

0019

1

BEFORE THE WASHINGTON

2

UTILITIES AND TRANSPORTATION COMMISSION

3

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)Docket UG-041515
Complainant,)Volume II
)Pages 19-47

5

v.

6

AVISTA CORPORATION, d/b/a AVISTA)
UTILITIES,)
Respondent.)

8

9

10

A pre-hearing in the above-entitled

11

matter was held at 1:34 p.m. on Monday, October 11,

12

2004, at 1300 South Evergreen Park Drive, Southwest,

13

Olympia, Washington, before Administrative Law Judge

14

C. ROBERT WALLIS.

15

The parties present were as follows:

16

COMMISSION STAFF, by Gregory Trautman,
Assistant Attorney General, 1400 S. Evergreen Park
Drive, S.W., P.O. Box 40128, Olympia, Washington,
98504-1028.

19

AVISTA CORPORATION, d/b/a AVISTA
UTILITIES, by David Meyer, Attorney at Law, E. 1411
Mission Avenue, Spokane, Washington 99203.

21

PUBLIC COUNSEL, by Robert Cromwell,
Assistant Attorney General, 900 Fourth Avenue, Suite
2000, Seattle, Washington 98164.

23

24 Barbara L. Nelson, CCR

25 Court Reporter

0020

1 NORTHWEST INDUSTRIAL GAS USERS, by
2 Edward A. Finklea, Attorney at Law, 1001 S.W. Fifth
3 Avenue, Suite 2000, Portland, Oregon 97202.

4

5 THE ENERGY PROJECT, by Chuck Eberdt,
6 1701 Ellis Street, Bellingham, Washington 98225 (via
7 teleconference bridge.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0021

1 JUDGE WALLIS: Let's be on the record,
2 please. The pre-hearing conference will please come
3 to order. This is a conference in the matter of
4 Commission Docket Number UG-041515, which is
5 nominally a proceeding denominated a complaint by the
6 Commission against Avista Corporation, d/b/a Avista
7 Utilities, regarding a proposal for a rate increase.

8 May we have the parties identify themselves
9 for the record, please, beginning with the Company.

10 MR. MEYER: Thank you, Your Honor. David
11 Meyer, on behalf of the Company, and my particulars,
12 in terms of the appearance, were previously entered.

13 JUDGE WALLIS: You need not repeat anything
14 that is previously of record. Now the parties in the
15 hearing room.

16 MR. FINKLEA: Ed Finklea, for the Northwest
17 Industrial Gas Users.

18 MR. CROMWELL: Robert Cromwell, on behalf of
19 Public Counsel.

20 MR. TRAUTMAN: Greg Trautman, for Commission
21 Staff.

22 JUDGE WALLIS: And on the bridge line?

23 MR. EBERDT: This is Chuck Eberdt, from the
24 Energy Project.

25 JUDGE WALLIS: Are there any other

0022

1 appearances to be made today? Let the record show
2 that there's no response. Very well.

3 As we last gathered, the conference today
4 was scheduled for a report on the parties' progress
5 in settlement, and for the possible determination, if
6 a settlement proved impossible, of a schedule to
7 proceed for this docket.

8 And Mr. Meyer, you indicated before we went
9 on the record that you would be prepared to make a
10 report; is that correct?

11 MR. MEYER: Yes, and I imagine that the
12 other parties will chime in and provide their
13 perspective, as well, but I'll go ahead.

14 Just a brief bit of history before I advise
15 you of just where we're at vis-a-vis a settlement.
16 As you're aware, the Company filed its case with this
17 Commission on August 20th, and filed supporting work
18 papers with that, providing copies to interested
19 parties.

20 From the outset, we've provided an
21 opportunity for all parties known to us to
22 participate. We've encouraged, as recently as the
23 last pre-hearing conference, parties to submit data
24 requests to us. We're obviously anxious to respond
25 to any outstanding questions.

0023

1 I'm aware of conversations had with the
2 parties in order to better understand their concerns,
3 and I believe Staff has had similar conversations
4 with interested parties, and this culminated in a
5 settlement conference that you had established at
6 your last pre-hearing conference, which was held on
7 -- last Tuesday, I believe it was. I think that was
8 the 5th, if I'm not mistaken, 5th, at which time all
9 Intervenors were there, Staff, the Company, NWIGU,
10 Public Counsel had a representative, and the Energy
11 Project was there, as well.

12 And at that point, the parties did discuss
13 where they might be with reference to settlements.
14 We intended that also to be an opportunity to respond
15 to any further background inquiries in terms of the
16 results of the Staff audit or any other questions
17 that we, as a Company, could answer. So it was an
18 opportunity not only to further discuss settlement
19 possibilities, but to gain, to the extent necessary,
20 any further understanding of the case, and we spent
21 some time doing that.

22 As Staff will tell you in a few moments,
23 they have done their audit, their on-site audit, and
24 I believe, as they will tell you, they, as a Staff,
25 are comfortable proceeding with a settlement. I

0024

1 believe you'll hear the same from a representative,
2 Mr. Finklea, from NWIGU, and the Company, of course,
3 is on board. So as we speak, of the five parties
4 that appear before you, Staff, NWIGU, and the Company
5 have reached agreement in principle on the terms of a
6 settlement that it would like to present to the
7 Commission on October 22nd.

8 We would continue to welcome any further
9 discussion, any further response to any data
10 inquiries from either Public Counsel or from the
11 Energy Project, and the door is by no means closed
12 should they like to entertain further discussions
13 prior to the 22nd. We're always willing to discuss
14 things, always willing to respond to any questions
15 they might have.

16 So with that, the three parties would
17 propose to file a settlement document with this
18 Commission, hopefully by the end of this week,
19 certainly by the first of next, and -- but as we
20 speak, it would be, barring further developments, a
21 three-party settlement.

22 And with that, I would like to ask Mr.
23 Trautman -- I think he had a few comments he would
24 like to add.

25 JUDGE WALLIS: Mr. Trautman.

0025

1 MR. TRAUTMAN: Thank you, Your Honor. Staff
2 concurs in the comments of Mr. Meyer. As he
3 indicated, Staff has reviewed the Company's filing
4 and done an audit of the Company's books, and Staff
5 has completed that audit, including the restated or
6 normalized adjustments.

7 Staff believes that the settlement provides
8 a fair presentation of the Company's financial
9 performance. Staff has also -- Staff also believes
10 that the other components of the settlement, which
11 would be the rate of return and return on equity,
12 capital structure, are all reasonable figures to be
13 used in the settlement.

14 Staff also concurs with the statement that
15 all parties have been involved in the settlement
16 discussions and all parties have been privy to the
17 correspondence, as well as the -- as well as the
18 proposals that have been provided in this -- in the
19 effort to reach settlement. And Staff concurs that
20 the settlement to which Mr. Meyer refers is
21 reasonable and that a hearing should be set for
22 October 22nd for presentation of the settlement, as
23 previously set forth in the pre-hearing conference
24 order.

25 MR. FINKLEA: Ed Finklea, for the Industrial

0026

1 Gas Users. Our organization, based both on our own
2 internal review and on the review that the Staff
3 conducted through its audit, have concluded that the
4 settlement would be reasonable. I concur with the
5 remarks of both Mr. Trautman and Mr. Meyer for the
6 Company.

7 For us, both the components of the
8 settlement and the bottom line result are acceptable
9 to the Industrial Gas Users. While, obviously, in
10 today's economic climate, no rate increase would be
11 preferable to any rate increase, we have concluded
12 that the settlement is something we could support and
13 the increase that would come from it would be
14 reasonable under the circumstances.

15 JUDGE WALLIS: Very well.

16 MR. MEYER: May I have just a follow-on word
17 before --

18 JUDGE WALLIS: Mr. Meyer.

19 MR. MEYER: Just -- what we would hope to
20 accomplish, then, on the 22nd, we would present the
21 settlement, each of the settling parties would make a
22 representative available to respond to questions from
23 Intervenors, questions from Public Counsel, and
24 certainly questions from the Commission and yourself.
25 And I just wanted you to be aware that that was our

0027

1 plan in terms of how we would present the matter, and
2 we would have some pre-filed testimony sponsored by
3 witnesses for Staff and NWIGU and the Company that
4 would be filed with the Commission in advance of that
5 October 22nd hearing.

6 JUDGE WALLIS: When would you propose to
7 file that?

8 MR. MEYER: We haven't settled on a date,
9 and whatever would be, I guess, at the convenience of
10 the Commission, certainly at least a couple of days
11 beforehand, if not sooner. If there's another date
12 in mind that you'd like to see it, we'll accommodate
13 that, certainly.

14 JUDGE WALLIS: What are the parties
15 contemplating in the way of pre-filed testimony?
16 Would it be comparable to the witnesses pre-filed in
17 the general rate case, or would it be more
18 abbreviated and perhaps less technical?

19 MR. MEYER: Well, two parts to that. First
20 of all, the settlement, what I can tell you,
21 contemplates that we would introduce into evidence at
22 that time the pre-filed testimony and exhibits of the
23 Company. So you'd have -- or the Commission would
24 have evidentiary foundation for analyzing the
25 settlement in light of that.

0028

1 In addition, then, we would provide more
2 limited testimony by, say, three witnesses, one for
3 each of the settling parties, that would speak to the
4 process, in the case of Staff or Nwigu, that they
5 went through in auditing the case, their evaluation,
6 why they think it is in the public interest.

7 JUDGE WALLIS: Mr. Cromwell, do you wish to
8 be heard?

9 MR. CROMWELL: I do, Your Honor. Thank you.
10 As I expressed at the previous pre-hearing conference
11 you held just a couple weeks ago, our concerns about
12 the settlement in principle that, to our knowledge,
13 remain essentially the same as it was prior to the
14 first pre-hearing conference, we continue to be
15 concerned about both the substance, the process
16 proposed, as well as the appearance of this type of
17 process.

18 Addressing each in turn, as to substance, I
19 honestly cannot comment as to the substance of what
20 is being proposed in the settlement. Obviously, it's
21 not a matter of record before you yet, but, quite
22 frankly, we are in the process of retaining the
23 consultants we would use in this proceeding, and
24 without the benefit of their wisdom and advice, I
25 have little comment to make.

0029

1 As to process --

2 JUDGE WALLIS: Let me ask whether your
3 concerns are addressed, although you identify them as
4 substance, they're essentially process, and you have
5 not yet had the opportunity to evaluate the proposal?

6 MR. CROMWELL: No, sir. The substantive
7 concerns I have are predicated upon a lack of
8 knowledge. Until the consultants that we retain have
9 the opportunity to review the substance of this
10 proceeding, I do not believe that I can fairly
11 represent what the position of Public Counsel is in
12 this proceeding.

13 JUDGE WALLIS: Thank you.

14 MR. CROMWELL: So I'm not sure if it's the
15 flip side of the coin, necessarily, in terms of
16 process, but it's -- I cannot comment on what I do
17 not know.

18 JUDGE WALLIS: Yes.

19 MR. CROMWELL: As to process, more directly,
20 what we would request from the Commission is the
21 normal period that would be allowed for review in
22 response to a general rate case, as filed, and the
23 reasonable process that that requires. I'm prepared
24 to make a record of procedural schedule, which I
25 would request the Commission adopt, that would allow

0030

1 us the opportunity to review this proceeding and the
2 case, as filed.

3 As to appearance, as you're well aware, the
4 appearance of impropriety is to be avoided as much as
5 any impropriety in fact. Our concerns revolve around
6 both the speed and the nature of the process that
7 produced this settlement. If you'd like, I'd be
8 prepared to provide to you the dates.

9 JUDGE WALLIS: What I'd like to do right now
10 is go on and see if Mr. Eberdt has comments. We can
11 take the general comments and then continue from
12 there.

13 MR. CROMWELL: Thank you.

14 JUDGE WALLIS: Mr. Eberdt.

15 MR. EBERDT: Thank you, Judge. Our concerns
16 probably mirror Public Counsel's to a great extent.
17 The proposed settlement may be a pretty good deal for
18 ratepayers, but we don't have any way of gauging
19 that. We were probably an intervenor for all of
20 about three minutes before the settlement was
21 proposed, so it's a little hard for us to even know.

22 As I expressed to the Company in our
23 discussions, we're concerned, as Mr. Finklea said,
24 about any rate increase, since the low-income folks
25 in Avista's service territory are going to feel that

0031

1 harder, probably, than anybody. So you know, four
2 percent maybe seems reasonable compared to what the
3 Company's asking for, but it's still four percent, it
4 still hurts. And we are also concerned about the
5 speed with which this went to a settlement and that
6 process. So that would pretty much sum it up for us.

7 JUDGE WALLIS: Very well. Mr. Meyer, do you
8 have any response to those concerns?

9 MR. MEYER: Yes, I do. Thank you. I just
10 want to make it clear that, without meaning to be
11 argumentative, the case was filed in August. By the
12 time it is presented or will be presented, hopefully,
13 to the Commission on the 22nd, two months will have
14 gone by, and we have yet to receive the first DR,
15 first data request, first request for information
16 from Public Counsel. We've made repeated requests
17 for them to present us with any questions they have,
18 and have yet to see that.

19 I think, though, the more important point is
20 this, that when this is presented on the 22nd of
21 October, the Commission will have before it at that
22 time, it doesn't have it before it now, but it will
23 have it then, a form of settlement. It will better
24 be able to understand the terms of the settlement,
25 the rationale for the settlement, the work that went

0032

1 into arriving at the settlement, in terms of Staff
2 and Intervenor audits, and then the Commission at
3 that time can better evaluate whether it needs any
4 further evidentiary basis in order to make a decision
5 or whether there is a sufficient record at that time.

6 So it -- the purpose and the request at this
7 pre-hearing is simply to establish the 22nd as a date
8 on which we will present the settlement and respond.

9 JUDGE WALLIS: By respond --

10 MR. MEYER: To any questions or concerns of
11 either interested parties, Intervenors, or the
12 Commission or yourself. It's a little hard to answer
13 the ultimate question today without the settlement
14 before you.

15 JUDGE WALLIS: Very well. Initially, if I
16 recall correctly, the parties had -- the settling
17 parties had indicated that the settlement, if any,
18 would be filed earlier. Is my recollection correct?
19 That is, very short upon this day?

20 MR. MEYER: Our hope was that we would have
21 all parties on board. That didn't happen, and so
22 we've -- I guess we've held out the possibility that
23 perhaps further discussions might ensue. Whether
24 they will or not, I only hesitate to speculate, but
25 we've tried to keep the process alive for as long as

0033

1 we could, and if there is a date by which you feel
2 you should have that document in hand, we'll be happy
3 to oblige.

4 JUDGE WALLIS: Very well. Mr. Trautman.

5 MR. TRAUTMAN: Staff concurs with the
6 remarks of Mr. Meyer.

7 JUDGE WALLIS: Mr. Finklea.

8 MR. FINKLEA: Yes, the Industrial Gas Users
9 concur that we believe that, with a panel of
10 witnesses before the Commission on the 22nd of
11 October, that we could fully explore the details of
12 any questions that the Commissioners might have and
13 allow parties who have concerns to voice those
14 concerns at that time.

15 JUDGE WALLIS: Very well. Mr. Cromwell,
16 during your earlier discussion about process, the
17 word due popped up. I wonder if you have done any
18 research into similar circumstances to determine
19 whether it would, in fact, be a violation of the due
20 process of your client and, Mr. Eberdt, you, as well,
21 on behalf of yours, to proceed in the manner that the
22 other parties are suggesting?

23 MR. CROMWELL: Your Honor, I can tell you
24 that the limited research we have done has not
25 indicated a direct case on point in the circumstance

0034

1 as I envision the Commission will be in in two weeks,
2 three weeks, given that we are still talking around a
3 pink elephant in the middle of the hearing room, so
4 to speak.

5 But what I can tell you, though, is that
6 this Commission has faced somewhat similar
7 circumstances in the past and has, in those
8 circumstances, provided the non-settling parties with
9 several months to do discovery, to provide responsive
10 testimony, a hearing on that testimony, and then
11 briefing.

12 JUDGE WALLIS: Are you prepared to cite to
13 those?

14 MR. CROMWELL: Your Honor, I did not bring
15 the orders with me. The colloquial citation would be
16 the US West make-whole case. The other case slips my
17 mind.

18 JUDGE WALLIS: 1997.

19 MR. CROMWELL: I believe that was the '97
20 make-whole case, yes. There was another case that, I
21 apologize, it slips my mind, which one I was looking
22 at.

23 JUDGE WALLIS: Mr. Eberdt, do you have
24 anything to add?

25 MR. EBERDT: I have no such knowledge, Your

0035

1 Honor.

2 JUDGE WALLIS: Very well. What schedule
3 would you propose, Mr. Cromwell?

4 MR. CROMWELL: I would propose the following
5 schedule, Your Honor. A period for discovery,
6 responsive testimony by any party that so chooses on
7 January 24th of 2005; rebuttal testimony on February
8 --

9 JUDGE WALLIS: Now, hang on just a second.
10 I wasn't sure from your statement whether the January
11 date was for the conclusion of discovery or for the
12 filing of responsive testimony.

13 MR. CROMWELL: I apologize. The dates I
14 will give you are for the action indicated.
15 Responsive testimony to be filed no later than
16 January 24th; rebuttal testimony to be filed no later
17 than February 25th; evidentiary hearings April 4th --
18 the week of April 4th, probably only a few days; a
19 public hearing the following week; briefing May 16th
20 and May 23rd.

21 JUDGE WALLIS: Very well. Have you
22 previously shared that proposal with the other
23 parties?

24 MR. CROMWELL: No.

25 JUDGE WALLIS: Mr. Meyer, are you able,

0036

1 given the brief time available, to comment on this
2 proposal?

3 MR. MEYER: Well, two comments. First of
4 all, I think it would be premature to set contingent
5 hearing dates, if you will, where we are so close to
6 the 22nd, that the Company believes we should have
7 that hearing on the settlement. If it would appear
8 that further proceedings are necessary at that time,
9 in light of what is learned at that time, we can set,
10 I think, a more informed schedule in this case, and
11 the -- I mean, the schedule could take a number of
12 different forms, depending on whether it's responsive
13 testimony to the settlement itself or whether it is
14 all parties back to square one.

15 A number of different options present
16 themselves, but until we know whether the Commission
17 is willing to accept a settlement, again, to be
18 effective coincident with the PGA on November 1, and
19 again, we're trying to sync, if you will, those two
20 dates up for a simultaneous rate change, I think it's
21 premature to set dates.

22 JUDGE WALLIS: If the Commission were to
23 decide, given the options available to it, to pursue
24 on a schedule that Mr. Cromwell proposes, would it be
25 the Company's and the other parties' intention to

0037

1 hold with the settlement or to revert to an every
2 party for itself mode, or are you able to comment?

3 MR. MEYER: We're not able to comment on
4 that at this point.

5 JUDGE WALLIS: Very well. What is the
6 earliest date at which the settlement and supporting
7 information could be filed?

8 MR. MEYER: By this Friday, and if that
9 presents a problem, even earlier.

10 JUDGE WALLIS: Mr. Trautman, is that --

11 MR. TRAUTMAN: That was the date --

12 JUDGE WALLIS: -- feasible?

13 MR. TRAUTMAN: That was the date that I had
14 anticipated, this Friday.

15 JUDGE WALLIS: Very well. Mr. Finklea.

16 MR. FINKLEA: We can meet that date, Your
17 Honor.

18 JUDGE WALLIS: Very well. Mr. Eberdt, I may
19 have skipped over you.

20 MR. EBERDT: I don't believe so. I don't
21 feel skipped over, sir.

22 JUDGE WALLIS: Okay. Is there anything
23 you'd like to add to the discussion at this point?

24 MR. EBERDT: No.

25 JUDGE WALLIS: Very well. What I would like

0038

1 the parties to do, and I understand that our request
2 could be perceived as a little bit premature, given
3 the Company's proposed position, but I would very
4 much like to see whether there is any authority
5 behind the concerns of the parties, and by that, I
6 mean both Public Counsel and Mr. Eberdt, on the one
7 hand, and yourselves on the other, as to what the
8 courts have determined to be an appropriate level of
9 process in comparable situations.

10 We will, of course, go back to the US West
11 docket and review that. If there are any other
12 Commission authorities, we would like to receive
13 those, as well. And if at all possible, if that
14 could be filed by Friday, we would very much
15 appreciate it.

16 Do parties anticipate any challenges in
17 meeting that schedule? Any unsurmountable challenges
18 meeting that schedule?

19 MR. MEYER: No.

20 MR. CROMWELL: I have an appellate brief due
21 in two weeks, which would materially impair the
22 quality of that brief if I have to spend this week
23 working on this.

24 MR. MEYER: Perhaps this could be a matter
25 for argument on the 22nd, as well.

0039

1 JUDGE WALLIS: Would it ease your burden if
2 the briefs were due two days in advance of the 22nd?

3 MR. CROMWELL: My brief is due, I believe,
4 on the 25th, so it's -- anything prior to then
5 subtracts from the effort involved in that process.

6 JUDGE WALLIS: Do you have other resources
7 available that could explore this question?

8 MR. CROMWELL: I can consult with Mr.
9 ffitich. My assumption is that he is as involved in
10 the rate cases that he is currently representing
11 Public Counsel on as I am, and our resources are
12 thereby limited.

13 JUDGE WALLIS: I take it it would not
14 satisfy your concerns to ask the other parties to
15 brief your position, as well as theirs?

16 MR. CROMWELL: I'd be delighted to have Mr.
17 Trautman brief my position, as well as mine.

18 MR. EBERDT: Your Honor, I actually don't
19 have the capacity to provide information in that
20 regard, either.

21 JUDGE WALLIS: Very well. Thank you.

22 MR. CROMWELL: I will provide you what I
23 can. I simply cannot assure you any level of
24 quality.

25 JUDGE WALLIS: Very well. What I would like

0040

1 you to do -- and my concern here is fairness to all
2 parties. First of all, I want to be fair to the
3 Commission, and I want them to be able to make a
4 decision in a timely manner that does not prejudice
5 the rights of any of the parties on what I believe is
6 a significant issue and recognize the challenges that
7 you would face in going to an extensive effort, but
8 to the extent that you have the time available and
9 can make a presentation, it would be very helpful to
10 have that received two days in advance of the
11 scheduled time and place for the presentation of the
12 settlement.

13 I'm going to recommend to the Commission
14 that they proceed with the settlement. This does put
15 us in a somewhat awkward situation, in that the
16 Commission would not be making a decision on whether
17 or not to accept the settlement on the record then
18 available until a very few days prior to the
19 scheduled date for public hearing in Spokane. And
20 once a hearing is announced, it's rather difficult to
21 un-ring that bell and to cancel a hearing. I would
22 expect, at a minimum, that we would be looking at
23 rescheduling the public hearing for sometime, at
24 best, during mid-November, in order to afford an
25 opportunity for public participation, and given the

0041

1 little that I know now about the Commissioners'
2 schedule during that period, which continues to be
3 hectic. So --

4 MR. MEYER: Again, just -- and I don't mean
5 to sound unappreciative of the sequence, the timing,
6 et cetera, but part of the architecture, if you will,
7 of this settlement is to have the settlement rates go
8 into effect at the same time as the PGA rates, which
9 was scheduled to go into effect, I believe, November
10 1st, so --

11 JUDGE WALLIS: We understand, and we
12 certainly do not foreclose you from making a request
13 that if the settlement is not approved for effect on
14 that date, that the Company be allowed some kind of
15 interim or temporary rate to bridge the period.

16 MR. MEYER: In terms of the settlement rate
17 being an interim rate?

18 JUDGE WALLIS: In terms of the Commission
19 authorizing a rate to be effective pending the
20 approval of the settlement or the rejection of the
21 settlement and the determination to proceed to a full
22 rate case or half rate case, as the case may be.

23 MR. MEYER: Okay. So just so I'm clear on
24 that aspect of it --

25 JUDGE WALLIS: I'm not inviting that, but

0042

1 I'm merely saying that nothing that I'm seeing here
2 would foreclose the parties making that request.

3 MR. MEYER: So if -- just so I'm clear on
4 the nature of that request, if the Company and other
5 settling parties were to request the Commission,
6 perhaps as part of the October 22nd presentation to
7 approve the settlement and put those rates into
8 effect as of November 1, that that is something the
9 Commission would entertain, recognizing that it might
10 be subject to refund, based on any mid-November
11 public hearing or any further proceedings that might
12 be had?

13 JUDGE WALLIS: Now, I cannot promise that
14 the Commission would grant such a request. All I can
15 say is that the parties are free, if they want to do
16 so, to make the request, and the Commission then
17 would respond, after hearing comments from all of the
18 parties, to take the action that it believes
19 appropriate under the circumstances.

20 MR. MEYER: Very well. I think I
21 understand. Thank you.

22 JUDGE WALLIS: Very well. Do any of the
23 parties wish to be heard further? All right.

24 Let me restate what we have. I will ask the
25 Commission whether it is their desire to issue a

0043

1 notice for the October 22nd presentation of a
2 proposed settlement in light of history. For
3 example, in the Verizon/AT&T complaint case, the
4 Commission was favorable to allowing the parties to
5 make the presentation of a proposed settlement, even
6 understanding that there was potential opposition,
7 just so the Commission would be able to understand
8 what the proposal was.

9 You have indicated that there will be
10 witnesses in support of the presentation who are
11 available for examination. If Public Counsel or Mr.
12 Eberdt's client wished to present the testimony of
13 any person in opposition, other than legal arguments,
14 you may do so. Is there any desire at this time to
15 make that kind of a presentation?

16 MR. EBERDT: Not on my part, Your Honor.

17 MR. CROMWELL: I'm sorry, Your Honor. Say
18 that again?

19 JUDGE WALLIS: Do you want to present a
20 witness or merely argument at the time of the October
21 22nd presentation?

22 MR. CROMWELL: I cannot -- I cannot envision
23 having a witness capable of knowledgably addressing
24 the matter at hand at that date.

25 JUDGE WALLIS: Very well. That was the

0044

1 question I was asking. Mr. Cromwell has presented a
2 proposed schedule that involves the filing of
3 responsive testimony on January 24, rebuttal
4 testimony on February 25, a hearing during the week
5 of April 4, and public hearing the following week,
6 with briefing by the parties on May 16 and May 23rd.

7 At the present time, that is merely a
8 proposal, and the Commission, I believe all the
9 parties agree, would be free to consider that, along
10 with the other information that they will have about
11 the proposal and the legal argument on the propriety
12 of proceeding under the circumstances following the
13 presentation on October 22.

14 We do recognize that there must be an
15 opportunity for a public comment, and that we will
16 not schedule a hearing to receive public comment at
17 the present time, but will await the results of the
18 discussions on October 22.

19 Does that fairly state the status of matters
20 at the present?

21 MR. MEYER: I believe it does, and in light
22 of our colloquy just a few moments ago, where I
23 sought to clarify that the Commission would entertain
24 a request to put the rates into effect subject to
25 refund. As we schedule any further proceedings, if

0045

1 necessary, that is something that the Company would
2 give some very serious consideration to and support.

3 JUDGE WALLIS: Very well. If you decide to
4 proceed in that manner, may I request that you make
5 that filing at your earliest convenience so that
6 parties who may be opposed to it would have the
7 opportunity to respond?

8 MR. MEYER: All right.

9 JUDGE WALLIS: Looking at my calendar, I
10 realize that's only about 11 days from today, isn't
11 it?

12 MR. MEYER: Well, and in that regard, Your
13 Honor, my -- I'm not sure exactly what that filing
14 would entail. It would be part of what would be
15 covered by witnesses presenting testimony, which
16 would be filed at least two days in advance of the
17 22nd, so to the extent that the Company is supportive
18 of the request to put this into effect subject to
19 refund, that would be covered off on in the form of
20 testimony.

21 JUDGE WALLIS: Yes, we understand that there
22 would be support, but we also understand that parties
23 may not -- may be at a disadvantage in responding if
24 they get only two days' notice. And if you were to
25 make an earlier request to be supported by testimony,

0046

1 as well as the arguments that you might present in
2 support of it, then parties would have a more
3 adequate opportunity to respond.

4 MR. MEYER: And that request could take the
5 form of a letter advising all parties of our intent?

6 JUDGE WALLIS: I am now recalling the
7 admonition of the Supreme Court justice for whom I
8 clerked, that lawyers are infinitely resourceful --

9 MR. MEYER: All right.

10 JUDGE WALLIS: -- and will, I'm sure, be
11 able to make a highly professional decision and
12 proceed accordingly.

13 MR. MEYER: Very well.

14 JUDGE WALLIS: Now, is there anything
15 further to come before the Commission at this time?
16 Mr. Trautman.

17 MR. TRAUTMAN: I just wanted to clarify on
18 the filing date. So October 15th would be the
19 presentation of the settlement, proposed settlement;
20 correct?

21 MR. MEYER: Twenty-second.

22 MR. TRAUTMAN: No, I mean, but I thought we
23 were to provide it to the Commission.

24 JUDGE WALLIS: Filing date would be October
25 15th, yes.

0047

1 MR. TRAUTMAN: And then, October 20th was
2 the date for filing the legal arguments, is that
3 correct, and then there was -- didn't you ask for the
4 authority?

5 JUDGE WALLIS: The witness support
6 testimony.

7 MR. TRAUTMAN: No, you talked about the
8 authority of the appropriate level of process.

9 JUDGE WALLIS: Oh, that's fine, yes.

10 MR. TRAUTMAN: And then the witness
11 supporting testimony by which date?

12 JUDGE WALLIS: By the 20th.

13 MR. TRAUTMAN: By the 20th, okay.

14 JUDGE WALLIS: Yes. If there is a motion
15 for early implementation, I would ask that the --
16 whatever -- in whatever form it takes, it be filed by
17 the 15th, as well. All right. Now, is there
18 anything further? All right. Thank you all very
19 much.

20 MR. EBERDT: Thank you, Judge.

21 MR. MEYER: Thank you.

22 MR. FINKLEA: Thank you, Your Honor.

23 (Proceedings adjourned at 2:13 p.m.)

24

25