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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of  
FOSS MARITIME COMPANY  
From an Interpretation by the Director,  
Department of Planning & Development.

Hearing Examiner Files: S-15-001 & S-15-002  
Department Reference: 3020324

FOSS MARITIME'S MOTION FOR  
CONTINUANCE OF HEARING DATE

In the Matter of the Appeal of  
PORT OF SEATTLE  
From an Interpretation by the Director,  
Department of Planning & Development.

**I. INTRODUCTION**

Foss Maritime Company ("Foss") respectfully requests that the Hearing Examiner continue the hearing date in this matter to the week of August 10, 2015, and that the Hearing Examiner continue each of the pending deadlines in this matter by two weeks. Good cause exists for this continuance. The City's motions to dismiss and for a protective order relating to discovery are pending. Until these motions are decided, and until the discovery requested from other parties is obtained, Foss is unable to complete substantial parts of its hearing preparation.

1 No prejudice to other parties will result from this short continuance. Accordingly, the Hearing  
2 Examiner should grant the requested continuance.

## 3 II. STATEMENT OF FACTS

4 This appeal was filed on May 12, 2015. A prehearing conference was held on June 3,  
5 2015. As reflected in the Prehearing Order issued the same day, Foss had previously submitted  
6 Public Records Act requests to the City for records relating to this matter. Prehearing Order, p.  
7 1.<sup>1</sup> Foss also advised the parties and the Hearing Examiner of its desire to conduct discovery,  
8 including limited interrogatories and document requests and depositions of two City employees.  
9 Foss provided the City with the written discovery prior to the prehearing conference on June 3,  
10 2015. Declaration of David R. West (“West Declaration”), ¶ 6. The City of Seattle (“City”)  
11 indicated that it might file a prehearing motion affecting whether discovery is appropriate. In the  
12 Prehearing Order, the Hearing Examiner stated, “[t]he schedule may be adjusted on motion of  
13 the parties if more time is needed on account of discovery-related issues.” Prehearing Order, p.  
14 1.

15 Since that time, DPD and the Office of the Mayor have provided a number of records  
16 responsive to Foss’s Public Records Act requests. West Declaration, ¶¶ 4-5. However, Foss has  
17 not yet received any documents from the City Council. West Declaration, ¶ 3. It appears that  
18 DPD intends to produce additional documents next week to Foss, and as of this date, the City has  
19 not yet responded to Foss’s interrogatories or requests for production of documents. West  
20 Declaration, ¶ 6. (The City’s responses are not due until next week.) And as the Hearing  
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27 <sup>1</sup> The Public Records Act requests were directed to the Department of Planning and Development; the Office of the  
28 Mayor; and the City Council. Each request was sent on May 15, 2015. Declaration of David R. West (“West  
Declaration”), ¶ 2.

1 Examiner knows, the City filed a motion to dismiss some of the issues in this case. This motion  
2 is pending and briefing is not complete.

3 On June 12, 2015, Foss sent notices for the depositions of Benjamin Perkowski and  
4 Andrew McKim to be held on June 30 and July 6, 2015, respectively. West Declaration, ¶ 7.  
5 The City filed a motion to change the date of Mr. Perkowski's deposition and to quash the  
6 deposition. The City also moved for a protective order regarding Mr. McKim's deposition. On  
7 June 25, 2015, the Hearing Examiner issued an order granting the motion to change the date of  
8 Mr. Perkowski's deposition. In that order, the Examiner deferred the decision on the motion to  
9 quash and protective order until after the issuance of the order on the City's motion to dismiss,  
10 anticipated for the week of July 6. The Hearing Examiner stated:  
11

12  
13 Foss indicates that delaying the depositions will delay its ability to prepare for hearing,  
14 and the Port also indicates that it wishes to avoid delay. However, as noted at the  
15 prehearing conference, the hearing may be continued on a motion showing good cause  
16 related to the need to obtain appropriate discovery, to avoid prejudice to the parties on  
17 account of changes to the discovery schedule.

18 Order on Motion to Change Deposition Date, p.1.

19 Foss now moves for a continuance of the hearing date and the pending deadlines in the  
20 case.

### 21 III. STATEMENT OF THE ISSUE

22 Should the Hearing Examiner continue the hearing in this matter to the week of August  
23 10-14, 2015, when good cause exists because discovery has been delayed?

### 24 IV. EVIDENCE RELIED UPON

25 This Motion relies upon the pleadings and papers on file in this matter and the West  
26 Declaration filed concurrently with this motion.  
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**V. ARGUMENT**

Hearing Examiner Rules of Procedure 2.20(a) provides that a scheduled hearing may be continued on the motion of a party for good cause shown. Here, good cause exists to continue the hearing.

The City's motion to dismiss certain issues in this case is currently pending. A ruling is not expected until the week of July 6. Following this ruling, the Hearing Examiner will issue a decision on the City's motions to quash the deposition of Mr. Perkowski and for a protective order relating to the deposition of Mr. McKim. These depositions are a key component of Foss's hearing preparation, since they will provide information relating to significant claims in this matter, as described in Foss Maritime's Opposition to Motion to Change the Date of Deposition of Ben Perkowski and for a Protective Order Quashing the Deposition, pp. 4-5, and Foss Maritime's Opposition to Motion for a Protective Order Concerning the Deposition of Andrew McKim, p. 4. Under the current schedule, Foss will be unable to conduct these depositions until shortly before the hearing, scheduled for June 23 and 24, 2015. This extremely compressed timeframe for discovery simply does not allow Foss sufficient time to prepare.

In addition, the City has not yet provided Foss with a full response to its Public Record Act requests nor any response to Foss's discovery requests. These requests seek documents and information relevant to this proceeding. Foss will need sufficient time to review these documents in anticipation of hearing and, potentially, to identify them as exhibits. The current deadline for submission of witness and exhibit lists is July 6, 2015; Foss cannot identify documents as exhibits when it has not even received or reviewed the documents. Foss is unable to complete its hearing preparation without access to relevant documents in the City's possession.

1 Further, a short continuance will not prejudice the City. Indeed, a continuance will  
2 benefit both parties by allowing the City sufficient time to complete its work to respond to the  
3 Public Records Act request and to allow depositions to occur at a time convenient to both parties  
4 after the issues in this case are determined.

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6 Foss has consulted the other parties to this matter to inquire whether they agree to the  
7 continuance and the timing suggested by Foss. Co-appellant Port of Seattle has indicated it joins  
8 the request for a continuance. The City has raised issues regarding the schedule of one witness  
9 (Ben Perkowski), and Foss has indicated that it is willing to have Mr. Perkowski testify by  
10 deposition if his testimony is found to be admissible. (The City's motion to quash asserts it is  
11 not.) The intervenor parties represented by EarthJustice are checking the schedules of their  
12 witnesses, and have requested that the hearing be set toward the end of the week of August 10  
13 for counsel's scheduling purposes. Foss has no objection to accommodating that request. Foss  
14 has communicated with counsel for the industry intervenor group and believes it will work out  
15 any scheduling issues with that group.  
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17 For these reasons, the Hearing Examiner should grant the requested continuance.  
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19 **VI. CONCLUSION**

20 For the reasons discussed above, Foss respectfully requests that the Hearing Examiner  
21 continue the hearing in this matter to the week of August 10, 2015.

22 Respectfully submitted this 2nd day of July, 2015.

23 MCCULLOUGH HILL LEARY, P.S.

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25  
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