

Docket TP-220513  
PSP Data Request Nos. 1-9 to  
Pacific Merchant Shipping Association  
March 10, 2023  
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**DATA REQUESTS: GENERAL INSTRUCTIONS**

Pursuant to the Washington Utilities and Transportation Commission's (UTC's) Orders in this matter (TP-220513), and WAC 480-07-405, Respondent Puget Sound Pilots ("PSP") propounds the following data requests to Pacific Merchant Shipping Association ("PMSA").

1. These data requests call for all information, including but not limited to information contained in documents or any other tangible or material thing that is known or available to PMSA and including all information in the possession, custody, or control of you or your agents, employees, contractors, attorneys, accountants, auditors, or other persons who are under your, or your attorney's employment, direction and/or control.

2. Please send all electronic documents and data in native format. For any documents that cannot be transmitted via email, please provide the documents via online fileshare; we can provide a secure site for uploading them if that would be helpful.

3. Please review all Excel documents and work papers for hidden cells. Hidden cells include hidden worksheets, columns, rows, and ranges. Please ensure that all items provided pursuant to these requests do not contain any hidden cells or formulas.

4. For purposes of these requests, the term "documents" or "documentation" includes, but is not limited to, letters, emails, correspondence of any kind (including all attachments and/or enclosures), messages, facsimiles, computer files and/or other electronically stored information, spreadsheets, presentations, reports, analyses, notes, minutes, memoranda, work papers, schedules, calendars, invoices, purchase orders, inventories, photographs, graphs, charts, drawings, diagrams, and all other taped, recorded, printed, written, typed, and/or electronic information.

**TESTIMONY OF PMSA**

**PSP DATA REQUEST NO. 1:** Provide lists of the members of the Pacific Merchant Shipping Association ("PMSA") in the calendar years 2019, 2020, 2021, 2022 and as of the first quarter of 2023.

**RESPONSE:**

**PSP DATA REQUEST NO. 2:** Please describe the nature of the charges by PMSA to vessels calling in Puget Sound. Specifically, address whether the charges are based upon a flat rate, whether there is any charge based on vessel size, whether the charge applies to a round trip voyage to and from Puget Sound or differentiates between inbound and outbound transits and/or harbor moves.

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**RESPONSE:**

**PSP DATA REQUEST NO. 3:** Does PMSA charge its members any annual membership fee? If so, what are those fees?

**RESPONSE:**

**PSP DATA REQUEST NO. 4:** In calendar years 2019, 2020, 2021 and 2022, what was PMSA's annual budget?

**RESPONSE:**

**PSP DATA REQUEST NO. 5:** For each of the calendar years 2010 through 2022 and the first quarter of 2023, provide a list of the charges or rate schedule utilized to bill PMSA members for membership fees and to bill oceangoing vessels for PMSA charges on a per voyage or transit basis.

**RESPONSE:**

**PSP DATA REQUEST NO. 6:** How does PMSA collect its membership fees? Provide a description of the process from beginning to end.

**RESPONSE:**

**PSP DATA REQUEST NO. 7:** How does PMSA collect the per vessel charges for vessels transiting to or from Puget Sound? Provide a description of the process from beginning to end.

**RESPONSE:**

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**PSP DATA REQUEST NO. 8:** Provide a representative sample of the PMSA invoices issued to PMSA members and to vessels calling Puget Sound ports utilized in 2019, 2020, 2021 and 2022.

**RESPONSE:**

**PSP DATA REQUEST NO. 9:** Did the PMSA or any of its members submit written or oral testimony on the oil spill financial responsibility bills in the Washington Legislature that ultimately were enacted as RCW 88.40.020 in 2022? If so, provide copies of any written testimony or written submission of any kind and, if the testimony was oral, identify the date, time, place and person so testifying.

**RESPONSE:**

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Attorney for Puget Sound Pilots

PACIFIC MERCHANT SHIPPING ASSOCIATION  
RESPONSES TO PUGET SOUND PILOTS DATA REQUEST NOS. 1-9

DATE PREPARED: March 17, 2023	WITNESS: Capt. Michael Moore
DOCKET: TP-220513	RESPONDER: Capt. Michael Moore,
REQUESTER: Puget Sound Pilots	Pacific Merchant Shipping Assn.

**PSP DATA REQUEST NO. 1:**

Provide lists of the members of the Pacific Merchant Shipping Association ("PMSA") in the calendar years 2019, 2020, 2021, 2022 and as of the first quarter of 2023.

**PMSA RESPONSE TO PSP DATA REQUEST NO. 1:**

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged, as further described below.

This Data Request is untimely for addressing issues having already been resolved and waived by PSP in the consideration of this filing. The basis for any inquiry regarding PMSA's membership is with respect to the establishment of PMSA's standing as a "person with a substantial interest" to participate in this proceeding as "an organization representing... vessel operators" pursuant to RCW 81.116.010, WAC 480-160-020. The Commission has already determined that PMSA has such standing as a person with a substantial interest and approved PMSA intervention in this matter. Order 03, ¶¶ 4-5 (August 26, 2022). PSP did not raise any objection to this finding, and any such interest it has in such line of inquiry has therefore been waived.

This Data Request is not reasonably calculated to lead to admissible evidence. Aside from questions of PMSA's standing, the composition of PMSA and the scope of its membership is not at issue in any of the testimony or proposals of PSP, or the response testimony of PMSA, TOTE, or UTC Staff. No items in the Petition or the proposed tariff are conditioned on PMSA membership, no vessel or PSP customer is advantaged or disadvantaged on the basis of PMSA membership. And, even if PSP proposed such provisions, they would likely be facially unlawful per se and not useful to setting a tariff.

This Data Request seeks information that is constitutionally privileged from disclosure during discovery. PMSA and its membership exercise their First Amendment constitutional rights to association and to petition the government by their appearance in this matter. PMSA asserts that there is some probability that this requested disclosure will harm its and its members protected rights. PSP's request for PMSA's membership list is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is

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no basis for a finding that any other source of relevant information has been exhausted in this process.

The First Amendment freedom to associate protects private associations from unnecessary discovery. *See N.A.A.C.P. v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). Under Washington state law this right is protected during discovery through a series of limitations on a requesting party:

In the discovery context, Washington has established a three-part test for First Amendment challenges based on associational privilege. First, the party asserting the right is only required to show some probability that the requested disclosure will harm its First Amendment rights. *Snedigar v. Hoddersen*, 114 Wash.2d 153, 158, 786 P.2d 781 (1990). Once this threshold is met, the burden shifts to the party requesting discovery to establish (1) the relevance and materiality of the information sought, and (2) that reasonable efforts to obtain the information by other means has been unsuccessful. *Id.* at 164, 786 P.2d 781. Finally, even if both of these required showings are made, the court must still balance the claim of privilege against the need for disclosure to determine which is the strongest. *Id.* at 166, 786 P.2d 781.

*Eugster v. City of Spokane*, 121 Wn. App. 799, 807, 91 P.3d 117 (2004).

As specified in *Right-Price Recreation LLC v. Connells Prairie Cmty. Council*, 105 Wn. App. 813, 21 P.3d 1157 (2001), the law favors non-disclosure and discovery is presumed as a matter of law to have the probability to be harmful when the discovery is of a type of class of requests that are suspect:

We conclude that the *discovery order here fits within the class of cases where we can assume a potential chilling effect on the group's First Amendment rights. Of particular concern is the scope of the discovery request. Right-Price asks for membership lists, minutes of meetings, and all financial records.* In addition, Right-Price seeks virtually every document or piece of correspondence the groups generated. As in *Pollard*, we would be naive not to recognize that disclosure of this information would chill the members' First Amendment rights. *When advocacy groups are required to disclose the identity of their members and the details of all of their activities, the freedom of members to promote their views suffers.* Privacy and anonymity are often essential to the free exercise of First Amendment rights. *See Talley*, 362 U.S. at 64-65, 80 S.Ct. 536.

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*Id.*, at 824-25. (Emphasis added.)

In addition, to further protect an Association's fundamental rights, the standard for the establishment of relevance is a much higher hurdle than in a typical discovery request:

To establish relevance, *the party seeking discovery must specifically describe the information sought and its importance: "[m]ere speculation that information might be useful will not suffice; litigants seeking to compel discovery must describe the information they hope to obtain and its importance to their case with a reasonable degree of specificity."* *Snedigar*, 114 Wash.2d at 165, 786 P.2d 781 (quoting *Black Panther Party v. Smith*, 661 F.2d 1243, 1268 (D.C.Cir.1981), *vacated by* 458 U.S. 1118, 102 S.Ct. 3505, 73 L.Ed.2d 1381 (1982)). To meet the second requirement, the party seeking discovery must make a "reasonably explicit" showing that every reasonable alternative source of information has been exhausted before the court will order disclosure. *Snedigar*, 114 Wash.2d at 165, 786 P.2d 781.

*Id.*, at 822. (Emphasis added.)

PMSA asserts all rights and privileges hereto and PSP has provided none of the required bases to overcome these presumptions in the law which favor non-disclosure.

Subject to and without waiving said objections or waiving any asserted privileges, PMSA further answers as follows:

PMSA publishes a partial and representative list of some of its membership for the public on its website at <https://www.pmsaship.com/about/members/> which is updated from time to time. This information is, was, and remains available to PSP without a data request, however, for PSP's convenience a copy of this representative membership list from the PMSA website as of March 10, 2023, produced as PMSA\_00001 to PMSA\_00007.

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**PSP DATA REQUEST NO. 2:**

Please describe the nature of the charges by PMSA to vessels calling in Puget Sound. Specifically, address whether the charges are based upon a flat rate, whether there is any charge based on vessel size, whether the charge applies to a round trip voyage to and from Puget Sound or differentiates between inbound and outbound transits and/or harbor moves.

**PMSA RESPONSE TO PSP DATA REQUEST NO. 2:**

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PMSA asserts that there is some probability that this requested disclosure will harm its' and its members' protected rights. PSP's request for information regarding PMSA's internal financial records is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is no basis for a finding that any other source of relevant information has been exhausted in this process.

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**PMSA RESPONSE TO PSP DATA REQUEST NO. 9:**

To the best of PMSA's knowledge, there was only one bill in 2022 which was enacted as RCW 88.40.020, HB 1691. PMSA did not submit written or oral testimony regarding HB 1691.

The records regarding who provided testimony in support or opposition to any bill in the Washington State Legislature is available online, including for HB 1691 at <https://app.leg.wa.gov/bills/summary?BillNumber=1691&Year=2021&Initiative=false>

This information is, was, and remains available to PSP without a data request, however, for PSP's convenience PMSA produces here a copy of the HB 1691 "House Bill Report" as PMSA\_00008 to PMSA\_00016. The HB 1691 House Bill Report demonstrates that neither PMSA nor PSP testified in any capacity, support or opposition, to this legislation.