

BEFORE THE STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

Docket TP-220513

**RESPONDENT PUGET SOUND
PILOTS' REPLY IN SUPPORT OF
MOTION TO COMPEL**

MEMORANDUM

1. The Commission should grant Respondent Puget Sound Pilots' ("PSP") motion to compel intervenor Pacific Merchant Shipping Association ("PMSA") to respond fully to PSP's Data Request Nos. 1 through 8. PMSA's opposition should be rejected for four key reasons.
2. First, the First Amendment's associational privilege is not an absolute defense to discovery. *Snedigar v. Hoddersen*, 114 Wash. 2d 153, 159, 786 P.2d 781 (1990). Here, although PSP seeks disclosure of information related to PMSA's membership and its charges to vessels, there is no indication that disclosure will impair "the freedom of members to promote their views." *Eugster v. City of Spokane*, 121 Wash. App. 799, 808, 91 P.3d 117 (2004). This administrative proceeding, in which PMSA intervened voluntarily on behalf of its members, in fact presents no risk of chilling any PMSA member's rights of freedom of association and is therefore not privileged.
3. Second, even if PMSA had met its threshold burden to show some probability of a constitutional infringement, PSP has demonstrated that its requests are relevant and material

to issues in this rate proceeding. *Eugster*, 121 Wash. App. at 809. For example, PMSA opposes funding an appropriate level of pilot DNI on grounds that increasing port costs will supposedly drive away shipping traffic, yet refuses to disclose the port fees that it charges its members. Likewise, PSP's request for a list of PMSA's members is relevant to challenge PMSA's claim that its members do not pose significant risk to Puget Sound.

4. Third, unlike other Washington cases addressing the associational privilege, the information requested by PSP is not publicly available. *Cf. Eugster*, 121 Wash. App. at 810, 91 P.3d 117 (finding that party seeking discovery did not make showing that every reasonable alternative source of information had been exhausted since the campaign contribution information requested was publicly available through the Public Disclosure Commission). Given that the requests call for internally kept information such as PMSA's membership and fees as well as the amounts and methods of charging rates to vessels, PSP appropriately sought to acquire this information directly from PMSA. PMSA's refusal to fully respond to PSP's requests left PSP no choice but to move to compel discovery.
5. Fourth, the balance of interests weighs heavily in favor of disclosure. *See Snedigar*, 114 Wash.2d at 166, 786 P.2d 781. In *NAACP v. Alabama*, 357 U.S. 449, 464, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958), the NAACP withheld a list containing the names of its rank-and-file members. The Supreme Court held that disclosure of the NAACP's membership lists could not be justified by the state's interest in enforcing corporate registration laws in light of the showing that past disclosure of the identity of the association's members had exposed them to hostility, violence and loss of employment. *Id.* at 462, 78 S.Ct. at 1172.
6. PMSA, in contrast, does not and cannot credibly argue that responding to PSP's data requests will expose it or its members to harassment, violence, or any other harm. PMSA merely

argues that disclosure will burden its freedom of association without pointing to any concrete consequences that would result from disclosure of the requested information. Further, unlike in *NAACP*, PMSA has refused to fully respond to all but one of the data requests issued by PSP, effectively stonewalling discovery completely. PMSA's attempt to liken its position to case law involving political activity in circumstances where exposure of membership names risked violence and hostility is baseless.

7. In sum, the data requests are appropriate and the information PSP seeks is discoverable. PMSA should therefore be ordered to immediately respond in full to PSP's data requests before the beginning of PMSA witness Captain Michael Moore's cross examination.

Respectfully submitted this 3rd day of April, 2023.

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