

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-190976

ORDER 05

DENYING PMSA'S REQUEST FOR
CONTINUANCE

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 December 17, 2019, the Commission entered Order 02, Prehearing Conference Order; Notice of Hearing, set for June 29-30, 2020 (Order 02). As relevant here, Order 02 granted the petition to intervene filed by Pacific Merchant Shipping Association (PMSA) and established a procedural schedule.
- 3 On January 14, 2020, Pacific Yacht Management (PYM) filed with the Commission a late-filed petition to intervene. The Commission granted PYM's petition by Order 03 on January 31, 2020.
- 4 On March 26, 2020, PSP filed with the Commission a Request to Extend the Procedural Schedule set by Order 02.
- 5 On March 31, 2020, the Commission entered Order 04, which granted PSP's Request to Extend the Procedural Schedule. The Commission extended the suspension date to December 4, 2020, and modified the procedural schedule as set forth in Appendix A to Order 04, including a modified hearing date of August 12-13, 2020.
- 6 On May 6, 2020, PMSA requested a second extension of the procedural deadlines and suspension date. PMSA states that the Governor's Proclamation, "Stay Home – Stay

Healthy,” inhibits its ability to prepare its testimony and that the Commission recognized in Order 04 that a further extension may be necessary. PMSA submits that it should have the same benefit of face-to-face witness meetings that PSP was afforded when preparing its initial filing. PMSA represents that PYM joins in its request and that Commission Staff takes no position.

- 7 On May 7, 2020, PSP filed a response opposing PMSA’s request for a second extension. PSP argues that its case and supporting exhibits were available to PMSA for four months prior to the date the Governor’s Proclamation was issued. PSP further submits that the parties, including PMSA, are continuing to propound and timely respond to data requests despite the Governor’s Proclamation. Finally, PSP states that various social distancing accommodations may be present for weeks or months to come.

DISCUSSION

- 8 We deny PMSA’s request to continue or otherwise modify the procedural schedule. As a threshold matter, RCW 81.116.030(4) provides that the Commission may suspend a marine pilotage tariff for a period not exceeding ten months from the time the changes would otherwise go into effect. As the petitioner, only PSP may request to waive this statutory deadline. In response to the COVID-19 pandemic, PSP requested an extension of the statutory suspension date until December 4, 2020, which the Commission approved in Order 04.
- 9 Given that PSP does not agree to extend the suspension date a second time, we thus evaluate PMSA’s request to modify the procedural schedule within the confines of a December 4, 2020, suspension date. Although the COVID-19 pandemic certainly warranted an initial extension, not enough time has passed for PMSA to demonstrate persuasively that extending deadlines other than the suspension date – a request it has no legal standing to make – is warranted at this time.
- 10 First, we find that modifying the procedural schedule as requested, absent a second extension of the suspension date, would impede the Commission’s ability to meaningfully adjudicate the case. Extending the procedural schedule prior to the hearing date or modifying the August 12-13, 2020, hearing date itself would significantly hinder the Commission’s ability to prepare for hearing or issue a decision prior to the December 4, 2020, suspension date.
- 11 Second, PMSA and PYM have already benefited from a more than one-month extension of various deadlines. For example, Order 04 extended the deadline for Staff and

intervenors to file responsive testimony and exhibits from April 22, 2020, to May 27, 2020. The discovery deadline was also extended from June 15, 2020, to July 29, 2020. The evidentiary hearing was continued more than one month, to August 12-13, 2020. This provided the parties, including intervenors PMSA and PYM, significant additional time to make adjustments due to the COVID-19 pandemic. Moreover, such adjustments should not be particularly difficult in light of technological advances that have made the electronic exchange of information commonplace.

- 12 As such, we find PMSA's claims that its counsel are unable to access voluminous file materials and resources in its offices unpersuasive. PMSA made this same claim in its March 27, 2020, letter responding to the first request for extension, suggesting that a longer extension may be necessary. However, as PSP notes in its May 8, 2020, response to PMSA's request, the parties have propounded and responded to numerous data requests despite limitations created by the Governor's Proclamation. Both the Commission and the parties must adapt to some degree during the COVID-19 pandemic, and we are not convinced that the parties will be prejudiced by maintaining the extended discovery and testimony deadlines established by Order 04.

ORDER

THE COMMISSION ORDERS THAT Pacific Merchant Shipping Association's request for continuance in Docket TP-190976 is DENIED.

Dated at Lacey, Washington, and effective May 12, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson

RAYNE PEARSON

Administrative Law Judge