

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 THE WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )

4 Complainant, )

5 vs. )

6 BREMERTON-KITSAP AIRPORTER, )

7 INC., C-903 )

8 Respondent. )

DOCKET NO. TC-001846  
Volume 2  
Pages 15 - 25

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A prehearing conference in the above matter  
was held on August 9, 2001, at 9:35 a.m., at 1300 South  
Evergreen Park Drive Southwest, Olympia, Washington,  
before Administrative Law Judge MARJORIE R. SCHAER.

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The parties were present as follows:

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THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by JONATHAN THOMPSON, Assistant Attorney  
General, 1400 South Evergreen Park Drive Southwest,  
Post Office Box 40128, Olympia, Washington 98504.

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BREMERTON-KITSAP AIRPORTER, INC., by JAMES K.  
SELLS, Attorney at Law, Ryan, Sells & Uptegraft, 9657  
Levin Road Northwest, Suite 240, Silverdale, Washington  
98383; and DAVID W. WILEY, Attorney at Law, Williams,  
Kastner & Gibbs, 601 Union Street, Suite 4100, Seattle,  
Washington 98101.

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Kathryn T. Wilson, CCR  
Court Reporter

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P R O C E E D I N G S

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JUDGE SCHAER: Let's be on the record. We are here this morning for a prehearing conference in Docket No. TC-001846. This is a filing by Bremerton-Kitsap Airporter seeking an increase in tariff rates. We are in the Commission's hearing room 108 at Commission's headquarters in Olympia, Washington. Today is August 9th, 2001. I'm Marjorie Schaer, and I'm the administrative law judge assigned by the Commission to this proceeding.

I would like to start by taking appearances from all of the parties starting with the Company, please. Since you gentlemen weren't with us at the last hearing, please give a complete appearance.

MR. SELLS: James Sells, attorney, appearing on behalf of Bremerton-Kitsap Airporter. My address is 9657 Levin Road, Suite 240, Silverdale, 98383. Telephone is (360) 307-8860. Fax is (360) 307-8865. E-mail is jimsells@rsulaw.com.

MR. WILEY: David W. Wiley with the law firm of Williams, Kastner, and Gibbs, Suite 4100, 601 Union Street, Seattle, Washington, 98101. My direct phone number is (206) 233-2895. Fax number is (206) 628-6611. E-mail, dwiley@wkg.com, and I'm co-counsel for Respondent Bremerton-Kitsap Airporter, Inc.

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1 JUDGE SCHAER: For Commission staff, please?

2 MR. THOMPSON: I'm Jonathan Thompson,  
3 assistant attorney general, representing Commission  
4 staff, and I think I already made my appearance on the  
5 record in the initial prehearing conference.

6 JUDGE SCHAER: Yes, you did. Outside of this  
7 hearing, I would like to have a conversation with the  
8 parties about how you see the case proceeding. Staff,  
9 I'm going to want to hear your reasons for seeking to  
10 proceed in this manner, which is framed as a rate  
11 increase request, and have you explain to me why you  
12 think continuing in this mode is superior to either  
13 conversion of this docket to a complaint case under the  
14 Commission's rules allowing conversion or to dismissing  
15 this case and bringing a separate complaint case.

16 I'm going to want to hear also from the  
17 parties your ideas on how this should proceed, and  
18 specifically, I'm going to want to talk to you about  
19 whether you would object to converting this matter  
20 under the conversion rules into a complaint case.  
21 Also, I'm wondering if you would object to a dismissal  
22 without prejudice to allow Staff to bring a complaint  
23 on the Company's rates are too high.

24 So that's how I see us starting this  
25 morning's hearing. The first prehearing conference

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1 order establishes discovery, filing requirements, and  
2 other administrative matters. The Second Supplemental  
3 Order provides the parties with a protective order.  
4 Only the schedule out of the first prehearing  
5 conference order has been suspended at this time. If  
6 you are going to be going forward either in this  
7 proceeding or in the converted proceeding, we will need  
8 to plan a schedule for going forward as part of what we  
9 accomplish this morning.

10 In the first prehearing conference, we  
11 started a discussion of issues presented, and as I  
12 understand the current issues and controversy, they are  
13 the same ones described by Mr. Thompson in that matter  
14 on Pages 5 and 6. Does everybody have a copy of the  
15 first transcript available, and if not, I have copies I  
16 can share with you.

17 MR. WILEY: I have seen it, and I'm  
18 wondering -- if you can believe the file is already  
19 this big... (Indicating.)

20 JUDGE SCHAER: Why don't I let you approach  
21 and take those. If you would look at Pages 5 and 6,  
22 you will see the issues that were outlined by  
23 Mr. Thompson and then what your clients, appearing at  
24 that point pro se, had to say about them. Starting at  
25 Line 17 is where I'm looking. Has everybody had an

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1 opportunity to look at that portion of the transcript?

2 MR. WILEY: Yes.

3 JUDGE SCHAER: Are those pretty much the same  
4 issues that are still presented at this point,  
5 Mr. Thompson, from your point of view?

6 MR. THOMPSON: Yes, they are.

7 JUDGE SCHAER: Are there other issues that  
8 you see arising that are not described here, Mr. Sells  
9 or Mr. Wiley?

10 MR. WILEY: Looking at Page 5, 6, and 7, I  
11 think the interchange -- I mean, the position of the  
12 Company is very similar about the lack of rate change  
13 in 10 years, etcetera, but at this stage, we have  
14 withdrawn any attempt to increase the rates.

15 MR. THOMPSON: I might just add a  
16 clarification too. I think probably all of the  
17 Company's expenses, not just the executive  
18 compensation, are at issue in our mind, but the  
19 executive officer compensation is the primary issue.

20 JUDGE SCHAER: Before we went on the record  
21 this morning, I indicated to you that I would like to  
22 have a conversation between the Bench and the parties  
23 about how we are going to proceed and what makes sense  
24 and that we could do that either on the record or off  
25 the record. How would the parties like to proceed at

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1 this point?

2 MR. WILEY: Off the record.

3 (Extended discussion off the record.)

4 JUDGE SCHAER: While we were off the record,  
5 there was an extensive discussion between the parties  
6 and between the administrative law judge and the  
7 parties about options for going forward in this  
8 proceeding and pros and cons of those. Agreements, I  
9 believe, have been reached among the parties on how we  
10 should go forward and how certain questions that were  
11 raised as part of that decision are going to be  
12 handled. At this point, Mr. Wiley, I would like you to  
13 report back on those, and then Mr. Thompson, I'm going  
14 to ask you to add anything that you think would make  
15 this record clearer, so let's go ahead, Mr. Wiley.

16 MR. WILEY: I hope I can articulate all the  
17 agreements, but the first element of the agreement that  
18 was reached by the parties is that the respondent will  
19 withdraw its tariff increase filing and that this  
20 proceeding will then be converted pursuant to WAC  
21 480-09-600 into a complaint proceeding by Staff against  
22 the Company; that the prehearing conference notice from  
23 April or March or thereabouts continues to frame the  
24 current issues, at least vis-a-vis the Staff's position  
25 about the present rates of the Company and the issues

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1 surrounding those rates, and that any refund which  
2 might be sought by Staff and which would be imposed by  
3 the Company would relate back to the date of today's  
4 prehearing conference, and we've reserved the right for  
5 both the administrative law judge and the parties to  
6 argue that issue as to its substance in the proceeding,  
7 and that discovery will restart as of today with a  
8 deadline of August 17th by the parties to respond to  
9 the pending discovery, the outstanding discovery  
10 requests.

11 Respondent is aware of requests that are  
12 still outstanding to it. By August 17th, it will  
13 provide what responses it can by that date, provide any  
14 objections which it anticipates making to certain ones  
15 of those discovery requests, and then for those that it  
16 seeks to gain additional time, it will ask for a date  
17 certain for compliance with the discovery rule request  
18 it intends to provide without objection.

19 So I think those are the key elements of the  
20 agreement to date. We are still going to discuss off  
21 record, as I understand, some concurrences on dates for  
22 the schedule from this point on.

23 JUDGE SCHAER: Mr. Thompson, did you want to  
24 add anything to that?

25 MR. THOMPSON: I would just add that the

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1 parties agreed that the conversion order should or may  
2 contain a provision in the ordering clause indicating  
3 that the Commission may seek to exercise its rights  
4 pursuant to RCW 81.20.020 to assess the cost of  
5 investigation against the Company.

6 MR. WILEY: I should add one thing that you  
7 pointed out that I meant to add to the record; that is  
8 that we believe that the conversion of this proceeding  
9 from a rate increase proposal to a complaint by the  
10 Staff against the Company obviates the suspension date  
11 issue, and that once the tariff increase has been  
12 withdrawn, there no longer is an issue as to deadline  
13 for the Commission to issue its order in a complaint  
14 proceeding as opposed to a rate adjustment proceeding.

15 JUDGE SCHAER: I believe that the parties  
16 agreed that today's date is a clear line. The  
17 conversion rule will be effective as of today. Any  
18 refunds that may be sought will relate back to today's  
19 date. I'm going to rule then on the record that this  
20 proceeding for the Commission is converted to a  
21 complaint case by the Commission staff against  
22 Bremerton Kitsap Airporter seeking to have the rates of  
23 that company examined and looking to a rate decrease  
24 possibility.

25 I'm going to rule on the record that the



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1 agreements outlined by Mr. Wiley are going to govern  
2 this case going forward. The first prehearing  
3 conference order establishes how we are going forward  
4 in terms of discovery filing, other procedural matters,  
5 and those will remain in effect. Discovery that had  
6 been suspended will revive as of today, and responses  
7 will be due in the manner described by Mr. Wiley.

8 I've also indicated to the parties that the  
9 agreements being made here are complex enough that I'm  
10 going to want to wait for a transcript before writing  
11 an order coming out of this so they are aware that  
12 there will probably be a two or three week time for the  
13 transcript to come followed by the time to write that  
14 order, and that's why I'm making rulings on the record  
15 today, because I want the parties to begin following  
16 those rulings as of today.

17 My only understanding is that the only issue  
18 we now need to address is the schedule for the  
19 remainder of the proceeding. One of the reasons we  
20 converted this proceeding was so we would not have to  
21 go back and start over but could move forward with the  
22 work that has been done, so I would like to hear from  
23 the parties in a few moments off the record what kind  
24 of schedule they contemplate and see if we can reach an  
25 agreed schedule and then come back on the record.

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1 Before we go off the record, is there anything that  
2 should be reflected on the record regarding our  
3 previous discussions that has not been said at this  
4 point?

5 MR. WILEY: It did occur to me that I think  
6 you need to make clear that the protective order that  
7 was issued that came in the Second Supplemental Order,  
8 I assume that will still be valid.

9 JUDGE SCHAER: Yes, that is correct,  
10 Mr. Wiley. Proceeding orders in this matter are  
11 continuing in effect, including the protective order,  
12 but for the scheduling, which is going to be our next  
13 task. Anything further from any of the parties? Let's  
14 go off the record to discuss the schedule. We are off  
15 the record.

16 (Extended discussion off the record.)

17 JUDGE SCHAER: Let's be back on the record  
18 after a recess in which the parties were able to  
19 discuss the schedule for the remainder of the  
20 proceeding and I believe have come up with some agreed  
21 dates for going forward, and Mr. Thompson, would you  
22 like to report on those, please?

23 MR. THOMPSON: Yes. The agreed schedule is  
24 as follows: Staff will prefile its direct testimony on  
25 October 3rd, 2001. The Company will prefile its

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1 responsive testimony on November 9th, 2001. Staff will  
2 prefile its rebuttal case on November 27. We will have  
3 evidentiary hearings from December 12th through the  
4 14th, and the parties will simultaneously file  
5 post-hearing briefs with findings of fact and  
6 conclusions of law proposed on February the 1st, 2002.

7 JUDGE SCHAER: Okay. That schedule will work  
8 for me, and I've been able to check my calendar. The  
9 hearing rooms appear to be available. So that will be  
10 the schedule for the remainder of this proceeding  
11 unless it's changed in some manner by a request that is  
12 ruled upon by the Bench. Is everybody on board with  
13 doing that; Mr. Wiley?

14 MR. WILEY: Yes, Your Honor.

15 JUDGE SCHAER: Mr. Thompson?

16 MR. THOMPSON: Yes.

17 JUDGE SCHAER: Is there anything further that  
18 needs to come before us this morning? Hearing nothing,  
19 we will stand adjourned until December 12th, 2001. We  
20 are off the record.

21 (Prehearing concluded at 11:20 a.m.)

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