

Docket No. TP-220513 - Vol. II

WUTC v. Puget Sound Pilots

November 1, 2022



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND) DOCKET TP-220513
TRANSPORTATION COMMISSION,)

Complainant,)

vs.)

PUGET SOUND PILOTS,)

Respondent.)

VIRTUAL PREHEARING CONFERENCE, VOLUME II
Pages 53-66
ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

November 1, 2022
11:00 a.m.

Washington Utilities and Transportation Commission
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LACEY, WASHINGTON; NOVEMBER 1, 2022
11:00 A.M.

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P R O C E E D I N G S

JUDGE HOWARD: Let's be on the record. Good morning. We're here today for a second prehearing conference in Docket TP-220513. This case is captioned Washington Utilities and Transportation Commission versus Puget Sound Pilots.

This is a general rate case filed by Puget Sound Pilots, or PSP.

My name is Michael Howard. I'm an administrative law judge with the Commission. The Commissioners will also preside in this case, but they will not be joining us at this particular prehearing conference.

Let's start by taking appearances beginning with PSP.

MR. HAGLUND: Mike Haglund, representing Puget Sound Pilots.

JUDGE HOWARD: Thank you.

Could we have an appearance from Staff?

MR. BEATTIE: Julian Beattie, Attorney General's Office, on behalf of Commission Staff.

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MICHAEL HOWARD

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JUDGE HOWARD: Thank you.

And could we hear from Pacific Merchant Shipping Association, or PMSA?

MS. DELAPPE: Good morning. Michelle DeLappe for PMSA.

JUDGE HOWARD: Thank you.

And could we hear from TOTE?

MR. BLOCK: Good Morning, Judge. Steve Block, Lane Powell, appearing for TOTE. And if I may, let me introduce my colleague, Angela Foster, also with Lane Powell, is working with me on this matter.

JUDGE HOWARD: All right. Thank you.

MS. FOSTER: Morning.

JUDGE HOWARD: Good morning.

So we're here today to discuss the schedule for this case going forward. In Order 04 in this docket, the Commission granted PSP's motion for leave to supplement the record subject to the condition that all remaining deadlines in the case are continued by six weeks. This would also include moving the evidentiary hearing.

For the hearing, I am proposing the new dates of April 5th and April 6th, 2023. This would appear to work for the Commission.

So I could -- we can do this one of two

1 ways. I could either read off a list of proposed dates
2 for the remaining deadlines in the case, including the
3 hearing date, or what I was leaning in favor of doing
4 was simply providing the parties that proposed hearing
5 date and letting the parties go off the record to
6 discuss this and then we would reconvene.

7 Does going off the record and having the
8 parties discuss these deadlines sound agreeable to
9 everyone?

10 MR. HAGLUND: For PSP, yes.

11 MR. BLOCK: Yes, it would.

12 MS. DELAPPE: Yes.

13 JUDGE HOWARD: Okay. Great. Thank you.

14 Are there any concerns at the moment with
15 that April 5th and 6th hearing date? I recognize
16 everyone may need to check calendars and things like
17 that.

18 MR. HAGLUND: At this point, Your Honor, it
19 looks okay for PSP. I know that if we had a witness who
20 had a problem and we needed to have that person appear
21 virtually, that's an option. So I'm -- I believe it is
22 an acceptable time frame for PSP.

23 JUDGE HOWARD: Okay, great. Thank you.

24 MR. BLOCK: It's acceptable to TOTE as well.
25 And we would -- have been discussing, you know, we think

1 I will confirm these dates work for the
2 Commission, but as -- as -- based on my current
3 understanding, this will work -- this will work well for
4 the Commission. So I appreciate the parties' efforts on
5 that discussion.

6 That is all the issues that I convened this
7 prehearing conference for is to discuss those deadlines.
8 Is there anything else we should address today before we
9 go off the record?

10 MS. DELAPPE: Yes, Your Honor. Michelle
11 DeLappe for PMSA. We had a couple of questions that we
12 were hoping could be resolved also since we're all
13 together.

14 The first was that there was a great deal of
15 data and evidence filed that -- as part of the record in
16 the last rate case between the same parties. We wanted
17 to know what the Commission's preference would be for
18 putting any of that -- any specific evidence from that
19 last rate case into the record in this rate case. If
20 that could be done just by references to the previous
21 record or if we need to resubmit those items.

22 JUDGE HOWARD: Well, the Commission's rule
23 about taking notice of -- of facts or other issues is
24 fairly broad. But if there's any disagreement about it,
25 I think it would be -- if there's any potential for

1 it's likely that the narrow issue that TOTE has with PSP
2 can be addressed by motion in advance of the hearing.

3 JUDGE HOWARD: All right. Great.
4 In that case, let's go off the record. We
5 are off the record.

6 (A break was taken from
7 11:04 a.m. to 11:17 a.m.)

8 JUDGE HOWARD: Let's be back on the record.
9 We are returning from our recess for the parties to
10 discuss the schedule for this case. And as I
11 understand, the parties have reached an agreement for
12 the remaining deadlines in the case.

13 Ms. DeLappe, would you mind reading the
14 parties' proposed dates for the remaining deadlines?

15 MS. DELAPPE: Absolutely. Response
16 testimony would be due February 10th; rebuttal and
17 cross-answering testimony due March 10th; deadline to
18 issue discovery requests, data requests is March 22nd;
19 deadline to file cross-examination exhibits, witness
20 lists, errata sheets, and to email the cross-examination
21 time estimates, March 29th; and for the post hearing
22 deadlines, we have briefs on April 28th and reply briefs
23 May 12th; and final order to be issued on July 10th.

24 JUDGE HOWARD: All right. Great. Thank
25 you.

1 disagreement about this, I think it might be safest to
2 have the witness sponsor the exhibit and then we can
3 address it in -- in our kind of normal manner of
4 handling evidence, and that might keep things clear.

5 Would that sound agreeable to you, having
6 witness sponsor this?

7 MS. DELAPPE: We can absolutely do that. We
8 just wanted to know whether that was what the Commission
9 preferred.

10 JUDGE HOWARD: Okay. Great.

11 MS. DELAPPE: And we did have one other
12 question if there's nothing else on that one.

13 Order 3 that Your Honor issued included
14 instructions for PSP to refile three documents that had
15 been incorrectly filed as work papers and that those
16 were to be refiled as exhibits to testimony of PSP
17 witnesses by September 9th.

18 I wrote to Mr. Haglund for a status update
19 on that on October 10th, but we still haven't seen the
20 required filing. And just for your reference, those are
21 paragraph Nos. 46 through 49 of Order 3.

22 Given the failure to timely refile, PMSA
23 would request that the Commission strike those three
24 documents and also request that the Commission strike
25 the testimony that corresponds to them. Thank you.

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1 JUDGE HOWARD: Thank you.
 2 Would PSP like to respond?
 3 MR. HAGLUND: Yes. It was my understanding
 4 that those were -- that -- that we did redesignate
 5 yesterday those as being sponsored by particular
 6 witnesses. I would double check the order, and if
 7 that's not the case, we will get it done in the next
 8 day. But I thought that we addressed that with the
 9 filing yesterday.
 10 JUDGE HOWARD: Just a moment. I'm just
 11 going to glance at the --
 12 MR. HAGLUND: Which paragraph did you refer
 13 to?
 14 JUDGE HOWARD: -- docket. I believe PMSA is
 15 referring to paragraphs 46 through 48 of Order 3 and...
 16 MS. DELAPPE: It's through 49.
 17 JUDGE HOWARD: Okay.
 18 MR. HAGLUND: Yes, I believe we did exactly
 19 what was requested. The automatic adjuster was
 20 redesignated for Captain Carlson, financial data for Ken
 21 Erickson was redesignated with him as the sponsor. So I
 22 believe we have complied.
 23 MS. DELAPPE: So in yesterday's filing, we
 24 received documents, exhibits for -- Exhibit WTB. And
 25 the information was that these were in compliance with

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1 Order 4. I'm wondering if we somehow missed a filing
 2 that was made yesterday.
 3 MR. HAGLUND: Well, and I guess this
 4 reflects a slight discrepancy between Order 3 and Order
 5 4 in that Order 4 specifically referenced those work
 6 paper documents as necessitating a witness sponsor, and
 7 that's what we did.
 8 I thought that also complied with Order 3 in
 9 that we designated who the witness was but did not
 10 refile the document that's already in -- in the record.
 11 But if the Court wishes us to do that, we could do that
 12 today. But we attempted in good faith to comply with
 13 the need for those work papers to be sponsored by a
 14 witness.
 15 JUDGE HOWARD: Would PMSA like to give any
 16 response to that?
 17 MS. DELAPPE: Your Honor, I am -- I do not
 18 see where -- which documents Mr. Haglund is referring to
 19 where things were recharacterized or redesignated.
 20 And I would also note that the instructions
 21 in Order 3 were quite different from the ones in Order
 22 4. They weren't -- I don't believe the Order 4
 23 addressed the work papers, and that the Order 3 said
 24 specifically that things -- the work papers, the three
 25 work papers that were cited would be refiled.

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1 So I -- I don't believe that what
 2 Mr. Haglund is referring to complies with that, but I'm
 3 not fully sure what he is referring to, Your Honor.
 4 JUDGE HOWARD: Yes, I -- I am looking back
 5 at Order 3, and I'm seeing that in paragraph 49, the
 6 Commission decided that these work papers at issue did
 7 not meet the definition of work paper and required
 8 refile of them within 14 days as exhibits to the
 9 testimony of the respective witnesses.
 10 I'm not going to hold up our discussion at
 11 this moment to -- to search through the docket. I'm
 12 going to decline to strike anything at this time. I
 13 would ask that PSP within seven days of our conference
 14 today file a letter to the docket confirming that these
 15 work papers were filed as exhibits and -- and pointing
 16 to where in the docket we can find them. And if
 17 there's -- if there's any remaining issues after that, I
 18 will revisit the issue, if needed.
 19 But for the moment, I'm going to decline to
 20 strike any -- anything or -- or -- and I'm not going to
 21 suggest anyone has failed to comply at this point
 22 without being able to review this further.
 23 MR. HAGLUND: Your Honor, I would just also
 24 mention that the Order 4 asked that we describe the
 25 basis for any changes to testimony and the -- relative

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1 to testimony or exhibits in the accompanying cover
 2 letter, and the specific references to the designation
 3 of those three previously filed work papers as having --
 4 as being sponsored by specific witnesses was covered in
 5 the cover letter.
 6 So exactly what would you like us to do
 7 within the next seven days just so I can be clear?
 8 JUDGE HOWARD: I see. Am I on mute? Okay.
 9 No, I am looking at your -- at PSP's work paper filed on
 10 October 31st. And I am seeing that it is identifying
 11 the sponsoring witnesses for these work papers. These
 12 appear to be the same work papers at issue in Order 3.
 13 Just a moment. So for -- if that's the -- I
 14 feel like some -- some confusion may have arisen. It
 15 does seem that this is more than 14 days after Order 3.
 16 I'm not going to strike anything or -- or take any
 17 particular action at this time, but I am seeing that the
 18 cover letter addresses this issue. And this appears to
 19 address what we -- I'm sorry. I'm going to review --
 20 I'm going to glance back at Order 3.
 21 I see. So we are not -- not -- the cover
 22 letter is not only designating witnesses, but also
 23 indicating which exhibits these work papers can be found
 24 in. So that would comply with Order 3's requirement to
 25 file these as work papers.

1 I would -- if PMSA has any further concerns
2 with this issue, I would encourage PMSA to review this
3 cover letter and to compare the work papers and the
4 exhibits referenced in the cover letter. But I believe
5 that addresses the issue for now.

6 Are there any further questions or issues we
7 should discuss before we go off the record?

8 MR. HAGLUND: Not for PMSA -- or not for
9 PSP, Your Honor.

10 MR. BLOCK: Nothing from TOTE.

11 MR. BEATTIE: Nothing from the Staff.

12 MS. DELAPPE: Nothing else from PMSA. Thank
13 you.

14 JUDGE HOWARD: All right. Thank you all.
15 In that event, we are adjourned.

16 (Adjourned at 11:31 a.m.)
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1 CERTIFICATE
2

3 STATE OF WASHINGTON
4 COUNTY OF THURSTON
5

6 I, Tayler Garlinghouse, a Certified Shorthand
7 Reporter in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and
9 accurate to the best of my knowledge, skill and ability.
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17 *Tayler Garlinghouse*
18 Tayler Garlinghouse, CCR 3358
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23
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25

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