposals to
16 submit to the Commission. Mr. Meyer?

17 MR. MEYER: I would be happy to go ahead.

18 JUDGE CLARK: Because you did an excellent
19 job setting forth the concurrent schedule the last
20 time, I will call on you to memorialize that for the
21 record, please.

22 MR. MEYER: I will be happy to do so, thank
23 you. The dates I will give you represent the
24 concurrence of the parties, not necessarily the
25 preference of each of the parties, and I will say this:

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1 The only reason that Avista would concur with these
2 dates is on the assumption that the Commission would be
3 able to issue an order in time to put rates into effect
4 by January 1. So with that clearly stated assumption,
5 the dates are as follows:

6 October 15th would be the date for Public
7 Counsel and ICNU to reply to the joint settlement
8 testimony. October 31st would be the rebuttal date of
9 the settling parties. The hearing dates would be
10 November 20th and 21st. Briefs would be on December
11 12th. Now, in the event, and I've clearly stated the
12 caveats, but in the event this schedule will not work
13 with the commissioners or because the schedule and the
14 briefing would not allow for an order prior to the end
15 of December, then it is Avista's preference for the
16 following dates --

17 JUDGE CLARK: Please don't go forward yet.
18 What I would like to have now is an on-record opinion
19 from those other individuals regarding whether or not
20 you concur with the schedule that has been presented by
21 Mr. Meyer. I'll turn first to Commission staff.

22 MR. TRAUTMAN: Thank you, Your Honor.
23 Commission staff concurs with the proposed schedule.

24 JUDGE CLARK: Mr. ffitch?

25 MR. FFITCH: Your Honor, Public Counsel

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1 concurs in the schedule. We do not concur in the
2 caveats with regard to the requirement that rates be
3 effective January 1st.

4 JUDGE CLARK: Thank you. The Energy Project?

5 MR. ROSEMAN: We concur in the schedule as it
6 was stated.

7 JUDGE CLARK: Northwest Industrial Gas Users?

8 MR. STOKES: Thank you, Your Honor. We also
9 concur in the schedule.

10 JUDGE CLARK: Industrial Customers of
11 Northwest Utilities?

12 MR. VAN CLEVE: Your Honor, we concur with
13 the schedule, but we also believe it's unnecessary for
14 rates to be effective January 1st.

15 JUDGE CLARK: Thank you. Now, Mr. Meyer, I
16 understand you have an alternative schedule, if you
17 would present that for the record, please.

18 MR. MEYER: Thank you. October 10th would be
19 the date for Public Counsel and ICNU to file their
20 reply to the joint settlement testimony. October 22nd
21 would be the date for the rebuttal of the settling
22 parties. The hearing dates would be November 12th and
23 13th, recognizing that only a portion of the 13th is
24 available, and the briefing date would be December 5th,
25 understanding that that briefing date is flexible. And

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1 the same caveats apply that this schedule would be to
2 provide for an order of some kind prior to the end of
3 December addressing the merits of the settlement.

4 JUDGE CLARK: Thank you. Mr. Trautman?

5 MR. TRAUTMAN: Thank you, and Staff would
6 concur with that schedule if the previously advocated
7 schedule of November 20th and 21st hearings is not
8 available. In that event, we would concur with
9 November 12th and 13th.

10 JUDGE CLARK: This is the alternative that
11 you would support.

12 MR. TRAUTMAN: Correct.

13 JUDGE CLARK: The Energy Project?

14 MR. ROSEMAN: We are unsure whether this
15 would work. I would need to confirm with our
16 witnesses. The witnesses are -- to put forth the
17 settlement by either the 12th or the 13th. Those are
18 dates that we have not discussed, so we have no opinion
19 about this proposed schedule at this time.

20 JUDGE CLARK: Thank you for memorializing
21 that on the record, Mr. Roseman. Northwest Industrial
22 Gas Users?

23 MR. STOKES: The schedule is fine with us if
24 the first schedule is not available.

25 JUDGE CLARK: This is the alternative

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1 schedule if the schedule the parties concur on is not
2 available.

3 MR. STOKES: Yes, Your Honor, and we have no
4 problem with that.

5 JUDGE CLARK: Mr. ffitch?

6 MR. FFITCH: Thank you, Your Honor. First I
7 would like to object to the proposal of this
8 alternative schedule that Avista has laid forth for the
9 following reasons, and we would recommend it not be
10 adopted. Our witness, Mr. Mike Majoros, is currently
11 scheduled for a hearing in Denver on those two days and
12 would only be available if that hearing canceled. He
13 has stated there is some possibility that it may
14 cancel, but he currently has a conflict on that date.

15 Our second witness, Mr. Charles King is
16 scheduled for surgery that week, and as we have
17 previously advised counsel, he is not available any
18 days that week. Our third concern with that schedule
19 is that we understand that there is only three hours
20 available on the 13th, and we are concerned that we may
21 not have enough hearing time available on the 12th and
22 the 13th even if our witnesses were to be available.
23 That would be not enough time, we are concerned, to
24 complete the hearing. We believe it would be a
25 violation of due process to force Public Counsel to go

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1 to hearing on days when its witnesses are not available
2 to it to present testimony or to assist with
3 cross-examination.

4 With regard to the stated desire of the
5 settling parties to modify the schedule so as to
6 achieve a rate effective date of January 1st, I wanted
7 to state our views on that, Your Honor. Neither the
8 Company nor the settling parties have any entitlement
9 to an earlier effective date for rates. The only legal
10 entitlement that Avista has is for an order by this
11 commission on or before February 4th, 2009, which is
12 the suspension date.

13 We have already got a schedule in this case
14 with hearings set for the week of December 1st. We
15 have arranged our processing of the case with those
16 dates in mind. Those were fair dates adopted to allow
17 all parties to do discovery and present a case. We
18 have scheduled our witnesses for those dates, and we
19 are prepared to go forward with hearings the week of
20 December 1st.

21 Again, we do not believe that either Public
22 Counsel, or ICNU can speak for themselves, or the
23 Commission should be forced into the schedule
24 modification simply because a subset of the parties has
25 reached a settlement on some issues in the case.

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1 Again, there is no legal requirement or entitlement for
2 an order in this case prior to February 4th, 2009.
3 With that in mind, we have a preferred alternative.

4 JUDGE CLARK: Let's not go there yet. Now I
5 know your argument against the alternative schedule.
6 Does Industrial Customers of Northwest Utilities have
7 anything further to add other than that presented by
8 Mr. ffitich?

9 MR. VAN CLEVE: Your Honor, ICNU opposes the
10 schedule proposed by Avista for the reasons stated by
11 Mr. ffitich, and I would just note for the record that
12 ICNU is jointly sponsoring the two witnesses who are
13 unavailable on the 12th and 13th.

14 JUDGE CLARK: Thank you. Now, Mr. ffitich,
15 I'm interested in your alternate schedule.

16 MR. FFITCH: Thank you, Your Honor. I will
17 note just before I read it off that we have attempted
18 to reach an accommodation with the other parties and
19 would be willing to consider some dates in November as
20 is evident from our support for the consensus schedule,
21 but we are not willing to accept involuntary assignment
22 of unworkable dates that prejudice our right in our
23 case.

24 Our alternative preferred schedule that would
25 take place if the 20th and 21st are not available in

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1 November would have the reply of Public Counsel and
2 ICNU due on October 17th; the rebuttal of Avista and
3 other parties due on November 5th. The hearing would
4 take place on December 2nd and 3rd, and the briefs
5 would be due on December 23rd, which is the current due
6 date for briefs, and it will be one round of briefs.

7 The only other thing I have to mention, and,
8 Your Honor, we haven't really talked about discovery
9 turnaround. I apologize. I don't have in my --
10 whether we had addressed that in the prehearing
11 conference order in terms of a shorter turnaround time.

12 MR. MEYER: Have not.

13 JUDGE CLARK: Actually, I think at this
14 juncture, whether or not the discovery turnaround time
15 would be abbreviated is probably dependent on whether
16 or not the Commission modifies the current procedural
17 schedule that's adopted.

18 MR. FFITCH: I think, Your Honor, I guess we
19 would just request for the record that discovery
20 schedule --

21 JUDGE CLARK: If that is a new proposal, I
22 need to have you hang on for a second because I would
23 like to hear first from Industrial Customers of
24 Northwest Utilities whether or not you support or
25 object to the schedule proposed by Mr. ffitch.

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1 MR. VAN CLEVE: We support Public Counsel's
2 proposal.

3 JUDGE CLARK: Mr. Meyer?

4 MR. MEYER: We are not in favor of that
5 proposal believing that it will not allow sufficient
6 time for briefing and what is an all-important
7 consideration for Avista, which is an order to allow
8 settlement rates to go into effect January 1. We just
9 don't believe that's feasible. Obviously, if the
10 Commission sees it differently, and we would like to
11 hold to those December 2nd and 3rd hearing dates and
12 can still get an order out in time, the merits, then
13 that's a different story, but I'm sensing problems in
14 that regard.

15 Just a few observations in regards to Public
16 Counsel. The settlement agreement, of course, was
17 filed on September 16th. That allows essentially
18 three-and-one-half months for the Commission to issue
19 its decision, and there ought to be a way for this
20 matter to be addressed on the merits within a
21 three-and-one-half-month period.

22 Avista has offered in our discussions with
23 the parties to conduct hearings virtually on any day in
24 November. There were four sets of dates that we had
25 talked about and had confirmed availability of on the

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1 commissioner's calenders: November 6th and 7th, the
2 12th and 13th, the 20th and 21st, possibly, and the
3 24th and 25th. Avista is willing to appear and conduct
4 the hearings on any of those dates and has tried to be
5 as flexible as possible to accommodate everyone's
6 schedules.

7 With regard to the unavailability of certain
8 witnesses on the 12th and 13th, Mr. King, I understand,
9 may be in surgery. Mr. Majoros is questionable. We
10 don't know yes or no, but with respect to Mr. King, the
11 Company is prepared to waive cross of Mr. King on the
12 12th and 13th and not require his appearance, so I
13 think our position is pretty clear. Thank you.

14 JUDGE CLARK: Thank you. Mr. Trautman?

15 MR. TRAUTMAN: I would simply say that Staff,
16 in response to your original question, Staff does not
17 support the schedule offered by Public Counsel, which
18 would have hearing dates of December 2nd and 3rd.

19 JUDGE CLARK: Thank you. Appearing on behalf
20 of The Energy Project? Do you have any comments
21 regarding the schedule proposed by Public Counsel and
22 supported by ICNU?

23 MR. ROSEMAN: The Energy Project does not
24 take a position on Public Counsel's proposed schedule.
25 The problem is we don't know if the hearing dates of

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1 December 2nd or 3rd would work with our witness, so we
2 don't have an opinion.

3 JUDGE CLARK: You don't know if the hearing
4 dates of December 2nd and 3rd would work, Mr. Roseman?

5 MR. ROSEMAN: That's correct.

6 JUDGE CLARK: Do you understand the hearing
7 is currently scheduled for December 1st through 3rd?

8 MR. ROSEMAN: That is correct, and December
9 1st was the date that our witness was advised, even
10 though there was no word from the Commission, was that
11 generally, the settlement panel is the first order of
12 business, so we advised that December 1st, and that's
13 the only date that I cleared with our witness. I
14 didn't go into December 2nd and 3rd, and I'm sorry if I
15 jumped the gun on that, but that's what I did.

16 JUDGE CLARK: I understand. Thank you for
17 that clarification. Northwest Industrial Gas Users?

18 MR. STOKES: Although those dates would work
19 for us, I believe we are bound by the settlement
20 agreement that contemplates the effective date of
21 January 1, so unless Avista is willing to work those
22 dates, we would oppose that.

23 JUDGE CLARK: Thank you. I just want to make
24 one point of clarification with respect to the comment
25 indicated by Avista, and that is that the Commission

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1 does not have in actuality three-and-a-half months to
2 consider the settlement proposed by the parties. The
3 Commission will not be able for due-process concerns to
4 be able to consider the settlement until all parties
5 have had the opportunity to be heard regarding the
6 merits of that settlement. So I certainly won't hazard
7 a guess about how much time they do have, but it is
8 less than three-and-a-half months.

9 Is there any other comment regarding the
10 proposed schedule, or shall we speed right along to
11 discovery? Mr. ffitch, you had, I believe, some
12 proposal in that regard?

13 MR. FFITCH: Yes, Your Honor. We would
14 request that the discovery response date be reduced to
15 seven business days after the rebuttal is filed.

16 JUDGE CLARK: And that is from ten to seven;
17 is that correct?

18 MR. FFITCH: From ten to seven.

19 JUDGE CLARK: Any objection?

20 MR. MEYER: Not so long as that same
21 seven-business-day rule applies to the responses to
22 data requests on the Public Counsel and ICNU reply to
23 the joint testimony.

24 MR. FFITCH: No objection.

25 JUDGE CLARK: Staff?

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1 MR. TRAUTMAN: No objection.

2 JUDGE CLARK: Energy Project?

3 MR. ROSEMAN: No objection.

4 JUDGE CLARK: Northwest Industrial Gas Users?

5 MR. STOKES: No objection, Your Honor.

6 JUDGE CLARK: Industrial Customers of
7 Northwest Utilities?

8 MR. VAN CLEVE: No objection.

9 JUDGE CLARK: There is one other alternative
10 that I wanted to offer to the parties, and that is
11 because I understand that we are having some difficulty
12 coming up with schedules that may work for all
13 witnesses' testimony, the other option that is
14 available to the parties is, of course, that the
15 hearing be bifurcated and that we allow the testimony
16 of those witnesses who are unavailable on a particular
17 date to be heard at a different time, perhaps an
18 earlier time, and I'm going to turn first to Public
19 Counsel and ICNU to get your opinion on this proposal,
20 because it appears that Mr. King and Mr. Majoros are
21 the individuals who might not be available on some of
22 the alternative dates.

23 MR. FFITCH: You are correct, Your Honor. I
24 guess it's hard to assess this without knowing specific
25 dates and checking with the witnesses.

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1 JUDGE CLARK: I'm not concerned with specific
2 dates. What I'm concerned with is whether or not you
3 would have objection to bifurcating the presentation of
4 those witnesses's testimony from the hearing, the
5 panel, in support of the settlement.

6 MR. FFITCH: Not necessarily, Your Honor. I
7 guess I can't give a definitive answer. I have to
8 think it through a bit. From our perspective, the main
9 focus of the hearing is cross-examining Company
10 witnesses and perhaps other parties who are supporting
11 the settlement, and then with the assistance of our
12 witnesses, and so then the question, I guess, is when
13 our witnesses are called for questioning by settling
14 parties or by the Bench, so I'm trying to think that
15 through, and then also with the panel adds two or three
16 components to the hearing. I guess I could imagine
17 maybe some difficulties, but I'm not immediately
18 opposed to the idea.

19 JUDGE CLARK: To the concept.

20 MR. FFITCH: To the concept. Obviously,
21 there are a lot of details that might come into play,
22 but not opposed to the concept.

23 JUDGE CLARK: ICNU?

24 MR. VAN CLEVE: Your Honor, we are not
25 opposed to the concept, but it depends on what kind of

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1 rebuttal testimony the settling parties file. For
2 example, if they are responding to the testimony of
3 Mr. Majoros and Mr. King, then we would want to, I
4 believe, cross-examine those parties at the same time
5 as Mr. Majoros, anyway, so he would be available for
6 that cross-examination. It might be that the panel in
7 support of the settlement might be here and be
8 available for cross-examination of --

9 JUDGE CLARK: I'm sorry. I didn't hear that
10 last proposal.

11 MR. VAN CLEVE: That some of the witnesses
12 that support the panel might need to be available for
13 cross-examination at the same time as Mr. Majoros.

14 JUDGE CLARK: In other words, if I can just
15 restate that to make sure I understand; that you might
16 need Mr. Majoros in order to aid in that examination?

17 MR. VAN CLEVE: That's correct.

18 JUDGE CLARK: Thank you.

19 MR. FFITCH: Your Honor, if I may interject,
20 I think Mr. Van Cleve sort of helped me clarify my
21 thinking a little bit. Essentially, it's difficult to
22 do -- I think it's more workable to bifurcate the panel
23 from the rest of the hearing, but typically, you have
24 your expert during cross-examination of the other side
25 available to you and then they can hear the

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1 cross-examination answers, and then they are able,
2 obviously, to go onto the witness stand themselves and
3 have a fuller idea of the record as they make their own
4 testimony. So we would like to have that part of the
5 hearing be preserved where the cross-examination of all
6 the witnesses should happen in the same time frame.

7 It also creates travel problems that we would
8 have to bring one of our witnesses out to assist with
9 cross and then bring them out again in a couple of
10 weeks to sit further on cross, if there were cross.
11 That's an expense.

12 JUDGE CLARK: Certainly there is, and of
13 course, this prehearing conference is an excellent
14 example of the Commission's willingness to allow people
15 to appear telephonically on the bridge line, and that
16 will save travel expenses for parties.

17 Is there anything further that should be
18 considered on the record of this morning's prehearing
19 conference?

20 MR. MEYER: There is not other than just a
21 quick comment on your suggestion of bifurcating.
22 Avista will show a maximum flexibility to do whatever
23 needs to reasonably be done here to make this thing
24 work, whether it's the bifurcation process, using the
25 bridge lines. There is probably a sensible way through

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1 this, so I thank you.

2 JUDGE CLARK: Thank you. Anything further
3 the parties wish to be heard? Then as I advised you
4 earlier and I believe off record, I am unable to
5 confirm availability of hearing dates this morning.
6 Therefore, I will take the schedule that all parties
7 concur regarding to the commissioners as well as the
8 alternative schedules proposed by the parties. Both of
9 those are taken under advisement, and the Commission
10 will issue a prehearing conference order at its
11 earliest opportunity. Is there anything further to be
12 heard? Hearing nothing, we are adjourned.

13 (Prehearing conference adjourned at 11:45 a.m.)

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