

**Docket No. TP-220513**

**WUTC v. Puget Sound Pilots**

**August 4, 2022**



**206.287.9066 | 800.846.6989**

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

[www.buellrealtime.com](http://www.buellrealtime.com)

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)



BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND ) DOCKET TP-220513  
TRANSPORTATION COMMISSION, )  
)   
Complainant, )  
)   
vs. )  
)   
PUGET SOUND PILOTS, )  
)   
)   
Respondent. )

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VIRTUAL PREHEARING CONFERENCE, VOLUME I  
Pages 1-53  
ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

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August 4, 2022  
9:30 a.m.

Washington Utilities and Transportation Commission  
621 Woodland Square Loop Southeast  
Lacey, Washington 98503

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

Buell Realtime Reporting, LLC  
1325 Fourth Avenue, Suite 1840  
Seattle, Washington 98101  
(206) 287-9066 | Seattle  
(360) 534-9066 | Olympia  
(800) 846-6898 | National

[www.buellrealtime.com](http://www.buellrealtime.com)

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

2 ADMINISTRATIVE LAW JUDGE:

3 MICHAEL HOWARD

4  
5 FOR COMMISSION STAFF:

6 HARRY FUKANO  
7 Office of the Attorney General  
8 PO Box 40128  
9 Olympia, Washington 98504  
10 (360) 995-2818  
11 harry.fukano@utc.wa.gov

12  
13 FOR PUGET SOUND PILOTS:

14 MICHAEL HAGLUND  
15 ERIC BRICKENSTEIN  
16 Haglund Kelley LLP  
17 2177 SW Broadway  
18 Portland, Oregon 97201  
19 (503) 225-0777  
20 mhaglund@hk-law.com  
21 ebrickenstein@hk-law.com

22  
23 FOR PMSA:

24 MICHELLE DELAPPE  
25 Fox Rothschild LLP  
1001 Fourth Avenue, Suite 4400  
Seattle, Washington 98154  
(206) 389-1668  
seasalt@foxrothschild.com

26  
27 FOR TOTE:

28 STEVE BLOCK  
29 Lane Powell PC  
30 1420 Fifth Avenue, Suite 4200  
31 Seattle, Washington 98111  
32 (206) 223-7000  
33 blocks@lanepowell.com

1 LACEY, WASHINGTON; AUGUST 4, 2022

2 9:30 A.M.

3 --o0o--

4 P R O C E E D I N G S

5

6 JUDGE HOWARD: Good morning. Let's be on  
7 the record. We're here today for a prehearing  
8 conference in Docket TP-220513. This case is captioned  
9 Washington Utilities and Transportation Commission  
10 versus Puget Sound Pilots. This is a general rate case  
11 filed by Puget Sound Pilots, or PSP.

12 My name is Michael Howard. I'm an  
13 administrative law judge with the Commission, and I'll  
14 be co-presiding in this matter along with the  
15 Commissioners. The Commissioners will not be joining us  
16 today at this particular conference, though.

17 Let's start by taking appearances starting  
18 with Puget Sound Pilots.

19 MR. HAGLUND: Mike Haglund and Eric  
20 Brickenstein on behalf of Puget Sound Pilots.

21 JUDGE HOWARD: All right. Thank you.

22 Could we have an appearance for Staff?

23 MR. FUKANO: Harry Fukano, Assistant  
24 Attorney General, appearing on behalf of Commission  
25 Staff.

1 JUDGE HOWARD: Thank you.

2 Could we have an appearance for Pacific  
3 Merchant Shipping Association, or PMSA?

4 MS. DELAPPE: Yes, Your Honor. Michelle  
5 DeLappe, appearing for PMSA.

6 JUDGE HOWARD: Thank you.

7 Could we have an appearance for TOTE  
8 Maritime Alaska LLC, or TOTE?

9 MR. BLOCK: Steve Block appearing for TOTE,  
10 Your Honor.

11 JUDGE HOWARD: Thank you.

12 Are there any organizations on the call that  
13 would like to give a verbal notice of appearance at this  
14 time?

15 MR. JENNINGS: This is Jay Jennings with  
16 Northwest Marine Trade Association.

17 JUDGE HOWARD: All right. Thank you. Would  
18 you -- would you mind giving your contact information?  
19 Do you plan on filing a petition to intervene?

20 MR. JENNINGS: We do not at the moment.

21 JUDGE HOWARD: All right. Okay. Are you  
22 here as an observer essentially?

23 MR. JENNINGS: Essentially.

24 JUDGE HOWARD: All right. Thank you. In  
25 that case, more detailed contact information would not

1 be necessary, but thank you.

2 So let's move on to petitions for  
3 intervention. Are there any petitions to intervene  
4 other than the ones that have been filed in writing? We  
5 have one from PMSA and one from TOTE.

6 All right. Hearing none, we received the  
7 two petitions to intervene from PMSA and TOTE. Are  
8 there any objections to either of these petitions?

9 MR. HAGLUND: None from PSP, Your Honor.

10 JUDGE HOWARD: Thank you.

11 MR. FUKANO: None from Staff, Your Honor.

12 JUDGE HOWARD: All right. Thank you.

13 I'm not hearing any further objections. I  
14 do see we might have a couple of observers who may need  
15 to mute their lines. So please check, if you are  
16 observing, that your line is muted.

17 All right. So we have -- next -- I'm sorry.  
18 All right. Hearing no objections to these petitions, I  
19 will grant the two petitions to intervene from PMSA and  
20 TOTE as these organizations have a substantial interest  
21 in the case and their participation is in the public  
22 interest.

23 So moving next to pending motions. So as  
24 parties are aware, we have five pending motions or  
25 petitions in this docket. We have PSP's petition for

1 interim rate relief, we have PSP's motion for leave to  
2 file reply in support of that same petition, we have  
3 PSP's motion for an expedited schedule, we have PMSA's  
4 motion to dismiss, and we have PSP's motion for leave to  
5 supplement the record.

6 I want to ask the parties if they have  
7 objections to the two most recently filed motions. I  
8 emailed the parties yesterday indicating I would be  
9 asking for oral responses to these two motions in the  
10 interest of judicial time.

11 First -- of these two, first, we have PSP's  
12 motion for leave to file reply in support of its  
13 petition for interim rate relief. PSP filed this motion  
14 for leave to file reply on August 2nd, 2022.

15 Are there any objections from any of the  
16 parties to PSP's motion for leave to file reply?

17 MS. DELAPPE: Your Honor, Michelle DeLappe  
18 for PMSA. I would like to lodge an objection. PMSA  
19 would oppose the granting of that leave to file a reply.  
20 As Your Honor knows, all three parties, starting with  
21 PMSA and its petition as well as Staff and -- excuse me,  
22 PSP and its petition, as well as Staff and PMSA in their  
23 opposition, cited Pacific Northwest Bell Telephone with  
24 guidance on when interim rate increases might be  
25 appropriate. And this Commission's Order No. 2 focused

1 on those factors in both of -- in all of these filings.

2 The proposed reply, however, omits any  
3 mention of this foundational case neither -- it neither  
4 presents an argument for why PSP's situation satisfied  
5 the Pacific Northwest Bell factors nor any argument for  
6 not applying those factors to this case. And as such,  
7 PMSA would submit that it does not therefore contribute  
8 to the discussion and that the motion to file the reply  
9 should be denied. Thank you.

10 JUDGE HOWARD: Thank you.

11 Would any other party -- I will turn to PSP  
12 in a moment, but would any other party like to respond  
13 and give its position on this motion?

14 MR. FUKANO: Staff would also object to the  
15 motion for leave to file a reply. Staff believes that  
16 PSP has not necessarily satisfied the standard for good  
17 cause. PSP raises numerous specific citations and  
18 arguments as part of its proposed reply that were not  
19 included in its original petition.

20 The original petition did not contain any  
21 citations specific -- to specific components of PSP's  
22 general rate case and only cited the Commission's final  
23 order in a prior pilotage case once.

24 In reply, PSP provides several citations to  
25 exhibits and develops arguments that could have been

1 made as part of the original petition.

2 Staff maintains that it's procedurally  
3 improper and unfair to allow parties to identify for the  
4 first time in reply this specific evidence and arguments  
5 that it seeks to rely on to justify the requested  
6 inquiries.

7 Staff would also like to comment in part  
8 that as to the substance that -- that Staff did oppose  
9 the inclusion of expenses that were included as part of  
10 the proposed automatic adjuster as part of footnote 3 to  
11 Staff's response.

12 Staff has some further commentary on the  
13 substance of the reply, but we'll reserve that for later  
14 if -- if the Commission desires.

15 JUDGE HOWARD: All right. Thank you.

16 Does -- does TOTE wish to give a position on  
17 this?

18 MR. BLOCK: TOTE takes no position on either  
19 of the motions, Your Honor.

20 JUDGE HOWARD: All right. Thank you.

21 Would PSP like to give a brief response to  
22 those comments?

23 MR. HAGLUND: Yes, Your Honor. Our major  
24 point would be, as laid out in our reply, that PMSA and  
25 Staff made arguments that were not anticipated in the

1 original motion. And the reply is appropriate in order  
2 to respond to the points that they made in their  
3 opposition pleadings. It's standard for there to be  
4 reply in this sort of setting, and we would urge the  
5 Court to allow it, grant it, and give it the weight to  
6 which you consider it due.

7 JUDGE HOWARD: All right. Thank you,  
8 everyone, for your comments. I am going to grant PSP's  
9 motion for leave to file reply and accept the reply as  
10 filed. And I will -- and we will discuss this -- the  
11 petition itself in a few minutes from now. I believe  
12 PSP has shown good cause for filing a reply. The issue  
13 of the merits of the underlying petition, again, we will  
14 talk about it in a few moments.

15 So moving next to PSP's motion for leave to  
16 supplement the record. This was also filed two days  
17 ago, where PSP seeks leave to file the executive summary  
18 of its case. Are there any objections to this motion?  
19 I would turn first to Staff.

20 MR. FUKANO: Staff recommend that the  
21 Commission deny the motion to supplement the record.  
22 While Staff appreciates the attempt to summarize the  
23 extensive amount of material filed by PSP, Staff is  
24 concerned that the executive summary filed goes beyond  
25 merely summarizing the rate case material by identifying

1 witness testimony on particular subjects and instead  
2 appears to be advocating for PSP's position similar to a  
3 legal brief in advance of the briefing schedule that  
4 will be set by the Commission.

5 To the extent that the arguments are already  
6 contained in the witness' testimony, the arguments  
7 appear accumulative and duplicative, and Staff believes  
8 that the filing is procedurally improper and should be  
9 reserved for the briefing stage of this proceeding.

10 JUDGE HOWARD: Thank you.

11 Could I hear from PMSA?

12 MS. DELAPPE: Yes, Your Honor. PMSA also  
13 would oppose the proposed supplement in its current  
14 form. It's similar concerns to those cited by Staff.

15 I would also add that if -- to the extent it  
16 is testimony of counsel that PSP wishes to introduce,  
17 that it should be designated as such. But if it is just  
18 an actual executive summary that PSP wishes to submit,  
19 it would need to be something that would be concise and  
20 highlight the issues in evidence at a very high level  
21 and a non-argumentative way and not such lengths.

22 I would also query to whether any summary is  
23 needed if PSP's case is simple. And if PSP's case is  
24 complex, then that would seem to indicate that an  
25 expedited schedule is not possible.

1           So it definitely seems that either one  
2           situation or the other is present and that we would not  
3           have both the summary needed, plus an expedited case.  
4           Thank you.

5           JUDGE HOWARD: All right. Thank you.

6           Would PSP like to offer a brief response to  
7           those comments? I have -- I -- I noted that TOTE has no  
8           position on either motion.

9           MR. BLOCK: That is correct, Your Honor. No  
10          position.

11          MR. HAGLUND: Yes, Your Honor. We think  
12          it's clearly public interest to allow the executive  
13          summary to be filed.

14          We would state at the outset that we would  
15          have no objection to either Staff or PMSA following a  
16          similar approach. We have -- it's been pointed out by  
17          the intervenors and Staff that PSP filed testimony, a  
18          mound over 500 pages, 22 witnesses, and we have over a  
19          thousand pages of exhibits and some 120-plus exhibits.

20          It's an effort to provide the Court, the  
21          Commissioners, and the opposing parties with a roadmap  
22          to our case. And in particular, I think -- we know --  
23          we know that this case is going to be of interest to the  
24          public. There will be a public hearing component that  
25          hopefully gets set today. And if you are a member of

1 the public or even a party and you want to have a sense  
2 of -- of -- if you wanted to track our case through the  
3 witnesses on an issue-by-issue basis, you're really in  
4 no position to do that without the executive summary.

5 We are not submitting it as evidence. We're  
6 submitting it as a supplement to the record that is  
7 designed to do exactly what the executive summary says,  
8 provide a roadmap to our case in a handy guide. If you  
9 want to look at all the witnesses who speak to the  
10 diversity, equity, and inclusion issue, they are listed  
11 at the end of that brief section with the page ranges by  
12 witness.

13 We think it's a help and we think it's hard  
14 to conceive of a public interest against its allowance.  
15 Thank you.

16 JUDGE HOWARD: All right. Thank you.

17 After considering all of the parties'  
18 comments on this, I am denying the motion for leave to  
19 supplement the record. I did closely review the  
20 proposed executive summary. It seems largely tied -- in  
21 large part tied to the testimony that's already been  
22 filed, but I am concerned it does contain arguments from  
23 counsel which are not sponsored specifically by a  
24 witness and is not merely a concise roadmap of the  
25 topics discussed in the testimony. And it also tends to

1 depart from Commission practice, something along the  
2 lines that's approximately 40 pages filed about one  
3 month after the regulated company's initial filing.

4           So if -- if PSP is interested in doing  
5 something like this in the future, I would encourage PSP  
6 to look at testimony filed by lead witnesses by  
7 utilities before the Commission, and that would be more  
8 consistent with our normal practice here.

9           So I'm going to move on now to discuss each  
10 of the three remaining motions or petitions and provide  
11 a brief verbal ruling on each. And there will be more  
12 detail for my reasoning in the written prehearing  
13 conference order, which will follow our meeting today.

14           First, I'm going to discuss PMSA's motion to  
15 dismiss. This is, of course, a threshold issue. If the  
16 Commission granted this motion, the case could not  
17 proceed.

18           The Commission is denying PMSA's motion to  
19 dismiss. Although it appears that PSP did not follow  
20 the Commission's instructions with regards to hiring a  
21 mutually agreeable third party to facilitate discussions  
22 around the transitioning of its retirement program, the  
23 Commission is not persuaded and it's remedy is to reject  
24 PSP's rate case without prejudice.

25           It is appropriate instead, we believe, to

1 require the parties to engage in a mediated discussion  
2 during the pendency of this rate case. And I will  
3 address this point later in today's conference.

4 Next I'm going to discuss PSP's petition for  
5 interim rate relief. PSP essentially -- and I am -- I  
6 am summarizing here and not saying this exactly --  
7 requesting a 1.4 percent adjustment.

8 We -- we may want to check our -- that we're  
9 muted if you're an observer.

10 PSP essentially requests -- if someone is  
11 calling in as Captain L, you might -- thank you. Thank  
12 you. Not a big deal.

13 PSP essentially requests a 1.4 percent  
14 adjustment to its revenue requirement for the addition  
15 of removal of licensed pilots. The Commission is  
16 denying PSP's petition for interim rate relief.

17 As a general matter, this petition does not  
18 meet the standards discussed by the Commission in  
19 Pacific Northwest Bell Telephone. It does not  
20 demonstrate an actual emergency, gross hardship, or  
21 gross inequity. It does not demonstrate that the  
22 failure to provide interim rate relief would cause clear  
23 jeopardy to PSP or its member pilots.

24 In contrast, past cases where the Commission  
25 has granted such relief, PSP's petition and the

1 accompanying reply, which I have accepted at this  
2 prehearing conference, cites relatively minimal evidence  
3 establishing financial need of hardship -- or hardship,  
4 excuse me.

5 I have considered PSP's reply for the  
6 petition, and it appears that this reply generally fails  
7 to address factors set forth in Pacific Northwest Bell  
8 Telephone.

9 I would also observe briefly that PSP  
10 petition and its motion for expedited schedule does not  
11 provide any specific procedural deadlines or process  
12 that would allow the parties and the Commission to  
13 review its request for interim rate relief. There's no  
14 separate hearing date earlier in the schedule proposed  
15 to review a request for interim rate relief.

16 While I'm not suggesting this is required  
17 for the Commission to -- to move forward and consider  
18 such a request, this is a relevant factor from Pacific  
19 Northwest Bell Telephone that should be addressed in any  
20 request for interim rate relief.

21 Finally, I'm going to discuss PSP's motion  
22 for expedited schedule. This motion is also being  
23 denied. PSP has brought forward a general rate case  
24 with 22 witnesses and approximately 3,000 pages of  
25 testimony, exhibits, and initial filing. This is not a

1 limited issue rate case that would be appropriate for an  
2 expedited schedule before the Commission.

3 I'm also going to observe here that PSP did  
4 not fully comply with the Commission's instructions with  
5 respect to engaging in mutually agreeable third-party to  
6 conduct the workshops around transitioning its  
7 retirement plan. The rate of return workshop led by  
8 Staff did not happen either, even if that was not  
9 necessarily the fault of PSP.

10 Because these issues have not been discussed  
11 and considered by the parties as contemplated by final  
12 Order 09 in Docket TP-190976, this is another factor  
13 weighing against an expedited schedule.

14 Therefore, this case is going to proceed on  
15 a regular 11-month calendar. For today's purposes, I am  
16 calculating a suspension date of May 29th, 2023, which  
17 falls 11 months after the filing of PSP's rate case.

18 The actual statutory suspension date, if you  
19 read the statutes that give the Commission its  
20 jurisdiction, would be later because it would be based  
21 on effective date of the tariffs. But I'm using  
22 May 29th, 2023, as the date for today's purposes.

23 So let's move on to discussing a procedural  
24 schedule for the case with those rulings in mind. Since  
25 we have disposed of pending motions, we should alter the

1 procedural schedule. There are certain standard items  
2 that we would expect to see in such schedule. We will  
3 need to set deadlines for response testimony, rebuttal  
4 testimony, prehearing submissions, and a discovery  
5 deadline. We also need to include at least one  
6 settlement conference.

7 For the evidentiary hearing in this case,  
8 I'm proposing the dates of February 22nd and 23rd, 2023.  
9 That is February 22nd, 23rd, 2023. The hearing could  
10 also be held on March 1st and 2nd, 2023. Because I'm  
11 using May 29th, 2023, as the effective due date for the  
12 final order, briefing in this case would need to be  
13 completed by March 29th. That means that choosing the  
14 later hearing date may limit the parties to one round of  
15 post-hearing briefing. Please keep these points in mind  
16 as we discuss a procedural schedule.

17 As I mentioned earlier, I'm also going to  
18 propose one more item for the schedule in this case for  
19 the issue of transitioning PSP's retirement plan, which  
20 I -- which I have referred to earlier.

21 While PSP states it has the agreement of two  
22 stakeholders for its retirement plan, it does not appear  
23 that we have a comprehensive stakeholder evaluation or  
24 other considerations as contemplated by Final Order 09.

25 I, therefore, plan to require the parties to

1 attend a settlement discussion on the transition of its  
2 retirement plan mediated by a Commission ALJ other than  
3 myself trained in mediation. I would not personally  
4 handle mediation, and this could be included in the  
5 schedule as a second settlement conference. And then  
6 following that mediated settlement discussion, any  
7 settlement or partial settlement could be presented to  
8 the Commission for consideration.

9           Would the parties like to respond to any of  
10 my points I've made about the procedural schedule or  
11 about the mediated discussion on the retirement plan?

12           I'd turn first to PSP.

13           MR. HAGLUND: Your Honor, we would be open  
14 to the February 22, 23 date in order to ensure both  
15 simultaneous opening briefs and reply briefs. We would  
16 point out that there also needs to be a time frame for  
17 public testimony. Did you contemplate that during those  
18 two days or on a separate day?

19           JUDGE HOWARD: Normally we would have the  
20 public comment hearing at a -- at an earlier date than  
21 the evidentiary hearing. That is certainly something  
22 that can be considered. I know it was discussed in  
23 PSP's last rate case before the Commission, but I don't  
24 believe that they actually proceeded with holding one.

25           So I think that is -- a possibility of a

1 public comment hearing is -- is something I haven't  
2 fully decided on, and I would welcome the parties'  
3 thoughts after maybe we go off the record for a bit.  
4 And -- and normally Public Counsel is involved in that.  
5 Public Counsel has not appeared in this case yet.

6 So I would encourage PSP to confer with  
7 Staff and the other parties, and I would be willing to  
8 consider any comments about whether we would have such a  
9 thing.

10 MR. HAGLUND: Okay. We will do so, but I  
11 believe in the order, it -- it stated that it would  
12 happen in this next case. So...

13 JUDGE HOWARD: Okay.

14 MR. HAGLUND: We will confer with the other  
15 parties. But if the -- we're comfortable with 22, 23,  
16 and we understand your -- your rulings. And we would be  
17 open to the convening of the ALJ mediated  
18 pension-related session at any time. Later this -- I  
19 guess we would prefer to see that happen sometime in the  
20 fall or early winter of -- of this year rather than have  
21 it be anywhere close to the hearing date.

22 JUDGE HOWARD: I think that is -- that is a  
23 likely -- that would be a likely time range for that.  
24 Thank you.

25 Would any other party like to raise any

1 concerns or questions about -- about these points or the  
2 mediated discussion?

3 MR. FUKANO: Just a -- oh, please go ahead.

4 MS. DELAPPE: No, no, I wanted you to go  
5 first. Thank you.

6 MR. FUKANO: I just wanted to confirm, Your  
7 Honor, that all the parties would include Staff as well  
8 or if that was your intent. Thank you.

9 JUDGE HOWARD: Yes.

10 MR. FUKANO: Okay. Thank you.

11 MS. DELAPPE: And Michelle DeLappe on behalf  
12 of PMSA. I had a couple of questions.

13 First, we agree with Mr. Haglund that a  
14 public comment hearing would be appropriate. It is  
15 at -- just for your reference, Your Honor, paragraph 391  
16 of Order 9, and so -- so we hope that that will be  
17 included in the scheduling order.

18 Regarding the proposed hearing dates, the  
19 proposed dates are completely acceptable except we do  
20 have a concern about whether two days will be sufficient  
21 given the volume of evidence with about twice the number  
22 of -- actually, exactly twice the number of initial  
23 witnesses as in the last PSP rate filing, initial filing  
24 and about double the amount of volume of evidence, we're  
25 concerned about being able to have sufficient time.

1 However, if there were a way to narrow the evidence, we  
2 would very much welcome that.

3 And I do want to just note that we had some  
4 discovery questions with that -- in regard to that too.  
5 You know, we'd like to have a discovery conference built  
6 into the schedule, ideally with a facilitator, if  
7 possible.

8 JUDGE HOWARD: All right. Thank you. And  
9 then thank you for that citation.

10 The -- the -- for a public comment hearing,  
11 if that is going to be included, I think we could  
12 probably include that as a to be determined date for now  
13 in the schedule, and then the parties can work with the  
14 Commission to set that up based on what's available on  
15 the Commission's calendars. The Commissioners'  
16 calendars.

17 As to whether two days is sufficient, if  
18 that is a point to consider, it might be worthwhile to  
19 reserve time on the 24th in case we need to go over.  
20 I'm -- I'm hopeful that that would not be the case  
21 because our hearings are generally limited to just  
22 cross, but it -- it might be a good idea to do that.

23 I should also mention that because --  
24 because of the -- the number of issues and the amount of  
25 evidence and that this is still only the second rate

1 case for PSP before the Commission, it would be very  
2 helpful for the Commission if we were having the hearing  
3 on February 22nd and following days if rebuttal and  
4 cross-answering testimony was submitted by either  
5 January 9th or January 11th because the Commission does  
6 carefully review and consider all of the testimony once  
7 it's all been submitted before the hearing.

8 So with that, did TOTE wish to make any  
9 comments?

10 MR. BLOCK: No comments or questions, Your  
11 Honor. Thank you.

12 JUDGE HOWARD: All right. Thank you.

13 With that -- sorry.

14 MR. FUKANO: Pardon me, Your Honor. Do you  
15 know if the hearing in this case will be virtual or in  
16 person?

17 JUDGE HOWARD: I do not. I do not. I  
18 believe what I would do for the prehearing conference  
19 order is -- is punch this question for later, and I'm --  
20 I'm hopeful that we could do maybe a hybrid hearing  
21 allowing for virtual attendance of some witnesses. But  
22 that depends on -- on certain IT issues being resolved.  
23 So I would have a hard time saying right now.

24 MR. HAGLUND: Your Honor, could I comment on  
25 the couple of issues you've -- that have just been

1 raised?

2 JUDGE HOWARD: Certainly.

3 MR. HAGLUND: With respect to the 9th or the  
4 11th, it happens that I have family from overseas that  
5 will be visiting for Christmas holidays. And so the  
6 11th would be much preferred over the 9th for  
7 cross-answering testimony.

8 And then with respect to the nature of the  
9 hearing, we have at least one witness who may be aboard  
10 a ship with good technical capability during the time of  
11 the hearing. I'll need to check with Chief Mate Alysia  
12 Johnson. She works 75 days on, 75 days off for Subcom,  
13 a cable ship laying vessel. And there's some potential  
14 that her on-duty time would coincide with February 22,  
15 23, 24. I'll be checking with her, but we would request  
16 virtual opportunity for her if she's in the midst of her  
17 at sea on-duty 75 days.

18 JUDGE HOWARD: Yes, I can tell you that at  
19 this moment, if we do transition from being purely  
20 online for our hearings to having an in-person element,  
21 that the plan is to also allow witnesses to attend  
22 through -- through Zoom or whatever means as assuming --  
23 assuming that that is -- is working and that, you know,  
24 we -- there aren't concerns from the other parties. I  
25 think it would work -- I think it would work just fine,

1 it just requires some IT issues to be resolved.

2 MR. HAGLUND: Okay. Thank you.

3 JUDGE HOWARD: Yeah.

4 MR. FUKANO: One more question from Staff,  
5 Your Honor. Staff, looking at other dockets and  
6 schedules for Commission Staff and counsel, there are a  
7 number of other proceedings that are ongoing around the  
8 holiday period in December and early January. Staff  
9 would request that if it was possible to extend out the  
10 cross-answering deadline about two weeks from your  
11 proposed dates, if that was possible.

12 JUDGE HOWARD: You know, I think -- I think  
13 the parties can discuss that. Staff -- Staff, by all  
14 means, can propose that. It's -- it -- this is -- this  
15 kind of becomes a -- unfortunately becomes something of  
16 a zero-sum game. So I don't -- I don't want to remove  
17 too much time from ALD and policy being able to consider  
18 all of the evidence and -- and brief the Commissioners  
19 appropriately and prepare for the hearing.

20 So I'm going to -- I recognize -- I  
21 recognize that Staff is facing a very large workload in  
22 the fall and winter of this year. So I'll consider  
23 that. It is -- it is also a workload situation for us  
24 too.

25 Unless there are any other concerns or

1 questions, I'm going to suggest that we go off the  
2 record so that the parties can discuss amongst  
3 themselves if they can come to a proposed procedural  
4 schedule. And I will -- I will exit the call, and I  
5 will ask the attorney for Staff to send me a message  
6 when the parties are done conferring.

7 Any questions or concerns before we go off  
8 the record?

9 MS. DELAPPE: Your Honor -- and, Your Honor,  
10 I did just want to note that we'll have questions that  
11 are not about scheduling, but rather about handling of  
12 evidence, but we can hold those until at the end.

13 JUDGE HOWARD: Certainly. I do plan on  
14 discussing discovery issues and a couple of other issues  
15 after this.

16 Mr. Fukano?

17 MR. FUKANO: Oh, pardon, Your Honor. Just  
18 no further issues from Staff.

19 JUDGE HOWARD: All right. All right.  
20 Great. Then we are off the record.

21 (Recess taken from 10:02 a.m.  
22 to 10:47 a.m.)

23 JUDGE HOWARD: All right. Let's be back on  
24 the record. We went -- we had a recess for the parties  
25 to confer on the procedural schedule, and I'm informed

1 that the parties have a partial agreement.

2 Mr. Fukano, would you describe the parties'  
3 agreement to the extent there is one?

4 MR. FUKANO: Yes, Your Honor. The parties  
5 have agreed to an initial settlement conference on  
6 September 23rd; a mediation on October 10th to address  
7 the pension issue identified by the Commission and  
8 raised by PSP. The parties have also agreed to a  
9 close -- a last day to issue discovery date of February  
10 8th; an exhibit filing deadline of February 15; a  
11 hearing to take place on February 22nd, 23rd, and  
12 potentially the 24th; simultaneous initial briefing on  
13 March 17; and simultaneous reply briefing on March 21st.

14 The parties have different proposals as to  
15 the dates for response testimony and cross-testimony.

16 JUDGE HOWARD: Okay. Great. Thank you for  
17 that.

18 What -- what -- since I'm already speaking  
19 with Staff's attorney, what is Staff's position for  
20 those two deadlines?

21 MR. FUKANO: Staff would request that  
22 response testimony be due the week of December 26th to  
23 the 30th, on a date within that range. I believe the  
24 26th is a holiday, so the latter half of the week would  
25 work best for Staff. Staff suggests that this is an

1 appropriate date given the intervening holidays and the  
2 press of other work on Commission dockets, as well as  
3 the amount of material filed in PSP's initial filing,  
4 and that cross-answering testimony would be then due  
5 four weeks following that date.

6 Staff would also note that the discovery  
7 response time or the DR response time would shift from  
8 ten business days to seven at the same date of response  
9 testimony and that the discovery response time would  
10 shift from seven business days to five at filing of  
11 cross-answering testimony.

12 JUDGE HOWARD: All right. Thank you.

13 All right. Could I hear PSP's thought on  
14 the schedule?

15 MR. HAGLUND: Yes, Your Honor. We think  
16 that December -- the week after Christmas is just way  
17 too long a time frame. There were four months -- there  
18 was a four-month response time in the initial rate case,  
19 which included more issues than we've got in this case  
20 given the resolution of some issues in the first ever  
21 rate case that resulted in the December -- or  
22 November 25, 2020 order.

23 And we think that it should be -- four  
24 months would take you from June 29 to October 29. We'd  
25 be open to a date, you know, anywhere in November so

1 that you got a significant period of time between then  
2 and, say, mid January in order to prepare the rebuttal  
3 or cross-answering testimony.

4 The other factor here is that it would be  
5 highly prejudicial to PSE to go with the Staff's  
6 recommended schedule because I personally have -- both  
7 of our daughters live overseas with our six  
8 grandchildren. They're all coming a few days before  
9 Christmas for two weeks, and that would coincide with a  
10 significant chunk of the cross-answering time frame.  
11 And we just think it'd be incredibly unfair to give the  
12 Staff -- to take that after Christmas time frame and  
13 include it within the cross-answering time frame.

14 The -- the four months is a long period of  
15 time. There's three months remaining in that. If you  
16 went to mid or late November, they'd get almost five  
17 months of time. We think that's enough.

18 JUDGE HOWARD: Thank you. I will take  
19 these -- all these points under consideration.

20 Could I hear --

21 MS. DELAPPE: Your Honor, may PMSA say --

22 JUDGE HOWARD: Yes.

23 MS. DELAPPE: -- just weigh in briefly on  
24 the issue?

25 PMSA believes it is -- the number one

1 priority for us for -- is to make sure that Staff has  
2 adequate time given its workload to prepare for the  
3 response testimony. And I would just like to point out  
4 for the Commission that the preliminary schedule  
5 suggested by PSP in its motion to set an expedited  
6 schedule had a shorter time frame, the -- much shorter  
7 even given PSP's counsel's concerns about the holiday  
8 visits from his family for filing rebuttal and  
9 cross-answering testimony.

10 So we believe that what Staff has proposed  
11 is reasonable.

12 JUDGE HOWARD: All right. Thank you.

13 MR. FUKANO: And while Staff does  
14 acknowledge the impact to family matters, Staff also  
15 would like to note that based on the Staff proposed  
16 schedule, that, you know, the filing deadline will also  
17 impact some of Staff's own holiday plans as well.

18 JUDGE HOWARD: All right. Thank you. I  
19 recognize that there isn't necessarily an easy answer to  
20 some of these questions here.

21 Could I hear from TOTE?

22 MR. BLOCK: Well, Judge, because of the  
23 narrow issue of TOTE's intervention here and the fact  
24 that substantial work on that has actually already been  
25 completed, we're -- we don't have any concerns about any

1 of the dates that are proposed by either side. So we  
2 will take no position on this as well.

3 JUDGE HOWARD: Okay. Thank you.

4 Well, I -- I will take the parties'  
5 positions into consideration. I have noted the parties'  
6 agreement to the extent there is one.

7 Is there anything -- I know we are going to  
8 discuss discovery here a moment. Is there anything  
9 about the schedule that we should discuss before we move  
10 on?

11 MR. HAGLUND: Your Honor --

12 MR. FUKANO: There -- go ahead, please.

13 MR. HAGLUND: The one question I had, Your  
14 Honor, is regardless of what date you pick, if there's a  
15 significant period between now and when response  
16 testimony will be filed, and it's quite possible that  
17 there could be some developments that relates to what  
18 PSP has filed that would warrant some supplementing of  
19 testimony from one or more witnesses, you know, when  
20 those developments occur. We know a few likely ones  
21 already.

22 How does Your Honor wish us to -- to do  
23 that? Is it simply by assume that we are aware of the  
24 development of significance that warrants a supplement  
25 to a witness's testimony that you do it as promptly as

1 possible or -- could you please enlighten us as to what  
2 to do in that circumstance?

3 JUDGE HOWARD: Well, for the -- from the  
4 Commission's perspective, pilotage is kind of a unique  
5 industry. We are used to seeing updates to testimony,  
6 particularly in the context of power cost updates for  
7 electric companies, and those would generally be a  
8 mechanical sort of update to the formula in the  
9 testimony updating costs in light of forward prices and  
10 things like that.

11 So and that would frequently be included in  
12 the schedule frequently agreed to by all the parties  
13 that the utility would -- would update its testimony  
14 along those lines and provide a power cost update.

15 In the context of pilotage, I recognize that  
16 there are going to be different issues. Are there -- is  
17 there a topic that PSP would anticipate filing  
18 supplemental testimony on?

19 MR. HAGLUND: Well, I could give you a  
20 couple examples. One is the -- we may -- we include in  
21 our record the information regarding compensation of  
22 other maritime workers like members of the ILWU. We  
23 know that there is a -- there have been negotiations for  
24 renewal of that contract. It expired, I believe, June  
25 30. The press is reporting that a settlement sometime

1 in September, October is most likely. That would be an  
2 example.

3 We know that there is a barely, we believe,  
4 imminent filing of a rate case by another pilot group in  
5 the United States. There may be information in that  
6 that would be of interest to the Commissioners in -- on  
7 the record in this case.

8 We have a -- we did leave a placeholder a  
9 couple of places with a couple of witnesses regarding  
10 how a contract might work out that will be known  
11 sometime this fall.

12 Those are the three examples I would -- that  
13 I'm able to give you at this time.

14 JUDGE HOWARD: Well, given those examples --  
15 and I would like to hear from the other parties in a  
16 moment, but given those examples, I think it may be best  
17 for PSP to move for leave to supplement the record  
18 because those -- my impression is those do seem like  
19 limited issues and -- and a fairly limited amount of  
20 information being added and supplemented in light of new  
21 developments.

22 I'm not necessarily prejudging whether the  
23 motion would be granted, I'm just thinking through this.  
24 And it would not necessarily need to be included in the  
25 schedule as a required supplemental filing date because

1 we don't know when these events are going to happen.

2 Can I hear from Staff?

3 MR. FUKANO: You know, subject to, you know,  
4 seeing the actual motion and material, Staff is  
5 concerned that this would provide Staff even less time  
6 to review material that PSP would then assert is, you  
7 know, material and important to their case.

8 And so I think Staff would have some  
9 concerns about the timing and the scope of those  
10 updates, particularly based on the amount of material  
11 already filed with the Commission. And I believe that  
12 PSP has already characterized their filing as containing  
13 overwhelming evidence. And so I -- I think Staff would  
14 have some concern there.

15 JUDGE HOWARD: Could I hear from PMSA?

16 MS. DELAPPE: Thank you, Your Honor. PMSA  
17 has identical concerns about the volume of the evidence  
18 already filed, about the evidence being -- becoming kind  
19 of a moving target, and about the relevance of the  
20 evidence, at least based on the examples provided.  
21 Though, of course, that could be handled with a motion  
22 and a response to the motion.

23 But just for judicial economy and the burden  
24 on all parties to having to respond to that, we would  
25 prefer to just move forward with the record as it is.

1 Thank you.

2 JUDGE HOWARD: Thank you.

3 Does TOTE have a position?

4 MR. BLOCK: No position, Your Honor.

5 JUDGE HOWARD: All right. Thank you.

6 Well, in this case, I -- I think we should  
7 table this issue for now. If PSP would like to move at  
8 a later date to supplement the record, we will do the  
9 motion at that time, and it will depend on the  
10 circumstances, and I don't -- I don't want to prejudge  
11 that without having that before me.

12 But I've noted the parties' concerns. And I  
13 don't think at this juncture, it would be appropriate to  
14 include a supplemental updated testimony filing date in  
15 the schedule as we would for, say, a power cost update  
16 and utility case because this isn't -- the scope of this  
17 update isn't necessarily clear at this juncture, it's  
18 not necessarily a customary part of the judicial  
19 practice.

20 So I'm going to -- unless there's any  
21 further questions about the schedule, I'm going to move  
22 on to the issue of discovery. And I know PMSA wanted to  
23 raise a couple issues here and I will allow them a  
24 chance to discuss that. I just wanted to touch on a  
25 couple issues before we reach that.

1           In some of the Commission's cases, the  
2 parties find it helpful to identify each data request by  
3 topic. Would it be helpful -- and the data requests  
4 would then be grouped by subject in that cover letter  
5 and the distribution email. The parties could cooperate  
6 to develop a uniformed list of subjects to keep track of  
7 the issues in discovery.

8           Would the parties be interested in such  
9 instructions in this case?

10           MR. FUKANO: Yes, Staff would be agreeable  
11 to that.

12           JUDGE HOWARD: All right. Thank you.  
13           Would PSP find this helpful or -- or not  
14 helpful?

15           MR. HAGLUND: We're -- we're amenable to it,  
16 Your Honor.

17           JUDGE HOWARD: All right. Great.  
18           Would any of the other -- intervenors like  
19 to respond?

20           MS. DELAPPE: I believe this would also be  
21 helpful from PMSA's perspective. Thank you.

22           JUDGE HOWARD: Okay. Great.

23           MR. BLOCK: TOTE would find it helpful.

24           JUDGE HOWARD: All right. Great.

25           I will plan on including instructions along

1 these lines in the prehearing conference order.

2 And Staff in -- in our discussions a few  
3 moments ago referred to shortening the response time for  
4 data requests. I believe it was from ten days to seven  
5 days with filing and response testimony and then from  
6 seven days to five days with filing of rebuttal  
7 cross-answering.

8 Does any party object the including such an  
9 instruction in the prehearing conference order?

10 MR. HAGLUND: No, Your Honor. It's fine  
11 with PSP.

12 JUDGE HOWARD: Any other party wish to  
13 respond?

14 MS. DELAPPE: PMSA does not object. Thank  
15 you.

16 MR. BLOCK: No, objection, Your Honor.

17 JUDGE HOWARD: All right. Thank you.

18 And frequently the Commission includes a  
19 requirement that data requests and responses are shared  
20 with every other party to the case, and this would be a  
21 requirement included in the prehearing conference order.

22 Is there any concern or objection to my  
23 including such an instruction in this case?

24 MR. FUKANO: No objection from Staff.

25 MR. HAGLUND: No, Your Honor. However, I do

1 note in the rules that to the extent there was the need  
2 for a protective order, that could be raised at the  
3 time. And if there was dispute over it, it would come  
4 before you, I assume. But there's no -- we know there  
5 is provisions in the rules where it's appropriate and we  
6 don't know whether we're going to be asked to provide  
7 anything that would warrant a protective order, but I  
8 just wanted to make a note that we would view that as a  
9 situation where counsel would work out between counsel,  
10 and if not, it would be decided by you.

11 JUDGE HOWARD: Certainly. That -- yeah,  
12 discovery disputes would be brought to me as an assigned  
13 ALJ.

14 And by the way, if your phone number ends in  
15 8544, you may want to mute yourself.

16 On the issue of a protective order, that's a  
17 difficult issue in the context pilotage. As I  
18 understand in the last rate case, the assigned ALJ  
19 interpreted the statutes as not allowing us to enter a  
20 protective order in this context.

21 I don't necessarily want -- I don't want to  
22 answer a question unless it's actually posed right now.  
23 But -- but I -- I would -- I would note that that was  
24 the Commission's position in the last rate case.

25 MS. DELAPPE: Your Honor?

1 JUDGE HOWARD: Yes?

2 MS. DELAPPE: Thank you. Well, PMSA  
3 actually had planned to request a standard form of  
4 protective order at this prehearing conference. Under  
5 WAC 480-07-420(1), sub part 1, this is the first time  
6 that I am hearing of there being a potential statutory  
7 conflict with that request, even though I was part of  
8 the whole proceeding in the prior rate case. So I'd be  
9 interested in knowing more if that continues to be the  
10 Commission's concern.

11 But in the last rate case, there -- PSP  
12 refused to proffer certain responsive documents to  
13 several of the discovery requests citing the lack of a  
14 protective order at that time. And so PMSA was hoping  
15 that we could prevent this difficulty this time by just  
16 putting in place a standard form of protective order and  
17 we, of course, favor redaction of all confidential  
18 information so...

19 JUDGE HOWARD: All right. Thank you. I --  
20 I have noted that request and that is something I'll  
21 have to take under advisement and -- and consider and  
22 address in the prehearing conference order.

23 Were there any other issues that PMSA wanted  
24 to raise? You mentioned a discovery conference with a  
25 facilitator?

1 MS. DELAPPE: Yes, thank you. We -- we are  
2 hopeful that -- the goal, from our perspective, would be  
3 to narrow the initial evidence, if possible, based on  
4 the relevancy to the actual issues in dispute in this  
5 case in order to limit the need for discovery and  
6 evidence that may not actually be material to those  
7 issues.

8 So we were hopeful for a discovery  
9 conference under -- with a facilitator under WAC  
10 480-07-415, sub part 4. Thank you.

11 JUDGE HOWARD: Thank you. And I would  
12 imagine that would be sometime in August or September?

13 MS. DELAPPE: As early as possible would be  
14 good. Thank you.

15 JUDGE HOWARD: Are there any objections to  
16 such a conference?

17 MR. HAGLUND: Not from PSP, Your Honor.

18 JUDGE HOWARD: All right. Hearing no  
19 objections, thank you.

20 Would -- did PMSA have any other concerns  
21 about discovery or was that -- was that everything at  
22 this point?

23 MS. DELAPPE: That was everything. Thank  
24 you.

25 JUDGE HOWARD: All right.

1 MS. DELAPPE: On discovery. We have some  
2 concerns about some of the evidence labeling, but I will  
3 address those after.

4 JUDGE HOWARD: All right. Thank you.

5 So the next main issue I wanted to address  
6 today is the Commission's consultation with the Board of  
7 Pilotage Commissioners. As the parties are aware, the  
8 statute allows the Commission to request assistance from  
9 the board. And in PSP's last rate case, the Commission  
10 designated the executive director -- and I may very well  
11 not be saying these names correctly -- Jaimie Bever and  
12 the chair of the board, Sheri Tonn, as consultants. And  
13 we indicated that we expected these two individuals to  
14 avoid ex parte communications regarding the rate case.

15 Do any of the parties object to the  
16 Commission designating the same two individuals as  
17 consultants in this case? Or do any of the parties wish  
18 to raise other concerns regarding the contemplation with  
19 the board?

20 MR. HAGLUND: PSP has no objection and no  
21 concerns.

22 JUDGE HOWARD: All right. Thank you.

23 MR. FUKANO: No objection from Staff.

24 MR. BLOCK: No objection from TOTE.

25 MS. DELAPPE: Same for PMSA.

1 JUDGE HOWARD: All right. Great.

2 The Commission will therefore designate the  
3 board's executive director and chair as consultants.  
4 Both the executive director and chair should refrain  
5 from ex parte discussions about this pending rate case  
6 before the Commission.

7 I want to briefly take a moment to discuss  
8 the parties' responsibilities on this issue. And I very  
9 well recognize that PSP, PMSA, and TOTE may need to  
10 speak with the board's director or chair about issues  
11 subject to the board's regulation and jurisdiction while  
12 this case is pending before the Commission.

13 But the parties should be careful to avoid  
14 discussing the merits of this rate case with the  
15 executive director or the chair, and I would submit that  
16 this likely stands to discussing PSP's revenue  
17 requirement because this is an issue within the  
18 Commission's jurisdiction under the statutory limits.

19 I expect the parties' attorneys to instruct  
20 their client's witnesses and members of their  
21 organizations accordingly.

22 I have a few housekeeping --

23 MS. DELAPPE: Your Honor --

24 JUDGE HOWARD: -- matters, but yes, did you  
25 have a concern?

1 MS. DELAPPE: I just had a question about  
2 what you were just discussing regarding the ex parte  
3 contacts. And was wondering if -- if you could just  
4 clarify who's on which side of the curtain so we can be  
5 sure that PMSA knows who to talk to at the Commission.  
6 Thank you.

7 JUDGE HOWARD: At the Commission?

8 MS. DELAPPE: At UTC.

9 JUDGE HOWARD: At UTC, all right. The --  
10 the -- at the Commission, regulatory staff, the majority  
11 of Commission Staff are in regulatory services and other  
12 sections, and they would be represented by, in this  
13 case, Mr. Fukano. And they would be considered a party  
14 to the case, and they are not on the Commissioners' side  
15 of the ex parte wall. So they don't have special access  
16 to the Commissioners during this case.

17 The people on the same side of the ex parte  
18 wall with the Commission would be myself and a -- really  
19 a handful of policy advisors who work in the section  
20 that we call policy, and they're distinct from  
21 regulatory services. And they advise the Commissioners,  
22 and the -- the two designees that we're talking about at  
23 the board, the executive director and the chair, would  
24 then be included as consultants on the Commissioners'  
25 side of the ex parte wall.

1           And this, of course, it is a difficult issue  
2 to navigate correctly because I recognize the board has  
3 jurisdiction over these substantive issues with  
4 pilotage, and there still needs to be discussions with  
5 these individuals. But I would just -- I wanted to  
6 emphasize my expectation that all the parties are  
7 mindful of that issue and that we're mindful of not  
8 discussing rate case issues and revenue requirement  
9 issues around those two members of the board. And I --  
10 unless -- unless you were to contact a member of -- one  
11 handful of policy advisers and myself and try to ex  
12 parte us, I think -- I think there's no -- it's unlikely  
13 there will be concerns with the Commission.

14           Any other questions or concerns? Did that  
15 answer your question?

16           MS. DELAPPE: Yes, thank you.

17           JUDGE HOWARD: Before I end with just some  
18 standard housekeeping matters, Ms. DeLappe, you've  
19 mentioned that PMSA has some other concerns. What were  
20 those?

21           MS. DELAPPE: Thank you, Your Honor. We  
22 just -- we had two -- I think two evidentiary questions  
23 about items filed by PSP.

24           First, there are a number of items that have  
25 been -- eight -- eight files labeled as work papers.

1 And we have consulted, of course, the definition of work  
2 papers under WAC 480-07-525. At least one of those  
3 files does not contain financial data, which I believe  
4 is part of what is the definition for work papers. And  
5 so we would submit that the -- PSP, dash, WPKAE Final  
6 Puget Sound Pilots Master Data File is not within that  
7 definition, we -- and should be relabeled as an exhibit.

8 With the other seven work papers, we note  
9 that with the way things are currently designated, does  
10 make it more difficult for purposes of directing data  
11 requests to the correct witness as well as navigating  
12 cross-examination for the hearing.

13 And so we would like -- in the last rate  
14 case, PSP submitted all of its work papers as exhibits,  
15 and they were referred to in a specific witness's  
16 testimony. That was Weldon Burton. Here there seems to  
17 be several witnesses for us. They're just by initials  
18 in the file names for five of the work papers. Three of  
19 them have no witness identification. And we prefer that  
20 these be redesignated in the way that they were done in  
21 the prior case, if possible, so -- as well as with  
22 corrected testimony to include the newly designated  
23 exhibits to facilitate handling these in the proceeding.

24 So that's the first request. And I can  
25 pause before I go to the second.

1 JUDGE HOWARD: That's fine. Please  
2 continue.

3 MS. DELAPPE: Okay. And so the second one  
4 is that, your know, I realize that Mr. Haglund has --  
5 PSP's counsel has filed a declaration in support of  
6 PSP's opposition to the PMSA motion to dismiss. And we  
7 wondered if it might be appropriate for that to be  
8 considered supplemental testimony and be relabeled as  
9 such if it's going to be looked at or considered at all  
10 in PSP's full direct case. Thank you.

11 JUDGE HOWARD: All right. Thank you.

12 I -- I will give PSP a chance to respond. I  
13 am going to -- I am going to go ahead and say, though,  
14 with respect to your second question about Haglund's  
15 declaration, that it is -- it is common for attorneys to  
16 submit these declarations in support of motions, and  
17 they would not be considered part of the evidentiary  
18 record when we're preparing the final order normally.  
19 So that would to me not seem to be an issue.

20 Would PSP like to respond to these concerns?

21 MR. HAGLUND: Well, as to the declaration, I  
22 agree completely with what you've just stated. It was  
23 put in to the record specifically with respect to the  
24 motion to dismiss and only with respect to that. So I  
25 see no reason that it should become part of the

1 evidentiary record.

2           As to the re-designation of work papers to  
3 have them designated for a particular witness in all  
4 cases and that corrected testimony be filed that would  
5 add those work papers as specific exhibits, we would not  
6 have any objection to that. I -- I would leave it to  
7 Your Honor if you wish us to do so, we will. And I  
8 guess we'd be prepared to get that done in -- you know,  
9 in the relatively near future, within a couple of weeks.

10           JUDGE HOWARD: All right. Thank you.

11           I'm going to take this issue under  
12 consideration, and I want to look at the -- the  
13 underlying work papers. I think that to some extent,  
14 this difficulty arises just because the Commission uses  
15 work papers and not every -- not every court does such a  
16 thing. We have -- and that's -- that's not in every  
17 case. But I am going to consider this issue and I  
18 appreciate PSP's response on designating by witness.

19           Were there any other concerns before I turn  
20 the some housekeeping matters?

21           MR. FUKANO: Commission Staff does one have  
22 follow-up question regarding the proposed discovery  
23 conference. Would that conference be limited to PSP and  
24 PMSA or would that involve all parties?

25           JUDGE HOWARD: I would anticipate it would

1 be all parties.

2           Hearing no further concerns at this time,  
3 I'm going to touch on a couple of issues.

4           I'm just going to remind the parties about  
5 electronic filing and electronic service. The  
6 Commission requires electronic filing of documents for  
7 formal filings. We are continuing to suspend the  
8 requirements for paper copies, and this will be  
9 memorialized in the prehearing conference order.

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

14           If any party has not yet designated a lead  
15 representative for service, please do so via an email to  
16 me as soon as possible. I believe all the parties and  
17 intervenors have already done so. My email is  
18 michael.howard@utc.wa.gov.

19           Also, if any party would like to add names  
20 and email addresses of other representatives or support  
21 staff who should receive courtesy copies of all  
22 documents filed, please email that to us as well.

23           And finally, for errata sheets, I don't  
24 recall if we addressed this directly earlier. Under our  
25 rules, the deadline for filing errata sheets, exhibits

1 may be established in the prehearing conference order.  
2 Are there any objections to setting this deadline a week  
3 prior to the hearing?

4 MR. FUKANO: No objection.

5 MR. HAGLUND: Did you say one week prior?

6 JUDGE HOWARD: One week prior. It would  
7 coincide with the final prehearing submission.

8 MR. HAGLUND: No objection from PSP.

9 JUDGE HOWARD: All right. Hearing no  
10 objections, I will plan on including such requirement.

11 I wanted to touch on one fairly relatively  
12 small issue about correcting tariff sheets filed in  
13 initial filing. When I was looking at PSP's initial  
14 filing and revised tariff pages themselves, I notice  
15 that the sheets 1 through 7 are -- have updated dates,  
16 but they're not labeled as the, quote, first revised  
17 page, end quote. They're still labeled as original  
18 pages but with new effective dates.

19 Would PSP mind refileing these seven tariff  
20 files with that labeling?

21 MR. HAGLUND: Is that first revised? Is  
22 that what you'll wish it to say?

23 JUDGE HOWARD: Yes, first revised page on  
24 tariff sheets 1 through 7, as I recall. And -- and  
25 submitting that in the next two weeks would be -- let's

1 just say a week. It's a small task.

2 MR. HAGLUND: No problem. We will do so,  
3 Your Honor.

4 JUDGE HOWARD: All right. Great. Thank  
5 you.

6 Is there anything else we should address  
7 today before we adjourn?

8 MR. HAGLUND: Your Honor, one thing I had  
9 neglected to bring up is with respect to the issue  
10 between PSP and TOTE Maritime. It's a pretty narrow  
11 issue. Mr. Block and I have had some discussions about  
12 ways to accelerate it. And looking at your rules,  
13 strikes me if the parties, PSP and TOTE, can hopefully  
14 come to an agreement, that the facts are undisputed and  
15 it's purely a policy, slash, legal question for the  
16 Commission.

17 It appears that the bringing it before the  
18 Commission on a basis of a motion for summary  
19 determination, which is like a motion for summary  
20 judgment in -- in state or federal court, may be an  
21 option. And if that proves to be the case and the  
22 desire was to bring it on, say, sometime this fall after  
23 TOTE does whatever discovery it wishes to do, does Your  
24 Honor have any particular constraints on when that might  
25 be filed and, you know, if we were ready to file it by

1 mid October, would -- would it just be noted up for  
2 decision and argument? And we could -- I'm sure  
3 Mr. Block and I could work out a briefing schedule on  
4 it. And I guess we'd like to know -- get some approval  
5 for that schedule if and when we're ready to present.

6 JUDGE HOWARD: I -- I don't have any  
7 particular constraints around this. I would -- I would  
8 likely suggest that it occur in advance of the hearing,  
9 more than -- more than -- probably more than two months  
10 in advance of the hearing just to allow all of these  
11 considerations to play out.

12 I would be defaulting to the normal  
13 timelines for responses to dispositive motions. And I  
14 believe a reply is not by right, but upon a showing of  
15 good cause, even in that context if I'm recalling  
16 correctly.

17 So I would just default to the normal rules  
18 unless the parties prefer something different.

19 MR. HAGLUND: Thank you.

20 JUDGE HOWARD: But I have no concerns  
21 with -- with -- with the approach you're suggesting at  
22 this point.

23 MR. HAGLUND: Okay. Thank you, Your Honor.

24 JUDGE HOWARD: Any concerns from any other  
25 party?

1 MS. DELAPPE: I have one final item, but  
2 it's not about that.

3 JUDGE HOWARD: All right. Well, please  
4 proceed.

5 MS. DELAPPE: I just wanted to note some of  
6 the language in the pleadings to date has been pretty  
7 aggressive and confrontational. So I just request a  
8 reminder to all to maintain civility in these  
9 proceedings. Thank you.

10 JUDGE HOWARD: Thank you. I think that is  
11 a -- that is a fair point and something that -- that we  
12 should all strive for at all times. I recognize that  
13 there is some contention between the parties  
14 historically. But, you know, I certainly -- I certainly  
15 expect professionalism when the parties are here.

16 All right. Unless there's anything further,  
17 I will issue an order shortly containing the procedural  
18 schedule and other guidelines for the disposition of  
19 this case. And we are adjourned. Thank you.

20 (Adjourned at 11:25 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

  
Tayler Garlinghouse, CCR 3358

