

Docket No. TP-220513 - Transcript Excerpt

WUTC v. Puget Sound Pilots

April 5, 2023



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,
Complainant,
v.
PUGET SOUND PILOTS,
Respondents.

VIDEOCONFERENCE EVIDENTIARY HEARING (EXCERPT)
The Honorable Michael Howard Presiding
April 5, 2023
PAGES 1-8

Transcribed by: Sara L. Kern, CET

1 -o0o-
2 April 5, 2023
3
4 JUDGE HOWARD: All right. Let's be on the record.
5 Good morning. It is Wednesday, April 5th, and the time is
6 9:03 A.M.
7 My name is Michael Howard. I'm an administrative law
8 judge with the Commission. And I am presiding in this
9 matter along with the Commissioners, who will join us
10 shortly.
11 We're here for an evidentiary hearing in Docket TP-220513.
12 This case is captioned Washington Utilities and
13 Transportation Commission versus Puget Sound Pilots.
14 Let's start by taking appearances beginning with PSP.
15 MR. HAGLUND: Michael Haglund, Haglund Kelly, and my
16 colleague Eric Brickenstein are here for Puget Sound Pilots.
17 JUDGE HOWARD: All right. Thank you.
18 Could we hear from Staff?
19 MR. CALLAGHAN: Thank Your Honor. Nash Callaghan,
20 Assistant Attorney General, on behalf of Commission Staff.
21 With me is Jaclynn Simmons and Mike Young.
22 JUDGE HOWARD: All right. Thank you.
23 Can we hear from Pacific Merchant Shipping Association or
24 PMSA?
25 MS. DeLAPPE: Good morning. Michelle DeLappe on behalf of

1 APPEARANCES
2 (All participants appeared via videoconference.)
3 FOR PUGET SOUND PILOTS:
4 MICHAEL HAGLUND
5 ERIC BRICKENSTEIN
6 Haglund Kelly LLP
7 177 Southwest Broadway
8 Portland, Oregon 97201
9 FOR COMMISSION STAFF:
10 NASH CALLAGHAN
11 Assistant Attorney General
12 P.O. Box 47250
13 Olympia, Washington 98504
14 FOR PACIFIC MERCHANT SHIPPING ASSOCIATION:
15 MICHELLE DeLAPPE
16 Fox Rothschild LLP
17 1001 Fourth Avenue, Suite 4400
18 Seattle, Washington 98154
19 FOR TOTE:
20 STEVEN W. BLOCK
21 Lane Powell
22 1420 Fifth Avenue, Suite 4200
23 Seattle, Washington 98101
24 ALSO PRESENT:
25 CHAIR DANNER
26 COMMISSIONER RENDAHL
27 COMMISSIONER DOUMIT

1 PMSA.
2 JUDGE HOWARD: Thank you.
3 And could we hear from TOTE Maritime Alaska LLC or TOTE.
4 MR. BLOCK: Yes, good morning, Your Honor. Steve Block,
5 Lane Powell, appearing for TOTE Maritime Alaska.
6 JUDGE HOWARD: All right. Thank you.
7 I want to start out by giving a roadmap for our plans for
8 the hearing over the next two days.
9 I will start by ruling on the seven pending motions.
10 I'll then be asking the parties whether they stipulate to
11 the admission of any prefiled testimony or whether they have
12 any objections.
13 After the Commissioners join us, in about a half hour from
14 now, we'll then allow the parties an opportunity to provide
15 brief opening statements limited to 15 minutes each.
16 We'll then turn to the cross-examination of witnesses
17 following the order of presentation that I circulated to the
18 parties earlier.
19 Because we have post-hearing briefing in this case, I do
20 not plan on providing for oral closing statements.
21 I also want to remind the parties to keep their
22 microphones muted unless they are speaking and only to use
23 video for those portions of the hearing they have a speaking
24 role.
25 If you're having any technical issues or you observe that

Page 5

1 someone has dropped off the call, please mention in the
 2 chat. The chat should be reserved for technical issues and
 3 requests for the breaks only.
 4 Are there any questions or housekeeping matters before we
 5 continue?
 6 MS. DeLAPPE: Your Honor, as housekeeping matters, I did
 7 have -- if this case this hearing goes on to Friday -- and I
 8 know that we're trying to avoid that, but my witness is
 9 Captain Moore and Kathy Metcalf would not be available on
 10 Friday, if you could take that into consideration, please.
 11 JUDGE HOWARD: Okay.
 12 MS. DeLAPPE: Thank you.
 13 JUDGE HOWARD: That was Moore and Metcalf?
 14 MS. DeLAPPE: Yes. Thank you.
 15 JUDGE HOWARD: All right. Thank you.
 16 MR. CALLAGHAN: Your Honor, I do have one small matter.
 17 Staff is going to withdraw its objections to the admission
 18 of Exhibit SM-15X and 16X. Thank you.
 19 JUDGE HOWARD: Okay. Thank you.
 20 On the issue of managing our time, I'm going to suggest
 21 that we start at 9 A.M. tomorrow as well.
 22 Does anyone have any concerns with that? Instead of 9:30.
 23 MR. HAGLUND: None for PSP.
 24 JUDGE HOWARD: All right. Thank you.
 25 I'm hearing no objections. Okay.

Page 6

1 Moving -- do we have the court reporter joining us at this
 2 point? Okay.
 3 I'm going to continue on with my rulings on the seven
 4 pending motions in this docket.
 5 I am not necessarily going to rule on these in the order
 6 that they were filed.
 7 First, we have Staff's motion in limine to reject PSP
 8 supplemental testimony. Under WAC 480-07-540 and other
 9 Commission rules, a party normally needs to take leave to
 10 file supplemental testimony.
 11 I am granting Staff's motion in limine. PSP has filed
 12 supplemental testimony on March 24th, outside of the
 13 procedural schedule and without asking leave. Allowing
 14 unauthorized submissions prejudices the other parties and
 15 undermines the orderly administration of the case. A party
 16 does not create a right to supplement the record by
 17 referring to future plans additions in his testimony.
 18 I've considered PSP's response but find it unpersuasive.
 19 In Order 4, paragraph 14, I observed that a motion to
 20 supplement the record may be simply denied as departing from
 21 Commission practice and the rules. This seems to have been
 22 overlooked.
 23 I am, therefore, rejecting Exhibits SB-11T; SB-12; SB-13;
 24 SB-14; JJN-6T; JJN 7; SM-8T; SM-9; SM-10; and SM-11.
 25 I'm also rejecting Exhibits MM-77X through MM-81X.

Page 7

1 Hold on a moment.
 2 Actually, I -- I'm going to decline to reject
 3 Exhibits MM-77X through MM-81X because those were submitted
 4 by the deadline for cross-exhibits.
 5 I have reviewed MM-105X, but this does not appear to be
 6 identical to any supplemental testimony or exhibits as Staff
 7 suggested. So I am not rejecting MM-105X at this time.
 8 (Conclusion of excerpted proceedings)
 9 (Court reporter joins at 9:10 a.m.)
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 8

1 CERTIFICATE
 2
 3 STATE OF WASHINGTON)
 4)
 5 COUNTY OF KING)
 6 I, the undersigned, do hereby certify under penalty
 7 of perjury that the foregoing recorded statements, hearings
 8 and/or interviews were transcribed under my direction as a
 9 certified transcriptionist; and that the transcript is true and
 10 accurate to the best of my knowledge and ability, that I am not a
 11 relative or employee of any attorney or counsel employed by the
 12 parties hereto, nor financially interested in its outcome.
 13
 14 IN WITNESS WHEREOF, I have hereunto set my hand this
 15 5th day of June, 2023.
 16
 17
 18
 19 
 20 s/ Sara L. Kern, CET
 21
 22



<p style="text-align: center;">A</p> <p>a.m 3:6 5:21 7:9 ability 8:10 accurate 8:10 additions 6:17 administration 6:15 administrative 3:7 admission 4:11 5:17 Alaska 4:3,5 allow 4:14 Allowing 6:13 and/or 8:8 appear 7:5 appearances 3:14 appeared 2:2 appearing 4:5 April 1:12 3:2,5 asking 4:10 6:13 Assistant 2:9 3:20 Association 2:11 3:23 attorney 2:9 3:20 8:11 available 5:9 Avenue 2:13,17 avoid 5:8</p> <hr/> <p style="text-align: center;">B</p> <p>beginning 3:14 behalf 3:20,25 best 8:10 Block 2:16 4:4,4 Box 2:9 breaks 5:3 Brickenstein 2:4 3:16 brief 4:15 briefing 4:19 Broadway 2:5</p> <hr/> <p style="text-align: center;">C</p> <p>C 2:1 8:1,1 call 5:1 Callaghan 2:8 3:19</p>	<p>3:19 5:16 Captain 5:9 captioned 3:12 case 3:12 4:19 5:7 6:15 certified 8:9 certify 8:6 CET 1:24 8:20 CHAIR 2:20 chat 5:2,2 circulated 4:17 closing 4:20 colleague 3:16 Commission 1:1,3 2:7 3:8,13,20 6:9 6:21 COMMISSION... 2:21,21 Commissioners 3:9 4:13 Complainant 1:4 concerns 5:22 Conclusion 7:8 consideration 5:10 considered 6:18 continue 5:5 6:3 counsel 8:11 COUNTY 8:5 court 6:1 7:9 create 6:16 cross-examination 4:16 cross-exhibits 7:4</p> <hr/> <p style="text-align: center;">D</p> <p>DANNER 2:20 day 8:15 days 4:8 deadline 7:4 decline 7:2 DeLAPPE 2:12 3:25,25 5:6,12,14 denied 6:20 departing 6:20 direction 8:8 docket 1:5 3:11 6:4</p>	<p>DOUMIT 2:21 dropped 5:1</p> <hr/> <p style="text-align: center;">E</p> <p>E 2:1,1 8:1,1 earlier 4:18 employed 8:11 employee 8:11 Eric 2:4 3:16 evidentiary 1:10 3:11 EXCERPT 1:10 excerpted 7:8 Exhibit 5:18 exhibits 6:23,25 7:3 7:6</p> <hr/> <p style="text-align: center;">F</p> <p>F 8:1 Fifth 2:17 file 6:10 filed 6:6,11 financially 8:12 find 6:18 First 6:7 following 4:17 foregoing 8:7 Fourth 2:13 Fox 2:13 Friday 5:7,10 future 6:17</p> <hr/> <p style="text-align: center;">G</p> <p>General 2:9 3:20 giving 4:7 goes 5:7 going 5:17,20 6:3,5 7:2 good 3:5,25 4:4 granting 6:11</p> <hr/> <p style="text-align: center;">H</p> <p>Haglund 2:4,5 3:15 3:15,15 5:23 half 4:13 hand 8:14</p>	<p>hear 3:18,23 4:3 hearing 1:10 3:11 4:8,23 5:7,25 hearings 8:7 hereto 8:12 hereunto 8:14 Hold 7:1 Honor 3:19 4:4 5:6 5:16 Honorable 1:11 hour 4:13 housekeeping 5:4,6 Howard 1:11 3:4,7 3:17,22 4:2,6 5:11 5:13,15,19,24</p> <hr/> <p style="text-align: center;">I</p> <p>identical 7:6 interested 8:12 interviews 8:8 issue 5:20 issues 4:25 5:2</p> <hr/> <p style="text-align: center;">J</p> <p>Jaclynn 3:21 JJN 6:24 JJN-6T 6:24 join 3:9 4:13 joining 6:1 joins 7:9 judge 3:4,8,17,22 4:2,6 5:11,13,15 5:19,24 June 8:15</p> <hr/> <p style="text-align: center;">K</p> <p>Kathy 5:9 keep 4:21 Kelly 2:5 3:15 Kern 1:24 8:20 KING 8:5 know 5:8 knowledge 8:10</p> <hr/> <p style="text-align: center;">L</p> <p>L 1:24 8:20</p>	<p>Lane 2:17 4:5 law 3:7 leave 6:9,13 Let's 3:4,14 limine 6:7,11 limited 4:15 LLC 4:3 LLP 2:5,13</p> <hr/> <p style="text-align: center;">M</p> <p>managing 5:20 March 6:12 Maritime 4:3,5 matter 3:9 5:16 matters 5:4,6 mention 5:1 Merchant 2:11 3:23 Metcalf 5:9,13 Michael 1:11 2:4 3:7,15 Michelle 2:12 3:25 microphones 4:22 Mike 3:21 minutes 4:15 MM-105X 7:5,7 MM-77X 6:25 7:3 MM-81X 6:25 7:3 moment 7:1 Moore 5:9,13 morning 3:5,25 4:4 motion 6:7,11,19 motions 4:9 6:4 Moving 6:1 muted 4:22</p> <hr/> <p style="text-align: center;">N</p> <p>N 2:1 name 3:7 Nash 2:8 3:19 necessarily 6:5 needs 6:9 normally 6:9</p> <hr/> <p style="text-align: center;">O</p> <p>o0o- 3:1</p>
---	---	---	---	---

<p>objections 4:12 5:17,25 observe 4:25 observed 6:19 Okay 5:11,19,25 6:2 Olympia 2:10 opening 4:15 opportunity 4:14 oral 4:20 order 4:17 6:5,19 orderly 6:15 Oregon 2:6 outcome 8:12 outside 6:12 overlooked 6:22</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 2:1,1 P.O 2:9 Pacific 2:11 3:23 PAGES 1:13 paragraph 6:19 participants 2:2 parties 4:10,14,18 4:21 6:14 8:12 party 6:9,15 penalty 8:6 pending 4:9 6:4 perjury 8:7 Pilots 1:6 2:3 3:13 3:16 plan 4:20 plans 4:7 6:17 please 5:1,10 PMSA 3:24 4:1 point 6:2 portions 4:23 Portland 2:6 post-hearing 4:19 Powell 2:17 4:5 practice 6:21 prefiled 4:11 prejudices 6:14 PRESENT 2:19 presentation 4:17</p>	<p>presiding 1:11 3:8 procedural 6:13 proceedings 7:8 provide 4:14 providing 4:20 PSP 3:14 5:23 6:7 6:11 PSP's 6:18 Puget 1:6 2:3 3:13 3:16</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>questions 5:4</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 2:1 8:1 record 3:4 6:16,20 recorded 8:7 referring 6:17 reject 6:7 7:2 rejecting 6:23,25 7:7 relative 8:11 remind 4:21 RENDAHL 2:21 reporter 6:1 7:9 requests 5:3 reserved 5:2 Respondents 1:7 response 6:18 reviewed 7:5 right 3:4,17,22 4:6 5:15,24 6:16 roadmap 4:7 role 4:24 Rothschild 2:13 rule 6:5 rules 6:9,21 ruling 4:9 rulings 6:3</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 s/ 8:20 Sara 1:24 8:20 SB-11T 6:23</p>	<p>SB-12 6:23 SB-13 6:23 SB-14 6:24 schedule 6:13 Seattle 2:14,18 set 8:14 seven 4:9 6:3 Shipping 2:11 3:23 shortly 3:10 Simmons 3:21 simply 6:20 SM-10 6:24 SM-11 6:24 SM-15X 5:18 SM-8T 6:24 SM-9 6:24 small 5:16 Sound 1:6 2:3 3:13 3:16 Southwest 2:5 speaking 4:22,23 Staff 2:7 3:18,20 5:17 7:6 Staff's 6:7,11 start 3:14 4:7,9 5:21 STATE 8:3 statements 4:15,20 8:7 Steve 4:4 STEVEN 2:16 stipulate 4:10 submissions 6:14 submitted 7:3 suggest 5:20 suggested 7:7 Suite 2:13,17 supplement 6:16 6:20 supplemental 6:8 6:10,12 7:6</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 8:1,1 take 5:10 6:9 technical 4:25 5:2</p>	<p>testimony 4:11 6:8 6:10,12,17 7:6 Thank 3:17,19,22 4:2,6 5:12,14,15 5:18,19,24 time 3:5 5:20 7:7 tomorrow 5:21 TOTE 2:15 4:3,3,5 TP-220513 1:5 3:11 transcribed 1:24 8:8 transcript 8:9 transcriptionist 8:9 Transportation 1:1 1:3 3:13 true 8:9 trying 5:8 turn 4:16 two 4:8</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>unauthorized 6:14 undermines 6:15 undersigned 8:6 unpersuasive 6:18 use 4:22 Utilities 1:1,3 3:12</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v 1:5 versus 3:13 video 4:23 videoconference 1:10 2:2</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>W 2:16 WAC 6:8 want 4:7,21 Washington 1:1,3 2:10,14,18 3:12 8:3 we'll 4:14,16 we're 3:11 5:8 Wednesday 3:5 WHEREOF 8:14</p>	<p>withdraw 5:17 witness 5:8 8:14 witnesses 4:16</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Young 3:21</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1-8 1:13 1001 2:13 14 6:19 1420 2:17 15 4:15 16X 5:18 177 2:5</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2023 1:12 3:2 8:15 24th 6:12</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 6:19 4200 2:17 4400 2:13 47250 2:9 480-07-540 6:8</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 1:12 3:2 5th 3:5 8:15</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 6:24</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 5:21</p>
---	--	--	--	---

9:03 3:6
9:10 7:9
9:30 5:22
97201 2:6
98101 2:18
98154 2:14
98504 2:10