0001

 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

 3 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 4 WASHINGTON UTILITIES AND ) DOCKET TP-190976

 TRANSPORTATION COMMISSION, )

 5 )

 Complainant, )

 6 )

 vs. )

 7 )

 PUGET SOUND PILOTS )

 8 )

 )

 9 Respondent. )

10 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

11 PREHEARING CONFERENCE, VOLUME I

12 Pages 1-27

13 CHAIRMAN DANNER, COMMISSIONER RENDAHL,

 COMMISSIONER BALASBAS, & JUDGE PEARSON

14 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

15

 December 12, 2019

16

 9:30 a.m.

17

18 Washington Utilities and Transportation Commission

 621 Woodland Square Loop Southeast

19 Lacey, Washington 98503

20

 REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

21

 Buell Realtime Reporting, LLC

22 1325 - 4th Avenue, Suite 1840

 Seattle, Washington 98101

23 (206) 287-9066 | Seattle

 (360) 534-9066 | Olympia

24 (800) 846-6989 | National

25 www.buellrealtime.com

0002

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

 2 COMMISSIONERS:

 3 DAVE DANNER, Chair

 ANN E. RENDAHL, Commissioner

 4 JAY BALASBAS, Commissioner

 5

 6 ADMINISTRATIVE LAW JUDGE:

 7 RAYNE PEARSON

 8

 FOR COMMISSION STAFF:

 9

 SALLY BROWN

10 HARRY O. FUKANO

 Assistant Attorneys General

11 PO Box 40128

 Olympia, Washington 98504

12 (360) 664-1193

 (360) 664-1225

13 sally.brown@utc.wa.gov

 harry.fukano@utc.wa.gov

14

15 FOR PUGET SOUND PILOTS:

16 DAVID WILEY

 BLAIR FASSBURG

17 Williams Kastner

 601 Union Street, Suite 4100

18 Seattle, Washington 98101

 (206) 628-6600

19 dwiley@williamskastner.com

 bfassburg@williamskastner.com

20

 FOR PACIFIC MERCHANT

21 SHIPPING ASSOCIATION:

22 MICHELLE DeLAPPE

 Foster Garvey

23 1111 Third Avenue, Suite 3000

 Seattle, Washington 98101

24 (206) 816-1403

 michelle.delappe@foster.com

25

0003

 1 A P P E A R A N C E S (Cont.)

 2 ALSO PRESENT:

 3 JEFFREY GOLTZ

 Cascadia Law Group

 4

 5

 6 \* \* \* \* \* \*

 7

 8

 9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0004

 1 LACEY, WASHINGTON; DECEMBER 12, 2019

 2 9:30 A.M.

 3 --o0o--

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

 5

 6 JUDGE PEARSON: Let's go ahead and be on the

 7 record. Good morning. We're here today for a

 8 prehearing conference in Docket TP-190976, which is

 9 captioned Washington Utilities and Transportation

10 Commission versus Puget Sound Pilots.

11 My name is Rayne Pearson and with me are

12 Chair Danner, Commissioner Rendahl, and Commissioner

13 Balasbas who will be co-presiding with me in this

14 matter.

15 So let's start by taking appearances and

16 addressing the petition for intervention, and let's

17 begin with Puget Sound Pilots.

18 MR. WILEY: Thank you, Your Honor. You can

19 hear me okay?

20 JUDGE PEARSON: Yes.

21 MR. WILEY: David Wiley along with Blair

22 Fassburg for the Pilots. Also in the hearing room is

23 associated counsel, Jeffrey Goltz.

24 JUDGE PEARSON: Okay. Thank you.

25 And for Staff?

0005

 1 MR. FUKANO: Harry Fukano, Assistant

 2 Attorney General, and Sally Brown, Senior Assistant --

 3 or Assistant Attorney General, here on behalf of

 4 Commission Staff.

 5 JUDGE PEARSON: Thank you.

 6 And for Pacific Merchant Shipping

 7 Association?

 8 MS. DeLAPPE: Michelle DeLappe on behalf of

 9 PMSA. Thank you.

10 JUDGE PEARSON: Okay. Thank you.

11 Is there anyone else in the room or on the

12 conference line who wishes to enter an appearance?

13 Okay. Hearing nothing, that brings us to

14 the petition for intervention. Pacific Merchant

15 Shipping Association, which I think I will refer to as

16 PMSA going forward, meets the statutory definition of a

17 person with a substantial interest and is therefore

18 granted intervention in this proceeding on that basis.

19 And I assume, because no one else entered an

20 appearance, that there are no other parties seeking to

21 intervene in this proceeding?

22 Okay. Hearing nothing, I just want to

23 remind the parties that the Commission requires

24 electronic filing of all documents in formal

25 proceedings, and the Commission's rules provide for

0006

 1 electronic service of documents as well. So the

 2 Commission will serve the parties electronically and the

 3 parties will serve each other electronically.

 4 If any party has not yet designated a lead

 5 representative for service, please do so via an email to

 6 me as soon as possible, and my email address is

 7 rayne.pearson@utc.wa.gov. And also, if anyone would

 8 like to add names and email addresses of other

 9 representatives or support staff who should receive

10 electronic courtesy copies of all documents filed in

11 this proceeding, please email me that contact

12 information as well.

13 With respect to data requests, parties

14 usually request of each other at the outset of discovery

15 that any data requests and responses be shared with

16 every other party to a proceeding, and to eliminate this

17 extra step, I intend to include in the prehearing

18 conference order a requirement that the parties share

19 all data request responses with every other party. Is

20 there any objection to including this requirement?

21 MS. BROWN: No.

22 MR. FUKANO: No.

23 JUDGE PEARSON: Okay. Hearing nothing, I

24 will include that in the order. And just to clarify,

25 responses to data requests should be shared only among

0007

 1 the parties and should not be filed with the records

 2 center or sent to the Commissioners or myself.

 3 So that brings us to the procedural

 4 schedule. I understand that there was a proposed

 5 procedural schedule circulated among the parties, but it

 6 sounded like as of late last evening, there was not

 7 complete consensus on that schedule. So do we need to

 8 take a recess to allow the parties time to have a

 9 conversation?

10 MR. WILEY: I think a five-minute recess

11 might be advantageous.

12 JUDGE PEARSON: Okay. So that's fine.

13 I think if you anticipate, it will only be

14 five minutes. Are you all fine with just stepping into

15 the conference room across the hall?

16 Okay. And then, Mr. Fukano, if you just

17 want to grab us out of the room when you're ready, then

18 we'll come back.

19 MR. FUKANO: Certainly.

20 JUDGE PEARSON: Okay. Then we are in

21 recess.

22 (A break was taken from

23 9:34 a.m. to 9:45 a.m.)

24 JUDGE PEARSON: Let's be back on the record.

25 Who would like to give us an update of the

0008

 1 conversations?

 2 MR. WILEY: I will try first, Your Honor.

 3 Unfortunately, we weren't able to work out mutually

 4 convenient or preferred dates. We -- we have talked to

 5 the Staff about their proposal to extend or modify the

 6 schedule. We were okay with that. We're having

 7 difficulty on the PMSA. So unfortunately, I know you

 8 would prefer not to have to be involved probably, we're

 9 going to have to leave it somewhat to your discretion.

10 We have -- I know, Your Honor, that we've

11 tried to find out the Commissioners' schedules, which,

12 after all, are the most determinative points, and I -- I

13 gathered that June was tough, May was better for the

14 hearing, but we -- I think Ms. DeLappe would like it to

15 be in July. So we've got some difficulties

16 scheduling-wise.

17 JUDGE PEARSON: Go ahead, Ms. DeLappe.

18 MS. DeLAPPE: Thank you. We've been -- as

19 you know for PMSA, it's our first time in the UTC

20 process. We're very happy to be in this process. We've

21 been looking at other general rate proceeding schedules

22 to try to gauge reasonableness, especially because we

23 believe that there -- it's important to have an

24 opportunity for robust discovery and preparation for a

25 very different process that we're embarking on.

0009

 1 So for us, this -- the front-loading of the

 2 proposed schedule was problematic for that opportunity.

 3 We're looking at an evidentiary hearing in early July

 4 and are hopeful that the Commissioners and that Your

 5 Honor would be available for something in early July.

 6 JUDGE PEARSON: Okay. And then what are

 7 your concerns with the remainder of the procedural

 8 schedule or are you fine with the timing in between the

 9 other filing deadlines and are you proposing that they

10 just be adjusted forward?

11 MS. DeLAPPE: We would be looking at I think

12 mid April for the inter- -- Staff and intervenor

13 responsive testimony and exhibits to provide sufficient

14 time for all the working through the data requests in

15 particular. We'd be looking at the rebuttal testimony

16 deadline being about 22 days before the hearing, the

17 discovery cutoff 15 days before the hearing, and then

18 just two rounds of simultaneous briefing, initial briefs

19 and reply -- reply briefs so we could provide about a

20 hundred days from the evidentiary hearing to the

21 suspension date.

22 JUDGE PEARSON: Okay. Let's hear from Staff

23 about their ideas on the proposed schedule.

24 MR. FUKANO: Staff was generally agreeable

25 to the proposed schedule circulated by the Pilots with

0010

 1 two significant changes. We had al- -- we had asked

 2 that the responsive testimony deadline set currently on

 3 February 18th be adjusted to February 21st to the end of

 4 that week and that the evidentiary hearing date be moved

 5 from May 11th to May 27th to accommodate witness

 6 unavailability.

 7 JUDGE PEARSON: Okay. And does Staff have

 8 any objection to PMSA's proposal?

 9 MR. FUKANO: Subject to check with the

10 remainder of Staff witnesses, we don't have any

11 objection at this time.

12 JUDGE PEARSON: Okay. And so, Mr. Wiley,

13 what are your concerns about moving the hearing a little

14 bit farther out?

15 MR. WILEY: Thank you, Your Honor. We -- we

16 also are new to this process in terms of -- of the rate

17 setting as you know for -- for PSP, so we both share

18 that. We also have -- have looked at comparative

19 schedules both with energy cases that you're very

20 familiar with and with transportation cases where there

21 is a shorter suspension period. And we've tried to

22 build in sort of a compromise approach on -- on that.

23 I don't -- I don't know anything about the

24 Commissioners' schedules in July. Obviously July --

25 before July 4th is prob- -- the first part of July is

0011

 1 typically problematic for vacation schedules, that would

 2 include yours truly too. But I don't think that -- we

 3 filed on November 20th, and I didn't think that -- that

 4 what we were proposing was compressing the -- the

 5 intervenor or Staff testimony period. We obviously

 6 don't want to -- to, you know, make them uncomfortable,

 7 but we also want to give you adequate time, and because

 8 this is the first time we have been in this process, we

 9 also did include -- we didn't do simultaneous briefs, we

10 did an opening response and reply to mirror the -- the

11 way evidence is presented in the hearing. So we did try

12 to accommodate that.

13 One other thing that we haven't provided for

14 that we -- we are not opposed to is a public hearing

15 comment period if the Commissioners would like that. So

16 we are certainly flexible in terms of adding some phases

17 in. We thought that the -- the direct response and

18 reply was really a logical interval according to the

19 Commissioners' schedule availability from what we were

20 aware of.

21 JUDGE PEARSON: So I do have another

22 question. Initially in my conversations with

23 Mr. Fassburg, you indicated that the hearing, that we

24 may need to reserve four or five days for a hearing, but

25 I see that the proposed procedural schedule submitted

0012

 1 just shows one day.

 2 MR. WILEY: Thank you. Ms. DeLappe asked

 3 about that too. That was just the start date that I

 4 intended to communicate. I wasn't clear and I

 5 apologize. I -- I think with 11 witnesses for the

 6 petitioner, we're going to need more than two days, but

 7 that is just my projection. I don't know what you feel

 8 or what the Commissioners feel.

 9 JUDGE PEARSON: Okay. So I see a couple of

10 the issues right now.

11 Ms. DeLappe, your proposed schedule of

12 filing rebuttal testimony 22 days before hearing gives,

13 you know, on our end 16 days less than what is in the

14 schedule proposed by the Pilots, which would give our

15 staff and our policy advisers 38 days prior to the

16 hearing to review all of that rebuttal testimony. But I

17 do agree that rather than the three rounds of briefing,

18 we will limit it to two rounds of simultaneous briefing

19 following the hearing.

20 We're going to confer for just one moment.

21 We'll be off the record.

22 (Pause in the proceedings.)

23 JUDGE PEARSON: Back on the record.

24 MS. BROWN: I just would like to make it

25 clear that lead Staff analyst will be out of the country

0013

 1 overseas and unavailable from April 23rd through May 20.

 2 So I would appreciate your factoring that into any

 3 scheduling that you consider. Thank you.

 4 JUDGE PEARSON: Okay. So in that respect,

 5 the week of May 11th will not work for Staff?

 6 MS. BROWN: Correct.

 7 JUDGE PEARSON: Okay. Thank you for

 8 clarifying that.

 9 We'll be off the record briefly.

10 (Pause in the proceedings.)

11 JUDGE PEARSON: We're back on the record.

12 So we will take all of the parties' requests under

13 advisement and come up with a procedural schedule that

14 will be memorialized in the prehearing conference order,

15 bearing in mind that the effective date will be what

16 ultimately controls the timing of the proceeding.

17 Okay. So moving on to other matters. Under

18 WAC 480-07-461(b), the deadline for filing errata sheets

19 to exhibits may be established in the prehearing

20 conference order. Does anyone have an objection to

21 setting a deadline a week prior to the evidentiary

22 hearing for the filing of errata sheets?

23 MR. FUKANO: No objection from Staff.

24 MR. WILEY: No objection from the

25 petitioner.

0014

 1 MS. DeLAPPE: And no objection from PMSA.

 2 JUDGE PEARSON: Okay, great. Then I will

 3 incorporate that date into the prehearing conference

 4 order.

 5 Is there anything else that we need to

 6 address today?

 7 MR. FUKANO: Would the Commission also be

 8 issuing protective orders in this case?

 9 JUDGE PEARSON: So the Commission is not

10 statutorily authorized to enter a protective order in

11 this docket, so parties may not make confidential

12 filings.

13 MR. FUKANO: Would the Commission not have

14 authority under its WACs to issue a protective order for

15 the adjudication?

16 JUDGE PEARSON: Correct.

17 MS. BROWN: But, you know, we still would

18 defer to either the Pilots or the shippers on that

19 point, but...

20 JUDGE PEARSON: Okay. Yeah, under our view,

21 we don't have statutory authority to enter a protective

22 issue in this docket.

23 MR. FUKANO: Understood.

24 MR. WILEY: That's a hill I've died on

25 previously in [inaudible], Your Honor, so I understand

0015

 1 that.

 2 MS. BROWN: You're still with us, Mr. Wiley.

 3 MR. WILEY: You had to notice that.

 4 There is one other issue that we have raised

 5 at least earlier in the rulemaking. I would like my

 6 colleague to more specifically address it since he has

 7 done the review of the issue, and that's Mr. Goltz.

 8 The -- as you know, under the statute the Board of

 9 Pilotage Commissioners is an -- is a potential advisor

10 to you should you seek their advice during this

11 proceeding. There are some practical issues we wanted

12 to ask about so that we're clear hopefully from the

13 start before discovery begins, et cetera, and we clear

14 that up that I would ask Mr. Goltz to address.

15 MR. GOLTZ: Thank you. Good morning.

16 Jeffrey Goltz, Cascadia Law Group, assisting the Puget

17 Sound Pilots on some issues, this being one of them.

18 So this was an issue of somewhat unique

19 provision in the statute in RCW 81.116.020 that

20 authorizes the Commission, quote, in exercising duties

21 under the section, the Commission may request assistance

22 from the Board, being Board of Pilotage Commissioners.

23 And I know that some members of the Commission, if not

24 all members of the Commission, are familiar with the

25 genesis of that -- of that provision.

0016

 1 It does not modify in any way the ex parte

 2 law under the Administrative Procedure Act RCW

 3 34.05.455. So it seems to us that those two provisions,

 4 the ex parte provision and this special provision of the

 5 Pilotage statute, need to be -- need to be read -- read

 6 together.

 7 And the reason we're raising this is several

 8 interests that I think is shared by everybody. One is a

 9 fair and transparent proceeding, that no one stubs their

10 toes on any procedural issues, which would jeopardize

11 the proceeding. And we want to get this right. We want

12 to make sure there is a full record, that everyone has

13 access to appropriate information.

14 So it seems to me that there's kind of three

15 ways, three general ways that this can be accomplished,

16 all of them requiring, as the statute says, a request

17 from the Commission. Not something the Commission has

18 to do, but it's authorized to do that. So the question

19 is, to what extent should representatives, staff, or

20 members of the Board of Pilotage Commissioners be on the

21 Commissioners' side of the ex parte wall. And there is

22 three general options. One is to have nobody on the ex

23 parte on the Commissioners' side, one is to have

24 everybody on the Commissioners' side, and the other one

25 is to kind of have some on and some -- some on your side

0017

 1 and some not on your side.

 2 So taking those in order, our preference

 3 would be to have nobody on the Commissioners' side.

 4 Basically, make -- that seems to be the most

 5 transparent. If the Commission wishes to request

 6 information, it can do so with a request that would be

 7 public akin to, if not denominated a bench request,

 8 everybody would have access to that same information,

 9 everybody would be able to respond to that information.

10 It will be transparent, it will be open, and allow a

11 maximum gathering of information.

12 Second option, another option is to have

13 everybody on the BPC on your side of the ex parte wall.

14 Besides needing a larger conference room, it would pose

15 some problems. One problem is some members of the BPC

16 are actually interested persons, and so that could pose

17 a limitation. The ex parte wall says in 34.05.455

18 allows you to communicate with certain employees of the

19 Commission and also other consultants. But the

20 limitation is, the consultants can't be interested in

21 the proceeding. So by law, you couldn't be consulting

22 with people on your side of the ex parte wall that have

23 an interest in the proceeding. That would eliminate at

24 least some members of the BPC.

25 There's another reason why putting everyone

0018

 1 else except perhaps those few members on your side of

 2 the ex parte wall is -- is problematic. In the course

 3 of preparing the testimony, Pilots did obtain

 4 information from the Board of Pilotage Commissioners,

 5 appropriately so. I suspect that the PMSA will want to

 6 respond to that and get some information from the Board

 7 of Pilotage Commissioners. That makes sense.

 8 Maybe this Commission Staff in responding

 9 will want to get information from the Board of Pilotage

10 Commissioners. If you put everybody on the

11 Commissioners' side of the ex parte wall, who do they

12 talk to? How do they get that information? That

13 request for information by itself could be an ex parte

14 contact that would be prohibited.

15 So the third option is to have some people

16 there and some people not. Designate one or more people

17 to give you -- to provide that advice, you could request

18 that. That could be done. But then again, you have to

19 make -- our suggestion is to make that very, very clear

20 in the request and make it very, very clear who -- who

21 will have that access and make it clear that other

22 members and staff of the Board of Pilotage Commissioners

23 will not inadvertently or advertently make ex parte

24 contacts to that BPC representative that, in fact, would

25 have to be an ex parte wall constructed within the Board

0019

 1 of Pilotage Commissioners.

 2 I understand that Commissioner Balasbas at a

 3 BPC meeting gave a presentation on ex parte matters.

 4 That's really important and it's appreciated, but it is

 5 a little bit tricky. And the Commission -- this

 6 Commission has a long history of developing an ex parte

 7 wall. Everyone understands it, and so the Commission

 8 Staff won't be talking with the Commissioners about this

 9 case and they -- and won't be sending emails to the

10 Commissioners about this case except on procedural

11 matters as is authorized.

12 So our -- our suggestion is that this --

13 when, and if, a request is made for assistance, it be

14 very clear how that relates to the ex parte rule --

15 pardon me, statute and practice, and whether it be --

16 our preference would be to have nobody on the ex

17 parte -- on your side of the ex parte wall. That would

18 be more transparent, it would allow gathering of

19 information of all the parties to approach the BPC and

20 get information, discuss things with them as well, and

21 in the preparation of their -- of their cases. And as

22 well, it would allow the Commission to obtain the

23 information they wanted in the preparation of its order.

24 Barring that, I just suggest that it be

25 very, very clear and transparent as to how this

0020

 1 operation will -- this request will be made and how it

 2 will be implemented. So thank you.

 3 JUDGE PEARSON: Thank you.

 4 I would like to allow the other parties an

 5 opportunity to respond.

 6 Ms. DeLappe?

 7 MS. DeLAPPE: I -- I don't have any

 8 objection to the proposal that only select board members

 9 be on the Commissioners' side of the ex parte wall.

10 JUDGE PEARSON: Okay.

11 MS. DeLAPPE: Yeah, as long as it's clear

12 how PMSA or any other party can make requests to the

13 BPC, that would be helpful. Thank you.

14 JUDGE PEARSON: Thank you.

15 And from Staff?

16 MR. FUKANO: Commission Staff believes that

17 the combination of the first and third options, both

18 through the use of bench requests and through the use of

19 designating specific individuals that the Commission

20 will communicate with on the Board, would be appropriate

21 in this context. It would give the Commission some

22 flexibility in how it wishes to request information from

23 the Board, and we think both of those options would

24 comply with the APA ex parte concerns.

25 JUDGE PEARSON: Okay. So can you just

0021

 1 clarify, are you saying that we would both designate

 2 individuals and then only communicate with those

 3 individuals through bench requests or are you saying

 4 it's one or the other?

 5 MR. FUKANO: It could be one, the other, or

 6 both. I believe that a bench request being in the open

 7 and available to all parties would not violate any ex

 8 parte issues, but in the event the Commission would like

 9 to communicate specifically with the Board without the

10 use of a bench request, it could outline a procedure by

11 which -- similar to what the Pilots has suggested, which

12 designates certain individuals as Commission contacts to

13 avoid any inadvertent or advertent ex parte

14 communication from other parties to that -- those

15 designated individuals.

16 JUDGE PEARSON: Okay.

17 MR. GOLTZ: Can I just reply to that? I

18 think it's important that -- that -- as I -- and I'm not

19 familiar with the Board of Pilotage Commissioners'

20 structure as much as almost everyone else at the table,

21 but -- but the -- I understand it's fairly simple to --

22 confine a number of staff members and -- and so I think

23 that the concern is that if you -- you want to leave

24 sort of some staff members behind if you do decide to --

25 to invite somebody on your side of the ex parte wall,

0022

 1 you want to leave some staff members back there to deal

 2 with -- with the requests that may be coming in on -- on

 3 this matter.

 4 And then you also have to make sure that

 5 whatever -- I think the term is -- centric term would be

 6 consultants under the ex parte law that whoever you

 7 would request to serve as a, quote, consultant, unquote,

 8 would be a person as statutorily required to -- who does

 9 not have an interest in the outcome of the proceeding.

10 MR. FASSBURG: If I may, I would just like

11 to add one piece of information that you may be aware of

12 already, but I think helps clarify the concern about

13 option No. 3. In July, the Board of Pilotage

14 Commissioners took a vote to designate on its own who

15 would be those advisors, perhaps prematurely, and they

16 designated their entire staff including the chair. And

17 that would create some of these logistical issues that

18 Mr. Goltz was referring to.

19 JUDGE PEARSON: Okay. Thank you.

20 So I think we'll take a brief recess now.

21 So we will be off the record and we will --

22 Oh, go ahead.

23 MS. DeLAPPE: Is this the final chance to

24 get to ask questions? I have a couple of other things.

25 JUDGE PEARSON: Oh, go ahead.

0023

 1 MS. DeLAPPE: Thank you. I was just waiting

 2 until it came around to my side. I did want to just say

 3 that one of our experts will be out of the country July

 4 6th through 15th, so I hope that that can be

 5 accommodated in the scheduling. And then I wanted to

 6 confirm that the rules -- discovery rules 400 through

 7 425 will be instituted for this -- these proceedings.

 8 JUDGE PEARSON: Yes, those will be made

 9 available in the suspension order that was issued.

10 MS. DeLAPPE: Okay. Great. Thank you.

11 JUDGE PEARSON: Okay. And you said July 6th

12 through...

13 MS. DeLAPPE: 15th.

14 JUDGE PEARSON: Okay.

15 MS. DeLAPPE: Thank you.

16 JUDGE PEARSON: Okay. Then we will be in

17 recess.

18 MR. FUKANO: And sorry, one further

19 clarification from Staff, that Staff would prefer the

20 third option where certain individuals on the Board were

21 designated, but believe that bench requests or the third

22 option would be appropriate.

23 JUDGE PEARSON: Okay.

24 MS. BROWN: I just want to add one thing

25 while we're all going around the room talking and that

0024

 1 is that unlike -- I just want to -- you know, unlike a

 2 lot of public servants we're hearing about in the news,

 3 we have the utmost confidence in your integrity and your

 4 ability to perform the functions of your position in a

 5 manner consistent with the law. And I just wanted to

 6 say that.

 7 I mean, so to a certain extent -- I mean, to

 8 a certain extent, there is a certain element of trust

 9 too that you will take your position seriously and you

10 will render a decision based on record evidence only.

11 And I just felt compelled to share that this morning.

12 Thank you.

13 JUDGE PEARSON: Thank you.

14 MR. WILEY: And I would actually echo

15 Ms. Brown's statement too. I've never had a concern in

16 41 years on that issue. It's the statute, the new

17 statute that's throwing me for a loop.

18 JUDGE PEARSON: Okay. Can we take a recess

19 now? Okay. We are --

20 MS. BROWN: Wait.

21 JUDGE PEARSON: -- we will be off the

22 record.

23 (A break was taken from

24 10:08 a.m. to 10:22 a.m.)

25 JUDGE PEARSON: Okay. So let's be back on

0025

 1 the record. We took a moment to discuss and we have

 2 reached a decision. As Ms. Brown and Mr. Wiley stated,

 3 under the APA, we understand that we may only make a

 4 decision based on the evidence before us in the record.

 5 We will designate the executive director and the chair

 6 of the Board as the individuals from whom we will seek

 7 assistance if necessary. And we will lay out the

 8 process and expectations around ex parte communications

 9 in the prehearing conference order, and we have the

10 utmost trust and confidence that the Board will

11 understand, respect, and adhere to the ex parte rules.

12 We intend to communicate directly with the designated

13 board members for consultation purposes only, and we

14 will memorialize this decision in the prehearing

15 conference recorder.

16 So is there anything else that we need to

17 address while we're all here today?

18 MR. FUKANO: None from Staff.

19 MR. WILEY: Your Honor, just to clarify, the

20 schedule will be addressed in the prehearing conference

21 order --

22 JUDGE PEARSON: It certainly will.

23 MR. WILEY: -- when you have more time to

24 talk. Okay.

25 JUDGE PEARSON: Yes.

0026

 1 MR. WILEY: Fair enough.

 2 MS. DeLAPPE: None from PMSA. Thank you.

 3 JUDGE PEARSON: Okay. So thank you all very

 4 much for being here today, and we are adjourned.

 5 (Adjourned at 10:23 a.m.)

 6

 7

 8

 9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0027

 1

 2 C E R T I F I C A T E

 3

 4 STATE OF WASHINGTON

 5 COUNTY OF THURSTON

 6

 7 I, Tayler Garlinghouse, a Certified Shorthand

 8 Reporter in and for the State of Washington, do hereby

 9 certify that the foregoing transcript is true and

10 accurate to the best of my knowledge, skill and ability.

11

12

13 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

14 Tayler Garlinghouse, CCR 3358

15

16

17

18

19

20

21

22

23

24

25