

**BEFORE THE STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

Docket No. TP-220513

PACIFIC MERCHANT SHIPPING
ASSOCIATION'S RESPONSE TO
PETITION FOR RECONSIDERA-
TION OF FINAL ORDER

I. INTRODUCTION & RELIEF REQUESTED

1. Pursuant to the August 23, 2023 Notice of Opportunity to Respond to Petition for Reconsideration, the Pacific Merchant Shipping Association (PMSA) files this response in opposition to Puget Sound Pilots' (PSP) Petition for Reconsideration.
2. PMSA respectfully requests that the Commission deny the Petition and affirm Order 08, the Final Order in this matter.

II. LEGAL STANDARDS

3. The Commission is required to "ensure that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services."¹ These "legal standards are not ambiguous or subject to serious dispute"² and require "rates that are *fair* to customers and to the company's shareholders."³

¹ RCW 88.16.035(1)(d)

² TP-220513, Final Order 08 at ¶57.

³ *Id.* at ¶44, ¶59 (citing TP-190976 Final Order 09 ¶35; further citing *People's Org. for Wash. Energy Res. v. WUTC*, 104 HWn. 2d 798, 808 (Dec. 12, 1985)).

4. Pursuant to Commission regulations, “[t]he purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more issues determined by the commission's final order.”⁴ To that end, the petitioner must clearly “identify each portion of the challenged order that it contends is erroneous or incomplete.”⁵

5. These regulations require that “a party must do more than simply reargue an issue decided in a final order.”⁶ A petition must both “demonstrate[] that our order is erroneous or incomplete” and “cite to portions of the record and laws or rules for support of the request for reconsideration, and must present sufficient argument to warrant a finding that our order is erroneous or incomplete.”⁷

III. ARGUMENT IN OPPOSITION TO PETITION

6. As a threshold matter, PSP’s claim that the Order is “unfair” fails to meet the requisite pleading for a petition for reconsideration. PSP does not plead with specificity exactly what was in error or incomplete in the ruling, it provides scant argument, and offers no citation to any laws or rules in support of its claims.

7. Where PSP’s petition challenges the authority of the Commission to exercise its discretion to lower the recovery of some of its pension cost pro forma adjustments, PSP’s claims are: (1) Commission discretion in a rate-setting case is

⁴ WAC 480-07-850(1).

⁵ WAC 480-07-850 (2).

⁶ *In the Matter of the Petition of: Qwest Corp. & Eschelon Telecom, Inc. Pursuant to 47 U.S.C. Section 252(b)*, Docket UT-063061, Order 19 (Jan. 30, 2009) at ¶7.

⁷ *Id.*

limited by the statutes which set the fines and penalties that can be awarded in civil actions where a party is found guilty of misdemeanor violations of Commission rules and regulations; and (2) Commission discretion is limited because of an error in offset accounting. Both arguments fail.

8. Both arguments fail to overcome the fact that Final Order 08 cited and relied on numerous bases for the exercise of its discretion in the setting of a retirement expense adjustment, including the many determinations of fact and law detailed in the *Commission Determination*.⁸ Specifically, the Commission relied on an exceptional volume of presented evidence to make findings that addressed multiple outstanding issues on the pension, the subject matter of this petition. From this evidence, which amongst other findings demonstrated significant non-compliance with Final Order 09 from the prior rate case, the Commission concluded that it had the right to both reject this case in its entirety⁹ and reduce the recovery of expenses to address compelling circumstances;¹⁰ the Commission ultimately decided to enact a reduced recovery.

9. PSP now asserts that the Commission's discretion to enact a reduced recovery in its rate-setting is limited by the civil penalty liability limits at RCW 81.04.387. This is an argument which is as meritless as it is novel. The adoption of a tariff is not a penalty—especially when the new tariff awards significant increases in

⁸ TP-220513, Final Order 08 at ¶¶ 202-221.

⁹ *Id.* at ¶¶ 208, 217.

¹⁰ *Id.* at ¶ 218.

revenues for the regulated company and imposes significant increases in rates on customers. Just as obviously, the enforcement of orders, regulations, and decisions of the Commission by civil action brought by the State of Washington in a superior court is a legal process which is completely independent of, separate from, and facially and plainly distinguishable from the adoption of rates. The Commission did not make any determination of any penalty in its Final Order 08, and PSP cites no law for its argument that these statutory enforcement provisions in any way apply to the Commission's rate-setting determination. While PSP seemingly admits that it would be found liable for noncompliance had the state opted to pursue an action for such a violation in this case, even such an admission has no relevance to this case: it still would not act as a bar against Commission discretion in subsequent rate-setting. Finally, since PSP has not been charged or convicted of a violation of a Commission rule, order, or regulation under RCW 81.04.387 (and therefore no evidence of any such charge or conviction is in the record of this case), this argument is entirely theoretical and therefore not a possible basis for reconsideration.

10. Regarding its offset accounting claim, PSP does not challenge any of the following material findings of fact and law that were identified in Final Order 08: PSP failed to follow the Commission's orders from the prior case regarding workshops, to consider member-pilot contributions, or to prepare reports and comprehensive interested party evaluations; PSP withheld evidence in response to data

requests by way of aggressive litigation strategies; PSP did not fully consider the application of ERISA contribution limits; PSP may not qualify as a lawful MEP employer; and PSP failed to obtain approval of its proposed MEP from federal agencies.¹¹ Rather PSP ignores all of these bases for the exercise of Commission discretion and focuses its complaint solely on one minor observation that noted that “PSP also fails to account for offsetting factors”¹² But this observation was not a dispositive or central basis cited in Final Order 08 for the exercise of the Commission’s broad discretion in this case. PSP’s argument conveniently ignores the conclusion that “the Commission exercises its authority to require compliance with its orders. We expect PSP to comply with Final Order 09 and the decisions in this Order.”¹³ As a result, regardless of what accounting methodology is correctly applied here, PSP has not provided a compelling argument to support a claim that the entirety of the Commission’s exercise of discretion regarding pension expenses should be reversed due to one potential minor issue alone.

CONCLUSION

11. Based on all of the foregoing, PSP’s petition is insufficient. PMSA respectfully

¹¹ TP-220513, Final Order 08 at ¶¶ 202-221.

¹² *Id.* at ¶ 217.

¹³ *Id.* at ¶ 218

requests that the Commission deny the petition and affirm Final Order 08.

DATED this 28th day of August, 2023.

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