

**Docket No. TP-220513 - Transcript Excerpt**

**WUTC v. Puget Sound Pilots**

**April 5, 2023**



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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	Docket No. TP-220513
v.	)	
	)	
PUGET SOUND PILOTS,	)	
	)	
Respondents.	)	
	)	

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VIDEOCONFERENCE EVIDENTIARY HEARING (EXCERPT)

The Honorable Michael Howard Presiding

April 5, 2023

PAGES 1-8

Transcribed by: Sara L. Kern, CET

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

2 (All participants appeared via videoconference.)

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24 ALSO PRESENT:

25 CHAIR DANNER  
COMMISSIONER RENDAHL  
COMMISSIONER DOUMIT

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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 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

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.

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.

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.)

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I, the undersigned, do hereby certify under penalty of perjury that the foregoing recorded statements, hearings and/or interviews were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, 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 5th day of June, 2023.

Sara L. Kern



s/ Sara L. Kern, CET