

WUTC v. Cascadia Water, LLC

Docket No. UW-240151 - Vol. IV (May 16, 2025)



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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION WASHINGTON UTILITIES AND) TRANSPORTATION COMMISSION,) Complainant,) vs.)DOCKET NO. UW-240151 CASCADIA WATER, LLC,) Respondent.) VOL IV PAGES 168-197 VIRTUAL PREHEARING CONFERENCE BEFORE ADMINISTRATIVE LAW JUDGES HARRY FUKANO JESSICA KRUSZEWSKI Via Zoom Washington Utilities and Transportation Commission 621 Woodland Square Loop SE Lacey, Washington 98504 DATE TAKEN: May 16, 2025 TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY, FAPR, RPR, WA CCR 2731	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	May 16, 2025 11:04 a.m. -o0o- JUDGE FUKANO: Good morning. My name is Harry Fukano. I'm an administrative law judge with the Washington Utilities and Transportation Commission. Co-presiding with me at this hearing is Administrative Law Judge Jessica Kruszewski. The time is approximately 11:04 a.m. We are here today for a second prehearing conference in Docket UW-240151, which is captioned Washington Utilities and Transportation Commission versus Cascadia Water, LLC. Let's start by taking brief appearances, starting with the company. ATTORNEY ANDERSON: This is Pam Anderson with Perkins Coie on behalf of Cascadia Water. JUDGE FUKANO: And for commission staff? ATTORNEY GAFKEN: Good morning. This is Lisa Gafken, assistant attorney general, appearing on behalf of commission staff. JUDGE FUKANO: And for public counsel unit? ATTORNEY O'NEILL: Tad Robinson O'Neill on behalf of public counsel. JUDGE FUKANO: And for the intervenor WCAW?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	A P P E A R A N C E S: FOR COMMISSION STAFF: Lisa W. Gafken lisa.gafken@atg.wa.gov Attorney General of Washington PO Box 40128 Olympia, Washington 98504 360.664.1187 FOR PUBLIC COUNSEL: Tad Robinson O'Neill Tad.ONeill@atg.wa.gov Office of the Attorney General Public Counsel Unit 800 Fifth Avenue, Suite 2000 Seattle, Washington 98104 206.464.6595 FOR THE RESPONDENT: Pamela J. Anderson PJAnderson@perkinscoie.com Perkins Coie LLP 10885 Northeast Fourth Street Suite 700 Bellevue, Washington 98004 425.635.1400 Eric W. Nelsen Eric.nelsen@nwnatural.com NW Natural 250 SW Taylor St Portland, Oregon 97204 503.220-2403 FOR INTERVENOR WATER CONSUMER ADVOCATES OF WASHINGTON: Kent E. Hanson Kent.hanson1@gmail.com 2345 Goodell Road Freeland, Washington 98249 kent.hanson1@gmail.com 206.919.6684	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	KENT HANSON: Kent Hanson on behalf of WCAW. JUDGE FUKANO: Let's start by addressing the proposed procedural schedule for this matter. I understand, based on Ms. Anderson's email, that the parties are largely in agreement on the proposed procedural schedule, but there is some disagreement regarding briefing. Beginning with the company, would you like to present any argument regarding your proposed briefing schedule? ATTORNEY ANDERSON: Yes, your Honor. Cascadia Water is proposing two briefs of an initial brief and a reply brief. And we believe that it's appropriate to have both an initial and a reply brief. That was included in the original procedural schedule that was set for this proceeding. And as we understand both the commission's order and the rule on rejecting a settlement, once the commission determines to reject a settlement, you go back to the procedural posture the case was in at the time the commission suspended the procedural schedule to deal with the settlement. And at that time, the parties had filed response testimony. And the next item would have been rebuttal and cross-answering testimony, a hearing, and

<p>1 then two briefs.</p> <p>2 And we believe that in this situation, that we</p> <p>3 should go back to the procedural schedule we had, and</p> <p>4 that the commission would be able to make a better</p> <p>5 decision with the benefit of both an initial and a reply</p> <p>6 brief.</p> <p>7 JUDGE FUKANO: Thank you.</p> <p>8 Would commission staff like to provide any</p> <p>9 argument regarding briefing?</p> <p>10 ATTORNEY GAFKEN: Yes, your Honor.</p> <p>11 So with respect to one brief or two, staff</p> <p>12 believes that one round of briefing should be sufficient.</p> <p>13 This case has been heavily litigated from the</p> <p>14 start. And for efficiency, just given where we are in</p> <p>15 the litigation, staff would prefer one round of briefing.</p> <p>16 Staff does understand that the commission -- or</p> <p>17 that the company prefers two rounds of briefing. And it</p> <p>18 is in the commission's discretion to order one or two</p> <p>19 rounds. Whether we have one or two rounds typically</p> <p>20 hinges on whether there's enough time to have that second</p> <p>21 round, the reply brief.</p> <p>22 I think the timeline that's presented under</p> <p>23 both of the proposals will work. So staff will write as</p> <p>24 many briefs as the commission seeks in this case, but</p> <p>25 would prefer that we be asked to write only one brief.</p>	<p>1 And would the intervenor like to provide any</p> <p>2 argument regarding briefing?</p> <p>3 KENT HANSON: I think when there is</p> <p>4 simultaneous briefing by the parties, it is better to</p> <p>5 have two rounds of briefing if time allows. And for that</p> <p>6 reason, that would be my preference.</p> <p>7 JUDGE FUKANO: Thank you.</p> <p>8 With regard to the briefing deadlines, under</p> <p>9 the company's proposal, the final round of briefing would</p> <p>10 be due on August 28th, 2025. The commission is somewhat</p> <p>11 concerned that having the final briefing due that late in</p> <p>12 August would give the commission a very short window to</p> <p>13 discuss the case and develop its order.</p> <p>14 Without deciding this issue now, if the</p> <p>15 commission did authorize two rounds of briefing in this</p> <p>16 case, would it be reasonable to modify those due dates</p> <p>17 such that the final brief was due no later than August</p> <p>18 21st, starting with the company?</p> <p>19 ATTORNEY ANDERSON: Your Honor, I believe that</p> <p>20 could work here. It seems that we would only have -- if</p> <p>21 we kept the initial brief date of August 14, we would</p> <p>22 have only seven days to file the replies.</p> <p>23 But I believe last time, we pushed out the</p> <p>24 initial -- the date for the initial briefs because it was</p> <p>25 a little bit short. And so we had maybe only seven or</p>
<p>1 Thank you.</p> <p>2 JUDGE FUKANO: Thank you.</p> <p>3 Does public counsel have any argument regarding</p> <p>4 the briefing schedule?</p> <p>5 ATTORNEY O'NEILL: My argument's very similar</p> <p>6 to that expressed by staff.</p> <p>7 The issue, really, here, is what's going to be</p> <p>8 beneficial for the commission in making its decision.</p> <p>9 There has been a lot of ink spilled on this case already.</p> <p>10 The record is pretty extensive. The briefing is pretty</p> <p>11 extensive.</p> <p>12 And from public council's perspective, a single</p> <p>13 brief is advantageous in two ways to the commission.</p> <p>14 First, it provides a little bit more time for</p> <p>15 the parties to get that first brief done, the most</p> <p>16 substantive part of the brief. And I find that</p> <p>17 additional time is actually helpful, particularly given</p> <p>18 the time it takes to get transcripts issued. That</p> <p>19 compressed our briefing schedule last time around, and I</p> <p>20 think led to some hurried briefing and maybe longer than</p> <p>21 necessary briefing on the initial round.</p> <p>22 So given the time constraints, we think one</p> <p>23 brief is better all around. But as with staff, we will</p> <p>24 write as many pages as the commission wants to read.</p> <p>25 JUDGE FUKANO: Thank you.</p>	<p>1 eight days to file the reply briefs in the last round.</p> <p>2 So I think the company could work with that.</p> <p>3 JUDGE FUKANO: And commission staff?</p> <p>4 ATTORNEY GAFKEN: My primary concern with that,</p> <p>5 first, the first round of briefing is trying to gain the</p> <p>6 lessons learned from the last round of briefing. So the</p> <p>7 last round of briefing really was compressed, and parties</p> <p>8 had to expedite the transcript, which is expensive. And</p> <p>9 so I would like to avoid that outcome.</p> <p>10 For this portion of the case, I do believe that</p> <p>11 the time frames can work. You know, if we have the</p> <p>12 initial briefs due on the 14th or somewhere very close to</p> <p>13 that and then turn around for a reply brief, that could</p> <p>14 work. We've done that in other cases.</p> <p>15 I think Ms. Anderson is correct. We had that</p> <p>16 same dynamic in the first round of briefing, so staff</p> <p>17 would be willing to work with that.</p> <p>18 But my concern really is trying to avoid having</p> <p>19 to expedite the transcript in the first round of</p> <p>20 briefing.</p> <p>21 JUDGE FUKANO: Certainly.</p> <p>22 Public counsel?</p> <p>23 ATTORNEY O'NEILL: It's doable, if we want --</p> <p>24 if the commission decides that it wants the second round</p> <p>25 of briefing, I think we could do it in seven days.</p>

<p>1 I suggest that the page limitations be sized</p> <p>2 appropriately. But that's not an objection to the</p> <p>3 schedule.</p> <p>4 I have the same concerns that Ms. Gafken</p> <p>5 shares, which is that I do think that it's more efficient</p> <p>6 from all the parties to have that brief moved to the</p> <p>7 21st. It's a more complete brief. We have more time.</p> <p>8 And that tends to be better work product.</p> <p>9 But I think it would be doable to do a</p> <p>10 seven-day turnaround.</p> <p>11 JUDGE FUKANO: Thank you.</p> <p>12 Would the intervenor -- does the intervenor</p> <p>13 have any response to that proposal or suggestion?</p> <p>14 KENT HANSON: A seven-day turnaround is</p> <p>15 acceptable.</p> <p>16 JUDGE FUKANO: Thank you.</p> <p>17 As one further possible alternative, the timing</p> <p>18 in this -- for this issue is being driven by the</p> <p>19 company's effective date contained in its currently filed</p> <p>20 tariff.</p> <p>21 If the commission were inclined to leave a</p> <p>22 reply brief date at August 28th, 2025, would the company</p> <p>23 be willing to extend its effective date by an additional</p> <p>24 week to allow the commission a slight amount more time to</p> <p>25 render a decision in this matter?</p>	<p>1 what day of the week that is?</p> <p>2 JUDGE FUKANO: I can certainly -- it's --</p> <p>3 ATTORNEY O'NEILL: It's a Thursday, Lisa. We</p> <p>4 had originally scheduled or proposed the 20th, but you</p> <p>5 wanted to move it up to the 19th for staff's filing</p> <p>6 issues, if you recall.</p> <p>7 ATTORNEY GAFKEN: I do. The 18th is fine with</p> <p>8 staff.</p> <p>9 JUDGE FUKANO: And for public counsel, would</p> <p>10 that be agreeable?</p> <p>11 ATTORNEY O'NEILL: Yes, we could do the 18th.</p> <p>12 JUDGE FUKANO: And would the company find that</p> <p>13 agreeable?</p> <p>14 ATTORNEY ANDERSON: I think the company might</p> <p>15 prefer the 20th. But will that work, or would it need to</p> <p>16 be cut by one day?</p> <p>17 JUDGE FUKANO: The commission would prefer to</p> <p>18 have that earlier rather than later to give our policy</p> <p>19 staff sufficient time to review the filings and prepare</p> <p>20 for the hearing.</p> <p>21 ATTORNEY GAFKEN: Staff is fine with either the</p> <p>22 18th or the 20th.</p> <p>23 ATTORNEY O'NEILL: My own preference is the</p> <p>24 20th, but the 18th works. I will be out of town until</p> <p>25 the 17th, so that's my -- the reason for my preference is</p>
<p>1 ATTORNEY ANDERSON: This is Pam Anderson. I</p> <p>2 would need to confer with the company. We've already</p> <p>3 extended the date a number of times. And we extended it</p> <p>4 by five months after the settlement was rejected. So I</p> <p>5 would just need to get confirmation about that.</p> <p>6 My expectation is they would prefer to go with</p> <p>7 the 14th and the 21st, and not extend.</p> <p>8 But I can see that Mr. Nelsen from Cascadia</p> <p>9 Water has turned his camera on.</p> <p>10 ATTORNEY NELSEN: Thank you, Ms. Anderson.</p> <p>11 Your Honor, Eric Nelsen, Senior Regulatory</p> <p>12 Attorney, Northwest Natural Water, appearing on behalf of</p> <p>13 Cascadia Water.</p> <p>14 I think that the company would prefer to leave</p> <p>15 the currently effective -- proposed effective date of the</p> <p>16 tariffs, given the extensive nature of this case.</p> <p>17 JUDGE FUKANO: Thank you. I appreciate your</p> <p>18 response.</p> <p>19 I do have some other questions regarding the</p> <p>20 procedural schedule. I noted that the proposed rebuttal</p> <p>21 cross-answering testimony deadline is due for June 19th,</p> <p>22 2025. I see that June 19 is a state holiday.</p> <p>23 Would the parties be agreeable to having that</p> <p>24 deadline moved one day up to June 18th instead?</p> <p>25 ATTORNEY GAFKEN: Judge Fukano, do you know</p>	<p>1 entirely my own schedule.</p> <p>2 ATTORNEY NELSEN: And I think the preference</p> <p>3 for the company would be the 20th.</p> <p>4 JUDGE FUKANO: Thank you.</p> <p>5 And Mr. Hanson, would either the 18th or the</p> <p>6 20th work for the intervenor?</p> <p>7 KENT HANSON: The 20th would be preferred, but</p> <p>8 either date would work.</p> <p>9 JUDGE FUKANO: Thank you.</p> <p>10 And one last issue regarding the procedural</p> <p>11 schedule: I did not see a due date included in the</p> <p>12 procedural schedule for a joint issue matrix regarding</p> <p>13 any outstanding issues to be litigated in this matter.</p> <p>14 Would any party object to having the joint</p> <p>15 issue matrix due on the same day as cross-exhibits, cross</p> <p>16 estimates, and exhibit lists are due?</p> <p>17 ATTORNEY ANDERSON: No objection from the</p> <p>18 company.</p> <p>19 ATTORNEY GAFKEN: No objection from staff.</p> <p>20 ATTORNEY O'NEILL: Public council has no</p> <p>21 objection either.</p> <p>22 KENT HANSON: WCAW has no objection.</p> <p>23 JUDGE FUKANO: Thank you.</p> <p>24 And the commission will issue a final</p> <p>25 procedural schedule as part of the second prehearing</p>

<p>1 conference order in this matter.</p> <p>2 Turning to the memo filed by the intervenor, I</p> <p>3 reviewed the memo submitted yesterday, and I'd like to</p> <p>4 give each other party an opportunity to respond to the</p> <p>5 issues raised by the intervenor, either here as part of</p> <p>6 this hearing orally, or in writing following this</p> <p>7 hearing.</p> <p>8 As a threshold issue, do any of the parties,</p> <p>9 without getting into the particulars of the argument,</p> <p>10 disagree with the position of the intervenor regarding</p> <p>11 the two issues raised in the memo, starting with the</p> <p>12 company?</p> <p>13 ATTORNEY ANDERSON: Your Honor, the company</p> <p>14 moves to strike the memo as outside the procedural rules</p> <p>15 provided by the commission.</p> <p>16 The commission's order and the rule states that</p> <p>17 if a settlement is rejected, the proceeding goes back to</p> <p>18 the status it was in at the time that the procedural</p> <p>19 schedule was delayed or stopped.</p> <p>20 And we believe that at this point, it's -- the</p> <p>21 company has a right to file rebuttal testimony, and the</p> <p>22 parties have a right to file cross-answering testimony,</p> <p>23 and that nothing in that order precludes us from</p> <p>24 responding fully to all of the response testimony.</p> <p>25 We are in agreement, the company is, with the</p>	<p>1 been plenty of writing already in this case. And we</p> <p>2 think that there's nothing in the procedural rules that</p> <p>3 allows for such a memo.</p> <p>4 And if the customer group is in disagreement or</p> <p>5 they don't understand the order, they have the</p> <p>6 opportunity to file a motion for clarification, a motion</p> <p>7 or other reconsideration under the commission's rules.</p> <p>8 So we were not planning to respond in writing.</p> <p>9 JUDGE FUKANO: Thank you. Appreciate the</p> <p>10 clarification.</p> <p>11 Does commission staff have any response to the</p> <p>12 intervenor's memo?</p> <p>13 ATTORNEY GAFKEN: Yes. And I understood the</p> <p>14 request at this point, not getting into the full</p> <p>15 argument, staff would likewise like to rely on an oral</p> <p>16 response rather than a written response.</p> <p>17 I do agree that the issue about what's in the</p> <p>18 record is a nonissue. All of the materials that have</p> <p>19 come in through the hearing -- well, and the post-hearing</p> <p>20 briefing as well, I believe are all part of the record.</p> <p>21 And so there would be no -- no need to refile or redo</p> <p>22 anything that may be relevant going forward from</p> <p>23 presentations that were made in support of or in</p> <p>24 opposition to the settlement.</p> <p>25 So I really do think that that's a nonissue,</p>
<p>1 second point, that the information and exhibits that were</p> <p>2 accepted at the prior hearing are part of the record and</p> <p>3 would only not be included in the record if they were</p> <p>4 subject to a motion to strike. And we have no motion to</p> <p>5 strike here, so we're not sure why that seems to be at</p> <p>6 issue.</p> <p>7 But we are in agreement that that information</p> <p>8 is in the record. And if it were not going to be</p> <p>9 included in the record, a motion or some other activity,</p> <p>10 action, would have to be taken to eliminate it.</p> <p>11 It's our position that the order rejecting the</p> <p>12 settlement, in that order, the commission determined that</p> <p>13 Cascadia Water did not provide enough information in its</p> <p>14 evidence in support of the settlement to show prudence</p> <p>15 for certain of the projects. And when we go back to the</p> <p>16 status of the proceeding as it was, we have an</p> <p>17 opportunity to respond to the other parties' response</p> <p>18 testimony, including all of the projects.</p> <p>19 JUDGE FUKANO: And to clarify with the company,</p> <p>20 Is the company intending, then, to file any kind of</p> <p>21 written response or motion to the intervenor's memo this</p> <p>22 morning, or are you just relying on your oral comments</p> <p>23 today?</p> <p>24 ATTORNEY ANDERSON: At this point, we would</p> <p>25 prefer to rely on our oral comments. I think there's</p>	<p>1 that everyone agrees that all of that material is in the</p> <p>2 record.</p> <p>3 With respect to the five projects, we do have</p> <p>4 some thoughts on that. And if you want, I can go through</p> <p>5 the entire argument, but I think what you're asking is</p> <p>6 whether there's some disagreement here with WCAW'S</p> <p>7 filing.</p> <p>8 And the short answer is yes, I believe so.</p> <p>9 There is some disagreement in terms of interpretation of</p> <p>10 the scope of the proceeding going forward. And staff</p> <p>11 would be happy to present our thoughts on that.</p> <p>12 JUDGE FUKANO: Okay. And I will return to that</p> <p>13 in just a moment.</p> <p>14 ATTORNEY GAFKEN: Okay. Thank you.</p> <p>15 JUDGE FUKANO: And broadly, does -- well, since</p> <p>16 there has been disagreement raised, perhaps now is the</p> <p>17 best time to hear any other argument.</p> <p>18 And just to confirm, because I did qualify my</p> <p>19 first question, does the company have any other further</p> <p>20 argument or particular argument that it would like to</p> <p>21 place into the record at this time?</p> <p>22 ATTORNEY ANDERSON: Not at this time, your</p> <p>23 Honor. Thank you.</p> <p>24 JUDGE FUKANO: Thank you.</p> <p>25 Then commission staff, please go ahead.</p>

<p>1 ATTORNEY GAFKEN: Okay. Thank you. Oops, 2 sorry, being virtual and managing the monitors here. 3 Okay. Under WAC 480-07-750(2)(c), if the 4 commission rejects a settlement, the adjudication returns 5 to the status at the time that the procedural schedule 6 was suspended to consider that settlement. 7 In this case, the procedural schedule was 8 suspended before rebuttal and cross-answering testimony 9 was due. Ultimately, this record has the company's 10 direct case, the rebuttal testimony, settlement 11 testimony, settlement response testimony, and settlement 12 rebuttal testimony contained within that record. 13 The commission rejected the settlement, which 14 puts us back to rebuttal and cross-answering testimonies 15 which were not filed. All of that information has come 16 in, and it stays in the record. It's already been 17 admitted to the record. So barring any motion to now 18 expunge the record of those materials, it stays in. 19 Parties do not have to repeat what was stated 20 in support and in opposition to the settlement. And to 21 the extent that that information remains relevant to 22 resolving the case without a settlement, parties can 23 point to it. 24 At this point, the case is now fully litigated. 25 We have no settlement that's pending in front of the</p>	<p>1 determine what level of disallowance would be appropriate 2 based on that decision; but given that the settlement was 3 a results only settlement, that precluded the commission 4 from determining what course of action to take based on 5 its ruling. 6 I will note that at this point, no party has 7 sought reconsideration or clarification of the order. 8 And that may be due to the timing. Such petitions would 9 have been due after the suspension date, and that date 10 has passed. 11 But in any event, Order 06 stands unchallenged. 12 From staff's perspective, we see the following 13 issues left to be litigated and determined in this case: 14 What should be done in light of the commission's prudence 15 finding with respect to the five projects; whether the 16 remaining nine projects are prudent; the issue of the 17 cost of capital and capital structure; rate structure, 18 which includes single tariff versus granular separate 19 tariffs and treatment of the Aquarius surcharge; the 20 overall revenue requirement; and whether rates should be 21 phased in or implemented all at once. 22 WCAW is asking that further litigation of the 23 prudence of the five projects be barred. This is not 24 consistent with the reason why we're here. 25 We are continuing the litigation in this case.</p>
<p>1 commission. 2 At this point, Cascadia has the opportunity to 3 file rebuttal testimony to the presentations that staff, 4 public counsel, and WCAW made in response to Cascadia's 5 direct case. 6 Staff, public counsel, and WCAW now have the 7 opportunity to file cross-answering testimony to each 8 other's response testimony. 9 This does not ignore the evidence that came in 10 during the consideration of the settlement. Indeed, the 11 commission made findings and conclusions with respect to 12 the evidence when it considered the settlement. 13 Now that the settlement has been rejected, 14 essentially all of the rate case issues are back on the 15 table. 16 The commission did make some findings with 17 respect to prudence. And the parties may have different 18 interpretations of what the findings in Order 06 mean. 19 In paragraph 63, the commission agreed with 20 public counsel and WCAW that Cascadia has not 21 demonstrated that the five capital projects were fully 22 prudent based on a lack of sufficient contemporaneous 23 documentation. 24 In paragraph 68, the commission stated that in 25 a fully litigated case, it would then proceed to</p>	<p>1 The commission found that those five projects were not 2 prudent based on the record before it. The commission 3 also could not determine what to do as a result of its 4 finding. These projects are squarely at issue, and 5 parties must be allowed to address them. 6 WCAW cites to collateral estoppel, which 7 applies to litigation -- or which applies to litigating 8 an issue that was decided in a prior case in a later 9 case. Collateral estoppel contemplates two separate 10 proceedings. It essentially means that once the 11 commission has definitively ruled on a specific issue in 12 a case, that ruling is binding in any future case 13 involving the same issue and the same parties, or those 14 in privity with them. 15 We are not in a separate proceeding, but rather 16 we're continuing the current proceeding. 17 I'll stop my comments there. Thank you. 18 JUDGE FUKANO: Thank you. 19 And just to clarify, did you have any response 20 or comment to the company's motion to strike the portion 21 of the intervenor's memo? 22 ATTORNEY GAFKEN: Staff doesn't take a position 23 on the motion to strike. It is an unusual process and 24 one that we don't normally see. 25 You know, the sort of -- the way that I</p>

<p>1 interpreted it was that it was -- it seemed to be like a 2 prehearing memo that you see in courts. And we don't 3 necessarily do that.</p> <p>4 I think we would all be arguing these issues 5 anyway today in this -- in this prehearing conference. 6 And so I don't have a specific objection to WCAW putting 7 that in writing. We do have an opportunity here to 8 respond orally, and I think a written response is not 9 necessary. So staff doesn't take a position on the 10 company's motion.</p> <p>11 JUDGE FUKANO: Thank you.</p> <p>12 And turning to public counsel, do you have a 13 response to the intervenor's memo, to the points raised 14 in the intervenor's memo and the company's motion?</p> <p>15 ATTORNEY O'NEILL: (Inaudible) the company's 16 motion, we would oppose the motion to strike. We think 17 this -- the memo that was filed by WCAW is a reasonable 18 approach.</p> <p>19 We had a conversation with the parties on May 20 5th and identified that there was a -- there was 21 confusion among the parties about the effect of Rule 6 on 22 the proceedings; specifically with respect to the 23 imprudence finding on the five projects identified in 24 that order.</p> <p>25 I think the motion is an appropriate way to</p>	<p>1 additional contemporaneous documentation available for 2 filing or presentation.</p> <p>3 So we're unclear on what additional evidence 4 could possibly be submitted with respect to that issue of 5 the existence of contemporaneous documentation for those 6 five projects, in which case WCAW's request is 7 reasonable, that there -- we shouldn't waste any time 8 trying to introduce new evidence on those topics.</p> <p>9 The only issue for adjudication in the 10 proceeding now, at least as to respect to those five 11 projects, is the extent of the disallowance.</p> <p>12 That's our read of this, of the order. And, you 13 know, I think that's plain language interpretation. So 14 that would be our position.</p> <p>15 JUDGE FUKANO: Thank you. And just to clarify, 16 earlier, I believe I heard you refer to a Rule 6? Which 17 are you referring to, if I heard you correctly?</p> <p>18 ATTORNEY O'NEILL: I don't know that I --</p> <p>19 JUDGE FUKANO: Perhaps I misheard.</p> <p>20 ATTORNEY O'NEILL: I don't think I said Rule 6. 21 I'm trying to remember what -- any rule that I mentioned 22 specifically, I don't...</p> <p>23 JUDGE FUKANO: I may have misheard.</p> <p>24 ATTORNEY O'NEILL: Yeah, I don't -- I don't 25 think I referred to -- I think that the -- I think that</p>
<p>1 raise that issue. All the parties have the opportunity 2 to respond. And if the commission were to give written 3 opportunity, they could supplement. I actually think it 4 can be resolved orally, and would rely on my oral 5 presentation here.</p> <p>6 I don't intend to file written response. So 7 that's on the motion to strike.</p> <p>8 I think I agree with both the company and with 9 staff, that public counsel's view is any testimony that's 10 been submitted would remain in the record. For WCAW and 11 for public counsel, we presented full testimony on all of 12 the matters, even though the settlement was limited by 13 the black box nature of it.</p> <p>14 So our positions have been fully briefed. And 15 it would be unfortunate to have to refile testimony on 16 the various points we raised in the settlement testimony.</p> <p>17 With respect to the issue -- I mean with 18 respect to WCAW's specific request, we actually agree 19 with WCAW's analysis here. The issue of prudence was 20 fully litigated in the settlement. And we believe that 21 with respect to those five projects, it was also fully 22 decided on the issue of contemporaneous documentation.</p> <p>23 And we have to note here, part of our reason 24 for this is that in discovery responses from the company, 25 which are in the record, they indicated there is no</p>	<p>1 the issue of prudence for the five projects was fully 2 litigated in the settlement.</p> <p>3 And it is the -- you know, Rule 6 -- I mean, 4 not Rule 6; Order 6 --</p> <p>5 JUDGE FUKANO: Yes. (Inaudible).</p> <p>6 ATTORNEY O'NEILL: -- is a final ruling on that 7 point, I would posit; and therefore, whether you call it 8 collateral estoppel or a law of the case, it is a 9 resolved issue. That's the way I read Order 6. So not 10 Rule 6. I apologize.</p> <p>11 JUDGE FUKANO: Thank you for that 12 clarification.</p> <p>13 And would the intervenor like to respond to any 14 of the positions or points raised by the parties in this 15 hearing?</p> <p>16 KENT HANSON: I would just like to say that 17 this is not a question of interpreting the order, and 18 that the order is clear in its ruling on whether the 19 burden of proof had been met on these five projects.</p> <p>20 It comes down to more of an interpretation of 21 the regulation that says the case returns to the status.</p> <p>22 And the question is: Does that, you know, 23 require us to ignore the rulings of the commission on the 24 precise issue that -- you know, it's the same issue 25 whether you're looking at the original tariff request and</p>

<p>1 what the revenue requirement requested there was, the 2 settlement only undid one thing. It altered the revenue 3 requirement.</p> <p>4 The black box nature only asks -- only made 5 unclear, kind of obscured the specific amount requested 6 for the rate of return and for how much of the cost of 7 each project was included in that revenue requirement.</p> <p>8 And the commission asked for clarification on 9 which projects -- how much money was attributed to each 10 project. That's the only unresolved issue.</p> <p>11 But the issue as to whether or not a particular 12 project was prudent on the five projects, that issue was 13 decided. It would not be a different question if the 14 question of the original tariff revenue requirement were 15 litigated.</p> <p>16 And as public counsel has pointed out, there is 17 no more evidence on contemporaneous documentation 18 according to the admissions of Cascadia.</p> <p>19 And so, you know, the question is one of 20 efficiency. It's one of fairness in terms of do we get 21 to -- have to relitigate issues that have been resolved?</p> <p>22 And, you know, I think the elements of 23 collateral estoppel or issue preclusion could be claim 24 preclusion. You could view these as two separate claims, 25 a claim for the original revenue requirement or for the</p>	<p>1 But we have a right to respond to what they 2 said about all of the projects in their response 3 testimony.</p> <p>4 JUDGE FUKANO: Understood. And just a point of 5 clarification on that: Would the company intend to 6 reattempt to relitigate the prudence of those five 7 capital projects, or is it more broadly just a response 8 to points raised, if you're able to clarify at this time.</p> <p>9 ATTORNEY ANDERSON: Not able to clarify for 10 certain at this time. We are working on that right now, 11 in particular with response to what was provided and what 12 is available.</p> <p>13 JUDGE FUKANO: Thank you.</p> <p>14 ATTORNEY NELSEN: And your Honor, if I may just 15 add to that, the company does not see it as relitigating. 16 We do not read the order that way.</p> <p>17 So we intend to take a look at the testimony 18 that was filed in November and fully address that in our 19 reply testimony.</p> <p>20 JUDGE FUKANO: Thank you.</p> <p>21 Are there any other comments on the points 22 raised in the intervenor's memo?</p> <p>23 ATTORNEY O'NEILL: Your Honor, this is public 24 counsel. I have just a brief response here.</p> <p>25 I mean, I guess I'm -- I understand the</p>
<p>1 settlement amount of the revenue requirement.</p> <p>2 But it's been litigated. And everybody had the 3 same motivation to litigate it fully. It has been 4 litigated fully. And so for that reason, there's no need 5 to reopen that issue.</p> <p>6 JUDGE FUKANO: Thank you.</p> <p>7 I understand that no party, then, is requesting 8 an opportunity to respond in writing.</p> <p>9 Are there any other further comments from any 10 party regarding the issues discussed in relation to the 11 intervenor's memo?</p> <p>12 ATTORNEY ANDERSON: Your Honor, on behalf of 13 the company, we are not in agreement that the language in 14 the memo that deals with litigation of the prudence of 15 those five projects, that it would be barred if we're 16 going back to the position we were in when the procedural 17 schedule was suspended.</p> <p>18 The company has a right to respond to the 19 information that was provided in the responsive 20 testimony.</p> <p>21 And we also understand, and we agree with the 22 rest of what's been said by the parties, that any 23 information that came in both in the settlement, the 24 supporting testimony, and in the testimony at the 25 hearing, that's all going to be in.</p>	<p>1 difficulty in trying to tell -- to explain what it is 2 there, what the company is intending to present on those 3 five capital projects.</p> <p>4 And I did discuss this with Ms. Anderson, that 5 there may be a motion to strike incoming if we believe 6 that there were -- there's new evidence filed that wasn't 7 filed in the settlement testimony. That may be the 8 procedural schedule, or procedure posture.</p> <p>9 And, you know, as I indicated, our view is that 10 the issue of evidence to support the prudence of those 11 five capital projects was fully litigated. And to the 12 extent that they didn't file available evidence to 13 support those five projects as part of the settlement 14 process, they've lost the right to supplement.</p> <p>15 I don't agree with the, We're going back to the 16 procedural schedule means we completely eliminate what 17 happened during the settlement proceeding and in the 18 settlement litigation or in Order 06, Determination of 19 Prudence.</p> <p>20 So that is a disagreement between us and the 21 company.</p> <p>22 JUDGE FUKANO: Thank you.</p> <p>23 Anything further on the issues raised in the 24 memo?</p> <p>25 Are there any other issues that a party would</p>

<p>1 like to discuss or raise at this hearing?</p> <p>2 Hearing nothing, then the commission will take</p> <p>3 these issues under advisement and issue a prehearing</p> <p>4 conference order shortly.</p> <p>5 And then hearing nothing further, we are</p> <p>6 adjourned.</p> <p>7 Thank you very much. We are off record.</p> <p>8 (Proceeding concluded at 11:39 a.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p>1</p> <p>2</p> <p>3 CERTIFICATE OF REPORTER)</p> <p>4 STATE OF WASHINGTON)</p> <p>5) ss</p> <p>6 COUNTY OF KING)</p> <p>7</p> <p>8 I, Elizabeth Patterson Harvey, a Certified</p> <p>9 Court Reporter and Registered Professional Reporter</p> <p>10 within and for the State of Washington, do hereby</p> <p>11 certify under penalty of perjury that the foregoing legal</p> <p>12 recordings were transcribed under my direction; that I</p> <p>13 received the electronic recording in the proprietary</p> <p>14 format; that I am not a relative or employee of any</p> <p>15 attorney or counsel employed by the parties hereto, nor</p> <p>16 financially interested in its outcome.</p> <p>17 IN WITNESS WHEREOF, I have hereunto set my</p> <p>18 hand this 31st day of May, 2025.</p> <p>19 <i>Elizabeth Patterson Harvey</i></p> <p>20 Elizabeth Patterson Harvey</p> <p>21 CCR 2731</p> <p>22 Certified Court Reporter in</p> <p>23 The State of Washington</p> <p>24</p> <p>25 My license expires December 21, 2025</p>	

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