

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-220513

ORDER 04

GRANTING MOTION FOR LEAVE
TO FILE REPLY; GRANTING
MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD

BACKGROUND

- 1 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 On August 26, 2022, the Commission entered Order 03, Prehearing Conference Order; Notice of Hearing (Order 03). Order 03 noticed a hearing for Wednesday, February 22, 2023, continuing if necessary, on Thursday, February 23, 2022.
- 3 On September 9, 2022, PSP filed a Motion for Leave to Supplement the Record (Motion for Leave to Supplement the Record). PSP notes that its initial filing on June 29, 2022, included testimony from accountant Weldon T. Burton. PSP requests leave to file supplemental testimony from Burton, Exh. WTB-04T, and associated exhibit WTB-05. PSP submits that Burton's supplemental testimony and exhibit provide "significant additional information regarding PSP's financial accounting and includes a description and explanation of PSP's 2021 pro forma statement of operations, including restating adjustments and pro forma adjustments." PSP submits that this supplemental testimony is also responsive to data requests (DRs) from Commission staff (Staff).
- 4 On September 16, 2022, Staff filed a Response to PSP's Motion to Supplement the Record. Staff indicates that it does not oppose PSP's Motion for Leave to Supplement the Record. However, Staff "respectfully requests that PSP provide full responses to Staff's DRs 1-12." Staff recommends that the Commission direct PSP "to clarify whether and how the supplemental material affects the material already on file with the Commission

in this docket.” Staff observes that it is “not clear what specific information PSP intends to correct or update as part of PSP’s supplemental filing.” Staff also recommends that the Commission extend all remaining procedural deadlines in the docket by four weeks “to allow the parties additional time to review the supplemental information provided by PSP.” Staff notes that the Commission is not required to issue a decision until October 2023 and that “the scope, timing, and significance of PSP’s supplemental material, as well as the need to reanalyze PSP’s pro forma and restating adjustments” support continuing the remaining deadlines in the docket.

- 5 On September 23, 2022, PSP filed a Motion for Leave to File Reply in Support of Motion to Supplement the Record (Motion for Leave to File Reply). PSP seeks leave to file its attached reply brief (Reply), indicating that PSP has no objection to Staff’s requests. PSP therefore requests that its Motion for Leave to Supplement the Record be granted subject to Staff’s recommended conditions.

DISCUSSION AND DECISION

Motion for Leave to File Reply

- 6 Pursuant to WAC 480-07-370(5), a party must not file a reply without leave from the Commission. A party must request leave to file a reply within five business days of the response at issue, and it must attach the proposed reply to its motion.¹
- 7 PSP timely filed its Motion for Leave to File Reply. PSP reasonably seeks leave to respond to Staff’s response, indicating that it has no objections to Staff’s recommended conditions. The Commission therefore grants PSP’s Motion for Leave to File Reply.
- 8 WAC 480-07-370(5)(b) provides that a motion for leave to file a reply is generally deemed denied unless the Commission acts on it within five business days. Pursuant to WAC 480-07-110, however, 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.” The Commission finds it appropriate, in this instance, to grant PSP an exemption from this requirement. Due to other workloads and the number of adjustments presented in Burton’s supplemental testimony, the Commission did not provide a ruling on PSP’s Motion for Leave to File a

¹ *Id.*

Reply within five business days. It is consistent with the public interest to grant PSP's motion and to accept its Reply for consideration.

Motion for Leave to Supplement the Record

- 9 Pursuant to WAC 480-07-540, a petitioner seeking to change rates for marine pilotage services bears the burden of proof. This includes the burden of production and the burden of persuasion.² Any supplemental filings authorized by the Commission will be included as part of the petitioner's direct case for purposes of a prehearing motion to dismiss.³
- 10 In this case, no party has objected to PSP's Motion for Leave to Supplement the Record. PMSA did not file any response to this motion. Staff indicated no objection but recommended that the Commission extend all remaining procedural deadlines by four weeks. While the lack of opposition weighs in favor of granting PSP's motion, the nature of Burton's supplemental testimony deserves comment and further consideration.
- 11 After reviewing the supplemental testimony and exhibit from PSP's witness Burton, the Commission is concerned that this evidence was not provided earlier. Pursuant to WAC 480-07-525(2), general rate proceedings for marine pilotage services in Puget Sound must contain certain testimony, exhibits, and workpapers. Test year workpapers must include: "An income statement with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments. The filing must identify dollar values and underlying reasons for each restating actual and pro forma adjustment."⁴ The workpapers must also include "[n]ormalized annual costs of any major capital investment or other recurring expenses"⁵ and supporting explanations for any adjustments calculated in a manner different than that accepted by the Commission.⁶ Burton's supplemental testimony and exhibit seek to provide additional detailed information for PSP's 2021 pro forma statement of operations not provided in its direct

² *Id.*

³ *Id.*

⁴ WAC 480-07-525(4)(d).

⁵ WAC 480-07-525(4)(p).

⁶ WAC 480-07-525(4)(s).

testimony, and Burton proposes a number of restating and pro forma adjustment changes that appear to fall within the requirements of WAC 480-07-525(2).

- 12 It is unclear why this testimony was not provided earlier, as part of PSP's initial filing. Many points raised by Burton's supplemental testimony appear to have been well within PSP's knowledge prior to June 29, 2022. For example, Burton makes significant updates to depreciation expense, including the depreciation rates for the Pilot Boat *Juan de Fuca*, when this was a requirement from the Commission's final order from PSP's 2019 rate case.⁷ Burton also addresses PSP's "Payroll Protection Program" loan, which the organization received in 2020 and was forgiven in 2021.⁸ Burton also provides restating and pro forma adjustments related to cruise ship revenue, resulting in an approximately \$1 million difference in revenue.⁹ In total, Burton's supplemental testimony and exhibit includes 15 restating adjustments and 25 pro forma adjustments, the majority of which appear to be new or revised adjustments to PSP's initial case.¹⁰ It appears that much of Burton's testimony addresses issues within PSP's knowledge prior to June 29, 2022, that should have been included in PSP's initial filing pursuant to WAC 480-07-525. To the extent PSP failed to satisfy this rule, the Commission would have been within its discretion to reject this general rate case.¹¹
- 13 Given these circumstances, Staff's recommended four-week procedural extension does not fully address our concerns. The Commission plans to extend the remaining procedural deadlines in this case by approximately six weeks, rather than four, to provide for appropriate due process for all the parties; to prevent prejudice resulting from PSP developing its case in a supplemental filing; and to assure this supplemental testimony does not hinder the Commission's review of this case. We also require PSP to file in this docket a list of all the changes made to its supplemental revenue requirement Excel model which result in changes to account totals, including cell references to each

⁷ See Burton, Exh. WTB-04 at 4:7-10.

⁸ *Id.* at 7:9-17.

⁹ Compare 220513-PSP-WP IC-projected 2022 revenue and assignments-06-29-22 (adjusting 2021 cruise ship revenue) with Burton, Exh. WTB-04 at 8:2-12 (again describing adjustments for 2021 cruise ship revenue).

¹⁰ See Burton, Exh. WTB-01T at 3:17-23 and 9:3-10.

¹¹ See WAC 480-07-525 ("The commission may reject a filing that fails to meet these minimum requirements, without prejudice to a petitioner's right to refile its request in conformance with this section.").

workbook for comparison. PSP should explain only what was changed in each account and why, not the flow-through changes to the Excel model that result from those changes.

- 14 Going forward, PSP should be aware that such an extension or continuance is not normally possible in general rate cases and that, in a future case, such a motion to supplement the record may simply be denied as departing from Commission practice and rules.
- 15 By a separate notice, the Commission will set a date for a second prehearing conference with the parties to establish new deadlines and a new hearing date. Much as we observed in Order 03, the actual statutory suspension date in this proceeding is not until November 25, 2023.¹² Sufficient time remains available to the Commission and the parties for a six-week continuance.
- 16 We agree with Staff's remaining condition. In addition to changes in the revenue requirement Excel model, PSP is required to clarify how its supplemental material revises or replaces existing testimony and exhibits filed by PSP. PSP should therefore file revisions to any testimony and exhibits included with its initial filing on June 29, 2022, to reflect its updated position as set forth in Exhibits WTB-04T and WTB-05. This would include, at the very least, relevant corrections to Megan Brook's Exhibits MB-04 and MB-05.¹³ PSP should also describe the basis for any revisions to its testimony in the

¹² 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 November 25, 2023. Order 03 incorrectly noted this suspension date as being October 25, 2023.

¹³ See Burton, Exh. WTB-04T at 1:18-19.

cover letters accompanying its filing of revised testimony. These revised testimonies and exhibits must be filed by Monday, October 31, 2022.¹⁴

ORDER

THE COMMISSION ORDERS THAT:

- 17 (1) Puget Sound Pilots' Motion for Leave to File Reply is GRANTED.
- 18 (2) Puget Sound Pilots' Motion for Leave to Supplement the Record is
 GRANTED subject to the conditions discussed in paragraphs 13-16 of this
 Order.

DATED at Lacey, Washington, and effective October 18, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.

¹⁴ Although Staff briefly requests that PSP be instructed to fully answer Staff DRs 1-12, Staff does not present these DRs for the Commission's review, and it has not filed a motion to compel. Pursuant to WAC 480-07-405, "A party's motion to compel responses to data requests must include the relevant data request, any objection to the request, and any response to the objection." The Commission will consider a motion to compel brought in accordance with this rule.