

Docket No. TP-190976 - Vol. I

Washington Utilities and Transportation
Commission v. Puget Sound Pilots

December 12, 2019



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Page 1

1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION

4 WASHINGTON UTILITIES AND) DOCKET TP-190976
 4 TRANSPORTATION COMMISSION,)
 5 Complainant,)
 6 vs.)
 7 PUGET SOUND PILOTS)
 8 Respondent.)

11 PREHEARING CONFERENCE, VOLUME I
 12 Pages 1-27
 13 CHAIRMAN DANNER, COMMISSIONER RENDAHL,
 14 COMMISSIONER BALASBAS, & JUDGE PEARSON

15 December 12, 2019
 16 9:30 a.m.

18 Washington Utilities and Transportation Commission
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 2 ALSO PRESENT:
 3 JEFFREY GOLTZ
 4 Cascadia Law Group

Page 2

1 A P P E A R A N C E S
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 3 DAVE DANNER, Chair
 4 ANNE RENDAHL, Commissioner
 4 JAY BALASBAS, Commissioner

6 ADMINISTRATIVE LAW JUDGE:
 7 RAYNE PEARSON

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Page 4

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

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?

Page 5

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

Page 6

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

Page 7

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

Page 8

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.

Page 9

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

Page 10

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

Page 11

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

Page 12

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

Page 13

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.

Page 14

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

Page 15

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.

Page 16

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

Page 17

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

Page 18

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

Page 19

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

Page 20

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

Page 21

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,

Page 22

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.

Page 23

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

Page 24

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

Page 25

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.

Page 26

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.)
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 2 CERTIFICATE
 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.
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 14 _____
 15 Tayler Garlinghouse, CCR 3358
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