

Description

Minutes
Day 2
Thursday August 13, 2015
S-15-001 & S-15-002
Foss Maritime Company and Port of Seattle
Terminal 5
Time: 9:00 AM
Examiner: Anne Watanabe
Assistant: Tiffany Ku

Party Representatives:

Foss Maritime, Appellant
c/o David R. West
Garvey Shubert Barer
1191 2nd Avenue, 18th Floor
Seattle, WA 98101

and

Jack McCullough
McCullough Hill Leary, P.S.
701 Fifth Avenue, Suite 6600
Seattle, WA 98104

Port of Seattle, Appellant
c/o Traci Goodwin
PO Box 1209
Seattle, WA 98111

and

Patrick Schneider
Foster Pepper
111 Third Ave, Suite 3400
Seattle, WA 98101

Eleanore Baxendale, for DPD
City Attorney's Office
701 Fifth Ave, Suite 2050
Seattle, WA 98104

Puget Soundkeeper, Intevenor
c/o Patti Goldman and Matthew Baca
Earthjustice
705 Second Ave, Suite 203

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| | Seattle, WA 98104 T-5 Intevenors, Intevenor c/o Molly Barker Veris Law Group, PLLC 1809 Seventh Ave, Suite 1400 Seattle, WA 98101 | | |
| Date | 8/14/2015 | Location | Large Hearing Room |
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| Time | Speaker | Note | |
| 9:00:44 AM | | Hearing continues from 8/16/15. | |
| 9:01:15 AM | | Preliminary matters are discussed. | |
| 9:02:16 AM | | Foss Exhibits 8, 25, 89, 90, 105 are admitted. Exhibit F61 has not been offered to be admitted yet. | |
| 9:03:32 AM | | DPD Exhibit 11 is admitted. | |
| 9:04:00 AM | | Patrick Schneider for Port of Seattle continues direct examination of Englin. | |
| 9:04:48 AM | | Port Exhibits 23 and 24 are admitted. | |
| 9:53:35 AM | | Schneider offers Port Exhibit 9 and Exhibit 10, and they are admitted. | |
| 9:57:56 AM | | Schneider offers Port Exhibit 11 and it is admitted. | |
| 10:00:28 AM | | Schneider offers Port Exhibits 12-20, Various Port Photographs. Objection by Baxendale. Schneider responds witness will identify photographs. | |
| 10:09:51 AM | | Department and Puget Soundkeeper counsel object over dates of photographs. | |
| 10:10:14 AM | | Examiner requests Declaration of Port's Photographer to confirm dates by 8/24. | |
| 10:14:23 AM | | Schneider offers Port Exhibits 25-30, Various Port Photographs. Same objections. | |
| 10:16:53 AM | | Schneider concludes direct examination. | |
| 10:17:11 AM | | Jack McCullough for Foss Maritime begins cross examination of Englin. | |
| 10:22:12 AM | | McCullough concludes. | |
| 10:22:17 AM | | Eleanore Baxendale for DPD begins cross examination of Englin. | |
| 10:23:19 AM | | Baxendale refers witness to DPD Exhibit 21. | |

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| 10:26:11 AM | | Objection by West, misstates testimony. |
| 10:26:25 AM | | Baxendale rephrases question. |
| 10:27:04 AM | | Objection by West, lack of foundation. |
| 10:27:13 AM | | Objection overruled. Baxendale continues. |
| 10:42:17 AM | | Baxendale concludes. Baca for Puget Soundkeeper begins cross examination of Englin. |
| 10:57:56 AM | | Baca concludes cross examination. |
| 10:59:22 AM | | Port Exhibits 22, 25-29 are admitted. |
| 10:59:41 AM | | Port Exhibits 18-20 need foundational declaration. Exhibits 12-17 are admitted. |
| 11:01:34 AM | | 15 minute break. |
| 11:18:09 AM | | Back on the record. |
| 11:18:15 AM | | McCullough begins redirect of Englin. |
| 11:25:20 AM | | McCullough concludes. |
| 11:25:30 AM | | Baxendale begins cross examination of Englin redirect. |
| 11:26:09 AM | | Objection by West, misstates testimony. |
| 11:29:16 AM | | Baxendale concludes cross examination. |
| 11:29:28 AM | | Baca begins cross examination of Englin redirect. |
| 11:30:35 AM | | Baca concludes. |
| 11:30:46 AM | | Examiner asks question of Englin. |
| 11:32:00 AM | | Schneider calls Mark McLaughlin of the Port of Seattle as witness and he is sworn in. |
| 11:32:22 AM | | Schneider begins direct examination of McLaughlin. |
| 12:03:25 PM | | Schneider concludes direct examination. |
| 12:03:42 PM | | Lunch break until 1:10 PM. |
| 1:10:46 PM | | Back on the record. |
| 1:11:22 PM | | Baxendale begins cross examination of McLaughlin. |
| 1:17:00 PM | | Objection by West. Objection overruled. |
| 1:35:49 PM | | Baxendale concludes cross examination. Patti Goldman for Puget Soundkeeper begins cross examination of McLaughlin. |
| 1:41:12 PM | | Objection by West, testifying. |
| 1:41:39 PM | | Goldman responds to West. |

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| 1:42:32 PM | | Examiner will allow Goldman to continue. |
| 2:00:54 PM | | Objection by West, incomplete document. |
| 2:01:38 PM | | Objection overruled. |
| 2:05:34 PM | | Goldman concludes cross examination. |
| 2:05:41 PM | | West begins cross examination of McLaughlin. |
| 2:15:29 PM | | Objection by Baxendale, outside line of cross examination. |
| 2:15:51 PM | | Objection overruled. West continues. |
| 2:18:15 PM | | West concludes. |
| 2:18:41 PM | | Schneider begins redirect of McLaughlin. |
| 2:19:39 PM | | Schneider concludes. |
| 2:19:56 PM | | Baxendale calls Larry Ahern of FAS as witness and he is sworn in. |
| 2:20:58 PM | | Baxendale begins direct examination of Ahern. |
| 2:33:18 PM | | Baxendale concludes direct examination of Ahern. |
| 2:33:27 PM | | No questions from Schneider. |
| 2:33:33 PM | | McCullough begins cross examination of Ahern. |
| 2:35:40 PM | | McCullough concludes cross examination. |
| 2:35:48 PM | | No further questions from Goldman or Baxendale. |
| 2:35:59 PM | | Baxendale calls Faith Lumdsen of DPD as witness and she is sworn in. |
| 2:41:55 PM | | Objection by West, calls for legal interpretation. |
| 2:42:08 PM | | Objection overruled. |
| 2:43:52 PM | | Baxendale concludes direct examination. |
| 2:44:03 PM | | West begins cross examination of Lumdsen. |
| 2:46:21 PM | | Objection by Baxendale, speculation. |
| 2:46:30 PM | | Objection overruled. |
| 3:02:34 PM | | Objection by Goldman. |
| 3:02:44 PM | | Objection sustained. |
| 3:03:15 PM | | Examiner addresses West. |
| 3:03:47 PM | | West continues. |
| 3:08:07 PM | | West concludes. |
| 3:08:15 PM | | Goldman asks question of Lumdsen. |

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| 3:08:35 PM | | Break. Off the record. |
| 3:22:28 PM | | Back on the record. |
| 3:22:34 PM | | Schneider calls Paul Meyer of Port of Seattle as witness and he is sworn in. |
| 3:22:44 PM | | Schneider begins direct examination of Paul Meyer. |
| 3:28:01 PM | | Objection by Baxendale, relevance. |
| 3:28:39 PM | | Objection overruled. |
| 3:47:07 PM | | Objection by Baxendale, states interpretation. |
| 3:47:19 PM | | Schneider responds to objection. |
| 3:47:43 PM | | Schneider rephrases question. |
| 3:55:07 PM | | Schneider concludes direct examination. |
| 3:55:22 PM | | McCullough begins cross examination of Meyer. |
| 4:08:42 PM | | McCullough offers Foss Exhibit 111, DPD Decision #3003133 |
| 4:22:16 PM | | McCullough offers Foss Exhibit 112, Verbatim Transcript of Proceedings, 8/13/15. |
| 4:22:32 PM | | Objection by Baxendale, no context for exhibits. |
| 4:34:14 PM | | McCullough concludes cross examination. |
| 4:35:54 PM | | Scheduling discussions. |
| 4:38:11 PM | | West offers Foss Exhibit 113, Selected Portions of Deposition of Andy McKim. |
| 4:39:56 PM | | West begins Offer of Proof. |
| 4:42:21 PM | | Baxendale responds to Offer of Proof. |
| 4:43:03 PM | | Hearing is adjourned, to continue 8/24/15. |