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BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

2

In the Matter of the Joint ) Docket No. UE-001878

3

Application of ) Volume III

) Pages 26-71

4

PACIFICORP and PACIFICORP, )

WASHINGTON, INC., )

5

for an Order Approving (1) the )

6

Transfer of Distribution )

Property from PacifiCorp to an )

7

Affiliate, PacifiCorp, )

Washington, Inc., (2) the )

8

Transfer of PacifiCorp of )

Certain Utility Property to an )

9

Affiliate, the Service Company,) )

and (3) the Proposed )

10

Accounting Treatment for )

Regulatory Assets and )

11

Liabilities, and an Order )

Granting an Exemption under )

12

RCW 80.08.047 for the Issuance )

or Assumption of Securities )

13

and Encumbrance of Assets by )

PacifiCorp, Washington, Inc., )

14

and/or PacifiCorp. )

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A prehearing in the above matter

was held on October 30, 2001, at 1:35 p.m., at 1300

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South Evergreen Park Drive, S.W., Olympia,

19

Washington, before Administrative Law Judge KAREN

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CAILLE.

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The parties were present as

follows:

22

PACIFICORP, PACIFICORP

OF WASHINGTON, INC., by James M. Van Nostrand,

23

Attorney at Law, 600 University Street, Suite 3600,

Seattle, Washington 98164.

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Barbara L. Nelson, CCR

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Court Reporter



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1 JUDGE CAILLE: Let's go on the  
2 record. This is Docket Number UE-001878, and it's  
3 encaptioned In the Matter of the Joint Application of  
4 PacifiCorp and PacifiCorp Washington, Incorporated.  
5 This matter concerns the restructuring of PacifiCorp  
6 into six separate state electric companies, a  
7 generation company, and a service company. The purpose  
8 of this prehearing conference is to set a procedural  
9 schedule and consider any other procedural matters. My  
10 name is Karen Caille, and I am the presiding  
11 Administrative Law Judge in this proceeding. Today is  
12 October the 30th, 2001, and we are convened in a  
13 hearing room at the Commission's offices in Olympia,  
14 Washington. Let's begin with appearances, and I'll  
15 ask the company to go first. And I believe I have  
16 all the vital information from everyone who's here  
17 today, so if you'll just state your name and whom  
18 you represent, that will be sufficient.

19 MR. VAN NOSTRAND: On behalf of Applicants  
20 PacifiCorp and PacifiCorp Washington, Inc., James M.  
21 Van Nostrand.

22 MR. CEDARBAUM: For Commission Staff,  
23 Robert Cedarbaum.

24 MR. CROMWELL: Robert Cromwell, on behalf  
25 of Public Counsel.

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1 JUDGE CAILLE: Mr. Sanger.  
2 MR. SANGER: Irion Sanger, on behalf of the  
3 Industrial Customers of Northwest Utilities.  
4 JUDGE CAILLE: Mr. Eberdt.  
5 MR. EBERDT: Charles Eberdt, on behalf of  
6 Yakima OIC and the Energy Project.  
7 JUDGE CAILLE: Thank you. Let the record  
8 reflect there are no other appearances. As I stated  
9 before going on the record this morning, the purpose  
10 of this prehearing conference is to set a procedural  
11 schedule. I'm aware that the parties have tried to  
12 work out a schedule and have not been successful.  
13 I have received a letter from Mr. Van  
14 Nostrand, which has set out procedural schedules for  
15 Utah and Oregon, and I would note for the record that  
16 hearings in those matters are set for May 2002. I  
17 think probably the first thing I should ask is  
18 whether we need to have this conference -- this  
19 discussion on the record?  
20 MR. CEDARBAUM: I think it makes sense to  
21 do this, because we usually go off the record --  
22 JUDGE CAILLE: And agree.  
23 MR. CEDARBAUM: -- and have to go back and  
24 have to go back and repeat it anyways.  
25 JUDGE CAILLE: Okay, all right. Now, I

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1 understand that Staff has a proposal. Do you want to  
2 -- Mr. Cedarbaum.

3 MR. CEDARBAUM: If you'd like me to, I can.  
4 We also received the documents that Mr. Van Nostrand  
5 submitted to you by letter dated October 26th, which  
6 included the Oregon, Utah, and Wyoming schedules.  
7 The Wyoming hearings are set toward the middle --  
8 toward the end of September 2002. I believe that  
9 should have been in his letter.

10 JUDGE CAILLE: Oh, you know, I just -- it  
11 should be 2002. I was thinking this was 2001, and I  
12 thought that maybe they were finished.

13 MR. VAN NOSTRAND: No, they should all be  
14 2002 on page two.

15 JUDGE CAILLE: Should be 2002, okay.

16 MR. CEDARBAUM: But in any event, the Staff  
17 proposed schedule would have hearings on all  
18 testimony before the Commissioners in the  
19 mid-November of 2002 time frame, with the hearings  
20 being completed by Thanksgiving, and I honestly don't  
21 have a calendar in front of me to know what those  
22 dates are, but the goal was to be done before the  
23 Thanksgiving weekend and --

24 JUDGE CAILLE: I can tell you that the  
25 NARUC meetings for 2002 are November 10th through the

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1 13th, so the week of the 18th -- Thanksgiving is the  
2 28th next year.

3 MR. CEDARBAUM: So let's say the week of  
4 the 18th, so that the hearings are completed before  
5 Thanksgiving the following week. Then we would back  
6 up from that point in time to have the company's  
7 rebuttal testimony filed a month prior to that,  
8 mid-October, and the Staff, Public Counsel, and  
9 Intervenor testimonies filed a month before that in  
10 mid-September. Again, I didn't have specific dates  
11 for that, but if it's the 18th of each month, without  
12 it being a Monday -- that's usually a horrible day to  
13 file something -- that would be fine.

14 JUDGE CAILLE: Yeah, October 18th is a  
15 Friday. September 18th is a Wednesday.

16 MR. CEDARBAUM: So I think those would be  
17 fine with Staff. So that was our contemplated  
18 schedule. And the justification for that schedule is  
19 really threefold. The first is that the company's  
20 primary jurisdictions in which it operates are Utah  
21 and Oregon, and it seems to make sense to Staff that  
22 we should await Commission orders from those states  
23 before Staff and Intervenors and Public Counsel file  
24 their testimony. Because the Commissions in those  
25 states issue orders that require or give the option

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1 to the company to amend its application in some  
2 respects, it would be helpful for us to be filing  
3 testimony on an amended application, rather than the  
4 existing application.

5           Even if there weren't amendments to the  
6 application prompted by those orders, it still makes  
7 sense to know what those states think about the  
8 application and the restructuring proposal, again,  
9 given the size of the company's service territory  
10 that's located in Utah and Oregon.

11           The second and third reasons are really  
12 interrelated, and they are the -- there is no  
13 statutory time frame or time clock on which the  
14 company's application on this docket needs to be  
15 heard, but there will be statutory time clocks on  
16 other cases the Commission is anticipating being  
17 filed by the end of this year, mainly a general rate  
18 case filed by Puget Sound Energy and a general rate  
19 case filed by Avista Utilities.

20           There is also pending before the Commission  
21 a complaint by Public Counsel versus Puget Sound  
22 Energy. That is a pending complaint which, I  
23 apologize, I don't have the docket number for.

24           It's also my understanding that Northwest  
25 Natural Gas Company will be filing an application

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1 before the Commission with respect to its acquisition  
2 of Portland General Electric. That won't have a  
3 statutory time frame, but it's another bucket of  
4 workload that will come before the Commission.

5           So given -- just to summarize, given the  
6 estimate that we have, that we believe we would  
7 probably see orders from Utah and Oregon somewhere in  
8 the early August time frame based on the schedules  
9 that Mr. Van Nostrand distributed -- and that is an  
10 estimate, I mean, we're doing the best we can on  
11 that, and given that there will be cases before the  
12 Commission that have statutory time frames in which  
13 they must be completed while this one does not, but  
14 that we can have a Commission order, based on our  
15 proposed schedule, sometime around the beginning of  
16 2002, which isn't too far off from the targeted date  
17 for some of the other jurisdictions for PacifiCorp,  
18 including Wyoming, which Mr. Van Nostrand's order  
19 indicates a decision is targeted for the end of this  
20 year.

21           It didn't seem like our schedule was that  
22 far off from the other states, so it was kind of a  
23 balance of all those factors.

24           JUDGE CAILLE: Just for clarification  
25 purposes, the Wyoming Commission decision is targeted



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1 for the end of 2002, or is it --

2 MR. CEDARBAUM: Right, I'm sorry. I meant  
3 to say 2002.

4 JUDGE CAILLE: Yes.

5 MR. CEDARBAUM: That's on page two of Mr.  
6 Van Nostrand's letter.

7 JUDGE CAILLE: Right. So everything on  
8 that page of the letter should read 2002?

9 MR. VAN NOSTRAND: Yes.

10 MR. CEDARBAUM: And I guess, just to  
11 complete my thoughts, with the hearings that we're  
12 proposing in the, you know, pre-Thanksgiving week, we  
13 would be looking to file briefs before Christmas, and  
14 then a Commission order would issue whenever it  
15 issues, which I assume would be sometime in the  
16 February 2003 time frame, which, again, you know, is  
17 reasonably close to the end of 2002.

18 JUDGE CAILLE: Okay. Mr. Van Nostrand,  
19 would you like to weigh in, or Mr. Cromwell?

20 MR. CROMWELL: Your Honor, the only thing I  
21 would have to add is that I support this schedule as  
22 being reflective of the internal discussions we've  
23 had regarding the cases that are going to be coming  
24 before the Commission next year.

25 Our general thought was that the rate cases

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1 are likely to be at briefing stage in August next  
2 year. And obviously, we haven't had prehearing  
3 conferences in any of these cases, since they haven't  
4 been filed, but I know there will be one set for the  
5 complaint case if it hasn't already been set. That's  
6 also likely to be in that same time frame.

7 So I think just in terms of resource  
8 allocation it makes sense, given that there is no  
9 statutory clock on this case, to push it out, rather  
10 than try and -- I guess it would be quadruple and  
11 quintuple stack dockets.

12 JUDGE CAILLE: Mr. Sanger and Mr. Eberdt,  
13 do you have any comments on this proposal?

14 MR. SANGER: This is Mr. Sanger. We would  
15 support this proposal.

16 MR. EBERDT: Likewise. Mr. Eberdt  
17 speaking.

18 JUDGE CAILLE: Okay. Mr. Van Nostrand,  
19 that leaves you.

20 MR. VAN NOSTRAND: Well, I guess it's --  
21 this is why I have not been able to reach agreement  
22 on a schedule. We find ourselves having to schedule  
23 around cases that haven't even been filed yet. It's  
24 speculation that there's going to be these cases  
25 filed, and yet we find ourselves taking place in line

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1 behind them.

2 This application was originally filed in  
3 December of 2000, almost eleven months ago. The  
4 testimony was completed June 30th of this year, over  
5 four months ago. The schedule under which Mr.  
6 Cedarbaum would have this proceed, with the  
7 Commission order sometime in February 2003, would be  
8 26 months after this application was filed and 19  
9 months after the company's testimony was completed.

10 And with all due respect to the workload, I  
11 understand it's considerable. These are  
12 extraordinary times in the power industry in the  
13 West, but this is not being processed with any sort  
14 of speed or due attention at all.

15 And I don't think it's fair for this  
16 company -- the reason for this filing being made is  
17 that this company is not recovering its costs under  
18 the current interjurisdictional allocation process.  
19 It's a serious problem for this company. We have  
20 rate cases in six jurisdictions, and when you add up  
21 all the totals, they don't total a hundred percent.  
22 It's an underrecovery across the company's system.  
23 This case is filed to address that. I don't think  
24 it's reasonable to expect this company to have to  
25 stand in line behind other utilities that are

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1 suffering the same sort of underrecovery problems and  
2 to have this case processed on a 26-month schedule.

3           We have a situation where Staff is  
4 proposing not to even begin working on this filing  
5 until August of next year, after commissions in two  
6 other states have ruled, and our case will have sat  
7 here for over a year at that point before Staff even  
8 commences to undertake to evaluate it because they're  
9 going to look and see what two other commissions do  
10 first.

11           I think the company has a right to expect  
12 more from this jurisdiction, and this schedule is not  
13 acceptable to the company.

14           JUDGE CAILLE: Okay.

15           MR. CEDARBAUM: Your Honor, can I respond  
16 to some of those comments?

17           JUDGE CAILLE: Yes.

18           MR. CEDARBAUM: First of all, to imply that  
19 Staff would not be -- would be sitting on its hands  
20 until sometime next August and not working on this  
21 case just is not correct. Staff has already put out  
22 discovery requests in this case, we're analyzing  
23 that, we'll continue to do that, as well. The  
24 analysis will not wait until those orders come out  
25 from Utah and Oregon. We will just be able to

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1 fine-tune and complete our analysis based on what  
2 those orders include.

3           Secondly, with respect to whether or not  
4 rate cases to be filed with this Commission are  
5 speculative, that's just not true, as well. The  
6 Avista filing is required to be filed based on the  
7 Commission order in Avista's emergency rate  
8 proceeding, and Puget Sound Energy has been very  
9 public that it expects to file a rate case in  
10 November, by the end of this year. So that's not  
11 speculation; that's a real workload crunch that will  
12 have statutory time frame that this Commission cannot  
13 waive.

14           And then, with respect to whether or not  
15 we're somehow treating this company unfairly because  
16 we are not processing the case faster than other  
17 states, in Utah, all that is coming out of that order  
18 that we expect sometime in August is an order on  
19 phase one in Utah. There is still a phase two  
20 proceeding, which, as I understand, has not even been  
21 defined yet, but it would include everything that's  
22 not resolved in phase one.

23           So the order that comes out with respect to  
24 Utah is not the end of the case in that state. The  
25 order that comes out in Wyoming isn't expected till

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1 the end of 2002, under basically the same time frame  
2 and same length of time that this Commission will  
3 have the case before it, and likewise with Oregon.

4 The application was filed in all of these  
5 states generally in the same time frame, and it will  
6 take generally the same time frame for all these  
7 states to resolve the application.

8 It just makes sense to have the Oregon and  
9 Utah orders issued so that this Commission can be  
10 responding to an application that is up to date and  
11 that takes into account whatever those two primary  
12 jurisdictions may have to say about the application.

13 It's not a matter of being -- having this  
14 Commission, its decision resolved by those two cases,  
15 but it's certainly important to know what those two  
16 cases result in.

17 So again, we think, taking into account all  
18 of the factors that are important to the Commission  
19 in this case and this case in other states and cases  
20 that will come before the Commission during the next  
21 year, the schedule that has hearings in the November  
22 time frame makes the most sense from everybody's  
23 perspective and is not unfair to the company.

24 MR. CROMWELL: If I may --

25 JUDGE CAILLE: Mr. Cromwell.

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1                   MR. CROMWELL: -- elaborate on Mr.  
2 Cedarbaum's comments. After its last general rate  
3 case, this company entered into a settlement  
4 agreement that established a rate of return and  
5 increases in rates that were agreed to by all the  
6 parties and approved by this Commission. Mr. Van  
7 Nostrand's raised the question of the company's  
8 returns.

9                   I don't understand the company to be saying  
10 that it's seeking here to vitiate the settlement  
11 agreement it entered into in Washington. I think, to  
12 put it bluntly, the company's in a rock and a hard  
13 place situation vis-a-vis Utah and Oregon, and  
14 they've crafted a proposal that all the states that  
15 they operate in need to address if those states agree  
16 that the company's proposal in this docket is the  
17 right way to resolve those conflicts.

18                   I think it's fair to utilize the time we  
19 have available, and particularly the time the  
20 Commissioners have available in the next year in the  
21 most -- I suppose the principle is judicial economy,  
22 but the most economic use of the time available for  
23 both the Commission and the parties recognizing, as  
24 has been stated, that there's a significant amount of  
25 work that's going to be coming down the line in the

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1 coming year that everyone will need to address.

2 JUDGE CAILLE: Okay. Anything further?

3 MR. SANGER: Mr. Sanger. I'd like to issue  
4 my support for the statements made by Mr. Cedarbaum  
5 and Mr. Cromwell.

6 I would like to add that Oregon is also  
7 addressing only phase one issues, and the order  
8 that's expected out sometime in August will only  
9 address phase one issues and there's going to be an  
10 additional proceeding to address phase two issues.

11 So the schedule that's being established in  
12 Washington in some ways may be too aggressive and may  
13 need to be extended to deal with additional issues  
14 that come out out of the Oregon and the Utah orders.  
15 So I think that the schedule that's being adopted --  
16 if this schedule's adopted in Washington, it would  
17 not be too aggressive and would not harm PacifiCorp.

18 And one final note on the Oregon schedule.  
19 The Oregon schedule is also a tentative schedule, and  
20 the prehearing conference to establish the final  
21 schedule hasn't even occurred yet, and the final  
22 schedule may have an even more prolonged time period.  
23 So I would disagree with Mr. Van Nostrand and support  
24 the schedule that Mr. Cedarbaum proposed.

25 JUDGE CAILLE: All right. Anything



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1 further?

2 MR. VAN NOSTRAND: I guess there seems to  
3 be this assumption that the company is going to  
4 drastically alter its application after phase one in  
5 Utah and Oregon. That's pure speculation. This  
6 application is complete for purposes of consideration  
7 by this Commission. It stands alone as it's  
8 currently before this body and it's -- to suggest  
9 that, oh, we need to wait until we see what comes out  
10 of Utah and Oregon before we proceed, because the  
11 company might change its application in response to  
12 those orders, that's just -- that's pure speculation  
13 and unsupported, at best.

14 We seem to like to bootstrap off the  
15 Wyoming schedule and say, Oh, we're only going to be  
16 a couple months later than Wyoming, but the Wyoming  
17 schedule was put together where the company's  
18 application is going to be considered on its merits.  
19 We're not looking at the possibility of having it  
20 dismissed in that state or being challenged on  
21 procedural grounds, which is what we understand we're  
22 looking at in Washington.

23 So we'd take the Wyoming deal if we get,  
24 you know, a schedule where we're actually looking at  
25 the company's application on the merits, but it's our

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1 understanding the Staff intends to file a motion to  
2 dismiss this application on fundamental grounds, and  
3 I can say eleven months after we filed it and four  
4 months after we completed the testimony. And you  
5 know, are we going to move forward or are we not  
6 going to move forward. It's --

7 MR. CEDARBAUM: Your Honor, if I could just  
8 amplify on something Mr. Van Nostrand said, which I  
9 was going to mention, as well, because it goes to the  
10 point that even with a hearing schedule for the end  
11 of November, we don't intend this case to languish  
12 and we intend to move forward on the case in one  
13 area.

14 In our issues statement that we filed with  
15 the Commission a while ago, we indicated that one  
16 issue was whether or not the Commission would be  
17 agreeable to the jurisdictional shift that this  
18 application would result in, that being a loss of  
19 Commission jurisdiction over generation and  
20 transmission with the restructuring of PacifiCorp.

21 To Staff, that is a fundamental policy  
22 issue that we think the Commission can decide on a  
23 threshold basis without testimony, but purely on  
24 briefs and through a motion, so we intend to file a  
25 motion to dismiss. It will be styled that way. We

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1 haven't pinned down the exact time when that motion  
2 will be filed, but it will be filed before the end of  
3 this year, probably before Thanksgiving, and tee up  
4 that issue so that the Commission can announce its  
5 policy beliefs and feelings about this jurisdictional  
6 issue, which we believe is threshold to the case.

7           So that will be an opportunity for the  
8 Commission to move forward on this case on that  
9 fundamental issue and provide whatever -- it can  
10 grant the motion to dismiss if it's styled that way,  
11 it can deny the motion to dismiss, or it can do  
12 anything in between, and we can move forward on that  
13 basis, but this case will not languish, and that will  
14 be one opportunity for the Commission to move  
15 forward.

16           JUDGE CAILLE: All right. I'd like to take  
17 about ten minutes to think about this and to look  
18 over the Commissioners' calendars, and so let's go  
19 off the record.

20           (Recess taken.)

21           JUDGE CAILLE: Let's go on the record. I'm  
22 going to just start out by saying that I'm really  
23 reluctant to schedule this hearing for November of  
24 2002, given the Commission has recently made it known  
25 that it would attend to the utilities cases as they

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1 come in.

2           So I guess what I need to know is -- I  
3 understand that there are rumors that PSE and Avista  
4 will be filing, but I'm wondering if it isn't  
5 possible to move ahead with this. And I guess what I  
6 probably need to hear are what are the barriers to  
7 our moving ahead with it. I heard, you know, the  
8 reasons why -- why we should wait, but I guess now I  
9 need sort of to hear why we can't go forward.

10           MR. CEDARBAUM: What prevents the  
11 Commission from scheduling a hearing faster than the  
12 one I suggested?

13           JUDGE CAILLE: Yes.

14           MR. CEDARBAUM: I don't think anything  
15 prevents the Commission from doing that if it's got  
16 the time on its schedule, other than whatever due  
17 process concerns there might be. I mean, if you're  
18 asking me are there impediments, barriers,  
19 prohibitions to that, there aren't.

20           JUDGE CAILLE: Well, right. And also, I'm  
21 also sensitive to the resource problem, because  
22 obviously I'm aware of it from my section and I know  
23 that the Attorney General's section is closely tied  
24 to us.

25           MR. CEDARBAUM: I think if -- I don't think

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1 I'm the only one in the room who thinks that whether  
2 Avista and Puget Sound Energy are going to file a  
3 rate case is speculative. I don't think it is  
4 speculative. My understanding of the Avista order  
5 that came out recently was that the company was  
6 ordered to file a rate case this year. And Puget is  
7 on record publicly in the investment community,  
8 regulatory community, and in the press that it  
9 intends on filing a rate case this year.

10 So those are workload issues that will  
11 strap Staff, my office and perhaps other parties,  
12 although I don't know that. There will be staff  
13 members, you know, working on issues across the board  
14 with respect to these cases, so there are workload  
15 issues involved.

16 I don't know if I can say that that is a  
17 prohibition against a case -- the case being  
18 scheduled sooner. I just think that it was a  
19 reasonable and logical schedule given not just those  
20 other workload issues, but the context of this case  
21 itself and with respect to what other states are  
22 doing.

23 And if the Commission believes that  
24 hearings in November just are not workable, then  
25 there also doesn't seem to me to be any reason to

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1 schedule hearings faster than what is being scheduled  
2 for Wyoming, though, which would be hearings in  
3 October of next year.

4 But that doesn't allow the Commission the  
5 benefit, I think, which is -- which would be nice to  
6 have, of what Oregon and Utah have or have not  
7 required of this company with respect to its  
8 application.

9 JUDGE CAILLE: And I guess that was going  
10 to be my next question, is why the Commission would  
11 want to wait for these other companies?

12 MR. CEDARBAUM: It is within the realm of  
13 possibility that -- a very large realm of possibility  
14 that this company's application in all of the states  
15 in which it operates will be granted without any  
16 change whatsoever, but I think that's speculative.

17 It is, I would assume, most likely that  
18 each Commission will have certain conditions placed  
19 upon the application, which is what this Commission  
20 has done in mergers -- every one that I've worked on,  
21 and other states have done so, as well.

22 So the benefit is that in Oregon and Utah,  
23 which are the company's two largest states, if those  
24 Commissions require amendments to the application and  
25 the company wishes to have its application go forward

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1 and have this restructuring happen, I assume it will  
2 change its application in some respect. That will  
3 mean -- I can't imagine that the company would  
4 reorganize in states differently across its service  
5 territory. It would then amend its application in  
6 Washington, as well. And it's that application we  
7 ought to be focusing our direct testimony on, not the  
8 application that currently exists.

9 Now, is that going to happen absolutely? I  
10 don't know. But I think it's more likely that  
11 something like that would happen than that the  
12 company's application will be untouched by those  
13 other jurisdictions.

14 MR. VAN NOSTRAND: Your Honor, if I could  
15 weigh in a little bit on this multi-state question.  
16 The primary force driving this application is the  
17 fact that it's becoming increasingly difficult for  
18 PacifiCorp to operate in six different jurisdictions.  
19 States are pursuing different policy objectives. And  
20 the company's way of allowing that to happen is to  
21 split into each state having its own distribution  
22 company.

23 So this case is going to be uniquely  
24 focused on what are Washington's interests with  
25 respect to PacifiCorp Washington, what are the policy

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1 objectives that this company should be pursuing in  
2 the state of Washington which are unique from those  
3 that are being pursued in Utah, Oregon, Wyoming,  
4 Idaho and California. This case is unique in that it  
5 doesn't matter what those other states do, because  
6 that's what this case is designed to do, is allow  
7 Washington to have its own electric company pursuing  
8 the policy objectives of this state.

9       It's not like a merger proceeding, where  
10 every state is looking at the same merger application  
11 and deciding which conditions to impose. These  
12 electric companies are going to be unique in each  
13 state and each state will be allowed to pursue its  
14 own policy objectives, and there is little, if any,  
15 reason to think Washington is going to benefit by  
16 learning from what Oregon or Utah seek to pursue with  
17 respect to this application in their states.

18       MR. CEDARBAUM: Your Honor, I guess I would  
19 just disagree with that. There are issues with  
20 respect to the impact of this reorganization on  
21 revenue requirements. If Utah or Oregon were to  
22 issue an order that had -- that shielded those  
23 companies from the impacts on revenue requirements to  
24 the extent that the company would want to recover  
25 those underrecoveries from other states, then it



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1 might amend its application in these other states.  
2 That would have an impact on what happens in other  
3 states.

4 I just don't think it's accurate to say  
5 that each state is going to resolve this application  
6 based solely on circumstances solely within its own  
7 borders. There will be an impact on what happens in  
8 other jurisdictions on this jurisdiction and perhaps  
9 vice versa.

10 JUDGE CAILLE: Okay. Mr. Cromwell.

11 MR. CROMWELL: Thank you, Your Honor. I  
12 just wanted to make -- I think you characterized it  
13 as rumors regarding other cases, and I just wanted to  
14 address that point very briefly.

15 As Mr. Cedarbaum has noted, Avista is under  
16 the order of the Commission to file before, I  
17 believe, the end of November or December 1st.

18 As to Puget Sound Energy, in the  
19 presentation of the Schedule 45 settlement to the  
20 Commissioners on the 17th of this month, which  
21 occurred, I believe, at 2:30 in the afternoon of that  
22 day, Mr. Secrist testified on the record that it was  
23 Puget Sound Energy's intent to file a general rate  
24 case the first week of November. When the Chairwoman  
25 questioned him quite specifically on that point, he

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1 made it clear that while operational concerns might  
2 cause them to have to push that back a little while,  
3 that he very, very clearly committed that this  
4 company would have -- I'm sorry, that Puget Sound  
5 Energy would have a general rate case before the  
6 Commission by the end of November.

7 I think that, you know, both pursuant to  
8 the Commission's order and statements on the record  
9 in a parallel docket, it's fair for Your Honor to, I  
10 suppose, take judicial notice of those facts and  
11 recognize that those workloads are not speculative.  
12 They are a matter of record in front of this  
13 Commission.

14 Those are resource allocation questions  
15 that all parties to these proceedings will have to  
16 address for the coming year, and to the degree that  
17 parties can cooperatively resolve those allocation  
18 issues to the benefit of all, terrific. If not, then  
19 obviously the Commission will have to make some hard  
20 choices on how to schedule its calendar and leave  
21 parties to deal with that as they may best do.

22 An additional point that I would like to  
23 make is that when we get into those questions of how  
24 we allocate resources among cases, from a  
25 Commissioner perspective, I think the most

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1 significant impact is on the quality of the record  
2 that's going to be developed for their consideration.  
3 And to the degree that scheduling of cases, as  
4 opposed to the substance of the case, is dictating  
5 the degree of involvement of one or more parties in  
6 that proceeding, then I think it's fair to conclude  
7 that the Commission will have a degraded record  
8 before it to make a decision.

9 JUDGE CAILLE: Okay. Is there anyone on  
10 the bridge line that would like to be heard? Mr. Van  
11 Nostrand, did you have an alternative proposal?

12 MR. SANGER: I'm sorry, this is Mr. Sanger.

13 JUDGE CAILLE: Mr. Sanger, did you want to  
14 -- did you have any more comments?

15 MR. SANGER: Yes, I did have one comment.  
16 I just would like to point out again that the Oregon  
17 -- the Oregon proceeding and I believe the Utah  
18 proceeding, as well, has bifurcated the proceeding  
19 into two different phases, and they contemplate an  
20 additional filing or additional proceeding after  
21 those orders. And if you're going to -- if you're  
22 considering a schedule that's more expedited than the  
23 one proposed by Mr. Cedarbaum, I would propose that  
24 we bifurcate the issues here and have it into a phase  
25 one and phase two proceeding, as well.

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1 JUDGE CAILLE: All right.

2 MR. EBERDT: May I ask how you would see  
3 that splitting up?

4 MR. SANGER: Well, at least in Oregon, they  
5 were deciding on a number of issues that were going  
6 to be looked at, and then the Commission is going to  
7 issue an order after that resolving some, but not all  
8 of those issues and directing the company on how to  
9 -- what additional things it needs to file.

10 It could be that the Oregon Commission  
11 likes PacifiCorp's application, approves it in its  
12 entirety, but what I believe is more realistic is  
13 that they will issue an order on a number of the  
14 issues, and then PacifiCorp will then come in and  
15 make an additional filing that will meet the  
16 requirements of that order. And then phase two could  
17 be a short proceeding or it could be another long,  
18 protracted proceeding.

19 JUDGE CAILLE: Okay. Mr. Van Nostrand, was  
20 there an alternative proposal to Staff's that you  
21 had? And then I will take up the matter about this  
22 phase one and phase two.

23 MR. VAN NOSTRAND: If I could just respond  
24 briefly to what Mr. Sanger said, I think we actually  
25 pursued a phase one, phase two, as part of our

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1 discussions which broke down last week, because -- I  
2 mean, he is correct, that's the way it's gone in  
3 Oregon and that's the way it's going in Utah.

4           And I guess we were not opposed to having a  
5 higher level discussion of policy issues as part of a  
6 first phase in this case, and we were prepared to go  
7 down that path. And it became more focused on Staff  
8 wanting to raise strictly the loss of jurisdiction  
9 issue, which it's going to raise as a basis for its  
10 motion to dismiss, and that's all that was going to  
11 be considered as part of phase one, and so that's why  
12 we abandoned that path.

13           But the company was not opposed to going  
14 down that path if we're going to allow an open  
15 discussion of those policy type questions, but we're  
16 not -- it doesn't seem appropriate to devote a phase  
17 one only to have it be decided on a motion to  
18 dismiss. So we don't have that sort of a policy type  
19 discussion in phase one. I think we'd prefer to  
20 adopt a schedule on the lines of what was done in  
21 Wyoming, to allow the case to go forward on that type  
22 of a schedule and have the hearings be, you know,  
23 following the Wyoming hearings, if that's what the  
24 parties' wishes are, and those hearings are scheduled  
25 from the 19th to the 27th of September, so sometime

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1 in October.

2 And I think, along with that, if Staff is  
3 intent on filing a motion to dismiss, I think there  
4 should be a deadline established for filing  
5 dispositive motions, if indeed they're timely at this  
6 point.

7 I mean, this application and basic  
8 parameters of it have been on file since December 1  
9 of 2000, and there's nothing structurally different  
10 now than was true eleven months ago. If there's a  
11 basis for a motion to dismiss now, it was there  
12 December 1 of 2000. I think, frankly, the time for  
13 dispositive motions has long since passed, but if  
14 we're going to entertain it, I think it should be  
15 very shortly, and that should be part of the  
16 schedule, as well.

17 To the extent the Commission's going to  
18 allow dispositive motions eleven months after the  
19 company files its application, there should be a  
20 limited window provided for that.

21 JUDGE CAILLE: Mr. Van Nostrand, now, the  
22 company's application wasn't complete, though, until  
23 -- wasn't it officially complete in August; is that  
24 right?

25 MR. VAN NOSTRAND: June 29th was when the

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1 testimony was filed, but the elements to which Staff  
2 objects, the jurisdictional pieces, where FERC has  
3 jurisdiction over some aspects, the SEC has  
4 jurisdiction over others, that was part of the basic  
5 elements of the company's filing that was made  
6 December 1, 2000.

7 JUDGE CAILLE: Well, okay. I mean, I heard  
8 Staff say that perhaps hearings in October would  
9 work, and I also heard the company say that. Am I  
10 correct? I mean, at least if we can -- I'm very  
11 reluctant to tell you -- I'm very reluctant to set a  
12 schedule today without really weighing in with the  
13 Commissioners and seeing if -- you know, how they  
14 feel about this. So you know, I'd like to try to --  
15 besides what Staff has proposed, moving that back a  
16 month doesn't seem like very much, but, you know, if  
17 the company is willing to do that, then I can present  
18 that to them, and we probably would need to schedule  
19 this dispositive motion to be heard, as well, or to  
20 be filed. Go ahead, Mr. Cedarbaum.

21 MR. CEDARBAUM: Thank you. You know, our  
22 Plan A, our preferred schedule is the one that I've  
23 stated, and if you want to -- if you need to consult  
24 with the Commissioners about that, then that's fine,  
25 from Staff's perspective.

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1           If the Commission's going to reject that  
2 schedule, then Staff would like the schedule not to  
3 be any quicker than hearings in October, which would  
4 be, you know, following the Wyoming hearings.

5           But that doesn't allow the Commission  
6 enough time or the parties enough time and the  
7 company enough time to file their direct and rebuttal  
8 testimony, you know, presumably following the  
9 issuance of orders in Oregon and Utah on phase one.  
10 That additional month allows for, you know, more  
11 complete and more refined testimony. So that's the  
12 downside to October.

13           Your Honor, if I could just -- I know this  
14 is a little bit beside the point, but let me just  
15 state for the record I do not believe that the  
16 Staff's not filing a dispositive motion as of yet is  
17 in violation of any Commission rule, especially given  
18 the moving target that this case has been since its  
19 inception.

20           And secondly, with respect to issues,  
21 either the last or the second to last prehearing  
22 conference, all the parties have filed issues  
23 statements, and we actually all came to the hearing  
24 expecting the Commissioners to be there and we were  
25 going to talk about that, but we got an indication on



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1 the record that the Commissioners, I think, were  
2 satisfied with the statement of issues and we were  
3 going to proceed on that basis.

4 JUDGE CAILLE: Yes.

5 MR. CEDARBAUM: So that's where I thought  
6 we were on that point. And I don't know that any  
7 things are different from where we stood on that  
8 point.

9 JUDGE CAILLE: I would think so.

10 MR. VAN NOSTRAND: Well, if I could comment  
11 on that point, as well. Where we were going when we  
12 started having this discussion on phase one and phase  
13 two was an opportunity for the Commission to have  
14 some exposure to the issues and perhaps to offer some  
15 preliminary reviews, because we understand Staff's  
16 fundamental concerns with the elements of this  
17 filing, and frankly, we have no problem with Staff  
18 expressing those concerns to the Commission, and if  
19 Commission has preliminary views on those issues, you  
20 know, making some observations.

21 And we thought what could come out of phase  
22 one would be something along the lines of the scoping  
23 order, for example, I think it was the third  
24 supplemental order in the PacifiCorp/Scottish Power  
25 merger case, where we had the wide open prehearing

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1 conference, the parties had an opportunity to say  
2 here's where we see the case, here's what the issues  
3 are, and here's our positions on that. The  
4 Commission quizzed us and then they issued an order  
5 saying here's our take on the case.

6 And we thought if phase one went along  
7 those lines, gave Staff an opportunity to say what it  
8 thought on that key jurisdiction issue and allowing  
9 the company to have a response and other parties to  
10 weigh in on other issues, as well, or allowing the  
11 company to say what motivates us and why they should  
12 be considered alongside Staff's objections, I think  
13 that would be a healthy process.

14 And if there's a way of still having that  
15 sort of a phase one policy issuance from the  
16 Commission, I think that would make for a good  
17 process in this case. But where it broke down was,  
18 you know, it focused exclusively on the key issue  
19 Staff had, and really not being much of a dialogue or  
20 the company getting a chance to say what we thought  
21 offset or should be considered alongside of Staff's  
22 objections.

23 So maybe what Mr. Cedarbaum was saying is,  
24 you know, we were all prepared to have that  
25 discussion at the prehearing conference a month ago,

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1 and maybe that's the logical place to have -- to go  
2 next, is to have a wide open issues conference and  
3 get some guidance from the Commission as to how they  
4 see this application going forward and express their  
5 views on Staff's issue and other issues.

6 MR. CEDARBAUM: Your Honor, I don't want to  
7 -- you probably think I already have belabored this.

8 JUDGE CAILLE: No, this is all helping me,  
9 and I will, you know, carry this --

10 MR. CEDARBAUM: Again, I'm, quite frankly,  
11 a little uncomfortable talking about these  
12 discussions that the parties had about process,  
13 because although it was process, I felt that those  
14 were in the context of discussions for settlement of  
15 process, and I don't feel comfortable talking about  
16 that.

17 But, again, we came out of the prehearing  
18 conference where we had submitted our issues list  
19 thinking that the Commission essentially, by not  
20 coming to the hearing to question us about it and  
21 discuss it, had thought that the issues were fully  
22 developed in those lists, and those were the issues  
23 to be addressed by the parties.

24 I took that as a signal that we got our, in  
25 essence, sort of our scoping decision on that. Those

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1 were our issues. We then thought, well, we've got  
2 this threshold issue. We'd like to tee that up and  
3 let the Commissioners have a shot at that, because it  
4 didn't require testimony, it could be done on briefs,  
5 and it was fundamental. So that was, we thought, a  
6 legitimate way to go, given the history of this case,  
7 and we still think it's a legitimate way to go. And  
8 if other parties want to file other dispositive  
9 motions or whatever, they can.

10 JUDGE CAILLE: So just so I'm clear, this  
11 dispositive motion would pretty much address the same  
12 sort of phase one issues that Mr. Van Nostrand is  
13 talking about?

14 MR. CEDARBAUM: It was phase -- I'm sorry.

15 JUDGE CAILLE: But it would be on briefing,  
16 rather than a dialogue before the Commission?

17 MR. CEDARBAUM: We defined -- Staff defined  
18 phase one as the following issue: Are there any  
19 circumstances under which the Commission, in this  
20 application, would be willing to relinquish its  
21 jurisdiction over transmission and generation  
22 services that now are provided by PacifiCorp, the  
23 existing company. Because if there weren't, then  
24 this application could be dismissed and we could all  
25 not work on it anymore.

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1           If the Commission was willing to go forward  
2 in spite of that, it could say so and we would go  
3 forward. Or if the Commission felt there was  
4 something in between that it wasn't willing to  
5 dismiss, but it had some guidance on that issue and  
6 the company ought to hear about that on that issue,  
7 that's fine. It can say what it wished and we would  
8 proceed on that basis.

9           But that was our definition of phase one  
10 and the process we envisioned for it, which we  
11 thought would move the case along, get some response  
12 from the Commission on that fundamental issue, given  
13 that the Commissioners had already told us, in  
14 essence, that the issues that we had listed in our  
15 issues statements probably a couple months ago were  
16 ripe for decision.

17           JUDGE CAILLE: September 13th, I think it  
18 was.

19           MR. CEDARBAUM: And that's what we  
20 envisioned, you know, quite honestly, whether it's a  
21 schedule that has hearings in November or hearings in  
22 October, that's a motion that we would -- since we  
23 didn't get agreement on phase one amongst the  
24 parties, we still felt it was a reasonable thing for  
25 the Commission to consider and decide, so we thought,

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1 well, we'll tee it up for a motion, and if you want  
2 to set a schedule for that to be filed and replies,  
3 that's fine.

4 JUDGE CAILLE: All right. Anybody have  
5 anything further to say?

6 MR. CROMWELL: Two points, Your Honor.  
7 First, I think it's important to note that the  
8 proposal Staff would make or the, you know, maybe  
9 that the one-month slideback of going from November  
10 to October hearings, I think it's questionable  
11 whether that achieves much.

12 But, in either event, I think it's  
13 important to note that in going into a single-phase  
14 review process, the Washington Commission would very  
15 likely be providing a more expeditious review than  
16 other states engaging in a two-phase process where  
17 the second phase has yet to be set.

18 So to the degree the Commissioners have  
19 concerns regarding the expeditious resolution of the  
20 issues the company's put before them, I think it  
21 would be fair to note that the Washington Commission,  
22 under Staff's proposal, could quite likely be  
23 providing a more expeditious review than the company  
24 would be receiving in other jurisdictions.

25 Second, if the Commission is willing or

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1 interested in entertaining an October hearing, as  
2 opposed to November, I would personally request that  
3 any such hearings be mid to late October. I make  
4 that request because I have a personal commitment  
5 that is likely to occupy the majority of September,  
6 and just in terms of having a chance to look at the  
7 rebuttal that would be filed in my absence and get  
8 ready for hearings, I would need at least a week or  
9 so to do that.

10 JUDGE CAILLE: All right. Well, I had  
11 hoped that we would walk out of here with a schedule,  
12 but it doesn't look like that's going to happen. Is  
13 there any -- does anyone want to be -- anything else  
14 need to be added? Then I'll let you -- I'll explain  
15 what we're going to do, what I'm going to do. Does  
16 anybody --

17 MR. CEDARBAUM: I was just going to -- if  
18 it helps in the scheduling matters, barring any new  
19 developments, my goal had been to file this motion  
20 before Thanksgiving time, so, you know, probably in  
21 about three weeks time frame, so if that was the --  
22 if that's amenable to the Commissioners and you, I  
23 could try to accomplish that. You know, if you want  
24 to set up a reply time, that's --

25 JUDGE CAILLE: Right. Why don't we go

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1 ahead and at least do that. The 22nd is  
2 Thanksgiving. So were you thinking that week?  
3 MR. CEDARBAUM: The 22nd is the Thursday?  
4 JUDGE CAILLE: Yes.  
5 MR. CEDARBAUM: If we could say the 20th.  
6 MR. SANGER: Hi, this is Mr. Sanger. I  
7 can't hear exactly what you guys are --  
8 JUDGE CAILLE: We are setting up a schedule  
9 for Staff filing the dispositive motion on November  
10 the 20th. And then, Mr. Van Nostrand, a reply, or  
11 your response, I mean?  
12 MR. VAN NOSTRAND: Well, if it's going to  
13 take Mr. Cedarbaum three weeks to generate it, we  
14 ought to have three weeks to respond to it.  
15 JUDGE CAILLE: Three weeks after  
16 Thanksgiving?  
17 MR. VAN NOSTRAND: Well, yeah, actually --  
18 JUDGE CAILLE: December 11th or -- let's  
19 see, or the 14th.  
20 MR. VAN NOSTRAND: Is it possible I could  
21 have until the 20th, since my chief staff support  
22 person will be unavailable through the 17th?  
23 JUDGE CAILLE: Well, okay.  
24 MR. CEDARBAUM: Your Honor, that seems like  
25 -- well, I understand those kinds of problems. It



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1 just seems like a lot more time to reply than I have  
2 for my opening.

3 JUDGE CAILLE: Did you want more time for  
4 your --

5 MR. VAN NOSTRAND: You've had eleven  
6 months.

7 JUDGE CAILLE: Maybe we should move out  
8 your opening.

9 MR. SANGER: Is this for dispositive  
10 motions for all parties or just the Staff motion to  
11 dismiss?

12 JUDGE CAILLE: Well, I mean, if other  
13 parties are -- I would like to entertain all the  
14 dispositive motions.

15 MR. SANGER: If that's the case, I would  
16 propose pushing off the date further off into  
17 December for all dispositive motions.

18 MR. CEDARBAUM: I don't mean to delay it.  
19 I'm prepared, you know, for November 20th, even if  
20 the company wants December 20th. I, quite frankly,  
21 don't care. But if other parties -- if there are  
22 going to be a round of dispositive motions, I'm also  
23 completely open and agreeable to, you know, a later  
24 time frame, and then the company can have, again, as  
25 much time as it needs after that to reply.

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1           But I would like -- I think we've typically  
2 built into dispositive motion calendars a short  
3 turnaround time for responses or answers for the  
4 moving party. So we could build into that -- build  
5 into the dispositive calendar, dispositive motion  
6 calendar, as well, let's say a ten-day following the  
7 company's reply for answers.

8           JUDGE CAILLE: So the proposal now is that  
9 it would be filing of dispositive motions like  
10 mid-December?

11          MR. SANGER: That would be preferable, Your  
12 Honor.

13          MR. VAN NOSTRAND: That's not -- I mean,  
14 this case has been on file since December 1. The  
15 basis for these dispositive motions has been on file  
16 for eleven months and, you know, we give three weeks  
17 to put them together, fine. Now we're talking about  
18 another six weeks from today before we even file the  
19 motions. We won't have a ruling on them until  
20 February, perhaps. I mean, so we're looking at 14  
21 months after the case is filed, the company doesn't  
22 even know whether it's going to proceed.

23          With all due respect, I think the schedule  
24 Mr. Cedarbaum had was fine. Let's stick with it.

25          JUDGE CAILLE: I tend to agree with Mr. Van

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1 Nostrand. I'm worried about other things that are  
2 going to be taking Staff's time and the  
3 Commissioners' time that have been already expressed  
4 here today, so let's set November 20th for the  
5 dispositive motions. And Mr. Van Nostrand, or --  
6 MR. VAN NOSTRAND: We can go with the 14th  
7 for --  
8 JUDGE CAILLE: The 14th.  
9 MR. VAN NOSTRAND: What day of the week was  
10 that?  
11 JUDGE CAILLE: A Friday.  
12 MR. VAN NOSTRAND: That would be fine.  
13 JUDGE CAILLE: And then a reply ten days  
14 later, is the 24th.  
15 MR. VAN NOSTRAND: Sounds marvelous.  
16 MR. CEDARBAUM: What day of the week is the  
17 24th?  
18 JUDGE CAILLE: The 24th is a Monday.  
19 MR. VAN NOSTRAND: It should be at least  
20 the 28th, something like that.  
21 MR. CEDARBAUM: Yeah, that would be -- if I  
22 could have till the 28th, or the parties could have  
23 till the 28th, then at least I can ruin more  
24 vacations that way.  
25 JUDGE CAILLE: The 28th is a holiday, Mr.

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1 Cedarbaum, according to my calendar. Or no, it's an  
2 open meeting day. Sorry. So I guess the 28th will  
3 be all right.

4 And I'm thinking that, as far as the  
5 schedule goes, I'm going to kind of weigh in with the  
6 Commissioners and see. I have a -- you know, I have  
7 a pretty good idea of how the time -- you know, the  
8 time frames in between filing. I can either, you  
9 know, impose a schedule or I can schedule a -- we  
10 could have a telephone conference and I can let you  
11 know there.

12 MR. CEDARBAUM: Maybe this is a mistake,  
13 but I'm ready for the Commissioners just to rule on a  
14 schedule.

15 JUDGE CAILLE: Okay, okay. All right.  
16 Then that's what we'll do, and it will be in the  
17 prehearing conference order. Is there anything else  
18 that needs to be taken up today?

19 I do need to ask about public hearings.  
20 Mr. Cromwell, I suppose you're my public hearing  
21 person.

22 MR. CROMWELL: Yeah, I know that the  
23 Commission is trying to get into the regular course  
24 of --

25 JUDGE CAILLE: Setting these up at the

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1 prehearing conference.

2 MR. CROMWELL: I guess I would maybe  
3 suggest that we defer that question. I have not  
4 spoken to the Commission's public affairs person to  
5 see if there has been any communication regarding  
6 this matter. It's not a general rate case or the  
7 sort of thing that's going to immediately and  
8 directly impact residential customers in the same  
9 fashion a rate case might, so I think that perhaps I  
10 need to have a discussion with Mr. ffitich.

11 JUDGE CAILLE: Okay. And perhaps I can  
12 have that discussion with the public affairs person  
13 myself, too, and then just kind of coordinate and  
14 then --

15 MR. CROMWELL: If the other parties are  
16 comfortable with us discussing that specific issue  
17 offline, I think that's appropriate.

18 JUDGE CAILLE: Is there any objection?

19 MR. VAN NOSTRAND: No.

20 JUDGE CAILLE: All right. Then that's what  
21 we'll do. And if there's nothing further, I will  
22 issue a prehearing conference order that will have  
23 our discussions today and a schedule. And thank you,  
24 everyone, for coming and participating. We're off  
25 the record.

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(Proceedings adjourned at 2:55 p.m.)

