

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-190976

ORDER 07

DENYING STAFF’S MOTION FOR
CONTINUANCE, IN PART;
REQUIRING RESPONSES TO
EXISTING DATA REQUESTS

BACKGROUND

- 1 On November 19, 2019, Puget Sound Pilots (PSP) filed with the Washington Utilities and Transportation Commission (Commission) its initial proposed tariff. On November 21, 2019, the Commission entered Order 01, suspending the tariff filing and setting the matter for adjudication.
- 2 On December 17, 2019, the Commission entered Order 02, Prehearing Conference Order; Notice of Hearing, which established a procedural schedule that was later modified by Order 04. As relevant here, Order 04 continued the hearing until August 12, 2020, and extended the discovery deadline until July 29, 2020.
- 3 On July 30, 2020, Commission staff (Staff) filed a letter seeking an extension of the discovery deadline until August 7, 2020. In its letter, Staff alleges that PSP breached its duty to supplement its responses to Staff’s data requests (DRs). Staff further requests the Commission impose a two-day turn-around time for DRs going forward.
- 4 Also on July 30, 2020, the presiding administrative law judge contacted the parties via email and requested a response indicating whether any party objects to Staff’s request. Pacific Merchant Shipping Association (PMSA) responded that it supports Staff’s proposal “to the extent it applies only to data requests directed to PSP regarding rebuttal materials.” PMSA objects to a general extension for any data requests directed to other parties.
- 5 PSP also responded, denying Staff’s claim that it breached its duty to supplement prior responses to data requests. PSP attached to its response Staff’s DRs propounded on July

30, 2020, and agreed to respond to a portion of those by August 4, 2020. PSP objects, however, to DRs 75-82 on the basis that Staff has been afforded adequate time “to follow up with additional questions relating to the documents produced by PSP in response to Staff’s DR 25 that are now the subject of DRs 75-82.” PSP argues that responding to DRs 75-82 would be “untimely and unduly burdensome.”

DISCUSSION AND DECISION

6 We deny Staff’s request to continue the discovery deadline but require PSP to respond to all outstanding DRs, including Staff’s DRs 75-82, for the reasons explained below.

7 As a preliminary matter, we construe Staff’s letter as a motion for continuance (Motion) filed pursuant to WAC 480-07-385, which defines a continuance as “any postponement of a deadline established by commission rule or order or any extension of time to comply with such a deadline.”¹ WAC 480-07-385(3)(a) requires parties to file and serve any motion for continuance other than an agreed request at least five business days prior to the deadline the party wishes to continue.

8 WAC 480-07-110(1) provides that the Commission may modify the application of its procedural rules during a particular adjudication without following the process outlined in subsection (2) of the rule if doing so is consistent with due process and the public interest. Although Staff’s Motion was not timely filed, we exercise our discretion to waive the application of the timing requirements set forth in WAC 480-07-385(3) for the purpose of addressing the Motion on its merits and providing guidance to the parties.

9 In its Motion, Staff stated it “believes that some of the information contained in Exh. GQ-5T relating to pilotage income should have been disclosed as a supplement to Staff’s prior data requests in this case.” PSP argues that Staff failed to identify any DR to which the new information PSP obtained would be responsive, and contends that there are none.

10 WAC 480-07-385(2)(a) provides that the Commission will grant a continuance if the requesting party demonstrates good cause for the continuance and granting the

¹ WAC 480-07-395(4) provides:

The commission will liberally construe pleadings and motions to effect justice among the parties. The commission will consider pleadings and motions based primarily on the relief they request and will not solely rely on the name of the document. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions or other documents that do not affect the substantial rights of the parties.

continuance will not prejudice any party or the Commission. We find that Staff's Motion contains insufficient information to establish that good cause exists, and further determine that extending the discovery deadline until two business days prior to the evidentiary hearing would be unduly burdensome to parties.

11 We are not persuaded, however, that responding to Staff's most recent DRs would prejudice PSP. We therefore extend the discovery deadline by one business day, to July 30, 2020, on the basis that the information responsive to Staff's DRs will likely benefit the record. To that end, we also require PSP to respond to Staff's DRs to which it objects related to pilotage income in other jurisdictions. We presume this information will be useful to the Commission, and that it would likely be the subject of bench requests if not offered for admission into evidence. Accordingly, we require PSP to respond by August 4, 2020, to each of the DRs propounded by Staff on July 30, 2020.

ORDER

12 **THE COMMISSION ORDERS THAT:**

- 13 (1) Commission Staff's July 30, 2020, Motion for Continuance in Docket TP-190976 is DENIED, in part. Staff's Motion is granted to extend the discovery deadline to July 30, 2020.
- 14 (2) Puget Sound Pilots objection to Commission Staff's data requests 75-82 is DENIED.

Dated at Lacey, Washington, and effective July 31, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson

RAYNE PEARSON
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.