

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p>Complainant,</p> <p>v.</p> <p>PUGET SOUND PILOTS,</p> <p>Respondent.</p>
--

DOCKET TP-220513

ORDER 07

SETTING DEADLINE FOR
RESPONSE TO PSP’S EMERGENCY
MOTION IN LIMINE

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 granted petitions to intervene filed by Pacific Merchant Shipping Association (PMSA) and TOTE Maritime Alaska, LLC (TOTE).
- 3 On November 23, 2022, the Commission issued a Notice of Revised Procedural Schedule, continuing the evidentiary hearing to April 5-6, 2023, and continuing the other remaining procedural deadlines in this case.
- 4 On March 28, 2023, PSP filed an Emergency Motion in Limine to Preclude the Introduction of Attorney-Client Privileged Material in Evidence (Emergency Motion in Limine). PSP submits that on March 15, 2023, PMSA served Data Request No. 658 on PSP, which quoted from a legal memorandum prepared by PSP’s former general counsel and current consultant, Walter S. Tabler. PSP submits that it appears PMSA obtained this legal memorandum through an unauthorized disclosure, possibly by a PSP member pilot, and that it has not waived any attorney-client privilege with respect to this document. PSP requests that the Commission require PMSA to immediately return all copies of the legal memorandum to PSP and preclude PMSA from relying on this material during the upcoming evidentiary hearing.

DISCUSSION

- 5 WAC 480-07-375(4) provides, “A party that opposes a written motion, other than a dispositive motion governed by WAC 480-07-380 or a motion for continuance governed by WAC 480-07-385, may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the presiding officer may set.”
- 6 Because of the approaching evidentiary hearing in this case, set to begin on April 5, 2023, we find it appropriate to shorten the normal 5 business day deadline for responding to PSP’s Emergency Motion in Limine. PMSA and other parties to the case may file any written response to PSP’s Emergency Motion in Limine by 5pm, on Monday, April 3, 2023.
- 7 We observe that PSP was first alerted to this apparent unauthorized disclosure on March 15, 2023, thirteen days before the motion itself was filed. While this should not be read as indicating that the Commission will find the privilege was waived, it undermines any assertion that the Commission should act on an emergency basis. This motion is instead properly construed and addressed as a motion in limine requiring a written or oral ruling by the start of the evidentiary hearing on April 5, 2023.

ORDER

- 8 **THE COMMISSION ORDERS That Pacific Merchant Shipping Association, Commission Staff, and TOTE Maritime Alaska, LLC, may file any written responses to PSP’s Emergency Motion in Limine by 5pm on Monday, April 3, 2023.**

DATED at Lacey, Washington, and effective March 29, 2023.

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.