

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-220513

ORDER 03

PREHEARING CONFERENCE
ORDER; NOTICE OF HEARING;
**(Evidentiary Hearing set for
Wednesday, February 22, 2023, at
9:30 a.m., continuing as necessary on
Thursday, February 23, 2023)**

- 1 **NATURE OF PROCEEDING.** On June 29, 2022, Puget Sound Pilots (PSP) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff No. 1. PSP characterizes its filing as a general rate case.
- 2 **CONFERENCE.** The Commission convened a virtual prehearing conference on August 4, 2022, before Administrative Law Judge Michael Howard.
- 3 **APPEARANCES.** Michael E. Haglund, Julie Weis, and Eric E. Brickenstein, Haglund Kelley LLP, Portland, Oregon, represent PSP. Harry Fukano, Assistant Attorney General, Lacey, Washington, represents Commission staff (Staff).¹ Michelle DeLappe, Fox Rothschild LLP, Seattle, Washington, represents Pacific Merchant Shipping Association (PMSA). Steven W. Block, Lane Powell PC, Seattle, Washington, represents TOTE Maritime Alaska, LLC (TOTE). Contact information for the parties' representatives is attached as Appendix A to this Order.
- 4 **PETITIONS FOR INTERVENTION.** PMSA and TOTE timely filed petitions to intervene.

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 5 Absent objections to the petitions to intervene, the Commission finds that PMSA and TOTE have established a substantial interest in this proceeding and that these parties' participation will be in the public interest.
- 6 **PMSA'S MOTION TO DISMISS.** On July 7, 2022, PMSA filed a Motion to Dismiss (PMSA's Motion to Dismiss). PMSA argues that PSP refused to initiate workshops with a mutually agreeable third party as required by Final Order 09 in Docket TP-190976, PSP's last general rate case (Order 09).² PMSA maintains that PSP did not: (1) adequately consider the issue of retirement payments to PSP's former executive director, (2) provide a comprehensive participant evaluation following the retirement workshops, or (3) consider whether active pilots should be required to contribute directly to the retirement fund.³ PMSA argues that PSP did not participate in any Staff-led rate of return workshops, suggesting that PSP's actions limited Staff's ability to conduct these workshops.
- 7 On July 18, 2022, PSP filed a Response to PMSA's Motion to Dismiss. PSP argues that it initiated and conducted a comprehensive set of workshops regarding the potential transition of its retirement program, as required by Order 09. PSP argues that it considered the issue of retirement payments to its former executive director during the workshops and that it reached agreement with two interested parties, Pacific Yacht Management (PYM) and Northwest Marine Trade Association (NMTA), on certain issues. With respect to the rate of return workshop, PSP argues that Order 09 allocated responsibility for this workshop to Staff and that it was not a prerequisite for PSP's next rate case filing.
- 8 *Commission Determination.* As indicated at the prehearing conference, we deny PMSA's Motion to Dismiss. A party may make a dispositive motion to dismiss pursuant to WAC 480-07-375(1)(a) and WAC 480-07-380(1). Under WAC 480-07-380(1), a party may move for dismissal if the pleadings and evidence fail to state a claim upon which the Commission may grant relief.

² See *WUTC v. Puget Sound Pilots*, Docket TP-190976, Order 09 ¶¶ 191-93, 390 (November 26, 2020).

³ Because the word "stakeholder" has negative connotations, the Commission no longer uses it. Acceptable substitutes are interested persons, participants, etc.

9 Even if a regulated company fails to establish the need for a rate increase, however, the Commission rarely exercises its discretion to reject a company’s rate case entirely.⁴ The Commission has explained:

If the Company fails to establish the need for a rate increase, the Commission is not required to simply dismiss the case. We may instead order a rate decrease, order that rates be maintained, or require modifications to the company’s services. Our broad discretion in rate cases reflects the quasi-judicial nature of ratemaking.⁵

10 The Commission also exercises its discretion when considering claims that a company’s filing fails to comply with an earlier order. Pursuant to WAC 480-07-885(3), “If a party to the original proceeding objects to the subsequent filing as not in compliance with the final order in that proceeding, the commission also may take additional action in that docket.” Commission rules therefore do not require dismissal of a rate case for failure to comply with earlier instructions.

11 Here, PSP complied with certain aspects of Order 09 when it conducted workshops around the potential transition of its retirement plan to a fully-funded, defined benefit program. In Order 09, the Commission “order[ed] PSP to initiate discussions for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan, as well as full accrual accounting.”⁶ The Commission required that “any agreements, recommendations, or contested issues that arise from the workshops, and PSP’s responses thereto, should be included in PSP’s initial filing in its next general rate case.”⁷ These instructions were adopted by reference in the order’s conclusions of law, indicating their binding nature.⁸ PSP complied with many of these instructions. PSP

⁴ See *WUTC v. Cascade Natural Gas Corp.*, Docket UG-200568 Final Order 05 ¶ 47 (May 18, 2021).

⁵ *Id.* ¶ 44.

⁶ Final Order 09 ¶ 191.

⁷ *Id.* ¶ 192.

⁸ Final Order 09 ¶ 463 (“(20) PSP should be required to initiate discussions as described in paragraphs 191 through 193 of this Order to develop a plan to transition to a fully funded, defined-benefit retirement program and full accrual accounting. Any agreements, recommendations, or contested issues that arise from the workshops, and PSP’s responses thereto, should be included in PSP’s initial filing in its next general rate case.”).

conducted workshops from March 2022 to June 2022 with interested parties,⁹ and PSP's witness Charles P. Costanzo describes areas of agreement with PYM and NMTA.¹⁰

12 However, PSP did not comply with the Commission's instruction that the workshops should be "facilitated by a mutually acceptable third-party with expertise in retirement planning, such as an actuary."¹¹ PSP witness Costanzo testifies that PSP began the process of engaging with interested parties by providing a report from its own actuary.¹² PSP then selected a mediator, Lou Peterson, to conduct the workshops without ensuring that this mediator was acceptable to interested parties.¹³ It is not evident that Peterson had expertise in retirement planning. These choices were inconsistent with the clear requirements of Order 09, including Conclusion of Law 20.

13 It is not clear, either, that the workshops adequately considered whether the retirement payments to its former executive director and general counsel should be included in rates.¹⁴ PSP does not claim to have obtained agreement from interested parties on this issue.¹⁵ Instead, PSP presents the testimony of the former executive director and general counsel, Walter S. Tabler, that the level of benefit is "fair and reasonable."¹⁶

14 Although PSP failed to fully comply with the Commission's instructions, this does not necessarily warrant dismissing the rate case without prejudice. The Commission exercises its discretion, in a quasi-judicial capacity, when considering a motion to dismiss

⁹ PSP's Response at 4. *See also* Declaration of Michael Haglund ¶ 12.

¹⁰ *See* Costanzo, Exh. CPC-1T at 9:7-24.

¹¹ Final Order 09 ¶ 192.

¹² *See* Costanzo, Exh. CPC-1T at 10:6-11 ("Instead, PMSA focused on an unfair process-related argument, repeatedly complaining that PSP started the stakeholder sessions with its own 'hand-picked actuary' rather than jointly engaging that actuary with other parties. As explained above, PSP had a fiduciary obligation to educate itself first regarding the various options and their costs before launching the stakeholder process.").

¹³ *See* Costanzo, Exh. CPC-5 at 3 ("Finally, to facilitate the discussions on March 2, we have asked a very well-regarded Seattle mediator, Lou Peterson of Hillis, Clark, Martin & Peterson P.S., to conduct this stakeholder meeting and not only to preside at any subsequent session, but to attempt to mediate a mutually agreeable resolution of this issue.").

¹⁴ *See* Final Order 09 ¶ 195.

¹⁵ *See* Costanzo, Exh. CPC-1T at 9:7-24 (describing areas of agreement with PYM and NMTA).

¹⁶ Tabler, Exh. WST-1T at 6:7-8.

a general rate case. The public interest weighs in favor of proceeding with this case in order to consider PSP's request for a rate increase and other issues affecting the public interest. To the extent that PSP failed to comply with Order 09, this issue is more appropriately addressed by ordering the parties to attend a mediated settlement conference.

15 **MOTION FOR LEAVE TO FILE REPLY.** On August 2, 2022, PSP filed a Motion for Leave to File a Reply in Support of Petition for Interim Rate Relief (Motion for Leave to File a Reply). PSP argues that PMSA's and Staff's responses to its Petition for Interim Rate Relief raise a number of legal issues and that this issue affects the organizational health of PSP and the system of compulsory pilotage. PSP attaches its proposed reply to its motion.

16 At the prehearing conference on August 4, 2022, the presiding administrative law judge requested oral responses from the parties to PSP's Motion for Leave to File a Reply. PMSA objected to this motion, arguing that PSP's proposed reply did not cite the relevant Commission decision on interim rate relief and that it did not add to the discussion. Staff also objected, arguing that PSP did not satisfy the good cause standard and that the proposed reply included citations that should have been provided in the motion itself. TOTE indicated that it took no position.

17 *Commission Determination.* At the prehearing conference, the presiding officer granted PSP's Motion for Leave to File a Reply. Pursuant to WAC 480-07-370(5)(a), "[a] party must not file a reply without permission from the commission, which the commission will grant only upon a showing of good cause." PSP has established good cause for leave to file a reply given the importance of the issues raised in the Petition for Interim Rate Relief and the legal issues raised by party's responses. The Commission grants PSP's Motion for Leave to File a Reply and accepts PSP's proposed Reply for consideration.

18 **PETITION FOR INTERIM RATE RELIEF.** On June 29, 2022, PSP filed a Petition for Interim Rate Relief and Request for Expedited Consideration (Petition). PSP submits that the tariff currently funds 52 full-time pilots but that the Board of Pilotage Commissioners (BPC) recently licensed an additional pilot. PSP anticipates that the BPC will license two additional pilots in July 2022, and one additional pilot during the pendency of the general rate case. This would bring the total number of full-time pilots to 56. PSP notes that because the current tariff funds only 52 pilots the cost of additional pilots would be borne entirely by current pilot members.

19 PSP submits that it meets the standards for interim rate relief set forth in *WUTC v. Pacific Northwest Bell Telephone Co.*, Cause No. U-72-30, Second Supplemental Order Denying

Petition for Emergency Rate Relief (October 1972) (*PNW Bell Telephone*). PSP therefore requests that the Commission approve an automatic tariff adjuster increasing the existing tariff rate by 1.4% for each new licensee above the currently funded level of 52 licensees and reduce the tariff by 1.4% for each retirement of a licensee provided the number of PSP licensees drops below 52.

- 20 On July 19, 2022, Pacific Merchant Shipping Association (PMSA) filed an Opposition to PSP's Petition for Interim Rate Increase and Expedited Consideration. PMSA argues that PSP has not proven the existence of an emergency or other extraordinary circumstances and that PSP does not meet the requirements of *PNW Bell Telephone*. Among other points, PMSA explains that PSP argued against adjusting vessel projections in light of the COVID-19 pandemic. This undermines PSP's claims that the Commission "expressly refused to factor the effects of the pandemic into PSP's tariff" and that this was a "clear mistake" causing hardship to PSP pilots. PMSA also argues that PSP has not brought forward any evidence discussing PSP's financing of pilot's income or how the change in the number of licensed pilots affects PSP's demands for financing in the short-term.
- 21 That same day, July 19, 2022, Staff filed a Response to Puget Sound Pilot's Petition for Interim Rate Relief, recommending that the Commission deny the Petition. Citing the same six factors that the Commission discussed in *PNW Bell Telephone*, Staff admits that some modification of the Commission's standards may be appropriate in the context of pilotage. Staff notes that PSP, an association of pilots unlike other regulated companies before the Commission, is not a capital-intensive organization. Staff also argues that the Commission should decline to consider PSP's arguments regarding pandemic-era declines in vessel traffic and the increase in foreign shipping industry profits. Staff submits that these arguments are generally contrary to the Commission's findings in Order 09.
- 22 As noted above, on August 2, 2022, PSP filed a proposed Reply in Support of its Petition for Interim Rate Relief. PSP argues that it is "dangerously understaffed" and that it ranks last for pilot income among a sample of 14 pilot groups for which data is publicly available. PSP argues that the shipping industry has earned record profits and that rates should increase as additional licensed pilots are added. PSP argues that its proposed interim rate relief is consistent with the findings of Order 09, which gave deference to BPC's determinations and cited to Captain Ivan Carlson's testimony regarding the number of anticipated licensed pilots. PSP argues that PMSA previously argued that distributed net income should be based on the number of actual licensed pilots. PSP argues that the other parties fail to appreciate the safety risks and reputational risks that result from an underfunded pilotage system.

23 *Commission Determination.* At the prehearing conference, the presiding officer denied PSP’s Petition for Interim Rate Relief. Pursuant to *PNW Bell Telephone*, the Commission evaluates six factors when determining whether to grant a request for interim rate relief:

1. Opportunity for an adequate hearing before granting interim relief;
2. Whether interim rates are necessary due to an actual emergency or to prevent gross hardship or gross inequity;
3. The mere failure of the currently realized rate of return to equal that approved as adequate is generally insufficient standing alone to justify granting interim relief;
4. Review of all financial indices as they concern the applicant, including rate of return, interest coverage, earnings coverage, and the growth, stability, or deterioration of each, together with the immediate and short-term demands for new financing and whether the grant or failure to grant interim relief will affect these financing demands in a manner that substantially affects the public interest;
5. Interim relief is a useful tool in an appropriate case to fend off impending disaster. However, the tool must be used with caution and applied only where not granting relief would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders. That is not to say that interim relief should be granted only after disaster has struck or is immanent, but neither should it be granted in any case where a full hearing can be had and the general case resolved without clear detriment to the utility; and
6. As in all matters, the Commission must reach its conclusion with the statutory charge to Commission in mind, that is, to “Regulate in the public interest.” (RCW 80.01.040). This is the Commission’s ultimate responsibility, and a reasoned judgment must give appropriate weight to all salient factors.¹⁷

24 At the same time, the Commission recognizes that these six factors may not apply in every case and that it should remain open to unique circumstances.¹⁸

25 PSP’s Petition generally fails to satisfy the *PNW Bell Telephone* factors. First, PSP does not propose any process for evaluating its request for interim rate relief. Because interim

¹⁷ *PNW Bell Telephone* at 13.

¹⁸ *WUTC v. Verizon Northwest Inc.*, Docket UT-040788, Order 11, 10, ¶ 24 (October 15, 2004).

rate relief is normally awarded after an adequate opportunity for a hearing, it would be inappropriate to grant this form of relief on the basis of the Petition alone.

- 26 Second, PSP provides relatively little evidence that there is an actual emergency, gross hardship, or gross inequity. In *WUTC v. Olympic Pipeline Company*, Docket TO-011472, Third Suppl. Order at *3-4 (January 31, 2002), the regulated company requested a 62 percent interim rate increase. Following a hearing, the Commission granted an interim rate increase of 24.3 percent, finding that the company was in “dire financial straits,” with no shareholder equity, and debts exceeding the book value of its assets. An association of pilots, such as PSP, does not have the same capital structure as Olympic Pipeline Company. Yet PSP fails to substantiate its drastic claims with evidence establishing actual financial hardship. This is particularly true given that PSP requests a mere 1.4 percent increase to its revenue requirement for each additional licensed pilot.
- 27 Third, the mere failure to realize the authorized rate of return does not justify interim rate relief. In its last rate case, PSP advocated against adjusting vessel projects in light of the COVID-19 pandemic.¹⁹ This resulted in pilots earning below their target distributed net income, but it appeared preferable to a highly speculative adjustment to account for pandemic-era declines in vessel traffic. But in its Petition, PSP argues that the Commission relied on vessel projections that “badly underestimated actual vessel traffic” and that this led pilots to realize only 74 percent of their authorized distributed net income.²⁰ PSP goes so far as to argue that the Commission “expressly refused to factor the effects of the pandemic into PSP’s tariff” and that this was a “clear mistake” that caused significant hardship to pilots.²¹
- 28 We are not convinced by these misrepresentations of the Commission’s decision in Order 09. Arguments such as these are easily shown to be false, and they only tend to undermine a party’s credibility.
- 29 For the purposes of this Order, it is sufficient to find that PSP pilots’ failure to earn their target distributed net income was, in significant part, due to pandemic-era declines in

¹⁹ Final Order 09 ¶ 367 (“We note here that no party has advocated to reflect the effects of the COVID-19 pandemic in revised vessel projections. Both PSP and Staff agree that it would be highly speculative to attempt to normalize the effects of the recent decline in shipping traffic.”).

²⁰ PSP’s Petition ¶ 8.

²¹ *Id.* ¶ 8, n.1.

vessel traffic. It would be inappropriate to award interim rate relief, prospectively, as a form of retroactive compensation for these past declines in vessel traffic.

30 Fourth, the Commission should review all financial indices concerning the petitioner. As we have noted above, PSP provides little evidence of financial need or hardship, which might substantiate its claims of gross inequity or gross hardship.²²

31 The fifth and sixth factors from *PNW Bell Telephone* are primarily concerned with the public interest and the implications of awarding interim rate relief. While PSP's proposal for a 1.4 percent adjustment for each additional licensed pilot appears relatively minimal, the other *PNW Bell Telephone* factors weigh strongly against awarding interim rate relief. PSP's Petition is therefore denied. The Commission should consider any proposed rate adjustment mechanism for the addition of licensed pilots in light of a full record, with an appropriate opportunity for a hearing.

32 **MOTION FOR EXPEDITED SCHEDULE.** On June 29, 2022, the same day that PSP filed the Petition at issue in this Order, PSP also filed a Motion to Set Expedited Schedule (Motion to Set Expedited Schedule). PSP proposes an expedited, seven-month procedural schedule for this proceeding. PSP argues that pilots are experiencing significant hardship and that this hardship will worsen after the tariff's funding of medical benefits phases out in 2023. PSP submits that its "highly organized evidentiary package" makes this expedited schedule feasible. PSP therefore requests that the Commission enter its order by January 25, 2023, which would be the end of the two-year rate-plan set forth by the Commission in PSP's last general rate case.²³

33 On July 7, 2022, PMSA filed an Opposition to PSP's Motion for Expedited Schedule, along with a Petition to Intervene and a Motion to Dismiss.²⁴ PMSA argues that PSP has submitted written testimony from 22 witnesses and more than 100 exhibits, which would be inappropriate for an expedited schedule. PMSA questions PSP's assessment of its initial filing, noting that the "executive summary" appears to be missing. PMSA argues that PSP has not shown the need for an expedited schedule and that the Commission previously found that there was "no shortage" of pilot candidates.²⁵

²² See *supra* ¶ 26.

²³ See generally *WUTC v. Puget Sound Pilots*, Docket TP-190976 Final Order 09 (November 25, 2020).

²⁴ PMSA's Petition to Intervene and Motion to Dismiss will be considered in a subsequent order.

²⁵ PMSA's Response (citing Final Order 09 ¶ 150).

34 On July 7, 2022, Staff also filed a Response to PSP’s Motion to Set Expedited Schedule (Staff’s Response). Staff notes that PSP’s proposed schedule provides less than two months for the preparation of response testimony and less than two weeks for the preparation of rebuttal testimony. Staff submits that such a schedule would unnecessarily constrict the ability of Staff and other parties to review the case.

35 *Commission Determination.* As noted at the prehearing conference, we deny PSP’s Motion to Set Expedited Schedule. The Commission normally reserves expedited schedules for rate cases with limited issues when an expedited schedule does not unnecessarily constrict parties’ ability to review the case. By contrast, PSP has submitted written testimony from 22 witnesses and more than 100 exhibits. This case is further complicated by PSP’s failure to fully follow the Commission’s instructions in Order 09 related to conducting retirement workshops. PSP’s proposed schedule would unnecessarily restrict the parties’ ability to review the rate case, and this would be contrary to the public interest.

36 **MOTION FOR LEAVE TO SUPPLEMENT THE RECORD.** On August 2, 2022, PSP filed a Motion for Leave to Supplement the Record (Motion for Leave to Supplement the Record). PSP requests leave to file its Executive Summary (Executive Summary). It submits that this Executive Summary “does not include new evidence” and that it is “designed and intended as a road map that provides a concise summary and citations to relevant testimony as to each key issue in this case.”

37 At the August 4, 2022, prehearing conference, the presiding administrative law judge asked for the parties for oral responses to PSP’s Motion for Leave to Supplement the Record. Staff objected to the motion and argued that the proposed Executive Summary went beyond summarizing the evidence and was cumulative of other evidence already filed. PMSA also objected, citing similar reasons to Staff and arguing that the Executive Summary constituted testimony from counsel. TOTE did not take a position on this motion.

38 PSP argued at the prehearing conference that the public interest supports granting leave to supplement the record. PSP noted that the Executive Summary was not submitted as evidence but would assist the Commission, and the public, in understanding PSP’s filing.

39 *Commission Determination.* At the prehearing conference, the presiding officer denied PSP’s Motion for Leave to Supplement the Record. PSP’s Executive Summary is not merely a road map of testimony. It is a 43 page document that contains arguments from PSP’s attorneys and their characterization of the evidence. If the Commission accepted this document, this would essentially provide PSP an opportunity to file an opening brief

approximately one month after its initial filing, with no clear opportunity for other parties to respond. This would be contrary to Commission practice and unfair to the other parties.

40 **PROTECTIVE ORDER.** At the prehearing conference, PMSA requested that the Commission enter a protective order in this Docket. PMSA noted that PSP objected to certain data requests in the last general rate case on the basis that there was no protective order.

41 We decline PMSA’s request to enter a protective order. Records filed with the Commission are generally subject to the Public Records Act, Chapter 42.56 RCW. Although the Public Records Act provides a limited exemption for certain records filed with the Commission, this exemption is currently limited to records filed by utilities, subject to RCW Title 80, and solid waste collection companies, subject to RCW chapter 81.77.²⁶

42 Given the current statutory framework, we are concerned that any protective order entered in this proceeding would not survive a challenge under the Public Records Act. Accordingly, we decline to enter a protective order at this time.

43 **COMMISSION ASSISTANCE FROM THE BOARD OF PILOTAGE COMMISSIONERS.** RCW 81.116.020(5) provides that, in exercising its duties under the applicable statute, the Commission may “request assistance” from the BPC. At the prehearing conference, the presiding administrative law judge asked whether the parties objected to the Commission designating the executive director and chair of the BPC as consultants, consistent with the Commission’s findings in PSP’s last general rate case.²⁷ No party objected to this proposal.

44 The Commission therefore designates the executive director and chair of the BPC as consultants for the Commission in this proceeding, consistent with our findings in PSP’s last general rate case. Because we are designating these two officials as consultants, “the designated BPC representatives may not communicate about the merits of this case with PSP, PMSA, Staff, or other BPC staff and board members.”²⁸ This ethical responsibility

²⁶ RCW 42.56.330(1) (exempting “[r]ecords filed with the utilities and transportation commission or attorney general under RCW 80.04.095 or 81.77.210 that a court has determined are confidential under RCW 80.04.095 or 81.77.210.”).

²⁷ See *WUTC v. Puget Sound Pilots*, Docket TP-190976 Order 2 ¶¶ 8-16 (December 17, 2019).

²⁸ *Id.* ¶ 14.

also falls on the parties to the case, to avoid initiating improper ex parte communications with these officials.

45 In the event that an ex parte communication occurs, the Commission will follow the process set out in WAC 480-07-310(4) by placing documentation of the ex parte communication in the record, notifying the parties that the communication occurred and providing documentation of the communication, and providing the parties with the opportunity to file and serve written rebuttal statements.

46 **WORKPAPERS.** At the prehearing conference, PMSA requested that PSP refile certain workpapers as exhibits or to designate them by witness. PMSA observed that certain workpapers, specifically the file “220513-PSP-WP KAE-Final Puget Sound Pilots Master Datafile-06-29-22” did not contain financial data and did not meet the definition of a workpaper.

47 In response, PSP indicated it was amenable to refile workpapers with witness designations.

48 Pursuant to WAC 480-07-525(4), general rate filings for marine pilotage services in the Puget Sound pilotage district should include workpapers reflecting the test year, including a schedule of fixed or long term assets, computation of revenue requirement, an accrual basis income statement, and an income statement with restating and pro forma adjustments, among other requirements. The file identified by PMSA contains industry-wide data points on vessel traffic and vessel types, among other data sets and graphs used throughout the testimony of Ken A. Eriksen. This file does not contain financial data specific to PSP’s test year or results of operations and should therefore be designated as an exhibit sponsored by witness Ken A. Eriksen.

49 In addition to the file mentioned by PMSA, the files “2022513 -PSP-WP Automatic Tariff Adjuster Work Paper-07-14-22” and “220513-PSP-WP DL-Pilot Group Pay Analysis-06-29-22” also do not meet the definition of a workpaper. We therefore require PSP to refile these documents, within 14 days of the entry of this Order, as exhibits to the testimony of their respective witnesses.

50 **DISCOVERY.** Discovery will be conducted under the Commission’s discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution. The Parties agree to certain discovery practices that will facilitate the sharing of all data requests and responses with all Parties as well as the tracking and organizing of those data requests and responses.

- 51 First, the Parties agree to identify each data request by subject (1) above each data request, (2) in the cover letter, and (3) in the distribution email. Data requests propounded in a single set will be grouped by subject in the cover letter and distribution email. The Parties will cooperate to develop a uniform list of subjects to facilitate discovery tracking. These discovery tracking processes are not intended to limit or restrict discovery in any way.
- 52 Second, response times to data requests will be adjusted as set forth in Appendix B.
- 53 Third, the Commission believes it will aid discovery in this case if all responses to data requests are shared with all parties. No party objected to the Commission making the exchange of data request responses with all parties as a requirement for discovery in this case. Accordingly, the Commission requires each party to share its data request responses with all other parties, subject to any confidentiality limitations contained in Commission rule and the protective order issued in this docket. To be clear, parties must not share data requests and responses with the Commissioners, the presiding administrative law judge, or Commission policy advisors, unless those responses are offered as exhibits to be admitted into the record.
- 54 Finally, PMSA requested a facilitated discovery conference to occur relatively earlier in the procedural schedule. There were no objections from the other parties.
- 55 Pursuant to WAC 480-07-415, the Commission may request or require the parties to attend a discovery conference. The Commission may also designate an individual to facilitate such a discovery conference.
- 56 In this case, the Commission grants PMSA's request and includes a facilitated discovery conference in the procedural schedule, as set forth in Appendix B. The Commission designates administrative law judges Samantha Doyle and Greg Kopta as co-facilitators. Judge Doyle may be reached at samantha.doyle@utc.wa.gov or 360-664-1164. Judge Kopta may be reached at greg.kopta@utc.wa.gov or at 360-664-1355.
- 57 If the parties seek to change the date of this discovery conference, the parties are required to make such a request to Judge Doyle and Judge Kopta. Attendance at this discovery conference is required for PSP and PMSA, but attendance is optional for Staff and TOTE.
- 58 **PROCEDURAL SCHEDULE.** The parties partially agreed upon a procedural schedule at the prehearing conference. The parties agreed to the dates for a parties-only settlement conference, a mediated settlement conference concerning PSP's retirement plan, a discovery end-date, final pre-hearing submissions, a hearing date of February 22, 2022, continuing as needed to February 23, 2022, and deadlines for post-hearing briefing.

59 PSP, Staff, and PMSA disagreed primarily regarding the deadlines for response testimony and rebuttal/cross-answering testimony. PSP argued that response testimony should be due in October 2022 or November 2022 and that delaying this deadline into December 2022 was unwarranted and would impact PSP's rebuttal testimony.

60 Staff argued that response testimony should be due between December 26, 2022, and December 30, 2022. PMSA generally supported Staff's proposed deadline for response testimony and noted that PSP itself proposed a shorter timeframe for rebuttal testimony in its Motion for an Expedited Schedule.

61 The Commission generally adopts the parties' proposed procedural schedule, which is attached to this Order as Appendix B. The parties may modify the date of the parties-only settlement conference by providing written notice to the Commission. The parties may modify the date of the mediated settlement conference regarding PSP's retirement plan by making such a request to mediators Judge Doyle and Judge Kopta.

62 Insofar as the parties disagree over the timing of response testimony and rebuttal/cross-answering, the Commission adopts Staff's proposal for the filing of response testimony on December 30, 2022, and the filing of rebuttal testimony four weeks later, on January 27, 2023. Staff noted other significant, pending cases before the Commission during the fall and winter of 2022. Staff's proposed response testimony deadline help accommodate this pressing workload. Because we have adopted the later deadline for response testimony, we also set a relatively later deadline for rebuttal/cross-answering testimony on January 20, 2023. We observe that this provides PSP more time to prepare rebuttal testimony than PSP requested in its Motion for an Expedited Schedule.

63 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other pre-filed materials in compliance with all of the following requirements:

- (a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files.
- (b) The Commission accepts only electronic versions of documents for formal filing. Parties must submit documents electronically through the Commission's web portal (www.utc.wa.gov/e-filing). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to records@utc.wa.gov, provided that the email:

(1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b).

- (c) In light of the COVID-19 pandemic, the Commission is suspending requirements for paper filings in this case.
- (d) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395 and WAC 480-07-460.
- (e) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (michael.howard@utc.wa.gov) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

64 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5 p.m. on Wednesday, February 15, 2022.** The Commission requires electronic copies in searchable PDF (Adobe Acrobat or comparable software). If any of the exhibits contain information designated as confidential, parties must file an electronic copy of the redacted version in searchable PDF (Adobe Acrobat or comparable software) of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits.

65 **EXHIBIT LISTS.** With each submission of pre-filed testimony and exhibits, the party making the submission must include a preliminary exhibit list that identifies each submitted exhibit in the format the Commission uses for exhibit lists it prepares for evidentiary hearings. The Company will prepare its preliminary exhibit list and circulate it to the parties. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all pre-filed testimony and exhibits and cross-examination exhibits, by **5 p.m., Wednesday, February 15, 2023.**

66 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge (michael.howard@utc.wa.gov) and the other parties by **5 p.m., Wednesday, February 15, 2023.**

67 **PUBLIC COMMENT HEARING.** At the prehearing conference, the parties submitted an agreed-upon procedural schedule that includes a public comment hearing. The parties

note that the exact date of the public comment hearing is to be determined. The Commission agrees that conducting a virtual public comment hearing is in the public interest, and will thus convene such a hearing **on or before February 22, 2023**. PSP ratepayers must receive notice of the date, time, and the methods for participating in the public comment hearing, as well as other information required under WAC 480-100-197, at least 30 days prior to the date of the public comment hearing.

68 **NOTICE OF EVIDENTIARY HEARING.** The Commission will hold an evidentiary hearing in this docket on **Wednesday, February 22, 2023, at 9:30 a.m., continuing as needed on Thursday, February 23, 2023**. Due to uncertainties surrounding the COVID-19 pandemic, the Commission will determine at a later date whether the hearing will be conducted in-person or virtually. If the hearing is conducted in-person, it will convene in the Commission's Hearing Room, First Floor, Commission Headquarters, 621 Woodland Square Loop S.E., Lacey, Washington.

69 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law and Policy Division (360-664-1136).

70 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of this Order, in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this docket, subject to Commission review.**

DATED at Lacey, Washington, and effective August 26, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael S. Howard
MICHAEL HOWARD
Administrative Law Judge

**APPENDIX A
PARTIES' REPRESENTATIVES
DOCKET TP-220513**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Puget Sound Pilots	Michael Haglund Haglund Kelley LLP 2177 SW Broadway Portland, OR 97201	(503) 255-0777	mhaglund@hk-law.com
	Julie Weis		jweis@hk-law.com
	Eric E. Brickenstein		ebrickenstein@hk-law.com
Commission Staff	Harry Fukano Assistant Attorney General Office of the Attorney General Utilities and Transportation Division P.O. Box 40128 Olympia, WA 98504	(360) 995-2818	harry.fukano@utc.wa.gov
PMSA	Michelle DeLappe Fox Rothschild LLP 1001 Fourth Ave., Suite 4400 Seattle, WA 98154	(206) 389-1668	seasalt@foxrothschild.com
	Mike Jacob PMSA 70 Washington St., Suite 305 Oakland, CA 95607	(510) 987-5000	mjacob@pmsaship.com
	Captain Mike Moore PMSA 2200 Alaskan Way Seattle, WA 98121	(206) 441-9700	mmoore@pmsaship.com
TOTE	Steven W. Block Lane Powell PC 1420 Fifth Avenue, Suite 4200 P.O. Box 91302 Seattle, WA 98111	(206) 223-7000	blocks@lanepowell.com

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET UE-210532**

EVENT	DATE
Tariff Filing	June 29, 2022
Tariffs Suspended and Discovery Commenced	July 15, 2022
Prehearing Conference	August 4, 2022
Facilitated Discovery Conference	September 14, 2022
Settlement Conference (parties only)	September 23, 2022
Mediated Settlement Conference	October 10, 2022
Response Testimony	December 30, 2022²⁹
Notices Issued for Public Comment Hearing	30 days prior to Public Comment Hearings
Public Comment Hearing	TBD
Rebuttal/Cross Answering Testimony	January 20, 2023³⁰
Discovery Cutoff	February 8, 2023

²⁹ On or after the deadline for response testimony, on December 30, 2022, a party to whom a data request is directed must make its best efforts to respond to data requests within seven days after the data request is served or must at least respond within ten days as required by WAC 480-07-405(7)(a)(ii).

³⁰ On or after the deadline for rebuttal/cross-answering testimony, on January 27, 2023, a party to whom a data request is directed must make its best efforts to respond to data requests within five days after the data request is served or must at least respond within ten days as required by WAC 480-07-405(7)(a)(ii).

File Cross Examination Exhibits, Witness Lists, and Errata sheets, and email Cross-Examination Time Estimates to the presiding ALJ	February 15, 2023
Hearing	February 22, 2023, at 9:30 a.m., continuing as needed to February 23, 2023
Simultaneous Post-hearing Briefs	March 17, 2023
Simultaneous Post-hearing Reply Briefs	March 31, 2023
Final Order Issued	May 29, 2023³¹

³¹ The Commission will make best efforts to issue the final order in this case by the above Final Order Due Date, 11 months after the filing of PSP’s initial testimony on June 29, 2022. This is not the limits of the Commission’s statutory authority, however. Pursuant to RCW 81.116.030(4), the statutory suspension date is 10 months “from the time the change would otherwise go into effect.” Because PSP’s initial filing provided an effective date of January 25, 2023, the actual statutory suspension date would be October 25, 2023.