From: Pearson, Rayne (UTC)
To: UTC DL Records Center
Subject: FW: Docket Nos. TC-143691, TC 160516 & TC-161257
Date: Friday, January 13, 2017 12:29:24 PM

Please add this to the appropriate dockets. Thanks!

-----Original Message-----
From: Beattie, Julian (UTC)
Sent: Thursday, January 12, 2017 2:34 PM
To: Brooks Harlow <bharlow@fcclaw.com>; Pearson, Rayne (UTC) <rpearson@utc.wa.gov>
Cc: Kopta, Gregory (UTC) <gkopta@utc.wa.gov>; Elisheva Simon <esimon@fcclaw.com>; Wiley, Dave <dwiley@williamskastner.com>; Gruber, Maggi <MGruber@williamskastner.com>
Subject: RE: Docket Nos. TC-143691, TC 160516 & TC-161257

Judge Pearson,

I am traveling right now and attempting to respond using questionable in-flight wifi. So please forgive the brevity of this response. I was able to check in with Staff before my departure and I can report that we support Speedishuttle's proposal. Staff recently decided to undertake its own investigation into Speedishuttle's allegations in TC-161257. We believe Speedishuttle's proposed testimony deadlines are more workable for this task. Please let me know if you have questions.

Thank you,
Julian

_____

From: Brooks Harlow [bharlow@fcclaw.com]
Sent: Thursday, January 12, 2017 2:13 PM
To: Pearson, Rayne (UTC)
Cc: Beattie, Julian (UTC); Kopta, Gregory (UTC); Elisheva Simon; Wiley, Dave; Gruber, Maggi
Subject: RE: Docket Nos. TC-143691, TC 160516 & TC-161257

Judge Pearson, attached (and pasted below) pursuant to your recent order, are two proposed case schedules from Shuttle Express (SE). Column 3 also shows the proposal that we received from Speedishuttle today, for ease of comparison. We understand that they are not willing to modify that proposal significantly, thus the separate proposals.

The preferred SE Proposal 1 retains the current hearing date of Feb. 28. It is feasible to do so by bifurcating the prefiled testimony on the complaint in TC-161257 from the testimony in the other pending cases. Since the issues are discrete, it should be easy to do and there is very little loss in efficiency as the same witnesses can be used, discovery can be blended, and the hearing can be blended. The advantage would be no risk of undue prejudice to the parties or the public from a 2.5 month delay of the entire case. This issue is before the Commission currently, so we merely note it and will not re-argue it. In the alternative, SE Proposal 2 delays the hearing almost to the full extent allowed by Order 02/05/12, but expands out the entire schedule in a balanced way. The hearing would start the 8th, rather than the 11th, which we understand is a rule workshop date.

We note that Speedishuttle's proposed schedule would add 69 days from the current hearing day to the proposed new first day of hearing. Fully 65 of those 69 days would benefit Speedishuttle, giving it a substantial delay in its pre-filed testimony. Further, it actually would shorten Shuttle Express's time to do rebuttal by 5 days, and shortens the discovery cutoff by 15 days. Indeed, the discovery cutoff would before the newly added Speedishuttle rebuttal testimony date. The current schedule was originally compressed for various reasons which are behind us at this point. There is no reason to maintain such a compressed schedule if the hearing date is continued to mid-May and give nearly all of the extra time to the Respondent.

Shuttle Express submits that if Proposal 1 is not adopted, Proposal 2 is more balanced and fair to all parties, giving

more time for each event. It even gives an extra week (to 1/25/17) for Speedishuttle to file its responsive testimony in TC-143691 and TC-160516, though that testimony should be well along in preparation, because it has already been three weeks after the Shuttle Express testimony was filed and is currently just a week from when it is now due (1/18/17). We feel it is important to finally get a substantive filing from Speedishuttle in this case. There may well be an opportunity for a summary determination that narrows or resolves the issues. But that will be impossible, as a practical matter, if the responsive testimony is delayed till so close to the hearing date, as proposed by Speedishuttle.

Again, in Proposal 2 Shuttle Express proposes to bifurcate the testimony in the new docket, TC-161257, to give Speedishuttle more time to prepare its purported case against Shuttle Express, including discovery. More time is needed for the new case. But delaying all filings in the entire case is less efficient, not more efficient. It also would be prejudicial to Shuttle Express, which still has no clue what factual defenses Speedishuttle has to its case, if any, after nearly 9 months of litigation.

Thank you for considering these scheduling alternatives. We are available and would encourage a scheduling conference if that would be helpful in trying to reconcile the disparate proposals.

EVENT/FILING

Current Deadline

Speedi Proposed Deadline

SE PROPOSAL 1 - SAME HEARING DATE

SE PROPOSAL 2 - NEW HEARING DATE

Shuttle Express Opening Testimony

21-Dec-16

21-Dec-16

21-Dec-16

21-Dec-16

Respondent Testimony and Optional Staff Testimony, TC-14361 and 160516

18-Jan-17

24-Mar-17

18-Jan-17

25-Jan-17

Speedi Opening Testimony re TC-161257 only

N/A

N/A

1-Feb-17

15-Feb-17

Shuttle Express Rebuttal Testimony, TC-143691 and 160516

10-Feb-17

11-Apr-17

10-Feb-17

8-Mar-17

Shuttle Express Response Testimony, TC-161257 only

N/A

N/A

17-Feb-17

15-Mar-17

Speedishuttle Rebuttal Testimony, TC-161257 only

N/A

2-May-17

24-Feb-17

5-Apr-17

Discovery Cutoff

20-Feb-17

27-Apr-17

20-Feb-17

26-Apr-17

Evidentiary Hearing

28-Feb-17

8-May-17

28-Feb-17

8-May-17

Simultaneous Briefs Due

28-Mar-17

12-Jun-17

28-Mar-17

9-Jun-17

DUE Reply Briefs

26-Apr-17

14-Jul-17

26-Apr-17

30-Jun-17

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From: Wiley, Dave [mailto:dwiley@williamskastner.com]
Sent: Thursday, January 12, 2017 4:57 PM
To: Pearson, Rayne (UTC) <rpearson@utc.wa.gov>
Cc: Brooks Harlow <bharlow@fcclaw.com>; Beattie, Julian (UTC) <Jbeattie@utc.wa.gov>; Kopta, Gregory (UTC) (Gkopta@utc.wa.gov) <Gkopta@utc.wa.gov>; Gruber, Maggi <MGruber@williamskastner.com>
Subject: Docket Nos. TC-143691, TC 160516 & TC-161257

Dear Judge Pearson:

Pursuant to Order 12/05/02 and specifically ¶12 of that Order, below please find a proposed resetting of the schedule in this consolidated matter as recommended by Speedishuttle. Obviously, considering the disparate positions of the two parties on this issue, it is difficult to arrive at any schedule that would be acceptable to Shuttle Express. Nevertheless, this is what we are now proposing, having worked this week with Staff to achieve realistic dates and to avoid the need to have duplicating or iterative testimony from Speedishuttle and/or staff to the original Petition/Complaint and Speedishuttle's Complaint, particularly since the affirmative defenses and the gravamen of Speedishuttle's Complaint are now intertwined. I also provided this proposal (with one other modification to be described) to Mr. Harlow by email on January 10.

On January 11, I was informed by Mr. Beattie that a second session in the rulemaking Docket No. TC-161262 is tentatively scheduled for May 11, thus he and I agreed to adjust forward the proposed evidentiary hearing date by a few days in this matter as you now see below. Docket TC-161262 is obviously directly relevant to auto transportation service and we note the deadline for initial written comments on this matter is January 27 with an initial workshop apparently set for March 2, 2017. Moreover, Speedishuttle now anticipates filing a pleading very shortly seeking confirmation/clarification of the rehearing evidentiary topics and anticipates any formal ruling thereon could aid all parties in the remaining phases of the presentations in this matter which the proposed schedule seeks to accommodate. In addition to accommodating various other hearing and/or trial or travel schedules in this proposal, we have also attempted to provide time for written comments and possible attendance at workshops in

Docket TC-161262, factoring in some of these pivotal proposed deadline dates as well as keeping in mind the present briefing schedule in the King County Superior Court Judicial appeal matter. Again, we understand from its interlocutory appeal Shuttle Express is adamantly opposed to any delay in this matter but believe the dates proposed are the most realistic we can target in seeking to avoid duplication of time and even greater costs in this process.

Finally, we sincerely hope that the submission of this proposed schedule will not in any way invite yet another formal or informal pleading cycle as we are simply responding to the requirement of your January 5 Order in acknowledging an inability to arrive at an agreed proposed schedule.

TC-143691, TC-160516, TC-161257

Current Deadline

Proposed Deadline

Respondent Testimony and Optional Staff Testimony

January 18, 2017

March 24, 2017

Shuttle Express Rebuttal Testimony

February 10, 2017

April 11, 2017

Speedishuttle Rebuttal Testimony*

May 2, 2017

Discovery Cutoff

February 20, 2017

April 27, 2017

Evidentiary Hearing
9:00 a.m

February 28, 2017

May 8 & 9, 2017

Simultaneous Briefs Due

March 28, 2017

June 12, 2017

DUE Reply Briefs

April 26, 2017

July 14, 2017

*New