WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re: Puget Sound Pilots	Docket No. TP-250574
	Pages 1 - 16

PREHEARING CONFERENCE

VOLUME 1

September 4, 2025

Before Administrative Law Judge

Harry Fukano

Reporter: Christy Sheppard, CCR, RPR

B&A Litigation Services

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BE IT REMEMBERED that on Thursday, September 4, 2025, via Zoom, at 9:30 a.m., before Christy Sheppard, Certified Court Reporter, CCR, RPR;

WHEREUPON, the following proceedings were had, to wit:

<<<<<< >>>>>>

JUDGE FUKANO: Good morning. My name is Harry Fukano. I'm an Administrative Law Judge with the Washington Utilities & Transportation Commission. The time is approximately 9:32.

We are here today for a prehearing conference in Docket TP-250574, which is captioned Washington Utilities & Transportation Commission versus Puget Sound Pilots.

Let's start by taking brief appearances starting with the Pilots.

MS. CARSON: Good morning, Your Honor. Sheree Strong Carson with Perkins Coie, representing the Puget Sound Pilots. Also here is Byron Starkey with Perkins Coie. And, briefly, there's a few members of the Pilots here, including Ivan Carlson, President of Puget Sound Pilots, and Scott Brewen, Executive Director of Puget Sound Pilots.

JUDGE FUKANO: Thank you. And for Commission Staff?

MR. O'BRIEN: Good morning, Your Honor. Colin O'Brien, Assistant Attorney General appearing for Staff. With me is Cassandra Jones, Assistant Attorney General, and then a couple of members of staff, Tiffany Van Meter and Scott Sevall.

JUDGE FUKANO: Thank you. And, Your Honor, Michelle DeLappe for PMSA. And with me attending separately is Mike Jacob, President of PMSA, and Captain Mike Moore, also in attendance.

JUDGE FUKANO: Thank you. This brings us to petitions to intervene. I would just like to confirm, are there any petitions to intervene other than the petitions that have been filed in writing that need to be addressed today?

Hearing nothing, let's turn to PMSA's petition to intervene. I have reviewed the petition filed by PMSA. I would like to confirm with the other parties whether there's any objection to PMSA's petition to intervene, starting with the Pilots.

MS. CARSON: Puget Sound Pilots has no objection to the petition to intervene.

JUDGE FUKANO: Thank you. And Commission Staff?

MR. O'BRIEN: Staff has no objection.

JUDGE FUKANO: Thank you. And based on the motion, the lack of objection, the Commission finds that PMSA has a substantial interest in this proceeding and grants its motion for intervention.

Moving right along, would the parties like to have discovery rules made available as part of this proceeding?

MS. CARSON: Yes. It's our understanding that there would be discovery in this proceeding.

MR. O'BRIEN: It's Staff's understanding as well, Your Honor.

JUDGE FUKANO: During the proceedings at the Commission, parties often issue a first data request asking that any subsequent data requests and responses are shared with all other parties.

It would make it seizer on the parties if I include this requirement in the prehearing conference order. Is there any objection to my including that requirement?

MS. CARSON: No objection.

MR. O'BRIEN: No objection.

JUDGE FUKANO: And PMSA?

MS. DELAPPE: No objection, Your Honor. Thank you.

JUDGE FUKANO: Thank you. I will

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include that requirement and discovery will otherwise be conducted according to the Commission's procedural rules.
I would like to note that while the Commission may request assistance from the Board of Pilotage commissioners, the Commission has not yet determined if it will seek assistance from the Board in this proceeding. The Commission intends to make that determination as part of the prehearing conference order after further consultation with the commissioners.
Have the parties had an opportunity to discuss a procedural schedule for this matter?
MS. CARSON: Yes, Your Honor, we have. We have agreement on most everything in the procedural schedule. I believe the only real disagreement is on the timing and existence of reply briefs, the timing of briefs, and whether or not there's a reply brief.
And we have two different schedules out there reflecting this difference and, you know, we are happy to send those to you if that's helpful.
JUDGE FUKANO: Yes, I think that would be helpful. And it would be helpful for each party to indicate which schedule it prefers, or what its preference would be.
MS. CARSON: Do you want us to address that now?

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JUDGE FUKANO: Certainly. Now seems like a good time.
MS. CARSON: Okay. So Puget Sound Pilots prepared a schedule that does include a reply brief. It's very important for PSP to have the opportunity for a reply brief as it has had in the last two cases before the Commission.
PSP is the party with the burden of proof. And just as, in terms of the evidentiary record, there's an opportunity for rebuttal testimony, we think it's important to have an opportunity to reply to any legal arguments and legal brief that's provided by other parties.
In this case, we are not asking just that Puget Sound Pilots have the opportunity to reply. Obviously, it would be available to all parties. We have heard from the Commission at bench bar conferences that reply briefs are helpful to clarify legal argument and point to the evidentiary record. We think this is really important.
We are not asking for a lengthy -- it could be a very short reply brief, you know, 10, 15 pages or whatever and a short time frame. We just respectfully request that.
And I should say that it's very common for the Commission to include reply briefs in the procedural

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schedule. Recent cases include the Cascadia Water case. There is Puget Sound Energy TER filings, and there are many out there, so we just respectfully request the opportunity for a reply brief in this case.
JUDGE FUKANO: Thank you. And other parties' proposals, or any argument or response?
MR. O'BRIEN: Just briefly, Your Honor. Commission Staff would oppose the presence of reply briefs. We just find that in this instance there's a lot of issues in this case, but at least from -- at least so far it seems to be primarily factual issues and not legal issues. Removing an entire step of what will be primarily attorney work in this process will both be a benefit for the parties as far as scheduling. As you will see, we have a bit more time for the first round of post hearing briefs in the no reply brief schedule, which will really help with the parties' scheduling and some tricky dates around April.
It will also help promote public interest by reducing rate case fees and general stress on the parties' time as well as the Commission's time. There's going to be a lot of very complex interrelated factual issues the Commission is going to have to untangle for this case, assuming we get to the evidentiary hearing, of course.

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Giving the Commission more time to process and write an opinion will be beneficial for the overall process by giving the Commission simply the time to develop its own opinions and develop its own analysis of what the parties are presenting.
I will also argue that the issue of -- the issue of Pilots being able to meet its burden of proof isn't really met -- isn't really supported by the idea of the reply brief simply because the burden of proof will be met in the evidentiary portions of this proceeding, not in the legal arguments that are made in the reply briefs. Staff would oppose the presence of reply briefs on this.
JUDGE FUKANO: Thank you. Any position or response from PMSA?
MS. DELAPPE: Yes, thank you. First, I appreciate that the parties have been working together on an agreed schedule and so we've mostly agreed on everything. I think it is only this reply briefs issue. With respect to that, PMSA fully agrees with Staff's position. I would just add as Your Honor knows, this is already -- we have had several rate cases, and so -- and with -- on this with the same parties and very similar legal issues, and so I think that the commissioners are very aware of the legal arguments, and that it is in the interest of everyone ultimately to get to a more

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streamlined proceeding, which I think is accomplished with skipping the reply briefs in this case. Thank you.

JUDGE FUKANO: Thank you. Given that there are then competing procedural schedules, I would request that the parties email their proposed procedural schedules to me and I will consult further with the commissioners about availability for a hearing date and issue a final procedural schedule as part of the prehearing conference order.

MR. O'BRIEN: And, Your Honor, as a procedural note, I will send the two different schedules to you. I checked with ALJ scheduling. It sounds like there may be a slight conflict on the 25th as far as the commissioners' availability, but as long as we don't need the commissioners present for the proceeding, our proposed dates of March 25th and March 26th should work for the evidentiary hearing.

JUDGE FUKANO: Understood. My understanding currently is that the commissioners intend to adjudicate the proceeding, so I believe they will be participating in the evidentiary hearing, but I will confirm that as part of the prehearing conference order.

MS. CARSON: And, Your Honor, if I might just add, I think we do have some -- at least one alternative time frame for the evidentiary hearing. If

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the March 25th and 26th doesn't work, I believe March 26th and March 27th would work for everyone, if that alleviates the problems with the Commission's calendar.

JUDGE FUKANO: Thank you for raising that up. Please do include that in the email regarding the procedural schedule so I can confirm with the commissioners.

Is there anything further that we should discuss with regard to scheduling?

MS. CARSON: Not to my knowledge.

JUDGE FUKANO: Thank you. Hearing nothing -- oh, Mr. O'Brien?

MR. O'BRIEN: I was just going to say not to my knowledge.

JUDGE FUKANO: Then moving on to electronic filing and service. I would like to remind the parties that documents should be filed online through the electronic filing link on the Commission's website. As the commissioners do intend to participate in this proceeding as I understand, the parties should also anticipate filing paper copies for the Commission in addition to the electronic filing. If the parties intend to submit exhibits, there will be requirements for filing exhibits and an exhibit list in advance of the hearing, which will also be done electronically. I will enter a

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prehearing order with details on this topic.

The Commission's rules also provide for electronic service of documents. The Commission will serve parties electronically, and the parties will serve each other electronically.

If you have any corrections or updates to our main service list in this document, please file a written notice of appearance or email to me at harry.o.fukano@utc.wa.gov.

If any party has not designated a lead representative for service, please do so via an email to me as soon as possible. Again, my email is harry.o.fukano@utc.wa.gov.

Also, if anybody would like to add names and email addresses of other representatives or support staff who should receive electronic courtesy copies of all document pleases filed in this proceeding, please email that to myself as well.

Under WAC 480-07-461(b) the deadline for filing errata sheets to exhibits may be established in a prehearing conference order. Does any party have an objection setting a deadline a week prior to the evidentiary hearing? Ms. Carson?

MS. CARSON: No, Your Honor. We do have that on our procedural schedule. I don't know if

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it's exactly a week, but I have no objection to that.

JUDGE FUKANO: Commission Staff, any objection?

MR. O'BRIEN: No objection, Your Honor.

JUDGE FUKANO: Okay. Any objection from PMSA?

MS. DELAPPE: No, Your Honor. Thank you.

JUDGE FUKANO: Thank you. We will incorporate that in the prehearing conference order.

Are there any other matters that we should address today generally about this proceeding before we adjourn?

MS. DELAPPE: Your Honor, there is one that PMSA would like to raise. There's normally been a wall where the commissioners can confirm with the BPC. And there's an issue here in this rate case which might, we would suggest, require different treatment of who is on the commissioner side of that wall in this rate case, and that is that, Dr. Sheri Tonn, the BPC chair, her comments have been -- from public workshops have been included in PSP's initial filing, so we would like to suggest that it would not be appropriate for her to be on the commissioner's side of the wall.

JUDGE FUKANO: So I understand that

PMSA is essentially objecting to designating Chair Tonn as a consultant for purposes of seeking Commission assistance from the BPC in this proceeding?

MS. DELAPPE: Yes, Your Honor. Thank you.

JUDGE FUKANO: Any response from the Pilots?

MS. CARLSON: Yes, the Pilots disagree with that. Obviously, Dr. Tonn is chair of the Board of Pilotage Commission, and has valuable information that she can provide to the commissioners.

The quote and testimony provided by Puget Sound Pilots is a quote from a public workshop. Just as the commissioners made statements from the public workshop that could be quoted, Chair Tonn also did and we have no objection. We think it would be a disservice to all if she was not available for consultation to the Commission.

JUDGE FUKANO: And does Commission Staff have any response to the objection?

MR. O'BRIEN: If you will give me just a second here, Your Honor. I'm just consulting with my client.

JUDGE FUKANO: Certainly.

MS. DELAPPE: And, Judge Fukano, may I add something I should have probably included originally?

JUDGE FUKANO: Yes, please go ahead.

MS. DELAPPE: I hope it will be helpful for the discussion. It isn't just the fact that comments are included, but the nature of the comments we believe do act as a position that would be relevant to this case, that there is some bias in those comments. Thank you.

JUDGE FUKANO: Thank you. And to confirm, can you identify where this comment is located in the record just so that I know what to review?

MS. DELAPPE: Unless Ms. Carlson can provide that, I can follow up afterwards.

MS. CARSON: I believe it's Ivan Carlson's testimony. I don't have the exact cite. I can try to find it, but we can follow up as well.

JUDGE FUKANO: Certainly. That would be most appreciated.

MS. DELAPPE: Excuse me, Your Honor, I don't have the exact cite either, the same testimony, though, I agree.

JUDGE FUKANO: And, Mr. O'Brien?

MR. O'BRIEN: Staff would support having this person be on the parties' side of the ex parte wall.

JUDGE FUKANO: So is that to say that

Staff would join in PMSA's objection?

MR. O'BRIEN: Yes.

JUDGE FUKANO: Understood. Thank you for the clarification. Very good. Then I will take that under consideration. As I mentioned earlier, the Commission has not determined whether it will need to request assistance from the Board as part of this proceeding, but that determination will be made as part of the prehearing conference order. I will certainly take this objection and issue under advisement and discuss this with the commissioners.

Are there any other matters we should address today?

MS. CARSON: No, Your Honor.

MR. O'BRIEN: Not to my knowledge, Your Honor.

MS. DELAPPE: And not from PMSA either. Thank you.

JUDGE FUKANO: Thank you. Then I will issue an order shortly containing a procedural schedule and other guidelines for the disposition of this case. We are adjourned. Thank you very much.

(Adjourned at 9:51 a.m.)

STATE OF WASHINGTON)
) ss
County of Pierce)

I, Christy Sheppard, CCR, RPR, a certified court reporter in the State of Washington, do hereby certify:

That the foregoing proceedings was taken before me and completed on September 4, 2025, and thereafter was transcribed under my direction; that the transcript is a full, true and complete transcript of the testimony, including all questions, answers, objections, motions and exceptions;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith promptly delivering the same to Stacey Brewster.

IN WITNESS WHEREOF, I have hereunto set my signature on September 19, 2025.

/s/Christy Sheppard, CCR, RPR
Certified Court Reporter No. 1932
(Certification expires 05/06/26.)

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