The Honorable Jessica Kruszewski
Administrative Law Judge

BEFORE THE STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of LAKESIDE TRANSPORTATION LLC, For Authority to Operate as an Auto Transportation Company in Washington, Applicant.	Docket No. 250362 LAKESIDE TRANSPORTATION LLC'S RESPONSE IN OPPOSITION TO PNTS'S MOTION TO STRIKE AND SUPPLEMENT TO MOTION TO STRIKE *On Behalf of Lakeside Transportation LLC*

Applicant Lakeside Transportation, LLC ("Lakeside"), by and through counsel, submits the following Response in Opposition to Protestant/Objector Pacific Northwest Transportation Services, Inc.'s ("PNTS" or "Objector") Motion to Strike and Supplement to its Motion to Strike.

I. Motions to Strike Are Generally Disfavored Because They Can Be Used as a Dilatory Tactic and Prevents Courts from Reaching the Merits of a Case.

"[M]otions to strike are often 'considered purely cosmetic or 'time wasters'," 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1382 (3d ed. June 2024 update). The federal case reporters abound with pronouncements that motions to strike are highly disfavored, *e.g., Petrie v. Elec. Game Card, Inc.,* 761 F.3d 959, 965 (9th Cir. 2014), rarely granted, *e.g.,*

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Stanbury Law Firm v. I.R.S., 221 F.3d 1059, 1063 (8th Cir. 2000) (per curiam), and commonly viewed as "time-wasters," e.g., *Gaines v. AT&T Mobility Servs., LLC*, 424 F. Supp. 3d 1004, 1014 (S.D. Cal. 2019). *Brown v. Las Vegas Metro. Police Dep't*, No. 2:25-cv-00918-NJK1, 2025 U.S. Dist. LEXIS 172247, at *1-2 (D. Nev. Sep. 3, 2025).

The Commission's responsibility is to establish a full and complete evidentiary record, especially in a public-interest adjudication such as this. A neutral and modest scheduling adjustment— as the Commission has already deemed necessary— is the appropriate remedy.

In accordance with the Commission's Order of November 12, the Parties have conferred and substantially agreed to new proposed Evidentiary Hearing dates, December 18-19, and are continuing to communicate with Staff Counsel to accommodate the remaining dates and deadlines in accordance with the Commission's November 12th Order suspending the procedural schedule. deadline to propose jointly a new schedule. **Exhibit 1**, Declaration of Benjamin Phillips, ¶4.

Such an extension fully resolves PNTS's concerns without depriving the Commission of essential evidence.

II. Objector PNTS's Supplement Raises No New Issues and Should Be Disregarded.

Objector PNTS's Supplement merely highlights the Commission's existing docket timestamp for Lakeside's Responsive Testimony. This information was already available to the Commission and fully addressed in the prior filings.

The Supplement does not introduce new arguments, new authority, or any relevant factual development that would support the extraordinary relief the Objector seeks.

III. Any Filing Delay Was Minimal and Caused No Prejudice to the Objector PNTS.

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Even accepting Objector PNTS's characterization of the filing time, any delay was minimal, curable, and cured. Protestant/Objector PNTS has not shown—nor can it show—any prejudice resulting from Lakeside's filing of response testimony.

- PNTS retained adequate time to review the filing.
- No deadlines applicable to PNTS were impacted.
- PNTS's ability to prepare rebuttal or cross-answering testimony was not impaired.

Commission precedent disfavors striking testimony where any timing deviation is minor and harmless, and where the party opposing the filing cannot demonstrate prejudice, as is the case here.

IV. Striking Evidence Is An Extraordinary, Drastic and Disfavored Remedy Which Should Be Used Sparingly.

Striking testimony is an extreme, disfavored remedy infrequently employed in matters related to cases involving highly regulated entities. In two reported appellate cases involving highly regulated entities, trial court denials of motions to strike testimonial declarations were affirmed in their respective appellate divisions in western Washington.

In *Citoli v. City of Seattle*, 115 Wn. App. 459, the Court of Appeals, Division I, affirmed a trial court's denial of a Defendant utility Seattle City Light motion to strike an affiant's testimonial declaration in a dispositive motion proceeding, even despite ruling in favor of the Defendant utility. *Citoli v. City of Seattle*, 115 Wn. App. 459, 475-76, 61 P.3d 1165, 1174 (November 25, 2002, Div. I).

In *SkyCorp, Ltd. v. King County*, 29 Wn.App. 2d 832, the Court of Appeals, Division II, affirmed that a trial court did not abuse its discretion when it denied a party's motion to strike the declaration of a party opponent's manager. *SkyCorp, Ltd. v. King County*, 29 Wn. App. 2d 832, 840, 543 P.3d 223, 229 (February 13, 2024, Div. II). Although the objection was raised for the first time in oral argument at the summary judgment hearing, the trial court promised to accord the movant's arguments to the

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weight of the evidence, declined to strike the at-issue declaration, and cited the declaration testimony in the court's decision denying the declarant the relief sought by the declarant. *SkyCorp, Ltd. v. King County*, 29 Wn. App. 2d 832, 860-861 (February 13, 2024, Div. II).

The Washington Utilities and Transportation Commission, when called upon to evaluate the future, may do so in any rational way that the evidence will support. In other words, the Commission may infer an applicant's future conduct from his or her past conduct, or, alternatively, proceed in any other rational way that the evidence will support. *Pac. N.W. Transp. v. Utils. & Transp.*, 91 Wn. App. 589, 590, 959 P.2d 160, 161 (1998). A reviewing court, that is both the Superior Court and the higher courts on appeal, will give substantial deference to a regulatory agency's judgment about how best to serve the public interest; an agency's decision cannot be set aside absent a clear showing of abuse of discretion. *Office of Attorney Gen., Pub. Counsel Unit v. Wash. Utils. & Transp. Comm'n*, 4 Wn. App. 2d 657, 658, 423 P.3d 861, 864 (2018).

V. PNTS's Motion and Supplement Reflect a Procedural Delay Strategy Rather Than a Merits-Based Objection.

PNTS's reliance on a docket timestamp underscores a procedural strategy rather than engagement with the substantive issues of public need, financial capability, operational readiness, and passenger benefit.

The Commission should view PNTS's Motion to Strike substantial response testimony as a delay tactic, which may be cured by changes to the procedural calendar as set forth in the Commission's November 12th Order, taken with the input of Staff Counsel and continuing compliance and cooperation of the Parties in agreeing to a new schedule.

VI. Conclusion

Based on the foregoing, Lakeside respectfully requests the Commission deny PNTS's Motion to

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Strike and the accompanying Supplement, or in the alternative, grant a neutral extension of time applicable to all parties to file Response testimony, without striking any substantive evidence – testimony or exhibits.

Respectfully submitted this 18th of November, 2025, at Bellevue, Washington.

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