

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p>Complainant,</p> <p>v.</p> <p>PUGET SOUND PILOTS,</p> <p>Respondent.</p>
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<p>DOCKET TP-220513</p> <p>ORDER 10</p> <p>GRANTING MOTION FOR CLARIFICATION</p>
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**BACKGROUND**

- 1 On August 10, 2023, the Washington Utilities and Transportation Commission (Commission) entered Final Order 08, Rejecting Tariff Sheets, Authorizing and Requiring Compliance Filing (Final Order 08), resolving all disputed issues in the general rate case filed by Puget Sound Pilots (PSP).
- 2 On September 21, 2023, the Commission entered Order 09, Denying Petition for Reconsideration (Order 09). The Commission denied PSP’s request for reconsideration of conclusion of law number 17 in Final Order 08, disallowing \$451,219 in expenses (reflecting half of PSP’s pro forma adjustment for the costs of continuing the association’s pay-as-you-go retirement plan).
- 3 On September 29, 2023, PSP filed a Request for Clarification of Final Order 08 (Motion for Clarification). PSP requested a conference to clarify the requirements of Final Order 08 and whether PSP was required to continue pension-related negotiations with Pacific Merchant Shipping Association (PMSA), which the Commission required in Final Order 09, resolving PSP’s last general rate case.<sup>1</sup> PSP submits that Final Order 08 discussed the consequences of PSP’s noncompliance with 2019 Rate Case Order, but that it did not require a “do over” of the workshop process. PSP further argues that there is nothing to be gained by reinstating the workshop process as instructed by the earlier rate case order, Final Order 09.

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<sup>1</sup> See *WUTC v. Puget Sound Pilots*, TP-190976, Final Order 09 (November 25, 2020) (2019 Rate Case Order).

4 On October 11, 2023, PMSA filed a Response to PSP’s Motion for Clarification. PMSA argues that Final Order 08 in this docket is unambiguous with requiring compliance with the 2019 Rate Case Order. PMSA argues further that PSP’s Motion for Clarification is legally, procedurally, and substantively improper. PMSA’s specific arguments are discussed in greater detail below.

### DISCUSSION

5 We grant PSP’s Motion for Clarification, finding it appropriate to clarify PSP’s responsibilities for compliance with Final Order 08. Due to the controversy between the parties, we find that this matter is more appropriately resolved by a written order rather than a clarification conference.

6 Pursuant to WAC 480-07-835(1), a party may request that the Commission clarify a final order by filing its motion within ten days of the entry of the order. An appropriate motion for clarification requests that the Commission modify the final order or take another action, such as to “[c]larify the meaning of, or requirements in, the order so that the parties can accurately prepare compliance filings.”<sup>2</sup>

7 As an initial matter, PMSA argues that PSP’s Motion for Clarification is legally, substantively, and procedurally improper. PMSA correctly observes that PSP’s Motion for Clarification was filed more than ten days after the entry of Final Order 08. Yet we find it appropriate, consistent with the public interest and the purposes of the underlying statutes to grant PSP an exception from the ten-day deadline established in WAC 480-07-835(1). Pursuant to WAC 480-07-110, the Commission may, in response to a request or on its own motion, grant an exemption from its own rules when “consistent with the public interest, the purposes underlying regulation, and applicable statutes.” Certainly, in this case it would be contrary to the public interest to leave the parties in doubt and uncertain as to the requirements of Final Order 08. If the Commission did not clarify the requirements of its order, this could undermine the path forward to a defined benefit multiple employer plan (MEP), as set forth in Final Order 08.

8 PMSA also argues that PSP is improperly reaching beyond the bounds of what is appropriate in a motion for clarification. We do not agree. PSP is not “challenging the evidentiary, legal, or policy decisions”<sup>3</sup> in Final Order 08, as PMSA contends, but is merely seeking to clarify its responsibilities for compliance. Final Order 08 required PSP

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<sup>2</sup> WAC 480-07-835(1)(a).

<sup>3</sup> WAC 480-07-840(2).

to submit a number of compliance filings as it attempts to obtain approval of its proposed MEP, and it is appropriate for PSP to request clarification on whether those future compliance filings should include reports on the workshop process as ordered in the earlier proceeding. PMSA is therefore wrong to suggest this motion is legally or substantively improper. As we explain below, Final Order 08 did not require a “do over” of the workshop process ordered by the 2019 Rate Case Order. PSP’s request for clarification of Final Order 08’s requirements does not amount to an impermissible attack on any of the findings in that Order.

9 Next, we turn to the main issue presented by PSP’s Motion for Clarification. Essentially, PSP and PMSA disagree as to whether PSP is required to follow the workshop process set forth in Final Order 09, in its first general rate case before the Commission, *in addition* to seeking approval of its proposed MEP and submitting compliance filings as required by Final Order 08.

10 In the 2019 Rate Case Order, the Commission required PSP to participate in a series of workshops with the parties “for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan . . .”<sup>4</sup> These workshops should, among other requirements, “be concluded prior to PSP’s next general rate case.”<sup>5</sup> The Commission declined to require PSP to study outcomes other than a defined-benefit plan and generally declined to instruct the parties as to the scope and breadth of the study.<sup>6</sup>

11 In Final Order 08, concluding the present rate case, the Commission found that PSP failed to comply with the workshop process required by the 2019 Rate Case Order, disallowed half of PSP’s pro forma adjustment for retirement plan expenses, and ordered PSP to submit a series of compliance filings as the association sought approval of its proposed MEP from relevant federal agencies.<sup>7</sup>

12 In Order 09, the Commission denied PSP’s request for reconsideration of Final Order 08 and “maintain[ed] its conclusion that only one half of PSP’s proposed pro forma adjustment should be allowed into rates given this noncompliance and its effect on the

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<sup>4</sup> 2019 Rate Case Order ¶ 191.

<sup>5</sup> *Id.* ¶ 192.

<sup>6</sup> *Id.* ¶ 193.

<sup>7</sup> *See generally* Final Order 08 ¶¶ 202-221.

record in this proceeding.”<sup>8</sup> Final Order 09 did not refer to any requirement for PSP to continue the workshop process discussed in the 2019 Rate Case Order.

- 13 PSP correctly observes that Final Order 08 generally referred to the requirements of the 2019 Rate Case Order in the past tense.<sup>9</sup> Final Order 08 reflected on the intended series of workshops and how they failed to conclude prior to the filing of the present rate case.<sup>10</sup> At no point did Final Order 08 require a “do over” of the failed workshop process. To the extent that Final Order 08’s findings were ambiguous, we now clarify that Final Order 08 did not require PSP to participate in the workshop process set forth in the earlier 2019 Rate Case Order.
- 14 While PMSA argues that Final Order 08 unambiguously required PSP to participate in the workshop process, this is not persuasive either in terms of the order’s plain language or the practicalities of the situation. As we have observed, Final Order 08 by its plain language did not require a “do over” of the workshop process required by the earlier 2019 Rate Case Order.
- 15 Even if Final Order 08 was ambiguous, PMSA’s interpretation would make little practical sense. In the 2019 Rate Case Order, the Commission provided for a series of workshops to determine *what* type of retirement plan should be proposed to the Commission. Those discussions subsequently failed, as discussed at length in our earlier orders. In the present docket, PSP proposed a specific defined benefit plan, its proposed MEP. In Final Order 08, PSP the Commission considered this proposed defined benefit plan and the potential obstacles to its approval. The Commission provided a path forward for review of the proposed MEP and discussed the consequences of PSP’s noncompliance with the workshop process required by the earlier 2019 Rate Case Order. The Commission did not, at any point, indicate that the PSP was required to return to the earlier workshop process to consider *what* type of retirement plan should be proposed to the Commission.<sup>11</sup> This would serve little purpose.

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<sup>8</sup> Order 09 ¶ 13.

<sup>9</sup> See Final Order 08 ¶ 204.

<sup>10</sup> *E.g., id.* ¶ 206 (“Although Final Order 09 contemplated a series of workshops, concluding in reports that would be included in PSP’s next general rate case, PSP failed to comply with Final Order 09 in several respects.”).

<sup>11</sup> Final Order 08 ¶ 212.

**ORDER**

*16*     **THE COMMISSION ORDERS That:**

*17*     (1)     Puget Sound Pilots' Motion for Clarification is GRANTED.

*18*     (2)     The findings, conclusions, and requirements of Final Order 08 are clarified as  
discussed above in paragraphs 13-15 of this Order.

DATED at Lacey, Washington, and effective October 30, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner