

WUTC v. Summit View Water Works

Docket No. UW-240589 - Vol. I

October 18, 2024



1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101
Bellingham | Everett | Tacoma | Olympia | Yakima | Spokane
Seattle 206.287.9066 Tacoma 253.235.0111 Eastern Washington 509.624.3261

www.buellrealtime.com

email: audio@buellrealtime.com

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
)
Complainant,) DOCKET NO. UW-240589
)
vs.)
)
SUMMIT VIEW WATER WORKS,)
)
Respondent.)
) PAGES 1-35

PREHEARING CONFERENCE - VOL. I
BEFORE ADMINISTRATIVE LAW JUDGE
CONNOR THOMPSON
October 18, 2024

Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98504

TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY, CCR 2731

1 A P P E A R A N C E S :

2

3 FOR COMMISSION STAFF:

4

5 Colin O'Brien

6 colin.obrien@atg.wa.gov

7 Office of the Attorney General

8 Utilities and Transportation Division

9 PO Box 47250

10 Lacey, Washington 98503

11 360.664.1188

12

13 FOR THE RESPONDENT:

14 Michael S. Howard

15 mhoward@williamskastner.com

16 David W. Wiley

17 dwiley@williamskastner.com

18 Williams Kastner & Gibbs, PLLC

19 601 Union Street, Suite 4100

20 Seattle, Washington 98101

21 206.628.6600

22

23 FOR PUBLIC COUNSEL:

24 Tad Robinson O'Neill

25 Tad.ONeill@atg.wa.gov

Public Counsel Unit

Office of the Attorney General

Public Counsel Unit

800 Fifth Avenue, Suite 2000

Seattle, Washington 98104

206.464.7744

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28

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4 JUDGE THOMPSON: Good morning. Let's be on
5 the record. The time is 9:30 a.m. My name is Connor
6 Thompson, and I am an administrative law judge with the
7 Washington Utilities and Transportation Commission.

8 We're here today for a prehearing conference
9 in UW-240589, which is captioned Washington Utilities and
10 Transportation Commission versus Summit View Water Works.

11 Let's go ahead and start by taking short
12 appearances from the parties, and we'll go ahead and
13 start with Summit View Water Works.

14 ATTORNEY HOWARD: Good morning, your Honor.
15 Michael Howard appearing for Summit View Water Works.
16 With me on the call today are Dave Wiley, CPA Ann LaRue;
17 and the company owner Kirk Rathmun.

18 JUDGE THOMPSON: Thank you.

19 And for staff?

20 ATTORNEY O'BRIEN: Good morning, your Honor.
21 Colin O'Brien, AAG for staff. With me is Mike Young from
22 staff.

23 JUDGE THOMPSON: Thank you.

24 And for public counsel.

25 ATTORNEY O'NEILL: Good morning, your Honor.

1 Tad Robinson O'Neill on behalf of public counsel. I'm
2 joined by Stefan de Villiers.

3 JUDGE THOMPSON: Thank you.

4 That brings us to petitions for intervention.
5 I do not see any petitions for intervention filed.
6 However, if there is anybody who would like to intervene
7 in this proceeding and is present this morning with us,
8 if you could please speak up, and we will consider that
9 intervention at this time.

10 Okay. Hearing none, we will go ahead and
11 move on.

12 It sounds like discovery has already perhaps
13 been going back and forth between the parties. So I do
14 think it's probably appropriate to have the discovery
15 rules available.

16 Is there any a need for a protective order
17 in this proceeding?

18 ATTORNEY HOWARD: Good morning, your Honor.
19 Mike Howard for the company.

20 I believe, as I recall in Order 01 in this
21 docket, there may have been a reference -- I believe
22 there was a reference to allowing formal discovery.

23 And there may have been a reference, too, to
24 entering a protective order, which the company would
25 support.

1 The company does have some concerns about
2 what the reasonableness of discovery would look like
3 going forward. But I can address those when it makes
4 sense.

5 JUDGE THOMPSON: Very good. Let's go ahead
6 and address that when we get to the procedural schedule
7 hearing in just a moment.

8 Does anybody have any objection to a
9 protective order, a standard protective order being
10 issued in this case?

11 It sounds like the company supports. Does
12 staff have any objection?

13 ATTORNEY O'BRIEN: No objection for staff,
14 your Honor.

15 JUDGE THOMPSON: Okay. And public counsel?

16 ATTORNEY O'NEILL: I have no objection to a
17 protective order.

18 JUDGE THOMPSON: Okay. And that brings us to
19 the procedural schedule. Have the parties had the
20 opportunity to discuss a procedural schedule, and do we
21 have any agreement by chance on a procedural schedule?

22 ATTORNEY O'BRIEN: I guess I can go first on
23 that one. We have discussed procedural schedule, your
24 Honor. I do not believe we have an agreement at this
25 time. It might be productive for the parties to briefly

1 go to a breakout room to discuss, but otherwise I believe
2 it's going to be a matter for ALD.

3 JUDGE THOMPSON: Okay. Prior to taking some
4 time for the parties to discuss, I'll just remind the
5 parties, which all of you are aware, that of course our
6 goal here today is to set a procedural schedule.

7 But the rule is to always allow for motions
8 to amend that procedural schedule. So if there is a need
9 -- or a need arises to move things around at a later
10 date, we can always do that. I can always do that. And
11 you know, ALD can always do that as well.

12 And so I would encourage the parties to work
13 together. I understand that there is disagreement over
14 what timeline we're looking at for the procedural
15 schedule, and I would just encourage the parties to
16 remember that while we're setting a procedural schedule
17 in this order, we can always amend that if the need
18 arises.

19 And with that, I'd encourage the parties to
20 go ahead and discuss, and we'll take a brief recess and
21 go off the record. I will jump off of the Zoom, and if
22 one of the parties could please let me know when you'd
23 like me to come back into the Zoom, I'd be happy to do so
24 at that time. Is there any representative who would be
25 willing to send me a message when the parties have

1 discussed or completed discussions?

2 ATTORNEY O'BRIEN: I can do that, your Honor.

3 JUDGE THOMPSON: Okay. Thank you. Let's be
4 off the record at this time.

5 (Recess.)

6 JUDGE THOMPSON: Okay. The parties have had
7 an opportunity to meet and confer regarding the
8 procedural schedule. I received an e-mail a moment ago
9 with both staff's procedural schedule as well as the
10 company's procedural schedule.

11 I apologize. It looks like the first is the
12 proposed procedural schedule for both staff and public
13 counsel.

14 So let's at this time take a minute to look
15 at both of those. It looks to me as though our first
16 real discrepancy between the parties is on response
17 testimony, rebuttal testimony date.

18 And then our evidentiary hearing proposed by
19 staff and public counsel is April 23, 2025. And the
20 proposed hearing date for the company is February 10th
21 and 11th of 2025. And so we're about two months apart
22 there.

23 And the company also has a date for an
24 initial or final order by May 2nd of 2025.

25 I will go ahead and take both of these under

1 advisement and issue a prehearing conference order with a
2 procedural schedule attached thereto.

3 However, I want to give the parties an
4 opportunity to go ahead and just comment on their
5 proposed procedural schedule and need for timing.

6 So at this time, I'll go ahead and turn to
7 you, Mr. Howard.

8 ATTORNEY HOWARD: Thank you, your Honor. I
9 have some considerations I want to walk through looking
10 at the two different schedules, why the company is
11 proposing a shorter schedule that results in a relatively
12 quick resolution of the case, and why we feel that the
13 contrary schedule is unreasonable in this instance. I'll
14 try to keep this as relatively concise as possible.

15 So as you see from the company's proposed
16 schedule, we have the initial filing in July, and the
17 conclusion of the proceeding with what we would
18 anticipate being an initial order, although it's
19 ultimately in the commission's discretion to do initial
20 or final in this case. And that leaves us about nine
21 months for the timeline for the entire proceeding, which
22 we would find -- which we would argue is pretty
23 reasonable.

24 And as your Honor can see, we have the
25 initial filing in this docket is the company's direct

1 case. It's prefiled testimony in its direct case for its
2 general rate case. And that's a little unusual for a
3 water company, but the company took that extra step in
4 this instance to try to head off difficulties. And
5 unfortunately, that hasn't been happening so far. We
6 haven't seen that quite materialize yet. But that's
7 already in the record.

8 And there's no -- the company evaluated the
9 need to supplement and found no need to supplement. I'll
10 talk more about that in a minute.

11 So the company's schedule, we would argue, is
12 very reasonable. And I want to compare it with staff's
13 proposed schedule.

14 So initially, staff was maintaining we needed
15 to refile, redirect, and that's been removed from the new
16 schedule being proposed today.

17 But let's look at their proposal for response
18 testimony being due later than the company proposes; so
19 that staff is proposing response testimony due January
20 29, and then sort of everything following from that.

21 So we would like to observe that staff has --
22 that the company's direct filing and general rate case
23 with prefiled testimony from three witnesses, two CPA's
24 and the company auditor, has been in the docket since
25 July 31. So they've already had almost three months to

1 conduct discovery and ask questions and review the
2 initial filing.

3 And I think the company is saying -- in the
4 company's proposed schedule we're saying you get an
5 additional two months, approximately, from the date of
6 the prehearing conference. That's almost five months for
7 the turnaround time on response testimony in a water
8 company rate case. I would argue that that is actually
9 quite generous in terms of response time for such a case,
10 and actually, longer than normal practice.

11 So staff's proposal to go beyond that and add
12 more than a month to the response time, and have it be
13 due in late January and then prolong the proceeding
14 accordingly is actually even more a departure from normal
15 practice and even a longer extension of the company's --
16 of the deadline for response testimony.

17 And why does this matter? This is a small
18 company with about eight employees, less than ten
19 employees, including temp and part time. And each month
20 this case is delayed, the company estimates is about
21 \$27,500 in lost revenue and additional costs for its
22 representation and its consultants, and its consultants
23 answering data requests and things of that nature.

24 So we're talking about material litigation
25 costs, material foregone rate increases, you know, to

1 litigate a water company rate case over what might be a
2 few percent of the final adjustments.

3 And I would like to observe that just because
4 a water company might normally file their testimony after
5 the case is suspended, and the rule allows that, there's
6 nothing wrong with doing it first. And the company
7 should not be punished for doing it first as the initial
8 filing.

9 So we'd also observe that staff has not
10 identified any noncompliance with Commission Rule WAC
11 480-07-530, and we have not heard any actual statements
12 as to how our direct filing is insufficient.

13 I also want to observe -- and I'll try to
14 keep this brief -- that staff's schedule is also premised
15 on the necessary witness -- excuse me -- a necessary
16 witness being unavailable for the entire month of
17 February. And the company is requesting a hearing on
18 February 10 and 11, as you see.

19 In the alternative, as a lesser alternative,
20 the company would request a hearing on January 30 and 31
21 of 2025. I am currently committed to be appearing, along
22 with other lawyers, in a Superior Court case the first
23 week of February going to trial. But otherwise, I am
24 open around that time.

25 So let's talk about this idea that staff is

1 marking a necessary witness unavailable for an entire
2 month. We've inquired into this witness availability.
3 It's a very important issue. And if a witness is saying
4 they're unavailable for the entire month and they're a
5 necessary witness, then we're saying that the proceeding
6 and the length of the proceeding and what the proceeding
7 looks like is dictated by that individual's leave
8 schedule and their leave request. That's the situation
9 we're in.

10 We are concerned that this may have happened
11 before in a previous case. And there was controversy in
12 a previous case about a similar type of leave request
13 during a litigated proceeding.

14 And I want to just note that the individual
15 we're discussing isn't even attending the call today and
16 didn't attend the open meeting in this docket either.

17 And so the company would observe that your
18 Honor has the power to subpoena a witness under RCW
19 80.01.060, and could quite simply resolve this issue and
20 have a timely and expeditious hearing in February.

21 If staff does not want to respond to the
22 subpoena request, they could always reassign it.

23 And if your Honor sees it suitable in your
24 discretion to inquire into this matter and issue a bench
25 request or something like that, I don't think the company

1 is interested in seeing anything personal from this
2 employee. I think if your Honor really wanted to inquire
3 into it, I think that an in-camera review could be
4 suitable. It's not about getting personal information
5 out there; it's about having a necessary witness be
6 available so it doesn't prolong the proceeding and
7 increase those actual costs that I was already outlining
8 earlier. This is material for this company, especially
9 for a company this size.

10 And then I raised some concerns about
11 discovery earlier in our call today, and your Honor
12 suggested I discuss those when we were talking about the
13 schedule. So I just wanted to briefly touch on
14 discovery.

15 I would encourage your Honor to look at my
16 earlier letter in the docket prior to the September 26
17 open meeting, where we expressed some pretty detailed
18 concerns about the informal data requests. There were
19 six rounds at that point, of informal data requests.
20 And we had some really distinct concerns about the
21 reasonableness of those and what they were asking for.

22 And just to give you an example that wasn't
23 included in that letter, one of the informal data
24 requests asked for all individual employee phone records
25 because there was, like, I think, a \$12 supplement for

1 the employees paying for their phones because they were
2 using them for work.

3 So -- but the audit that this small company
4 is going through is a sort of granular aggressive audit
5 that is requesting even individual employee phone
6 records.

7 So we do feel that it would be -- it would be
8 very reasonable to impose some sort of reasonable cap, in
9 your Honor's discretion, on staff discovery going
10 forward.

11 And I think we also need some quality
12 control. We need some assurance. We need some quality
13 control on discovery. I think a rule, Civil Rule 26 (g),
14 styled "certification on staff's discovery request" could
15 be suitable.

16 And it might seem outrageous for me to
17 suggest such a thing. But even after the open meeting,
18 the September 26 open meeting where the company made such
19 a point about unreasonable discovery, those concerns were
20 not memorialized in Order 01, as is normally practiced.

21 And furthermore, the company also received a
22 seventh set of what were apparently informal data
23 requests, just a series of questions from regulatory
24 analyst Ben Sharbono, who isn't here today, in an e-mail
25 after that open meeting. And those apparently may not

1 have even been reviewed by the AG. So even though Order
2 01 suggested we were in formal discovery, we still got
3 another set of them.

4 We need someone to participate and have some
5 quality control over these discovery requests, given
6 what's happening in this proceeding so far and the costs
7 this is imposing on the company.

8 And as we observed in our letter, about a
9 quarter of those requests were asking for info that was
10 already provided or asking for industry standard
11 adjustments in the water industry.

12 So are discovery limits of any sort a little
13 unusual in the commission -- in the area of commission
14 practice, yes. But we think they're reasonable here.

15 And I also want to observe that with the
16 entry of a protective order after this prehearing
17 conference, which has already been approved by the
18 commissioners, that will allow the company to provide its
19 general ledger and some other commercially sensitive
20 documents for inspection. And that I believe is --
21 should really resolve any outstanding questions and sort
22 of these aggressive granular auditing questions that have
23 been coming from staff.

24 So I think if you pair some sort of
25 reasonable guardrails on discovery just to keep the small

1 company's costs down, combined with the fact that we're
2 sharing the sensitive information under a protective
3 order, I think that's going to result in a reasonable
4 solution and combine with handling this case on a
5 somewhat reasonable time frame.

6 I don't think that using the maximum
7 statutory suspension period is reasonable or warranted,
8 and it imposes unreasonable costs on the company. And
9 it's also premised on a witness being unavailable for an
10 entire month.

11 Thank you for your consideration.

12 JUDGE THOMPSON: Thank you. Mr. O'Brien?

13 ATTORNEY O'BRIEN: So there was a lot there.

14 The -- as far as the actual procedural
15 schedule goes, the company is forfeiting the option to do
16 a supplemental filing for their direct testimony. That
17 is over the -- I guess I wouldn't say objection, but to
18 the disappointment of both staff and public counsel.
19 It's their prerogative to do it, but staff and public
20 counsel have both identified some major deficiencies in
21 their testimony that we believe need to be filled.

22 With that being said, I think that staff and
23 public counsel's proposed schedule is a good middle
24 ground from the company truly is wanting to forfeit their
25 option to put in supplemental direct.

1 Staff is proposing a January 29 response date
2 for public counsel, staff, and intervenor response
3 testimony. The reason that staff's proposing that date
4 is that the company is wanting to cut off more than two
5 months' worth of time that staff would normally use to
6 evaluate and prepare their response to this filing.

7 Mr. Howard is suggesting that for some reason,
8 the Court should take into account the informal portion
9 of this case in calculating the time that staff gets to
10 respond to testimony during the formal portion of this
11 case.

12 That's not how -- that is not how the time
13 computation works. And if it was, staff would simply
14 suspend every case the second it came in because
15 otherwise, the clock always starts ticking immediately.

16 So quite simply, it makes sense to give staff
17 and the other parties until January 29 to respond even if
18 the company isn't submitting direct, because during all
19 of that time, not only is staff having to work on
20 settlement, they're having to work on their own response
21 testimony, they're having to put in discovery requests to
22 draw out the information that the company should be
23 putting in its direct testimony in the first place.
24 There's also the holiday time that normally -- that
25 always interferes with staff's work anyway. So quite

1 simply put, staff needs that time, and everything down
2 from that.

3 I do also want to flag just a basic
4 logistical point which Mr. Howard went on, which is that
5 we do have a necessary witness that has a very
6 longstanding, preexisting when this case was filed, time
7 off from February 1 to February 23. I'm not sure why
8 this is such an issue for the company. It's standard PTO
9 that staff is perfectly permitted to take, and would not
10 have caused any issue but for the company making it an
11 issue.

12 But as the company's current schedule lays
13 out, the company's proposed schedule, they are putting
14 the evidentiary hearing in the middle of that time. And
15 I can't see why when they knew that -- they knew prior to
16 this hearing that this is an issue.

17 Finally, the discovery request issue, or
18 Mr. Howard's request to limit discovery: This was
19 already dealt with at the open meeting. There's a reason
20 that there is no discovery request limitation in the open
21 meeting order, and that's because the commissioners
22 denied his request at the open meeting. And he's simply
23 trying to relitigate that issue now.

24 As I stated, there's deficiencies in the
25 filing that staff would like to address. There's

1 problems in the filing that staff would like to address.
2 And I'm sure public counsel would also like to address
3 things. A limit on discovery would only prevent staff
4 from doing its statutorily imposed duties.

5 So all that being said, I think that staff
6 and public counsel's proposed procedural schedule is the
7 more reasonable of the two. I think it sticks more with
8 the intent of how cases normally are litigated here. And
9 I think that the Court should therefore adopt our
10 proposal.

11 Thank you.

12 JUDGE THOMPSON: Thank you.

13 And Mr. Howard, I see you have your hand up.
14 I'll come back to you in just a moment.

15 But I want to give public counsel the
16 opportunity to speak quickly. So public counsel, do you
17 have anything to add to staff's comments?

18 ATTORNEY O'NEILL: Public counsel's position
19 is we would have liked for this case to have resolved
20 before the open meeting, all of the questions answered,
21 and there to have been a resolution.

22 We would like for it to resolve next week at
23 the proposed settlement conference, or maybe it's two
24 weeks from now. We'd like for it to resolve then.

25 I mean, we -- our goal here is to achieve a

1 resolution that's fair to the customers and to the
2 company. That's the statutory goal. That's the mandate.

3 The issue is -- and we detail in our comment
4 letter a fairly significant or significantly detailed
5 list of concerns that we have with the filing, the direct
6 filing.

7 We echo staff's disappointment that the
8 company is waiving its ability to modify its direct
9 filing. But that's their right.

10 We -- the issue for public counsel in terms
11 of why we believe our proposed schedule is superior is
12 that we don't know what we don't know. It's possible
13 that when they provide their general ledgers, all of our
14 questions will be answered and we can quickly resolve the
15 case. But we don't know.

16 It's possible that when we submit our
17 discovery requests, our data requests which we -- you
18 know, follow up to the ones we've done informally, that
19 all of the answers will be there and will be resolved.
20 But we don't know that.

21 And absent knowing what those answers are,
22 shortening the schedule prejudices the process of getting
23 to a fair result.

24 The initial proposal that staff and public
25 counsel were in support of was longer even than this.

1 We've shortened it to account for the company's decision
2 to waive its direct filing.

3 The proposed schedule by staff and the
4 counsel is within the statutory time frame. So, I mean,
5 it's a reasonable period of time.

6 The other thing that is motivating public
7 counsel here is that there are very significant and
8 strident complaints from the constituents here and a very
9 vocal group of individuals, and that gives us pause as
10 well. And I think additional time is necessary.

11 With respect to the witness, Mr. Sharbono, I
12 think there are a lot of resolutions short of hastening
13 the hearing. A deposition would be -- a perpetuation
14 deposition is the easier solution. You could depose
15 Mr. Sharbono after his testimony and just use that
16 testimony in the hearing. I don't think there's a reason
17 to accelerate the hearing because of a witness being
18 absent, even a necessary one. There are avenues that can
19 address that.

20 I didn't actually meet or hear Mr. Howard
21 ask for discovery limitations. He is expressing the same
22 concerns that he did at the hearing. And I presume if he
23 were to bring a motion to limit discovery, that would be
24 the context for that motion. But it should be evaluated
25 when it's brought.

1 I can say that public counsel has outstanding
2 data requests that we will be submitting.

3 We are evaluating whether to retain an expert
4 on ROE, which is our -- subsequent to the open meeting,
5 there has been a docket opened, a policy docket on water
6 case ROE. And that may be more appropriate. And we have
7 yet to evaluate whether we wish to pursue it in this case
8 or defer to that policy docket. But that is another
9 reason that more time is necessary, because we have to go
10 through that process.

11 I think that's -- I mean, we -- public
12 counsel's position is that the proposed -- joint proposed
13 schedule from staff and public counsel is appropriate.
14 It's within statutory time frames. It lets us do the
15 necessary work to get to a fair, just, and reasonable
16 resolution.

17 I fully appreciate the company's frustration
18 with staff. That they filed this case more than a year
19 ago and they ultimately withdrew has delayed the process
20 quite a bit. That was a decision that they made then.

21 Ultimately, companies are in charge of when
22 they file. And it takes the time that it takes. You
23 know, I appreciate their frustration, but that doesn't
24 mean that we should short circuit the process.

25 JUDGE THOMPSON: Okay. Thank you. I

1 appreciate some of your proposed solutions and appreciate
2 the comments.

3 Mr. Howard, I'll turn back to you to respond.

4 ATTORNEY HOWARD: Thank you, your Honor. I
5 will again try to keep this relatively brief. I just
6 want to respond to a few select comments, mostly from
7 staff.

8 There was the discussion from staff that they
9 were disappointed that they were forfeiting our
10 supplemental filing, and that there were major
11 deficiencies in the rate case.

12 I think that's misleading. I think we
13 haven't seen any actual deficiencies in the direct filing
14 identified, any actual failure to meet the company's
15 burden.

16 The direct testimony, including the testimony
17 from the two CPA's, who are experienced CPA's -- about 50
18 years of experience between the two of them, and they
19 both used to work at the commission -- discuss all the
20 salient issues including salaries, contributions, native
21 construction, and dealing with affiliates.

22 And just because staff and public counsel
23 have identified issues that they were concerned about or
24 they might want to argue for adjustments, that would be
25 appropriate for response testimony.

1 And nothing that we're hearing implicates an
2 actual deficiency in the company's carrying of its burden
3 in its direct case.

4 I just take issue with these comments that
5 make it sound like we're susceptible to a motion to
6 dismiss. The case is well supported. It's complete.

7 Staff also took issue with taking the
8 pre-suspension period of time in this proceeding into
9 account and suggests they would have to suspend all
10 dockets immediately.

11 I would actually argue the opposite. So this
12 is the -- the only water company case I'm aware of where
13 the company has done the proactive step of filing
14 testimony first.

15 So when staff pressures the company into
16 voluntary extensions of its effective date to avoid
17 suspension at the open meeting, and then suspends the
18 filing, and then staff argues for the entire statutory
19 suspension period of ten months when the case is
20 suspended, what that is actually doing is that staff is
21 getting free time in the beginning of the case at the
22 company's expense, and having the company give that sort
23 of concession without any sort of consideration in
24 return. And then staff is going to argue for the full
25 ten months anyway. I think that is actually rather

1 punitive and adversarial.

2 I think also this concern about litigating
3 all cases because this period of time would be counted
4 doesn't really apply, because most water company cases
5 they're not filing the testimony first. They just want
6 to apply.

7 And staff has also characterized this as
8 standard paid time off. As I've noted, we have concerns
9 that this type of situation has occurred before in a
10 similar case. And we're not hearing any accommodation or
11 effort to resolve this issue or reassignment of the case
12 or other things that might fix it from staff's
13 perspective. Having a hearing in February is reasonable
14 when you consider the fact that -- how the schedule
15 should be arranged, given where we are in the proceeding.

16 Staff then said that there was no -- that the
17 commission denied my request for discovery limitations at
18 the open meeting. Very important to observe here that
19 this representation today is actually incorrect.

20 If your Honor looks at the recording of the
21 9/26 open meeting, Commissioner Rendahl specifically says
22 that it would be -- and I'm going to closely paraphrase
23 -- that would be something within the ALJ's purview.

24 So Commissioner Rendahl omitted -- then
25 omitted discovery limitations in her motion. But before

1 that, she noted it would be in the ALJ's purview. So if
2 anything, this is the decision -- the prehearing
3 conference by the ALJ, this is when the commissioners
4 believe such a judgment call should be made.

5 Public counsel suggested also that I did not
6 move or request for any discovery limitations. I
7 believed that this was a prehearing conference, and it
8 was appropriate, under commission rules, for a prehearing
9 conference order to set forth all the guidelines for the
10 disposition of the proceeding, including limitations on
11 discovery and how discovery is handled.

12 So I think it's appropriate, entirely
13 appropriate, without positing as a formal motion, for us
14 to come here to prehearing conference order and argue for
15 what we think discovery should look like.

16 But if you need a really specific request
17 from me, or the parties want a really specific request, I
18 would reiterate my recommendation, slightly modified from
19 my letter to the commission: A cap of 20 data requests
20 to staff, not applied jointly to public counsel at this
21 time; 20 data requests to staff, which they can adjust,
22 they can seek relief from on a showing of good cause from
23 your Honor.

24 And we would also ask for a certification to
25 their discovery request in the style of Superior Court

1 Rule 26(g).

2 And then public counsel also referred to some
3 strident customer complaints. And I wasn't normally
4 going to go here at a prehearing conference order, but
5 this is -- I feel like I should respond to that sort of
6 characterization.

7 I think we might have some customers who have
8 strong feelings here. But really, that's what this
9 proceeding is about. Let's have this proceeding go
10 forward in a reasonable, cost-effective manner with a
11 protective order and the company providing the
12 commercially sensitive information, and allowing that
13 inspection by staff and public counsel. This is going to
14 be the opportunity to investigate and uncover those
15 concerns in a reasonable way. So I would suggest that we
16 are fully allowing for that.

17 And again, I would just take exception with
18 any phrases such as we are waiving our direct. Our
19 direct is in the file.

20 I think it's just very unusual for a company
21 to have to file direct by two expert witnesses who -- and
22 the company owner. The expert witnesses used to work at
23 the commission. They've followed things very closely and
24 laid out their whole case with all the supporting
25 documents.

1 And for staff in response to continually say
2 that there isn't a direct testimony in the record, I've
3 never encountered that situation.

4 So thank you, your Honor, again, for your
5 attention.

6 JUDGE THOMPSON: Okay. I think I've heard
7 enough regarding positions supporting each individual
8 proposed procedural schedule.

9 Let's talk about a couple of things that I
10 hope we can agree on and hammer those out for the
11 procedural schedule, because I understand there is a hard
12 stop. I believe it's 11:00 a.m. or 11:30 a.m. this
13 morning. And -- for some of the parties.

14 And so with that being said, let's talk about
15 a date for an initial settlement conference. I see in
16 the company's proposed schedule, we have either the 23rd
17 or 28th, which would put us next Wednesday or the
18 following Monday.

19 Is there any consensus on what day might
20 work, with the understanding that I will do my best to
21 get out a procedural schedule and protective order today?

22 However, for full transparency for the
23 parties, I am the only ALJ presently at the commission
24 this week. And so there are other matters I've got to
25 attend to as well. But I will do my best to get that out

1 as expediently as possible.

2 ATTORNEY O'NEILL: The parties did discuss
3 the initial prehearing -- or settlement conference. And
4 we're actually going to propose the 29th -- I think this
5 is agreed by all the parties. Let me know if I have
6 misspoken -- the 29th at 1:30, subject to Mr. Howard
7 checking with his client.

8 And if we do agree to move it, I think we
9 will be able to find a time jointly and would move to
10 move that date. I think the parties are in alignment on
11 that, at least.

12 JUDGE THOMPSON: Okay. And that will be
13 sufficient in my view to provide me time to get the
14 orders out and for the company time to get the general
15 ledger to public counsel and staff.

16 I would expect that the company would act to
17 get that to them as fast as possible once that protective
18 order comes out, so that that settlement conference can
19 be productive and give staff and public counsel time to
20 look over that prior to that settlement conference,
21 because it does sound like there is a chance that the
22 parties may become more aligned after that initial
23 settlement conference.

24 Regarding the issue of ROE and the docket
25 which has been opened, this is not preclusion from

1 bringing up the issue. This is not a preclusion from
2 providing testimony on the issue.

3 I just want to note that that docket is open.
4 And regardless of the outcome on ROE, there are always,
5 of course, ways to implement whatever the commission's
6 ultimate decision is in that docket at a later date as we
7 move forward. And so certainly I just want to make the
8 parties aware of that and make everyone aware that that
9 docket has been assigned a docket number.

10 I do think that we can work with the
11 availability or unavailability of any witnesses as public
12 counsel suggested.

13 And otherwise, I don't know that we're going
14 to get any further on procedural schedule items today.

15 Like I said, I will take both under
16 advisement, as well as the arguments put forth by both of
17 the parties and issue a procedural schedule as soon as I
18 possibly can, because I want to make sure that we
19 facilitate something that works for the parties and
20 perhaps resolution, if that is something that is
21 feasible.

22 I do believe that the docket number for that
23 ROE policy statement is 240733, If anybody would like
24 that for their own records.

25 But with all that being said, I think we're

1 as far as we can get regarding procedural schedule this
2 morning.

3 And so with time being of the essence for, I
4 believe, multiple parties, let's go ahead and move to --
5 well, there is one more issue I want to look at before I
6 move on. It looks like the company has simultaneous
7 post-hearing briefs. And staff has simultaneous
8 post-hearing briefs as well. Okay. So we don't have any
9 disagreement on post-hearing briefing. And so that is
10 good. I'm glad to hear that. And I'll keep that under
11 consideration as we move forward.

12 Okay. Regarding electronic filing and
13 electronic services, I do want to remind the parties that
14 documents should be filed online through the electronic
15 filing link on the commission's web page.

16 I assume that the parties will submit
17 exhibits. And there are requirements for filing exhibits
18 and an exhibit list in advance of the hearing, which will
19 also be done only electronically. I will enter a
20 prehearing order with details on this topic.

21 And I will also take under advisement the
22 potential limitations on discovery.

23 I would ask, just as a point of order, for
24 the parties to try not to submit duplicative discovery
25 requests. I understand that sometimes that may be hard.

1 And I will note that regardless of the outcome on any
2 limitations or lack thereof of discovery requests, that
3 the parties may bring discovery disputes to the
4 commission. And so if it continues to be an ongoing
5 problem, there is, of course, always an avenue to address
6 that. I do ask that the parties try to resolve that
7 issue because it does sound like perhaps there are
8 duplicates, and that should not be happening.

9 The commission's rules, moving back to
10 electronic service, provide for electronic service of
11 documents. The commission will serve the parties
12 electronically and the parties will serve each other
13 electronically.

14 If you have any corrections or updates to our
15 master service list in this docket, please file a written
16 notice of appearance or e-mail me at
17 Connor.Thompson@utc.wa.gov. And Connor is C-O-N-N-O-R.
18 Thompson is T-H-O-M-P-S-O-N.

19 If a party has not yet designated a lead
20 representative for service, please do so via e-mail to me
21 as soon as possible.

22 And if there are additions to the service
23 list that any party would like to make, particularly for
24 support staff or witnesses, again, please e-mail those
25 and we will take care of that.

1 I don't see in either procedural schedule any
2 deadline for errata sheets. Would the standard timeline
3 be acceptable to everybody?

4 Typically the deadline for filing errata
5 sheets to exhibits is seven days prior to the evidentiary
6 hearing.

7 I'll turn to the company first. Does the
8 company have any objection to that?

9 ATTORNEY HOWARD: No objection, your Honor.

10 And I would just add that I realized the
11 company's proposed schedule did not have a discovery
12 cutoff. But when we were discussing this potential
13 schedule with the parties, we were proposing a January 17
14 discovery cutoff under the company's schedule. So I just
15 wanted to note that point as well. Thank you.

16 JUDGE THOMPSON: Okay. And could you provide
17 me that date one more time, please?

18 ATTORNEY HOWARD: Yes. It was a proposed
19 discovery cutoff of January 17, 2025.

20 JUDGE THOMPSON: January 17. Okay.

21 And does staff have any objection to the
22 timeline for errata sheets?

23 ATTORNEY O'BRIEN: No objection, your Honor.

24 JUDGE THOMPSON: Okay. And public counsel?

25 ATTORNEY O'NEILL: No objection, your Honor.

1 JUDGE THOMPSON: Okay. Is there anything
2 else we need to address today?

3 Do any of the parties have any other matters
4 which we've not addressed regarding the procedural
5 schedule and the prehearing conference order?

6 ATTORNEY HOWARD: Nothing from the company,
7 your Honor.

8 ATTORNEY O'BRIEN: Nothing from staff, your
9 Honor.

10 JUDGE THOMPSON: Public counsel?

11 ATTORNEY O'NEILL: No, I don't have anything
12 further.

13 JUDGE THOMPSON: Okay. I appreciate all of
14 you appearing this morning, and you providing procedural
15 schedules as well as your arguments.

16 I will issue an order shortly containing the
17 procedural schedule and other guidelines for the
18 disposition of this case.

19 We are adjourned at this time. Thank you
20 again for all your time this morning. We are off the
21 record.

22 (Proceedings concluded at 10:35 a.m.)

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STATE OF WASHINGTON)
) SS
COUNTY OF KING)

I, Elizabeth Patterson Harvey, a Certified Court Reporter and Registered Professional Reporter within and for the State of Washington, do hereby certify under penalty of perjury that the foregoing legal recordings were transcribed under my direction; that I received the electronic recording in the proprietary format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of November, 2024.

Elizabeth Patterson Harvey



Elizabeth Patterson Harvey, CCR 2731