

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' REQUEST FOR
CLARIFICATION OF FINAL ORDER 08**

September 29, 2023

I. INTRODUCTION.

1. Pursuant to WAC 480-07-840, the Puget Sound Pilots (PSP) request a conference to clarify the meaning of Final Order 08 with respect to whether it imposes any obligations on the part of PSP to conduct pension-related negotiations with PMSA or to prepare an interested persons evaluation and participation study regarding the PSP pension. Clarification of Order 08 on this issue is necessary because the parties have different positions. UTC staff agrees with PSP that the Final Order 09 requirements contemplating a series of workshops and a summary report are no longer applicable post-Final Order 08. PMSA, however, contends that the negotiation, workshop and participation study requirements set out in Final Order 09 continue.

II. ARGUMENT.

Final Order 08 Clearly Addressed PSP's Non-compliance with Final Order 09 and Did Not Reimpose the Requirements of the Prior Order.

2. In Final Order 08, the Commission addressed PSP pension issues in one paragraph in its synopsis,¹ 14 pages under the heading "Retirement,"² three findings of fact³ and two conclusions of law.⁴ As demonstrated below, nowhere in Final Order 08 did the Commission state that PSP's obligation under Final Order 09 to conduct pension-related workshops was a continuing obligation. Instead, the Commission made clear that PSP's non-compliance with Final Order 09 necessitated disallowing one-half of PSP's pro forma retirement expense of approximately \$450,000.⁵ On a going-forward basis, PSP was instructed to seek determinations from two federal agencies regarding a potential transition of the PSP pension

¹ Final Order 08 at 1.

² *Id.* at pp. 47-60.

³ *Id.* ¶¶ 431-33.

⁴ *Id.* ¶¶ 474-75.

⁵ *Id.* ¶ 218.

plan to a Multiple Employer Plan (MEP) defined benefit pension plan and to report on the status of those efforts in this Docket every 60 days.⁶

3. A review of the relevant paragraphs in Final Order 08 demonstrates the correctness of the position of PSP and UTC staff on this issue. Each is discussed in turn below.

4. In the fourth paragraph of its Final Order 08 Synopsis, the Commission states:

The Commission finds that PSP failed to comply with the Commission's order to conduct workshops regarding the transition to a fully funded, defined benefit retirement plan. The Commission instructs PSP to seek determinations from relevant federal agencies before seeking recovery of any costs associated with its proposed defined-benefit plan.⁷

5. In the 14 pages of Final Order 08 devoted to PSP retirement issues, the Commission devotes six paragraphs to discussion of PSP's non-compliance with Final Order 09 and the consequences of that non-compliance. Two statements in particular make clear that this non-compliance was being dealt with in Final Order 08 and that the Commission was not ordering PSP to attempt a "do over" of the pension workshop requirement in Final Order 09. First, the Commission noted that "PSP's non-compliance with Final Order 09 influences our decision for both the proposed MEP and the recovery of test year pro forma retirement expense."⁸ Second, in rejecting the argument of PSP Executive Director Charles Costanzo that PSP had "no obligation to engage in an unnecessarily long and unproductive stakeholder process with PMSA," the Commission declared:

Yet PSP is not free to disregard the Commission's order without seeking clarification, review, or appealing the decision. Final Order 09 remained final and binding on PSP.⁹

⁶ *Id.* ¶ 212.

⁷ *Id.* at 1.

⁸ *Id.* ¶ 206.

⁹ *Id.* ¶ 207.

6. After discussing the uncertainties regarding whether PSP's MEP pension proposal fully accounted for ERISA contribution limits¹⁰ and whether PSP "qualifies as an employer for purposes of the MEP,"¹¹ the Commission ordered PSP to submit determination letters to IRS and the Department of Labor and, if both agencies issued favorable determination letters, PSP was authorized to submit a subsequent filing with a new Docket number "seeking to adjust tariff rates to recover MEP costs."¹² Alternatively, PSP was authorized to seek recovery of MEP costs "in its next general rate case."¹³
7. In a separate discussion of whether to approve PSP's pro forma pension adjustment as a known and measurable expense, the Commission determined in its discretion "that a portion of the pro forma retirement expense adjustment should not be allowed into rates because of PSP's non-compliance with Final Order 09."¹⁴ The Commission then concluded that only one-half of PSP's pro forma retirement expense adjustment, a sum of approximately \$450,000, should be allowed into rates "until PSP's next general rate case."¹⁵ In support of this conclusion, the Commission stated:

The Commission retains broad discretion to allow recovery of expenses to result in fair, just, reasonable, and sufficient rates, and under compelling circumstances, unreasonable or excessive expenses may simply be reduced. Further, 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.¹⁶

8. The last sentence in the above quote refers to Final Order 09's compliance obligations in the present tense, which is inconsistent with the clear thrust of Final Order 08, which dealt with PSP's non-compliance with Final Order 09 with three specific actions. These included

¹⁰ *Id.* ¶ 210.

¹¹ *Id.* ¶ 211.

¹² *Id.* ¶ 212.

¹³ *Id.*

¹⁴ *Id.* ¶ 217.

¹⁵ *Id.* ¶ 218.

¹⁶ *Id.*

reducing PSP's requested pro forma retirement expense adjustment, declining to approve the MEP pension plan and directing additional process in the form of submission of determination letters to two federal agencies with regular reporting on this process to the Commission.

9. Further, it is worth noting that the Commission, in denying PSP's recent petition for reconsideration of the reduced pro forma retirement expense adjustment, noted: "There was a clear nexus between the Commission's findings regarding PSP's non-compliance in paragraphs 206-209 and the decision to allow only one-half of PSP's proposed adjustment in paragraphs 217-18 of the Order."¹⁷ Nowhere in Final Order 08 or in Order 09 in this Docket is there any reference to PSP being obligated to restart the pension-related workshop process specified in Final Order 09.
10. Under the circumstances, there is nothing to be gained from reinstating the pension workshop process, especially given the high probability of its futility and the clarity that the determination letter process will bring to PSP's proposed pension plan transition. The likely futility of the Commission ordering PSP and PMSA back to the negotiating table on the pension transition issue was noted by Commissioner Doumit in a question he directed to PSP Executive Director Costanzo: "But on this point going forward, you think it would be futile, essentially, to have an order that asks you – the two sides to get together on the defined benefit plan?" Mr. Costanzo replied in the affirmative, stating that he did not believe PMSA was "acting in good faith."¹⁸

III. CONCLUSION.

11. PSP sincerely wishes to avoid any potential non-compliance with Final Order 08 and respectfully requests clarification of that order regarding the pension workshop issue. Based

¹⁷ Order 09 ¶ 15.

¹⁸ Tr. at 360:16-24.

on the record and the plain meaning of Final Order 08, the Commission should clarify Final Order 08 to make clear that PSP has no ongoing obligations under Final Order 09.

DATED this 29th day of September 2023.

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