

BEFORE THE STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

Docket TP-220513

**RESPONDENT PUGET SOUND
PILOTS' RESPONSE IN
OPPOSITION TO COMMISSION
STAFF'S MOTION IN LIMINE**

MEMORANDUM

I. INTRODUCTION.

1. Commission Staff's ("Staff") Motion in Limine should be denied. PSP acknowledges its oversight in not moving for leave to file the supplemental testimony of Jessica Norris, Captain Sandy Bendixen, and Sean McCarthy, and apologizes for that omission. The evidence should still be allowed, however, because it will assist the Commission and no party will be prejudiced by its admission.

II. BACKGROUND.

2. On March 24, during discovery and before the deadline to file cross-examination exhibits, PSP submitted supplemental testimony from three witnesses: Jessica Norris, Captain Sandy Bendixen, and Sean McCarthy. The supplemental testimony does not raise new issues, but instead simply introduces and authenticates seven exhibits.
3. As to Ms. Norris, at the time PSP filed its rebuttal testimony on March 3, its 2022 audited financial statement was in draft form. In her rebuttal testimony, Ms. Norris submitted a

portion of the draft audit and stated that the final 2022 audited statement would be completed and filed in advance of the hearing. Ms. Norris’s supplemental testimony simply provides and authenticates the final version of PSP’s 2022 audited financial statement, as promised in her rebuttal testimony. *See* Exh. JJN-07.

4. As to Captain Bendixen, her supplemental testimony attaches three exhibits, two of which were referenced in her rebuttal testimony and produced in discovery. These exhibits, all of which contain publicly available information, include a copy of the five-year Washington State Pro-Equity Anti-Racism (PEAR) Plan & Playbook, a copy of Governor Inslee’s Executive Order 22-04, and a copy of the PowerPoint presentation made by representatives of the Board of Pilotage Commissioners on March 14, 2023 to the Washington Senate Transportation Committee.
5. Lastly, Mr. McCarthy’s supplemental testimony attaches three exhibits, all of which were produced to the parties in response to data requests served after PSP filed its rebuttal testimony on March 3. These exhibits include PSP’s current insurance policies and a recap sheet prepared in response to a PMSA data request showing the costs of PSP’s insurance program by coverage type for the last six policy years.
6. On March 27, Staff moved to exclude PSP’s supplemental testimony and the related exhibits.

III. LEGAL STANDARD.

7. The Commission has discretion to either admit or exclude the evidence at issue. *See* WAC 480-07-460(1)(c) (“The presiding officer *may* refuse to admit into evidence any new or revised exhibits if the failure to provide them prior to the hearing impairs the ability of other parties or the commission to review and examine those exhibits during the hearing.”) (emphasis added).

IV. ARGUMENT.

8. The Commission should exercise its discretion to admit the supplemental testimony and exhibits.
9. Ms. Norris's testimony simply provides a final version of PSP's audited financial statement that was not available when she filed her rebuttal testimony on March 3. This is plainly an appropriate basis to supplement the record and should come as no surprise to the parties, particularly given that Ms. Norris flagged the issue in her rebuttal testimony and promised to submit the final 2022 audited financial statement upon completion.
10. Likewise, the Captain Bendixen and Mr. McCarthy's supplemental testimony authenticates new exhibits related to issues already in the case, some of which were previously referenced in testimony, and most of which had already been produced in discovery. Like PSP's final audited financial statement, these exhibits round out the record and will assist the Commission's factfinding.
11. Contrary to Commission Staff's motion, no party will be prejudiced by the introduction of the supplemental testimony and exhibits. This is a complex rate case that involves large volumes of evidence. It makes sense that the record would develop during discovery, which is precisely why the Commission has discretion to allow the introduction of new evidence up to and including during the hearing. Similarly, Commission Staff's claim that PSP's submission of seven discrete exhibits will prejudice its ability to prepare for the hearing is not plausible, as underscored by the fact that PSP filed the supplemental testimony before the deadline to submit new evidence as cross-examination exhibits.

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V. CONCLUSION.

12. In short, while PSP should have sought leave to file the supplemental testimony and apologizes for its omission, that oversight should not outweigh the parties and the Commission's interest in resolving this rate case based on a full evidentiary record. Because the supplemental testimony and exhibits will assist the Commission without prejudicing any party, Staff's motion in limine should be denied.

Respectfully submitted this 3rd day of April, 2023.

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