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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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4 WASHINGTON UTILITIES AND) Docket No. UT-990946

TRANSPORTATION COMMISSION,) Volume II

5 Complainant,) Pages 16-28

)

6 v.)

)

7 1-800-RECONEX, INC.,)

Respondent.)

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10 A hearing in the above matter was

11 held on February 21, 2001, at 1:36 p.m., at 1300

12 Evergreen Park Drive Southwest, Olympia, Washington,

13 before Administrative Law Judges MARJORIE R. SCHAER

14 and WILLIAM HENDRICKS.

15 The parties were present as

16 follows:

17 1-800-RECONEX, INC., by William E.

Braun, Attorney at Law, 2500 Industrial Avenue,

18 Hubbard, Oregon, 97032.

19 THE COMMISSION, Johnathan

Thompson, Assistant Attorney General, 1400 Evergreen

20 Park Drive, S.W., P.O. Box 40128, Olympia, Washington

98504-0128.

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24 Barbara L. Nelson, CSR

25 Court Reporter

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1 JUDGE SCHAER: Let's be on the record.
2 We're here this afternoon for a second prehearing
3 conference in Docket Number UT-990946. This matter
4 arises from a formal complaint brought by the
5 Washington Utilities and Transportation Commission
6 against 1-800-Reconex, Inc., alleging violations of
7 Reconex's tariffs, Commission rules, and state law.
8 This portion of the proceedings focuses on alleged
9 violations by Reconex of a settlement stipulation
10 approved in the first supplemental order in this
11 proceeding.

12 Today is February 21st, 2001. We are
13 appearing today in Room 108 in the Commission
14 headquarters building in Olympia, Washington. I'm
15 Marjorie Schaer, and William Hendricks, who is seated
16 to my left, and I are the Administrative Law Judges
17 assigned by the Commission to this stage of the
18 proceeding.

19 I would like to start this afternoon by
20 taking appearances from all parties, starting with
21 the company. Go ahead, Mr. Braun.

22 MR. BRAUN: My name is William E. Braun,
23 last name is B-r-a-u-n. I'm Vice President and
24 General Counsel of 1-800-Reconex, which is spelled
25 R-e-c-o-n-e-x. Our offices are located at 2500

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1 Industrial Avenue, Hubbard, Oregon, 97032.

2 JUDGE SCHAER: Have you filled out one of
3 the appearance forms that the court reporter
4 provides?

5 MR. BRAUN: I believe that she did for me,
6 yes.

7 JUDGE SCHAER: Does that include both your
8 fax number and your e-mail address?

9 MR. BRAUN: It does not. My fax number is
10 area code 503-982-6077, and my e-mail address is
11 bill.braun@reconex.com.

12 JUDGE SCHAER: Okay. Could you give me a
13 written copy of that information at the conclusion of
14 the hearing, also?

15 MR. BRAUN: Of course.

16 JUDGE SCHAER: Just hand me the form and
17 I'll Xerox it, but I need to make sure we have it for
18 the file as we go forward. Then, for the Commission,
19 please.

20 MR. THOMPSON: Jonathan Thompson, Assistant
21 Attorney General, representing Commission Staff. My
22 address is 1400 South Evergreen Park Drive, S.W.
23 It's Olympia, Washington, 98504. And my phone number
24 is 360-664-1225. E-mail is jthompso@wutc.wa.gov.
25 Oh, fax -- I don't think I gave my fax. That's

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1 360-586-5522.

2 JUDGE SCHAER: And do you have a card or a
3 form that has that information?

4 MR. THOMPSON: I did fill out a form.

5 JUDGE SCHAER: Okay. Would you please make
6 sure I get that information in writing, also, at the
7 end of the hearing. We try not to wait for a
8 transcript before we get our prehearing conference
9 orders out.

10 Are there any preliminary matters to come
11 before the Commission this afternoon?

12 MR. BRAUN: No, Your Honor.

13 JUDGE SCHAER: Thank you. In the first
14 prehearing conference in this matter, Judge Lois Gold
15 triggered the provisions of the discovery rule in WAC
16 480-09-480. And reviewing the file, there does not
17 appear to be a protective order and it does appear
18 that the Commission's filing requirements were
19 explained in the earlier hearing. Is that your
20 understanding?

21 MR. BRAUN: Yes.

22 JUDGE SCHAER: Okay. This afternoon, we
23 will need to review the issues presented at this
24 stage of the proceeding and develop a schedule for
25 resolving the issues framed by the notice of hearing.

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1 And I'd like to start out, then, with the discussion
2 of what issues the parties see framed at this stage
3 of the proceeding, starting with you, Mr. Braun.

4 MR. BRAUN: Thank you, Your Honor. As I
5 indicated earlier, I see two issues with respect to
6 the supplemental order to show cause. The first is
7 the company's -- my company's compliance with the
8 system improvement aspect of the order, and the
9 second is the company performance with respect to the
10 supplemental audit conducted by Commission Staff.

11 JUDGE SCHAER: Mr. Thompson, what issues do
12 you see framed at this stage?

13 MR. THOMPSON: I would agree that those are
14 the two main issues. Whether the company is
15 essentially liable to pay the \$121,000 for failing to
16 meet the goal of the system improvement expenditures,
17 and also whether the same is true of the \$45,000 for
18 failing to meet the benchmarks set out. We might, I
19 suppose, get into further detail on that. I don't
20 know what -- did you want to flesh that out a little
21 bit more, or is that adequate?

22 JUDGE SCHAER: Well, I'm interested in
23 knowing -- first, you've given some numbers, and my
24 understanding would be that the first, the \$121,000
25 number would go with the first issue, and the \$45,000

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1 with the second, but I want to confirm that that's
2 the case. Is that --

3 MR. THOMPSON: Right.

4 JUDGE SCHAER: Okay. I guess I would like
5 you just to flesh out a little bit more what you
6 think we're doing at this stage of the proceeding.
7 Is this a proceeding to see whether terms of an order
8 were met and then to go forward automatically with
9 the provisions, or is this a proceeding to reopen any
10 evidence or any procedural issues? I understand
11 there would need to be evidence about the audit and
12 whether the numbers it produces are accurate, if
13 there is a contest about that, but how far beyond
14 that do you see issues appearing?

15 MR. THOMPSON: I might just address that,
16 if I could. I think the way I was thinking of it was
17 that the audit is a little bit like a complaint and
18 it's also a little bit like prefiled testimony from
19 staff. And if there is going to be a need to frame
20 what the issues may be from the company's standpoint,
21 there may be -- we may need to provide an opportunity
22 for the company to respond to that with either a
23 briefing or something like prefiled testimony of
24 their own, and then possibly an opportunity following
25 that for Staff to reply. And then, if there is a

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1 need for a hearing for cross-examination purposes,
2 that could follow on that. That's sort of what I had
3 envisioned.

4 JUDGE SCHAER: So would you be then
5 preparing some brief testimony regarding the
6 qualifications of who did the audit and the
7 information in the audit and filing it in that
8 manner, or would you just --

9 MR. THOMPSON: We could do that. If we
10 want to make it more like prefiled testimony, we
11 could, yeah, essentially add the information of the
12 auditor's qualifications and a certification that
13 it's true and correct and so forth and basically have
14 that be Staff's prefiled testimony, if you think that
15 would work.

16 JUDGE SCHAER: It just seems to me that Mr.
17 Braun or the Commission may have questions about the
18 audit and --

19 MR. THOMPSON: Okay.

20 JUDGE SCHAER: -- that it would probably be
21 appropriate to have a witness of whom we could ask
22 those questions. If we don't have questions, then
23 that appearance could be waived, but I think that I
24 would, at this point, at least, like to have that
25 option open. What is your thought on that?

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1 MR. BRAUN: I would agree. If we're going
2 to sort of frame this compliance audit as prefiled
3 testimony, I think we do need to put it in the proper
4 forum with possibly the audit merely as an exhibit,
5 so I have something formal from which to respond to.
6 So I think that would be appropriate.

7 JUDGE SCHAER: And then, so you would see
8 the filing by Staff fairly quickly, I would think,
9 followed by a time period for review and then filing
10 of a response by your client?

11 MR. BRAUN: That would make sense to me,
12 Your Honor.

13 JUDGE SCHAER: Okay. And then a reply from
14 you after that and then some kind of hearing date
15 And of course, at any stage in these proceedings, if
16 parties agree that there are not factual disputes or
17 if you reach some kind of a factual agreement between
18 you, there are procedures in our procedural rules
19 that would allow you to move for summary
20 determination or some other more expedited way of
21 going forward. There are -- I'm trying to indicate
22 that we are not locking into actually going to
23 hearing and having that process if it turns out we
24 don't need it. But I would like to have that framed
25 as a thing we could use if we do need it.

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1 MR. BRAUN: Absolutely.

2 JUDGE SCHAER: So that we aren't making
3 this up later.

4 MR. BRAUN: I think that's where a little
5 bit of my confusion comes about. And I apologize.
6 I've only appeared before the Commission one other
7 time on a prehearing conference such as this. If I
8 understand what you're saying, we will go ahead and
9 set the schedule. In the interim, we will exchange
10 testimony. And if we can come to a resolution, would
11 we be able to put that resolution in front of the
12 Commission and have the Commission either bless it or
13 say, you know, I don't think so, or was that -- would
14 that be your role?

15 I think the preliminary discussions I had
16 off the record with Staff, I think there was some
17 confusion as to their understanding of their ability
18 to negotiate any settlement from these numbers.

19 JUDGE SCHAER: It's my understanding at
20 this point if the parties were to come up with a
21 proposed settlement, it would be presented first to
22 Judge Hendricks and me to review for the Commission,
23 and then, if it looked like that might be something
24 that we'd go forward with, we would have to determine
25 whether to put out an initial order indicating our

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1 views on that or whether the parties might want to
2 waive an initial order and go directly to an order by
3 the Commission.

4 And I would have to, of course, check with
5 the Commissioners to see, then, if they wanted a
6 hearing where they could ask questions, and it will
7 largely hinge on what they see as being a better way
8 for them to prepare to make the ultimate decision.

9 We do have a rule in our procedural rules
10 about settlement and we do encourage settlement, we
11 do encourage use of alternative dispute resolution
12 procedures if that is something that would help the
13 parties. And I don't know what Staff's questions may
14 be about how broadly they may approach this, but, you
15 know, if those questions are presented, that is
16 something that we would look at and hear from
17 everyone on and respond to. If you have questions
18 this morning, this afternoon, we could do that, or we
19 could wait to see what comes up, if anything.

20 Okay. So we've talked about going forward
21 with three different stages of testimony. And the
22 question I would have, then, is we have the discovery
23 rule triggered, and that's still available. At the
24 last stage of this proceeding, Judge Gold had set a
25 discovery cutoff time, and if the parties wished to

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1 do that again, that's something that we'll need to
2 talk about when we get into the specifics of
3 scheduling. And then a final thing I would like you
4 to consider in that realm is if there are going to be
5 kinds of information that you would want to be kept
6 private, confidential, then we do have the ability to
7 put in a protective order if a party seeks it.

8 And so with that in mind, I think perhaps
9 it would be useful at this point to go off the record
10 and discuss more specifically kinds of information,
11 the kinds of discovery, the schedule that we would
12 need to accommodate your needs in those areas, and
13 then come back on the record when we have determined
14 either that we have a schedule we all agree with or
15 that we can't come up with one and then present the
16 arguments that Judge Hendricks and I would need to
17 rule on in setting a schedule.

18 So at this point, let's be off the record.

19 (Recess taken.)

20 JUDGE SCHAER: Let's be back on the record
21 after our afternoon recess. And while we were off
22 the record, the parties were able to discuss
23 scheduling and come up with an agreed schedule for
24 going forward. Judge Hendricks and I have been able
25 to check that schedule against our calendars and it

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1 works for everyone here, I believe. So which one of
2 you would like to report on that? Would you like to
3 do that, Mr. Thompson?

4 MR. THOMPSON: Sure.

5 JUDGE SCHAER: Okay. Why don't you let us
6 know, then, what schedule the parties would like to
7 proceed under?

8 MR. THOMPSON: I'll just start
9 chronologically. The first thing would be for Staff
10 to file its prefiled testimony by the 8th of March.
11 The next thing would be for the company to file its
12 responsive prefiled testimony by the 5th of April,
13 with an opportunity for reply by Staff by the 20th of
14 April, and then a one-day hearing on May the 15th.
15 And finally, a deadline for a post-hearing brief on
16 the 25th of May.

17 JUDGE SCHAER: Okay. Does that schedule
18 work for you, Mr. Braun?

19 MR. BRAUN: Yes, it does, Your Honor.

20 JUDGE SCHAER: Okay. That will be the
21 schedule, then, from this point forward in this
22 proceeding. A prehearing conference order will be
23 issued after this hearing. If there's anything in
24 the order that you wish to object to, you'll have ten
25 days after the entry of the order, and absent any

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1 objections, the prehearing conference order will
2 control further proceedings in this matter, subject
3 to Commission review.

4 So is there anything else that we need to
5 discuss this morning, or this afternoon?

6 MR. BRAUN: Nothing for the company.

7 MR. THOMPSON: No.

8 JUDGE SCHAEER: All right. Then we're off
9 the record. Thank you all.

10 (Proceedings adjourned at 2:27 p.m.)

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