

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND PILOTS, Respondent.</p>	<p>DOCKET TP-190976 ORDER 03 GRANTING LATE-FILED PETITION TO INTERVENE</p>
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BACKGROUND

- 1 On November 19, 2019, Puget Sound Pilots (PSP) filed with the Washington Utilities and Transportation Commission (Commission) its initial proposed tariff. On November 21, 2019, the Commission entered Order 01, suspending the tariff filing and setting the matter for adjudication.
- 2 On November 21, 2019, the Commission issued a Notice of Prehearing Conference, set for December 12, 2019 (Notice). The Notice required persons seeking intervention to file a petition to intervene at least three business days prior to the prehearing conference. On December 12, the Commission convened the prehearing conference as scheduled.
- 3 On December 17, 2019, the Commission entered Order 02, Prehearing Conference Order; Notice of Hearing, set for June 29-30, 2020 (Order 02). Order 02, among other things, granted the Pacific Merchant Shipping Association’s (PMSA) petition to intervene and established a procedural schedule.
- 4 On December 16, 2019, Pacific Yacht Management (PYM) filed comments in this Docket. That same day, the presiding officer contacted PYM to clarify whether its comments were intended to be construed as a petition to intervene. PYM stated that it would consult with its legal counsel and determine how it wished to proceed. On December 18, PYM sent an email to the presiding officer stating that “PYM is still

working on our options in this docket.” As such, the presiding officer did not treat the comments as a late-filed petition to intervene.

5 On January 14, 2020, PYM filed a petition to intervene (Petition). In its Petition, PYM explains that it did not receive official notice of this proceeding, instead learning that PSP had initiated this docket on December 10, 2019, at an industry Christmas party. PYM describes itself as specializing:

[I]n management and maintenance of owner/operator yachts in the Seattle area. Additionally, PYM offers yacht/port agent services for transient recreational vessels while they are in Washington waters. PYM contracts the services of the Puget Sound Pilots to meet the requirements of RCW 88.16.005 for transient foreign flagged recreational vessels as required by the Board of Pilotage Commissioners in the process of obtaining a pilotage exemption, or as required by state law, when a recreational vessel is not eligible for a pilotage exemption.

6 In its Petition, PYM argues that its “transient foreign-flagged vessels, who are obliged to use compulsory services in the Puget Sound, are directly impacted financially by the rates and tariffs charged for these services, and each is a ‘person with substantial interest’ under RCW 81.116.010(3).”

7 On January 15, 2020, the Commission issued a Notice of Opportunity to Respond to Late-Filed Petition to Intervene by January 22, 2020.

8 On January 22, 2020, Commission staff (Staff) filed a response stating that it does not oppose the Petition, and PMSA filed a response supporting the Petition. PMSA’s response explicitly states that it does not represent PYM’s ratepayers.

9 Also, on January 22, 2020, PSP filed a response opposing the Petition on several grounds. First, PSP argues that PYM failed to meet its burden of proof to establish that it had good cause to delay its filing. PSP notes that the Christmas party occurred on December 10, 2019, two days prior to the prehearing conference. In addition, PSP contends that PYM had multiple opportunities to receive notice of the proceeding in other venues.

10 Next, PSP argues that PYM failed to establish that it represents persons with a substantial interest in the outcome of this proceeding because it has not demonstrated that it is authorized to speak on behalf of those foreign-flagged recreational vessels that use and pay for pilotage service. PSP argues that “[t]he authority to coordinate services on behalf

of superyachts hardly demonstrates that PYM is an organization ‘representing’ these foreign-flagged vessel operators requiring pilotage service as required by the statute.”

- 11 Third, PSP argues that PYM failed to demonstrate that its participation would not impair the orderly and prompt conduct of this proceeding. Rather, PSP contends, PYM intends to oppose an increase in pilotage rates and proposes to create “new and special rates that afford its customers differential and preferential treatment from other vessels of similar sizes.” Finally, PSP argues that PYM’s purported interest in suppressing pilotage rates is already represented in this proceeding by PMSA.

DISCUSSION

- 12 Washington Administrative Code (WAC) 480-07-355(1)(b) provides that the Commission “may grant a petition to intervene made after the initial hearing or prehearing conference, whichever occurs first, only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition to intervene.”
- 13 As a threshold matter, we accept PYM’s late-filed Petition. PYM states in its Petition that it did not receive official notice of this proceeding, but instead received constructive notice on December 10, 2019, two days prior to the prehearing conference. PSP argues that two days was sufficient notice, and that PYM could have learned about this proceeding through the minutes of the November 21, 2019, meeting of the Board of Pilotage Commissioners.
- 14 Although not addressed in PYM’s Petition, its conversations with the presiding officer clarified that additional delay was due to ongoing discussions with counsel regarding its legal options. We find that PYM’s decision to consult with counsel to determine whether or not it should proceed without representation, given the significant financial and administrative considerations, was reasonable.¹ In addition, regardless of whether the board meeting could have provided PYM with earlier constructive notice, we have no reason to doubt PYM’s assertion that it learned of this proceeding on December 10, 2019. Accordingly, we find that PYM’s explanation is satisfactory to show good cause. We turn now to the substantive issues raised by the Petition.

¹ We also recognize that these discussions occurred during the holiday season, which likely resulted in additional delay.

- 15 The Commission may grant intervention to any person who “discloses a substantial interest in the subject matter of the hearing.”² RCW 81.116.010(3)(b) defines “a person with a substantial interest” for the purposes of this proceeding as “a vessel operator or other person utilizing the services of a licensed pilot and paying pilotage fees and charges for such services or an organization representing such vessel operators or persons.”
- 16 PYM states in its Petition that it provides yacht and port agent services for transient recreational vessels that traverse Washington waters. When needed, PYM contracts PSP’s services to meet the requirements of RCW 88.16.005 on behalf of its clients. As an agent for these transient vessels, PYM is authorized to speak on their behalf to make contracting arrangements. Furthermore, PYM publicly holds itself out as representing persons who utilize licensed pilot services.³ We find that this agent relationship qualifies PYM as a representative of persons utilizing the services of a licensed pilot and paying pilotage fees and charges for such services. Because PYM meets the statutory definition of “a person with a substantial interest,” we grant its Petition to intervene on that basis.
- 17 Finally, the Administrative Procedure Act (APA) states that a presiding officer may grant a petition to intervene in an adjudication “upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”⁴ Commission rules provide the presiding officer with discretion to grant intervention “[i]f the petition discloses a substantial interest in the subject matter of the hearing or *if the petitioner’s participation is in the public interest.*”⁵ In addition, “the presiding officer may impose conditions upon the intervenor’s participation in the proceedings.”⁶
- 18 PSP asserts that PYM neither explicitly stated nor properly demonstrated that its intervention would not impair the orderly and prompt conduct of the proceedings due to

² WAC 480-07-355(3).

³ According to PYM’s website, its services include “Every aspect of yacht maintenance and ship’s agent services ... for both power and sail, from the largest mega yacht to the smallest sport boat ... Pacific Yacht Management understands both the owner’s and the operator’s perspective of yacht care.” See <http://www.pacificyachtmanagement.com/about-us>, last visited January 30, 2020.

⁴ RCW 34.05.443(1).

⁵ WAC 480-07-355(3) (*emphasis added*).

⁶ RCW 34.05.443(2); *accord* WAC 480-07-355(3).

its opposition to increases in pilotage rates and its proposal to create new and specialized rates for certain recreational vessels. PSP argues that the PYM's first interest in this proceeding is already represented by PMSA, and that the latter expands the review of the tariff.

- 19 While PYM did not affirmatively state in its Petition that it would not attempt to broaden the scope of the proceeding, the Commission may exercise its discretion to allow conditional intervention in light of public interest considerations.
- 20 At this stage in the proceeding, we decline to permit PYM to expand the issues or broaden the scope of this docket. Because the Petition was late-filed and discovery is well underway, doing either would likely impair the orderly and prompt conduct of the proceedings.
- 21 We nevertheless find that permitting PYM to intervene in this case will be useful to the Commission in compiling an appropriate record. No other party has PYM's perspective and experience related to recreational vessel services, and PMSA affirmatively states that it does not share the interests of the ratepayers that PYM stands to represent. As such, PYM is able to provide valuable insight regarding the impacts of the proposed tariff's terms and conditions on PSP's customers. Moreover, PYM's Petition demonstrates that its participation would not necessarily be limited to advocating on behalf of its business interests, but will meaningfully contribute to the Commission's understanding of pilotage rates. Accordingly, we find that granting PYM's Petition to intervene is in the public interest.

ORDER

The Commission Orders That Pacific Yacht Management's late-filed petition to intervene is GRANTED.

DATED at Lacey, Washington, and effective January 31, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge