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24 Barbara L. Nelson, CCR

25 Court Reporter

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

2 JUDGE TOREM: Folks on the bridge line,
3 we're going to go on the record now. So I'll say
4 good morning, tell you my name is Adam Torem, spelled
5 T-o-r-e-m. I'm an administrative law judge for the
6 Utilities and Transportation Commission, and I'll be
7 presiding over this matter.

8 Today we're here at the Washington UTC
9 Building at 9:35 a.m. It's Thursday, June the 14th,
10 2007, and this is a pre-hearing conference in Docket
11 TS-070889. We have a court reporter present today
12 from Continental Reporting Service, Ms. Barbara
13 Nelson.

14 Now, this case addresses a request that was
15 filed on May 7th, 2007, by Aqua Express, LLP, to
16 extend a suspension of commercial ferry service under
17 Certificate BC-129 for two additional years, from
18 June 4th, 2007, through June 4th, 2009. Following
19 the Commission's open meeting of May 23rd, 2007, the
20 Commissioners ordered a full hearing on the request
21 to determine if good cause exists to grant the
22 request.

23 Now, the purpose of the pre-hearing

24 conference today is to take appearances from the
25 parties, including any of those who might be seeking
0003

1 to intervene, clarify the issues for hearing, and
2 then discuss a schedule for the Commission's
3 consideration of this request and perhaps any other
4 procedural matters.

5 So before we proceed further, let me take
6 appearances, and I'll let Mr. Trotter go first. He
7 knows how to do the stating of the full name, the
8 party he represents, full address, telephone number,
9 fax number, and an e-mail address. It's very
10 formulaic. So Mr. Trotter, if you'll set the
11 example.

12 MR. TROTTER: Okay, fine, Your Honor, thank
13 you. My name is Donald T. Trotter, and I'm an
14 Assistant Attorney General. I represent the
15 Commission in this matter. My address is P.O. Box
16 40128, Olympia, Washington, 98504-0128. My phone
17 number is (360)664-1189, fax is (360)586-5522, and my
18 e-mail is DTrotter@wutc.wa.gov.

19 JUDGE TOREM: Okay. Mr. Blackman.

20 MR. BLACKMAN: My name is John Blackman, I'm
21 a managing member of Aqua Express. My address is
22 1101 Alaskan Way, Suite 201. Telephone number is --
23 and that's Seattle, 98101. Telephone number is
24 (206)623-1445, fax is (206)623-5474, and the e-mail
25 address is JohnB@ArgosyCruises, all one word, spelled

0004

1 A-r-g-o-s-y-C-r-u-i-s-e-s.com.

2 MR. CLARK: I'm Kevin Clark, C-l-a-r-k, here
3 with Argosy. Address is 1101 Alaskan Way, Suite 201,
4 Seattle, Washington, 98101. Phone number,
5 (206)623-1445, fax number (206)623-5474, e-mail is
6 KevinC@ArgosyCruises, that's plural, Cruises.com.

7 JUDGE TOREM: Mr. Hayes.

8 MR. HAYES: My name's Richard Hayes,
9 H-a-y-e-s. I'm the Executive Director of the Kitsap
10 County Public Transportation Benefit Area Authority,
11 more commonly known as Kitsap Transit. The address
12 is 60 Washington Avenue, Suite 200, Bremerton,
13 Washington, 98337. The phone is (360)478-6230, the
14 fax is (360)377-7086, and the e-mail is
15 KTexecutive@KitsapTransit.com.

16 JUDGE TOREM: All right. Let me note also
17 in the room with Mr. Trotter today is Mr. Danny
18 Kermode, from Commission Staff, as well. And we have
19 on the telephone line Mr. Tom Waggoner and Mr. Sonny
20 Woodward. Mr. Waggoner, can you please state your
21 appearance, as well, giving the party you're
22 representing today, address, telephone number, fax
23 number, and e-mail address, and then, Mr. Woodward,
24 if you'll add your personal information. If it's the
25 same party, that's fine. Mr. Waggoner.

0005

1 MR. TROTTER: Your Honor, this is Don
2 Trotter. If you don't mind, I'm wondering whether --
3 I recognize Kitsap Transit is here in the room, and

4 if they wish to be a party, I don't believe the Staff
5 will object. But perhaps they didn't -- they may not
6 have understood that you were asking for appearances
7 as a party.

8 JUDGE TOREM: Well, I'm going to sort that
9 out shortly.

10 MR. TROTTER: You're going to get the names
11 and addresses first? Okay.

12 JUDGE TOREM: That's what I want to do, see
13 who's here, and then we're going to address the issue
14 of intervention and party status. And again, if we
15 take a break, those things can be addressed by you,
16 Mr. Trotter. So you can fully explain what that
17 implies and how much of a burden that is.

18 MR. TROTTER: Okay. Thank you.

19 JUDGE TOREM: But Mr. Waggoner and Mr.
20 Woodward, if you'd state the addresses.

21 MR. WAGGONER: My name is Tom Waggoner, and
22 I'm representing the Kingston Chamber of Commerce and
23 also the subcommittee of the chamber, which is our
24 Passenger Ferry Committee. My address is Post Office
25 Box 73, Kingston, Washington. I have no fax. I have

0006

1 the e-mail, which is Tom@KingstonLumber.com.

2 JUDGE TOREM: Mr. Waggoner, how do you spell
3 your last name?

4 MR. WAGGONER: W-a-g-g-o-n-e-r.

5 JUDGE TOREM: Mr. Woodward.

6 MR. WOODWARD: Yes. My name is Sonny

7 Woodward, W-o-o-d-w-a-r-d. Address is Post Office
8 Box 1329, Kingston. My phone number is
9 (360)297-0320. My e-mail address is
10 SonnyW@JohnLScott.com.

11 JUDGE TOREM: And Mr. Woodward, the spelling
12 of your first name?

13 MR. WOODWARD: S-o-n-n-y.

14 JUDGE TOREM: All right. Thank you.

15 MR. WOODWARD: And representing the Kingston
16 Chamber of Commerce and the Kingston Chamber of
17 Commerce subcommittee.

18 JUDGE TOREM: All right. And as Mr. Trotter
19 indicated, there will be a discussion in just a few
20 moments as to those folks giving their addresses, if
21 they'll actually be parties in this case or just
22 interested persons, if you will, that might be giving
23 comment or public testimony at an appropriate point.

24 Now, the issue in this case, Aqua Express is
25 already the holder of a commercial ferry certificate

0007

1 of public convenience and necessity. As I said
2 earlier, it's Number BC-129. And my understanding is
3 that the certificate authorizes provision of
4 passenger-only ferry service between Kingston and
5 Seattle.

6 The Commission previously granted a
7 temporary discontinuance of service several times.
8 There was a nine-month period of time from October
9 1st, 2005, through June 30th, 2006, and then an

10 additional six-month period from July 1st, 2006,
11 through December 31st, 2006, so I guess it's actually
12 seven months. No, six. My math is off this morning.
13 And January 1st was the latest one, through June 4th,
14 all that in 2007. And the request that came in in
15 May was for a further discontinuance for two years,
16 from June 4th of this year, 2007, through June 4th,
17 2009.

18 Now, there were a number of letters
19 submitted, and this matter definitely is of interest
20 to Kitsap County and the City of Kingston, but I
21 haven't received any what I would call formal
22 petitions to intervene in this case. So there may be
23 a question, as Mr. Trotter had indicated, as to who
24 wants to be a formal intervenor and who wants to
25 simply be a party of interest. Parties, as we have
0008

1 them now, will be the Applicant, Petitioner from Aqua
2 Express and, representing the Commission Staff, Mr.
3 Trotter.

4 Let me ask, Mr. Hayes, if you see any
5 indication that Kitsap Transport wants to be an
6 intervening party in this case or simply a person of
7 interest, if you will?

8 MR. HAYES: I think that we probably should
9 ask for the intervenor status. We have a partnership
10 relationship with Aqua Express, and a significant
11 portion of the rationale for asking for a two-year
12 period is based on a process we need to go through to

13 reach a successful election and funding that the
14 program needs to go forward as a joint venture, so --

15 JUDGE TOREM: Okay. So you're potentially
16 seeking intervention status. Mr. Woodward and Mr.
17 Waggoner, any indication that the Chamber of Commerce
18 wishes to become a full party or an intervenor in
19 this case?

20 MR. WAGGONER: No, Your Honor. We submitted
21 a breakdown of our ten-year quest to be -- to have
22 passenger ferry service operating out of -- from
23 Seattle to Kingston. We would be an interested party
24 supporting the Applicant.

25 JUDGE TOREM: And was that Mr. Waggoner?

0009

1 MR. WAGGONER: Yes.

2 JUDGE TOREM: And gentlemen, if you do have
3 further comments, the court reporter and probably all
4 of us here that don't recognize your voices so well
5 would appreciate identifying the speaker. Thank you.

6 MR. WAGGONER: Yes, thank you.

7 JUDGE TOREM: All right. So Mr. Trotter,
8 you had indicated that the Commission Staff would not
9 necessarily object to Kitsap Transport becoming an
10 intervenor. Did you want to quickly review on the
11 record what the requirements for intervention are
12 under WAC 480-07-355, or would you like me to do
13 that, since I've got the page open?

14 MR. TROTTER: Well, you can do it, but just
15 -- Staff has no objection to Kitsap Transit being an

16 intervenor in this case.

17 JUDGE TOREM: Let me quickly articulate what
18 that means. Typically, the Commission wants to have
19 these petitions in writing, but I can approve it
20 verbally today, but I think for the record --

21 MR. HAYES: We can turn something in.

22 JUDGE TOREM: -- Mr. Hayes, if you can file
23 under the WAC the appropriate petition. And I take
24 it, Mr. Trotter, I'd give you some time to file a
25 written we have no objection letter if you choose,

0010

1 and I'll make a formal ruling on that in the
2 pre-hearing conference order, but if there's no
3 objection today, it seems as though that would be
4 appropriate.

5 MR. HAYES: Do you need our attorney's name
6 and address and et cetera? Because it would come
7 from him.

8 JUDGE TOREM: If an attorney's going to file
9 it on behalf, that would be fine, and a separate
10 notice of appearance would come in, as well.

11 MR. HAYES: Okay.

12 JUDGE TOREM: But again, it requires you to
13 state your interest in the proceeding and your
14 position with respect to the matter in controversy.
15 Supporters of Aqua Express, I'd understand you'd ask
16 that this extension be granted.

17 MR. HAYES: Yes.

18 JUDGE TOREM: And then there's a question as

19 to whether the Petitioner proposes to broaden the
20 issues, and if so, to what. I don't know if that
21 would be appropriate in your case. And part of it is
22 the name and address of the Petitioner's attorney.
23 So so long as the petition shows what's called a
24 substantial interest in the subject matter of the
25 hearing or if your Petitioner's participation is in

0011

1 the public interest, and I would determine that yes,
2 today you do have a separate interest as a municipal
3 facility, that yes, we would grant that and there's
4 been no objection, so consider yourself an intervenor
5 at this point.

6 And Mr. Waggoner and Mr. Woodward, we'll
7 have you continue to listen in, but again, as an
8 interested person today, there won't be a chance for
9 public comment. There may be at a later hearing.

10 MR. WAGGONER: Thank you, Your Honor.

11 JUDGE TOREM: Mr. Hayes, would next Monday,
12 June the 18th, close of business, be sufficient time
13 to file that petition?

14 MR. HAYES: Oh, absolutely, yes.

15 JUDGE TOREM: All right. And then what I'm
16 hoping is that, shortly after that comes in, Mr.
17 Trotter can, if he chooses to, file a response, but
18 I'm hoping by next Friday to have the pre-hearing
19 conference order sent out, and if I have all the
20 filings and petitions by then, that would be
21 fantastic.

22 MR. TROTTER: We'll accommodate that
23 schedule, Your Honor.

24 JUDGE TOREM: All right. Now, Mr. Blackman
25 and Mr. Clark, under the WAC 480-51-130, you sought
0012

1 the Commission's permission for the indefinite
2 discontinuance, and you asked for a period of two
3 years. And when I looked through the Administrative
4 Code and I looked at what else was in the file, it
5 appears that this sort of request is different and
6 has to be distinguished from the previous WAC in
7 sequence, it's called a petition to extend a
8 certificate and limitations on time to actually
9 initiate service. And there's required progress
10 reports, and the statute is RCW 81.81.010(2), and
11 again, it was WAC 480-51-120.

12 So one of the things I want your discussion,
13 when I leave the room and you can have an
14 off-the-record chat about, is questions about what
15 the standard of proof for the hearing will be,
16 because under WAC 480-51-130, which, again, I believe
17 governs this proceeding, it's very short, it talks
18 about discontinuances, not initiating. It doesn't
19 tell me if the standard is potentially public
20 interest that it be granted or is it some version of
21 the previous WAC's criteria, 120(2)(e), which talk
22 about submission of progress reports, indicating
23 significant advancement toward I think initiating
24 service, and I wonder if it would be, in this case,

25 toward resuming service, or some other version of
0013

1 criteria. What is it that I would be ruling on. I
2 want to make sure both Commission Staff and Aqua
3 Express and any other intervenors agree that these
4 are the issues that have to be proved at hearing one
5 way or the other.

6 And the other issue that immediately
7 presented itself was the last sentence from that rule
8 on discontinuance, 130, it says, The Commission shall
9 not grant permission for discontinuance of service
10 for periods exceeding 12 months. And the request
11 clearly is for 24 months.

12 I suppose there's two sides to that coin
13 that could be discussed as to 12 months at a time or
14 12 months total. We've already exceeded 12 months
15 total by the listing I gave you earlier. So those
16 are some other issues procedurally that I think would
17 be best fleshed out and understood by the time we
18 close today's pre-hearing conference as to what might
19 be presented.

20 So of course today we're not going to the
21 merits on those issues, but we have to discuss what's
22 going to be presented at hearing. Before I ask Aqua
23 Express to tell me their views on those things, I
24 know, Mr. Trotter, you had some other issues you
25 thought could be put on our record this morning, and
0014

1 then we'll take a brief break to sort those out.

2 MR. TROTTER: Well, Your Honor, first of
3 all, I think the issue is whether the request can and
4 should be granted. I would have to give some more
5 consideration to the standard. This company did
6 initiate service. I don't recall the exact year, but
7 they did. I don't think there's any dispute that
8 they did offer service for a period of time. So I
9 don't believe rule -- Section 120 would apply.

10 Whether it applies by analogy I guess is a
11 policy question for the Commission, but I think the
12 -- I think you've highlighted the legal issues, and
13 then the practical issue is is a hearing required,
14 can we agree to some facts and have a summary
15 determination, that sort of thing, which I proposed
16 to discuss with the parties at a break and see if we
17 can make any progress on that.

18 JUDGE TOREM: All right. And one of the
19 things that -- I was going to go through some of this
20 today, and the sheet I will flip to now has my
21 suggestions, that if there is a chance of settling
22 this short of a hearing, I talked with our chief
23 judge, Ann Rendahl, and reviewed the Commission's
24 procedures on settlements or mediation, and we can
25 make an additional judge available if you think

0015

1 that's helpful.

2 I would be the hearing judge, so I couldn't
3 act as an arbitrator or mediator in any way, shape or
4 form, but if there is a settlement to be had between

5 the Commission Staff and the party in interest, Aqua
6 Express, and also Kitsap Transit, as an intervenor
7 supporting them, if you need a judge to do that, one
8 can certainly be arranged. And our procedural rules,
9 I think it's 480-07-700, lay those out as to the
10 formal ideas. But Mr. Trotter's familiar with that
11 and can certainly discuss that at a break.

12 Gentlemen, do you have anything else, from
13 Aqua Express or Kitsap Transit, to put on the record
14 before I turn you over to Mr. Trotter off the record
15 to discuss a potential way forward?

16 MR. BLACKMAN: Well, I'm not -- this is John
17 Blackman speaking. I'm not an attorney, so I first
18 would like to apologize to the Commission for sending
19 in a -- what I would say was a very sparse request,
20 about two sentences, which I think, in turn, caused
21 the Commission to have to go through a lot of
22 background information that I could have helped
23 provide in advance, and I didn't do that. So I
24 apologize for that.

25 And Aqua Express is an LLP that is owned by

0016

1 four maritime-based companies with over 150 years of
2 experience, and we tried our darnedest to make a go
3 of this financially. We've invested over \$2 million
4 in trying to make that happen, and so we weren't
5 successful.

6 We've concluded, as a result of that
7 expensive experience, that we need to have a

8 government partner. And Kitsap Transit, I don't mean
9 to suggest they haven't been a partner. This service
10 couldn't have operated at all without their
11 assistance and support as far as connecting bus
12 schedules and so forth, but we really are interested
13 in trying to resume service on the route. We need
14 the support of a government partner.

15 In the event that somebody else comes along
16 and is ready, willing and able and fit, according to
17 the UTC, we would certainly step aside and not
18 protest that application.

19 So I think it's in the public interest to
20 give us more time to try to make this happen. And as
21 I say, we've got a joint development agreement with
22 Kitsap Transit and we've been working with them and
23 trying very hard to find a combination that's going
24 to make this work.

25 So I'd ask that the Commission consider --

0017

1 the judge consider extending our suspended
2 application for two years.

3 JUDGE TOREM: Well, as you know, this is the
4 process to do that, and I can't consider anything
5 really today. This is just procedural matters. But
6 I do think if you're able to discuss with Mr. Trotter
7 and understand, from Commission Staff's perspective,
8 the other concerns that go with potentially a
9 certificate being out there that's not being used or
10 the Commission doesn't understand everything

11 you've just laid out in summary this morning --

12 MR. BLACKMAN: Sure.

13 JUDGE TOREM: -- that some sort of summary
14 determination that can be submitted, Mr. Trotter can
15 tell me when I come back as a stipulation or a
16 proposed order that I would review and then find to
17 be legally sufficient, I would then forward that to
18 the Commission with a recommended, essentially
19 initial decision, I believe, and then the Commission
20 would adopt, modify, or send it back.

21 But at least at that point, the sort of
22 review it would have gotten in an open meeting will
23 be a lot more in-depth, a lot more work will have
24 gone into it and a judge will have reviewed it and
25 made a formal recommendation to the Commissioners.

0018

1 At that point, you may get exactly what you're
2 looking for, but we need to make sure all the issues
3 are fleshed out at this point. Mr. Hayes?

4 MR. HAYES: Having heard that, I'll probably
5 save the bulk of our issues for the discussion. We
6 have a vital public interest in protecting and
7 preserving this asset through the partnership that we
8 have with Aqua Express. It is part of a long-term
9 passenger ferry plan, which I didn't send in, because
10 it's about 50 pages, but which we readily can.

11 I also need to apologize. We basically sent
12 in nothing, simply not appreciating the importance, I
13 think, of our participation to the UTC, but I think

14 it may be an unusual thing that the UTC has to
15 consider, with a government agency as a partner, but
16 I think it is very close to the heart of the matter.
17 So we're here now. We'll keep participating.

18 JUDGE TOREM: Well, again, as I indicated,
19 the legal issues in this case, the certificate's
20 already been granted to Aqua Express years ago, and I
21 don't remember the exact date either, but service was
22 initiated, the painful financial experience was
23 described by Mr. Blackman, but again, the issues here
24 are, I think from Mr. Blackman's perspective, and
25 perhaps from Kitsap Transit, as well, is how do you

0019

1 stay on track. I won't speak for Mr. Trotter, but
2 what I read from the open meeting memos and how I got
3 the file were how do we make sure this certificate
4 shouldn't be pulled so that there's not a competitive
5 disadvantage or disincentive to others who might wish
6 to provide the public with the same service and how
7 do you make it a win-win, so that there is an
8 invitation for competition and service to be actually
9 provided, but not make the next best competitor that
10 has a certificate step back all the way.

11 Those sorts of things can be decided at
12 hearing based on the legal bases as to granting a
13 discontinuance for a specified period of time or
14 through an agreement that Mr. Trotter, Mr. Kermode
15 and the rest of Commission Staff can review and make
16 sure serves all the different public interests, as

17 well as the statutory and regulatory needs to allow
18 people to, as you say, file if they're fit, willing
19 and able to do it.

20 So I think that's the panoply of issues that
21 have to be decided at the hearing on the merits. If
22 there's a simpler way to do it through provision of
23 supporting documentation to go with an agreement and
24 perhaps some agreements, as you've expressed, Mr.
25 Blackman, to have some conditions on any

0020

1 discontinuance and maybe reports an analogy to what's
2 going on in the 120 as to progress being made so that
3 the discontinuance can be handled the next time
4 around at an open meeting, if necessary, then perhaps
5 some sort of agreement can be worked out.

6 Mr. Trotter, does that sound accurate for
7 what you're trying to do?

8 MR. TROTTER: Yeah, I think we can work
9 within that framework.

10 JUDGE TOREM: Okay. Anything else for the
11 record at this moment? All right. Let me note it's
12 now just a little bit after 10:00. We're going to go
13 off the record. And Mr. Waggoner and Mr. Woodward,
14 you're invited to stay on the line. We're going to
15 keep the telephone line open. And if you have
16 anything from the Chamber of Commerce, just let Mr.
17 Trotter know you want to interrupt, and you can
18 hopefully hear the rest of the discussions, and we'll
19 go from there.

20 Any other questions? Mr. Waggoner, Mr.
21 Woodward, you're still there?

22 MR. WAGGONER: Yes.

23 MR. WOODWARD: Yes, sir.

24 JUDGE TOREM: Very good. We're off the
25 record at one minute after 10:00. Mr. Trotter, I'll
0021

1 be in my office. Let me know when you're ready.

2 MR. TROTTER: Okay. I suspect about 15
3 minutes, Your Honor. Thank you.

4 (Recess taken.)

5 JUDGE TOREM: All right. We're ready to go
6 back on the record at 10:23. Where are we, folks?

7 MR. TROTTER: This is Don Trotter, Your
8 Honor. I'll make a brief statement, and then the
9 parties can tell me if I got it right.

10 We've decided there's a reasonable prospect
11 for settlement of this matter, so we would like you
12 to hold a pre-hearing conference in 30 days to
13 determine the status, and we believe there's an
14 excellent chance that we would file a settlement by
15 that time, or if not, we would be be prepared to
16 either go toward a summary determination procedure or
17 a hearing procedure, but that decision would be made
18 at that subsequent pre-hearing conference. But the
19 goal would be a settlement of the issues in the case.

20 Aqua Express understands that if it wishes
21 to seek an extension of more than 12 months, it needs
22 to seek an exception, apply for an exception to the

23 rule. We believe they can do that within this
24 docket, we believe they may well ask for that, but
25 they'll need to follow 480-51-010 in order to be able

0022

1 to do that. And Staff may well support that request,
2 but what the parties have envisioned is an
3 information exchange process within the next week or
4 10 days, and then we'll proceed to see if we can
5 settle the matter.

6 Parties understand your questions regarding
7 standard of proof, and we'd be prepared to address
8 that in any settlement that was presented, as well as
9 your questions about the scope of the -- just a
10 moment -- the scope of the permission for
11 discontinuance of service.

12 You mentioned there was an issue of whether
13 the discontinuance can be for a total of 12 months
14 under all extensions or each extension's limited to
15 12 months, and so on. We'd be prepared to address
16 that issue.

17 So the bottom line is we're going to attempt
18 a settlement in fairly short order. Parties seem to
19 be -- the parties with the information, which is the
20 Applicant and Kitsap Transit, were pretty clear that
21 they could get information to us very expeditiously,
22 so we're confident that we can meet the schedule that
23 we've set out for your consideration.

24 JUDGE TOREM: All right. Mr. Blackman and
25 Mr. Clark, does that sound about right?

0023

1 MR. BLACKMAN: It does, and I have every
2 hope that we can reach a settlement. I don't think
3 it's going to be that difficult.

4 JUDGE TOREM: All right. Mr. Hayes.

5 MR. HAYES: It looks fine.

6 JUDGE TOREM: All right. Let me ask Mr.
7 Trotter, then. Procedurally, this sounds like mainly
8 we're going to do a continuance of the matter. We
9 had addressed the issue of Kitsap Transit being an
10 intervenor today. I can issue a pre-hearing
11 conference order next week granting that status, so
12 it's formal and they -- from Mr. Hayes's perspective,
13 his role is set, and then continue all other matters
14 for 30 days.

15 MR. TROTTER: That's fine.

16 JUDGE TOREM: All right. And just so we
17 have the date certain, today is June the 14th.
18 Thirty days out would put us the week of July 9th or
19 the week of July 16th.

20 MR. TROTTER: The week of the 16th would be
21 better for me, Your Honor.

22 JUDGE TOREM: And for me.

23 MR. HAYES: If Wednesday is possible, I
24 would like that, because I have a second board
25 meeting on the 17th, which allows me to make sure the

0024

1 board gets to consider this fully.

2 JUDGE TOREM: So is your board meeting the

3 17th?

4 MR. HAYES: It's the 17th.

5 JUDGE TOREM: Okay. So that's Tuesday. So
6 Wednesday, the 18th, would be the preferable day?

7 MR. HAYES: Yes, that would be very good for
8 me.

9 JUDGE TOREM: Now, Mr. Trotter, I think, is
10 suggesting that the settlement may be completed ahead
11 of the 30 days.

12 MR. HAYES: Oh, certainly, yeah. And we
13 plan on providing him a pretty good lot of
14 information just in this next week.

15 MR. TROTTER: I think we're okay.

16 JUDGE TOREM: Okay. Does anybody else have
17 a problem with Wednesday, July the 18th, to do this
18 again?

19 MR. BLACKMAN: So this would be, on the
20 18th, a pre-hearing conference like we're doing right
21 now?

22 JUDGE TOREM: And hopefully it would turn
23 into more of a status conference at which the parties
24 can articulate where we are. If it's done in advance
25 and there's going to be a settlement that's going to

0025

1 be recommended for approval, I'd like to get a copy
2 of it the week before or a couple days in advance, so
3 that I can review it, come in knowing if I have any
4 questions that I think the Commissioners might have,
5 as well, any obstacles that I could identify quickly

6 that could be addressed on the record, as opposed to
7 bring them up for the first time. I might be able to
8 send a memo out to all the parties and say, Be
9 prepared to address the following items.

10 But, again, I'm just trying to make sure
11 that we do the most possible business, and if it can
12 be resolved on the 18th, then I can tell you as much,
13 and then it will be a recommendation to the
14 Commissioners in that regard.

15 MR. TROTTER: Okay. So Your Honor, just
16 thinking this through, if the parties filed a
17 settlement agreement, just for example, the first
18 week of July, you would be willing to hold your
19 consideration hearing, at least potentially, after
20 you review it, of course, but there's at least the
21 possibility that you would review that settlement on
22 the 18th. So if you continued this matter, you would
23 at least -- that pre-hearing conference, one of the
24 issues at that pre-hearing conference could be
25 consideration of any settlement that's filed provided

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1 that you have enough lead time and so on to do that?

2 JUDGE TOREM: And do you know, Mr. Trotter,
3 if there would be, if I'm formally considering a
4 settlement, notice to the public and a chance for
5 public comment required?

6 MR. TROTTER: Yeah, that's the thing I was
7 thinking about, Your Honor. Certainly, the parties
8 had a chance to intervene today, and those who didn't

9 may be foreclosed from participating, but usually a
10 settlement hearing notice goes out after the
11 settlement's filed, so perhaps -- I'm thinking this
12 through, kind of thinking out loud here, it might be
13 best if -- for example, a settlement is filed the
14 first week of July, that the hearing on the 18th be
15 cancelled and another notice of hearing go out, and
16 at least be a hearing on the 18th, but at least it
17 would be under perhaps a more directed notice of
18 hearing.

19 JUDGE TOREM: Correct. So what I think
20 we're talking about in legal terms is the settlement
21 would come in with a motion, an agreed motion to
22 strike the status conference and, in its place or
23 whatever, convert it to a notice on the formal
24 hearing that the public could comment and otherwise
25 satisfy all of the due process needs of everybody

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1 else that's not necessarily a party, and have it on
2 the 18th. So to do that would probably mean we need
3 to have that settlement filed ahead of the July 4th
4 holiday to allow appropriate notice.

5 MR. TROTTER: Right.

6 JUDGE TOREM: Now, for your information, Mr.
7 Trotter, because you'd be the one coordinating this
8 with ALD, our Administrative Law Division here at the
9 Commission, I'm going to be out of town that week of
10 July 4th, and you'd have to find another judge,
11 perhaps Judge Rendahl, to coordinate making sure the

12 appropriate notice went out, but I can summarize that
13 in my pre-hearing conference order that will have the
14 intervention and that there's a possibility that that
15 hearing may be converted to another process, and at
16 least we'll have the wheels greased to know what the
17 deadlines are.

18 If we miss those deadlines, then I know that
19 myself and Judge Moss are involved in a power cost
20 only rate case the next week, which is, for those of
21 you that wonder about where your electric and utility
22 bills go, that's going to take up a lot of time that
23 week.

24 The next opportunity for a hearing on this
25 matter will be the week of July 30th, so we could --

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1 if for some reason we find that the settlement takes
2 a little bit longer and we don't have the requisite
3 notice to send out a settlement hearing conference
4 and hold the date of the 18th, then we'll want to go
5 ahead and look at kicking it over to the week of July
6 30th. Is that fair, Mr. Trotter?

7 MR. TROTTER: Yeah, that's fine. And I
8 don't know what our filing time will be, but, you
9 know, we're going to work hard on it and we'll do the
10 best we can.

11 JUDGE TOREM: Okay. Well, I do recognize
12 there's only two full weeks left in this month, so
13 time can slide by. All right.

14 One other concern that I have, and I leave

15 it up to the parties, whether to reach a settlement
16 and then give notice to Mr. Sultan, who had sent some
17 letters of interest in, at that point, or whether it
18 would be strategically wise for you -- and again, I
19 leave it up to you to involve him in advance of
20 filing the settlement so that his comments might
21 already be there and avoid any potential later
22 objections or battles at a settlement hearing that
23 might take Commission Staff a different direction or
24 the Commissioners themselves, if they were to hear
25 from him.

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1 His contact information was filed in a
2 number of comments that came in, available in records
3 management if you don't already have a copy, but I
4 was surprised that he wasn't here today. As Mr.
5 Trotter indicated, he very well may have foreclosed
6 his ability to act as an intervenor. Our rules are
7 fairly strict on stating up front that you want party
8 status, but again, I leave it up to the parties that
9 are here and have already been granted that status
10 whether to involve him at whatever stage so you know
11 at least what you're dealing with. And if all
12 parties of interest and intervenors can be on the
13 same page, all the better for a settlement, even if
14 it was supported by your opponents. If that's
15 possible, it's an ideal world. If it's not, again, I
16 leave it up to you.

17 MR. TROTTER: We'll take that under

18 consideration, Your Honor.

19 JUDGE TOREM: All right. Anything else for
20 the record today, then? I will look for a formal --

21 MR. HAYES: Yes, intervenor status.

22 JUDGE TOREM: -- one or two-page intervenor
23 notice. Mr. Trotter, do you want me to wait for a
24 response from you?

25 MR. TROTTER: I'll send in a short response.

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1 JUDGE TOREM: All right. Then, again, the
2 intervention status is granted, but, again, indicate
3 the scope --

4 MR. HAYES: Need to hear from us, yes.

5 JUDGE TOREM: -- so I'll have that all in
6 writing. And I'll send out, hopefully by next
7 Friday, the next pre-hearing conference order, which
8 will set up the next business for us on July the
9 18th, with the what-ifs if it turns into a
10 settlement. I may try to cite to the rules that
11 would apply to that in the notice so that you folks
12 have it. And Mr. Trotter certainly knows where that
13 is, but you can discuss it. And if there's a
14 correction that needs to be made, if I get it wrong
15 somehow, give about a ten-day period to ask me to
16 make any corrections to those notices.

17 So those will be advisory statements,
18 anyway, so they won't be binding. Simply the
19 intervention will be binding.

20 All right. Anything else for the record?

21 Anybody else on the bridge line? Anything else for
22 the record?

23 MR. WAGGONER: No, Your Honor. Everything's
24 fine.

25 JUDGE TOREM: All right. Glad that we could
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1 reach this accommodation this morning. So at 10:35,
2 we are adjourned. Thank you.

3 (Proceedings adjourned at 10:35 a.m.)

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