

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-190976

ORDER 02

PREHEARING CONFERENCE  
ORDER; NOTICE OF HEARING

**(Set for Monday and Tuesday,  
June 29 and 30, 2020, at 9:30 a.m.)**

- 1 NATURE OF PROCEEDING.** On November 19, 2019, Puget Sound Pilots (PSP) filed with the Washington Utilities and Transportation Commission (Commission) its initial proposed tariff. The purpose of this filing is to increase pilotage rates, previously set by the Board of Pilotage Commissioners (BPC), that have been in place since 2015. The proposed initial tariff filing has a stated effective date of December 23, 2019.
- 2** On November 21, 2019, the Commission entered Order 01, suspending the tariff filing and setting the matter for adjudication.
- 3 CONFERENCE.** The Commission convened a prehearing conference at its headquarters in Lacey, Washington, on December 12, 2019, before Chair David Danner, Commissioner Ann Rendahl, and Commissioner Jay Balasbas. Administrative Law Judge Rayne Pearson presided.
- 4 APPEARANCES.** David Wiley and Blair Fassburg, Williams Kastner, Seattle, Washington, represent PSP. Sally Brown and Harry Fukano, Assistant Attorneys General, Lacey, Washington, represent Commission staff (Staff).<sup>1</sup> Michelle DeLappe, Foster

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<sup>1</sup> 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

Garvey P.C., Seattle, Washington, represents the Pacific Merchant Shipping Association (PMSA). Contact information for party representatives is attached as Appendix A to this Order.

5 **PETITION FOR INTERVENTION.** On December 6, 2019, PMSA filed a petition to intervene. In its petition, PMSA describes itself as a non-profit trade association that represents PSP customers who operate ocean-going vessels, as well as service providers such as marine terminal operators, shipping agents, tug companies, bunker providers, and others.

6 The Commission may grant intervention to any person who “discloses a substantial interest in the subject matter of the hearing.”<sup>2</sup> RCW 81.116.010(3)(b) defines “a person with a substantial interest” for the purposes of this proceeding as “a vessel operator or other person utilizing the services of a licensed pilot and paying pilotage fees and charges for such services or an organization representing such vessel operators or persons.”

7 Because PMSA meets the statutory definition of “a person with a substantial interest,” its petition to intervene is granted on that basis.

8 **COMMISSION ASSISTANCE FROM THE BPC.** 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, PSP requested the Commission obtain assistance from the BPC only through formal written bench requests to ensure transparency in this proceeding. In the alternative, PSP requested the Commission designate only specific BPC board members to assist the Commission during the pendency of this proceeding, and to provide clear guidance in this Order on ex parte rules.

9 Staff suggested the Commission use a hybrid approach, both designating individual BPC board members as advisors and issuing bench requests as needed.

10 PMSA had no objection to designating specific BPC board members as advisors provided those board members do not have an interest in this proceeding.

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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.

<sup>2</sup> WAC 480-07-355(3).

- 11 The Commission denies PSP's request to communicate with the BPC solely through bench requests, but agrees with the parties that it is appropriate to designate individual BPC representatives to serve in a consulting role. As noted above, RCW 81.116.020(5) permits the Commission to "request assistance" from the BPC. The statute provides no further guidance, thus placing the method and means for obtaining such assistance squarely within the Commission's discretion.
- 12 Bench requests are a procedural mechanism used by the presiding officer to obtain additional information from a party or parties to a proceeding to fill evidentiary gaps in the record. The BPC, however, is not a party to this proceeding. Moreover, the Commission will only request assistance from the BPC for the purpose of analyzing existing evidence, not to supplement the record. In light of these factors, we find that bench requests are not an appropriate means for the Commission to obtain assistance from the BPC. In addition, as Staff noted at the prehearing conference, the Commission understands that its decision must be based solely on the evidence in the record. Obtaining assistance from the BPC by designating certain individuals to act as consultants will not compromise this outcome, or any other aspect of this proceeding.
- 13 Consistent with this decision, we designate the executive director and chair of the BPC as consultants to the Commission, and have the utmost confidence that those individuals will refrain from engaging in ex parte communications with any party to this proceeding, or with other BPC employees or members. Per the parties' request, we provide clear guidance on ex parte practice below.
- 14 WAC 480-07-310(1) provides that:

[N]o person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy or investigative staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge assigned to the adjudication, or the commissioners' assistants, advisory staff, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding so that they may participate in, or respond to, the communication.

Here, the designated BPC representatives do not have a direct or indirect interest in the outcome of this proceeding, and are therefore on the presiding officers' "side" of the ex parte "wall." As such, the designated BPC representatives may not communicate about the merits of this case with PSP, PMSA, Staff, or other BPC staff and board members. By way of further guidance, WAC 480-07-310(2) provides that communications concerning

procedural aspects of the proceeding, such as scheduling, are not ex parte communications.

- 15 Pursuant to WAC 480-07-310(2)(b), the designated BPC representatives will act as “consultants who are subject to the presiding officer’s supervision,” and they may communicate only with Commission members and the presiding officer, their assistants, and their advisors regarding the merits of this proceeding.
- 16 In the unlikely 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.
- 17 **DISCOVERY.** Discovery will be conducted according to the Commission’s discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively to avoid having to bring discovery matters forward for formal resolution.
- 18 No party objects to the Commission making the exchange of data requests and responses with all parties a requirement for discovery in this case. Accordingly, the Commission requires the parties to share every data request and response with all parties. Data requests and responses should be shared among the parties, and should only be filed with the Commission if they are being offered as an exhibit, in which case they should be filed concurrently with the testimony of the sponsoring witness in accordance with the Commission’s procedural rules for filing such documents.
- 19 **PROCEDURAL SCHEDULE.** The parties were unable to agree to a procedural schedule at the prehearing conference. The Commission heard from all parties regarding their scheduling preferences and availability, and determines that scheduling an evidentiary hearing on June 29 and 30, 2020, both balances the parties’ interests and best meets the Commission’s scheduling needs in light of statutory timing requirements. The full procedural schedule is attached to this Order as Appendix B.
- 20 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other prefiled 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. The Commission requires electronic copies to be in searchable .pdf format (adobe acrobat or comparable software), or to otherwise comply with WAC 480-07-140(6)(a). Parties must submit documents electronically through the Commission's web portal ([www.utc.wa.gov/e-filing](http://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](mailto:records@utc.wa.gov) provided 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) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395 and WAC 480-07-460.
- (d) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge ([rayne.pearson@utc.wa.gov](mailto:rayne.pearson@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.

21 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5 p.m. on June 22, 2020**. The Commission requires electronic copies in searchable .pdf (adobe acrobat or comparable software). The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits.

22 **EXHIBIT LISTS.** With each submission of prefiled 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. PSP will prepare and file its preliminary exhibit list for their initial filing in these dockets. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits by **5 p.m. on June 22, 2020**.

23 **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 and the other parties via email by **5 p.m. on June 22, 2020**.

24 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in these dockets on **June 29, 2020, beginning at 9:30 a.m. and continuing on June 30, 2020, at 9:30 a.m. as necessary**, in the Commission's Richard Hemstad Hearing Room, 621 Woodland Square Loop SE, Lacey, Washington.

25 **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 Division ([rayne.pearson@utc.wa.gov](mailto:rayne.pearson@utc.wa.gov) or 360-664-1136).

26 **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 the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in these dockets, subject to Commission review.**

DATED at Lacey, Washington, and effective December 17, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Rayne Pearson*  
RAYNE PEARSON  
Administrative Law Judge

**APPENDIX A  
PARTIES' REPRESENTATIVES  
DOCKET TP-190976**

<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>E-MAIL</b>
Puget Sound Pilots	David Wiley Blair Fassburg Williams Kastner 601 Union Street, Suite 4100 Seattle, WA 98101	(206) 628-6600	<a href="mailto:dwiley@williamskastner.com">dwiley@williamskastner.com</a> <a href="mailto:bfassburg@williamskastner.com">bfassburg@williamskastner.com</a>
	Eric vonBrandenfels President, Puget Sound Pilots 2003 Western Avenue, Suite 200 Seattle, WA		
	Linda Styrk Executive Director, Puget Sound Pilots		
Commission Staff	Harry Fukano Assistant Attorney General Office of the Attorney General Utilities and Transportation Commission P.O. Box 40128 Olympia, WA 98504	(360) 664-1225	<a href="mailto:harry.fukano@utc.wa.gov">harry.fukano@utc.wa.gov</a>
	Sally Brown Senior Assistant Attorney General	(360) 664-1193	<a href="mailto:sally.brown@utc.wa.gov">sally.brown@utc.wa.gov</a>
PMSA	Michelle DeLappe Foster Garvey P.C. 1111 Third Avenue, Suite 3000 Seattle, WA 98101	(206) 816-1403	<a href="mailto:michelle.delappe@foster.com">michelle.delappe@foster.com</a> <a href="mailto:seasalt@foster.com">seasalt@foster.com</a>
	Mike Jacob, VP and General Counsel PMSA 70 Washington Street, Suite 305 Oakland, CA 94607		<a href="mailto:mjacob@pmsaship.com">mjacob@pmsaship.com</a>
	Capt. Mike Moore, VP PMSA 2200 Alaskan Way Seattle, WA 98121		<a href="mailto:mmoore@pmsaship.com">mmoore@pmsaship.com</a>

**APPENDIX B  
PROCEDURAL SCHEDULE  
DOCKET TP-190976**

<b>EVENT</b>	<b>DATE</b>
Prehearing Conference	<b>December 12, 2019</b>
Prehearing Conference Order (Order 02)	<b>December 17, 2019</b>
Initial Settlement Conference <sup>3</sup>	<b>January 17, 2020</b>
Staff and PMSA Response Testimony and Exhibits	<b>April 22, 2020</b>
Second Settlement Conference	<b>TBD</b>
PSP Rebuttal Testimony and Exhibits; Staff and PMSA Cross-Answering Testimony and Exhibits	<b>May 26, 2020</b>
Discovery Deadline – Last Day to Issue Data Requests	<b>June 15, 2020</b>
Exhibits List, Cross-Examination Exhibits, Witnesses List, Time Estimates, Exhibits Errata	<b>June 22, 2020</b>
Evidentiary Hearing	<b>June 29 and 30, 2020, at 9:30 a.m.</b>
Simultaneous Post-Hearing Briefs	<b>July 20, 2020</b>
Simultaneous Reply Briefs	<b>August 3, 2020</b>
Suspension Date	<b>October 23, 2020</b>

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<sup>3</sup> Per WAC 480-07-700(3)(a), parties may reschedule a settlement conference included in the procedural schedule without seeking to modify the schedule if all parties agree, but the parties must provide notice to the presiding officer of the rescheduled date.